



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

Case Reference : **CHI/21UD/OLR/2019/0105**

Property : **49 Albany Court, Robertson Terrace,
Hastings TN34 1JH**

Applicant : **Brian Holding, Jennifer Holding &
Sally Ann Dutton**

Representative : **Mr Stuart Wright, Counsel,
instructed by Herringtons LLP**

Respondent : **Multistates Limited**

Representative : **Mr Stephen Jones, Counsel,
instructed by Rice-Jones & Smith
Solicitors**

Type of Application : **Determination of premium for new
lease: section 48 Leasehold Reform,
Housing and Urban Development Act
1993**

Tribunal Members : **Judge E Morrison
Mr N Robinson FRICS**

**Date and venue of
Hearing** : **9 December 2019 at White Rock
Hotel, Hastings**

Date of decision : **23 December 2019**

DECISION

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The application

1. Under the application dated 25 April 2019 the applicant lessees applied under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium payable for a new lease in respect of their flat at 49 Albany Court. The respondent is the competent landlord, as defined in section 40 of the Act.

Summary of decision

2. The premium payable is £46,614.00. Of this sum £45,393.00 is payable to the Respondent (competent landlord), and £1,221.00 is payable to the intermediate landlord. However, as a payment to the intermediate landlord of £1,330.00 has already been agreed by the parties, this figure must be substituted for the tribunal's figure of £1,221.00.

The inspection

3. The tribunal inspected the property immediately before the hearing in the presence of the applicant, the legal representatives, and the expert valuers. Albany Court is a 1960s purpose-built block of flats overlooking Hastings seafront which, at the eastern end, oversails part of a Debenhams department store. It is close to the town centre with the usual amenities. There are three entrances to the block, each with a staircase and lift. Flat 49 is on the seventh (top) floor and has sea views to the front. Due to the construction of the building, it appears that the majority of the flats are of a similar overall area although there are different configurations so that some have no balcony, some a balcony half the width of the flat and a proportionately smaller living-room, and some, including Flat 49, a balcony the full width of the flat (and therefore also a smaller main bedroom).
4. Flat 49 comprises, on the southern side of the flat, a full width covered balcony with living room and main bedroom facing the sea, an internal bathroom with corner bath, separate shower & wash basin (no WC) and, on the northern side, a kitchen, second bedroom and separate WC. The flat appeared generally in good decorative order with the bathroom and kitchen having both been refurbished although not in the immediate past. There is a full gas central heating system in place of the original partial warm air system which is understood to have served just the living room, main bedroom & hall. The windows and balcony doors are UPVC double glazed replacement units which appear to have been installed throughout the block.

The leases

5. The respondent holds a head lease of Albany Court from the freeholder K/S Hastings UK. This lease expires on 31 October 2203. The rent is a peppercorn.

6. Albany Court Hastings Limited holds an intermediate lease which expires on 8 October 2059. The rent is £1800.00 p.a. without review.
7. The applicant holds a lease of the flat which expires on 29 September 2059. The rent is £26.00 p.a. without review.

The law and jurisdiction

8. Section 42 of the Act provides that a qualifying tenant of a flat must give written notice of a claim to exercise the right to a new lease. Section 45 provides that the landlord must serve a counter-notice. If it is agreed that the tenant has a right to a new lease, but any of the terms of acquisition remain in dispute two months after the date when the counter-notice was given, section 48 provides that the Tribunal may, on the application of either party, determine the matters in dispute.
9. The price (premium) to be paid by the tenant for the new lease is governed by Schedule 13 of the Act. The premium shall be the aggregate of:
 - (i) The diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3 of the Schedule. Values are open market values subject to certain assumptions.
 - (ii) The landlord's share of the marriage value as determined in accordance with paragraph 4 of the Schedule;
 - (iii) Any amount of compensation payable to the landlord under paragraph 5 of the Schedule.

Paragraphs 6-10 of the Schedule govern the calculation of the sum payable to any intermediate landlord.

Matters agreed

10. The only dispute between the parties is the amount of the premium. However many elements of the valuation process are agreed. The valuation date is 15 September 2018, at which point the unexpired term of the flat lease was 41.04 years, the unexpired term of the intermediate lease was 41.07 years, and the unexpired term of the head lease was 185.13 years. The respondent's reversion is currently to a 144.06 year leasehold, but after the grant of the new lease this reversion will reduce to 54.06 years. It has been agreed to discount the respondent's current reversion at 5% and the intended reversion at 5.5%. In assessing the diminution in value of the intermediate landlord's interest, £26.00 p.a of the head rent should be apportioned to the flat and the parties agreed that this should be at the NLF rate at valuation date of 2.15%. The value should be taken at £704.00. Having said that, the applicant made an offer of £1,330.00 to the intermediate landlord, which has been accepted. It is agreed that there is no compensation payable.

The issues

11. The three matters in dispute are:
- (i) The value of the flat with a new lease (“the long leasehold value”)
 - (ii) The value of the flat held on the current lease without rights under the Act (“the short leasehold value”)
 - (iii) The value of the landlord’s reversion in the flat with a new lease (54.1 years).

The expert evidence

12. The applicant’s valuer, Mr Oliver Dodds, works locally in the Hastings area, and has been dealing with lease extension and enfranchisement work for the last three years. His report was dated 11 September 2019 and his valuation produced a premium of £25,098.00.
13. The respondent’s valuer, Ms Jennifer Ellis, is based in London and has many years of experience in lease extension and enfranchisement work. She produced two reports dated 24 September 2019 and 2 October 2019, the second report considering recent decisions of the Upper Tribunal. She proposed a premium of £57,642.00.
14. The Tribunal heard oral evidence from both experts at the hearing. They agreed that the short and long leasehold values should be assessed by reference to the available market evidence.

The market evidence

15. The valuers prepared a joint statement of matters agreed, to which was appended details of flat sales at Albany Court. The tables below reproduce that appendix, with an additional column (figures provided by Ms Ellis but not disputed by Mr Dyer) updating the sale prices to the valuation date, based on the Land Registry house price index for Hastings and also adjusting to freehold value.

Long leaseholds

Flat	Floor	Sale date	Sale price -£	Updated and adjusted to FH value	Term at sale - years	Notes
52	4	22.11.16	147,000	160,790	133	1 bed, half balcony
29	5	29.9.14	146,000	197,370	113	2 beds, half balcony
61	3	5.7.13	135,000	204,520	121	3 beds, full balcony

39	2	7.9.12	135,000	204,395	137	2 beds, half balcony
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Short leaseholds

Flat	Floor	Sale date	Sale price - £	Updated and adjusted to FH value	Term at sale - years	Notes
11	5	16.10.17	140,000	136,650	42	2 beds, half balcony
36	1	14.2.17	130,000	134,911	42.6	2 beds, no balcony
24	3	10.2.17	143,000	148,402	42.6	2 beds, full balcony
60	3	9.2.17	170,000	Not calculated	42.6	3 beds, full balcony
45	5	19.12.16	130,000	137,780	42.8	2 beds, half balcony

In addition two other short leasehold sales were referred to: Flat 42 (by Ms Ellis) and Flat 59 (by Mr Dyer).

42	4	15.7.19	120,000	118,503	40.2	2 beds, half balcony
59	7	17.3.16	139,950	Not calculated	43.5	2 beds, full balcony

16. Mr Dyer also relied on one comparable in a different block: the sale of a two-bedroom, half balcony seafront flat, 9 Victoria Court, a post-war purpose-built block in St Leonards. The flat sold on 10 August 2018 for £177,500.00 with a share of the freehold.

The long leasehold value

17. The valuers agreed that the long leasehold value should be taken to be the freehold value less 1%.
18. Mr Dyer proposed a freehold value of £160,000.00, producing a long leasehold value of £158,400.00. He explained at the hearing that this figure was largely derived from the sale at 9 Victoria Court, after deducting 10% for the difference in location, as Victoria Court was in St Leonards and a more desirable area. He did not think the Land Registry index time-adjusted values for long leasehold sales at Albany Court were of much assistance, because although the Land Registry

index was useful for 3 to 4 and possibly 5 years, it was an average, covering the demand for the whole of the town and it did not allow for the subtleties of the market, such as the differences between seafront and inland locations. People were relocating from London and Brighton and over the last few years period properties had become particularly desirable. The demand for purpose-built flats had reduced. He stated that there is a “glass ceiling” on what someone will pay. As a local valuer he used his experience of the market rather than just looking at the indexes, which must be treated with caution. He described the Flats 29, 39 and 61 Albany Court as “very historic sales” for which the Land Registry index produced inflated figures, and suggested that his local experience of the market carried more weight.

19. The tribunal asked Mr Dyer why he had not included other similar blocks in his comparables. He stated that the nearest purpose-built block was retirement flats with associated facilities and therefore not comparable. Other than that, there were only three other seafront blocks in the locality, Greeba Court which comprised one bedroom flats only, Victoria Court (referred to above), and Marine Court which was a 1930s period block with a number of problematic issues that meant that the values there were not useful.
20. Ms Ellis admitted that her local experience was limited to this block but said that an “academic” approach based on the actual evidence was the one required by the Upper Tribunal decisions. She accepted that the market evidence available was not ideal but all the sales at the block had been recorded and she believed that she could rely on the Land Registry index. She made the point that a valuer doesn’t determine the sales prices but analyses them.
21. Based on the four long leasehold sales at the block, she arrived at the freehold value of £207,500.00, producing a long leasehold value of £205,425.00. The sale of Flat 52 did not assist much as it was a one bedroom flat. Considering the other three sales, and allowing for the full balcony and better views from the 7th floor, £207,500.00 was a reasonable value for Flat 49. Ms Ellis did not consider that the Victoria Court sale was a useful comparable.

Discussion and determination

22. While the tribunal acknowledges that the local market is relevant and should be considered, we accept Ms Ellis’s point that views about it must be evidence based. Although Mr Dyer set out his opinion as to why a buyer would pay no more than £158,400.00 for Flat 49 with a long lease, he was unable to support this with any hard evidence. We do not consider that the Victoria Court sale is a useful comparable. While it is a two bedroom flat in a purpose-built block on the seafront, it was sold “with a share of the freehold” but no details were available of what this meant– was the flat itself subject to a short/shorter lease that would still require extension and what might be the arrangements for that if it was necessary? Mr Dyer also produced no evidence to back up

his assertion regarding the differential in value between the two locations

23. However, we accept Mr Dyer's point regarding the usefulness of the Land Registry index. In *Roberts v Gardner* [2018] UKUT 0064 (LC) the Upper Tribunal commented that whilst indices are regularly used to adjust for time, the reliability of the evidence must decrease the further from the valuation date transactions occurred. The warning in *Elmbirch Properties Plc, Re: 51 and 85 Humphrey Middlemore Drive* [2017] UKUT 0314 (LC) that transactions which require an adjustment using indices covering a three year period must carry a health warning was repeated. It placed more weight on a comparable which was five months after the valuation date.
24. Looking at the four sales at Albany Court, Flats 61 and 39 were both sold for £135,000.00 in July 2013 and September 2012 respectively, some 5 and 6 years before the valuation date. Given the lapse of time between these sales and the valuation date, we are unable to place a great deal of reliance on the updated prices. Flat 61 is also a larger flat in that it has 3 bedrooms and was understood to be situated at an angle to the main elevation, giving it a larger footprint. The most recent sale was Flat 52 in November 2016, but this is a one-bedroom flat which has no rear windows and an internal kitchen, and is therefore not a very useful guide. This leaves only Flat 29, a fifth floor two bedroom, half balcony flat sold for £146,000.00 in September 2014, just over 4 years before the valuation date. No evidence was given by either side as to the relative values of a flat with a full or half balcony and our view, with no evidence to the contrary, is that the size of the balcony does not make a material difference. A half balcony is still a good size, a larger balcony might only be used part of the time, and means that the main bedroom is smaller. Based on the limited evidence available, we adopt the updated value of Flat 29 of £197,300.00 as the best guide and determine a freehold value of Flat 49 at **£197,000.00**, reducing to **£195,030.00** for long leasehold.

The short leasehold value

25. The valuers agreed that this should be determined from the available evidence of sales of short leases with rights under the Act, making an appropriate deduction to arrive at the value for a short lease without rights.
26. Mr Dyer considered that the sale of Flat 24 was the best comparable, being a two bedroom flat with a full balcony. The updated value was £148,402.00. He considered there should be a 7.5% reduction for rights, this percentage reflecting the local market and what people would pay. He then made a further reduction by "stepping back" in light of local knowledge, to arrive at a short leasehold value of £130,000.00. He said that whilst it would be exceptionally difficult, if not impossible, to raise a mortgage on short leases, a point which would normally reduce demand, the age and type of buyer at Albany

Court meant that the lease length seemed to be less critical. There was a good level of demand.

27. Ms Ellis noted the most recent sale of Flat 42 in July 2019 for £118,503 (index-adjusted), considered the other sales, and arrived at a short lease with rights value of £130,000.00. She made a deduction of 10% for rights, producing a figure of £117,000.00. She considered that in London many purchasers have access to private finance which enables them to buy 41 year leases, and that may not be as readily available in Hastings.
28. Ms Ellis also referred to relativity graphs as a cross-check on her conclusions. In her initial report she referred to two graphs: Gerald Eve less 1% and Savills enfranchiseable. In her second report, following guidance in *Trustees of the Barry and Peggy High Foundation v Zucconi* [2019] UKUT 0242 (LC), she also considered the Gerald Eve 2016 and the Savills unenfranchiseable graphs. These produced relativities at 41.0 years of between 62.91% and 65.83%, and she adopted 63%. On her freehold figure of £207,500.00 this produced a figure of £130,725.00 for a short lease without rights. However, adopting a preference for the market evidence, she maintained that £117,500.00 was the correct figure.
29. Mr Dyer was able to produce a copy of the sales particulars for Flat 42, from which it was clear that, apart from replacement UPVC double glazed windows and balcony doors, the flat was in need of complete modernisation, including the provision of heating.
30. The other flat excluded from the agreed statement was Flat 59. This flat was on Mr Dyer's original list and, when asked about it, Mr Dyer said that he still wished to rely upon it. Miss Ellis said that it was the most historic sale of a short lease, so she did not think it was necessary to take it into account as there was sufficient evidence without it. The tribunal considered that this flat was useful in that it was a two-bedroom, full balcony, seventh floor flat, i.e. apparently very similar to Flat 49. Whilst the sale took place in March 2016, this was more recent than the evidence available for the long lease sales relied on by Ms Ellis, except for the discounted Flat 52 mentioned above.

Discussion and determination

31. The Upper Tribunal has made it clear that market evidence is to be preferred over relativity graphs where such evidence is available: *The Trustees of the Sloane Stanley Estate v Adrian Howard Mundy* [2016] UKUT 223 (LC); *Roberts v Gardner* [2018] UKUT 0064 (LC). In the latter case it was said that graphs should only be considered if the market evidence was inconclusive. In our view there is sufficient market evidence in this case.
32. With respect to Flat 42, having seen the sales particulars describing its condition, the Tribunal concludes that its sale price, rather than being a

useful aid to value, is misleading. We also consider that Flat 60 should be excluded from consideration as it is a larger 3-bedroom flat sold at a price substantially out of line with the other sales.

33. However, the other four flats on the agreed statements, together with Flat 59, provide good evidence. The average sale price of these flats with rights (11, 36, 24, 45 & 59), adjusted to September 2018, is £143,130.00. We see no reason to depart from a 10% deduction for rights as applied in *Mundy* to a 41.32 year lease, as Mr Dyer did not provide any evidence to corroborate the appropriateness of his suggested percentage of 7.5%. A deduction of 10% from the average sale price produces a short leasehold value of **£128,800.00**.
34. The tribunal does not see any need to consider the relativity graphs, but as a useful cross-check it is noted that applying a 63% relativity to of a freehold value of £197,000.00 produces a short lease value of £124,100.00. This is not substantially out of line with our analysis of the market evidence, and we bear in mind that only a small minority of the flats at Albany Court have extended leases. This unusual situation in this day and age may suggest that, in this block, the length of the lease is not so relevant to the type of lessee that it attracts, and may be a factor in explaining why the figure we have arrived at is higher than the figure suggested by the graphs.

The value of the landlord's reversion with new lease

35. Mr Dyer used his long leasehold value to calculate the value of this reversion. Ms Ellis disagreed with this approach, saying that as that there is no market evidence the graphs must be used. The four graphs produced the following relativities:

Gerald Eve less 1%	76.25%
Savills enfranchiseable	75.48%
Gerald Eve 2016	73.68%
Savills unenfranchiseable	74.00%.

36. Taking the Gerald Eve 2016 graph as the lowest and rounding up, Ms Ellis adopted a relativity at 54 years of 73.75%. Mr Dyer was questioned on this and whilst he did not accept Ms Ellis' freehold value figure, he said that he accepted her calculations, which the tribunal takes to mean the relativity of 73.75% and not the freehold valuation. We agree with the approach of Ms Ellis and applying a relativity of 73.75% to our freehold value of £197,000.00 produces a figure of £145,287.00 for use in the reversion calculation.

37. Appended to this decision is the tribunal's valuation using the figures as agreed by the parties and determined by the tribunal.

Dated: 23 December 2019

Judge E Morrison

Appeals

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

49 Albany Court, Robertson Terrace, Hastings

Valuation date	15/09/2018				
Expiry of Headlease	31/10/2203		VALUES		
Unexpired term of Headlease	185.13 years		Freehold	£	197,000
Expiry of Intermediate Lease	08/10/2059		144.06 year L/H	£	195,030 99.00%
Unexpired term of Intermediate Lease	41.07 years		131.04 year L/H	£	195,030 99.00%
Expiry of Underlease (Flat)	29/09/2059		54.06 year L/H	£	145,288 73.75%
Unexpired term at valuation date	41.04 years		41.04 year L/H	£	128,800
Freehold Value	£	197,000			
Value of extended lease (unimproved)	£	195,030			
Freehold Reversionary Value uplift		99.00%			
Value of existing lease (unimproved)	£	128,800			
Yield, Ground Rent		2.15%			
Yield, Current Reversion 144.06 years		5.00%			
Yield, intended Reversion of 54.06 years		5.50%			
New lease term (plus 90 years)		131.04 years			
Ground Rent	£	26 for	41.04 years		

Diminution in value of Landlords' present interests, excluding marriage value

Multistates Ltd's Interest (Head Lessee/Competent Landlord)

Current Reversion on	08/10/2059				
to	144.06 year leasehold	£	195,030		
PV £1 after	41.07 years at	5.00%	<u>0.13482</u>	£	<u>26,294</u>
Intended Reversion on	29/09/2149				
to	54.06 year leasehold	£	145,288		
PV £1 after	131.04 years at	5.50%	<u>0.00090</u>	£	<u>131</u>
				£	26,163

Albany Court Hastings Ltd's Interest (Intermediate Landlord)

Capitalise ground rent for current term					
Ground rent		£	26		
YP	41.04 years at	2.15%	<u>27.08404</u>	£	<u>704</u>
				£	704

Plus Landlords' share of marriage value

Value of future interests

Freeholder	£	-			
Competent Landlord	£	131			
Intermediate Landlord	£	-			
Lessee	£	<u>195,030</u>		£	195,161

Value of current interests

Freeholder	£	-			
Competent Landlord	£	26,163			
Intermediate Landlord	£	704			
Lessee	£	<u>128,800</u>		£	<u>155,667</u>
Total Marriage value				£	39,494
Landlords' share of marriage value at 50%					<u>£ 19,747</u>

PREMIUM DUE TO MULTISTATES LTD & ALBANY COURT HASTINGS LTD. £ 46,614

Apportionment of Marriage Value

As diminution of part of whole					
Competent Landlord's Interest	£	26,163	97.38%	£	19,230
Intermediate Landlord's Interest	£	<u>704</u>	2.62%	£	<u>517</u>
	£	26,867		£	19,747

Amounts payable

Competent Landlord	£	26,163	£	19,230	£	45,393
Intermediate Landlord	£	704	£	517	£	1,221
					£	<u>46,614</u>