



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

**Case reference** : **LON/00AX/OLR/2017/0306**

**Property** : **13 Minstrel Gardens, Surbiton,  
Surrey KT5 8DD (“the flat”)**

**Applicant** : **Katharine Anne Hipsey (“the  
tenant”)**

**Representative** : **Glanvilles LLP**

**Respondent** : **Sinclair Gardens Investments  
(Kensington) Limited (“the  
landlord”)**

**Representative** : **Wallace LLP**

**Type of application** : **A new lease claim**

**Tribunal member** : **Angus Andrew  
Patrick Casey MRICS  
Sara Hargreaves**

**Date and Venue of  
hearing** : **27 June 2017  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **18 July 2017**

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**DECISIONS**

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## **Decisions**

1. The existing lease “with Act” rights value of the flat at the agreed valuation date was £235,803.
2. A deduction of 3.5% is to be applied to reflect the value of the “Act rights” at the valuation date.
3. The ground rent on review is £1,120 per year.
4. The price to be paid for the new extended lease is £52,365 in accordance with our attached valuation.

## **The application and hearing**

5. The tenant applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the price to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of the flat.
6. We heard the application on 27 June 2017. Both parties were represented by valuers who also gave evidence on their behalf: the tenant by Julian Wilkins MRICS and the landlord by Geoffrey Holden FRICS. With the agreement of both parties we decided that an inspection of the flat and the comparable flats referred to in this decision would not assist us.

## **Background**

7. The development at Minstrel Gardens comprises 58 apparently similar flats on the ground and first floors. All the flats have the benefit of a parking space and the ground floor flats have the benefit of a garden. The flat is on the ground floor with a garden and parking space. Mr Holden put the gross internal area of the flat at 410 square feet although the size and composition of the flat is not a material consideration because all the comparables were drawn from Minstrel Gardens and the valuers agreed that no adjustments for these features were required.
8. In 1982 a head lease of part of the development including the flat was granted to Villiers Flats Management Limited for a term of 99 years and 1 month from 1 October 1982. That company however had not served notice of separate representation and played no part in the proceedings.
9. The flats in Minstrel Court were sold on leases for terms of 99 years from 1 October 1982 so that the head lessee originally had a reversion of 1 month. It is however apparent that a large number of new extended leases have been granted either by agreement or under the terms of the Act.

10. The lease of the flat is dated 15 June 1983 and as described above is for a term of 99 years from 1 October 1982. The lease reserves an initial yearly rent of £60 pounds. As with all the original leases the rent is subject to review every 21 years from the term commencement date. On review the rent is to be the greater of the existing rent and 0.5% of the value of the flat three months prior to the review date. The rent was therefore last reviewed on 1 October 2003 when it was increased to £725 per year. The next review date is 1 October 2024.
11. By a notice dated 14 September 2016 the tenant gave notice of her claim to a new extended lease. By a counter-notice dated 4 November 2016 the landlord admitted the claim. On 17 February 2017 the tribunal received the tenant's application for a new extended lease.

### Issues

12. The parties had agreed the following:
  - a. The valuation date at 15 September 2016
  - b. An unexpired term of 65.04 years
  - c. The next ground rent review will be 8.04 years from the valuation date
  - d. A deferment rate of 5%
  - e. A capitalisation rate of 5.5%
  - f. The new extended lease value at £302,500
  - g. Extended lease to freehold relativity of 100%
  - h. The terms of the new extended lease
13. Although incidental to the valuation the valuers had also agreed a basket of 13 comparable sales that may be summarised as follows:-
  - The sale of 1 short lease ground floor flat (46)
  - The sales of 4 long lease ground floor flats with nominal ground rents (2, 9, 37 and 50)
  - The sales of 2 long lease ground floor flats with current yearly rents of £725 subject to review as described above (42 and 49)
  - The sales of 3 short lease first floor flats (48, 52 and 58)
  - The sales of 2 long lease first floor flats with nominal ground rents (39 and 47)
  - The sale of 1 long lease first floor flat with a current yearly rent of £725 subject to review as described above (7)
14. In their treatment of these comparables the valuers agreed that the sale prices should be adjusted for time by reference to the Land Registry price index for flats within the London Borough of Kingston upon Thames. Neither sought any adjustments for condition.
15. Only two issues remained in dispute. The first was the existing lease value of the flat for the purpose of calculating the marriage value. Mr Wilkins contended for an existing lease value of £254,100 whilst Mr Holden contended for an existing lease value of £212,658. The second was the

ground rent on review for the purpose of calculating the diminution in value of the freehold interest. Mr Wilkins suggested a yearly ground rent of £1,270 whilst Mr Holden suggested a yearly ground rent of £1,066.

16. These differing existing lease values and ground rents resulted in Mr Wilkins contending for a premium of £39,911 and Mr Holden for a premium of £59,485.

### **Mr Wilkins' approach**

17. Mr Wilkins sought to determine the existing lease value by determining the appropriate relativity. He did this by reference both to the relativity graphs in the RICS Research Report of October 2009 and by an analysis of the market evidence. He declined to rely entirely on market evidence because he believed that the short lease sales were *"tainted by the past history of difficulty of obtaining lease extensions at this development and the reputation of this freeholder generally"*
18. Although Mr Wilkins drew our attention to the Gerald Eve 1996 and Savills 2002 graphs he discounted them because they relate to Prime Central London. He considered that the Greater London and England graphs indicated a relativity of 89% although in arriving at that figure he ignored the Nesbitt & Co graph and reduced the South East Leasehold relativity by 2% to reflect his view that it required a downward adjustment for the "no act world".
19. He then reduced this relativity to 86.82% to reflect his assessment of the effect of what he considered to be the onerous ground rent reserved by the flat lease. He reached that figure by capitalising and deferring £375, which he considered to be the excess ground rent.
20. Turning to the market evidence he discounted the three sales of flats with current yearly rents of £725 subject to review (7, 42 and 49). Mr Wilkins then made an upward adjustment of £25,000 to each of the remaining first floor flat prices to reflect the advantage of a ground floor location. He reached this figure by making two comparisons. Firstly he compared the average sale prices of 3 ground floor long lease flats (2, 9 & 37) with the sale price of 1 long lease first floor flat (47), which gave a differential of £22,700. Secondly he compared the sale price of the only ground floor short lease flat (46) with the average sale prices of two short lease first floor flats (48 & 52), which gave a differential of £26,175.
21. This left Mr Wilkins with 6 adjusted long lease sales (2, 9, 37, 39, 47 and 50) and 4 short lease sales (46, 48, 52 and 58). He then discounted 2 long lease sales (39 and 50) and 2 short lease sales (48 and 58) because he considered that they were "out of line". Perhaps coincidentally the discounted long lease sales had the two highest sale prices and the discounted short lease sales the lowest sale price. A comparison of the remaining long lease and short lease sales gave Mr Wilkins a relativity of 81.70%.

22. Mr Wilkins considered that the market evidence was so tainted by the respondent's reputation that it was unnecessary to make a further deduction to reflect the value of the Act rights.
23. Thus Mr Wilkins was left with a graph relativity of 86.82% and a market relativity of 81.70%. He alighted on a relativity of 84% being "*somewhere between these two percentages*". Applying that relativity to the agreed long lease value of £302,500 gives an existing lease value of £254,100.
24. Mr Wilkins took the ground rent to be 0.5% of his existing lease value: that is £1,270.

### **Mr Holden's approach**

25. Mr Holden also sought to establish the appropriate relativity as a means of calculating the existing lease value of the flat. In doing so he relied entirely on market evidence.
26. Mr Holden firstly adjusted the sale prices of the 3 long lease flats with yearly ground rents of £725 subject to review (7, 42 and 49). He did so by capitalising and deferring both the current ground rents and the assumed ground rents on review. This enabled him to calculate the premiums that would be payable for new extended leases of those flats, which he added to the achieved sale prices. The adjusted prices were his assessments of the sale prices that would have been achieved if the 3 flats had been sold subject only to nominal ground rents.
27. Having made this adjustment Mr Holden then compared the price of the single ground floor short lease flat (46) with the average price of the 6 long lease ground floor flats (2, 9, 37, 42, 49 and 50). The comparison produced average prices of £242,557 and £305,466 and relativity of 79.1%. He then compared the average price of the 3 first floor short lease flats (48, 52 and 58) with the average price of the 3 first floor long lease flats (7, 39 and 47). The comparison produced average prices of £208,312 and £288,911 and relativity of 72.10%.
28. Coincidentally these comparisons indicate the price differentials between the ground and first floor flats. The difference between the price of the single short lease ground floor flat (46) and the average price of three short lease first floor flats (48, 52 and 58) is £34,245. The difference between the average price of the six long lease ground floor flats (2, 9, 37, 42, 49 and 50) and the average price of the three long lease first floor flats (7, 39 and 47) is £16,555.
29. Returning to relativity, as a check Mr Hebden compared the sale prices of 3 pairs of flats that were in each case sold at about the same time (46/42, 52/7 and 48/47). These comparisons gave relativities of 77.33%, 76.14% and 76.30% that he rounded down to 76%. This gave Mr Holden a real world existing lease value of £229,900.

30. Mr Holden then made two downward adjustments to this value: the first to reflect the value of the “normal” Act rights and the second to reflect the benefit of removing the uncertainty of the future rent on review which extending the lease under the Act would also accomplish.
31. For two reasons he considered that a deduction of 7.5% was appropriate to reflect both adjustments. The first was based on the Upper Tribunal’s decision in *Contactreal* [2017] UKUT 0178 (LC) to make a deduction for Act rights of 3.5% for a lease with an unexpired term of 67.49 years. The second was based on a first-tier tribunal decision [*Ramazani v Sinclair Gardens Investments (Kensington) Limited* (LON/00AX/0LR/2016/0697)] to make a deduction of 7.5% to reflect “both the benefit of the rights under the Act and the onerous ground rent terms”. This further deduction left Mr Holden with an existing lease value of £212,658.
32. Although Mr Holden also based the ground rent on review on his existing lease value he made a further reduction to reflect the fact that at review the lease would have a shorter unexpired term by some 8 years. He took the difference between the mid point of the five outer London/England graphs referred to in the RICS report mentioned above at 65.04 years and 57 years to be 5.5%. He deducted this from his real world relativity to give the present value of a 57 years unexpired lease on the flat and took 0.5% as the ground rent on review.

### **Reasons for our decision**

33. Both valuers drew our attention to the decision of the Upper Tribunal in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0223 (LC). In *Mundy* the Upper Tribunal preferred the use of market evidence when valuing the existing lease and said that the relativity graphs should only be used as a last resort if there is a lack of market evidence.
34. In this case the valuers had identified thirteen sales including four short lease sales (46, 48, 52 and 58) that were within two years and nine months of the valuation date. In comparison to similar cases that might be regarded as an abundance of market evidence and in principle there is no need to consider the relativity graphs.
35. Consequently we must first decide if the landlord’s reputation has tainted this market evidence to the point that it cannot be relied on, as contended by Mr Wilkins. His criticisms were based on two searches. The first was a Google search that revealed, in the words of Mr Wilkins, a number of “*negative references*” to the landlord, some of which had been appended to his report. The second was a search of the Leasehold Advisory Service website indicating that the landlord had been involved in 61 previous cases before this tribunal and the Upper Tribunal.
36. As far as the Google search is concerned the unsubstantiated criticisms of third parties who do not appear for cross examination carry little or no evidential weight. Indeed they are little more than gossip. The tenant herself did not give evidence of the landlord’s conduct and in answer to Mr

Holden's questions Mr Wilkins accepted that there was no suggestion that the landlord had at anytime acted unlawfully.

37. It is apparent that the landlord drives a fairly hard bargain when negotiating lease extensions outside the Act but it is not alone in adopting such a commercial approach. Lessees seeking to extend their leases will doubtless have the benefit of professional advice and will always have the option of exercising their rights under the 1993 Act. Indeed it would seem from the freehold register that the majority of the extended leases in Minstrel Gardens were granted under the Act. In any event a high price negotiated on a lease extension outside the Act will not of itself undermine the evidentiality of a subsequent sale of the same flat in the market.
38. As to the number of tribunal cases involving the landlord all that can be said is that the landlord is assiduous in asserting its position both before this tribunal and the Upper Tribunal. The same could be said with equal force of the large estates in Prime Central London ("PCL") and we have never heard it suggested that such an approach undermines the market evidence in PCL. A lessor is perfectly entitled to protect its interests by resorting to this and the Upper Tribunal. In the absence of adverse judicial comment such an approach cannot be said to diminish its reputations or taint the evidentiality of sales negotiated in the market.
39. We now turn to market evidence. Both valuers had selected and adjusted the evidence to ascertain relativity and had then applied the relativity to the agreed freehold value to calculate the existing lease value. Relativity is simply a product of two values: in the words of the RICS research report it "is a 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".
40. The valuers had agreed the value of the flat in possession to the freeholder at £302,500. In this case there is sufficient market evidence to establish the existing lease value without reference either to the relativity graphs or to a specific relativity calculated by reference to selected and adjusted market evidence.
41. There is a further advantage to this approach. In calculating relativity both valuers were forced to make adjustments to reflect the ground rent review provisions. In our view those adjustments were largely artificial and although well intentioned would not be replicated in the market. All the short leases include the rent review provisions referred to in paragraph 9 above. Consequently if the existing lease value is derived from the four short lease sales it is unnecessary to adjust for the ground rent review provisions.
42. Of the four short lease sales one was the sale of a ground floor flat and three were sales of first floor flats. Accordingly an upward adjustment is required to the sale prices of the first floor flats to reflect the benefit of the gardens included with the ground floor flats. As observed Mr Wilkins made an adjustment of £25,000. However, he arrived at that figure by

using only six comparable sales which of itself casts some doubt on his conclusion.

43. Mr Holden's approach was such that it was unnecessary for him to identify a garden adjustment. However at the hearing he disputed Mr Wilkins' adjustment of £25,000 saying that it should be considerably lower, although he did not say by how much.
44. A comparison of the sale price of the single ground floor short lease flat (46) with the sale prices of the three short lease first floor flats (48, 52 and 58) indicates a price differential of approximately £34,000. However, a comparison of the sale prices of the six long lease ground floor flats (2, 9, 37, 42, 49 and 50) with the sale prices of the three long lease first floor flats (7, 39 and 47) indicates a much lower differential of approximately £16,500 and one would expect the differential to be higher for the long lease sales. Taking this evidence in the round we agree with Mr Holden that £25,000 overstates the garden adjustment and we adopt a more realistic adjustment of £20,000.
45. We are therefore left with adjusted sale prices for the four short lease sales that are set out in the table to which we will shortly refer. The adjusted sale price for flat 58 is markedly lower than the adjusted sale prices of the other three flats. Instead of discounting the sale of flat 58 we consider that it is preferable to take all four sales into account but to give the sale of that flat a lower weighting. Our conclusions are set out in the following table from which it will be seen that we determine the existing short lease value of the flat at £230,803.

Flat No	Time adjusted sale price	Garden / floor	Adjusted price	Weight	Weighted price
46	£242,557	-	£242,557	30%	£72,767
48	£210,833	£20,000	£230,833	30%	£69,250
52	£221,881	£20,000	£241,881	30%	£72,564
58	£191,223	£20,000	£212,223	10%	£21,222
				<b>Total</b>	<b>£235,803</b>

46. The total is the existing lease value of the flat with the benefit of the Act rights. Consequently a deduction has to be made to reflect the value of the Act rights.
47. As will be recalled Mr Wilkins, in his treatment of the market evidence, made no deduction for the Act rights because he considered that the evidence was tainted by the landlord's reputation. Having rejected this reputational argument his approach is not sustainable.
48. In Mundy the Upper Tribunal drew attention to the methodology adopted in *Earl Cadogan v Cadogan Square Limited* [2011] 3 EGL 127 for assessing the value of the Act rights, which involves a comparison of the Savills 2002 Graph (real world) and the Gerald Eve Graph (Act world). The Upper



Tribunal commented that the difference between the graphs “should disclose the appropriate deduction for the absence of rights under the Act for a lease of any particular length” although in its valuation in Mundy the Upper Tribunal adopted the lower deduction advanced by the lessor’s valuer.

49. The use of the Earl Cadogan methodology suggests a discount of 3.7% to reflect the value of the Act rights at 65.04 years:  $[(87.22-84.02)/87.22] \times 100$ . That methodology supports Mr Holden’s deduction of 3.5% for normal Act rights that we therefore adopt. Consequently we value the existing lease without “Act rights” at £227,550 [ $£235,803 - (3.5/100 \times £235,803)$ ]. We do not think that there is any reason to increase this deduction because of the claimed additional benefit of removing uncertainty regarding rent increases at future reviews. Whilst the review rent will reflect future levels of value there is no certainty these will always rise and the review would reflect the diminishing length of the lease which would offset, at least to some extent, any growth in values.
50. Turning to the ground rent at the next review we agree with both valuers that it will be dependent on our determination of the existing lease value. However we agree in principle with Mr Holden’s further deduction to reflect the shorter unexpired term at the date of the review. Although we agree with all the criticisms that have been made elsewhere about the relativity graphs they are the only tool available to us to calculate the deduction. Whichever graphs are used the difference in value between 65 and 57 years is about 5% and we make this deduction to our with Act rights valuation of £235,803 to leave £224,013 which at 0.5% gives a ground rent on review in some 8 years’ time of £1,120.
51. We therefore value the premium to be paid at £52,365 in accordance with our valuation attached.

**Name: Angus Andrew**

**Date: 18 July 2017**

### **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).

**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  
13 Minstrel Gardens, Surbiton, Surrey, KT5 8DD**

**Valuation date: 15 September 2016 – Unexpired term 65.04 years**

**Diminution in Value of Freehold Interest**

Capitalization of ground rents  
for term –

Ground Rent passing YP 8.04 years @5.5%	£725 6.3599	£4,611	
Ground Rent on review YP 57 years deferred 8.04 years @ 5.5%	£1,120 11.2631	<u>£1,2645</u>	£17,256
Reversion to F/H value with VP Deferred 65.04 years @ 5%	£302,500 <u>0.0419</u>	<u>£12,675</u>	
Less value of F/H after grant of new lease Deferred 143.71 yrs @5%	£302,500 <u>0.0005</u>	£151	<u>£12,524</u> £29,780

**Marriage Value**

*After grant of new lease*

Value of extended lease	£302,500	
Plus freehold value	<u>£151</u>	£302,651

*Before grant of new lease*

Value of existing lease	£227,550		
Plus freehold value	<u>£29,931</u>	<u>£257,481</u>	
<b>50% share to Freeholder</b>		£45,170	£22,585

**Premium Payable Say £52,365**