



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

Case reference	:	CAM/00KF/OCE/2020/0006
HMCTS code (paper, video, audio)	:	A:BTMMREMOTE
Property	:	57 Woodgrange Drive, Southend-on-Sea, Essex SS1 2SD
Applicant	:	1. Zep Birdsall 2. Aimee Marie Gargan
Representative	:	Drysdales Solicitors LLP
Respondent	:	Forcelux Limited
Representative	:	Graham Fear and Co.
Type of application	:	Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge David Wyatt Mrs M Hardman FRICS IRRV (Hons)
Date of decision	:	21 July 2020

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 363 pages, together with a replacement joint statement dated 27 June 2020 and signed by both experts, the contents of which we have noted.

Summary of the tribunal's decision

- (1) The price payable for the collective enfranchisement is **£48,409** comprised of: (a) £43,409 for the building; and (b) £5,000 for the external areas.

Background

1. This is an application pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (the “**Act**”) for a determination of the price to be paid for collective enfranchisement of 57 Woodgrange Drive, Southend-on-Sea, Essex SS1 2SD (the “**Property**”).
2. The first Applicant (Zep Birdsall) is the qualifying tenant of the ground floor flat. The second Applicant (Aimee Marie Gargan) is the qualifying tenant of the first floor flat.
3. By a notice of a claim dated 2 July 2019, served pursuant to section 13 of the Act, the Applicants claimed to exercise the right to acquire:
 - (a) the freehold of the building, pursuant to section 1(1) of the Act, proposing a price of £25,000; and
 - (b) the freehold of external areas, pursuant to section 1(2)(a) of the Act, proposing a price of £1.
4. On 27 August 2019, the Respondent freeholder served a counter-notice admitting that the Applicants were entitled to exercise the right to collective enfranchisement and counter-proposing prices of: (a) £50,075 for the freehold of the building; and (b) £10,000 for the freehold of the external areas.
5. On 12 February 2020, the Applicants applied to the tribunal for a determination of the prices payable (and to determine the costs payable to the Respondent, which at that stage had not been confirmed). By the time of the hearing, the tribunal was asked to determine the prices alone.
6. On 9 April 2020, the tribunal gave case management directions, indicating that the application was suitable for determination on the papers and that any relevant information which would have been obtained by the tribunal at an inspection could be provided by the parties by other means.
7. The parties relied on the copy property particulars and other details produced with the reports from the experts in the bundle for the

determination. The respondent requested a hearing, which was arranged and conducted as described below.

The issues

8. The basis of calculation of the prices is set out in Schedule 6 to the Act. In summary and referring to the relevant paragraphs of Schedule 6, the prices are to be the aggregate of:
 - (a) the value of the freeholder's interest if sold in the open market by a willing seller (as set out in paragraph 3 in respect of the building and paragraph 11 in respect of the external areas);
 - (b) the freeholder's share of any marriage value (as set out in paragraph 4 in respect of the building and paragraph 12 in respect of the external areas); and
 - (c) the amount of any compensation payable to the freeholder (as set out in paragraph 5 in respect of the building and paragraph 13 in respect of the external areas).
9. In calculating (a) and (b) above, any increase in value which is attributable to an improvement carried out by the tenants at their own expense is to be disregarded.

Matters agreed

10. The following matters were agreed:
 - (a) The relevant valuation date: 22 July 2019;
 - (b) The lease of the ground-floor flat is for a term of 90 years from 1 April 1984 with a ground rent of £120 until 31 March 2044 and £180 until 31 March 2074;
 - (c) The lease of the first-floor flat is for a term of 99 years from 1 September 1995 with a ground rent of £75 until 31 August 2028, £150 until 31 August 2061 and £300 until 31 August 2094;
 - (d) The deferment rate: 5%; and
 - (e) The relativity of long leasehold to freehold values: 99%.

Matters not agreed

11. The following matters were not agreed:
 - (a) The long lease values (subject to (b) below);
 - (b) Whether adjustments are to be made to disregard improvements said to have been made by the tenants;

- (c) Relativity of short lease to freehold values;
- (d) The value of the roof space;
- (e) The value of the front garden;
- (f) The capitalisation rate; and therefore
- (g) The prices payable.

The hearing

- 12. The hearing in this matter took place by telephone on 6 July 2020. The Applicants were represented by and relied on the expert report and valuation of Mr Dedman MA BSc (Hons) dated 19 May 2020. The Respondent was represented by and relied on the expert report and valuation of Mr Gibb BSc (Econ.) MRICS dated 11 May 2020.
- 13. Only those documents in the bundle referred to in this decision have been considered by the tribunal in reaching its determination, together with the oral evidence provided by each expert valuer at the hearing.
- 14. No party requested an inspection. The tribunal was satisfied that, based on the evidence provided by the parties and their experts, an inspection was not necessary.
- 15. At the hearing, Mr Dedman challenged Mr Gibb to say what proportion of work he did for tenants. Mr Gibb said that he seldom acted for tenants and suggested that was because his professional view on short lease relativity (as examined below) tended not to find favour with tenants and, based on the current case law, he would not change his view on this.

Property

- 16. In their reports and the joint statement, the experts agreed that:
 - (a) the Property is in a residential area, close to the town centre and sea front, on a bus route and with good rail links from the nearby railway stations (as set out in detail in the report from Mr Gibb);
 - (b) the Property is a two-storey building with a pitched roof, was constructed around the early part of the 20th century, forming part of a terrace, and was converted in the early 1980s into flats;
 - (c) the ground floor flat (referred to below as “GF”) has an entrance door from the communal hall, a front room, two bedrooms, a bathroom and a kitchen, with a door from the kitchen to the rear garden demised under the lease;

- (d) the first floor flat (referred to below as “FF”) has an entrance door from the communal hall to a staircase and landing, a front room, two bedrooms, a bathroom and a kitchen;
 - (e) both flats have gas central heating; and
 - (f) the front garden area and the loft area are not demised.
17. Mr Dedman said that the Property was on a “*trunk*” road, that buildings in the vicinity are predominantly low-rise houses and house conversions, that the Kursaal Estate (including flats and maisonettes managed by the local authority) is opposite and that parking in the vicinity is restricted. Mr Gibb said that Woodgrange Drive was not a trunk road and the actual entrances to the former Kursaal Estate were some distance away.
 18. Mr Dedman said that the ground floor flat has a GIA of 59.9 sq. m. and the first floor flat has a GIA of 70.3 sq. m. Mr Gibb did not dispute those floor areas, but preferred to base his valuation on the precise room dimensions set out in his report, for the reasons referred to below. He said that a lot of properties in this area were sold to rent, so room sizes were particularly important and there was a risk of the licensing regime applying, which would prohibit use of smaller rooms as bedrooms except for children. Mr Dedman replied that a lot of properties were sold to owner occupiers as well. He said that while layouts might differ the experts had found a good number of comparable long lease transactions, as described below, so differences in room dimensions/layouts should average out.
 19. Mr Dedman had thought that the back garden was demised only to the ground floor flat. Mr Gibb (correctly) pointed out at the hearing that half of the back garden is demised to each flat.
 20. Mr Gibb said and Mr Dedman did not dispute that both flats have relatively large well-proportioned living rooms with ceiling heights of just over 9 feet and the bedrooms are all good-sized well-proportioned doubles.

Long lease values

21. Mr Gibb notes in his report that the first floor flat at the Property was purchased in September 2017 for £143,500. He says that this price appears very low in comparison with local comparables and that it may reflect the condition of the flat when it was sold. Neither expert used this as a long lease comparable, but it is considered below generally and in relation to short lease comparables.

22. The experts refer to the following property sales in the vicinity. All these properties have two bedrooms.

Address	Price (£)	Completion date	Area (sq. m.)
4a Kilworth Avenue	212,500	23/7/18	
19 Honiton Road	190,000	8/3/19	74
20a Kilworth Avenue	195,000	8/5/19	70.32
3a Stanley Road	147,500	12/7/19	64.3
7a Leamington Road	215,000	5/8/19	65
41a Ambleside Drive	207,500	19/9/19	69
41a Cheltenham Road	173,000	22/10/19	73
39 Ambleside Drive	195,000	13/11/19	66
7a Honiton Road	220,000	22/11/19	
49a Ambleside Drive	195,000	29/11/19	68

Mr Dedman's evidence

23. Mr Dedman said that the Property is at the “*rough end*” of these comparables, on a larger road, and that 3a Stanley Road was the nearest comparable, followed by 41a Cheltenham Road. He said that adjustments needed to be made to these comparables for various factors, including general adjustments for time and size. Taking each in turn:

- (a) Mr Dedman did not comment on 4a Kilworth Avenue (£212,500), details of which were produced by Mr Gibb, but we have considered his general comments and his specific comments in respect of 20a Kilworth Avenue (below).
- (b) Mr Dedman said at the hearing that for 49a Ambleside Drive (£195,000), the price should be adjusted to £160,000 (GF)/£180,000 (FF). These figures were higher than in his report because he had originally deducted £20,000 for parking but Mr Gibb had pointed out that 49a does not have parking. He said that he had made the general adjustments described above and deducted a further £10,000 because 49a was in very good condition.

- (c) Mr Dedman said that for 19 Honiton Road (£190,000), the price should be adjusted to £130,000 (GF)/£145,000 (FF), making the same general adjustments and deducting a further £20,000 because it has parking and £10,000 because he says it is in a better location.
 - (d) Mr Dedman said that for 20a Kilworth Avenue (£195,000), the price should be adjusted to £145,000 (GF)/£160,000 (FF), making the same general adjustments and deducting £10,000 because he says it is in very good condition and £20,000 because it is in a better location.
 - (e) Mr Dedman said that for 3a Stanley Road (£147,500), the price should be adjusted to £140,000 (GF)/£155,000 (FF), making the same general adjustments and adding £5,000 because it was given a poor EPC rating.
 - (f) Mr Dedman said that for 7a Leamington Road (£215,000), the price should be adjusted to £150,000 (GF)/£175,000 (FF), making the same general adjustments and deducting £10,000 because he says it is in very good condition, £20,000 because it has parking and £20,000 because it is in a better location.
 - (g) Mr Dedman said that for 41a Ambleside Drive (£207,500), the price should be adjusted to £155,000 (GF)/£175,000 (FF), making the same general adjustments and deducting £10,000 because it is in very good condition and £20,000 because it has parking.
 - (h) Mr Dedman said that for 41a Cheltenham Road (£173,000), the price should be adjusted to £125,000 (GF)/£140,000 (FF), making the same general adjustments and deducting £20,000 because it is in a better location.
 - (i) Mr Dedman said at the hearing that for 39 Ambleside Drive (£195,000), the price should be adjusted to £160,000 (GF)/£180,000 (FF), making the same general adjustments and deducting £10,000 because it is in very good condition. Again, that is higher than the figures in his report, which had assumed that 39 had parking when it did not.
 - (j) Mr Dedman did not comment specifically on 7a Honiton Road (£220,000), details of which were produced by Mr Gibb, but we have considered his general comments and his specific comments in respect of 19 Honiton Road (above).
24. Mr Dedman said that his assessment of the condition of these comparable properties was based on the photographs provided. In response to questions from Mr Gibb, he confirmed his view was that 3a Stanley Road is not as good as the other properties but is at the same

level as Woodgrange Drive. Mr Gibb asked why Mr Dedman's adjustments were all downwards. Mr Dedman said that was because all the comparables were better, apart from the poor EPC rating for 3a Stanley Road which he had adjusted upwards for. He said that while he did not have the dimensions for individual rooms and he accepted that GIA figures included circulation space, he believed that these averaged out, as mentioned above.

25. Based on an average of these revised figures, Mr Dedman assessed long leasehold values of £146,025 for the ground floor flat and £165,330 for the first floor flat. These were higher than the figures in his report and original joint statement (because he had adjusted upwards for the lack of parking at the comparables mentioned above) and different from the figures in the revised joint statement (because he had made a mistake in the calculations).

Mr Gibb's evidence

26. Mr Gibb said that 3 Stanley Road is not an appropriate comparable because it is in a very run-down area, where he would not walk around at night, is - he believes - housed partly in the loft space, has an "F" EPC rating, and no room sizes have been provided. Mr Dedman challenged this, saying that it faces onto a grass area and is only a couple of hundred metres of the subject property. It seems from the Land Registry plans to be a little further away than that, but it is well within half a mile of the Property.
27. Mr Gibb says that the other transactions are suitable comparables and are recorded as being within a quarter mile of the Property, an area which features similar housing. He made comments on these and referred to his comparable analysis table at pages 192-3 of the bundle, with details of room dimensions and other factors compared to the subject flats, which we have considered. In particular, he says that:
 - (a) The second bedroom at 41a Cheltenham Road was only 8'5" by 6'1", which does not compare with the second bedrooms in the Property;
 - (b) Both the Kilworth Avenue properties have smaller second bedrooms;
 - (c) Both the Ambleside Drive properties back onto railway line;
 - (d) Allowance should be made for the fact that 39 Ambleside Drive only had 87 years remaining on the lease at the time of the transaction;
 - (e) Allowance should be made for the time between prices being negotiated and completion of transactions; and

- (f) He prefers to consider the precise room dimensions set out in his report and analysis table, referring to the dimensions of the bay windows. He says that overall area figures are often inaccurate and that room sizes and layouts will reflect prices paid in the real world.
28. Mr Dedman challenged this, saying that all the properties other than 3a Stanley Road were better than the flats at the Property and that smaller second bedrooms might deter some buyers but others, such as singles or those with one child, would not be put off. He asked whether Mr Gibb accepted that all the other comparables were on quieter residential streets compared to Woodgrange Drive, a larger road. Mr Gibb said that he had allowed for that, together with other the factors he had described.
29. Based on this, and the comparison details he has produced at pages 192 and 193 of the bundle, Mr Gibb assessed long leasehold values of £178,200 for the ground floor flat and £183,150 for the first floor flat, referring to the larger front room in the ground floor flat.
30. He said that these were based on his professional view on the matters referred to above, not a worked calculation from all the figures (his precise long leasehold values were simply 99% of his freehold valuation figures of £180,000 for the ground floor flat and £185,000 for the first floor flat). He confirmed that the difference between the values of the two flats was based on the difference in the dimensions of the living rooms. He emphasised that the ground floor still had a nice living room, but the first floor had a larger one, as detailed in his report.

The tribunal's determination

31. 3a Stanley Road is a different type of property in a different location, further away from the Property. Looking at the plans provided, it does seem to face an open area but that is a strip between Stanley Road and a larger road. It is still reasonable to take it into account together with the other transactions, as described above, as part of the basket of comparables, but it is to be given less weight.
32. Similarly, we do not disregard the sale of the first floor flat at the Property, but at that time it had less than 78 years remaining on the lease and there is a substantial margin for variation depending on the condition it was in at the time.
33. Woodgrange Drive is clearly not a trunk road, but it is larger, busier and less appealing than the quieter residential streets which lead off from it or from such streets, where the other comparables are located, further away from the Kursaal Estate.

34. The Ambleside Road properties (£195,000) are useful comparables. They look better, are on a quieter road and are in a generally better location - but they back onto the railway line and one has a shorter lease, which largely balances this out. This is rather supported by the fact that Mr Dedman made no adjustments for the location of these properties. He adjusted them only for time and floor area and added £10,000 because he said they were in better condition. Even if we made the same general adjustments as Mr Dedman, the Ambleside Road properties would suggest something in the region of £160-170,000 (GF) and £180-£190,000 (FF), depending on whether we made the same adjustment for their condition.
35. We take Mr Gibb's point that in this case adjustments based on floor area alone may overstate the differences between the two flats and the comparables, particularly where less important areas such as hallways are included. The ground floor flat has a smaller floor area than all the other comparables but it does still have reasonably good room dimensions and layouts compared to the first floor flat and the comparable properties, with a larger second bedroom than 41a Cheltenham Road, but without the other advantages identified by Mr Dedman as being enjoyed by the other properties. This all suggests that Mr Dedman's adjusted figures for the Ambleside Road properties are too low for the ground floor and a little too high for the first floor.
36. Stepping back and looking at all the comparables in the round, by reference to the factors identified by each of the experts, we determine that (subject to the question of tenant improvements, as examined below) the long leasehold values are £170,000 for the ground floor flat and £175,000 for the first floor flat.

Tenant improvements

37. Mr Dedman says that the windows in both flats have been upgraded to UPVC and that £3,500 should be deducted from the value of each flat to disregard the value of these improvements.
38. Mr Gibb said that the windows were changed without the landlord's consent as required by the leases and that failure to comply with covenants should not put the leaseholders at an advantage. He was asked at the hearing to identify the relevant covenant(s) in the leases and referred only to clause 3(c) in each lease. This is a covenant not to make any structural alterations or additions to the demised premises nor to erect any new buildings thereon or remove any of the landlord's fixtures and fittings without the previous consent in writing of the landlord. Mr Dedman said that he understood the Applicants had obtained consent from the landlord; Mr Gibb said that his instructions were that no consent was given.

39. Mr Gibb said that, in any event, replacing the windows was a cheaper alternative to complying with the repairing covenants and repairing the wood frames, and that while there had previously been a move towards UPVC windows, renovation and repair was now seen as a superior approach. It was cheaper to put in the new UPVC windows, he said, so that was not an improvement. Mr Dedman said that painting the old window frames would have been cheaper than replacing them and that UPVC windows were quieter and retained heat better.

The tribunal's determination

40. The covenants Mr Gibb relied on did not prohibit replacement of the windows without consent. On the information provided, there was no suggestion that they are structural (it would be surprising if they were) and the old windows were not landlord's fixtures or fittings; they are part and parcel of the property which is demised to the tenants under their leases and which they are obliged by those leases to repair.
41. It seems to us that in view of the location of this Property the replacement windows are a marginal improvement in functional terms. We determine that based on the information provided £1,000 of the value of each flat is attributable to an improvement carried out by the relevant tenants and accordingly the adjusted long lease values are £169,000 for the ground floor flat and £174,000 for the first floor flat.

Relativity

42. Mr Gibb said that at the relevant date the ground floor flat had an unexpired term of 54.67 years and the first floor flat had an unexpired term of 75.11 years. Mr Dedman did not disagree, but had rounded these to 54.7 and 75.1.
43. In view of the decision of the Upper Tribunal in Deritend Investments (Birkdale) Limited v Treskonova [2020] UKUT 0164 (LC), made the week before the hearing, the tribunal sent a copy of that decision to the parties in advance to ask the experts to take this into account when making their case and giving their evidence to the tribunal at the hearing, in case they were not already aware of it.

Mr Dedman's evidence

44. Mr Dedman said that short leases are sold in the local area at a higher relativity than those determined in Reiss v Ironhawk Ltd [2018] UKUT 0311 (LC) and other cases outside prime central London ("PCL") which followed The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 (LC). He said that, in his experience, actual sales in the area corresponded with the practitioner's graph of Nesbitt & Co. In support

of that assertion, he refers to the following sales of converted flats in Southchurch Road:

- (a) 358a, sold in September 2019 for £192,000. Mr Dedman says that this was a long lease.
- (b) 366a, sold in May 2018 for £160,000 with 64 years unexpired.
- (c) 356A, sold in November 2017 for £170,000 with 72 years unexpired.
- (d) 356, sold in November 2017 for £165,000 with 100 years unexpired. Mr Dedman adjusted this upwards by £25,000 for poor layout, referring to the floor plan and explaining that there was no natural light in the dining room and that occupiers would have to go through the dining room to the kitchen.

45. Mr Dedman had not produced Land Registry details for any of these transactions, only prints from *Rightmove* with copy property particulars and price details. No documentary evidence of the lease lengths was produced, but Mr Dedman told the tribunal that he had looked them up at the Land Registry and put the relevant periods in his report.

46. Mr Dedman said that 366a and 356A Southchurch Road were good short lease comparables and produced figures of relativity to 358a which were (after adjusting for time and deduction of allowances for the value of the rights under the Act) “*roughly*” in line with the Nesbitt graph. He annexed to his report the relativities indicated by the various graphs for the relevant lease lengths. In his report, he produced an analysis of relativity in respect of these sales which by comparison with his analysis of the long leases indicates:

SR flat	Unexpired term	Relativity to Mr Dedman’s adjusted long lease price	Nesbitt
366a	64 years	83.6%	87%
356A	72 years	90.5%	92%

47. Mr Gibb challenged this, saying that these properties were not identical to the subject flats and were some distance away. Mr Dedman replied that these properties in Southchurch Road were comparable to the subject flats; the only reason he had not used them as long lease comparables was that there were plenty more local long lease transactions, as described above.

48. Mr Dedman also referred to sales of certain flats in Marks Court. He said that Marks Court was near to the Property and is a nice gated development built in the 1980s/90s. He said he had frequently acted for tenants in that block and he gave details of two sales of longer leases (125 and 129) and four sales of shorter leases (22, 94, 95 and 112), two at 67 years and two at 68 years, which he averaged to 67.5 years. These transactions were from August 2018 to February 2020, but Mr Dedman had not adjusted for time. Again, he had not produced Land Registry entries to confirm the term details given in his report, but he said that averaging these and deducting an allowance for the value of the rights under the Act indicated a relativity in line with the Nesbitt graph. He produces an analysis of these sales of short leases, which indicates a relativity of 88.3% for the average (67.5 year) unexpired term of the short leases, compared to 89.5% produced by the Nesbitt graph.
49. Mr Dedman accepted that the relativities suggested by his comparables were all “*just under*” those which Nesbitt would suggest. He said that the reason for this might be that shorter leases were not as well looked after and, in the case of Marks Court, that it is a purpose-built development, not a conversion. Mr Gibb asked whether the price did not differ depending on the location of each flat in the block at Marks Court. Mr Dedman said that he had averaged the transactions to deal with such variations.
50. Mr Dedman said that he had used the Nesbitt graph in several negotiated settlements locally and this had been accepted by the other parties. He said (in effect) that these comparable transactions at different lease lengths were sufficient to confirm that the Nesbitt graph was suitable for calculation of relativity for property in this area.
51. Accordingly, Mr Dedman said that the relativities for the Property should be taken from the Nesbitt graph and were 79.6% for the ground floor flat and 93.6% for the first floor flat.
52. Mr Gibb challenged this, referring to the criticisms in the reported Upper Tribunal cases (as mentioned above) of all the RICS 2009 graphs, including the Nesbitt graph. He asked whether the only transaction evidence Mr Dedman had been able to find were those referred to above. Mr Dedman answered that the sale of the first-floor flat at the subject property in September 2017 for £143,500 was a short lease comparable (it had just under 78 years remaining in 2017). He confirmed that this was a comparable to be taken into account along with his other short lease comparables. He believed that, at the long lease values he had given, this transaction would be “*about right*” compared with the Nesbitt graph. Mr Gibb had already acknowledged - when considering this with long lease comparables - that the price appears low and may have reflected the condition of the flat when it was sold. Mr Dedman said that the photographs indicated it was in fair condition at the time.

53. The tribunal asked Mr Dedman to confirm whether he wanted to make any further submissions about this, following the decision in Deritend. Mr Dedman indicated that his position was that the Nesbitt graph should be used. However, he added that, while his short lease comparables were “*not perfect*”, transaction evidence takes precedence over graphs.

Mr Gibb’s evidence

54. Mr Gibb said that no real local evidence has been provided for short leases. He said if you need to make too many adjustments then comparables are not good enough and even if they had been good enough testing the Nesbitt graph in a few places does not mean it is then suddenly reliable. He completely rejected Mr Dedman’s comparables; he said that no real details of those comparables – condition, layout and so on – had been provided. He said that there were no actual short lease market comparables in this area. The details provided were for different lease lengths for properties which were themselves too different. In his view, the sale of the first floor flat in the subject property in 2017 could not stand alone as a test of relativity, because the condition was unknown and there was no corresponding long lease transaction.
55. Mr Gibb accepted that the Gerald Eve and Savills graphs are based on PCL, not local, transactions, but said that they were based on a large number of transactions and had been adopted by the Upper Tribunal. He referred us to Mundy, Reiss (para. 48 onwards, where the Upper Tribunal commented on the Nesbitt graph and the (then) Savills 2015 graph), the other authorities mentioned in his report and Deritend.
56. Mr Dedman raised the matter of the possible technical criticisms of the Savills 2015 graph mentioned by the Upper Tribunal at para. 170 in Mundy. Mr Gibb referred again to Reiss (para. 50). He said that he had originally looked at using the Savills graph alone but, for his final valuation, he had formed the view that it would be fairest/safest for the relativity figures to be an average of the Gerald Eve 2016 (unenfranchiseable) and Savills 2015 (unenfranchiseable) graphs, as set out below based on his report:

Flat	Unexpired term	Gerald Eve	Savills	Average
Ground floor	54.67	74.21%	74.50%	74.355%
First floor	75.11	87.93%	87.10%	87.510%

The tribunal's determination

57. Market evidence is of course always the best means of assessing short lease relativity. Whilst it can sometimes be difficult to identify, the tribunal found it somewhat surprising that the valuer for the Respondent was unable to identify any in the locality.
58. Mr Dedman is correct that the Upper Tribunal in Mundy referred to possible technical criticism of the (then) Savills 2015 graph, and that both the graphs used by Mr Gibb are based on data from PCL. However, Mr Gibb's approach - as to the graphs to be used where there is insufficient transaction evidence - is consistent with the authorities. In Deritend the Upper Tribunal:
- (a) confirmed the concerns expressed in the earlier authorities about the RICS 2009 graphs (which included the Nesbitt graph used by Mr Dedman), describing them as overstating relativity in post financial crisis markets and based on weak source material which is historic and limited in geography;
 - (b) said (at para. 39) that the Savills 2016 graph (meaning the Savills 2015 graph as updated) and Gerald Eve 2016 graph provided objective evidence of relativity based on a very large data set, had been revised in the light of close scrutiny by the Upper Tribunal in Mundy (the criticism referred to by Mr Dedman), and should be considered as the starting point where no, or insufficient, transaction evidence has been submitted by the parties. The Upper Tribunal acknowledged that these graphs are not ideal, particularly for property outside PCL, but said that for the time being they provide the only treatment of relativity which can be regarded as reliable; and
 - (c) added (at para. 58) that 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 these PCL graphs, but such evidence is likely to comprise evidence of transactions and if those are available it may be unnecessary to make use of graphs at all.
59. This is valuation guidance from the Upper Tribunal which we are obliged to follow. The tribunal was not persuaded that the transaction details produced by Mr Dedman validate the Nesbitt graph for use in the local area. Even apart from the fact that it is now well established that it is not a reliable graph: (a) the relativities suggested by the comparable transactions he describes are all at least 1% out (because they are expressed as relativity to long leasehold, rather than freehold, values); (b) even before allowing for that, the two Southchurch Road comparables are at a significantly lower relativity than Nesbitt would suggest (one, 366a, is nearer to Savills and Gerald Eve than it is to

Nesbitt); and (c) these are “tests” at only three places, at 64, 67.5 and 72 years.

60. However, in carrying out this exercise, Mr Dedman has produced some actual transaction evidence. Comparing his analysis of the short lease transactions with the relativity graph figures he annexed to his report produces the results in the following tables:

Southchurch Road	Unexpired term	Gerald Eve 2016	Savills unenfr	Relativity to Mr Dedman’s adjusted long lease price
366a	64 years	81.03%	80.9%	83.6%
356A	72 years	86.15%	85.5%	90.5%

Average unexpired term of the short leases at Marks Court	Gerald Eve 2016	Savills Unenfr	Relativity to Mr Dedman’s adjusted long lease price
67.5 years	83.35%	83%	88.3%

61. None of this really assists with the ground floor flat because the transactions involve significantly longer leases (at 64 years and above, compared to less than 55 years).
62. As to the first floor flat, we treat the evidence with some caution in view of the limited documentation produced and Mr Gibb’s criticisms, particularly in relation to the sales of flats in Marks Court because very little information about those flats has been produced and they do seem a rather different type of property. Subject to these reservations and converting to freehold relativity, the Marks Court transactions (at the average 67.5 years) suggest a relativity of about 4% higher than the PCL graphs. The transaction details for Southchurch Road are a little more useful, although both were more than a year before the valuation date. It appears the sale of 356A (at ~72 years compared to the ~75 years left on the lease of the first floor flat) was at a relativity of (after converting Mr Dedman’s long lease relativity to freehold relativity) over 89%, some 3.5% higher than the 85.825% which would be suggested by the average of the PCL graphs. Converted to freehold relativity in the same way, the sale of 366a (~64 years) suggests a relativity of about 1.5% higher than the PCL graphs.
63. Both experts acknowledged (subject to the points made by Mr Gibb) that the sale of the first-floor flat was a comparable short lease

transaction. It was purchased on 15 September 2017 by the second Applicant for £143,500, when it had 76.9 years unexpired. We take this into account, since it suggests a low relativity to the long lease value of £175,000 we have determined, but Mr Gibb has already acknowledged that this price was very low and the flat may have been in poor condition, so there is a very wide margin for variation.

64. In all the circumstances, following Deritend:
- (a) we do not have sufficient short lease transaction evidence for the ground-floor flat and its relativity is accordingly to be determined using Mr Gibb's average of the Savills and Gerald Eve graphs (74.355%); and
 - (b) the short lease transaction evidence suggests that the relativity indicated by the average of those graphs for the first-floor flat (87.510%) is a little too low for this location. The evidence produced is not strong enough to justify a substantial increase, but does show that it would be appropriate to adjust this upwards, slightly, to 89%.
65. Accordingly, the tribunal determines that the relativities are: (a) 74.355% for the ground floor flat; and (b) 89% for the first floor flat.

The loft

66. Mr Dedman said that the loft space is worth £100 because it has no profitable development potential and there is poor access for storage. He accepted at the hearing that a lot of lofts in the area had been converted.
67. Mr Gibb said that the loft space would provide scope to extend the size of the first floor flat and points out that it would give the immediate right to use the space for storage. He accepted at the hearing that he had not gone into the loft or measured headroom, having assessed it from the first floor.
68. Mr Dedman said that headroom was very limited and conversion would free up only one additional room. Mr Gibb said that you would put in a dormer roof to free up headroom/create space and that such a conversion would cost something in the region of £25,000. He was not sure on the spot what value would be added to the Property by such a conversion. Instead, he referred (in effect) to the amount by which a tenant might overbid the market, given all the savings involved in staying and extending rather than attempting to move, as set out in his report. He says that this type of extension is becoming increasingly common and £5,000 represents a fair price to compensate the Respondent for the loss of the ability to sell the loft space/rights to the tenant of the upper flat.

The tribunal's determination

69. Mr Gibb's analysis is speculative. The possible development he describes seems relatively substantial, where no actual proposals have been produced and no planning or other consents sought. However, he has taken the correct approach, as required by paragraph 5 of Schedule 6 to the Act, in respect of the loss of the ability to sell the loft space/rights, even if only for storage with a possibility of future development. A tenant would be expected to pay a reasonable price for this.
70. In the circumstances, we assess the loss or damage payable under paragraph 5 of Schedule 6 in respect of the loft at £1,000.

The external areas

71. Mr Dedman says that the front garden is worth £100 because it has no parking potential. He says that the enjoyment from this front garden is otherwise outweighed by the need to maintain it and it can be enjoyed without owning it. He concedes that there may be some potential to develop the front garden into a parking area but says that the prospect of obtaining the requisite crossover permission and planning permission (saying this is required for flats, which Mr Gibb accepted) is not positive. He relies on the local authority "Vehicle Crossing Policy Guidance Nov 14" which - he said in his report - provides that "*a crossover cannot be within 10m of a junction*" and "*if within 30m the parking area should be 8m x 8m for each car*".
72. Mr Dedman was asked why he had said this, when in fact the policy states that crossovers cannot be within 10m of a junction *with high pedestrian movement* and the minimum parking area of 8m x 8m applies for *classified roads or lower category roads within 30 metres of a junction with a distributor road or strategic primary route*.
73. Mr Dedman accepted that the nearest junction does not have high pedestrian movement and appeared to accept that this was not a classified road, but argued that the road at the junction (Leamington Road) might be a distributor road. He said that there was only room for one space without blocking the front door. He confirmed that parking in the area is very limited; when had gone to see the Property again on the Sunday evening before the hearing there was no parking in the vicinity and he had to park at the top of Cheltenham Road.
74. Mr Gibb referred to his photograph, in the bundle, of a car parked on the front garden at the Property having obviously driven over the existing kerb to get there, and his photograph showing cars parked in all the other front gardens in the road. Mr Dedman said that the front garden at the Property was being used unlawfully and this could be

stopped. He was asked why he had allowed no hope value for parking even if he thought the necessary consents were not likely to be obtained. He said that he was valuing the property as it was.

75. Mr Gibb said that the front garden is worth £10,000, which he assesses as £5,000 per flat/parking space. He observed that Mr Dedman has said elsewhere in his report that comparable long lease properties with parking are worth £20,000 more than those without. Mr Gibb said that was probably a little more than double the actual increase in value. Mr Gibb asserts that there is enough room for two cars, that costs of creation of the spaces would be less than 5% of the capital value of the flats and that, given the parking situation in Southend, values of parking spaces are only likely to rise.

The Tribunal's determination

76. We generally prefer Mr Gibb's evidence on this, particularly in view of the £20,000 allowed by Mr Dedman for parking in his long lease comparables and the fact that there is plainly some value in having ownership and control of the garden, which separates the building from the road. Mr Dedman's argument that Leamington Road might be a distributor road does not seem likely and does not fit with his own evidence (in relation to the long lease comparables) that Leamington Road is a quieter residential street.
77. However, we accept there is some risk that the necessary consents might not be granted or that it might turn out that only one space is practicable or permitted. The other properties in the road do have two closely set spaces, but the front garden at the Property is nearer the junction and if anything appears narrower.
78. In all the circumstances, taking into account the uncertainties, the potential costs of obtaining the necessary consents, ground works and constructing a crossover and hard surfacing for parking, we assess the value of the Respondent's freehold interest in the external areas at £5,000.

Capitalisation rate

79. Mr Dedman refers to a range of 6% to 8% and says that the capitalisation rate should be 7% to reflect an investor's required rate of return for the duration of the lease.
80. Mr Gibb says that the capitalisation rate should be 5% because interest rates are only a fraction of what they were and in an open market this fall would be reflected in the capitalisation rate. He refers to yield rates on government stocks and argues that if the deferment rate and capitalisation rate are to differ then they should both be reduced.

The Tribunal's determination

81. The tribunal is not persuaded by Mr Gibb's arguments in respect of a capitalisation rate of 5%. The ground rent increases in respect of both properties, the ground floor every 30 years and the first floor doubling every 33 years. It would be deemed more attractive than more modest ground rents with limited increase patterns and on that basis, we determine the capitalisation rate proposed by Mr Dedman of 7%.

Summary

82. In summary, the tribunal has determined that:

- (a) Subject to (b) below, the long lease values are £170,000 for the ground floor flat and £175,000 for the first floor flat;
- (b) £1,000 of the value of each flat is attributable to the UPVC windows as an improvement carried out by the relevant tenants and accordingly the long lease values are to be adjusted to £169,000 for the ground floor flat and £174,000 for the first floor flat;
- (c) Relativities of short lease to freehold values are 74.355% for the ground floor flat and 89% for the first floor flat;
- (d) The value of the roof space is £1,000;
- (e) The value of the external areas is £5,000; and
- (f) The capitalisation rate is 7%.

The price

50. Accordingly, the tribunal determines the appropriate price to be **£48,409**, comprised of: (a) £43,409 for the building (calculated as shown in the Appendix to this decision in respect of the demised areas, plus the £1,000 value of the roof space); and (b) £5,000 for the external areas.

APPENDIX

57 Woodgrange Drive, Southend-on-Sea, Essex SS1 2SD

Tribunal's valuation						
GF Flat						
Valuation date		22/07/2019				
Unexpired term		54.69				
Period to 1st review		24.69 years				
Ground rent to 1st review		£120				
Capitalisation rate		7%				
Deferment rate		5%				
Extended lease value		£169,000				
Freehold uplift (if applicable)	1%	£170,690				
Relativity (where used)		74.355%				
Existing Lease value		£126,917				
Calculations						
Diminution of freehold						
Loss of ground rent				£ 120		
Years Purchase	24.69 years @		7%	11.5978	£1,392	£0
Loss of ground rent				£ 180		
Years Purchase	30 years @		7%	12.4090		£0
Present value of £1 in	24.69 years @		7%	0.1882	£420	
Sub-total						£1,812
Reversion to Freehold						
Capital value				£ 170,690		
Present value of £1 in	54.69 years @		5%	0.0694		£11,840
						£13,652
Marriage Value calculation						
Value of proposed interests						
Freeholder				£0		
Leaseholder				£170,690		
Value of existing interests					£170,690	
Freeholder				£11,840		
Leaseholder				£126,917		
Sub-Total					£138,757	
Total marriage value						
				£31,933		
at 50%						£15,967
Enfranchisement Price						£29,619

FF Flat							
Valuation date		22/07/2019					
Unexpired term		75.11					
Period to 1st review		9.11					
Ground rent to 1st review		£75					
Capitalisation rate		7%					
Deferment rate		5%					
Extended lease value		£174,000					
Freehold uplift (if applicable)	1%	£175,740					
Relativity (where used)		89%					
Existing Lease value		£156,409					
Calculations							
Diminution of freehold							
Ground rent				£	75		
Years Purchase	9.11	years @	7%		6.5728	£493	£1
Ground rent				£	150		
Years Purchase	33	years @	7%		12.7538		£0
Present value of £1 in	9.11	years @	7%		0.5399	£1,033	
Ground rent				£	300		
Years Purchase	33	years @	7%		12.7538		£0
Present value of £1 in	42.11	years @	7%		0.0579	£222	
							£1,747
Reversion to Freehold							
Capital value				£	175,740		
Present value of £1 in	75.11	years @	5%		0.0256	£4,501	
							£6,249
Marriage Value calculation							
Value of proposed interests							
Freeholder					£0		
Leaseholder					£175,740		
Value of existing interests							
Freeholder					£6,249		
Leaseholder					£156,409		
Sub-Total							
					£162,657		
Total marriage value							
					£13,083		
at 50%							
							£6,541
Enfranchisement Price							
							£12,790

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).

~~Sum of A+B+C+D~~

~~Sum of A+B+C+D~~