



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

Case Reference : CHI/00ML/OLR/2020/0161 &
CHI/00ML/OC9/2020/0019

Property : Flat 4 ,18, Albert Road, Brighton BN1 3RN

Applicant : 328 GTS Limited

Representative : ODT Solicitors
drigg@odt.co.uk

Respondent : Eighteen Albert Road Brighton Limited

Representative : Coole Bevis
jonathan.everett@coolebevisllp.com

Type of Application : Section 48(1) & 60 Leasehold Reform,
Housing and Urban Development Act 1993

Tribunal Member(s) : W H Gater FRICS MCI Arb
Judge S Lal
M C Woodrow MRICS

Date of Directions : 6 May 2021

DECISION

Summary of Decision

The Tribunal has determined for the reasons set out below that the price payable by the Applicant for the lease extension at the property is the sum of £28,100.

The Tribunal notes that the draft new lease has been agreed.

The Tribunal directs that representations in respect of costs applications shall be made within 21 days of the date of this decision.

BACKGROUND

1. The application is for the premium, other terms and costs to be determined under the Act.
2. Directions were made on 27 October 2020, 29 December 2020, 15 January 2021 and 22 February 2021.
3. An application to extend time limits was rejected by directions on 22 February 2021 on the grounds that the parties had earlier reported good progress and that sufficient time had already been granted.
4. The Applicant submitted a bundle as directed. This included, inter alia two expert valuers reports and a schedule of agreed matters.
5. The Tribunal reviewed the bundle and determined that it could fairly and reasonably proceed to a decision on the papers.
6. The matter was determined having regard to the evidence contained in the bundle and application. References to documents in the bundle are shown as [].
7. The Tribunal noted that since the application was made, the form of the new lease has been agreed.
8. The Tribunal identified the remaining issue that needed to be determined is the premium to be paid in accordance with The Act.
9. In considering the premium to be paid, the Tribunal noted that the salient matters not agreed between the valuers, summarised at 12 below, would also need to be determined.
10. Valuation reports submitted on behalf of both parties were from Ms Jenni Freeborn MRICS instructed by the Applicants, and Mr Julian Wilkins MRICS instructed by the Respondents.
11. The following matters have been agreed between the experts.

- A date of valuation of 9 March 2020.
 - The term remaining 53.04 years.
 - The floor area of the flat 27.8 square metres.
 - A deferment rate of 5%.
 - The capitalisation rate 7%.
 - The aggregate value of the capitalised ground rent is £598.
 - The uplift to Freehold Vacant Possession Value. 1% uplift from the extended lease value to the Freehold value.
12. The following matters are reported as not agreed between the valuers.
- The reversionary value.
 - The extended lease value.
 - The existing lease value.
 - The marriage value.
 - The premium to be paid.

The Law

13. The statutory provisions dealing with the premium payable by the Applicants 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:
- (i) The diminution in value of the landlord's interest in the tenant's flat
 - (ii) The landlord's share of the marriage value
 - (iii) Any amount of compensation payable to the landlord.
14. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:
- (i) The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
 - (ii) The value of his interest in the flat once the new lease is granted.
15. 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.
16. The value of the landlord's interest comprises two elements:
- (i) The right to receive rent under the existing lease for the remainder of the term (The term).
 - (ii) The right to vacant possession at the end of the term subject to the tenant's right to remain in occupation (The reversion).
17. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's

corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.

18. 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 Evidence and Consideration

19. The Tribunal will not recite all the evidence submitted but has examined all submissions made in accordance with directions. It has considered in turn, the evidence in relation to each disputed item and makes the following findings.

The Property

20. From the evidence provided the Tribunal finds the following in relation to the property.
21. Flat 4 is one of five flats in a converted terraced dwelling house built circa 1880. It is a bedsitter/studio flat situated on the second floor with shared access from the Ground Floor.
22. The property is located in a residential area of Brighton with local amenities nearby.
23. The accommodation comprises a front facing bedsitting room with kitchenette fittings, and a storage cupboard with immersion tank. There is a separate bathroom / wc with bath, wash basin and wc. There is an electric shower over the bath.
24. From photographic and written evidence the Tribunal finds that the flat is in below average condition and fitted out to a basic standard with mixed sanitary ware, signs of damage to kitchen fittings and poor decoration internally.
25. Neither valuer makes any deduction for improvements to be excluded under the Act and the Tribunal finds that there are no qualifying improvements.
26. The flat is held on a lease dated 7 March 1975 (The Lease) for a term of 99 years commencing on 25 March 1974. The ground rent was initially £15 per annum for the first 25 years, rising to £30 for the next 25 years, then £45 for the following 25 years then £60 for the final 24 years.

The value of the unimproved, extended leasehold interest.

27. Ms Freeborn has submitted 9 comparable properties, being studio and small one bedroom flats, in evidence [48].

28. She makes various adjustments for comparison such as location and accommodation [49].
29. She makes allowance for comparable transactions which benefitted from the stamp duty holiday after the valuation date, based on half the tax saved.
30. House prices moved little during the period in evidence but adjustments by the house price index have been made. She points out that there are a limited number of lenders who will lend on small studio flats with a minimum floor area ranging from 30 to 46 square metres. Some 26 lenders do not lend on this type of security.
31. Accordingly, she groups the comparables referred to in two categories, above 30 m² and below 30 m².
32. Ms Freeborn notes the sale of this property at £80,000 in March 2020 with the benefit of the Section 42 notice.
33. Applying weighting as described to the sales evidence she arrives at a price per square metre of £5,600 and a total value of £155,000 for the extended lease value. The FHVP with the agreed uplift at 1 % is assessed by her as £156500.
34. Mr Wilkins also refers to a schedule of comparables and analyses the prices in terms of price per square metre. This produces a figure of £6,987 per square metre and an extended lease value of £194,238. However, he considers that this is too high and refers to the fact that sales are not usually based on a price per square metre. By cross checking comparable sales, he arrives at a valuation for the extended lease at £180,000 and submitted the following evidence.
35. He refers to seven sales of comparable flats. He uses the floor areas from energy performance certificates as he believes these are reliable. He adjusts for various factors.
36. His valuation of the long leasehold interest is £180,000. The FHVP value with the agreed uplift at 1% is reported as £181,800.
37. The Tribunal considered all the comparable evidence.
38. Under the Act the property is assumed to be in tenant worthy condition and not as it is shown in evidence.
39. The sale of 1b, 26 Albert Road in late 2020 [49] is the nearest comparable in terms of date and location. It is slightly larger than the subject property. Ms Freeborn's adjustments for lease length and stamp duty holiday are matters of opinion lacking firm evidence but the concluded value of £169,000 sits well with other sales.

40. The Ground Floor Flat at 15 Albert Road is smaller than the subject property and sold two years before the valuation date for £135,000.
41. Mr Wilkins' comparable at Flat 6, 1 Vernon Terrace shows an adjusted value of £176,247 for a slightly larger one bedroom flat.
42. The Tribunal finds that Ms Freeborn's valuation at £155,000 is too low in the light of evidence, e.g. Flat 1b, 26 Albert Road. Mr Wilkins' figure of £180,000 is high and looks to comparables with superior accommodation.
43. For these reasons the Tribunal finds that the value of the unimproved, extended long leasehold interest to be **£165,000**.
44. Adopting the agreed addition for a virtual freehold the Tribunal determines the FHVP value at **£166,600**.

The Value of the unimproved short lease.

45. Ms Freeborn commences her consideration with the sale price of the subject property in March 2020 at £80,000. Ms Freeborn is aware of the circumstances of the sale as she gave advice to the owner beneficiaries. She states that this was a cash sale where the property was offered in poor repair. The owners accepted a cash offer in circumstances which differed from a market transaction under the Act and the price does not equate to the required definition in the Act.
46. She adopts two approaches. The first is to analyse the actual sale price and make adjustments using a "residual" type calculation adjusting for refurbishment and agent's costs as well as an element of profit. Finally, she deducts for No Act Rights, arriving at a short lease value of £113,129.
47. Then as a second approach Ms Freeborn refers to relativity graphs approved by the Upper Tribunal and finds the value to be £114,407 (73.08%) against a FHVP value of £156,550. £114,420 is the value adopted in the premium calculation.
48. Mr Wilkins considers that the sale price at £80,000 is without doubt a market transaction. However he goes on to state that no agents' fees were paid and that the vendors' legal fees were paid by the buyer. He adjusts for these items. There is a further adjustment for the poor condition of the property as the Act requires a valuation assuming the tenant has complied with repairing covenants. In doing so he arrives at a short leasehold value of £93,050.
49. Mr Wilkins goes on to adjust for the exclusion of rights under the Act, the "No Act World Deduction".
50. He is of the opinion that the value of No Act Rights is greater in a mortgage dependant market and that sales away from central London are generally mortgage dependant.

51. Based on case law and his experience of the market Mr Wilkins has extrapolated data to create his own graph of “No Act World deductions” [147]. From that graph he extrapolates an adjustment percentage at 6.02% but appears to make no further adjustment for “mortgage dependant market” referred to in 50 above.
52. Deducting this percentage from £93,050 he concludes that the short leasehold value under the Act is £87,446. This produces a relativity to the FHVP value of £181,800 of 48.1%.
53. The Tribunal
54. Both valuers are aware of and referred to case law regarding the task of valuing short leasehold interests and the use of graphs of relativity.
55. Within the bundle the Tribunal was referred to inter alia -
- The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 (Mundy),*
Deritend Investments Ltd v Treskonova (2020) UKUT 0164 (LC),
Trustees of the Barry and Peggy High Foundation v Zucconi [2019] UKUT 0242 (LC).
56. The Tribunal considered the evidence from both experts on adjusted valuations, relativity and the use of graphs, particularly in the light of the Deritend case referred to above.
57. The Tribunal was referred in particular to Mundy. In that case it was made clear that the preferred method for determining short lease value is by analysis of market evidence before resorting to graphs. If they are to be used, Deritend makes clear that Savills 2016 and Gerald Eve are more reliable and may be used outside of the PCL. It rejected the use of other graphs.
58. In Deritend the Upper Tribunal developed that guidance and said in its decision -

58. The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence, notwithstanding that the subject of the valuation is outside PCL. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a Tribunal would be entitled to adjust the figure suggested by the PCL graphs. The RICS 2009 graphs do not provide that persuasive evidence and, if it is to be found, it is likely to comprise evidence of transactions; if those are available it may be unnecessary to make use of graphs at all. In any event, no such persuasive evidence was presented to the FTT.

59. We are satisfied that the outcome justified by the evidence provided to the FTT was a determination based on the average of the two 2016 PCL graphs. For the reasons we have already explained we do not endorse Mr Sharp's averaging of the resulting relativity figure by reference to the Beckett and Kay 2017 graph.

59. The paucity of market evidence is often a significant hindrance to determining the value of a short leasehold interest under the Act.
60. Only the sale of the subject property has been offered in evidence and the experts differ on the analysis and basis of sale. As such the resultant divergence of opinions is based on individual views. There is an element of subjectivity and mathematics introduced in an imperfect sales world.
61. For this reason the Tribunal finds that this transaction and resultant analysis does not provide "persuasive evidence" envisaged by the Upper Tribunal in *Deritend*.
62. The clear guidance in *Deritend* and latterly *Zucconi* is that only certain graphs are approved. Mr Wilkins has clearly given a great deal of thought to relativity in creating his own graph. However, this is based on the results of case law rather than analysis of actual sales transactions using recognised statistical methodology. For this reason, the Tribunal rejects this methodology and looks to the approved graphs for guidance on the true relativity.
63. Accordingly the Tribunal approves the approach taken by Ms Freeborn in arriving at a relative percentage of 73.08%. Applied to a FHVP value of £166,660 this provides a value of the short leasehold at **£121,795**.
64. The determined sums when incorporated into the calculation of premium payable below produce a sum of **£28,100**. Accordingly the Tribunal determines the premium payable in this sum.

Appeals

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.

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.

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.

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.

APPENDIX 1

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Flat 4 Albert Road, Brighton BN1 3RN

Calculation of premium payable.

Value of Freehold Interest:				
<u>Term value</u>	Agreed by parties			£598
<u>Reversion</u>				
FHVP of flat £165000 x (1/.99)		£166600		
PV £1 in 53.04 years @ 5%		0.0752		
Reversion value				£ 12528
			Present value freehold interest	£13126
<u>Diminution of FH reversion:</u>				
<u>Proposed</u>				
FHVP of flat		£166600		
PV £1 in 143.04 years @ 5%	0.0009		Proposed value of freehold interest	£150
Diminution in Freehold interest =present minus proposed value.				£12976
<u>Landlords Share of Marriage Value</u>				
Proposed long lease value value		£165000		
Proposed FHVP value		£150		
LESS				
Short lease value of flat	166660@73.08%	-£121795		
Freeholder Present Interest		-£13130		
Marriage Value		£30225		
		Freeholder's share @ 50% of £30225		£15112
				£28088
Enfranchisement price	say			£28100