



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

Case Reference	: LON/OOAH/OCE/2022/0135
Property	: 77 Outram Road, Croydon CRO6XJ
Applicant	: Outram Residential Limited
Respondent	: 77 Outram Road, Croydon Limited
Type of Application	: For determination of premium payable.
Tribunal Members	: Judge Shepherd Anthony Harris LLM FRICS FCI Arb
Date of Determination	: 20th September 2023

Determination

1. In this case Outram Residential Limited (“the Applicants”) applied for a determination of the terms of acquisition of the freehold of the semi-detached premises at 77 Outram Road, Croydon, CRO 6XJ (“the Premises”) from the Respondent, 77 Outram Road, Croydon Limited (“The Respondent”).

2. The Applicant is a nominee purchaser and is owned by the leaseholders of Flats 1 & 2 in the premises. The premises comprise flats on the ground, first, and second floors. The freehold of the building and external areas of the premises were registered to the Respondent on 15th May 2020. Sheetal Ladva was registered as the leaseholder of Flat 1 on 4th November 2013. Fox and Stevens Property Services Limited was registered as the leaseholder of Flat 2 on 24th November 2020. Alexander Miller was registered as the leaseholder of Flat 3 on 13th January 2010
3. The Applicant served an initial notice under Section 13 Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) on 11th March 2022. The Respondent served a positive counter-notice on 16th May 2022. In its covering letter, the Respondent challenged the validity of the notice. The Applicant served a second initial notice on 19th May 2022. The Respondent served a positive counter-notice on 26th July 2022. In its covering letter, the Respondent challenged the validity of the Second Section 13 notice.
4. The Applicant applied under Section 24(1) of the Act for a determination of the premium on 11th October 2022. Following a 3-month stay until 19th January 2023, the Tribunal first issued directions on 9th February 2023. Those directions were amended on 11th April 2023.
5. On 27th July 2023, following a Case Management Hearing, Judge Latham and Evelyn Flint issued further directions and listed the hearing on 19th September 2023. The Tribunal issued further directions having noted that the only issue in dispute was the premium. A draft TR1 with tracked changes, was provided by The Applicant’s solicitors on 11th May 2023 in compliance with the Tribunal’s directions. The Applicants also provided an expert report in proper form produced by Emma Biddle MRICS dated 31st August 2023. In the report Ms Biddle concluded that the premium payable for the enfranchisement was £15300. The flats were individually valued at £245k (Flat 1) , £220k (Flat 2) and £190k (Flat 3). The Respondent failed to allow access to Ms Biddle to

inspect Flat 3 but from the lease plan it was assumed that this was a one bedroom flat with kitchen, bathroom and reception room. The lease of Flat 3 was believed to have 69.07 years to run.

6. The Respondent has failed to provide an expert report in proper form. On the day of the hearing on 19th September 2023 they provided what was headed a “Valuation Summary” they had received from David Robson MRICS. He had inspected the premises with Ms Biddle on 15th September 2023. His summary is not an expert report because it is not a report to the Tribunal and does not contain the correct declarations. In any event he was also working on the basis that the lease of Flat 3 had 69 years to run. He had also not inspected flat 3. He arrived at a valuation of £17260.

7. On 18th September 2023 , the day before the hearing, the Respondents sent an email to the Tribunal suggesting the matter had been settled on the basis that they were agreeing the valuation figure of Ms Biddle. The parties were asked to provide a consent order. The Claimant replied to the effect that the matter had not settled because they had received new information which affected Ms Biddle’s valuation. The information concerned had been provided by the Respondent in an email on 18th September 2023 which stated that a new lease had been granted in relation to Flat 3 with effect from 10th June 2020. The Registration of the new lease was pending with the Land Registry. The Applicant had requested information about the lease having checked the Land Registry day list as early as 1st September 2023 but no disclosure was forthcoming.

8. As a result of the new lease Ms Biddle prepared an Addendum report dated 18th September 2023 which concluded that the value of the freehold was £5211.

The adjournment application

9. On the morning of the hearing Alex Miller of the Respondent sent an email to the Tribunal stating that neither he nor his wife would be attending the hearing. He said they both had flu like symptoms (non - covid). An adjournment was requested. No medical evidence was provided. At the hearing I indicated that the adjournment application was refused. The hearing had been listed since 27th June 2023 in consultation with the Respondent. The application was not in a proper form and should have been made before the day of the hearing – according to Mr Miller his flu like symptoms had been evident since Thursday 14th September 2023. In addition it is not clear why the Respondent had not instructed Mr Robson or anyone else to appear on their behalf even if they could not attend themselves.

The hearing

10. The Applicant was represented by Mr Modha of Counsel. He attended with Ms Biddle the surveyor and Winston Fox who owns a share of Flat 2.
11. Mr Modha said that no concluded agreement had been reached before the hearing as the Applicant had not accepted the offer to settle made by the Respondent. He said that the information about the lease extension had been suppressed by the Respondent. The result of which was potentially that the nominee purchaser would be required to pay for it had the existence of it not been disclosed at the last minute. He said that the lease extension meant that the reversionary interest in Flat 3 was minimal. He asked the Tribunal to accept the addendum report from Ms Biddle.
12. Mr Modha invited the Tribunal to determine the premium payable for the freehold of the Property and determine or approve the draft TR1. The relevant dates for the purpose of valuation are:
 - a. 11/03/22 in respect of the First Section 13 notice; and

b. 27/05/22 in respect of the Second Section 13 notice.

13. There have been no proceedings to determine the validity of the Section 13 notices. As a result, the Tribunal's determination was sought in respect of both notices. The differences between the valuations was considered to be trivial.

14. Mr Modha said that although the particulars of the new lease were not known. Ms Biddle's calculations reasonably took into account the presumed grant of a long lease at a peppercorn rent.

The Law

15. Chapter 1 of part 1 of the Act confers on the qualifying tenants of flats in premises to which the provisions apply, the right to have the freehold of those premises acquired on their behalf by a nominee at a price determined under that chapter.

16. The premium payable is calculated in accordance with Schedule 6 to the 1993 Act. The valuation date is the relevant date.¹

17. The premium is comprised of:²

- i. The value of the freeholder's interest in the Building (but in practice including the surrounding grounds);³
- ii. The freeholder's share of marriage value;⁴ and
- iii. Additional compensation.⁵

¹ Section 126(1) Commonhold and Leasehold Reform Act 2002

² Paragraph 2 of Schedule 6 to the 1993 Act

³ Paragraphs 3 & 10 of Schedule 6

⁴ Paragraph 4 of Schedule 6 to the 1993 Act

⁵ Paragraph 6 of Schedule 6 to the 1993 Act

- iv. The value of the freeholder's interest in the Building and surrounding grounds is the open market value, based on certain assumptions.⁶

Ms Biddle's calculation

Capitalisation rate

18. She relied on 7%. The capitalisation rate is the rate used to capitalise the freeholder's rental income. Ms Biddle notes that the rental income at present is £100 per annum each for Flats 2 & 3, although rent for Flat 3 may now be £0. The key points are the ground rent is low with standard increases (every 33 years). Ms Biddle had adopted the higher end of the range (which is usually 6-7%).

Deferment rate

19. Ms Biddle relied on a deferment rate of 5%. The deferment rate is the percentage discount applied to the value of a reversionary interest to account for the loss of the right to future possession. In other words, it is the value of deferred possession. She saw no reason to depart from the rate and guidance in *Cadogan v Sportelli* [2007] 1 EGLR 153.

Freehold vacant possession value

20. This is the value of the freehold for each flat by reference to comparables (which are then adjusted). The values for Flats 1 (£245k) & 2 (£220k) were very similar to the offers received and accepted by the leasehold owners of those flats in 2021 (£240k & £215k respectively). Those sales did not proceed because the Respondent as freeholder failed to provide information relating to the management of the Building.

Relativity

⁶ Paragraph 3(1) of Schedule 6 to the 1993 Act

21. In her initial report, Ms Biddle relied on a relativity percentage of 85.44%. Relativity is the value of a dwelling held on a lease (here, the short lease of Flat 3) at a given unexpired term divided by the value of the same dwelling in possession to the freeholder. It is expressed as a percentage. She relied on the case *Mundy v Trustees of Sloane Estate* [2016] UKUT 223 (LC).⁷ Where there is no real-world evidence, the correct approach to determining the present leasehold value is to use graphs of relativity. Later graphs from 2015-2016 have not been considered and approved and applied consistently at the highest levels of the courts, whereas GE96 has. Ms Biddle said it was appropriate to adopt GE96 and discount by 1% on the basis that the Property is outside PCL.

Marriage value

22. In her Addendum Report Ms Biddle said marriage value is not payable if the new lease is accepted by the tribunal. Marriage value is the increase in aggregate value of the freehold and every intermediate leasehold interest in the Building when acquired by a nominee purchased compared to their value prior to acquisition. However, marriage value is only payable where a lease (i) has 80 years of less unexpired and (ii) is held by a participating tenant.⁸ The participating tenants' leases have unexpired terms of ~159 years and ~88 years respectively.

Hope value

23. Ms Biddle relied on a Hope Value of 5%. Hope value is the expectation that a purchaser of the freehold could grant new long leases to non-participating tenants outside the 1993 Act at a premium. It is calculated as a percentage of marriage value. She saw no reason to depart from *Earl of Cadogan v Cadogan Estates* [2011] UKUT 154 (LC). As the Addendum Report is on the basis that the non-participating lease has already been extended there is no hope value in this valuation.

⁷ *Mundy v Trustees of the Sloane Estate* [2016] UKUT 223 (LC)

⁸ Paragraph 4(2A) of Schedule 6 to the 1993 Act

Valuation of additional premises

24. Ms Biddle gave this value as £50 because the additional premises were limited; they comprise the garden path over which the leaseholders have an express easement. Ms Biddle observed little potential development value.⁹
25. In response to a question from the tribunal Ms Biddle confirmed that her original valuation stood if the tribunal decided that the new lease should not be taken into account.

Determination

26. The Tribunal considers that a new lease of Flat 3 has been granted and that it is correct to take into account the new lease notwithstanding the fact it had not yet been registered. It is tolerably clear that the existence of the new lease would affect the valuation even if unregistered. Mr Modha was unable to identify any authority or reference in Hague that contradicted this proposition. It seems that even Mr Robson was not told of the new lease as he made no reference to it in his summary.
27. Ms Biddle's evidence was impressive. The Tribunal accepts the valuation contained in her addendum report for 11 March 2022 at £5211.00. The value on 25 May 2022 is £5251.00 so a marginal difference for date. Mr Harris' calculation is attached in the appendix.

Summary

28. The valuation of the freehold as at 11th March 2022 was £5211 and the valuation of the freehold as at 25th May 2022 was £5251. The Applicant's proposed transfer deed is accepted.

Judge Shepherd

20th September 2023

⁹ Paragraph 5 of Schedule 6 to the 1993 Act

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appendix

Valuation date 11 March 2022

Address	77 Outram Road Croydon
Case Reference	LON/00AH/OCE/2022/0135

Basic Information Flat 1					
Valuation Date	11 March 2022				
Existing lease Expiry Date	23 June 2181				
Years unexpired	159.28				
Existing Ground Rent	£0				
Freehold value	£245,000				
Extended lease value	£245,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Reversion value Flat 1					
Reversion to freehold value				£245,000	
Pv of £1	159.28	Years @	5.00%	<u>0.00042</u>	
Reversion value					<u>£ 103</u>
Premium payable Flat 1					£ 103

Address	Flat 2				
Case Reference					
Basic Information Flat 2					
Valuation Date	11 March 2022				
Existing lease Expiry Date	22 October 2110				
Years unexpired	88.61				
Existing Ground Rent	£100				
Basis of review	25				
Date of 1st review	23 October 2036				
Years to 1st review	14.62				
Length of period	25				
Rent at 1st review	£200				
Date of 2nd review	17 October 2061				
Years to 2nd review	39.60				
Length of period	25				
Rent at 2nd review	£300				
Date of 3rd review	11 October 2086				
Years to 3rd review	64.59				

Length of period	24.03				
Rent at 3rd review	£400				
Freehold value	£220,000				
Extended lease value	£220,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Term Value					
Term 1					
Ground rent				£ 100.00	
YP	14.62	Years @	7.00%	8.9731	
PV of £1	0	Years @	7.00%	<u>1.00</u>	
					£ 897
1st review					
Ground rent				£ 200.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	14.62	Years @	7.00%	<u>0.37</u>	
					£ 867
2nd review					
Ground rent				£ 300.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	39.60	Years @	7.00%	<u>0.0686</u>	
					£ 240
3rd review					
Ground rent				£400	
YP	24.03	Years @	7.00%	11.4745	
PV of £1	64.59	Years @	7.00%	<u>0.01</u>	
Term Value					£ 58
Reversion value Flat 2					
Reversion to freehold value				£220,000	
Pv of £1	88.61	Years @	5.00%	<u>0.01325</u>	
Reversion value					£ <u>2,916</u>

Total Premium payable flat

2

£ 4,978

Address	Flat 3
Case Reference	

Basic Information Flat 3

Valuation Date	11 March 2022
Existing lease Expiry Date	23 June 2181
Years unexpired	159.28
Existing Ground Rent	£0
Freehold value	£190,000
Extended lease value	£190,000
Capitalisation Rate	7.00%
Deferment Rate	5.00%

Reversion value Flat 3

Reversion to freehold value				£190,000	
Pv of £1	159.28	Years @	5.00%	<u>0.00042</u>	
Reversion value					<u>£ 80</u>

Premium payable flat 3

£ 80

Premium for specified premises

Premium payable Flat 1	£	103	
Premium payable Flat 2	£	4,978	
Premium payable Flat 3	<u>£</u>	<u>80</u>	
			£ 5,161

Premium for additional premises

Say		<u>£ 50.00</u>
Total payable		£ 5,211

Valuation date 25 May 2022

Address	77 Outram Road Croydon			
Case Reference	LON/00AH/OCE/2022/0135			
Basic Information Flat 1				
Valuation Date	25 May 2022			
Existing lease Expiry Date	23 June 2181			
Years unexpired	159.08			
Existing Ground Rent	£0			
Freehold value	£245,000			
Extended lease value	£245,000			
Capitalisation Rate	7.00%			
Deferment Rate	5.00%			
Reversion value Flat 1				
Reversion to freehold value				£245,000
Pv of £1	159.08	Years @	5.00%	<u>0.00043</u>
Reversion value				<u>£ 104</u>
Premium payable Flat 1				£ 104

Address	Flat 2			
Case Reference				
Basic Information Flat 2				
Valuation Date	25 May 2022			
Existing lease Expiry Date	22 October 2110			
Years unexpired	88.41			
Existing Ground Rent	£100			
Basis of review	25			
Date of 1st review	23 October 2036			
Years to 1st review	14.41			
Length of period	25			
Rent at 1st review	£200			
Date of 2nd review	17 October 2061			
Years to 2nd review	39.40			
Length of period	25			
Rent at 2nd review	£300			
Date of 3rd review	11 October 2086			
Years to 3rd review	64.38			
Length of period	24.03			
Rent at 3rd review	£400			

Freehold value	£220,000				
Extended lease value	£220,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Term Value					
Term 1					
Ground rent				£ 100.00	
YP	14.41	Years @	7.00%	8.8988	
PV of £1	0	Years @	7.00%	<u>1.00</u>	
					£ 890
1st review					
Ground rent				£ 200.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	14.41	Years @	7.00%	<u>0.38</u>	
					£ 879
2nd review					
Ground rent				£ 300.00	
YP	25.00	Years @	7.00%	11.6536	
PV of £1	39.40	Years @	7.00%	<u>0.0696</u>	
					£ 243
3rd review					
Ground rent				£400	
YP	24.03	Years @	7.00%	11.4745	
PV of £1	64.38	Years @	7.00%	<u>0.01</u>	
Term Value					£ 59
Reversion value Flat 2					
Reversion to freehold value				£220,000	
Pv of £1	88.41	Years @	5.00%	<u>0.01339</u>	
Reversion value					£ 2,945
Total Premium payable flat 2					
					£ 5,016

Address	Flat 3				
Case Reference					
Basic Information Flat 3					
Valuation Date	25 May 2022				
Existing lease Expiry Date	23 June 2181				
Years unexpired	159.08				
Existing Ground Rent	£0				
Freehold value	£190,000				
Extended lease value	£190,000				
Capitalisation Rate	7.00%				
Deferment Rate	5.00%				
Reversion value Flat 3					
Reversion to freehold value				£190,000	
Pv of £1	159.08	Years @	5.00%	<u>0.00043</u>	
Reversion value					<u>£ 81</u>
Premium payable flat 3					
					£ 81

Premium for specified premises		
Premium payable Flat 1	£ 104	
Premium payable Flat 2	£ 5,016	
Premium payable Flat 3	<u>£ 81</u>	
		£ 5,201
Premium for additional premises		
Say		<u>£ 50.00</u>
Total payable		£ 5,251