



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

Case reference : **LON/00BK/OLR/2023/0253**
REMOTE/VIDEO

Property : **Flat 9FB Oxford and Cambridge
Mansions Transept St London NW1 5EJ**

Applicant : **James Matthew Lewis**

Representative : **Roach Pittis
Mr P Harrison of Counsel**

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

Representative : **Wallace LLP
Mr J Fieldsend of Counsel**

Type of application : **S48 Leasehold Reform Housing &
Urban Development Act 1993**

Tribunal : **Judge F J Silverman MA LLM
Mr R Waterhouse FRICS**

Date of hearing : **7 and 8 November 2023**

Date of Decision : **21 November 2023**

DECISION

**The Tribunal determines that the amount payable by the Applicant
for an extended lease of the property is £78,950**

Reasons

1. The Applicant seeks a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. The hearing of this matter took place on 07 and 08 November 2023 by a remote video hearing to which the parties had previously consented. Mr P Harrison of Counsel represented the Applicant tenant and Mr O French MRICS gave expert evidence on his behalf. Mr J Fieldsend of Counsel represented the Respondent landlord and Mr R Sharp BSc FRICS gave expert evidence on their behalf. The parties themselves were not present at the hearing.
3. The parties had prepared an agreed bundle of documents for the hearing including reports from both experts. The Tribunal had received and read these documents prior to the hearing and makes reference to them below. The Tribunal also received and had read supplementary bundles from both experts.
4. The main issue which the Tribunal was asked to determine was the price to be paid by the Applicant to acquire an extended lease of the property known as Flat 9FB Oxford and Cambridge Mansions Transept Street London NW1 5EJ (the property). In so doing they were also asked to consider the effect of a supplementary document which either varied the lease or rectified it (according to the different interpretations given by the parties), relativity and the value of improvements (if any). Other matters, including the form of the lease and gross internal area, had been agreed by the parties' advisors prior to or during the hearing and these were accepted by the Tribunal.
5. The Tribunal considered that it would not be proportionate to inspect the subject property and were not asked by the parties to do so. The Tribunal has seen photographs of the property and understands that it is a fourth (top) floor flat accessed by a staircase in a Victorian purpose built block situated in a residential area containing similar blocks of flats. Sited above a public underground car park in a one way street the block is close to several busy roads and two main line stations. As constructed and as shown on the lease plan, the property comprises a living room, kitchen, bedroom and bathroom. After discussion the parties agreed that the floor area of the property was 652 sq ft. The property does not enjoy the benefit of any outside space but some permit parking is available in the street. The property is neither listed nor within a conservation area. As at the valuation date a number of alterations had been made to the interior layout of the flat which currently comprises two small bedrooms and bathrooms, a living room and a galley kitchen. It is not known who carried out the alterations; the Respondent had no record of any licence to alter being requested or granted but did not appear to object to the

current state of the property. The Applicant asserted that the alterations carried out would not have required the landlord's consent.

- 6 The Applicant is the current assignee of a lease dated 26 July 1979 made between Metropolitan Property Co Ltd (1) Freshwater Family Holdings Ltd (2) and Smartdene Properties Ltd (3) which created a term of 99 years commencing from 29 September 1978. The valuation date is 05 August 2022.
- 7 The Application was filed with the Tribunal on 31 March 2023 and Directions were issued on 06 July 2023.
- 8 On the Applicant's behalf it was asserted that the only amount payable by the Applicant was marriage value; there was no value in the head lease because of the terms contained in a deed dated 17 May 2012 made between the Respondent and the freeholder.
- 9 In the present circumstances the effect of this deed would be to modify a clause in the lease between the Respondent and the freeholder which requires any payments made to the Respondent to be paid to the freeholder or as it directed i.e. to remove from the Respondent the benefit of any sums received by it. The Respondent described this as a deed of rectification which had been entered into to correct a drafting error made in the original lease between these parties.
- 10 The Applicant rejected the description of the document as a deed of rectification and preferred to call it a variation of lease suggesting it had been entered into following the Upper Tribunal decision in *Grosvenor Estates Belgravia v Klaasmeyer* (2010) UK UT 69. For the Applicant it was pleaded that a deed of rectification is a document drawn up following a court order which grants equitable relief following proof of a common mistake (as legally defined). In the present case there was no evidence that there had been a common mistake (ie a misunderstanding by both parties) and no court decision ordering rectification. The original lease, the terms of which were altered by the later deed, had been quite clear in its wording and intentions, and had been made between two experienced and related property companies. There was no evidence whatsoever of a mistake or coercion in its creation. The 'variation' deed appeared to have been created because the parties wished to put in place an arrangement which they considered was more suitable or convenient to their particular business.
- 11 Having considered both the above arguments the Tribunal prefers the interpretation that the 2012 document is a deed of variation of the lease. However, it does not agree with the Applicant that the effect of the deed is to negate the value of the head lease. The head lease remains capable of being sold in part as a separate asset and if sold would, according to the deed of variation, negate the effect of that deed. It cannot therefore be correct to say that the headlease is deprived of all

value because of the existence of the deed of variation. In any event, the deed of variation does not affect the relationship or covenants made between the Applicant tenant and the Respondent as landlord. In the Tribunal's view the existence of this document does not affect the transaction under discussion.

- 12 A further difference between the parties lies in their decision on how to value the property itself. As stated above, the property was built as a one bedroom flat but now has the layout of a two bedroom apartment.
- 13 The question arises of whether the alterations to the internal layout of the property constitute an improvement which should be taken into account in its valuation. Mr Sharp's view was that all work done to the property constituted repair under the lease covenants and was not classed as an improvement. Mr French took the view that the alterations were tenant's improvements which should be ignored. The consensus therefore appears to be that the 'improvements' are not to be taken into account in valuing the flat. On that basis the Tribunal takes the view that the property should be valued as it is described in the lease and accompanying plan ie as a one bedroom flat. Alterations made to the subject property have not therefore been taken into account in its valuation.
- 14 The parties' valuers also differed in their approach to graphs/indices used to adjust comparables. For the Respondent, Mr Sharp used the Land Registry Westminster graph which has the advantage of being updated monthly and covers property exclusively in the London Borough of Westminster where the subject property is situated. Its disadvantage is that its results are compiled from all transactions in the borough and thus include transactions from a variety of properties from all sectors of the market including commercial and freehold transfers and short leases. Additionally as an index it continually is refined by the Land Registry as more transactions are registered. Mr French for the Applicant also rejected this graph because it shows large fluctuations from one month to another which could not necessarily be accounted for by equivalent changes in the market. Mr French preferred to use Savills index which is not always as up to date as the Land Registry statistics but which encompasses a large and consistent selection of property which is re-assessed quarterly. This too has its disadvantages in that its data may not be quite as current as that from the Land Registry and it only covers prime central London properties. The parties agreed that the subject property does not meet the 'prime' criteria. Whichever data set is used some adjustments will be necessary and it was common ground that fewer adjustments added value to a comparable. In the present circumstances the Tribunal preferred the Land Registry data as being more current and more applicable to the subject property than Savills and used that in its own calculations.

- 15 Both parties presented the Tribunal with a selection of comparables, some from the same development as the subject property, others in the near neighbourhood.
- 16 Of these the Tribunal considered that there were a sufficient number of properties in the Oxford & Cambridge block to offer a valid set of comparables. Properties outside this block were deemed less useful for the following reasons: Wallace Court (proximity to noisy road & commercial premises beneath block); Varsity Court (of modern construction with lift and balcony) ; Crawford Mansions (superior W1 postcode, balcony).
- 17 Both parties valuers had chosen to include **Flats 9FA and 10G** in their baskets of comparables. Flat 9FA is adjacent to the subject property, like the subject it has one bedroom and is considered to be in good condition. At 520sq ft it is considerably smaller than the subject property and has no natural light to the bathroom. Its most recent transaction is dated March 2023 i.e. it post-dates the valuation date of the subject property, and so not available to the hypothetical parties in setting the price for the notional bid for the long lease, it is however valuable as an indication of the trend of prices and an adjustment would need to be made for that factor as well as for size and light.
- 18 Flat 10G , is offered by the Applicant and Respondent also a 4th floor flat in good condition, at 743 sq ft is larger than the subject property, has 2 bedrooms and a transaction date of June 2021, more than a year prior to the subject property's valuation date of August 2022.
- 19 Despite the adjustments which need to be made to both of the above properties to reconcile them to the subject property, in the Tribunal's opinion they remain good comparables in the present situation.
- 20 With a transaction date of August 2022, **Flat 3F**, offered by both the Applicant and the Respondent, is close to the valuation date, and is another fourth floor flat , much larger (889 sq ft) having –four bedrooms, although two of them are barely bigger than cupboards, and so requires adjustment for size.
- 21 **Flat 5M** is a ground floor flat ,offered by the Respondent is discounted by the Tribunal because its transaction date of August 2019 is around 3 years before the valuation date of August 2022.
- 22 **Flat 9A** offered by the Applicant , is a lower ground floor three bedroom flat, comprising 1,230sq ft, sold in May 2021 is discounted on the grounds of both size and location.

- 23 **Flat 10E** offered by the Applicant , is a third floor 2 bedroom flat, comprising 901 sq ft, sold July 2020, unextended 57 year , whilst a relatively short lease , still a relevant comparable.
- 24 The parties also referred to a recent decision on Flat 8F where the Tribunal endorsed the use of the Land Registry Index in preference to Savills. Following this decision the Tribunal, and the reasoning above , this Tribunal adopts the Land Registry Index in this case.
- 25 Mr French made several adjustments to the comparables each of which was quantified and made as part of a sequence of adjustments. Mr Sharp's adjustments were made on a holistic basis based on his professional judgement, without discerning the extent of any one component. The Tribunal prefers Mr French's adjustment approach.
- 26 The tribunal makes two adjustments to Mr French's adjustment and analysis before adopting his comparables. With Flat 3F the adjustment for quality is reduced from 25% to 15% altering the end figure to 803 psf. Similarly with 10G the same criteria quality is adjusted from 17.5% to 15% this altering the figure to 854 psft.
- 27 The impact of these changes brings the average of the comparables in Mr French's report at page 125 of the 290 bundle to 840.00 psft.
- 28 In relation to the adjustment from long leasehold value to FHVP, the normal market practice is to adjust the long leasehold to the FHVP by adding 1%. In this case there is no freehold to consider because the competent landlord has a 999-year lease. Mr Sharp at page 161 adopts a 1% differential here. Mr French adopts 0.5% within his valuation on the basis that the 999-year lease is short of a freehold in terms of unassailability. The Tribunal acknowledges the fact the 999-year lease falls short of a freehold and so adopts the 0.5%.
- 29 In relation to relativity, for the Applicant Mr French considers there is suitable evidence under Mundy to make adjustments and provides three options based on an actual transaction of a similar property within the block and illustrated with two relativity graphs giving an average of 77.1%.
- 30 For the Respondent Mr Sharp's position is that Mundy requires relevant sales data with which to adjust. He says that in the absence of such data he adopts 2016 Savills and Gerald Eve graphs resulting in 74.7%.

31 The Tribunal prefers Mr French's position which is grounded in an actual transaction of a similar property within the block but triangulated with two relativity graphs.

32 Taking into account all the aspects raised in the experts' reports and subsequent discussion we determine the extended lease value of the subject property at £542,203.

33 Applying these criteria to the valuation gives a Premium payable of £78,950.

34 The Tribunal's calculation is attached as Appendix A .

35 **The Law**

Section 48 Leasehold Reform Housing and Urban Development Act 1993 provides for :

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.

Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.

Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Judge F J Silverman
As Chairman

21 November 2023

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix A (see next page)

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