



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

Case reference : **CHI/OOHN/OLR/2021/0160**

Property : **173a Stewart Road, Bournemouth, BH8 8PB**

HMCTS code : **P:PAPEREMOTE**

Applicant : **Franceso Abate and Ann Patricia Abate**

Representative : **Ellis Jones Solicitors LLP**

Respondent : **Big Ben Construction Limited**

Representative : **None**

Type of application : **A determination of the premium and lease extension terms under the provisions of section 50 and section 51 of the Leasehold Reform, Housing & Urban Development Act 1993 where the Landlord cannot be found**

Tribunal member(s) : **Mrs Johanne Coupe FRICS
Mr Dallas Banfield FRICS**

Date of determination and venue : **9 March 2022 virtual hearing on the papers**

Date of decision : **14 March 2022**

DECISION

Decision of the Tribunal

The Tribunal determines that the appropriate sum to be paid into court for the grant of a new lease of 173a Stewart Road, Bournemouth, BH8 8PB (“the Property”) pursuant to sections 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) is £33,913. Further, the Tribunal determines the new lease terms as provided, subject to amendment as at paragraph 57.

The application

1. On 15 June 2021 Ellis Jones Solicitors LLP issued a Part 8 Claim in the County Court at Bournemouth and Poole, deemed issued on 17 June 2021 (“the valuation date”), seeking a vesting order under section 50(1) and 51(1) of the Act, which claimed a new lease to be granted on statutory terms, adding 90 years to the existing unexpired term and reducing the ground rent to a peppercorn.
2. On the 20 October 2021, Deputy District Judge Hay, sitting at the County Court of Bournemouth and Poole, ordered, amongst others, that *“the claimants do provide confirmation that an enquiry has been made to the Treasury solicitors regarding this matter.”* [24].
3. On 29 November 2021, District Judge Bridger granted a vesting order subject to assessment of the premium and other terms by the First-Tier Tribunal (Property Chamber).

Background

4. The Tribunal is required to determine the terms of the new lease pursuant to section 50(1) of the Act and the appropriate sum to be paid into court pursuant to section 51(5).
5. The relevant legal provisions are set out on Appendix 2 to this decision.
6. Section 48 of the Act provides that the Tribunal has jurisdiction to assess the premium in accordance with a formula in Schedule 13. The basis of calculation requires the premium to account for the Landlord’s loss of ground rent and compensation for the Landlord’s deferred right to possession of the Property. Further, and in addition, the Landlord is entitled to a 50% share of any marriage value.
7. The Act also compensates the Landlord financially for any diminution in the value of any land retained in its estate which is directly attributable to the grant of the lease extension, where such sums can be justified under paragraph 5 of Schedule 13.

The Lease

8. Salient details of the lease in respect of the Property are as follows:
- | | | |
|------|----------------|---|
| i. | Title | DT43330 |
| ii. | Date of lease | 3 May 1973 |
| iii. | Term | 99 years |
| iv. | Commencement | 3 May 1973 |
| v. | Unexpired Term | 50.87 years |
| vi. | Ground Rent | £15.00 per annum for the first 33 years
£25.00 per annum for the next 33 years
£40.00 per annum for the last 33 years |
9. The second Applicant purchased the Property in her sole name in or about November 1980. In or about July 1985 she sold it to her mother-in-law, Margherita Abate. Margherita passed away on the 22 April 2004 and the lease was assigned to the first and second applicant on the 10 August 2017.

The Property

10. The Tribunal did not consider that an inspection of the Property was necessary, nor would have been proportionate to the issues in dispute. Having considered the submissions the Tribunal were satisfied that the matter was suitable for a paper determination.
11. The Tribunal is grateful to the Applicant and their surveyor for providing a comprehensive description of the Property, photographs and a comparable location map. The Tribunal has also taken the opportunity to view the Property from publicly available online platforms.
12. From submissions made to the Tribunal brief details are as follows:
13. The Property comprises a first floor flat within a converted two storey semi-detached house. A further self-contained flat is found at ground level. The Property is located in an area of early- Victorian dwellings, many of which have been converted into flats. The building is constructed of rendered masonry walls beneath a pitched and concrete interlocking-tiled roof.
14. Access to the flat is through an independent ground floor entrance door, whilst access to the garage and demised garden is via a driveway which, the Applicant's surveyor advises, is "*inadequate to achieve vehicular access for any modern vehicle.*" [37].
15. The Property offers the following accommodation:
- | | | |
|-----|----------------------|---|
| i. | <u>Ground floor:</u> | Private entrance and lobby with stairs leading to: |
| ii. | <u>First floor:</u> | Hallway; Reception room; Kitchen; double Bedroom; single Bedroom; Bathroom. |

16. The Tribunal is advised that the Gross Internal Area is between approximately 54.61m² – 56m² dependent on wall thickness.
17. Garden. The front garden, being demised to the ground floor flat, is mainly laid to lawn. The subject Property's demised garden is found to the rear of the building and, the Tribunal is advised, '*appears overgrown*' [37]. Inspection access was not gained by Mr Chapman-Burnett however the extent of the demised land can be ascertained from the H.M Land Registry Plan DT43330.
18. Garage/Parking. Further to paragraph 14 above, the Applicants' surveyor regards the garage as no more than a garden store and valued it accordingly. No additional off-road parking is included.
19. Services. All mains services are connected. Heating is provided by a gas fired boiler to hot water radiators in all principal rooms.
20. Location. The Property is located in Charminster, a densely populated residential area popular with owner occupiers and investors. The Property is well located for shops and local amenities, whilst the immediate area is adequately served by public transport links.

The Valuation

21. The Applicant's valuation was prepared by Mr Keith Chapman-Burnett BSc MRICS of Chroma Chartered Surveyors, a Chartered Surveyor with extensive experience of valuing residential property for enfranchisement purposes in the locality.
22. Mr Chapman-Burnett's report included the required Statement of Truth and Declaration and concluded that the appropriate sum was £32,804.
23. The Tribunal finds it convenient to detail its own consideration of each input following that of the Applicant's.

Methodology

24. The Applicant. Mr Chapman-Burnett applies the principles of Schedule 13 Paragraph 2 to his valuation, these being that the premium payable is the aggregate of:
 - i. The diminution of the value of the freeholder's interest in the leaseholders' property, to which he applies a term and reversion method of valuation;
 - ii. The freeholders' share of marriage value at 50%; due as the unexpired term is less than 80 years;
 - iii. Any amount of compensation payable to the freeholder; considered nil.

25. The Tribunal. The Tribunal concurs with Mr Chapman-Burnett's methodology.

Capitalisation rate

26. The Applicant. Mr Chapman-Burnett applies a rate of 7% to both the current ground rent of £25.00 p.a and the rent on review of £40.00 p.a, based on the low level of income being unattractive to financial investors, the lack of credible evidence to support a higher figure, his professional experience of local settlements and undisclosed Tribunal evidence.
27. The Tribunal. The Tribunal takes no issue with Mr Chapman-Burnett's analysis and, accordingly, adopts a capitalisation rate of 7% to the passing ground rent and that on review.

Deferment rate & Reversionary Value

28. The Applicant. Mr Chapman-Burnett followed the decision in *Cadogan vs Sportelli*¹ and accordingly adopts 5%.
29. The Tribunal. The Tribunal considers the rate of 5%, as adopted by Mr Chapman-Burnett, is appropriate in this matter.
30. The Applicant. Following established case law, Mr Chapman-Burnett followed the principle of making an adjustment of 1% to reflect the difference between long leasehold and freehold values.
31. The Tribunal. The Tribunal concurs.

Long Leasehold Value

32. The Applicant. Mr Chapman-Burnett relies on six comparable sales transactions, all within relatively close proximity of the Property and, in the main, sold close to the valuation date. Where adjustment for time is required, he does so in line with the House Price Index "*flats and maisonettes in the BCP Council area*" [41].
33. Having weighted and adjusted each comparable Mr Chapman-Burnett arrives at a long lease value of £182,995 and a freehold value of £184,825.
34. Whilst not tabulated in his evidence a summary of Mr Chapman-Burnett's conclusions is set out by the Tribunal below:

¹ *Earl Cadogan & Cadogan Estates Limited v Sportelli* (2007) 1 EGLR 153

Date	Address	Unexpired Years	Features	Price	Adjustments	Adjusted Price
17/06/21	Subject 173a Stewart Rd	50.87	1st floor 2 bed 58m ² Garden Garage Driveway			
28/05/21	176a Stewart Rd	145	1 st floor 2 bed 58m ² No parking	£185,000	Condition Garden Shed	£170,000 - £175,000
17/09/21	157 Stewart Rd	115	1st floor 2 bed New bath 71.4m ² Garden Parking	£183,500	LRHPI Bathroom	£175,000
11/03/21	276a Malmesbury Park Rd	n/k	Ground floor 2 bed 79m ² Garden Parking	£172,500		£175,000 - £180,000
09/21	229a Stewart Rd	n/k	1 st floor 2 bed + study 58m ² Garden Parking	£195,000	Study	£180,000
20/01/21	199a Stewart Rd	Share of FH	1 st floor 2 bed 65m ² Garden Parking	£210,000	Improvements Garden	£190,000
28/08/20	149a Stewart Rd	147	1st floor 2 bed 68m ² New kitchen New bathroom Garden Parking	£206,000	Improvements Landscaped garden	£185,000

The Tribunal

35. The Tribunal finds the first comparable, *176a Stewart Road*, to be the most useful. Not only is it within very close proximity of the subject Property, it is also a two bedroom, first floor flat of similar size, with a long unexpired term. Mr Chapman-Burnett adjusts the sale value for enhanced condition, landscaped garden and shed however he makes no account for the subject Property having a garage/store. We therefore find his adjusted value too low.
36. *157 Stewart Road* is a useful comparable in that, again, it is within very close proximity of the subject Property, is a two bedroom first floor flat and has a long unexpired term. Adjustment is made for the improved bathroom and larger floor area however the lack of clarity over whether the transaction includes a garage diminishes its overall reliability.

37. *276a Malmesbury Park Road* whilst being within close proximity and providing two bedroom accommodation of similar size, albeit on the ground floor, is considered less reliable due to the lack of information on the unexpired term.
38. Likewise, the Tribunal has not been provided with the unexpired term, as at sales transaction, of *229a Stewart Road*. Mr Chapman-Burnett advises that, from his understanding, “*the property sold for £195,000 in c. September 2021*” [42]. Although this provides useful background information, the Tribunal is unable to place much weight on the transaction due to its unconfirmed status. Further, Mr Chapman-Burnett adjusts the sale by c.£15,000 to account for “*the small third small bedroom/study*” [42] despite the overall floor area being virtually identical to the subject Property.
39. The Tribunal considers the sale of *199a Stewart Road* a useful comparable. The flat is within a short distance of the subject Property, is a similar first floor flat with a garden but with off-road parking and can be adjusted for the share of freehold, improvements and time difference.
40. In his adjustments, Mr Chapman-Burnett regards the garden at *199a Stewart Road* as “*very pleasant*” [42], whilst describing part of the subject garden as “*overgrown*” [37]. The Tribunal reminds itself of its requirement to value the Property in a lease-maintained condition.
41. The final sale comparable, *149a Stewart Road*, precedes the valuation date by approximately ten months, which can be adjusted for by reference to the LRHPI. The two bedroom first floor flat, at c.68m², is larger than the subject Property and has the benefit of a modernised kitchen and bathroom. The unexpired term is considered long and, taking all differences into account, Mr Chapman-Burnett adjusts the figure downwards by £21,000. He does not however provide a breakdown of his adjustments.
42. In preparing his expert report Mr Chapman-Burnett has relied upon evidence provided principally through Rightmove Plus; data from HM Land Registry; verbal evidence from local estate agents; and his own personal knowledge of the area. It would have assisted the Tribunal in its deliberations to have sight of such documentation where applicable, in particular as a visual aid to the comparators’ improvements and financial adjustments. That said, the Tribunal appreciates that Mr Chapman-Burnett only received instructions on the 15 February 2022 leaving just a short window of opportunity to inspect the Property, assimilate evidence and prepare his expert report in time to meet the Tribunal Directions. The Tribunal is therefore grateful to him for his submissions.
43. Having regard to the evidence of Mr Chapman-Burnett, its own knowledge as an expert Tribunal and doing the best it can on the information before it, the Tribunal determines the long leasehold value as £185,000 and, accordingly, the freehold value as £186,850.

Short Lease Value & Relativity

44. The Applicant. In arriving at his short lease value, Mr Chapman-Burnett had regard to the Upper Tribunal decisions in *Mundy v Sloane Stanley*²; *Barry & Peggy High Foundation v Zucconi*³; *Reiss v Ironhawk*⁴; *Mallory v Orchid Base*⁵; and *Midlands Freehold v Speedwell Estates*⁶ where, in each case, relativity was considered.
45. Mr Chapman-Burnett submitted no short lease transactional evidence, instead preferring to reference four of the published graphs of relativity:
- | | |
|---|---------------|
| i. Gerald Eve 2016 | 71.21% |
| ii. Savills Unenfranchiseable | 71.60% |
| iii. Savills Enfranchiseable | 78.50% |
| iv. Less Act Rights | (7.94% 8.79%) |
| v. 2009 RICS Greater London & England average | 77.27% |
46. Taking an average of the PCL graphs, and adjusting for ‘no Act rights’, Mr Chapman-Burnett arrived at a relativity of 70.97%.
47. Contending that some consideration at least should be given to the RICS Greater London & England graph, he increased his calculation to 72.55%. Noting however that this figure is below the Gerald Eve 2009 graph of 74.7%, he opined that it may not entirely reflect the equivalent Zucconi differential and, in addressing this, he upwardly adjusted his PCL average by 1%, to arrive at a relativity rate of 72%, thereby providing an existing short lease value of £133,073.
48. The Tribunal. In arriving at an existing short lease value, the Tribunal reminds itself of the advice of the Upper Tribunal in *Mundy*, that short lease market transactions at or around the valuation date should be the starting point for determining relativity.
49. No short lease evidence was provided however the Tribunal acknowledges that the paucity of such evidence is often an issue.
50. Where no such reliable evidence exists the consideration of relativity graphs is considered appropriate. Paragraph 169 of *Mundy* advises valuers: “*The more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the*

² *Mundy v Sloane Stanley Estates Trustees* (2018) EWCA Civ 35

³ *Trustees of Barry & Peggy High Foundation v Claudio Zucconi & Mirella Zanre* (2019) UKUT 242 (LC)

⁴ *Reiss v Ironhawk Ltd* (2018) UKUT 0311 (LC)

⁵ *Mallory v Orchid Base* (2016) UKUT 468 (LC)

⁶ *Midlands Freehold & Speedwell Estates* (2017) UKUT 463 (LC)

relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of these rights on the statutory hypothesis. When those methods throw up different figures, it will be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.”

51. In considering more than one approach Mr Chapman-Burnett has followed the advice in *Mundy* however, the Tribunal is not entirely persuaded by his methodology.
52. The Upper Tribunal determinations in *Reiss* and *Zucconi* both concerned, as here, property outside of prime central London (PCL) and, despite each decision being dependent on the evidence before it, the Upper Tribunal approach serves as guidance which may be relied on in other cases. In both *Reiss* and *Zucconi*, where transactional evidence was either unhelpful or unavailable, the recent PCL graphs were adopted as the most reliable and objective evidence of relativity.
53. Whilst the Tribunal acknowledges Mr Chapman-Burnett’s point that *Zucconi* does not preclude consideration of the 2009 Greater London & England graphs, it nevertheless considers the PCL graphs, whilst not ideal, to be a starting point where no, or insufficient, transactional evidence is submitted.
54. It is the Tribunal’s opinion that the PCL graphs, revised since *Mundy*, are more reliable, and hence preferable, than incorporating an average of the 2009 RICS Greater London and England graphs. Had persuasive evidence being submitted to justify a deviation from the PCL graphs the Tribunal would have considered it however, in the event, no such evidence was presented.
55. Accordingly, the Tribunal determines relativity at 71.40%, that being an average of the Gerald Eve 2016 graph and Savills unenfranchiseable graph, and an existing lease value, reflecting a ‘no act world’, of £133,411.
56. The Tribunal further determines that no additional sum is to be paid in respect of any diminution in the value of any land retained in its estate which is directly attributable to the grant of the lease extension, where such sums can be justified under paragraph 5 of Schedule 13.

Terms of the New Lease

57. The Applicant. The Applicant submits a draft proposed new lease at page [63] of the bundle.

58. The Tribunal. The Tribunal accepts the proposed lease terms save that in the event of a missing landlord the lease will be executed by an officer of the Court. The execution clause on page [61] shall be amended by deleting reference to Big Ben Construction and substituting; “Executed as a deed by District Judge Sitting at the County Court at Bournemouth and Poole pursuant to the Court Order dated 2 December 2021 in proceedings between the parties under claim No HOOBH341.”

The Tribunal’s Decision

59. The Tribunal determines that the premium to be paid for a 90-year lease extension in respect of the Property known as 173a Stewart Road, Bournemouth, BH8 8BP under the Leasehold Reform Housing and Urban Development Act 1993 is £33,913 (Thirty Three Thousand, Nine Hundred and Thirteen Pounds) and this is the appropriate sum to be paid into court under section 51(5).

Johanne Coupe FRICS (Chairman)
Dallas Banfield FRICS
14 March 2022

Appendix 1

Tribunal's valuation

Valuation date	17/06/2021
Unexpired term	50.87
Ground rent at valuation date	£25.00 rising to £40.00
Capitalisation rate	7%
Deferment rate	5%
Extended lease value	£185,000
Freehold value	£186,850
Existing Lease value	£133,411

Calculations

Diminution of freehold

Loss of ground rent			£25.00	
Years Purchase	17.87 years @	7%	10.0217	£250
Loss of ground rent			£40.00	
Years Purchase	33 years @	7%	12.7538	
Present value of £1 in	17.87 years @	7%	0.2985	£152

Reversion to Freehold

Capital value			£186,850	
Present value of £1 in	50.87 years @	5%	0.0836	£15,621
				<hr/>
				£16,023

Less Freehold reversion after extension

Freehold value			£186,850	
PV £1 deferred	140.87 years @	5%	0.0010	£187
				<hr/>
				£15,836

Marriage Value calculation

<u>Value of proposed interests</u>				
Freeholder		£187		
Leaseholder		<u>£185,000</u>	£185,187	
<u>Value of existing interests</u>				
Freeholder		£15,621		
Leaseholder		<u>£133,411</u>		
Sub-Total			<u>£149,032</u>	
<u>Total marriage value</u>			£36,155	
Landlords share @ 50%				<u>£18,077</u>

Enfranchisement Price

£33,913

APPENDIX 2 - Relevant Legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 50(1) – (3)

50 Applications where landlord cannot be found.

(1) Where—

(a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but

(b) the landlord cannot be found or his identity cannot be ascertained, the court may, on the application of the tenant, make a vesting order under this subsection.

(2) Where—

(a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and

(b) paragraph (b) of that subsection does not apply, but

(c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained, the court may, on the application of the tenant, make an order dispensing with the need to give a copy of such a notice to that person.

(3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and

(b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

Section 51

51 Supplementary provisions relating to vesting orders under section 50(1).

(1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to

exercise the right to acquire a new lease of his flat.

(2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.

(3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which—

(a) is in a form approved by a leasehold valuation tribunal, and

(b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below); and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.

(4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.

(5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—

(a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;

(b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and

(c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).

(6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).

(7) Subject to subsection (8), the following provisions, namely—

(a) sections 57 to 59, and

(b) section 61 and Schedule 14, shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.

(8) In its application to a lease granted in accordance with this section—

(a) section 57 shall have effect as if—

(i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and

(ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and

(b) section 58 shall have effect as if—

(i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and

(ii) subsections (6)(a) and (7) were omitted.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.