

4408



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

**Case Reference** : **OT/LON/00AS/OLR/2016/1442**

**Property** : **11 Crosier Road, Ickenham,  
Middlesex UB10 8RR**

**Applicants** : **Ms Deborah Jane Carrington**

**Representative** : **Mr Alexander Bastin (Counsel)**

**Respondent** : **Ault Investments Limited**

**Representative** : **Mr Wilson Dunsin FRICS**

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

**Tribunal Members** : **Mr Jeremy Donegan (Tribunal  
Judge)  
Mr Duncan Jagger FRICS (Valuer  
Member)**

**Date and venue of  
Hearing** : **07 February 2017  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **07 March 2017**

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**DECISION**

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## **Decisions of the tribunal**

- (A) The tribunal determines the premium payable under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'), on the grant of a new lease of 11 Crosier Road, Ickenham, Middlesex UB10 8RR ('the Flat') is £56,029 (Fifty-Six Thousand and Twenty-Nine Pounds). A
- (B) schedule setting out the tribunal's calculation of the premium is attached.

## **The background**

1. The Applicant is the leaseholder of the Flat, which is a purpose built maisonette on the first floor of a two-storey semi-detached block at 11/12 Crosier Road ('the Block'). The Respondent is the freeholder of Bythorn House, Glebe Avenue, Ickenham, which is an estate comprising several properties, including the Block.
2. On 26 January 2016 the Applicant served a notice of claim on the Respondent, pursuant to section 42 of the 1993 Act, seeking a new lease of the Flat. The Applicant proposed a premium of £48,250 for the new lease and a further sum of £1,050 under schedule 13 of the 1993 Act.
3. On 04 April 2016, the Respondent served a counter-notice in which it admitted the Applicant's entitlement to a new lease under the 1993 Act. The counter-notice proposed a higher premium of £73,608.

## **The application**

4. On 06 September 2016 the Applicant submitted an application to the tribunal to determine the premium to be paid for the new lease, pursuant to section 48 of the 1993 Act.
5. Directions were issued on 23 September 2016. Paragraph 1 provided that any application to determine the Respondent's costs was stayed. There has been no application to lift the stay. Accordingly the tribunal was not required to determine the Respondents' costs under section 60 of the 1993 Act.
6. At the hearing, the parties' representatives confirmed that the tribunal was only being asked to determine the premium payable for the new lease. It was not being asked to determine the wording of the new lease.

### **The hearing**

7. The application was heard on 07 February 2017. The Applicant was represented by Mr Bastin and the Respondent was represented by Mr Dunsin. The Applicant attended the hearing and was accompanied by her solicitor, Ms Vicky Payne and surveyor, Mr David Graham.
8. Mr Graham and Mr Dunsin are both Fellows of the Royal Institution of Chartered Surveyors and gave expert valuation evidence to the tribunal.
9. Mr Graham is the proprietor of David Graham Chartered Surveyors, which is based at 7 Grand Parade, Wembley Park, Middlesex. He has considerable experience of 1993 Act valuations, for both leaseholders and freeholders. He relied on a report dated 20 January 2017 in which he valued the new lease premium at £51,188.
10. Mr Dunsin is a director of Dunsin Surveyors Limited, which is based at 7 Lower Grosvenor, Place, London SW1W 8EN. He also has considerable experience of 1993 Act valuations and regularly undertakes valuations in the Middlesex area. He relied on a report dated 30 January 2017 in which he valued the new lease premium at £68,369.
11. The tribunal was supplied with a paginated hearing bundle, which included copies of the application, directions, section 42 notice, counter-notice, Land Registry entries for the freehold and leasehold titles, the existing lease, a draft new lease and the experts' reports. A statement of agreed facts was appended to each of the reports. The tribunal was also supplied with a helpful skeleton argument from Mr Bastin.

### **The existing lease**

12. The lease was granted by (1) W Sims & Sons Limited to (2) Robert Finch and Adrienne Valerie Finch on 31 March 1997 for a term of 99 years from 29 September 1986. The ground rent is fixed at £15 per annum, throughout the term.

### **The issues**

13. The following matters were agreed by the valuation experts, as set out in their statement of agreed facts:

- |      |                                   |                 |
|------|-----------------------------------|-----------------|
| (i)  | Valuation date:                   | 26 January 2016 |
| (ii) | Unexpired term at valuation date: | 49.67%          |

- (iii) Capitalisation rate: 7.5%
  - (iv) Deferment rate: 5%
  - (v) No 'other compensation' is payable under paragraphs 2(1)(c) and 5 of schedule 13 (incorrectly referred to as 'schedule 6' of the 1993 Act).
14. The only matters in dispute were relativity and the long lease value of the Flat. After a short adjournment, the parties agreed the long lease value at £352,500. This meant the only issue to be determined by the tribunal was relativity. Given this fact, the tribunal decided that an inspection of the Flat was unnecessary.
15. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made the determination set out below.

**Relativity**

16. The valuation experts agreed there was no transactional evidence that could be used to determine relativity. For this reason they both relied on graphs referred to in the RICS research report "*Leasehold Reform: Graphs of Relativity*", published in October 2009.
17. Mr Graham adopted a relativity of 78.25%. This was based on the graphs for Greater London and England at section 2 of the RICS report, copies of which were appended to his report. The rates for a term of 49.67 years are:

Beckett and Kay	71.41%
South East Leasehold	81.67%
Nesbitt and Co	74.80%
Austin Gray	74.26%
Andrew Pridell	77.34%

18. The mean average of these five rates is 75.90%. Mr Graham disregarded the Beckett and Kay ('BK') graph, as it is opinion based. He also disregarded the Austin Gray ('AG') and Andrew Pridell ('AP') graphs, as both firms are based on the South coast and he did not consider their data to be geographically relevant. The notes accompanying the AG graph referred to a geographical spread of "*Predominantly the South East and Suburban London*". However, Mr

Pridell has suggested to Mr Graham that his graph does not apply to London properties.

19. Mr Graham considered the South East Leasehold ('SEL') and Nesbitt graphs to be most relevant. The former is mostly based on data in Beckenham and Bromley, which he considered to be similar in character to Ickenham. Mr Graham described the Nesbitt graph as predominantly 'landlord based' but accepted it was widely used.
20. In his oral evidence, Mr Graham commented on the Upper Tribunal's decision in ***The Trustees of the Sloane Stanley Estate v Mundy & Others [2016] UKUT 223 (LC)***. The UT analysed the various graphs in section 1 of the RICS report, which relate to Prime Central London ('PCL'). It concluded the Gerald Eve graph was "...in most common use at the valuation dates for leases without rights under the 1993 Act" (paragraph 63 of appendix C). At paragraph 64 it went on to describe this graph as "...the industry standard".
21. In ***Sloane Stanley*** the UT provided guidance on how relativity might be determined in future cases. The flats in those appeals were located in London SW3 and SW7, within PCL and the UT only analysed the graphs for PCL. It did not address the graphs in section 2 of the RICS report. Mr Graham pointed out there is nothing in the guidance to suggest it applies outside PCL. He does not consider it to be relevant in this case, where the Flat is based on the outskirts of London.
22. Mr Graham did not consider the GE graph to be relevant for Outer London properties. It was predominantly based on settlements on the Grosvenor Estate. The property market in PCL has different characteristics to the rest of the country, as buyers are not so mortgage dependent.
23. Mr Graham also commented on the UT's decision in ***Denholm v Stobbs [2016] UKUT 0288 (LC)***, which concerned a flat in Notting Hill. The UT accepted there was a slight difference between properties in PCL and those just outside it (paragraph 78). It used the GE graph as a starting point but observed that relativity is likely to have fallen since 2002 (paragraph 77). It made a deduction from the graph of 1%, with a further deduction of 1.55% for the unusual lease terms. Mr Graham considered these deductions to be fact specific. He did not consider it appropriate to make any deduction to the relativity for the Flat.
24. In cross-examination, Mr Graham expressed the view that relativity is subject to regional variations. In his words "*it can vary from street to street and block to block*".

25. Mr Graham did not accept that relativity rates have fallen since the RICS report. When pressed by Mr Dunsin, he said the Nesbitt and SEL graphs were the most reliable for the Flat.
26. Mr Dunsin adopted a relativity of 71.24%. His starting point was the GE graph, which gave a rate of 73.74% for the unexpired term. He then made a deduction of 2.5%, as he considers that relativities have fallen since the RICS report.
27. Mr Dunsin relied on the 1% deduction in *Denholm* and the UT's decision in *Mallory & Others v Orchidbase Limited [2016] UKUT 0468 (LC)*, which concerned flats in Hemel Hempstead. The UT determined a relativity of 76.25% for an unexpired lease term of 57.68 years. This is 3.36% below the corresponding rate in the GE graph of 79.61%. Mr Dunsin believed this to support his contention that relativities have fallen since the various graphs were produced.
28. In cross-examination, Mr Bastin questioned the relevance of the *Sloane Stanley* and *Denholm* decisions. Mr Dunsin suggested that if relativities have fallen in PCL then they will have fallen elsewhere. He also made the point that two of the section 2 graphs (AG and BK) had been considered and rejected in *Denholm*.
29. Mr Dunsin was also cross-examined on the section 2 graphs, which he had not addressed in his report. He suggested the SEL graph should be disregarded, as it is markedly higher and "out of kilter" with the other graphs. However he accepted that Beckenham and Bromley were "not incomparable to Ickenham". When pressed he said the Nesbitt graph was the most reliable section 2 graph.
30. On questioning from the tribunal Mr Dunsin accepted that purchaser profiles would be different in PCL and Ickenham and this would have an impact on relativity. He referred to the UT's decision in *Re Cooltrace's Appeal [2012] UKUT 69(LC)*, where it was said "Outside PCL, there is no evidence to suggest that relativity will differ among regions, and it is appropriate therefore to consider graphs of relativity that give the widest possible range of material" (paragraph 22).
31. In his closing submissions, Mr Dunsin pointed out that Mr Nesbitt had applied the GE graph when quantifying the 'without Act rights' adjustment in *Mallory*. He also reiterated that relativities had reduced since 2007, which he attributed to the financial crisis in 2007/08. This led to lenders becoming more selective when granting mortgages, making it more difficult to buy short lease properties. This resulted in a smaller pool of potential buyers for these properties; although buyers in PCL are less dependent on mortgages than elsewhere.

32. Mr Dunsin's starting point was the GE graph, which he then adjusted in the light of the UT's decisions in **Denholm** and **Stobbs**. The tribunal queried if the 2.5% represented an approximate midway point between the 1% deduction in **Denholm** and the 3.36% differential in **Mallory**, which he accepted.
33. In Mr Dunsin's view, the section 2 graphs should not be used. They had all been the subject of criticism. When pressed, Mr Dunsin agreed with Mr Graham that the BK, AG and APA graphs should be disregarded. In his view the SEL graph should also be disregarded, leaving just the Nesbitt graph as the "*best of the worst*".
34. In his closing submissions, Mr Bastin distinguished the location of the Flat from the properties in **Sloane Stanley** (PCL) and **Denholm** (Notting Hill). In both of these cases the GE graph was used as a starting point. In **Denholm** it was described as "*...the most reliable (or, the least least reliable graph)...*". Mr Bastin did not consider the GE graph to be appropriate in this case, as Ickenham is a very different market place to PCL. Rather, one or more of the section 2 graphs should apply.
35. Mr Bastin compared the different approaches of the two experts. Mr Dunsin used the GE graph as a starting point and had not addressed the section 2 graphs in his report. By contrast, Mr Graham had considered all of the section 2 graphs and selected the most appropriate. The SEL graph was relevant as the properties analysed had a similar make up to those in Ickenham and Mr Dunsin's criticism was not persuasive. Mr Graham had taken an even handed approach and also selected the Nesbitt graph even though it is considered to be landlord friendly. The BK graph should be disregarded, as it was opinion based. The AG and APA graphs should also be disregarded, given the geographical make up of their data. Mr Bastin pointed out that both of these graphs had been disregarded in **Mallory**
36. Mr Bastin also pointed out there was no detailed explanation for the 1% deduction in **Denholm**. He submitted there should be no deduction in this case, as there was no evidence that relativities had fallen outside PCL. The decision in **Mallory** did not establish a precedent. This was simply one decision, where transactional evidence produced a figure below the GE graph. Mr Dunsin had not established any basis for his deduction of 2.5%. Further he had provided no evidence of the impact of the financial crash on the graphs.

### **The tribunal's decision**

37. **The tribunal determines that the appropriate relativity is 77.0175 %.**

### Reasons for the tribunal's decision

38. The tribunal preferred Mr Graham's approach to relativity. This should be based on the graphs in section 2, as the Flat is on the very outskirts of London. PCL has a very different property market to the rest of the country, with much greater demand (including larger numbers of overseas buyers) and significantly higher prices. Further the proportion of buyers requiring mortgages is much lower and many of the leasehold properties have short leases. These factors all affect the demand for lease extensions and the premiums paid. Mr Dunsin acknowledged that PCL is a different market and appeared to accept it has different relativities to the rest of the country, in his reliance on **Coolrace**.
39. This is not a case where the Flat is on edge of PCL or the neighbourhood has similar characteristics to PCL. It is some way distant and has very different characteristics. In those circumstances the tribunal could see no justification for using any of the section 1 graphs.
40. There is nothing in the **Munday** decision to suggest the GE Graph should be the starting point in all cases. At paragraph 169 the UT said "*One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis.*"
41. Mr Graham used the first approach and selected the SEL and Nesbitt graphs, as he considered them to be the most reliable. The tribunal accepts they are both relevant in this case. The SEL graph should be used, for the reasons advanced by Mr Graham and Mr Bastin. The fact that it is several points higher than the others is not a good reason, on its own, to disregard it. Mr Dunsin made no other criticisms of this graph that might justify its exclusion.
42. Mr Graham and Mr Dunsin both agreed the Nesbitt graph was relevant. Its geographical spread was Greater London and the outer suburbs, with a proportion of provincial towns.
43. The tribunal agrees the BK graph should be excluded, as it was opinion based. Where it differs with Mr Graham is over the relevance of the AG and APA graphs. His objection was purely geographical. The AG graph was primarily based on data in Brighton and Hove. The geographical spread of the APA graph was wider but was largely Sussex based. Having regard to the UT's comments in **Coolrace**, as referred to at paragraph 30 above, the AG or APA graphs should be considered. Including these graphs gives the widest possible range of materials.



The fact they were disregarded in *Mallory* can be explained by the availability of transactional evidence in that case.

44. The mean average of the section 2 relativity figures, excluding BK, is 77.0175%. The tribunal then considered whether to make a 2.5% deduction, as proposed by Mr Dunsin. It accepts that lending criteria and loan to value ratios have tightened since the 'credit crunch', based on the members' professional knowledge and experience. However there was no evidence of the impact this has had on relativity. Mr Dunsin's analysis of the *Mallory* decision was of no assistance, as the relativity in that case was decided on transactional evidence. Further this was just one decision and did not establish a trend of falling relativities.
45. The tribunal also considered whether to make a deduction of in the light of the *Denholm* decision but concluded this was inappropriate. In that case the flat was only just outside PCL and a deduction was made from the GE graph, as it was thought to overstate relativities. The tribunal has based its relativity on four of the section 2 graphs and there was no evidence these overstate relativities.

#### Summary

46. **Having determined the relativity at 77.0175%, with all other issues agreed, the tribunal determines the new lease premium is £56,029, as set out in the attached schedule.**

**Name:** Tribunal Judge Donegan    **Date:** 07 March 2017

## ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.

**SCHEDULE****11 Crosier Road, Ickenham UB10 8RR****The Tribunal's Valuation****Assessment of the premium for a lease extension****In accordance with Leasehold Reform, Housing and Urban Development Act 1993****LON/00AS/OLR/2016/1442****Components**

Valuation date:	26 <sup>th</sup> January 2016	
Yield for ground rent:	7.5%	
Deferment rate:	5.0%	
Long lease value	£352,500	
Uplift of Freehold value	0.00%	
Existing leasehold value	£271,487	
Relativity	77.0175 %	
Unexpired Term	49.67 years	
Ground rent currently receivable	£15	
Capitalised @ 7.5% for 49.67 years	12.9662	£194
Reversion to:	£352,500	
Deferred 49.67 years @ 5%	0.08862	<u>£31,239</u>
Freeholder's Present Interest		£31,433
Landlords interest after grant of new lease	£352,500	
PV of £1 after reversion @ 5% 0.00110	£388	<b>£31,045</b>
<b>Marriage Value</b>		
Extended lease value	£352,500	
Plus freehold reversion	<u>388</u>	
	£352,888	
Landlord's existing value	£31,433	
Existing leasehold value	<u>£271,487</u>	
	£302,920	
Marriage Value	£49,968	
Freeholders share @ 50%		<b>£24,984</b>
<b>LEASE EXTENSION PREMIUM</b>		<b><u>£56,029</u></b>