



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

Case reference : **LON/00AZ/OLR/2021/0146**

Property : **37 Worsley Bridge Road, London
SE26 5BE**

**HMCTS code (paper,
video, audio)** : **V: VIDEO FVH**

Applicant : **Bala Property Limited**

Representative : **Mr J Bennett FRICS**

Respondent : **St Ermin's Property Co. Limited**

Representative : **Mr D Robson MRICS**

Type of application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge N Hawkes
Mr A Parkinson MRICS**

**Date of determination
and venue** : **15 September 2021 Remote Hearing**

Date of decision : **1 October 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: FULL VIDEO HEARING REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that

the Tribunal was referred to are in a bundle of 254 pages (excluding index), the contents of which we have noted. The order made is described below.

Summary of the Tribunal's decision

The premium payable for the new lease of 37 Worsley Bridge Road, London SE26 5BE is £146,600.

Background

1. This is an application made by the Applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) for a determination of the premium to be paid for the grant of a new lease of 37 Worsley Bridge Road, London SE26 5BE (“the Property”).
2. Chapter II of the 1993 Act confers on the tenant of a flat the right to acquire a new lease of the flat on the payment of a premium which is calculated in accordance with the provisions of Schedule 13 to the 1993 Act. The new lease, under which no rent is payable, is for a term equal to the unexpired term of the original lease plus an additional 90 years.

The issues

3. By an agreed memorandum dated 22 July 2021, the parties’ experts state that the agreed matters are as follows:

“1. The property is a ground floor two-bedroom maisonette in a purpose-built semi-detached building, built circa 1938, with private entrance and garden to the rear.

2. The property is situated on a residential road a short walk from the shops and restaurants of Southend Lane. Southend Park is a short walk away. Transport links are provided by Lower Sydenham Railway station.

3. At the date of valuation the property was exhibiting signs of significant damp penetration in the second bedroom and bathroom from the above maisonette and otherwise the fittings and decorations throughout were dated and beyond their useful life expectancy with complete overhaul and refurbishment required.

4. The Gross Internal Floor area (GIA) is 550ft² (51m²).

5. The accommodation comprises hall, reception room, kitchen, 2 bedrooms and bathroom.

6. The Date of Valuation is the 7th July 2020.

7. *The flat is held under a lease for a period of 99 years from 25th March 1938 thus having 16.71 years remaining at the date of valuation.*
 8. *The current ground rent is fixed at £5.20 per annum.*
 9. *The compensation due to the loss of ground rent is agreed at £50.*
 10. *The appropriate deferment rate is agreed at 5.25% for the calculation of the landlord's loss of reversion in 16.71 years.*
 11. *The appropriate deferment rate is agreed at 5% for the calculation of the landlord's loss of reversion in 106.71 years."*
4. The experts also state that the matters in dispute are as follows:
1. *The value of the flat in the hands of the freeholder.*
 2. *The appropriate relativity for the existing lease, when compared to the value of the flat in the hands of the freeholder.*
 3. *The appropriate relativity for the extended lease, when compared to the value of the flat in the hands of the freeholder.*
 4. *The appropriate premium payable excluding costs."*
5. It was confirmed at the hearing that it is not contended that value of the Property to the freeholder is affected by the risk of the lessee remaining in occupation at the end of the lease, as afforded by Schedule 10 of the Local Government and Housing Act 1989.
6. The Applicant contends for a premium of £143,100 and the Respondent contends for a premium of £152,900. Accordingly, the parties are £9,800 apart.

The hearing

7. The hearing of this matter took place by video on 15 September 2021. The Applicant was represented by its expert, Mr Justin Bennett BSc (Hons) FRICS ACI Arb, and the Respondent was represented by its expert, Mr David Robson MA (Oxon) MSc MRICS.
8. The Applicant relied upon an expert report dated 3 September 2021 prepared by Mr Bennett and the Respondent relied upon an expert report dated 6 September 2021 prepared by Mr Robson. The Tribunal heard oral evidence from both experts.
9. Various relevant colour photographs are included in the hearing bundle. Further, at the conclusion of the hearing, it was agreed that, by

5 pm on 16 September 2021, the experts would send the Tribunal a supplemental joint statement containing further colour photographs of the Property and of the proposed comparable properties, together with the experts' observations on the photographs and the lease in respect of 46 Worsley Bridge Road.

10. On the basis that the Tribunal would receive these further documents, the experts were content for the Tribunal not to inspect. Having received and considered these documents, we are satisfied that it is neither necessary nor proportionate to the issues in dispute for an inspection to be carried out by the Tribunal.
11. During the course of cross-examination, Mr Bennett revised Appendix 3 to his report to correct an accidental error concerning lease length of one of his comparable properties. It was agreed that he would provide the Tribunal with a written copy of his revised Appendix 3 and this has been received.

The value of the freehold with vacant possession

The comparable sales evidence

12. Having carefully considered the evidence of both experts, the sales evidence which the Tribunal considers to be relevant and the adjustments which the Tribunal finds to be appropriate are set out in a table which is appended to this decision. We are not satisfied that adjustments for potential storage space are justified given the nature and location of the comparable properties.
13. On the basis of this comparable sales evidence, the Tribunal finds that the value of the extended lease is £270,500.

The relativity of the extended lease when compared to the freehold

14. The extended lease will have 106.71 years remaining. Mr Bennett contends for a relativity when compared with the freehold of 96.84% and Mr Robson contends for a relativity of 99%.
15. In *Earl Cadogan v Betul Erkman [2011] UKUT 90 (LC)*, the Upper Tribunal stated at [98], on the issue of relativity between freehold and long leasehold values:

98. There is little difference between the parties on this issue. The Nominee Purchaser argues that the relativity for very long leases (which we take to be over 100 years unexpired term) should be 99% and the Freeholder says that it should range between 98% and 99% depending upon the length of the unexpired term under consideration.

We prefer the evidence of the Freeholder on this issue which is supported at the lower end of the range by reference to the Gerald Eve/John D Wood 1996 graph which shows a relativity of 98% at 100 years. In our opinion the following range of relativities is appropriate: leases with unexpired terms of 100 to 114 years – 98%; 115 to 129 years – 98.5% and above 130 years – 99%. We do not consider that the additional category of 98.75% proposed by Mr Clark for unexpired terms of between 125 – 130 years is justified.

16. *The issues raised in the Erkman case were further considered by the Upper Tribunal in Contactreal Limited v Ms Hannah M Smith [2017] UKUT 178 (LC) at [69] to [73]:*

“Issue (v): freehold vacant possession value

69. The FTT did not accept that the value of the extended leasehold was 99% of the freehold vacant possession value because this adjustment was ‘not common practice in the Midlands’. Ms Abel said there was no demand for freehold flats in Leamington Spa because (i) there was a lack of mortgage finance; and (ii) there was an inherent difficulty in enforcing positive covenants. She said that ‘in a relatively immature market such as the Midlands, it is not something that is ever taken [into] consideration when agreeing lease extension premiums.’

70. It is generally recognised that 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 freehold. The relativity of even the longest lease may approach 100% but will not reach it. This valuation principle is reflected in many Tribunal decisions and in Earl Cadogan v Erkman [2011] UKUT 90 (LC) the Tribunal set out an appropriate range of relativities at paragraph 98:

"Leases with unexpired terms of 100 to 114 years - 98%; 115 to 129 years - 98.5% and above 130 years - 99%."

71. The majority (but not all) of the graphs in the RICS Research Report ‘Leasehold Reform: Graphs of Relativity’ show relativities of 100 year leases which are less than 100%. One graph that equates a 100 year lease with a freehold is that produced by Nesbitt & Co. In Mallory v Orchidbase Limited [2016] UKUT 0468 (LC) the Tribunal accepted the evidence of Mr Laurence Nesbitt of that firm that ‘in his experience a share of the freehold would make little difference to value when considering long lease values.’ The Tribunal found support for that view in the price achieved for a long leasehold flat which was higher (on a time adjusted basis) than the prices of three other flats in the same block each of which had a share of the freehold.

72. *In many cases before the Tribunal the relativity of a long lease is agreed between the parties and is unlikely to be disturbed, e.g. in Denholm the parties agreed, and the Tribunal accepted, that an extended 133.37 year lease had a relativity of 99%.*

73. *It may be the FTT's experience in the Midlands that parties tend to agree the relativity of long leases at 100% although the reasons given by Ms Abel why this is so and her suggestion that the Midlands market is 'immature' are not explained or convincing. Mr McKeown challenged the FTT's assertion that it was 'not common practice' to discount the relativity by 1% and, in the absence of any evidence of the kind that persuaded the Tribunal in Mallory not to make such an allowance, I see no reason why such a discount should not properly have been made by the FTT, in accordance with Tribunal practice and valuation principle. I therefore allow this ground of appeal and determine the relativity of the extended lease at 99% of the freehold vacant possession value."*

17. Further, in *Roberts v Gardner* [2018] UKUT 64 (LC), the Upper Tribunal stated:

"47. In the Tribunal's recent decision in Contactreal Ltd v Smith [2017] UKUT 0178 (LC) the existence of a difference in value between a long lease and an unencumbered freehold of the same property was taken to be an established matter of valuation principle which ought not to be departed from except where there was evidence to justify doing so. At paragraph [70] the Tribunal (Mr A.J. Trott FRICS) said that 'the relativity of even the longest lease may approach 100% but will not reach it.' Reference was made to Earl Cadogan v Erkman [2011] UKUT 90 (LC) in which the Tribunal suggested how that difference may be quantified at different long lease lengths: 'Leases with unexpired terms of 100 to 114 years - 98%; 115 to 129 years - 98.5% and above 130 years - 99%."

18. In assessing relativity, Mr Bennett has considered evidence concerning the sale of 44 Worsley Bridge Road, a proposed comparable property (on the basis that this sale was with a share of the freehold), the *Erkman* case, and a straight-line analysis of the Savills 2015 market graph. At paragraph 4.24 of his report, he states:

"...mindful that relative values have reduced over time, due to higher premium levels driving down market value, I am of the opinion that the appropriate level of relativity is the average of the Erkman relativity and Savills 2015 market relativity $[(98\%+95.67\%)/2]$ for the 106.71 lease at 96.84%"

19. During cross-examination, Mr Bennett agreed that the purchaser of 44 Worsley Bridge Road would have to pay a premium to extend their

lease but he noted that they would receive half of that premium back as a freehold owner.

20. Mr Robson is of the opinion that there would be no difference in value between the Property with a lease with about 107 years remaining and the Property with a lease with over 130 years remaining at the valuation date.

21. At paragraph 10.2 of his report, Mr Robson states:

“Whilst I am aware of the Upper Tribunal determination of Contactreal Limited v Smith [2017] UKUT 178 (LC), suggesting a relativity of 98% for leases of 100 – 114 years, my opinion is derived from the lack of evidence to suggest a differential from my general experience in valuing in the Greater London area. Indeed, it has only been since 2014 the RICS changed the assumed ‘minimum’ term from 70 years to 85 years in the Red Book and within the last five years lenders have started to show concern with lending on properties with less than 85 years remaining. The general consensus with local estate agents is as long as the lease has 100 or more years remaining there will be no impact on value as the level of sophistication / knowledge within the market is not considered to be of the same standard as that found in Prime Central London. That said, it is admitted the Government announcement on 7th January 2021 seems to have given more awareness to the implications of leasehold property however, as yet, I have not seen evidence or come across a purchaser who has negotiated a lower sale price to reflect a future lease extension when the lease is already over 100 years in the local market or the wider Greater London area.”

22. During cross-examination, the experts expressed differing opinions concerning the nature of the market in the locality of the Property. In summary, Mr Robson gave evidence that estate agents are of the view that “a 99 year lease is long enough” and that the market in this area is not sophisticated enough to differentiate between significantly different lease lengths when the terms are over 99 years.

23. Mr Bennett gave evidence that a purchaser in this locality would be mindful of the difference between, for example, leases with terms of 106 years, 141 years and 999 years. In his view, the market will also be aware of the existence of graphs and will consider the values in the *Erkman* case to be too high. Both experts gave evidence that they have extensive valuation experience in the relevant area.

24. The Tribunal finds that the appropriate relativity in the present case is 98%. Having carefully considered the entirety of the evidence given by each expert, we prefer Mr Bennett’s evidence that the local market is sophisticated enough to differentiate between leases with terms of 99 years and above with significantly different lease lengths. However, we

prefer Mr Robson's evidence that the local market is unlikely to be sufficiently sophisticated to rely upon graphs in this context.

25. On the basis of the case law set out above and our findings on the evidence, we are satisfied that the applicable relativity in the present case is 98%. Applying this relativity to the extended lease value of £270,500, the value of the flat in the hands of the freeholder is £276,000.

The relativity for the existing lease, when compared to the value of the flat in the hands of the freeholder

26. The Applicant contends for a relativity of 35.32% and the Respondent contends for a relativity of 32.85%.

27. In *Deritend Investments (Birkdale) Ltd v Treskonova* [2020] UKUT 0164 (LC) at [58] the Upper Tribunal stated:

“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.”

28. Mr Bennett gave evidence that Gerald Eve have not published, or explained, the evidence which forms the basis for their graph, despite requests to do so. He also stated that it is “common knowledge” that the Gerald Eve graph was withdrawn from their website shortly after publication and was only reintroduced after reference had been made to it in litigation.
29. In Mr Bennett's opinion, the appropriate relativity should be drawn by averaging the relativities derived from the Savills and Gerald Eve graphs and the relativity drawn from the short lease sale of Flat 5 Meadowview Road, a property in the vicinity.
30. On analysing the sales of six properties in the locality in poor condition with approximately 17 years remaining on their leases, Mr Robson notes the prices achieved range from £91,000 to £185,000. Further, a sale price of £146,000 was achieved for a refurbished property with a 17.1 year lease.

31. Mr Robson states that he has made “best efforts” to analyse the short lease sales evidence but he concludes that the hypothetical purchaser would, at the valuation date, have been advised to bid based on the Savills unenfranchiseable and Gerald Eve Graphs. In his opinion, the appropriate relativity is 32.85% which he has derived by averaging the figures obtained from the two graphs.
32. The Tribunal is not satisfied that the evidence of short lease sales in the vicinity can be relied upon due to the inconsistency in the sales figures achieved. On the basis of Mr Bennett’s evidence concerning the Gerald Eve Graph, we consider it likely that the hypothetical purchaser would, at the valuation date, have relied upon the graphs but would have placed greater weight (75%) on the Savills graph than on the Gerald Eve graph. We therefore find that the appropriate relativity is 33.75%.

Conclusions

33. Applying the Tribunal’s findings, the premium payable for the new lease of 37 Worsley Bridge Road, London SE26 5BE is £146,600. The Tribunal’s valuation is attached to this decision.

Name: Judge N Hawkes

Date: 1 October 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case

number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Address	Date	Price	Floor Area (Sq Ft)	Lease £ per sq ft term	Adjustment to RHP value and time	Time	Adjustment to RHP	Location	Condition	Garden	Parking	Further adjustments	Overall adjusted RHP
37 Wonsley Bridge Subject Road	Jul-20	285,000	550	316	LR July 20 = 121.36 LR Sep 20 = 122.35 Share of Freehold	546	546	Similar	Poor	Yes - near	No	Less 5% for condition. Less 4% for parking. Total less 9% Less 5% for condition. Less 6% for tandem parking spaces. Plus 8% for limited potential front garden and no rear garden. Total less 2% Less 5% for condition. Less 5% for location. Total less 10% Less 5% for condition. Less 5% for location. Total less 10% Less 5% for condition. Less 5% for location. Total less 10% Less 5% for condition. Less 5% for location. Total less 10% Less 2% for condition. Less 5% for location. Total less 7%	496
44 Wonsley Bridge 1 Road	28/09/2020	286,000	530	550	94.9 300%	546	546	Similar	Better	Similar	Same		
46 Wonsley Bridge 2 Road	09/02/2021	275,000	525	524	LR Feb 21 = 126.71 965 99%	902	902	Similar	Better	Worse	Better - two tandem spaces		492
67 Meadowview 3 Road	26/06/2020	297,000	569	522	LR June 2020 = 122.11 306.8 98%	519	529	Better	Better	Similar	Same		476
132 Meadowview 4 Road	14/08/2020	300,000	506	593	LR Aug 2020 = 120.76 346.4 99%	596	602	Better	Better	Similar	Same		542
156 Meadowview 5 Road	30/09/2020	310,000	517	600	LR Sep 20 = 122.35 346.4 99%	595	601	Better	Better	Similar	Same		541
172 Meadowview 6 Road	30/10/2020	307,500	532	578	LR Oct 20 = 124.27 346.4 99%	564	570	Better	Better	Similar	Same		513
43 Meadowview 7 Road	25/02/2021	285,000	570	500	LR Jan 21 = 126.48 346.4 99%	480	485	Better	Better	Similar	Same		451
Average												501.48	
Adjusted RHP												275,813	
Extended lease value												say £276,000	
												say £270,480	
												say £270,300	

Tribunal's Valuation

Valuation date	07/07/2020
Unexpired term	16.71
Ground rent at valuation date	£5.20
Capitalisation rate	7%
Deferment rate of landlords loss of reversion in 16.71 years	5.25%
Deferment rate of landlords loss of reversion in 106.71 years	5%
Extended lease value	£270,500
Freehold value	£276,000
Relativity	33.75
Existing lease value	£93,150

Calculations

Diminution of freehold

Loss of ground rent			£5.20	
Years purchase	16.71 years@	7%	9.6736	£50

Reversion to Freehold

Capital Value			£276,000	
Present value of £1 in	16.71 years@	5.25%	0.42527	£117,375
				<u>£117,425</u>

Less Freehold reversion after extension

Freehold value			£276,000	
PV £1 deferred 106.71	@	5%	0.00548	£1,512
				<u>£115,912</u>

Marriage Value calculation

<u>Value of proposed interests</u>				
Freeholder			£1,512	
Leaseholder			£270,500	£272,012
<u>Value of existing interests</u>				
Freeholder			£117,425	
Leaseholder			£93,150	
Sub-Total				£210,575
Total marriage value			£61,438	
Landlords share @ 50%				£30,719
Lease Extension Premium				£146,631
		Say		£146,600