



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

**Case reference** : LON/00BF/OLR/2017/1199

**Property** : Flat 1F, Park Road and Garage 1,  
Cheam, Sutton, Surrey SM3 8QB

**Applicant** : John Abbott

**Representative** : Roger Weston FRICS, of  
Symingtons, Chartered Surveyors

**Respondent** : The Halliard Property Company  
Limited

**Representative** : Robin Sharp BSc FRICS

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

**Tribunal members** : Judge Timothy Powell  
Mrs Helen Gyselynck BSc MRICS

**Date of determination  
and venue** : 16 January 2018 at  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 22 February 2018  
**Date of revision** : 5 March 2018

***Revised* DECISION**

**Summary of the tribunal's decision**

- (1) The appropriate premium payable for the new lease is ~~£44,864~~  
£44,945.

**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 Act") for a determination of the premium to be paid for

the grant of a new lease of Flat 1F, Park Road and Garage 1, Cheam, Sutton, Surrey SM3 8QB (the "property").

2. By a notice of claim dated 3 February 2017, served pursuant to section 42 of the Act, the applicant's predecessors in title exercised their right for the grant of a new lease in respect of the subject property. At the time, they held the existing lease granted on 9 May 1986 for a term of 99 years from 25 March 1975 at an annual ground rent of £75, rising to £225. They proposed to pay a premium of £24,000 for the new lease.
3. Following the transfer of the property and the benefit of the notice of claim to the applicant, on 10 April 2017 the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £66,087 for the grant of a new lease.
4. On 11 September 2017, the applicant applied to the tribunal for a determination of the premium.

### **The issues**

#### **Matters agreed**

5. The following matters were agreed:
  - (a) The subject property comprises two bedrooms, kitchen, bathroom and reception room plus garage;
  - (b) Valuation date: 6 February 2017;
  - (c) Unexpired term: 57.125 years;
  - (d) Present ground rent: £150, rising to £225 in March 2041 throughout the term;
  - (e) No improvements are claimed;
  - (f) Deferment rate: 5%.

#### **Matters not agreed**

6. The following matters were not agreed:
  - (a) The yield for capitalising the ground rent;
  - (b) Value of the leasehold interest after the lease extension;
  - (c) Relativity;
  - (d) The appropriate freehold adjustment, if any;
  - (e) The premium payable.

### **The hearing**

7. The hearing in this matter took place on 16 January 2018. The applicant was represented by Mr R J Weston, FRICS; and the respondent by Mr R Sharp, BSc FRICS.
8. The applicant relied upon the expert report and valuation of Mr Weston dated 1 January 2018, supplemented by an addendum dated 15 January 2018 (which made a slight adjustment to the sale values of the comparable properties); and the respondent relied upon the expert report and valuation of Mr Sharp dated 6 January 2018.

### **The subject property**

9. The subject property is a second floor flat in a purpose-built terrace of shops and two-storey flats above. Access to the flats is at the rear in the service and parking area and at the side. On the ground floor under the subject flat is a fish and chip shop; and adjacent are a Thai restaurant, a hairdressers and an estate agent. The flat comprises a lounge, kitchen, two bedrooms and a bathroom. It has double-glazing and Economy 7 heating, but no garden amenities; and it has the benefit of a garage.
10. Photographs of the property and comparables were provided. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.

### **Yield for capitalising the ground rent**

11. Mr Weston contested for a capitalisation rate of 7%, stating in his report and in oral evidence that this was “in accordance with the great majority of cases that go before the FTT”. Mr Sharp contended for 6% “because the income is secure and interest rates remain at historically low levels”.

### **The tribunal’s determination and reasons**

12. The tribunal determines that the appropriate capitalisation rate is 6.5%. The appropriate yield commonly falls between 6% and 7% and there was no evidence or any strong argument to prefer one valuer over the other. In those circumstances, it is appropriate to select the mid-point between the two.

### **Long leasehold value**

13. Mr Weston for the applicant contended for £240,000 as the appropriate long lease value for the subject property as at the valuation

date, compared with £265,000 contended for by Mr Sharp for the respondent. The two valuers agreed on the same long leasehold comparable sales and, save in respect of the sale of Flat 1E, Park Road, they agreed on the sale values, adjusted for time compared with the valuation date of the subject.

14. With regard to Flat 1E, Park Road, this sold for £218,000 on 30 September 2014. According to Mr Weston the adjusted value to the valuation date was £257,470; and according to Mr Sharp it was £263,292 (to which he added half a percent to reflect the ground rent and future rent reviews). However, using the House Price Index for Sutton, the tribunal's own calculation of the adjusted sale value is £261,395 (being £218,000 x (119.81/99.92)).
15. To this adjusted figure the tribunal is willing to accept an additional half percent to reflect the rising ground rent (to be reviewed to 1/500 of the maisonette's long lease value, at 25 year intervals), which was more onerous and carried more risk than the rent review provisions in the lease to the subject property. A half percent addition would give an adjusted value of £262,702.
16. The evidence, which the tribunal accepted, was that the subject property and Park Road comparables were in a better location and in a superior development to the comparables in Cheam High Street. This was partly because the latter lack parking and their single rear access is not as good as subject property (save for flat 12 at 15-25 High Street, which has underground parking). The tabulated details of the comparable flats is set out below:

Address	Adjusted value to 6.2.17	Parking	Lease years	Comment
1C Park Road	£260,834	Residents, good (no garage)	153	First floor above Thai restaurant, gas fired CH
1E Park Road	£262,702	Residents, good (no garage)	110	Average condition, accommodation on two levels
42B High Street	£233,737	None	108	Top floor
44A High Street	£255,215	None	108	First floor
56B High Street	£254,202	Very poor	108	Top floor
Flat 12 at 15-25 High Street	£267,324	Underground	140	Top floor mansard, largest flat

17. In his addendum report, Mr Weston sought to make adjustments according to an analysis of the rates per square foot of the respective comparables. However, there was no evidence to support the notion that a prospective purchaser would have regard to the rates per square foot in this location; and the tribunal did not feel the need to make any adjustments for this. The tribunal placed no reliance on the potential comparable at Flat 1J, Park Road referred to by Mr Sharp, which was not a completed sale transaction, nor on Flat 42A, High Street referred to by Mr Weston in his addendum, which simply appeared to have been provided to justify an assumed gross internal area for the flat above, 42B.
18. Without more, the average value of six comparables came to £255,669. However, it was necessary to deal with the competing contentions for adjustments to the comparables, to reflect the fact that the subject property had a garage and to reflect differences in condition.
19. With regard to the garage, Mr Weston suggested making an upward adjustment to the comparable values of some £5,000 to £10,000, though the evidence appended to his addendum suggested that freehold garages sold for between £13,000 and £16,000. Mr Sharp considered that the freehold value of a single garage in the area was between £10,000 and £15,000, having provided evidence of one freehold garage sale for £12,500, in November 2014. He said that the subject garage, being demised with a flat, would be slightly less valuable.
20. Having considered the evidence, the tribunal determines that the potential value of a garage sold on the open market would be around £15,000, but if sold with a flat we consider that £12,500 would be the appropriate upward adjustment to those comparable properties that have no garage or acceptable alternative parking.
21. The statement of agreed facts and issues included a handwritten statement that “no improvements are claimed”, i.e. there were no tenant’s improvements in the subject property that fell to be disregarded. However, in oral evidence, Mr Weston sought downwards adjustments to the sale values of the comparable flats, to reflect the fact that the condition of the subject flat was, in his opinion, poorer than the comparables.
22. Mr Sharp said that there should be no adjustments for condition, as the subject flat, while untidy at the valuation date was not in significantly worse condition than the comparable properties, most of which were in average condition themselves.

23. In the tribunal's view, there was no need to make any deductions for tenants' improvements in the subject flat, because there were none. Furthermore, the fact that the subject flat was in an untidy or poor condition at the valuation date was to be ignored, because it was to be assumed the tenant had complied with repairing covenants in the lease. There was no big difference between the condition of the subject flat and that of the comparables, which would require any valuation adjustment. In short, we had not been given evidence of any significant difference in condition that would require us to make adjustments to the sale prices of the comparable properties.
24. We also agreed with Mr Sharp's comment that the adjusted value of flat 12 at 15-25 High Street "sets a ceiling for the value of the subject" and, therefore, taking into account the upward adjustment for a garage, we adopt his £265,000 as the appropriate long lease value for the subject.

### **Notional freehold value**

25. Mr Weston considered that the long leasehold value of the subject property was the same as the freehold value. Mr Sharp assessed the freehold value at plus 1% of the long leasehold value.
26. The tribunal adopts the 1% addition because it is generally accepted as a valuation convention, to reflect the absence of any obligations which would otherwise apply under a lease and the ability to grant a very long lease, and we see no reason to depart from this. The notional freehold value is therefore determined at £267,650.

### **Existing short leasehold value**

27. Mr Weston for the applicant contended for a short lease value of £199,920 and Mr Sharp for the respondent contended for £187,374.
28. Mr Weston did not identify or rely upon any short lease sale in the area that could be used as evidence of the existing short lease value of the subject flat at the valuation date. Instead, he relied upon the graphs of relativity to determine this value. In particular, he took a basket of the 2009 RICS Greater London and England graphs (Beckett & Kay, South East Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell) to give an average relativity for an unexpired term of 57.125 years of 83.30%. He stated that these graphs were "the most appropriate for this location and type of property". He made no deduction for rights under the 1993 Act.
29. In contrast, Mr Sharp considered that the evidence of the short lease sale of the subject flat itself was relevant. On 10 February 2017, ie. four days after the valuation date, it sold for £180,000, without the aid of mortgage finance. Mr Sharp adjusted the sale price upwards by 10% to

produce £198,000, to reflect that the flat required redecoration and refreshing and that it was bought with an assured shorthold tenancy, over which the applicant had influence. He then deducted 10% for rights under the 1993 Act, to give a net value £178,200. He justified his 10% deduction by reference to several previous tribunal decisions, which were appended to his report, although he was candid enough to admit that not every tribunal would agree with a 10% discount for 1993 Act rights. The net value of £178,200 as a percentage of the freehold value of £267,677 produced a 66.57% relativity.

30. However, as this was only one transaction and may not be wholly regarded as reliable evidence, in accordance with the Upper Tribunal decision in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0223 (LC)<sup>1</sup>, paragraph 169, Mr Sharp turned to those graphs of relativity which he said the Upper Tribunal had deemed “most reliable”, being the “emerging” Savills 2015 enfranchiseable graph and the Gerald Eve 2016 table and graphs of relativity. These combined indicated an approximate 76.2% relativity (i.e. Savills 76.2% and Gerald Eve 76.11%).
31. These graphs relate to the Prime Central London (PCL) area. Mr Sharp said that the 76.2% relativity produced was lower than the average of the 2009 RICS PCL graphs, because there had been a general lowering of relativities since the financial crash in 2008-2009. Furthermore, in Mr Sharp’s opinion, relativity in Cheam will be lower than PCL because the local market is more mortgage-dependent and less international.
32. In Mr Sharp’s opinion, the most reliable graph for properties in the suburbs was the Beckett & Kay (2014 and 2017) graph, which indicates a relativity of about 67.5%. The average relativity of the three graphs he relied upon was 73.27%; and, when averaged with the 66.57% indicated by the market evidence of the subject flat, the product was 69.92% or, say, the 70% relativity for which he contended.

### **The tribunal’s determination**

33. The Tribunal determines that the existing short leasehold value is £193,859.

### **The tribunal’s reasons**

34. On the evidence before it in this case, the tribunal preferred Mr Sharp’s approach to Mr Weston’s, with regard to the valuation of the existing short leasehold value of the subject flat.

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<sup>1</sup> See now the Court of Appeal decision upholding the Upper Tribunal at [2018] EWCA Civ 35, issued on 24 January 2018, after the hearing in this case.

35. The starting point for considering the existing short leasehold value of the property is the market evidence of the sale of the subject itself, for £180,000, some four days after the valuation date (see *Mundy*, paragraph 168, and earlier decisions).
36. The tribunal adopts Mr Sharp's time adjustment and 10% condition adjustment to the sale price, producing a figure of £198,000. However, we do not agree with his 10% deduction for 1993 Act rights.
37. While there is no fixed and agreed-upon tariff of percentage deductions for Act rights across different lease lengths, some general guidance may be gleaned from recent cases. A non-exhaustive table of discounts accepted or made by the Upper Tribunal for unexpired terms of 40 years or more is set out at paragraph 60 of *Sinclair Gardens Investments (Kensington) Ltd* [2017] UKUT 0494 (LC), a decision of Mr P D McCrea FRICS dated 29 December 2017. Although Mr McCrea also expressed caution in relying on past decisions, nonetheless in the *Orchidbase* decision he quoted, a 5.50% adjustment was made for 1993 Act rights, where there was an unexpired term of 57.68 years. As that is very close to the unexpired term in the present case (57.125 years), the tribunal adopts this deduction, 5.5%, which reduces the value net of 1993 Act rights, to £187,110. As against a freehold value of £267,650, this produces a relativity of 69.91%.
38. In his report, Mr Sharp readily accepted that the sale of the subject was only one transaction and a subjective judgement had been made in respect of the flat's condition, the effect of the grant of a tenancy to a short-term tenant and 1993 Act rights. He acknowledged that this one sale may not wholly be regarded as reliable evidence, a problem which he said was anticipated in paragraph 169 of the *Mundy* decision, where in "the more difficult cases" it was envisaged that valuers might also have regard to "the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act" or "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."
39. Given that we are only dealing with a single comparable and that questions may be raised as to its reliability, the tribunal agrees that it is appropriate, in accordance with *Mundy*, to have regard to the graphs of relativity as well as to the comparable sale.
40. While we had sympathy with Mr Weston's approach, when he averaged the basket of 2009 RICS Greater London and England graphs, he gave no compelling arguments why those graphs should be preferred over the more up-to-date graphs relied upon by Mr Sharp. In our view, the 83.30% average relativity that those graphs produced was too high; and, in the light of the arguments we heard in this case, we concur with Mr Sharp when he says that the 2009 graphs are now somewhat out of



date and that the property market has changed over the intervening eight years.

41. However, at the other extreme, we were not entirely satisfied with the reliability of the Beckett & Kay 2014 graph put forward by Mr Sharp, despite it having been accepted by some other tribunals. While the email from Beckett & Kay dated 5 September 2016 says that the graph now uses some transaction evidence in addition to opinion, there is no reference to the sample size, to the geographical relevance of the transactions, or to the balance between transactional evidence and opinion. Furthermore, the line of the graph had been “hand drawn as best fit to the data points the sales evidence gave”, producing a line which was significantly at variance to other graphs of relativity.
42. Therefore, in accordance with the *Mundy* decision, our approach has been to take the Gerald Eve 2016 graph as the “industry standard” and, despite criticisms of that graph too, as the least bad option. It is noteworthy that the Gerald Eve graph and the unenfranchiseable relativity column of the Savills 2015 graph are very close indeed. We therefore agree with Mr Sharp that these should be averaged, producing relativity of 76.2%.
43. Despite our significant reservations about the reliability of the Beckett & Kay 2014 graph, in the absence of persuasive contrary argument from Mr Weston in this case, we adopt Mr Sharp’s approach and apply the average of his chosen graphs of relativity (Savills 2015, Gerald Eve 2016 and Beckett & Kay 2014) to the tribunal’s relativity for the comparable sale, to produce an overall relativity of 72.43% and, therefore, a short leasehold value of £193,859.

### The premium

44. The tribunal determines the appropriate premium to be ~~£44,864~~ **£44,945**. A copy of its valuation calculation is annexed to this decision.

**Name:** Judge Powell

**Date:** 22 February 2018  
**Revised:** 5 March 2018

### 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).

**LON/00BF/OLR/2017/1199 - 1F Park Road and garage, Cheam, Sutton, Surrey SM3 8QB**  
**(Valuation revised 5 March 2018, in italics)**

A second floor flat above shops comprising 2 bedrooms, living room, kitchen, bathroom with garage and parking, held on a 99 year lease from 25 March 1975. No improvements are to be excluded.

Agreed date of valuation 6 February 2017. Agreed 57.125 years unexpired term.

Current Ground Rent £150 rising to £225 in 24.125 years

Extended Lease Value £265,000

Freehold Vacant Possession Value £267,650

Relativity rate 72.43%. Deferment rate 5%. Capitalisation rate 6.5%.

**Value of the Landlord's present interest**

Ground Rent £150

YP for 24.125yrs @6.5% 12.01735

£1,802.60

Ground Rent £225

YP for 33 yrs @6.5% def 24.125 2.94582

£662.81

Reversion to *Freehold* £267,650

PV of £1 @5% for 57.125 0.061597

£16,486

£18,952

Value of eventual reversion (FHVP) £267,650

PV of £1 @ 5% for 147.125 yrs 0.00076

£203.41

£203

Diminution of the Landlord's interest

**£18,748**

**Marriage value**

Value of Tenant's interest after grant of new lease £265,000

Plus Value of Landlord's future interest £203

£265,203

Less

Existing lease value (-1993 Act rights) £193,859

Value of landlord's existing interest £18,952

£212,811

Marriage Value

£52,393

50%

£26,196

Premium payable (ex costs)

**£44,945**