



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

Case reference : **LON/00BK/OLR/2020/1268**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **18 Bentinck Close, 76-82 Prince Albert Road, London NW8 7RY**

Applicants : **Mohammad Hassan Malekmadani and Fatemeh Khodaparast**

Representative : **Mr Jason Mellor DipSurvPrac**

Respondent : **Daejan Investments (Grove Hall) Limited**

Representative : **Mr Robin Sharp BSc FRICS**

Type of application : **Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal members : **Judge Nicola Rushton QC
Mr Ian Holdsworth MSc FRICS
MCI Arb**

Date of determination and venue : **20 July 2021 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **22 July 2021**

DECISION

Summary of the tribunal's decision

The appropriate premium payable for the new lease is **£292,750**.

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle of 287 pages, the contents of which have been noted.

Background

1. 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 18 Bentinck Close, 76-82 Prince Albert Road, London NW8 7RY (the “**property**”).
2. By a notice of a claim dated 6 April 2020, served pursuant to section 42 of the Act, the applicants exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicants held the existing lease granted on 11 June 1979 for a term of 99 years from 29 September 1976 at an annual ground rent of £120/£240/£480 p.a., rising every 33 years. The applicants proposed to pay a premium of £160,000 for the new lease.
3. On 17 June 2020, the respondent intermediate landlord served a counter-notice admitting the validity of the claim and counter-proposed a premium of £495,750 for the grant of a new lease.
4. On 16 December 2020, the applicants applied to the tribunal for a determination of the premium payable to the respondent.
5. Notice of the claim was also given to the freehold owner, Bentinck Close (St Johns Wood) Limited, which has taken no active part in this claim. It is agreed that no part of the premium is payable to the freeholder.

The issues

Matters agreed

6. The following matters were agreed:
 - (a) The subject property is a self-contained flat on the first floor within a 7 storey mansion style block of flats, which is the rear block of two, constructed between 1936 and 1938, between them containing 35 flats;
 - (b) The gross internal floor area is 1,731 square feet;

- (c) The valuation date: 7 April 2020;
- (d) Unexpired term: 55.47 years;
- (e) Ground rent: £240 p.a. for a further 22.48 years, rising thereafter to £480 for the remaining 33 years of the term;
- (f) Relativity of the “no-Act world” short leasehold (unimproved) value to the freehold (unimproved) value: for the sake of settlement and with no admissions as to the proper basis of calculation, this was agreed between the experts at 75.03%;
- (g) Capitalisation of ground rent: 6% per annum; and
- (h) Deferment rate: 5%.

Matters not agreed

- 7. The following matters were not agreed:
 - (a) The unimproved freehold vacant possession value (“FHVP”): the applicants contending at the hearing for £1,800,000 and the respondent contending for £2,018,605;
 - (b) The unimproved long leasehold vacant possession value: the applicants contending at the hearing for 98% of FHVP and the respondent contending for 99% of FHVP; and
 - (c) The premium payable.

The hearing

- 8. The hearing in this matter took place on 20 July 2021, as a remote video hearing on the CVP platform. The applicants were represented by Mr Jason Mellor DipSurvPrac, who was also the expert witness for the applicants, and the respondent by Mr Robin Sharp BSc FRICS, who was also the expert witness for the respondent. There were no other attendees.
- 9. The applicants relied upon the expert report and valuation of Mr Mellor dated 30 June 2021 and the respondent upon the expert report and valuation of Mr Sharp dated 1 July 2021. Mr Mellor has dealt with many lease extensions and valuations in the St John’s Wood area which includes the property, over many years. Mr Sharp was involved in advising on the collective enfranchisement price for the Bentinck Close blocks in 2001 and also historically (pre-1997) acted for the freeholder, and more recently he has acted and advised on many lease extensions including in this locality. The tribunal considers that both experts had significant relevant expertise and is grateful for their assistance.
- 10. 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. The tribunal notes that both experts

attended the property together on Friday 16 July 2021 to make a further physical inspection and agree measurements.

11. Each expert relied upon their report as their evidence in chief together with supplementary evidence given orally, was cross-examined by the other expert, and also answered questions from the tribunal. Finally the tribunal heard submissions from each of them in turn, each then acting as advocate.
12. The two outstanding issues on which the tribunal heard evidence and submissions were therefore: (a) the unimproved freehold value of the property and (b) the percentage adjustment to freehold value to calculate the long leasehold value. The evidence received and the tribunal's determination on each of those issues is as follows.

Unimproved freehold value of the property

13. Bentinck Close is a period development of large flats, with porter service and lifts. Flats 1 – 15 are located in the front block and flats 16 – 29 in the rear block. There is a communal courtyard garden between the blocks. The subject property is therefore in the rear block. It has dual aspect onto the courtyard garden and onto Mackennal Street (at the rear).
14. The experts were agreed that sales of flats in the rear block were significantly better comparables than those in the front block, as the flats in the front block benefit from views over Regents Park (to varying degrees) and so tend to command higher prices, although they also face onto a busier road. The experts were also agreed that there was sufficient market data from sales within Bentinck Close itself and no useful purpose was served by looking at sales outside it.
15. There have been four recorded open market sales of flats within Bentinck Close in the past 5 years. Both experts referred to the same four comparables, although the weight and reliance which they placed on them differed. However, both were agreed that the recent sale of number 25 was easily the best comparable (Mr Sharp considering it ultimately the only proper comparable).

Flat number	Date of sale	Price	Size ft² (from sale particulars)	Lease length (years)	Floor
25 (rear)	Jan 2020	£2.075m	1,778	992 +share F/hold	4

8 (front)	Oct 2019	£2.425m	1,776 or 1772	992 +share F/hold	3
6 (front)	Jul 2017	£2.6m	2,156	148	2
28 (rear)	Feb 2016	£2.15m	1,710	995 +share F/hold	6

16. Mr Mellor made adjustments to each comparable for: lease length, floor level, time passed from sale to valuation date, aspect, and condition/layout. He also adjusted each comparable by reference to size in square feet. In reaching his final valuation figure, he applied a weighting to each of the four comparables, which was (finally) as follows: x4, x2, x1 and x2 (respectively). As to floor, Mr Mellor said he had made an adjustment of 1% for each floor from first upwards (treating the first floor as least attractive).
17. In making his adjustments for time, Mr Mellor used the Savills North West Flats index, on the basis that it covered this location and the subject property was typical of the type of flat used to compile that index. He included in his evidence an exchange of emails with Chris Buckle and Frances Clacy at Savills confirming that the average price of a flat in that index was £1.8m, and included several in NW8 7, although not this block. Further, it was Mr Mellor's experience that valuers in this part of North London frequently used that index, and he said that in his own experience it was the index which seemed most closely to reflect local market conditions.
18. On this basis and applying his comparable weighting, he calculated the unimproved freehold value of the subject property as £1,817,550, which he rounded to £1.8m.
19. Mr Mellor said that while he agreed that number 25 was easily the best comparable, he was always reluctant to rely on only one transaction because you never knew if there was something unusual about that one comparable which was not apparent.
20. In relation to number 25, Mr Mellor's evidence was that he had made an overall adjustment of -1% for the combination of floor level (-3%) and the better aspect of the subject (+2%). He had then made an overall adjustment of -10% for condition and layout combined, to arrive at an equivalent figure for the subject, unmodernised but in good repair. This was because he said number 25 was in good modernised condition, with modern, good quality kitchen and bathrooms, a better bathroom

layout (including en suite and dressing room to the master bedroom), wooden flooring throughout and the removal of a partition wall between living room and dining room to make a more attractive, open space.

21. Mr Sharp's evidence was that he had treated the sales of nos. 8, 6 and 28 as background information as to the tone of values in the block and as validation of the sale price of number 25. He had therefore calculated the unimproved freehold value of the subject property by reference to the sale price of number 25 alone, adjusted for aspect, layout and condition.
22. Mr Sharp made no adjustments by reference to floor area, as it was his view that when the floor areas were as similar as they were as between the subject property and number 25, purchasers were influenced by features other than precise square footage. He noted that number 25 had a worse aspect but did not consider any reduction for floor level was appropriate in this case. He deducted a round figure of £15,000 (equating to about 0.75% of the purchase price) for the better bathroom layout in number 25 but considered that overall the condition and layout of number 25 was only a little better than the subject, assuming an unmodernised condition of the latter. He therefore made a further reduction of only minus 1% for condition.
23. Both experts agreed that there was no need to make any adjustment for time to the sale price of number 25, which was in January 2020, albeit their reasons differed. (Mr Mellor relied on the Savills index; Mr Sharp's view was that the effect of Covid-19 on sales meant that January 2020 prices were more reliable than April 2020 data in any event).
24. Overall the experts therefore agreed that the appropriate reduction for number 25 for aspect and floor level combined, was -1%, although they differed a little as to how they got there.
25. Their main area of disagreement on adjustments to the number 25 sale price was as to the appropriate reduction for condition and layout to ensure a good match with the subject: Mr Mellor contended for a total reduction of -10% (or around £200,000) on the sale price of No 25 and Mr Sharp for a total reduction of -1.75% (or around £35,000).

The tribunal's conclusions on this issue

26. The tribunal considers that the best approach to the available comparable evidence is to base its valuation on the sale price for number 25, with appropriate adjustments, treating the other comparables as providing evidence of the overall tone of values in the blocks. This is especially so since there are real difficulties, as the

experts both accepted, with adjusting the value of number 28 for time (its sale was more than 4 years before the valuation date) as the Savills North West Flats index and the HM Land Registry index (the latter preferred by Mr Sharp) give radically different adjusted figures. In doing so, the tribunal does not consider that it is simply relying on one comparable, because there is a significant degree of consistency between the four comparables (in size and price, allowing for which block they are in), and the sale price for number 25 accords with the overall tone of adjusted sale prices of these properties.

27. The tribunal also makes no adjustments by reference to square footage. The square footages of the subject property and number 25, as recorded, were very similar. It also appeared from the evidence of the experts that the reason the agreed square footage of the subject was slightly lower than that of number 25 might well be because the sales particulars for number 25 slightly overstated it. The tribunal also agrees that such a small difference is unlikely to affect the view of a purchaser.
28. In terms of the adjustments to be made to the £2,075,000 sale price of number 25, the tribunal reminds itself that it is assessing an equivalent freehold value for the subject property in an unmodernised condition and without the benefit of any tenants' improvements, but in good repair.
29. Mr Mellor submitted that the sales particulars for number 6 gave an excellent example of a flat in Bentick Close which presented in an unmodernised condition but still in good repair. Mr Sharp was unwilling to agree with this on questioning from the tribunal, although the tribunal notes he has described number 6 as "unmodernised" in his table of comparables (para. 6.5 of his report).
30. The tribunal agrees that number 6 is a good example of an unmodernised flat and that there is a significant differential between the condition of that flat and of number 25, which it concludes was indeed in a good, modernised condition. In addition, the tribunal accepts that the layout of number 25 is better than that of the subject property (unimproved and unaltered). The arrangement of the bathrooms in the subject property is poor, and the tribunal agrees with Mr Mellor that the en suite master bathroom and dressing room, and open plan living room in number 25, are features of the layout likely to be more attractive to buyers. It also agrees that the kitchen and bathrooms in number 25 are modern and of good quality and clearly superior for example to the functional but old-fashioned bathrooms in number 6.
31. The tribunal's conclusion is that it should make an overall reduction of 7.5% to the sale price of number 25 to reflect the latter's superior

condition and layout (5% for condition and 2.5% for layout), as compared to the subject property (unmodernised but in good repair).

32. The tribunal's calculation of unimproved freehold value of the subject is therefore:

Flat no 25 sale price: £2,075,000

Less 1% for aspect/level and 7.5% for condition/layout:

Adjusted sale price of no 25: £1,898,625

The adjusted sale price is then rounded to **£1,900,000** The tribunal relies upon this determined value as the unimproved vacant possession value of the subject.

Long leasehold unimproved value

33. The extended lease in this case will be for 145.47 years. Mr Mellor submitted that the extended lease value should be calculated as 98% of the freehold figure, whereas Mr Sharp submitted that it should be calculated as 99%.

34. Both experts referred to the decision of the Upper Tribunal on this issue in *Cadogan v. Erkman* [2011] UKUT 90 (LC) in which the Upper Tribunal was asked to consider two alternative scales of relativities when comparing long leasehold values with freehold values, where the leases were over 100 years in length. The scale preferred by the Upper Tribunal was the Gerald Eve/John D Wood 1996 graph. On that basis, the tribunal concluded at [98]:

“In our opinion the following range of relativities is appropriate: leases with unexpired terms of 100 to 114 years – 98%; 115 to 129 years – 98.5% and above 130 years – 99%...”

This tribunal notes that the alternative scale put before the Upper Tribunal also provided for a relativity of 99% above 130 years in any event, so there was no difference between the scales on this point.

35. Mr Sharp submitted that on the basis of the *Cadogan* decision, a relativity of 99% should be applied as the extended lease was over 130 years. In addition he submitted that this was the relativity which was applied by most valuers in practice when dealing with extended leases of this length and that Mr Mellor had accepted in cross examination that it was a percentage widely adopted by surveyors in premium calculation.

36. Mr Mellor submitted that tribunals have been encouraged to rely on the Savills 2016 current market relativity table and graph for enfranchiseable leases, which gives a relativity figure of 94.6% for relativity at 100 years. He submitted that this was inconsistent with the direction in *Cadogan* that a relativity of 98% should be applied from 100 to 114 years, which in turn strongly suggested that the suggested figures for relativities between 100 and 150 years should be reconsidered. He said that the approach in *Cadogan* was not consistent with the approach that the Upper Tribunal had since mandated to relativity tables in *Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC); [2016] L. & T.R. 32, in particular that the approved graphs should be based on data and not only on opinion evidence.
37. Mr Mellor accepted however that while Savills had published a graph which extended to 150 years, they had not published the relativity figures above 100 years, and also had not responded to his request for their data set for relativities between 100 and 150 years. Accordingly, the best that he could do was submit that the slope of the graph at 145 years had not quite reached 100%, and that when he calculated how that figure probably changed between 100 years (at 94.6%) and 150 years (at 100%), the relativity at 145 years was 98.35%, which he said should be rounded to 98%.
38. While the tribunal has some sympathy for the argument which Mr Mellor presented, it considers that in the absence of data which more directly challenges the conclusions as to relativity in *Cadogan* and/or shows that relativity figures have changed since that decision was reached, it should follow the recommendation of 99% for lease lengths over 130 years which was given in *Cadogan*. The tribunal is also conscious that, from the evidence of Mr Mellor and Mr Sharp, it appears the current practice of surveyors and valuers considering long lease extensions is overwhelmingly to apply a relativity of 99%, certainly to lease lengths over 140 years.
39. Accordingly, the tribunal has applied a relativity of 99% in calculating the long leasehold (unimproved) value, which it therefore treats as £1,881,000.

The premium

40. Taking into account these determinations, the tribunal accordingly determines the appropriate premium to be **£292,750**. A copy of its valuation calculation is annexed to this decision.

Name: Judge Nicola Rushton QC **Date:** 22 July 2021

Appendix: Valuation setting out the tribunal's calculations

Property : 18 Bentinck Close, London NW8 7RY				
Reference: BG/LON/00BK/OLR/2020/1268				
FTT valuation				
Lease and Valuation Data				
Lease Term:		29/09/1976		
Lease Expiry date:		28/09/2075		
Unexpired term as at valuation date:		55.47	years	
Date of Valuation		07/04/2020		
Rent receivable by landlord:				
Payable from valuation date for 22.48 years	£	240		
Payable for second period 33 years	£	480		
Values				
Extended lease value on statutory terms	£	1,881,000		
Notional Freehold	£	1,900,000		
LHVP with current term unexpired	£	1,425,570	Relativity	75.03%
Capitalisation rate (%)		6.00		
Deferment rate (%)		5.00		
Value of Freeholders present interest				
Term 1				
Ground rent payable	£	240		
YP @ 22.48 years @ 6%		12.16915	£	2,921
Term 2				
Ground rent payable	£	480		
YP @ 33 years @ 6%		14.23023		
Deferred @ 22.48 years @ 6%		0.26985	£	1,843
			£	4,764
Reversion				
Freehold in vacant possession	£	1,900,000		
Deferred @ 55.47 years @ 5%		0.06678	£	126,877
			£	131,641
Current value of the freeholders interest				
Less				
Freehold value after leasehold extension	£	1,900,000		
PV of £1 in 145.47 years at 5%		0.00083	£	1,572
Freeholders interest value				£ 130,069
Marriage value				
Value of flat with long lease on statutory terms	£	1,881,000		
Landlords proposed interest	£	1,572	£	1,882,572
Less				
Value of Leaseholders existing interest	£	1,425,570		
Value of Freeholders current interest	£	131,641	£	1,557,211
Marriage value	Total		£	325,361
Division of Marriage Value equally between				
Freeholder			£	162,680
Leaseholder			£	162,680
			£	162,680
Price payable to Freeholder				
			Total	£ 292,750
			SAY	£ 292,750

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).