



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	CHI/21UD/OLR/2019/0142
Property	:	Flat 5 Royal Albion Mansions, Marine Parade, Hastings, East Sussex TN34 3AQ
Applicant	:	Robert Antoni Julian Gliniecki & Jacqueline Gliniecka
Representative	:	Tolhurst Fisher LLP
Competent Landlord	:	Robert Terry Falconer & Raymond O'Connor
Representative	:	Shentons Solicitors and Mediators
Intermediate Landlord	:	Davis Properties Limited
Representative	:	ODT Solicitors
Type of Application	:	Determination of premium and other terms of acquisition remaining in dispute section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal Member(s)	:	Judge Tildesley OBE Mr B Simms FRICS
Date and Venue of Hearing	:	Town Hall, London Road, Bexhill-on-Sea TN39 3JX 4 March 2020
Date of Decision	:	13 April 2020

DECISION

Decision of the Tribunal

- 1) The Tribunal determines the premium payable for the new lease of Flat 5 Royal Albion Mansions, Marine Parade, Hastings (“the property”) at £15,378.00 in accordance with section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (1993 Act).

The Application

1. The Applicant seeks a determination of premium and other terms of acquisition of a new lease pursuant to Section 48 of the Leasehold Reform, Household and Urban Development Act 1993.
2. On 14 November 2018 the Applicant served a notice to exercise the right to acquire a new lease of the property.
3. On 21 January 2019 the Landlord issued a counter notice admitting the Applicant’s right to a new lease but disputing the Applicant’s proposals in respect of the premium and the terms of the new lease.
4. The intermediate landlord served a Notice of Separate Representation.
5. The sole matter in dispute was the premium. The parties’ solicitors had agreed the terms of the new lease.
6. At the hearing the Applicant proposed a premium of £9,393.00 (£2,278 intermediate landlord), as against £17,629 (£6,234 intermediate landlord) for the competent landlord.

The Hearing

7. The parties’ expert witnesses, Mr Oliver Dyer MRICS (Applicant), Mr Wilson Dunsin FRICS (Competent Landlord) and Mr Geoffrey Philip Holden FRICS (Intermediate Landlord) gave evidence and represented their respective parties at the hearing. Mr and Mrs O’Connor, the Landlord was also present at the hearing.
8. The Applicant’s solicitors had prepared a bundle and a supplementary bundle of documents which was admitted in evidence. The bundle contained a Memorandum of Agreed matters signed by the expert witnesses [SB 23-27].
9. Immediately prior to the hearing the Tribunal inspected the property in the presence of the Applicant and the parties’ expert witnesses.

The Background

10. Royal Albion Mansions is a substantial seafront six storey building with frontages to Marine Parade, Albion Lane and George Street and within the historic Hastings Old Town Conservation Area.
11. The building was formerly a hotel built around 1880's, and of traditional construction with solid brick walls under a pitched roof covered with slates.
12. The building was converted into residential/commercial units. The commercial elements consist of a public house and live music venue on the basement, ground floor and part first floor, and ground floor retail fronting George Street. The public house is open seven days a week between 12 noon and 11pm with extended opening to midnight on Friday and Saturday nights
13. The residential elements comprise 11 flats arranged over first, second, third and fourth floors. The flats have a communal entrance to the side of the property off Albion Lane. The Public House and other nearby restaurants store their waste bins in Albion Lane.
14. The subject flat is on the third floor. The common areas under the lease for the flat comprise the communal entrance, steps leading up to ground floor hallway and vestibule and a central staircase. The Tribunal observed that a lift had recently been installed. The Applicant advised that the subject flat did not have the benefit of the lift because the Applicant had not contributed towards the costs of its installation.
15. The subject flat consists of a hall, lounge (4.10m x 4.74m), kitchen (4.17m x 2.69m), two bedrooms (2.56m x 3.06m & 3.99m x 2.85m) and bathroom with WC. The flat has single glazed windows, gas central heating and hot water. The flat is an older conversion and does not benefit from the levels of sound and heat insulation that are now required.
16. The intermediate lease for the building is dated 24 November 1988 and made between Laurel Crown Limited and Cambridge & County Securities Limited. The lease is held for a term of 99 years from the 25 March 1988 expiring on 24 March 2087. The rent payable is £100 per annum for the first 33 years, £200 per annum for the next 33 years and £300 per annum for the final 33 years.
17. The lease for the flat is dated 24 November 1991 and made between Cambridge & County Securities Limited and Judith Elizabeth Wilson. The term of the lease commenced on 25 March 1988 until 14 March 2087. The rent payable is £40 per annum until 24 March

2020, £80 per annum until 24 March 2054, and £120 per annum until 14 March 2087.

The Law

18. The statutory provisions dealing with the premium payable by the Applicant for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the 1993 Act. The premium is the aggregate of
 - The diminution in value of the landlord's interest in the tenant's flat.
 - The landlord's share of the marriage value.
 - Any amount of compensation payable to the landlord.
19. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:
 - The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
 - The value of his interest in the flat once the new lease is granted.
20. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements.
21. The value of the landlord's interest comprises two elements:
 - The right to receive rent under the existing lease for the remainder of the term (*The term*).
 - The right to vacant possession at the end of term subject to the tenant's right to remain in occupation (*The reversion*).
22. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's interests after the new lease had been granted, and deducting the corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.
23. Paragraph 5 of schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this Application.

The Issues

24. The matters agreed between the parties in respect of the premium were as follows:
 - Valuation date: 15 November 2018.
 - Unexpired term: 68.36 years.
 - Deferment Rate: 5 per cent
 - National Loan Fund Rate of 2.08 per cent as at 9 November 2018.
25. The Applicant's valuer conceded at the hearing that the approach adopted by the valuers for the Respondent and the intermediate landlord in respect of the valuation of intermediate landlord's interest was correct.
26. The Applicant's valuer acknowledged that on the agreed valuation date the freeholder and the intermediate landlord had received section 42 Notices from Flats 2, 3, 4, 5, 6, 7, 10 and 11. Flat 8 had a statutory lease extension granted in 2011. Given those facts a hypothetical buyer would realise that such profit rent as there was at Valuation date would become negative once the statutory lease extensions had been completed.
27. The Lands Tribunal in *Nailrile Limited v Earl Cadogan and others* [200] 2EGLR 151 determined that where an intermediate interest had a negative value after the grant of the new lease the intermediate interest should be valued using the single rate approach. The Lands Tribunal decided that the capitalisation rate in the single rate approach is the yield on 2.5 per cent Consolidated Stock.
28. The Tribunal noted that on 6 July 2015 2.5 per cent Consolidated Stock was redeemed. In its place The Rentcharges (Redemption Price) (England) Regulations 2016 provided that the yield to be applied would be the National Loans Fund Interest Rate.
29. The parties, therefore, agreed that the intermediate interest would be valued using the single rate approach, and the appropriate ground rent capitalisation rate would be 2.08 per cent.
30. This left two matters in dispute:
 - The value of the flat held on the lease claimed.
 - The value of the flat held on the current lease without rights under the 1993 Act.

Consideration

31. The Tribunal intends to deal with each of the two matters in dispute starting with the value of the flat held on the lease claimed .
32. Mr Dyer for the tenant identified three comparable sales relevant to his valuation. Flats 2 and 7, 11 Pelham Crescent which were one bedroom flats with sea views and a share of the freehold. They sold at £103,000 on 15 June 2018 and £103,500 on 28 September 2018 respectively. The third was 4 The Sea House a two bedroom flat with sea views which sold at £145,000 on 19 September 2017 with a lease term of 113 years.
33. Mr Dyer considered that 4 The Sea House was the most relevant comparable being close to the subject property and located over A1/A5 retail shops. Mr Dyer, however, highlighted that The Sea House was a modern property constructed to current building regulations and that it was not situated over a public house.
34. Mr Dyer also referred to two current properties for sale, a two bedroom maisonette at 44-45 George Street which was above a restaurant and had an asking price of £150,000, and a three bedroom ground floor flat for sale in Pelham Crescent with an asking price of £157,500. Mr Dyer opined that these two properties were more attractive than the subject flat and represented a “glass ceiling” on the values of flats in the area.
35. Mr Dyer stated in his professional judgment and applying his local expertise that a hypothetical purchaser would have difficulties in obtaining a mortgage for the subject flat.
36. Mr Dyer decided on a value of £143,550 for the extended lease unimproved and a one per cent uplift to give a freehold value of the landlord’s interest in the flat of £145,000.
37. In arriving at his valuation Mr Dyer said that he started with the sale evidence of 4 The Sea House which he then examined against the basket of sales evidence, and particular features of the subject flat, its age in respect of construction, its location above a Public House and perceived difficulties with obtaining a mortgage.
38. Mr Dunsin for the freeholder stated that Flat 4 The Sea House was the best comparable. Mr Dunsin pointed out that it was smaller than the subject flat being some 507 square feet compared with 708 square feet. Further the sale price for Flat 4 The Sea House required adjustment to produce a value at the valuation date. In this respect Mr Dunsin applied The Land Registry House Price Index to the sale price which resulted in a valuation of £156,754.
39. Mr Dunsin started with the adjusted sale price of £156,754 for Flat 4 The Sea House to which he added £10,000 to reflect the size

difference between the Flat 4 and the subject flat which produced a figure of £166,754.

40. Mr Dunsin then referred to the Upper Tribunal decision in *Contactreel Limited v Smith* [2017 UKUT 178 (LC)] which said that

“it is generally recognised there is a qualitative difference between freehold and leasehold tenure and that a leasehold, however, long its term is not as valuable as an equivalent leasehold”.
41. The Upper Tribunal in *Contactreel* set out a range of relativities to reflect the difference between the values of a long leasehold and the freehold. The Upper Tribunal identified a relativity of 98 per cent for leases with unexpired terms of 100 to 114 years.
42. Mr Dunsin applied the relativity of 98 per cent to the adjusted sales figure of £166,754 which produced a freehold value of approximately £170,000. Mr Dunsin then decided to apply a relativity of 99 per cent to the £170,000 to produce an extended lease value of £168,300 for the subject property.
43. Mr Dunsin in evidence disagreed with Mr Dyer’s view about the difficulties of obtaining a mortgage for the subject flat and considered that the flat was readily saleable in its current condition and location.
44. Mr Holden for the intermediate landlord said that in the absence of market evidence involving the sale of the subject flat he found it a difficult property to value with precision. Mr Holden opted for a pragmatic approach and split the difference between the competing valuations of Mr Dyer and Mr Dunsin. Mr Holden applied a freehold valuation of £157,155 which with a 99 per cent relativity supplied a value of £155,583 for the extended lease of the subject property.
45. The Tribunal is obliged to do its best on the evidence provided. The Tribunal noted that the experts agreed that Flat 4 The Sea House was the most relevant comparable and that the adjusted sale price of £156,754 should form the basis for the value of the extended lease for the subject flat.
46. Having agreed on the starting point of Flat 4 The Sea House, the respective approaches of Mr Dunsin and Mr Dyer diverged. Mr Dunsin focussed exclusively on constructing his valuation on the sale evidence of Flat 4. The Sea House. Mr Dyer, on the other hand, stood back and examined the sale evidence for Flat 4 in the context of sales of flats in the vicinity (including asking prices) and of specific features of the subject flat. The Tribunal did not regard Mr Holden’s contribution added to the debate on the value of extended

lease. Mr Holden's principal concern was with the valuation of the intermediate landlord's interest.

47. The Tribunal is not convinced with Mr Dunsin's decision to add £10,000 for the size differences between Flat 4 and the subject flat. The Tribunal considers that the valuation of size difference should be viewed in the context of the overall layout and the number of bedrooms for the respective flats. Each flat had two small double bedrooms of similar size with Flat 4 having slightly larger bedrooms. The Tribunal considers that the lay out of the living areas was the principal difference between the flats rather than size. Flat 4 had an open plan kitchen and living area whilst the subject flat had a separate lounge and kitchen. In the Tribunal's view, the respective lay outs would appeal to different sectors of the market, and would not result in one particular lay out having a higher value than the other. Given these circumstances the Tribunal does not consider that the subject flat would attract an increase of £10,000 in its value because of its larger size than Flat 4 The Sea House.
48. The Tribunal preferred Mr Dyer's approach to the valuation of the extended lease. The Tribunal finds Mr Dunsin's stance one dimensional focussing exclusively on the sale price of 4 The Sea House. In the Tribunal's view the hypothetical purchaser would make an offer for the subject flat in the round having regard to a wider range of factors than just the sale price of Flat 4 The Sea House.
49. The Tribunal is satisfied that the various features of the subject flat identified by Mr Dyer: its age and not constructed to modern standards and its location directly over a public house and music venue would have an adverse effect on its value pushing it below the adjusted sale figure for Flat 4 The Sea House.
50. The Tribunal finds Mr Dyer's evidence on the asking prices for two current properties in the immediate vicinity of the subject flat relevant insofar as giving an indication of the upper limit of what a hypothetical purchase would pay for the subject property. In the Tribunal's view the asking prices suggest a ceiling of a £150,000.
51. The three expert witnesses agreed that the value of the extended lease represented a relativity of 99 per cent of the freehold value.
52. **Having regard to its findings in [46] to [51] the Tribunal adopts Mr Dyer's valuation for the extended lease of £143,550 and of £145,000 for the freehold value of the landlord's interest in the flat.**
53. The Tribunal turns now to the value of the flat held on the current lease without rights under the 1993 Act.

54. The expert witnesses agreed that there was no relevant market evidence of sales of flats with short leases at or near the valuation date.
55. In order to arrive at the value for the existing lease without rights the expert witnesses relied on the evidence provided by the Relativity Graphs. The graphs provide a value of the subject flat held on its existing lease with 68.33 years unexpired divided by its value in possession of the freeholder expressed as a percentage.
56. Mr Dyer referred to the “Graphs of Relativity” published by “my leasehold” which summarised the average values for a lease with an unexpired term of 68.32 years in the Graphs for 2009 and 2015 and in the Published Research.
57. Mr Dyer opted for the average percentage given in the 2009 RICS Greater London & England graphs of 91.47 per cent arguing that it gave a fair representation of the relativity between unextended and extended lease values in the local area and in the context of seafront flats.
58. Mr Dyer contended that 2015 data provided significantly lower unextended values which did not in his opinion tally with the differences in value when considered against real world transactional evidence in the Hastings and St Leonard’s area. When asked by the Tribunal to justify his opinion Mr Dyer suggested that the deficiencies with the subject flat had the effect of increasing the lower extended values expressed in the 2015 data. In this regard the Tribunal did not understand Mr Dyer’s reasoning. The Tribunal considered the deficiencies would have had the opposite effect of deflating the extended values.
59. Mr Dunsin and Mr Holden recited from various decisions of the Upper Tribunal. Mr Holden said that the apposite question when considering the evidence of Relativity Graphs was “What is the most reliable graph” In this regard Mr Dunsin and Mr Holden relied on two recent decisions of the Upper Tribunal.
60. In *Trustees of the Barry and Peggy High Foundation* [2019] UKUT 0242 (LC) the Upper Tribunal said that the FTT did not pay proper regard to the most recent cases outside prime central London, where the Savills enfranchisable and unenfranchisable graphs have been preferred by the Tribunal to the use of an average of the RICs 2009 graphs. The Upper Tribunal went on to say that had the FTT considered the most reliable and recent graphs they would have taken into account the Savills 2015 enfranchisable graph, the Savills 2016 unenfranchisable graph, and the Gerald Eve 2016 (unenfranchisable) table and graph.
61. In *Oliyide and Elmbirch Properties* [2019] UKUT 0190 (LC) the Upper Tribunal said that the Savills 2016 unenfranchisable graph,

and the Gerald Eve 2016 (unenfranchiseable) table and graph were appropriate for properties outside prime central London.

62. Mr Holden adopted the relativity of 83.53 per cent as set out in the Savills 2016 unenfranchiseable graph for a lease of 68.33 years. Mr Holden said that the graph had been checked and found statistically sound.
63. Mr Holden went onto say that the lower values in the recent graphs reflected the current market for short leases, and were being accepted as such by the practitioners in the field of lease extensions. Mr Holden supported his assertion by his analysis of events that occurred since the financial crash in 2008 and corresponded with the 2009 relativity graphs which are sometimes preferred for valuing properties outside London.
64. Mr Holden highlighted two significant developments which in his opinion had depressed the value of short leaseholds. The first was the expansion of the market in leasehold properties since 2009 which meant that purchasers had greater choice and would opt for longer leaseholds rather than shorter ones. The second related to the reluctance of mortgagees to lend monies on leases with a term of less than 80 years.
65. Mr Dunsin adopted a relativity of 83.7 per cent which was derived from taking the average of the Gerald Eve 2016 unenfranchiseable graph and the Savills 2015 unenfranchiseable graph.
66. The Tribunal was not impressed with Mr Dyer's justification for a relativity of 91.47 per cent, and found his explanation particularly on the impact of the property's shortcomings confusing.
67. The Tribunal was persuaded by the arguments of Mr Dunsin and Mr Holden. The Tribunal preferred Mr Holden's proposal of 83.53 per cent as the appropriate relativity.

The Tribunal's decision

68. The Tribunal determines the premium payable for the new lease of Flat 5, Royal Albion Mansions, Marine Parade, Hastings, East Sussex TN34 3AQ at £15,378.00 in accordance with section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (1993 Act).
69. The share of the premium between the freeholder and the head leaseholder is £9,337.00 and £6,041.00
70. The Tribunal's calculation is set out below.

Address Flat 5, Royal Albion Mansions TRIBUNAL

Facts used

Values	New long lease (unimproved)	£143,550	99%		
	Freehold	£145,000			
	Existing lease (unimproved)	£121,119			
	Relativity	83.53%			
	Valuation date	14/11/18			
	yield	2.08%			
	distant reversion yield	5.00%			
Unexpired term at valuation date - Headlease		68.36	years		
Unexpired term at valuation date - Flat		68.33	years		
	Ground Rent	40.00	for	2.36	yrs
	increasing to	80.00	for	33	yrs
	increasing to	120.00	for	32.97	yrs

Value of Freeholder's interest

				£143,550	
x Pv	5.00%	68.33 years		<u>0.035656</u>	£5,118
Less				£145,000	
x Pv	5.00%	158.33 years		<u>0.000442</u>	<u>£64</u>
				Freeholder's interest	£5,054

Value of headlessee's interest

Capitalise ground rent for current term					
			Ground rent	£40.00	
YP 2.08%	2.36 years			<u>2.27996</u>	£91
			Increase to	£80.00	
YP 2.08%	33 years			23.70472	
x Pv 2.08%	2.36 years			<u>0.95258</u>	<u>22.58057</u>
					£1,806
			Increase to	£120.00	
YP 2.08%	32.97 years			23.68966	
x Pv 2.08%	35.36 years			<u>0.48290</u>	<u>11.43976</u>
					<u>£1,373</u>
				Headlessee's interest	£3,270

Marriage value

	Capital value of new extended lease	£143,550	
Value of landlord's interest after grant of new lease		<u>£64</u>	£143,614

Less	Capital value of existing lease	£121,119	
	Value of Freeholder's interest lost	£5,118	
	Value of headlease	<u>£3,270</u>	<u>£129,507</u>
	Marriage value	<u>£14,107</u>	

50% of marriage value	£7,053
Compensation	<u>nil</u>
Price payable	<u>£15,378</u>

Apportionment

Freehold	£5,054	60.71%	£9,337
Headlease	£3,270	39.29%	£6,041
		100.00%	£15,378

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking