



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

**Case Reference** : CHI/00MS/OLR/2020/0219

**Property** : Flat 2, Grove Mews, 444 Portsmouth Road,  
Southampton, SO19 9AT.

**Applicant** : Aiste Ksenofontovaite

**Representative** : Household Services Limited

**Respondent 1** : Trendgrove Properties Limited

**Representative** : Altermans Solicitors Limited

**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 Coupe FRICS

**Date of Decision** : 11 June 2021

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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 £13,100.

### **Background**

1. This is an application to determine the premium and other terms of the acquisition, made on 18 December 2020.
2. Directions were made on 19 January 2021 setting out a timetable for the exchange of written submissions on the matters not agreed.
3. The parties have confirmed that the draft lease has been agreed and that the only issues remaining are matters of valuation.
4. The matter was determined by video conference hearing on 29 April 2021 and both parties submitted expert valuation evidence.
5. Valuation reports have been received from Mr Linz Darlington BSc (Hons), instructed by the Applicant and Mr G P Holden FRICS instructed by the Respondents.
6. An inspection of the property has not been made. The Tribunal relied on evidence of the nature and condition of the property from the expert witnesses.
7. The following were agreed between the parties:
  - Date of valuation 12 June 2020
  - Unexpired term at valuation date 66.78 years
  - Ground rent: £25 (0.78 years) increasing to £40 then to £60 for the last 33 years of the term.
  - Capitalisation rate 7%
  - Deferment rate 5%
  - Extended leasehold value 99% of FHVP value.
8. The following are disputed
  - Unimproved Long Lease Vacant Possession Value
  - Unimproved Short Lease Vacant Possession Value/Relativity
  - Resulting Premium

## **The Premises**

9. The subject property is a one bedroom flat, one of 16 in a block constructed in the 1980s. It is situated about 2.5 miles to the east of Southampton.
10. It has a lounge/dining room, hallway, kitchen, bedroom and bathroom/WC.

## **The Hearing**

11. The hearing was attended by Mr Darlington and Mr Holden.
12. The Tribunal noted the apparent dual status of the representatives for the Applicant and Respondent i.e. that they may be advocates and expert witnesses. The Tribunal asked the parties to ensure that they make clear to the Tribunal in what capacity they were speaking at any given time. It was to be assumed that they were addressing the Tribunal as expert witnesses unless told to the contrary.

## **Evidence at the Hearing**

13. Within the bundle the Tribunal was referred to the following caselaw:-
  - The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223(Mundy)
  - Mallory v Orchidbase [2016] UKUT 468 (LC)
  - Reiss v Ironhawk [2018] UKUT 0311 (LC)
  - Sinclair Gardens Investments (Kensington) Ltd [2017] UKUT 494 (LC)
  - Zuckerman v Calthorpe Estate Trustees [2009] UKUT 235 (LC)
  - Earl of Cadogan v Sportelli [2007] EWCA Civ 1042
  - Trustees of the Barry and Peggy High Foundation and Claudio Zucconi and Mirella Zanre [2019] UKUT 0242 (LC) ("Zucconi")

### Mr Darlington's evidence

#### Unimproved extended lease value

14. Mr Darlington said that when assessing the unimproved extended lease value, it was appropriate to start by analysing the sale of the subject property in an improved condition for £134,000 very close to the valuation date.
15. The Act requires a valuation excluding improvements and he described the appropriate condition as "lease maintained" and makes a deduction of 7% from the purchase price to reflect this. He points out that Mr Holden adopts a similar approach but deducts only 2.5%.
16. He also referred to the recent sale of Flat 9 in the same block described as in lease maintained condition and not improved and Flat 11, 442 Grove Mews [145] in an inferior block and 14% smaller.
17. Mr Darlington analysed five comparables [140] sold between August 2019 and December 2020. He made adjustments for improvements and condition and applied house prices indices to reflect sale date.

18. The “stand out comparable” is the subject property which sold subject to contract, assuming completion of a long lease, at £134,000.
19. He invited the Tribunal to find the value of the unimproved extended leasehold value at £124,620.

#### Unimproved short leasehold value

20. Mr Darlington considers that case law directs us that evidence of market sales is the best evidence. The Mallory and Reiss cases found that two sales transactions consistent with the relativity graphs were sufficient.
21. Both valuers had analysed transactions on the wider estate development but the only comparable was Flat 12, 444 Grove Mews, sold for £80,000 in May 2019. Mr Darlington considers that this comparable is of limited relevance for a number of reasons.
22. Section 13 of the Act requires an assumption of a sale by a willing buyer but Flat 12 was sold by mortgagees in possession. It was also marketed with the disclosure of an £80,000 offer inviting bids within seven days. He considers that a mortgagee in possession does not have the same interest in maximising price as a willing seller [190]. Flat 12 was also in need of significant refurbishment and cash investment. For these reasons it would not be reliable to focus on this one comparable. Doing so would contradict Upper Tribunal guidance in Zucconi & Deritend.
23. Using the Savills unenfranchiseable and Gerald Eve relativity graphs he arrives at an average relatively of 82.75%.
24. He added a caveat on Deritend noting that the presence of persuasive market evidence can permit departure from approved graphs. The Respondents claim that there is more supply here and their adjustment of 4.25% is not justified. Mr Darlington said that the opinion of experts alone is not persuasive evidence as envisaged in Deritend.
25. Therefore, in the absence of market transactions Mr Darlington adopted 82.75% of a freehold value of £125,879 to arrive at the value of the unimproved short lease at £104,164. This builds to a premium payable of £12,908.
26. Mr Holden as advocate questioned Mr Darlington.
27. In answer to Mr Holden’s questions Mr Darlington said that the adjustment to the stand out comparable [106] was based on his own experience. He referred to an earlier case where there were seven comparables known to Mr Holden, but no evidence was placed before the Tribunal.
28. Questioned on the Mallory Orchid Base case [310] which featured 1970s built flats, Mr Darlington confirmed that the age of the flat could potentially affect its value in an improved state but there were a number of factors, for example a 1970s flat may have been refurbished in 1990 and would not by today’s standards be considered improved. The subject flat was sold with a very new refurbishment and this was reflected in the premium price.

29. Questioned about the flat in the Mallory case [310] which featured a larger two bedroom flat, Mr Darlington agreed that there would be a differential in value and that this is why a percentage is adopted rather than a simple figure. Mr Darlington said that in Mallory there was a nominal across the board percentage applied irrespective of the condition of each flat. In this case both experts have closely considered the actual sale of the subject flat. Mallory would deduct the same percentage for both of our comparables negating the basis and for that reason 7% is appropriate.
30. Questioned on his valuation of the short lease [108] he did not think the time difference between the valuation date and the sale of Flat 12, 444 Grove Mews was unhelpful. Questioned whether he considered an auction sale was not open market value, he said that some sales in that situation can be in distress. He agreed that most short leases sold at auction but the sellers may be in a range of circumstances. He indicated that whilst a mortgagee in possession has a duty to obtain the best price there are risk factors to a buyer which can depress values for example the absence of a title guarantee.
31. Questioned on his comment [114] that there is greater demand for shorter leases outside London, he indicated this was his opinion but provided no evidence. The appetite for short leasehold flats is affected by affordability, knowledge of enfranchisement law, published data and guidance. There are different drivers affecting the market for long and short leasehold flats. Without evidence he would find it difficult to answer whether there is more demand for flats in London. Prices were higher in all categories.

#### Mr Holden's evidence

##### Long Leasehold Value

32. Mr Holden did not wish to add significantly to his expert report but noted that both valuers agree that market evidence is best. He agreed that the block at 442 Grove Mews was less valuable. His approach was similar, relying on three long leasehold comparisons and one short leasehold.
33. Like Mr Darlington he analysed the pending sale of the subject flat with a long lease at £134,000. He made a "token" adjustment to disregard improvements at 2.5% to arrive at a long lease value of £130,000.

##### Short Leasehold value

34. For the short leasehold value, he contrasted the sale of 12 Grove Mews with the three long leasehold sales, giving an average relativity of 73.29% [289]. Adjusting this percentage further for a no Act world, he deducted a further relative percentage of 4.18% (£4,023) to arrive at a short lease value of £92,216. He confirmed that his strong view was that there is less demand for short leasehold interests in Southampton than in central London.
35. Mr Holden did acknowledge that analysing one transaction was insufficient to be reliable and considered the percentage relativity based on approved graphs to be 82.75%. In seeking to provide a weighted approach he gave his relativity at 70.22%, a third of the weighting of the approved graphs [216/4.74]. This gave an average relativity of 78.57% rounded down to 78.5%.

36. Mr Holden told the Tribunal that whilst his approach was not perfect, he considered the weighted percentage he arrived at was correct. He invited the Tribunal to determine a premium of £16,243.
37. Questioned by Mr Darlington about his adjustment for improvements he confirmed that he usually adopted 2.5%, the 3% chosen here was as a result of rounding. Where the property was in need of modernisation no adjustment was made for improvements. Where there had been a lot of improvements photographic and other evidence would need to be considered.
38. The flat had been inspected by someone who was no longer with the firm and Mr Holden was unable to inspect himself as he was shielding under Covid restrictions. Looking at the photographic evidence he considered the improvements to the subject flat were largely cosmetic. In further questioning he said that the small balcony to Flat 9 does not add much whereas access to open space on the ground floor was an attractive feature.
39. Questioned on his short lease valuation, he considered that the mortgagee in possession sale was equivalent to the statutory valuation given the length of time to run. The mortgagee in possession is still a willing seller because they want to sell. When referred to case law about the status of sales by mortgagees, he said that these may or may not be comparable to full market value. He accepted in part that there were risks to a purchaser buying a property in possession.
40. Asked about comparison with Flat 12 Grove Mews [252], he agreed that the photos at 190 and 216 illustrated how the flat had been put in good condition.
41. On the matter of the weighting given to relativity percentages, he said that it was correct to place more reliance on the approved graphs and felt that one-third:two-thirds was the right ratio. Apart from the sale of Flat 12 there were no sales of short or long lease flats which were helpful.
42. Questioned by the Tribunal, the experts confirmed they had not agreed a list of the improvements to be deducted. Mr Darlington considered that his adjustment reflected kitchen, bathroom and some flooring improvements. Both experts confirmed that their adjustment to FHVP was 1%.
43. Summarising for the Applicant Mr Darlington said that the Applicant purchased the flat at a premium and it would not be fair to charge a further amount by not deducting a sufficient amount for improvements. The sale of Flat 12 is unreliable evidence for the reasons given and should be rejected completely. None of the market evidence referred to is “persuasive” in relation to the Deritend decision.
44. For the Respondent Mr Holden said reliance on the relativity graphs implies that the markets in London and Southampton are the same and this would not be correct. The market evidence was not enough to be persuasive which does give an indication that values should be lower and for this reason he had applied his weighting. In his opinion the selected weighting reflected the correct valuation.
45. Mr Holden said that both valuers agree the market evidence is best but do not agree on the adjustments. Improvements made to the subject flat were to suit

this particular buyer and he invited the Tribunal to find the long leasehold value at £130,000.

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46. The Tribunal records its thanks to the two experts who have invested a great deal of time in analysing the evidence and caselaw in presenting their cases. A considerable amount has been prior agreed and there are two elements of the premium calculation remaining which need to be determined, i.e. the unimproved value of the long leasehold interest and the value of the short lease disregarding Act rights.

#### Long leasehold Value Unimproved

47. The Tribunal notes the methodology adopted by the experts in extrapolating and analysing sales evidence. The Tribunal finds that the sale of the subject property, albeit subject to contract, is a good indicator of the extended lease value. Allowance must be made for the improvements which are clearly evident.
48. Mr Darlington's deduction for improvements is considered to be on the high side having regard to the evidence and the Tribunal moderated this in arriving at the unimproved value.
49. Accordingly the Tribunal determines the value of the long leasehold at £126,500 with the FHVP at £127,778.

#### Short Unimproved Long Lease Vacant Possession Value

50. Both valuers are aware of and referred to case law regarding the task of valuing short leasehold interests and the use of graphs of relativity.
51. The Tribunal considered the evidence from both experts on relativity and the use of graphs, particularly in the light of the Deritend case referred to above.
52. The Tribunal was referred to Mundy. In that case it was made clear that the preferred method is by analysis of market evidence before resorting to graphs. If they are to be used, Deritend makes clear that Savills 2016 and Gerald Eve are more reliable and may be used outside of the PCL.
53. In Deritend the Upper Tribunal developed that guidance and said in its decision.

*58. 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.*

*59. We are satisfied that the outcome justified by the evidence provided to the FTT was a determination based on the average of the two 2016 PCL graphs. For the reasons we have already explained we do not endorse Mr Sharp's averaging of the resulting relativity figure by reference to the Beckett and Kay 2017 graph.*

54. The Tribunal finds that the relative analysis of long lease comparables adopted by Mr Holden and the sale of the subject property by mortgagees in possession does not constitute persuasive evidence as set down in Deritend. Indeed, Mr Holden acknowledged this in part in summing up.
55. The Tribunal adopts the Deritend approach in use of the approved relativity graphs. It finds that the correct relativity is, as Mr Darlington adopted, 82.75% of FHVP.
56. Applied to an FHVP of £127,778 this results in a short lease value of £105,736.
57. Accordingly, the Tribunal determines the value of the short leasehold interest, excluding the Act rights at £105,736.

### **Determination**

58. Based on the findings above the Tribunal determines the premium payable as £13,100. The Tribunal's calculation is shown below.



Flat 2, Grove Mews, 444 Portsmouth Road, Southampton SO19 9AT

## Calculation of premium payable.

<b><u>1: Diminution in Freehold Value</u></b>				
(i) Capital value of Ground Rent	Agreed through evidence submitted.			£580
(ii) Freehold Reversion				
<u>Unencumbered FHVP value</u>		£127778		
	PV£1 66.78 YEARS @5%	0.0385		4919
<b>Current value of freehold interest</b>				£5499
<b>(iii)</b>	Less: interest after extension			
<u>Unencumbered FHVP value</u>		£127778		
	PV£1 156.78 YEARS @5%	.0005		<u>£64</u>
<b><u>Diminution of FH reversion:</u></b>				£5435
<b><u>2: Landlords Share of Marriage Value</u></b>				
(i) Combined value of interests after extension				
		Freehold	£64	
		Leasehold	<u>£126500</u>	£126564

(ii) Less combined value of current interests			
	Freehold	£5499	
<u>Short lease @ 82.75%</u> <u>UFHVP £127778</u>	Leasehold	<u>£105736</u>	<u>£111235</u>
<b><u>Marriage Value</u></b>			£15239
Landlord's share at 50%			£7665
<b><u>Premium Payable</u></b>		£7665+£5435	<b>£13100</b>

## **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 [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being 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