



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

**Case Reference** : CHI/24UD/OLR/2021/0123

**Property** : First Floor Flat, 44 Nutbeam Road, Eastleigh,  
Hampshire, SO50 5JQ

**Applicant** : Neil Naresh Jagessar  
Niquesha Kavita Sooklal-Jagessar

**Representative** : Dutton Gregory Solicitors  
[l.uphill@duttongregory.co.uk](mailto:l.uphill@duttongregory.co.uk)

**Respondent** : Elmdon Real Estate LLP

**Representative** : Keystone Law  
[Sal.mamujee@keystonelaw.co.uk](mailto:Sal.mamujee@keystonelaw.co.uk)

**Type of Application** : S.48(1) Leasehold Reform Housing and Urban  
Development Act 1993

**Tribunal Member(s)** : Mr W H Gater FRICS MCI Arb  
Mrs J E Coupe FRICS

**Date of Decision** : 19 April 2022

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## DECISION

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### 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 £21,658.**

### Background

1. This is an application to determine the premium and other terms of the acquisition under The Act. The Tribunal notes from the bundle that the lease is now agreed and, accordingly, this decision relates to the premium only.
2. Directions were made on 28 October 2021 setting out a timetable for the determination of the case, including exchange of written submissions on the matters not agreed.
3. Those directions confirmed that as no objection had been made within 28 days of the directions of 1 October 2020, the matter would be determined on the papers without a hearing.
4. On 25 January 2022 the Respondent made an application to the Tribunal requesting a hearing and objecting to the contents of the Applicants part of the bundle, submitted earlier.
5. An amended bundle was subsequently submitted, and the parties confirmed that they were content for the matter to be determined on the papers.
6. The Tribunal reviewed the bundle and determined that it could fairly and reasonably proceed to a decision on the papers.
7. The matter was determined having regard to the evidence contained in the bundle and application. References to the bundle are for the electronic numbering and shown [].
8. The Tribunal identified the following issues that need to be determined
  - The Premium to be paid in accordance with The Act.

9. In considering the premium to be paid, the Tribunal noted that the matters not agreed between the valuers, summarised at 11 below, would also need to be determined.
10. Valuation reports have been submitted on behalf of both parties. Mr Simon P Dancer FRICS was instructed by the Applicants. Mr Geraint Evans FRICS was instructed by the Respondents.
11. The following matters have been agreed between the experts or adopted in the expert's valuations.
  - A date of valuation of 3 May 2021.
  - A lease term of 99 years from 16 April 1981.
  - The ground rent is increased every 33 years and is currently £50 per annum. It rises to £100 per annum for the remaining 33 years of the term.
  - A deferment rate of 5%.
  - FHVP value adjustment 1%
12. The following matters are not agreed between the valuers.
  - The capitalisation rate.
  - The valuations of the property with the existing short lease and an extended lease.
  - The value of the property as a virtual freehold with vacant possession.
  - The premium payable.

## **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 the 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.
20. The Tribunal noted the description of the flat provided by Mr Dancer and the Agent's particulars in the bundle. The property comprises a first-floor self-contained apartment in a purpose-built development of similar style properties constructed around 50 years ago.
21. The property has a communal ground floor entrance with stairs leading to the first floor, an entrance hallway leading to a sitting room, kitchen, one bedroom and a bathroom. There is one car parking space allocated to the property.
22. The property is approximately 47 sq metres in area according to the EPC register although Mr Evans questions this as a similar flat at 40 Nutbeam Road is shown as 45 sq metres on the same register.
23. Neither expert makes adjustment for excluded improvements and there are assumed to be none.

24. The flat is held on a lease dated 16 April 1981 (The Lease) for a term of 99 years commencing on 16 April 1981, registered under Title number HP 189120.
25. Mr Evans reports the unexpired term as 58.95 years. Mr Dancer reports 58.99 years. The difference is de minimus and as a finding of fact the Tribunal determines that at the valuation date there were 58.95 years remaining and therefore 25.95 years until the next ground rent increase.
26. The ground rent is subject to fixed increases at 33 year intervals. The first review passed, and the current rent is £50. The next review takes place on 16 April 2047 when the rent increases to £100 p.a. for the remainder of the term.

### **The capitalisation rate.**

27. Mr Dancer adopts a rate of 6% and refers to an earlier decision of this Tribunal for Flat 5 40 Nutbeem Road: (CHI/24UD/OLR/2020/0154) which adopted 5.5%. He states that the higher rents and income growth from the property in that case were more attractive than the fixed rents in this instance.
28. Mr Evans considers that, with Base Rates at 0.1% a purchaser would look favourably at the returns for this property and adopts 5.5%.
29. No comparable ground rent transactions were submitted by either valuer.
30. The Tribunal finds that the rent passing is a modest amount with limited, fixed growth in 26 years from the valuation date. This would be less attractive to a purchaser than the rent referred to in the previous case. On consideration the Tribunal prefers Mr Dancers submission as to the appropriate capitalisation rate in the circumstances.
31. The Tribunal determines that the capitalisation rate in this case is 6%.

### **The value of the property with an extended lease.**

32. Mr Dancer submitted the following evidence.
33. The subject property last sold on 7 May 2021 for £91,000.
34. He states that the property was in poor condition, citing an email to him from the Applicant in January 2022 saying that there was no central heating, outdated, unserviceable gas heaters and there was a leak in the bathroom under the main bath which caused serious timber decay and mould growth. One of the windows in the bathroom was also defective causing water ingress and further decay. In the bedroom, there were signs

of damp to the walls and ceiling and the kitchen cabinets and flooring were in poor condition and needed to be replaced.

35. He refers to the following comparable.
36. Flat 34 Nutbeem Road, which is a very similar property in the same block, was sold on 14th July 2017 for £155,000 (one hundred and fifty-five thousand pounds). The property was in excellent condition and had been fully modernised and also had the benefit of a garden. The same property has sold, subject to contract at £150,000 with a 119-year lease at a £50 p.a. ground rent.
37. Mr Dancer values the extended lease at £150,000.
38. Mr Evans does not offer evidence of sales in support of his valuation of the extended lease but bases his calculation on a previous decision of this Tribunal on a similar flat at 40 Nutbeem Road: (CHI/24UD/OLR/2020/0154). This adopted a long lease value of £155,000 at a valuation date of 4 February 2020.
39. He refers to house price indices for Eastleigh between the valuation dates which show an increase of 4% rounded.
40. Nevertheless, Mr Evans does not apply this increase and states that this is offset by the apparent discrepancy in the reported floor areas. Accordingly, he reports a value of £155,000.
41. The Tribunal is not bound by previous First Tier decisions and looks to the experts to provide market sales evidence. Mr Dancer has only provided one long lease transaction which has not completed, and Mr Evans has provided none.
42. The fall in the value of Mr Dancer's comparable between 2017 and the current date is not explained. Examining the evidence, such as it is, the Tribunal finds that £150,000 is low.
43. Doing the best that it can in the circumstances the Tribunal determines that the value of the extended leasehold interest is £155,000.

**The value of the property as a virtual freehold with vacant possession (FHVP).**

44. Both valuers adopt the variance of 1% to allow for the difference between long leasehold value and the virtual Freehold Valuation (FHVP).
45. The Tribunal adopts this figure. Accordingly, the value of the long leasehold interest of £155,000 is 99/100 of the FHVP, £156,565.

46. The Tribunal finds that the value of the FHVP is **£156,565**.

### **The Value of the existing lease**

47. Mr Dancer referred to the cases of *Deritend Investments (Birkdale) Ltd v Treskonova* (2020) UKUT 0164(LC) : (Deritend) and *Mundy v Sloane Stanley Estate* (2018) EWCA Civ 35 (Mundy) 5.2.1 The guidance given in the cases of Deritend and Mundy clearly shows that the best evidence that valuers should rely on is real open market evidence as close to the date of valuation as possible.
48. Where there is no transactional evidence the Tribunals and Courts endorse the use of Savills and Gerald Eve 2016 graphs of relativity.
49. Mr Dancer refers to Flat D 18-20 Nutbeem Road described as well presented with virtually identical accommodation to the subject property and size. The property was placed on the market at £120,000 (one hundred and twenty thousand pounds) with a lease remaining of 62 years. The ground rent is £50 pa.
50. The agents stated in January 2022 that sale has been agreed at £117,500 with a cash buyer. The agent's details show that heating is by electric radiators.
51. He considers that the sale price on 7 May 2021 at £91,000 was a real bargain which, whilst allowing for condition, did not represent the open market value of the short lease interest.
52. Mr Dancer adopts a valuation of the short lease at £118,019. This represents 77.9% of his valuation of the FHVP of £151,500.
53. Mr Evans also refers to Deritend and Mundy. He adopts the actual sale price of £91,000 and adjusts for the Act rights which are to be excluded. Using the Savills graph he deducts 6.41%. This gives a value for the short lease of £85,167.
54. The Tribunal is cognisant of the decisions in Mundy and Deritend.
55. Deritend gave firm valuation guidance that, the two PCL graphs (Gerald Eve 2016 and Savills as updated in 2016) provide the only treatment of relativity which can be regarded as reliable and should be considered as a starting point where no, or insufficient, transactional evidence has been submitted by the parties (para. 39).
56. In Deritend, 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.*

57. The Tribunal finds that the evidence of sales transactions provided is not persuasive to the extent indicated in Deritend and insufficient to dislodge the use of and the graphs of relativity provided. It finds no merit in blending graphs with other methods.
58. The actual sale of the property at £91,000 with a short lease, including Act rights appears to be an outlier both when cross referencing the relativity graphs – at 58.1% of the FHVP determined above, and the marketing of a near comparable albeit subject to contract.
59. The Savills and Gerald Eve 2016 graphs are shown as an average of the two as Zucconi on [61]. In this case the relativity is 77.51%.
60. 77.51% of £156,565 is £121,353. The Tribunal adopts this figure as the value of the existing short leasehold interest.

### **Premium payable**

61. Mr Dancer reports a premium of £21,480 and Mr Evans reports a premium of £39,810.
62. Adopting the findings above, the Tribunal calculates the premium payable in accordance with The Act to be **£21,658**. The calculation is set out in Appendix 1 below.

### **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

### First Floor Flat,44 Nutbeem Road, Eastleigh, SO50 5JQ

CHI/24UD/OLR/2021/0123

#### Premium Calculation.

Diminution in Value of Landlord's Interest per Schedule 13(3)

(a) Value before grant of new lease:

Term 1

Ground Rent	£ 50	
Years Purchase 25.95 yrs. at 6%	13.00	£ 650

Term 2

Ground Rent	£ 100	
Years Purchase 33 years at 6 %	x 14.23	
X Present Value £1 in 25.95yrs at 6%	0.2205 = 3.138	£ 314

£964

Reversion

Freehold value	£156,565	
Present Value £1 in 58.95 yrs at 5%	0.0563	<u>£ 8815</u>

Value before grant of new lease. £9,779

#### Less

(b) Value after grant of new lease.

Freehold value: FHVP	£156,565	
Present Value £1 in 148.95yrs at 5%	0.0007	
	£110	
		<u>-£110</u>

Diminution of landlord's interest **£9,669**

## Marriage value

<u>Combined values after lease extension</u>	
Tenants leasehold interest	£155,000
Freehold reversionary interest	<u>£110</u>
Combined values	<u>£155,110</u>
 <u>Combined values before lease extension</u>	
Tenants leasehold interest (unimproved short lease.)	£121,353
Landlords interest before new lease	£9,779
Combined values	£131,132
<b>155110-131132 = Marriage Value</b>	<b>£23,978</b>
Share of marriage value at 50% =	£11,989
+Diminution Landlords interest	<u>£9,669</u>
	£21,658

**Premium £21,658**