



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

Case reference : **LON/00AY/0LR/2022/0460**

Premises : **Flat 10 Okeover Manor, Clapham Common
North Side, London, SW4 0RH**

HMCTS code : **P: CVPREMOTE**

Applicant : **Patricia Ann Mercia Clark**

Representative : **Mr Channer BSc (Hons) MRICS**

Respondent : **Deritend Investments
(Birkdale)Limited**

Representative : **Mrs Muir of Counsel**

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

**Tribunal
members** : **Tribunal Judge I Mohabir
Mrs S Redmond BSC (Hons) MRICS**

Dates of hearing : **10 January 2023**

Date of decision : **22 March 2023**

DECISION

Background

1. This is an application made by the Applicant leaseholder 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 Flat 10 Okeover Manor, Clapham Common, Northside, London, SW4 0RH (the “property”).
2. The property is on the second floor of a four storey Art Deco building constructed in the 1920s/30s containing 20 flats in total. The property measures 645 sq ft (59.9 square metres) and contains a reception room, kitchen, bedroom, bathroom and separate w.c.
3. By a notice of claim dated 18 January 2022 (“the notice”), served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease in respect of the property. The notice proposed a premium of £39,500.
4. At the time, the Applicant held the existing lease dated 10 September 1981 for a term of 99 years from 25 December 1978 (“the lease”). The lease had an unexpired term of 54.933 years on the valuation date, being the date of the notice of claim.
5. On 17 March 2022, the Respondent, as the competent landlord, served a counter-notice admitting the validity of the claim and counter-proposed a premium of £115,975 for the grant of a new lease. The freeholder is Metropolitan Properties Company Limited.
6. The parties were unable to agree the premium payable and the Applicant made an application for a determination of those terms on 13 June 2022.
7. The Applicant’s valuer is Mr Andrew Channer BSc (Hons) MRICS whose report is dated 28 December 2022. The Respondent’s valuer is Mr Robin Sharp BSc FRICS whose report is dated 22 December 2022. Both valuers prepared a Statement of Agreed Facts and Disputed Issues dated 22 November 2022 found at page 80 of the bundle, which was amended on 14 December 2022 by Mr Channer to contend that the property had in fact been improved.

The issues

Matters agreed & Not Agreed

6. The parties have agreed the terms of the new lease. However, the premium remains in dispute. The specific valuation elements not agreed were the freehold vacant possession value, the deferment rate and the capitalisation rate. These are each dealt with in turn below.

The hearing

7. The remote video hearing in this matter took place on 10 January 2023. The Applicant was represented by Mr Channer both as advocate and expert witness. The Respondent by Mrs Muir of Counsel.

Freehold Vacant Possession Value

8. Mr Channer, for the Applicant used 18 comparables whereas Mr Sharp, for the Respondent used 5 comparables. Difficulties arose because of the lack of comparable sales in nearby location.
9. The approach taken by Mr Sharp was to look only at the block and an adjacent similar block. Mr Channer included other blocks in the area but made no adjustments for location.
10. Seven of Mr Channer's comparables were 'under offer prior to abortion' and there was no additional evidence other than sales particulars. One of these is included by Mr Sharp because it is in one of the preferred blocks although it post dates the valuation by almost a year.
11. The comparables in the other blocks were not considered by Mr Sharp.
12. Trinity Close is 'near the common' and there is only one completed sale, namely Flat 24. This was post the valuation date and is a smaller flat (596sqft) with aspect over the garages. This requires subjective adjustments put at +10% for aspect and -5% for walk-up from ground to second floor. It was put to Mr Channer that this block needed adjustment for location as it is in Clapham Old Town. He did not accept this. We find the very limited evidence relating to the uncompleted sales of little assistance and the completion again of limited assistance given the level of potential adjustment.
13. The Grove Lodge comparables all pre-date the valuation date by more than a year, all are smaller flats and the adjustment for 'aspect' is put at +10%. However, further adjustments are made for 'quantum/size' up to -8%. It was put to Mr Channer that this is an inferior 1950's block of smaller flats and required adjustment for location and aspect. Mr Channer considered his adjustment for 'aspect' covered this point. Because of the date of the transactions and extent of adjustments we do not find these comparables provide useful assistance.
14. Hightrees House is a large block in Balham. Mr Channer argues that it is not a different area, however, he makes no distinction for what he agreed is a different block ie. with gym, roof terraces, pool and concierge.
15. One of the comparables is 18 months pre valuation date, the others 5 months prior all needing large subjective adjustments which are said by Mr Channer to effectively balance out. We are concerned that there is

insufficient consideration of the differences to the block and location and find these of limited assistance.

16. Concentrating on those comparables within the block and its neighbour the first issue relates to transaction dates. Flats 5 and 8 Okeover Manor pre-date the valuation date by more than 3 years 8 months. Those in Woodlands are within 2 years. The 'offer' for 18 Woodlands is almost a year after the valuation date and there is no agreement on the FHVP for this comparable before adjustments although the only adjustment proposed before improvements is 1% for condition by Mr Sharp.
17. Mr Channer included two analyses for the offer stated to result from the marketing exercise. As to the remaining 'offers' within the two blocks, we consider that Flats 2 and 11 Okeover Manor and 24 Woodlands are of limited assistance as all require further adjustments, particularly 24 Woodlands which although a similar GIA is arranged to provide two bedrooms but no longer has a separate kitchen.
18. There is considerable need for caution as the period before the valuation date includes the Covid-19 lock down and more recently the uncertainty of rising interest rates.
19. Doing the best we can, we concentrate on the 5 'local' comparables considered by both Mr Channer and Mr Sharp. Firstly, in relation to adjustments:

Price indexing: both valuers used the same index.

Lease length and relativity: For Mr Sharp this applied to Flats 5 and 8 Okeover being the oldest transactions with a lease unexpired term of approximately 148 years. Mr Channer adjusted by reference to Savills Enfranchisable Graph before making any other adjustments and describes this as the FHVP value. After making all adjustments, including improvements, he reached a value of £510,500. After making his adjustments Mr Sharp applied a relativity of 99% to the approximate 987 year leases at Woodlands and concluded the extended lease value. He then made a 1% uplift to give the effective freehold value of £570,631 before improvements, which becomes £564,828 after improvements. In the calculation, Mr Sharp uses another FHVP figure of £575,000 which is not referenced elsewhere except in the schedule of comparables where this is his conclusion for the value of 18 Woodlands at the valuation date, which has not yet completed.

Condition: Mr Channer deducted 1% in each case. Mr Sharp made no deductions but made variable deductions for tenant's improvements of between £20,000 and £40,000. After careful consideration of the particulars we find that 1% is too light and we consider that an adjustment of -2% is appropriate.

Location: This is not relevant to this basket of comparables.

Position: Referred to as aspect. This affects only 16 Woodlands, which is described as having views over the communal gardens. Mr Channer adjusted by 5% and Mr Sharp by 15%. We find that 5% is a reasonable adjustment. There is still a reasonable view and the flat has the advantage of being in a block close to the Common.

Floor level: Mr Channer adjusted by 5% and Mr Sharp 1.5%. We consider this is a relevant issue and adjust by the average of -3.25%.

GIA: Mr Channer made a deduction of 15% for the smaller flat 16 Woodlands. He went on to use a psft basis, which meant that he applied an adjustment twice for this feature. Mr Sharp argued that there should be addition of 2.5% to cover this difference (477 sq ft compared to 645 sq ft for the subject property). We consider this merits an adjustment of +2%. Mr Sharp adjusted for size at 12 Woodlands, which has 636 sq ft in the particulars but from the lease plans appears to be below 18 sq ft where 660 sq ft was accepted by both. We, therefore, make no adjustment. Flat 8 Okeover Manor is larger at 700 sq ft and now has 2 bedrooms and Mr Sharp adjusted by -2%. Overall we adjust here for size and configuration by -3%.

Weighting: Mr Channer used a psft basis to derive his final FHVP. However, this was after applying his weighting scheme, firstly for length of time from the valuation date. Although described as more scientific we consider that it required very cautious consideration. There is a wide scope of comparables, many of which we have excluded because of time of completion or evidence of completion. The second part of his exercise relates to the overall effect of adjustments, which in our view does not properly reflect that in some cases there are large subjective adjustments both positive and negative which result in cancelling out this impact. We therefore reject this approach here.

20. The comparables within the local blocks are generally within quite close GIA and we consider that the size/quantum adjustments made are sufficient to reflect this factor. We do not adopt the psft approach. Doing the best we can with the valuation evidence provided and applying our assessment we adopt the average of the 4 adjusted sold comparables shown on the attached schedule. The comparables at Okeover Manor are of similar length of lease unexpired.
21. Firstly we adjust the Woodland comparables by a relativity of 99% and then average the resulting extended lease value. We adjust the average by uplift of 1%, which provides effective FHVP of £551,986 before deducting for improvements. Standing back and looking at the assessments of 18 Woodlands, being marketed through 2022 but not completed, these were put by Mr Channer at £535,719 and £555,560 and at £563,558 by Mr Sharp. We do not include it in the average, as there is too much uncertainty as to the effects of interest rate changes on the market on an uncompleted sale.

22. We are, therefore satisfied that £551,986 is the FHVP of the subject property before consideration of Tenants improvements.
23. As to the value of any improvements, the Tribunal found that, save for the installation of central heating in 1995, the other improvements claimed by the Applicant did not increase the value of the property. Taken together, they amounted to repair and/or replacement of what was already there or simply increased the amenity of the property.
24. The Tribunal concluded that the concluded that the increased value of the central heating system was £8,000. Accordingly, the resulting FHVP for the property excluding improvements is thus £543,986.

Deferment Rate

25. Mr Channer argued that the Tribunal that it should depart from the *Sportelli* deferment rate of 5% and apply a deferment rate of 5.5% on the grounds that:
 - (1) the risks arising from the reversion being a 999 year lease rather than freehold (0.25%) and
 - (2) the management related risk arising from the specific provisions of the headlease (0.25%).
26. However, the Tribunal was satisfied that Mr Channer's arguments were simply based on mere assertions and not supported by any evidence. They were purely theoretical, remote and a matter of considerable speculation. This is to be contrasted with the position in *Zuckermann* where the Tribunal in that case was able to depart from the 'Sportelli rate' because it was presented with the evidence to do so. Therefore, the Tribunal found that there was no reason to depart from a deferment rate of 5% in this instance.

Capitalisation Rate

27. The ground rent currently payable under the lease is £75 per year and rises to a maximum of £100 for the remainder of the term of the lease. On any view, this is a modest ground rent and would not be attractive to a purchaser of the freehold interest, especially given the cost of collecting it. The 6% rate contended for by Mr Sharp was based on the Tribunal's earlier decision in relation to Flat 6, Okeover Manor in 2012. The Tribunal did not regard this as good evidence as it is another Tribunal decision and, importantly, it was a figure agreed by the respective valuers in that case and was not subject to a Tribunal determination.
28. The Tribunal was, therefore, satisfied that the deferment rate of 7% contended for by Mr Channer was appropriate here.

29. Accordingly, the Tribunal determines the appropriate premium to be **£85,532**. A copy of its valuation calculation and schedule of comparables is annexed to this decision.

Name: Tribunal Judge I Mohabir
Date: 22 March 2023

LEASE EXTENSION

per Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended

10, Okeover Manor, Clapham Common North Side, LONDON SW4 0RH**Facts and matters agreed and determined:**

Second floor flat of approximately 59.9 sq m/645 sq.ft.

Valuation date:

18/01/2022

	GIA	Extended Lease	condition	Aspect	Floor level	GIA	EL adjusted	
12 Woodlands	636	520,787	-2%		-3.25%		493,446	
16 Woodlands	477	487,167	-2%	5%		2%	511,525	
							average	£502,486
5 Okeover	645	624,027	-2%		-3.25%		591,266	
8 Okeover	700	642,645	-2%		-3.25%	-3%	589,627	
							ave Okeover	£590,446
							overall ave Extended lease	£546,466
							Thus effective freehold at uplift of 1%	£551,986
							less £8,000 improvements	£543,986

LEASE EXTENSION Schedule 13 Leasehold Reform, Housing and Urban Development Act 1993
10, Okeover Manor, Clapham Common North Side, LONDON SW4 0RH

Facts and matters agreed and determined:

Second floor flat of approximately 59.9 sq m/645 sq.ft.

Valuation date: 18/01/2022

Capitalisation

Rate: 7%

Deferment rate: 5%

Effective FHVP value

unimproved: £543,986

Relativity to extended lease

value: 99%

Extended lease value: £538,546

Relativity to existing lease: 74.54%

Existing lease

value: £405,487

Lease expires: 24/12/2076

Unexpired

Term: 54.933 years

£75 and £100 from

Ground Rent per annum:

25/3/2043

Head lease

Unexpired

expires: 14/05/3011

Term: 989.315

Marriage Value: 50%

Improvements: £8,000

Calculation of premium:

Diminution in value of competent Landlord's interest:

Current Ground

Rent 75

YP @ 7% for 21.18 years 10.8773 816

Reviewed Ground Rent 100

YP @ 7% for 33.753 years 12.8299

Deferred 21.18 years at 7% 0.23858 3.0610 306

Loss of rental income: 1,122

Reversion to 934.382 year lease value 543,986

Deferred 54.933 years at 5% 0.0686 37,317

38,439

Proposed:

Reversion to 844.382 year lease value 543,986

Deferred 144.933 years @ 5% 0.00080 435

Diminution in Competent Landlord's interest: 38,004

Calculation of Marriage Value:

Proposed

interests:

Competent Landlord's interest 435

Leaseholder:	<u>538,546</u>	538,981
Less Existing interests:		
Competent Landlord's interest	38,439	
Leaseholder:	<u>405,487</u>	<u>443,926</u>
Total Marriage Value:		95,055
Attributable to Landlords @ 50%		<u>47,527</u>
Total Premium payable:		<u>85,532</u>

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).