



2071

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

Case Reference : **LON/00AZ/OLR/2013/1382 & 1474**

Properties : **7,9,12,19,25 and 33 Belmont Hall,
Belmont Grove, London Se13 5DU**

Applicants : **The Respective Lessees of the
Properties**

Representative : **Mr Jonathan Rushton Counsel**

Respondent : **Brickfield Properties Limited**

Representative : **Mr Christopher Heather Counsel**

Type of Application : **Section 48 Leasehold Reform,
Housing and Urban Development
Act 1993 – determination of the
terms of acquisition of new leases**

Tribunal Members : **Judge John Hewitt
Mr Philip Tobin FRICS MCI Arb**

**Date and venue of
Hearing** : **4 and 5 March 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **16 April 2014**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:
 - 1.1 The premiums payable by the respective Applicants to the Respondent for the new leases are as follows:

Flat 7	£40,698
Flat 9	£38,437
Flat 12	£39,753
Flat 19	£40,957
Flat 25	£40,450
Flat 33	£44,182

All as calculated in accordance with 'The Tribunal's Lease-Extension Valuations' appended to this Decision.

- 1.2 The terms of the new leases which were in dispute are settled as set out in paragraphs 34 -48 of this Decision.

2. The reasons for our decisions are set out below.

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

Procedural background

3. Each of the Applicants gave to the Respondent a notice pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act), seeking to exercise the right to acquire a new lease of their respective flats.
4. The Respondent gave to each Applicant a counter-notice pursuant to section 35 of the Act which admitted that the Applicant had, on the relevant date, the right to acquire a new lease.
5. The parties have been unable to agree all of the terms of acquisition of the new leases and applications dated 21 October and 8 November 2013 were made to the Tribunal pursuant to section 48 of the Act. It was convenient for the two applications to be processed and heard together.
6. Directions were duly given and the applications came on for hearing on 4 and 5 March 2014.
7. The task before the Tribunal was to determine the terms of acquisition which were in dispute.
8. The Applicants were represented by Mr Jonathan Rushton of counsel. Expert valuation evidence was given by Mr Christopher Smith FRICS MEWI whose report is dated 21 February 2014.
9. The Respondent was represented by Mr Christopher Heather of counsel. Expert valuation evidence was given by Mr Robin Sharp BSc FRICS whose report is dated 27 February 2014.
10. We are grateful to Mr Rushton and Mr Heather for the help and assistance given to us during the course of the hearing and for their succinct submissions.

Matters not in dispute

11. The following matters were not in dispute:
 - 11.1 Deferment rate at 5%;
 - 11.2 Marriage value at 50%;
 - 11.3 The unexpired lease terms as recorded in the Valuations appended to this Decision;
 - 11.4 The ground rents payable, save as regards Flat 33;
 - 11.5 The dates of valuation vary between about 16 March and 17 April 2013 but that there is no valuation significance as regards the precise date of valuation in each case;
 - 11.6 There were no tenant's improvements to be taken into account; and
 - 11.7 The location of the subject development and the description of the accommodation.

Matters in dispute

12. The following matters were in dispute:
 - 12.1 Capitalisation rates;
 - 12.2 Short lease values;
 - 12.4 Long lease values;
 - 12.4 Relativity;
 - 12.5 The ground rent review for Flat 33; and
 - 12.6 Lease terms of some leases

General background

13. Belmont Hall is a 1930s development of 32 flats with some Art Deco features. The four-storey blocks are of traditional solid brick construction with a flat roof. There are three staircases each with a lift and each serving a group of twelve flats to the outer units and eight flats to the central units. Those flats accessible from the outer staircases have two bedrooms; and those to the centre have an additional dining annexe to the living room capable of conversion to an extra bedroom or study.
Each flat has a kitchen and bathroom and some flats have a separate WC.
All of the flats retain the original single glazed steel framed windows and have wood block flooring to the principal areas.
14. Photographs of the development are at pages 59 and 60 of Mr Smith's report and at page 2 of Mr Sharp's report.
15. As regards the subject flats the parties were agreed as to the following:

Flat No.	GIA	Floor	Rooms	Date of Lease
7	677	2 nd	3 + K B sep wc	14.08.1975
9	631	2 nd	3 + K B	01.12.1986
12	653	3 rd	3 + K B	04.02.1977
19	748	2 nd	3/4 + K B sep wc	22.12.1977
25	677	1 st	3 + K B sep wc	18.01.1977
33	653	3 rd	3 + K B	12.09.1991

It was also agreed that four of these flats have re-fitted modern kitchens with additional units and fittings. Flat 25 was considered to have a kitchen of basic presentation and flat 33 also had a basic kitchen retaining some period features.

All of the flats were let on terms of 99 years from 25 March 1974 save for flat 9 where the term was from 25 March 1976.

16. By way of summary we set out below the premiums originally contended for by Mr Smith and Mr Sharp as set out in their respective reports (as revised during the course of the hearing) and the premiums determined by the Tribunal as set out in paragraph 1.1 above:

	Mr Smith	Mr Sharp	Tribunal
Flat 7	£26,436	£47,429	£40,698
Flat 9	£24,549	£44,899	£38,437
Flat 12	£26,695	£48,285	£39,753
Flat 19	£28,241	£51,044	£40,957
Flat 25	£26,289	£47,091	£40,450
Flat 33	£31,086	£52,899	£44,182

Capitalisation rates

17. Mr Smith contended for a rate of 7.5% on all of the flats save for flat 33 in respect of which he contended for a rate of 6%. Mr Smith relied heavily on his experience with negotiated settlements where with modest ground rents in the range of £75 -£150 pa he typically agreed a generic rate of 7% in London SE12 and sometimes had achieved 8%.

Here the ground rents were lower and in Mr Smith's view less attractive to investors and so he made an adjustment of 0.5%.

As regards flat 33 Mr Smith acknowledged the rent review pattern is dynamic and this would be attractive to investors. He thus suggested a rate of 6%.

Taken overall Mr Smith suggested a generic rate of 6.5-7%.

18. By way of contrast Mr Sharp proposed a generic rate of 5.95% save for flat 33 where he proposed 5%. Mr Sharp had arrived at his figure of 5.95% by taking the average of two transactions set out in tab 2 of his report. Mr Sharp was not cross-examined on his evidence.
19. On this issue we prefer the evidence of Mr Sharp on a rate of 5.95% because this struck a chord with the experience of members of the Tribunal. However we saw no justification to make an adjustment in respect of flat 33. A potential investor buying this freehold will buy the portfolio of ground rent income from 32 flats. Whilst one ground rent might be marginally more attractive than the remaining 31, the investor has to take a view. Taken overall we find that the investor would not adjust his bid as regards flat 33.
20. We have thus determined the capitalisation rate at 5.95% for all six flats in issue.

Short lease values

21. Mr Smith and Mr Sharp gave conflicting evidence on short lease values. Mr Sharp had a rather complex spreadsheet at page 86 of his report which he revised during the course of the hearing. The final version was at page 86b. Mr Smith analysed a number of sales and sought to make adjustments to reflect time, size, living space, blight, cost of works and aspect/floor level.

22. Mr Sharp told us that at the material time short leases were difficult to sell except at low prices or with incentives and that mortgage valuations of terms less than 70 years put pressure on prices.
23. We looked carefully at the sales identified by the valuers. The evidence of Mr Smith that 33 The Squirrels was not a helpful comparable because this property was quite different in character to the subject development struck a chord with the experience and expertise of the members of the Tribunal. We agree with Mr Smith that it is more helpful to consider the transactions concerning flats within Belmont Hall.
24. We were not persuaded by Mr Smith's evidence and the array of adjustments he took us through. In the experience of the Tribunal there is a margin for each adjustment. The more adjustments to be made, the greater the margin for error or distortion by way of a ripple effect. We were not convinced that any adjustment for size was appropriate because all of the subject flats were broadly of similar size, save for flat 19. Similarly we considered that aspect/floor/orientation did not have any significant effect on value. Each flat enjoyed its own specific characteristics a plus on one feature was negated by a minus on another. The issue of blight raised by Mr Smith was not persuasive and there was not substantive evidence put before us to support it.
25. We considered the two transactions at flats 11 and 24 offered the most helpful comparables. We made adjustments as follows:

No.11

Sale price	£218,000
Adjusted for time to March for consistency =	£236,622
Less: Adjustments:	
£25,000*	
<u>£ 7,343**</u>	<u>£ 32,343</u>
Short lease value	£204,279

*Adjusted to reflect the proportion of the purchase price the vendor considered he would be required to spend on acquiring an extended lease;
 ** Adjusted to reflect the awareness of contribution to the costs of major works then contemplated by the landlord.

No.24

Sale price	£237,500
Adjusted for time	£210,201
Adjusted for Act rights	£189,181
Short lease value	£189,181

We took the average of these two values to arrive at our short lease value of £196,730.

Long lease values

26. For this exercise we considered the most helpful comparables to be the transactions concerning flats Nos 1, 10, 15 and 31 as follows:

No.1

Sale price	£250,000	
Adjusted for time	£260,699	£260,699
No.10		
Sale price	£330,300	
Adjusted for time	£296,907	
Adjusted for high quality fit out	£286,907	£286,907
No.15		
Sale price	£250,000	
Adjusted for time	£261,406	£261,406
No.31		
Sale price	£248,000	
Adjusted for time	£278,205	<u>£278,205</u>
Total		£1,087,217
Average		£271,804

Relativity

27. Again we have considered the competing expert evidence carefully. The parties were quite apart. Mr Smith took us through paragraph 21 of his report and the graphs he wished to rely upon and his interpretation of them. His expert view was that relativity for the leases with 60 years unexpired lay between 83 and 86.2% and he adopted 84%. We note that this is close to the Pure Tribunal graph at page 71 of Mr Smith's report.

As regards flat 9, where the parties were agreed the years unexpired was 62, his range was 83 and 87.6% and he adopted 85%.

28. Mr Sharp preferred to focus on the two transactions mentioned in paragraph 25 above. He analysed them at tab 3 part 2 of his report to arrive at 69.49%. We consider his analysis to be subjective. We note his evidence. We note that as regards flat 11 he has assumed the sum of £40,000 the vendor was to incur in the acquisition of the lease extension. On the evidence before us we find he was in error to do so. The retention was £40,000 but there was no expectation that the costs incurred would come to that figure. We prefer and consider the realistic cost the vendor had in his mind at the time was only £25,000. Of course it is understandable that the retention was greater than the anticipated cost because it is common practice to allow a margin for error and to be over cautious.

29. We accept that where possible market evidence is to be preferred. Adopting Mr Sharp's general approach we find that as regards flat 11, an adjustment to the sale price of £218,000 should be made to reflect the anticipated cost of the lease extension. That produces a figure of £193,000. Having made adjustments for 'No Act world' we find that the values are as follows:

Flat 11	£188,538	
Flat 24	<u>£216,019</u>	
	£404,557 ÷ 2 =	£202,278

We assume the freehold to be valued at £267,000 and thus we arrive at a relativity of 75.75%.

30. We accept that the graphs or at least some of them are now out of date and do not necessarily reflect the fluctuations in difficult market conditions and the market as at the valuation dates.
Standing back, taking stock and an overall view of the competing evidence, the limited reliable market evidence, the imperfect materials in the graphs before us we draw on our accumulated experience and expertise we determine that the relativity to adopt for those flats with 60 years unexpired is 75.75% and for the lease of flat 9 where there are 62 years unexpired the relativity to adopt is 77.00%.

Lease terms

31. The parties have been able to agree most of the terms of the new leases to be granted. A few terms are in dispute.
32. The starting point under section 57(1) of the Act is that the new leases to be granted under section 56 shall be on the same terms as those of the existing lease, as they apply on the relevant date but with such modifications as may be required or appropriate to take account of matters set out in that subsection, none of which are material to the present case.
33. Section 57(6) provides that either party may require that for the purposes of the new lease any term of the existing lease shall be excluded or modified in so far as:-
- (a) it is necessary to do so in order to remedy a defect in the existing lease; or
 - (b) it would be unreasonable in the circumstances to include, or include without modification, the term in question in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease.

Save for the matter mentioned in paragraph 34 below, all of the proposed modifications in dispute came within the ambit of section 57(6)(b).

It was not in dispute that the Tribunal has a wide discretion when considering whether to modify or exclude a term of the existing lease under section 57(6).

34. In each case the Respondent wished to include in the appropriate sub-paragraph the words:

“... and in relation to the grant of any underlease to which Chapter II of the Act would apply but for section 59(3) the Lessee shall include a provision therein stating that such underlease does not confer on the undertenant the right to a new lease from the Lessor in accordance with Chapter II of the Act”

Initially each of the Applicants sought to delete that insertion. At the hearing Mr Rushton conceded that the new leases should contain that insertion.

35. In all six new leases the Respondent wished to include the provision:

“The registration fee payable in clause [] of the tenant’s covenants in the Previous Lease shall be £40 together with VAT thereon or such greater registration fee as the Landlord reasonably requires”

36. In the case of flats 9 and 33 the Respondent wished to make an amendment to clause 2(2)(b)(vi) of each lease to modify the definition of the dates on which interim service charges are to be payable and to give the landlord the power to vary those dates at will. A sample of what was proposed is at [116].
37. In the case of flats 7, 12, 19 and 25 the Respondent wished to substitute the service charge regime with a new, modified and updated regime. A sample of what was proposed is at [72].
38. As regards flats 19 and 25 the respective Applicants wished to incorporate a mutual enforcement covenant. A sample of what was proposed is at [186].

The registration fee

39. Mr Heather contended that it was a reasonable modification. Mr Rushton opposed the modification sought and said that he did not have instructions to concede it.
40. We consider that the modification is reasonable within meaning of section 57(6). The fee proposed is modest by today's standards and we are conscious that the new lease is for a term exceeding 150 years. We consider it inevitable that during that period there will be changes to the value of money. We are satisfied that there is no prejudice to the lessee. The lease provides that any increased fee has to be 'reasonable' and it will be for the landlord to justify any increase. Further, the lessee will have the benefit of the protection afforded by Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Dates of payment of interim service charges

41. Mr Heather submitted that the Respondent wished to harmonise these leases with other leases within the development for reasons of ease of administration. The proposed modification keeps the dates the same as at present but gives the landlord the power to change the dates later should it wish to do so. The proposed modification was opposed by Mr Rushton who submitted that it was an unreasonable and weak ground. We agree and prefer the submission of Mr Rushton and determine that the modification should not be made.

Service charge regime

42. Mr Heather submitted the leases of the 32 flats contained two different service charge regimes. The Respondent had a long term goal of moving all the leases into the one modern service charge regime, largely for reasons of ease of administration because it was unattractive to have two forms in operation which resulted in increased management costs. He accepted that whilst the older form worked the newer long form was to be preferred. He also submitted that the inclusion of a sinking fund was considered good estate management practice and that it was reasonable for the Respondent to seek to move towards a common regime.
43. Mr Rushton opposed the modification. He argued that the regime was not just expanded it was a completely different animal. He submitted that the landlord must show a defect in the existing lease which the modification was designed to fix. The Respondent had failed to make out a case and relied simply on its own preference, ease of administration and long term goal.
44. We prefer and accept the submissions of Mr Rushton. No defect was identified in section 57(6)(b) does not cater for mere preferences of landlords.

30. We accept that the graphs or at least some of them are now out of date and do not necessarily reflect the fluctuations in difficult market conditions and the market as at the valuation dates.
Standing back, taking stock and an overall view of the competing evidence, the limited reliable market evidence, the imperfect materials in the graphs before us we draw on our accumulated experience and expertise we determine that the relativity to adopt for those flats with 60 years unexpired is 75.75% and for the lease of flat 9 where there are 62 years unexpired the relativity to adopt is 77.00%.

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43. Mr Rushton opposed the modification. He argued that the regime was not just expanded it was a completely different animal. He submitted that the landlord must show some defect in the existing lease which the modification was designed to fix. The Respondent had failed to make out a case and relied simply on its own preference, ease of administration and long term goal.
44. We prefer and accept the submissions of Mr Rushton. No defect was identified and section 57(6)(b) does not cater for mere preferences of landlords.

Mutual enforcement covenants

45. Mr Rushton submitted that in the market diligent conveyancers will bring to prospective purchaser's attention the absence of such a clause and that some mortgage lenders may refuse finance in the absence of such a clause. Mr Rushton drew attention to the lease of flat 12 where, by way of a deed of variation, the landlord had included such a clause [144].
46. Mr Heather opposed the modification. He argued that in the case of both flats 7 [64] and 12 such a clause had been provided for as part of a commercial arrangement and that consideration had been paid.
47. Mr Heather also submitted that the absence of such a clause was not a defect and no changes since the lease was granted had been identified by the lessees concerned and no evidence about mortgage finance difficulties had been put before the Tribunal.
48. We prefer and accept the submissions of Mr Heather. We agree that no defect was identified. It seems to us that if a lessee wishes to have the benefit of such a clause he can approach his landlord to see if a commercial outcome can be achieved.

Judge John Hewitt
16 April 2014

TRIBUNAL'S LEASE-EXTENSION VALUATIONS

7, 9, 12, 19, 25 & 33 BELMONT HALL COURT
BLACKHEATH LONDON SE13 5DU

Facts agreed between parties:

FLAT	FLOOR	ACCOMM.	UNEXPIRED TERM yrs	G/RENT £ p.a.	TRIBUNAL'S ADJUSTMENTS for size/position, etc.
7	2 nd	3, K, B, sep. WC.	60	60/90	+ 2.5%
9	2 nd	3, K, B/WC	62	150/225	nil
12	3 rd	3, K, B/WC	59.92	60/90	nil
19	2 nd	3/4, K, B, sep. WC	60	60/90	+ 2.5%
25	1 st	3, K, B, sep. WC	60	60/90	+1%
33	3rd	3, K, B/WC	59.95	475/geared	nil

Deferment rate agreed @ 5%;

Notional freeholds agreed @ extended lease + 1%.

Tribunal's capitalisation rate: 5.95%.

Relativity: 75.75%

FLAT No. 7:

Extended Lease	£271,804 + 2.5% =	£278,598
Freehold (+ 1%)		281,385
Existing Lease @ 75.75% of f/hold =		213,149

Existing F/hold:

G/rent	£60		
YP for 27.398 years @ 5.95%	13.357	£801	
G/rent:	£90		
YP for 32.608 years @ 5.95%	14,254		
PV in 27.398 years	0.205	2.92	263
Reversion to		£281,385	
PV after 60 years @ 5%	0.0535	15,054	16,118

Proposed F/hold:

	£281,385		
PV after 151.5 years @ 5%	0.00061	172	
Diminution			£15,946

Marriage value:

Proposed leasehold	£278,598		
Proposed freehold	172	278,770	
Current leasehold	£213,149		
Current freehold	16,118	229,267	
		49,503	
		@ 50%	£24,752

Lease-extension premium for Flat 7 £40,698

FLAT No. 9:

Extended Lease	£271,804
Freehold	274,522
Existing Lease	@ 77% of f/hold = 211,382

Existing F/hold:

G/rent	£150	
YP for 29.5 years @ 5.95%	13.662	£2049
G/rent:	£225	
YP for 33 years @ 5.95%	14,311	
PV in 27.398 years	0.187	2,676
Reversion to	£274,522	602
PV after 62 years @ 5%	0.0485	13,314
		15,965

Proposed F/hold:

	£274,522	
PV after 151.5 years @ 5%	0.00059	162
Diminution		£16,127

Marriage value:

Proposed leasehold	£271,804	
Proposed freehold	162	271,966
Current leasehold	£211,382	
Current freehold	15,965	227,347
		44,619
		@ 50%
		£22,310

Lease-extension premium for flat 9**£38,437****FLAT No:12**

Extended Lease	£271,804
Freehold (+ 1%)	274,522
Existing Lease	@ 75.75% of f/hold =£207,950

Existing F/hold:

G/rent	£60	
YP for 26.9 years @ 5.95%	13.256	£795
G/rent:	£90	
YP for 33 years @ 5.95%	14,31	
PV in 27.398 years	0.211	3,02
Reversion to	£274,522	272
PV after 60 years @ 5%	0.0538	14,769
		15,836

Proposed F/hold:

	£274,522	
PV after 149.9 years @ 5%	0.00067	184
Diminution		£15,652

Marriage value:

Proposed leasehold	£271,804	
Proposed freehold	184	271,988
Current leasehold	£207,950	
Current freehold	15,836	223,786
		48,202
		@ 50%
		£24,101

Lease-extension premium for flat 12**£39,753**

FLAT No. 19:

Extended Lease	£271,804 + 2.5% =	£278,598
Freehold (+ 1%)		281,385
Existing Lease @ 75.75% of f/hold =		213,149

Existing F/hold:

G/rent	£60		
YP for 27.014 years @ 5.95%	13.28		£797
G/rent:	£90		
YP for 33 years @ 5.95%	14.31		
PV in 27.014 years	0.2099	0.3	270
Reversion to	£281,385		
PV after 60 years @ 5%	0.0535	15,054	16,121

Proposed F/hold:

	£281,385		
PV after 151.5 years @ 5%	0.00061		172
Diminution			£16,293

Marriage value:

Proposed leasehold	£278,598		
Proposed freehold	172		278,770
Current leasehold	£213,149		
Current freehold	16,293		229,442
			49,328
			@ 50%
			£24,664

Lease-extension premium for flat 19**£40,957****FLAT No. 25:**

Extended Lease	£271,804 + 1% =	£274,522
Freehold (+ 1%)		277,267
Existing Lease @ 75.75% of f/hold =		210,030

Existing F/hold:

G/rent	£60		
YP for 27.014 years @ 5.95%	13.28		£797
G/rent:	£90		
YP for 33 years @ 5.95%	14.31		
PV in 27.398 years	0.2099	0.3	270
Reversion to	£277,267		
PV after 60 years @ 5%	0.0535	14,834	15,900

Proposed F/hold:

	£277,267		
PV after 151.5 years @ 5%	0.00061		169
Diminution			£16,069

Marriage value:

Proposed leasehold	£274,522		
Proposed freehold	172		274,691
Current leasehold	£210,030		
Current freehold	15,900		225,930
			48,761
			@ 50%
			£24,381

Lease-extension premium for flat 25**£40,450**

