



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

Case Reference : **LON/00AF/OLR/2017/0132**

Property : **Basement Flat, 14 Mosslea Road,
London SE20 7BW**

Applicant : **Abdul Haye Chaudhry
Nazira Begum Chaudhry**

Representative : **Mr Alan Cohen BSc FRICS IRRV**

Respondents : **Judeglen Limited
Latchguard Limited**

Representative : **Mr Robert D S Heald FRICS**

Type of Application : **Section 48 Leasehold Reform,
Housing and Urban Development Act
1993 – to determine the terms of
acquisition in dispute**

Tribunal Members : **Judge John Hewitt
Mr P Casey MRICS
Judge Ruth Wayte**

**Date and venue of
hearing** : **23 May 2017
10 Alfred Place, London WC1E 7LR**

Date of Decision : **5 June 2017**

DECISION

Decision of the tribunal

1. The total premium payable by the applicants to the respondents for the grant of the two new leases is £32,000.00 calculated as shown on the valuation appended to this decision.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

3. On 24 March 1994 the first respondent was registered at Land Registry as the proprietor of the freehold land comprising the basement floor flat at 14 Mosslea Road, registered with title number SGL571601 [25].
4. On 30 April 1990 the second respondent was registered at Land Registry as the proprietor of the remainder of the freehold land comprising 14 Mosslea Road, registered with title number SGL220251 [19].
5. On 4 December 1998 the respondents were registered at Land Registry as the proprietors of a lease of the basement flat and the rear garden of 14 Mosslea Road, registered with title number SGL284326 [30]. The lease was dated 29 September 1979 and granted a term of 99 years from that date.

The demised premises are a compact basement flat comprising one double bedroom, living room, kitchen and bathroom/wc plus the rear garden. It has its own street door. There is no garage or off-street parking available to the tenant.

We understand that 14 Mosslea was originally constructed as a three-storey centre-terrace Victorian bayed house, subsequently adapted to create three self-contained flats.

Mosslea Road is an established residential road off the High Street and conveniently located for shops and transport facilities.

6. By a notice dated 23 September 2016 and given pursuant to section 42 of the Act, the respondents sought to exercise the right to acquire a new lease and put forward proposals for the grant of that lease [15].
7. By a counter-notice dated 14 November 2016 and given pursuant to section 45 of the Act the respondents admitted that on the relevant date the applicants had the right to acquire a new lease, but did not accept the proposals put forward by the applicants and put forward counter-proposals [16].
8. The parties were unable to agree all of the terms of acquisition of the new lease and an application dated 18 January 2017 seeking a

determination of the terms of acquisition in dispute was filed with the tribunal [1].

9. Directions were given and the application came on for hearing before us on 23 May 2017.

The hearing

10. The applicants were represented by Mr Alan Cohen who undertook the roles of both expert witness and advocate. Mr Cohen's report is at [70]. Mr Cohen was accompanied by an observer, his grandson, Daniel Cohen, who had recently qualified as a surveyor.
11. The respondents were represented by Mr Robert Heald who undertook the roles of both expert witness and advocate. Mr Heald's report is at [88].
12. We were told that the parties had agreed all the components of valuation save for the relativity.

In the context of valuations under the Act, relativity is the value of a dwelling held on an existing lease at any given unexpired term divided by the value of the same dwelling in possession to the freeholder, expressed as a percentage.

Thus, the focus of the hearing was on relativity.

The parties' respective positions were as follows:

	Relativity	Premium
Mr Cohen	87.36%	£27,998
Mr Heald	82.00%	£36,957

13. We were told that the valuers were agreed on the following components:

Valuation date:	28 September 2016
Unexpired term:	62.00 years
Ground rent:	£25pa
Capitalisation rate:	7.00%
Deferment rate:	5.00%
Extended lease value:	£335,000
Freehold value:	£338,350

We were also told that the respondents were connected companies which would apportion the premium payable between them and they did not require the tribunal to make an apportionment.

Mr Cohen's approach

14. Mr Cohen presented his report, and took us through the salient parts. Mr Cohen answered a number of questions put to him by members of the tribunal. Mr Heald was invited to cross-examine Mr Cohen but he did not wish to do so.
15. Mr Cohen was of the view that in line with the authorities the starting point is to consider recent sales or transactions concerning comparable properties. He did not consider there were any relevant transactions to rely upon. In the absence of such compelling evidence he turned to the RICS Research Report: Leasehold Reform: Graphs of Relativity – October 2009. Mr Cohen considered that the graphs in section 2 – Greater London and England - to be the most appropriate with the exception of Austin Gray which, he concluded, should be excluded because his understanding is that it is made up exclusively from properties outside of London, mostly in Brighton & Hove where many elderly persons retire to and who are not overly bothered if they overpay and who are not mortgage dependent.

At 62 years unexpired the graphs recorded:

Beckett & Kay:	86.84%
South East Leasehold:	90.40%
Nesbitt & Co:	85.00%
Andrew Pridell:	87.20%

Mr Cohen averaged these to arrive at 87.36%.

We observe that the Austin Gray graph recorded 87.00% and if this had been included the average would have come out as 87.29%.

16. In answer to questions put to him by members of the tribunal Mr Cohen said that every graph has its flaws. He rejected the Prime Central London (PCL) graphs, even the Gerald Eve graph because Penge was a far cry from PCL and the market was quite different.
17. Mr Cohen also said that when asked to give broad advice on a premium, his starting point would be recent sales, if available, but if not he would resort to the appropriate graphs and take an average to get to broad-brush figure.
18. Mr Cohen also said that in his view Mr Heald was wrong in his approach and that he had difficulty in understanding his logic. Mr Cohen was critical of Mr Heald including two recent settlements concerning the other two flats within 14 Mosslea Road, in which both Mr Cohen and Mr Heald were concerned, because both lessees were keen to settle so as to be able to sell and whilst the premiums had been agreed, the component parts and methodology had not.

Mr Heald's approach

19. Mr Heald presented his report, and took us through the salient parts. Mr Heald was cross-examined Mr Cohen and he also answered a number of questions put to him by members of the tribunal.

20. Mr Heald accepted that there was no relevant sales evidence to rely upon. He thus looked at three other valuation tools, namely:

The two settlements concerning the other two flats in the building;
The graphs; and
FTT decisions.

21. As to the ground floor flat Mr Heald said that Mr Cohen had put forward a valuation [97] for a premium of £18,677 adopting a relativity of 87.50% for a term unexpired of 62.86 years. The settlement arrived at was £20,400, which Mr Heald analysed represented a relativity of 85.93%.

22. As to the top floor flat Mr Heald said that Mr Cohen had put forward a valuation [98] for a premium of £24,077 adopting a relativity of 86.88% for a term unexpired of 61.40 years. The settlement arrived at was £28,500, which Mr Heald analysed represented a relativity of 83.65%.

23. Mr Heald accepted that the components or analysis of the settlements had not been agreed with Mr Cohen. He said that he took the agreed premiums and worked backwards. He also said that he did not take into account any keenness on the part of the lessees to conclude a deal. Mr Heald relies upon them because they are settlements of similar flats within 14 Mosslea and he considered they should go into the mix.

24. Mr Heald also relied upon the graphs and he also said that whilst they have their benefits they also have a number of shortcomings because they can relate to specific areas. He was also critical that data relied upon in the graphs is now dated; and that only Beckett and Kay is kept up to date – that records, he said: “*around 73% to 74% for the subject 62 approximately year Lease unexpired term*”

25. Mr Heald relied upon all of the graphs, he did not exclude any of them, he did not average them, but put them into the mix generally.

26. Finally, Mr Heald relied upon three FTT decisions, copies of which were appended to his report. Mr Heald did not analyse them but simply asserted that they show “*... relativity has been determined at a much lower level than that referred to above and cannot in our view be ignored for the purposes of this determination.*”

27. Mr Heald did not average any of the decisions but put them into the mix generally.

28. Having identified the three sources of evidence Mr Heald took them all into the mix in the round and his experience and professional opinion

led him to conclude that a relativity of 82.00% was right for the subject property. 28. In answer to questions Mr Heald accepted that Upper Tribunal guidance was to the effect that settlements and FTT decisions were not reliable evidence. However, he asserted that he looked at them to guide him in the right direction to get a result.

29. Mr Heald was unable to explain exactly how his 82.00% was arrived at because it was an amalgam of all the evidence he had looked at, but he said it felt right when standing back and taking everything into account.
30. Mr Heald's attention was brought to the Gerald Eve graph for Prime Central London which, for a term unexpired of 62 years, shows a relativity of about 82%.

Mr Heald agreed that guidance in *Mundy* was to the effect that the Gerald Eve graph for PCL was the gold standard for PCL. He considered it had some relevance to Penge even though Penge was not PCL; he saw no difference between PCL and Penge. Mr Heald did not see a conflict with his 82% for both PCL and Penge.

Discussion and conclusions

31. We agree with both valuers that none of the subject graphs are in themselves compelling. Each can be properly criticised for one reason or another. They can be but a general guide in the absence of compelling transaction evidence
32. The two settlements relied upon by Mr Heald are of limited evidential value. We accept Mr Cohen's evidence that the components were not agreed and that each lessee had a particular and personal reason to conclude a deal promptly. We find we can give them very little weight. We note that when formulating his valuations on those two properties Mr Cohen had adopted relativities which were broadly consistent with what he now contends for in relation to the subject property.
33. We also reject the FTT decisions relied upon by Mr Heald. We find they do not have any evidential value and, as Mr Heald accepted, that is the guidance of the Upper Tribunal. We also reject the submission that there are similarities between PCL and Penge. Those areas are quite different and the Gerald Eve graph for PCL is of no assistance.
34. We accept that both valuers have considerable experience in the field acting for both landlords and tenants on enfranchisement matters. Neither witness was particularly compelling, but several of the matters put into the mix by Mr Heald comprised unreliable evidence.
35. In a sense both valuers could be right. In very general terms we preferred Mr Cohen's rather more orthodox approach, but even having looked at the graphs, it is necessary to stand back and take a broad overview to get a feel for what is about right, and that was reflected in Mr Heald's approach. We have undertaken that exercise and in doing

so and in taking a broad-brush approach we determine that the appropriate relativity to adopt for the subject property is 85%.

36. We have therefore arrived at a premium payable of £[] made up as shown on the valuation appended to this decision.

Judge John Hewitt
5 June 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.

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

S48 Leasehold Reform Housing and Urban Development Act 1993

**Determination of the premium payable for an extended lease of
Basement Flat, 14 Mosslea Road, London SE20 7BW**

**Valuation date: 28 September 2016 – Unexpired term 62 years
(Agreed)**

Diminution in Value of Freehold Interest

Capitalization of ground rents for term – Agreed at £352

Reversion to F/H value with VP	£338,350		
Deferred 62 years @ 5%	<u>0.0486</u>	<u>£16,431</u>	

Less value of F/H after grant of new lease	£338,350		
Deferred 152 yrs @5%	<u>0.0006</u>	<u>£204</u>	<u>£16,579</u>

Marriage Value

After grant of new lease

Value of extended lease	£335,000		
Plus freehold value	<u>£204</u>	<u>£335,204</u>	

Before grant of new lease

Value of existing lease @ 85% f/h	£287,597		
Plus freehold value	<u>£16,783</u>	<u>£304,380</u>	
		£30,824	£15,412

50% share to Freeholder and Intermediate Leaseholder £31,991

Premium Payable Say £32,000