



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

Case reference	:	LON/00BK/OLR/2019/0133
Property	:	9d Oxford and Cambridge Mansions, London NW1 5EJ
Applicant	:	David Taylor and Emma Jane Taylor
Representative	:	Charles Tellerman BSc MRICS
Respondent	:	Deritend Investments (Birkdale) Limited
Representative	:	Robin Sharp BSc FRICS
Type of application	:	Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993
Tribunal members	:	Judge Hargreaves Ian Holdsworth BSc MScFRICS
Date of determination and venue	:	11th June 2019 at 10 Alfred Place, London WC1E 7LR
Date of decision	:	11th July 2019

DECISION

Summary of the tribunal's decision

The appropriate premium payable to the competent landlord for the new lease is £151,870.

Background

1. All references are to page numbers in the bundle provided.
2. This is an application made by the applicant leaseholders pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid for the grant of a new lease of 9d Oxford and Cambridge Mansions, Transept Street, London NW1 5EJ (“the property”).

3. By a notice of a claim dated 8th August 2018 (p13), served pursuant to section 42 of the Act, the applicants exercised the right to acquire the grant of a new lease of the subject property and proposed to pay a premium of £108,900 for the freehold. The existing lease was for a term of 99 years from 29th September 1978 at a yearly rent of £125 until 2011, for the next 33 years a rent of £250, and thereafter £500.
4. On 5th October 2018, the respondent freeholder served a counter-notice (p14) admitting the validity of the claim and counter-proposed a premium of £263,875 for the new lease.
5. On 18th January 2019, the applicants applied to the tribunal for a determination of the premium (p1).

The issues

Matters agreed

6. The following matters were agreed (see p86):
 - (a) The subject property is a second floor flat which has been re-arranged internally since it was demised (ie the lay out is not in accordance with the plan at p55); its gross internal floor area is agreed at 1,238 square feet;
 - (b) The valuation date: 8th August 2018;
 - (c) Details of the tenants' leasehold interests:
 - (i) Date of lease: 11th October 1985
 - (ii) Term of lease: 99 years from 29th September 1978
 - (iii) Ground rents: see above: £125 rising to £500
 - (iv) Unexpired terms at valuation dates: 59.14 years
 - (d) Capitalisation: 6% per annum;
 - (e) Tenants' improvements: none to take into account;
 - (f) Deferment rate: 5%.

Matters not agreed

7. The following matters were not agreed:
 - (a) Freehold vacant possession value (the applicants' figure was £1,094,392 and the respondent's £1,154,211);
 - (b) Relativity (79.5% and 74.66% respectively);
 - (c) The premium payable.

The hearing

8. The hearing in this matter took place on 11th June 2019. The applicants were represented by Charles Tellerman BSc MRICS (report at p87), and the respondent by Robin Sharp BSc FRICS (report at p573), and the parties relied on their reports and valuations. The hearing took most of the day, the first half of the day on issue (a) above, the afternoon on issue (b).

9. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination. Additional photographs were provided. The flat is located on the fringe of prime central London (which is agreed). There is no lift and it is on the second floor. According to the lease and plan it comprises a hall, reception room, three bedrooms, bathroom, separate WC, kitchen with access to another room, but that cannot be used as a bedroom because it has no means of escape other than through the kitchen. Therefore, Mr Tellerman says it must be valued as a three bedroomed flat, with a study/dining room off the kitchen, and it is not a four bedroomed flat. As Mr Sharp describes it, it currently comprises 6 rooms, 3 bathrooms/shower rooms and 2 small kitchens, as the result of various partitions, in respect of which it is unclear whether permission was given in accordance with the lease provisions, and as to which we do not have to make any findings (see paragraph 10 below).
10. Notwithstanding these differences in description, both experts agreed at the hearing that the valuation should be based on the lay-out as provided by the lease plan at p55 (five rooms, a kitchen, bathroom, separate WC). A plan of 9c (below) with measurements is at p207, and a hand altered plan of 9d's current lay out is at p595.

Long leasehold value

11. Mr Tellerman's table of comparables is at p175, Mr Sharp's at p582. Both used 1f Hyde Park Mansions, 12c Hyde Park Mansions, 9C Oxford and Cambridge Mansions, and 12e Oxford and Cambridge Mansions. There is no relevant market evidence relating to the property itself. 9c is immediately below the property, but with various differences, the principal one being ceiling height, which Mr Tellerman considers important and Mr Sharp to have less impact in this case. We accept Mr Tellerman's account of the difference in measurements on the basis of his oral evidence (which Mr Sharp also finally accepted), and we also conclude that higher ceilings do have an impact on value, as generally more attractive to a purchaser. This impacts on the use of 9c which is below 9d, as a comparable.
12. Mr Tellerman's approach to this aspect of the valuation exercise is set out in sections 9-11 of his report (p91-94) with a conclusion of £884 psf producing a value of £1,094,400. See his table at p175. The evidence relating to his comparables is at p176-124 and consists of sales particulars and office copy entries.
13. Mr Sharp also included 4j Oxford and Cambridge Mansions, but as a fourth floor walk up, two floors above the subject property and much smaller, we have discounted this as not a useful comparable. His analysis of comparables is at section 5 of his report at p579-582 and his figure is £1,142,670. His evidence is presented in the same format as Mr Tellerman's at p600-647. Apart from the subject property neither expert had inspected the comparables and we have been careful to avoid coming to conclusions based on photographs in sales particulars used to sell property; for example, conclusions as to the standard of kitchen refurbishment/bathrooms are in our judgment not possible on the quality of this evidence.

The tribunal's determination

14. The tribunal determines that the long leasehold value is £1,105,638.

Reasons for the tribunal's determination

15. Both experts agreed the comparables required adjustment to be useful. Their tables show their adjustments produce different values. We consider the right approach is to take Mr Tellerman's table and make further adjustments to the experts' conclusions to reflect the difference in ceiling heights. In addition to discounting 4j as a credible comparable, we note that 12e Oxford and Cambridge Mansions is a challenging comparable because it is a completely different type of flat, even though in the same block, being on the third floor, with a lift, and 40-45% bigger, so requiring considerable adjustment, as the disparity in the experts' use of it demonstrates. They were closest in their conclusions on 9c, reaching virtually the same figure psf (£923 and £922). So that is a good guide to the use of that as a comparable.
16. That leaves us overall with 1f and 12c Hyde Park Mansions, 12e and 9c Oxford and Cambridge Mansions. We take Mr Tellerman's schedule at p175 because it is more detailed in lay-out than Mr Sharp's though both took the same approach (except as to ceiling heights, which we consider relevant) with different conclusions. Taking into account their oral and written evidence we adjust Mr Tellerman's schedule as follows.
17. Both experts told the tribunal that the adjustment to transaction evidence by floor level also reflected ceiling height (see column 14 in Mr Tellerman's table). The tribunal has considered these composite adjustments and reduced them as in their opinion they over compensate for the differences between the subject and comparable properties. In relation to 1f Hyde Park Mansions we adjust by -2.5%, in relation to 12e Oxford and Cambridge Mansions we adjust by -5%, in relation to 12c Hyde Park Mansions we adjust by -2.5%, and make the same adjustment with respect to 9c Oxford and Cambridge Mansions.
18. We make a further adjustment for quantum in the case of 12e Oxford and Cambridge Mansions, and substitute +4.5% instead of Mr Tellerman's 3%, preferring Mr Sharp's approach. This is to reflect the difference in value per square foot of this significantly larger property (when compared to the subject property). 12e has an area of 1,760 square feet compared to 9d's 1,238 square feet, a 42% difference in size.
19. The Tribunal's revised psf values are therefore as follows. For 1f Hyde Park Mansions, £911.23 (closer to Mr Sharp's £914), for 12e Oxford and Cambridge Mansions £803 (closer to Mr Tellerman's £799), for 12c Oxford and Cambridge Mansions £946.08 (higher than both), and in the case of 9c Oxford and Cambridge Mansions £948.13 (closer to Mr Sharp's £954). We have increased Mr Tellerman's values by 2.5% except in the case of 12e where the % increase is 0.5%. This is appropriate because as explained above (paragraph 18), there is a significant size difference between the subject property and the comparable which should be reflected in value. Mr Tellerman did accept in oral evidence that on reflection he had failed to take into account fully the impact on value per square foot of this larger comparable property.
20. These figures produce an average freehold value per square foot of £902.11, and multiplied by the agreed gross internal area (£1238), produces a figure of £1,116,812.

Freehold value

The tribunal's determination

21. The tribunal determines that the freehold value is £1,116,810.

Reasons for the tribunal's determination

22. The analysis of comparable evidence submitted by Mr Tellerman included a 1% uplift of the long leasehold value to calculate notional freehold. This accords with the guidance in *Cadogan v Erkman* LRA/56/2007 and LRA/68/2008 for long leasehold adjustment. The comparable evidence submitted relates to leases in excess of 140 years unexpired. The tribunal has adopted this guidance in calculating the premium.

Existing leasehold value/relativity

23. Mr Tellerman's approach is detailed in section 12 of his report at p94-97. That is based on his understanding and application of the following authorities which he contends determine the approach of the Tribunal in a case such as this where there is no market transaction concerning the existing lease near the valuation date: *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC); *Nailrile Ltd v Earl Cadogan* [2009] RVR 95; *Earl Cadogan v Cadogan Square Ltd* [2011] EGLR 127; *Mallory v Orchidbase Ltd* [2011] UKUT 0468 (LC).
24. He argues that applying the approach in these authorities justifies a 5.5% deduction for Act rights based on the 59.14 years unexpired term of the lease at the date of valuation. Countering Mr Sharp's preference for a discount of 10% for Act rights, Mr Tellerman cites at least five Tribunal decisions (listed at p95) which have rejected Mr Sharp's figure of 10% as excessive. Taking two comparisons (market sales of 11e Oxford and Cambridge Mansions and 12e Oxford and Cambridge Mansions), Mr Tellerman produces a relativity of 80%. He then tests this further (following *Mundy* paragraph 169) by applying the approach set out in paragraph 169 which suggests that "more than one approach" in cases such as this might be required, suggesting (i) "using a reliable graph for determining the relative value of an existing lease without rights under the 1993 Act" and (ii) "using 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 those rights on the statutory hypothesis. Applying (i) Mr Tellerman averages three unenfranchiseable graphs to produce a relativity of 80.22% for a 59.14 year lease (see his paragraph 12.12 p97). Applying (ii) Mr Tellerman applied the Savills 2015 Enfranchiseable Graph to produce a with rights relativity of 82.96% (paragraph 12.14), before deducting 5.5% to produce 78.4%.

25. Mr Tellerman then takes all three figures (80%, 80.22% and 78.4%) to produce a final average figure of 79.5% as the figure he applies for the relativity of a 59.14 year lease without rights (paragraph 12.16).
26. Mr Sharp's evidence on relativity is at paragraph 7 of his report at p582. He also takes as his starting position the sales of 11e and 12e Oxford and Cambridge Mansions. He explains his approach as follows: "I usually deduct 10% because 1993 Act rights are valuable for lease terms with c60 years unexpired." He reaches a figure of 71.68% relativity without deduction for Act rights (paragraph 7.3). He then goes on to argue for a deduction of 10% for Act rights while going on to accept that his 10% approach is not accepted by "every Tribunal". We accept that it has been applied in the decisions he cites in support, but in this case we reject the arguments in paragraph 7.6 of his expert report as deployed in support of the 10% figure. Our main reason for doing so is that although these considerations justify a discount, they do not explain why 10% is appropriate, though they obviously support the theoretical, economic and social policies behind the deduction.
27. It follows that we reject Mr Sharp's application of the blanket 10% deduction as inappropriate in this case and consider that the *Mundy* approach provides better guidance. In fact, this is also anticipated by Mr Sharp's further analysis in paragraph 8 of his report (p587) in which he refers to the use of graphs including the Savills Enfranchiseable graph and the "emerging" Gerald Eve 2016 table. As to the latter, both experts were sharply divided in their experience of the use of this graph, which demonstrates the extent to which experience can be so individual as to defeat any intention to draw a reliable way forward from it. In this case Mr Tellerman said he had never encountered anyone from Gerald Eve using the 2016 graph, whereas Mr Sharp said he was always encountering its application in negotiations with Gerald Eve but using the 1996 version. It could be said therefore that they were arguing about two different things, neither point of much assistance in this case.

The tribunal's determination

28. The tribunal applies a figure of 77.1% for relativity.

Reasons for the tribunal's determination

29. We have considered the experts' differing approaches as outlined above. Without further detail, we have decided that there is very little we can derive from the Gerald Eve "emerging" graph and prefer to apply, rather than the average of a "basket" of graphs, the simpler approach of using the Savills 2015 Unenfranchiseable graph (p699-703). We reject Mr Tellerman's use of the Nesbitt graph (as urged by Mr Sharp) because of the criticism in *Orchidbase*, which supports, however, a deduction of 5.5% not 10%.
30. In accordance with *Mundy* the tribunal sought reliable comparable market transaction evidence at or near the valuation date to assist in determination of relativity. Mr Tellerman submitted the short lease sale of 9c and long lease sale of 12e both situated in Oxford and Cambridge Mansions, to calculate a with rights relativity of 85.5%. A deduction of 5% is then made to reflect Act rights. This does not accord with the Savills 2015 Act rights deduction of 6.3% for a 59.14 year unexpired term. UT guidance supports the application of the Savills 2015 Act rights deductions.

31. A single transaction does not provide sufficient evidence to determine relativity. Following *Mundy* again the tribunal disregards the relevance of the RICS Leasehold Reform Graphs of Relativity, and reviewed more recent graphs, particularly the Savills 2015 graph. We did not use the Gerald Eve 2016 graph because of its limited use by valuers carrying out premium valuations at the valuation date.
32. This graph shows a relativity of 82.96% for an unexpired term of 59.14 years. The tribunal deducts for Act rights in accordance with UT guidance and makes a 5.25% deduction. This produces a relativity of 77.1%.

The premium

33. The tribunal determines the appropriate premium to be £151,870. A copy of its valuation calculation is annexed to this decision.

Name: Judge Hargreaves
Ian Holdsworth
BSc MSc FRICS

Date: 11th July 2019

Appendix: Valuation setting out the tribunal's calculations

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).

CASE REFERENCE LON/00BK/OLR/2019/0133

**First-tier Tribunal
Property Chamber (Residential Property)**

**Valuation under Schedule 6 of the Leasehold Reform Housing and Urban
Development Act 1993**

**Premium payable for the freehold interest in 9d Oxford and Cambridge
Mansions NW1 5EJ**

Valuation date: 8th August 2018

Property: 9d Oxford and Cambridge Mansions, Transept Street London NW1 5EJ				
Reference: LON/00BK/OLR/2019/0133				
FTT valuation				
Lease and Valuation Data				
Lease Term:		29/09/1978		
Lease Expiry date:		28/09/2077		
Unexpired term as at valuation date:		59.14	years	
Date of Valuation		08/08/2018		
Rent receivable by landlord:				
Payable from valuation date for 26.14 years	£	250		
Payable for second period 33 years	£	500.00		
Values				
Extended lease value on statutory terms	£	1,105,638		
Notional Freehold	£	1,116,806		
LHVP with current term unexpired	£	867,870	Relativity	77.71%
Capitalisation rate (%)		6.50		
Deferment rate (%)		5.00		
Value of Freeholders present interest				
Term 1				
Ground rent payable	£	250		
YP @ 26.14 years @ 6.5%		12.41864	£	3,105
Term 2				
Ground rent payable	£	500		
YP @ 33 years @ 6.5%		13.45909		
Deferred @ 26.14 years @ 6.5%		0.19279	£	1,297
			£	4,402
Reversion				
Freehold in vacant possession	£	1,116,806		
Deferred @ 59.14 years @ 5%		0.05583	£	62,351
			£	66,753
Current value of the freeholders interest				
Less				
Freehold value after leasehold extension	£	1,116,806		
PV of £1 in 149.14 years at 5%		0.00069	£	772
Freeholders interest value				£ 65,981
Marriage value				
Value of flat with long lease on statutory terms	£	1,105,638		
Landlords proposed interest	£	772	£	1,106,410
Less				
Value of Leaseholders existing interest	£	867,870		
Value of Freeholders current interest	£	66,753	£	934,623
Marriage value	Total		£	171,787
Division of Marriage Value equally between				
Freeholder			£	85,894
Leaseholder			£	85,894
			£	85,894
Price payable to Freeholder				
			Total	£ 151,874
			SAY	£ 151,870