FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference :	**MAN/00BY/OLR/2020/0019**
Property :	**Flat 3, Cavendish Gardens, Devonshire Road, Liverpool L8 3TH**
Applicant :	**Ashley Davies**
Applicants Representative :	**John Davies, SK Real Estate (Liverpool) Ltd**
Respondent :	**The Riverside Group Ltd**
Respondents Representative :	**Annie Hennis, Trowers & Hamlins**
Type of Application:	**Leasehold Reform, Housing & Urban Development Act 1993 – Section 48(1)**
Tribunal Members :	**Tribunal Judge Professor Caroline Hunter** **Tribunal Member William Reynolds MRICS**
Date of Determination:	**21 December 2020**
Date of Decision :	**15 January 2021**

DECISION

Order

The premium payable by the Applicant to the Respondent in respect of the Property shall be £2,590.

Background

1. The Applicant is the leasehold owners of Flat 3, Cavendish Gardens, Devonshire Road, Liverpool (the Property). On 1 June 2020 the Applicant applied to the Tribunal for a determination of the appropriate premium on the grant of a new lease extending their lease of the Property pursuant to section 48(1) of the Leasehold Reform, Housing & Urban Development Act 1993 (the Act).

2. The Notice of Claim issued by the Applicant under Section 42 of the Act for a new lease which was dated 3 October 2019 proposed a premium of £1,600. The counter notice dated 3 December 2019 proposed a premium of £2,900. The Tribunal notes that in the Application to the Tribunal, the Applicant proposes a revised premium of £1,750 as opposed to the figure of £1,600 included within the original Notice of Claim. There are no other matters in dispute regarding the terms of the lease extension.

3. The Tribunal issued Directions on 25 August 2020 with the matter to proceed by a paper determination without an inspection. The Applicant was directed to provide a statement of case, any valuation, copy of lease, application form and accompanying documents within 21 days. The Respondent was directed to submit a statement of case in reply within 21 days of receipt of the Applicant's case. The Applicant was directed that she may provide comments on the Respondent's statement of case within 7 days of receipt. The Directions provide that if each party produces expert evidence from a valuer, the valuers shall discuss the case within 10 days of the Respondent's submission and each party shall provide to the Tribunal a joint statement within 14 days of discussions taking place, setting out which facts and issues are agreed and identifying those which remain in dispute.

4. The Applicant's case was made by their representative, Mr John Davies BSc MRICS of SK Real Estate (Liverpool) Ltd. Mr Davies's Expert Report and Valuation is dated 15 September 2020. His valuation for the premium payable is in the sum of £1,768 which he rounds to £1,800.

5. The Respondent's reply to the Applicant's Statement of Case was made by their representative, Trowers Hamlin and incorporates an Expert Report and Valuation prepared by Nicholas Plotnek LLB of Nick Plotnek Associates which is dated 4 October 2020. His valuation for the premium payable is in the sum of £2,592.

6. Both of the Expert Valuers provide very comprehensive reports and valuations and make reference to case law. The Tribunal are grateful for their detailed submissions.

7. On 30 October 2020, the Respondent's representative wrote to the Tribunal with a copy also sent to the Applicant to advise that the parties expert valuers discussed the case on 9 October 2020. The letter identifies that it does not represent an agreed joint statement and that the contents of the letter have not been approved or authorised by the Applicant's

surveyor. This letter states that the Respondent understands that the only matter in dispute between the parties is the deferment rate with the Applicant adopting a rate of 5.5% whilst the Respondent adopts a rate of 5%.

8. Whilst the Respondent's letter of 30 October 2020 identifies that the parties have not explicitly agreed any matters, the Tribunal finds as a matter of fact that the differences which are of consequence between the parties' respective valuations are confined to the deferment rate they adopt and whether or not they apply an uplift to reflect the value of a freehold interest vs a long leasehold interest. In this respect, the Respondent's valuer adopts a 1% addition whilst no addition is incorporated in the valuation prepared on behalf of the Applicant.

9. The Tribunal is tasked only with considering the appropriate premium for a 90 year extension of the lease from 14 December 2000 and proceeds on the basis that the extended lease will be made on substantially similar terms to the existing lease.

10. The Tribunal have not inspected the property but understand from Mr Davies's report that it comprises a 2 bedroomed flat arranged on ground and lower ground floors within a mid-19th Century 4 storey Grade II listed building which was last refurbished around the year 2000 and which currently accommodates 20 flats. Flat 3 has suspended timber floors surmounted by a variety of floor coverings, painted plaster walls & ceilings, gas central heating and timber framed double glazed windows. The bathroom has a bath with shower over, WC and wash hand basin.

The Law

11. Section 48 and Schedule 13 of the Act provide the statutory regime within which the Tribunal should assess the premium that is to be payable for the new lease. The relevant extracts from the Act appear at Annex B.

The Evidence, Discussion and Determination of Premium

The Leasehold Vacant Possession Value

12. To arrive at its decision, the Tribunal must assess the value of the leasehold interest in Flat 3 Cavendish Gardens with vacant possession having a 90 year extension so that the new lease will be at a peppercorn rent for a term to expire on 13 December 2099.

13. In his report, Mr Plotnek identifies that the leasehold value is agreed between the parties at £130,000. He goes on to make an adjustment to arrive at the freehold vacant possession value of plus 1%.

14. In support of this, he references the Upper Tribunal decisions in *Elmbirch Properties Plc re 51 & 85 Humphrey Middleton Drive* [2017] UKUT 0314 (LC), *Contactreal Limited v Ms Hannah M Smith* [2017] UKUT 0178 (LC) together with two other decisions in this Tribunal's region.

15. Mr Davies does not identify within his report that the leasehold value is agreed between the parties. Instead, in his report, he refers to adopting a freehold vacant possession value

of £130,000 whilst in his valuation calculations, he simply references this as 'Flat value'. Accordingly, he makes no adjustment to this figure when arriving at his valuation.

16. Only Mr Davies provides any comparable evidence. He cites three transactions involving flats in Liverpool, one of which relates to the sale in June 2018 of a similarly arranged ground and lower ground floor flat in the same building (flat 15) on a 99 year lease at a price of £133,000.

17. The Tribunal notes that all three of Mr Davies's comparables relate to transactions involving a long leasehold interest rather than a freehold interest and that Mr Davies does not specify whether he has made any adjustment to the comparables he cites in order to arrive at his figure of £130,000 for the freehold interest with vacant possession or 'Flat value'.

18. The Tribunal has considered the evidence presented and is of the opinion that a 1% addition to reflect the value of a freehold interest contrasted with a long leasehold interest is appropriate, in line with the decisions of the Upper Tribunal in *Elmbirch Properties Plc re 51 & 85 Humphrey Middleton Drive* [2017] UKUT 0314 (LC), *Contactreal Limited v Ms Hannah M Smith* [2017] UKUT 0178 (LC) and the principle referred to in *Midlands Freeholds Limited & Speedwell Estates Limited* [2017] UKUT 0463 (LC).

19. In the absence of specific argument from Mr Davies on this point or any clear adjustment having been made to the comparable evidence from the leasehold transactions he cites the Tribunal adopts a value of £130,000 for the leasehold interest in Flat 3 with vacant possession which it uplifts by 1% to £131,300 when reflecting the value of a freehold interest with vacant possession.

The deferment rate

20. Mr Davies argues for a deferment rate of 5.5% whilst Mr Plotnek suggests that the decision in *Earl Cadogan & Cadogan Estates Ltd v Sportelli & Others* [2007] 1 EGLR 153 (LC) should be definitive and a 5% rate should be adopted.

21. In support of his contention, Mr Davies puts forward statistics from Land Registry data with respect to the change in values for Flats and Maisonettes in Kensington & Chelsea, the West Midlands, the North West and Liverpool for the period from December 1999 to December 2019. He also puts forward the Nationwide Building Society House Price Index (Regional Indices) over the period quarter 4 1973 to quarter 4 2019.

22. Mr Davies goes on to refer to the Upper Tribunal case of *Zuckerman v Trustees of the Calthorpe Estate* [2009] UKUT 235 (LC). He states that in this case a 0.5% adjustment to the rate arrived at by reference to the decision in *Earl Cadogan & Cadogan Estates Ltd v Sportelli & Others* [2007] 1 EGLR 153 (LC) was adopted to take account of the reduced prospects for capital growth in the West Midlands region vs Prime Central London (PCL). Mr Davies concludes that rates of growth for the North West are similar to the West Midlands and argues that the 0.5% increase in the deferment rate agreed in the *Zuckerman* case should be applied to the deferment rate in this case. He further justifies his contention by reference to the value of flats in the Cavendish Gardens development in 2001 contrasted with current values which he notes to have increased by circa 200%. Mr Davies identifies this growth to be less than the general trend in the North West.

23. Mr Davies also references a case (*William Harold Taylor & Margaret Taylor v Thomas Arthur Pennels* reference MAN/36UE/ OCE/2017/0001) relating to a flat in Harrogate where the Respondent's valuer in this present case, Mr Plotnek, acted on behalf of the Applicant and where the Tribunal determined the deferment rate argued for by Mr Plotnek of 5.75%. Mr Davies believes this to have been the most recent case in this Tribunal region where the deferment rate was not agreed in advance of the Tribunals determination. Notwithstanding Mr Davies's contention, this Tribunal is aware that there are more recent cases in this Tribunal's region where the deferment rate wasn't agreed in advance albeit that they do not all appear to be recorded on the LEASE database. Furthermore, the case Mr Davies references related to an absent landlord and accordingly the Tribunal received no evidence or argument on behalf of the landlord. Additionally, this present Tribunal does not have detailed information on the circumstances of the case or the reasons for the Tribunal agreeing a deferment rate of 5.75% in that particular case.

24. The Tribunal notes that Mr Plotnek now considers the deferment rate in *Sportelli* should be definitive, however, the Tribunal is not persuaded that this is necessarily the case.

25. The Upper Tribunal's decision in *Sportelli* was considered in detail by the Court of Appeal and is referenced at paragraph 27 of the decision in *Sinclair Gardens Investments (Kensington) Ltd, Re: 7 Grange Crescent* [2014] UKUT 79(LC). That paragraph identifies that:

> "The Court of Appeal then went on to qualify its general approval of the Lands Tribunal's approach so far as it related to future decisions outside the PCL area. After drawing attention at paragraph 100 to the fact that the evidence in *Sportelli* was directed principally to the market within the PCL area, Carnwath LJ said this at paragraph 102:'
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> > "The issues within the PCL were fully examined in a fully contested dispute between directly interested parties. The same cannot be said in respect of other areas. The judgment that the same deferment rate should apply outside the PCL area was made, and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with different areas. The deferment rate adopted by the Tribunal will no doubt be the starting point; and their conclusions on the methodology, including the limitations of market evidence, are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas. That would be a matter for those advising future parties, and for the tribunals, to consider as such issues arise."'

26. Useful further guidance is provided at paragraph 28 of the decision in *Sinclair Gardens* which says :

> 'On a number of occasions since the Court of Appeal's decision the Tribunal has been invited to depart from the generic deferment rates identified in *Sportelli* when valuing properties outside PCL. On each such occasion the need for evidence to justify a different rate has been emphasized'.

27. In *Culley v Daejan Properties Ltd* [2009] UKUT 168 (LC) the Tribunal provided the following guidance (at paragraph 35):

> 'Thus evidence of valuers as to whether a higher risk premium should be taken because of the features of the property under consideration, including its location, is of undoubted relevance, and if a tribunal is satisfied on the evidence before it that such features justify the application of a higher deferment rate then, of course, it ought to apply such higher rate. In determining whether a higher rate is appropriate it will need to bear in mind the considerations that led the Tribunal in *Sportelli* to adopt the approach that it did, and the primary question will always be whether there are particular features that are not fully reflected in the vacant possession value and thus should be reflected in a higher risk premium. Moreover – and this is a matter that may not, or may not sufficiently, emerge from the Tribunal's post-*Sportelli* decisions – what matters is the view that the market, properly informed on relevant factual matters, would take on such features (the prospective movement of house prices in the area, for instance, or the potential obsolescence of the property) in considering an investment in the reversion. On this the expert opinion of the valuer is likely to be important.'

28. At paragraph 30 of *Sinclair Gardens* also contains detail of the Lands Tribunal's findings in *Hildron Finance Limited v Greenhill Hampstead Limited* (2007) LRA/120/2006 where it identifies:

> 'Evidence had also been presented on behalf of the landlord in Hildron in an attempt to demonstrate that the long term growth rate of flats in north London was comparable to that in PCL. At paragraph 39 of its decision the Lands Tribunal commented on the fact that the evidence covered a period of only 13 years, saying this:
>
> > "We do not consider that such a short period – which coincided with a general upward movement in values – is adequate for the purpose for which it was intended. In order to provide a reliable indication of the long term movement in residential values so as to justify a departure from the *Sportelli* starting point, we consider that a period in the region of 50 years should be looked at, and that a series of statistics with different starting dates should be considered in order to ensure that an unrepresentative period is not relied on."'

29. Paragraph 32 of *Sinclair Gardens* makes reference to the Lands Tribunals comments in *Daejan Investments Limited v The Holt (Freehold) Limited* (2008) LRA/133/2006 and notes that at paragraph 78 of its decision the Lands Tribunal posed for itself the question whether "upon the evidence before this Tribunal, a departure from the 5% deferment rate determined in Sportelli is justified." The elements of the generic rate in dispute in that case were the real rate of growth and the risk premium. As regards the real rate of growth, the Lands Tribunal drew the conclusion from the evidence it had received concerning the change in the value of flats in The Holt compared with the value of older residential property in London generally from 1977 to 2006 that The Holt had out-performed the general market by 20%. Of that evidence it was said at paragraph 79:

> 'The analysis was conducted over a 29 year period which covered both strong and weak markets. Whilst it is less than a period in the region of 50 years that this Tribunal thought in Hildron would be required to provide a reliable indication of a long term movement in residential values it is considerably longer than the period used in the other analyses put before us and had the benefit of relating specifically to data about the appeal property itself. We find this analysis useful and we give weight to it.'

30. Paragraph 41 of *Contractreal* re-iterates the position outlined in paragraph 76 of *Sinclair Gardens* which states that :

> 'Nonetheless, the further evidence required to justify a departure from the *Sportelli* starting point must provide what the Lands Tribunal in The Holt described as "a reliable indication of a long term movement in residential values.'

29. Paragraph 76 of *Sinclair Gardens* goes on to record that:

> 'Evidence relating specifically to data about the appeal property itself is also likely to be necessary, such as was available in *Zuckerman* and again in this appeal in the form of Mr Holden's analysis of real growth since 1962 in the sales of properties in Grange Crescent and Grange Road. Particular care should be taken in drawing firm conclusions from statistical material where the basis on which it has been compiled and its application to the subject property are uncertain.'

30. At paragraph 45 of *Contractreal*, the Upper Tribunal notes:

> 'The deferment rate determined in *Zuckerman* cannot simply be adopted in other appeals in the West Midlands region as though it were a presumptive starting point. The correct starting point remains *Sportelli* and although *Zuckerman* can be taken into account it must be considered against specific evidence relating to the appeal property in question.'

At paragraph 48 it is stated that:

> **'**The evidence before the FTT.....can fairly be described as "very thin", not least because Ms Abel's comparison was with Greater London and not prime central London and was for a period of only 21 years.'

The Tribunal's findings with respect to the deferment rate

31. The Tribunal considers that whilst Mr Davies has put forward statistical information relating to the movement in prices over a 20 Year period for Flats and Maisonettes in Kensington & Chelsea, the West Midlands, the North West and Liverpool, he has not put forward any market evidence in relation to the deferment rate to be adopted. Mr Davies provides limited evidence of the growth rate for flats within the Cavendish Gardens development however the Tribunal notes that this is only in respect of a 17 year period and that it relies upon imputing the attribution of market value for a 100% share as opposed to a 75% share only by reference to the figures contained within the lease.

32. On balance, the Tribunal does not consider the totality of Mr Davies's evidence is sufficient to persuade it that a deferment rate of 5.5% should be adopted and the Tribunal adopts a rate of 5%.

The Tribunal's Valuation

39. The Tribunal's valuation is set out in Annex A. It determines a premium for the extended lease of £2,592 which it rounds to £2,590.

Appeals Provision

40. If any party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge C Hunter
15 January 2021

Annex A

Flat 3, Cavendish Gardens, Liverpool										
First Tier Tribunal - Northern Region										
Valuation - Case Ref : MAN/00BY/OLR/2020/0019										
Valuation Date	3rd October 2019									
1.	**Diminution in the value of the freeholders's interest**									
Term										
(i)	*Value of existing freehold*									
			Ground rent		£0					
		YP	80.19	years						
		@	7%		14.2228					
						£0				
Reversion										
Leasehold Vacant Possession Value										
exc Tenants Improvements with lease term										
				£130,000						
adjustment to Freehold				1%						
					£131,300					
	Present Value		80.19	years						
		@	5%		0.0200					
						£2,625				
							£2,625			
Less										
Value of retained interest					£131,300					
	Present Value		170.19	years						
		@	5%		0.0002					
							-£33			
	Premium							**£2,592**		
							Say	**£2,590**		

Annex B
Leasehold Reform, Housing and Urban Development Act 1993

Section 48 Applications where terms in dispute or failure to enter into new lease

(1) Where the landlord has given the tenant--

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, [the appropriate tribunal] may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where--

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by [the appropriate tribunal] under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is--

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by [the appropriate tribunal] under subsection (1)--

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.