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

Case Reference : **LON/00AW/OLR/2013/0096**

Property : **157 Oakwood Court, London W14
8JT**

Applicant : **Ms Noura Mousallam**

Representative : **Mr Christopher Heather of counsel**

Respondent : **Brickfield Properties Limited (in
substitution for Daejan properties
Limited)**

Representative : **Mr E Shapiro of Chesterton
Humberts**

Type of Application : **A hearing to determine the
premium payable for a new lease of
the property under section 48(1)
Leasehold Reform, Housing and
Urban Development Act 1993 (the
“Act”)**

Tribunal Members : **Judge J Pittaway
Mr D Jagger**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 November 2013**

DECISION

Decision of the Tribunal

1. The Premium

The Tribunal **determines** in accordance with section 48 and Schedule 13 of the Act that the premium for the extended lease is **£364,840**.

A copy of the Tribunal's valuation is attached as Appendix 1.

2. Costs

There was no application before the Tribunal in respect of section 60(1) costs.

Introduction

1. This is an application to the Tribunal by the Applicant for a lease extension of the lease of the Property. The Notice of Claim to Exercise this Right is dated 14 November 2012 and was admitted by Daejan Properties Limited, the then Respondent by way of Counter Notice dated 22 January 2013. The Applicant applied to the Tribunal on for the determination of the premium payable for the 90 year lease extension.
2. On 21 February 2013 Daejan Properties Limited granted an overriding lease of the Property for a term of 999 years from 21 February 2013 to Brickfield Properties Limited.
3. The Tribunal issued Directions on 1 August 2013.
4. The Application was heard on 5 November 2013. Mr Heather represented the tenant Applicant and Mr Shapiro represented the landlord Respondents. At the Hearing Mr Shapiro confirmed that he represented both companies as they were part of the same group of companies. The parties agreed that Brickfield Properties Limited were now the competent landlord and Respondent for the purposes of the Application.
5. The Tribunal inspected the Property on 6 November 2013.

Matters to be determined

By the date of the Hearing the issue that had not been resolved by the parties was the premium payable for the 90 year lease extension, by reason of the value at the valuation date of 14 November 2012 of

1. the proposed extended term of 152.11 years at a peppercorn rent; and
2. the existing lease.

Evidence and Submissions

1. The bundles before the Tribunal contained a Statement of Agreed Facts dated 28 October 2013, an Opening Skeleton Argument on behalf of the Applicant, a Statement of Expert Opinion and valuation from Mr Mellor acting for the Applicant and a Report and valuation from Mr Shapiro acting for the Respondent. The Tribunal also heard evidence from Mr Mellor and Mr Shapiro on the issues to be determined.
2. The difference between Mr Mellor's and Mr Shapiro's proposed premiums was due to their different treatment of the comparables and their adopting different relativity rates.

Comparables

3. The parties were in agreement that comparable evidence was best obtained from sales of other flats in Oakwood Court with leases of a similar length to that of the Property and agreed that flats 75, 110, 28, 20 and 77 all of which had been sold between February 2011 and October 2012 provided appropriate comparables.

Mr Shapiro also offered Flat 59 as a comparable, which was rejected by Mr Mellor on the basis that it differed from the property in architectural appearance, size and layout. Mr Mellor also submitted that a flat sold after the valuation date was not an appropriate comparable.

4. In using the comparables to ascertain the unimproved freehold value of the Property, and therefore the value of the proposed lease, Mr Mellor took the sale price per square foot for each comparable adjusted by
 - 4.1 a percentage to reflect how long before the valuation date each comparable had been sold (using the Savills index which both valuers agreed was appropriate);
 - 4.2 a percentage to reflect the difference between the unexpired term of the lease in question and the freehold value, the percentage being based on the Lands Tribunal decision in *Erkman v Cadogan*;
 - 4.3 a percentage to reflect whether the front and side aspects of the comparables were better or the same as the Property by reason of their situation in Oakwood Court;
 - 4.4 a percentage to reflect the floor upon which each comparable is located as against the third floor location of the Property; and

- 4.5 an amount per square foot, ranging between £175 per square foot and £450 per square foot to reflect the value of improvements.
5. Mr Shapiro adopted a more general approach, submitting that Mr Mellor's academic precision was not reflected in the market place.
- 5.1 Insofar as lease length is concerned Mr Shapiro did not accept that the Lands Tribunal approach in *Erkman* was correct as it did not reflect market practice (which does not distinguish between leases with unexpired terms of between 100 and 115 years, 115 and 130 years and over 130 years).
- 5.2 In using the Savills index to adjust values of comparables Mr Shapiro submitted that there was no reason for the Tribunal not to take into account post-dated as well as pre-dated evidence, making it possible to treat 59 Oakwood Court as a comparable.
- 5.2 Mr Shapiro submitted that Mr Mellor's adjustments for aspect and floor based on a percentage per square foot in each case produced a disproportionate reduction when applied to flats of the square footage of the Property and the comparable flats. He disagreed with Mr Mellor as to the effect on value of the front aspects enjoyed by the comparables (whether they fronted on the communal garden or had an oblique view of it), the extent to which having an uninterrupted side aspect impacted on value and the impact on value of the floor on which any flat was situated, as against the third floor location of the Property.
- 5.3 In relation to improvements Mr Shapiro submitted that a discount of up to £450 per square foot was disproportionate when applied to flats of the square footage of the flats in Oakwood Court. He referred to rebuilding costs being only in the region of £300 per square foot (without providing supporting evidence). He submitted that a distinction had to be made between the cost of works undertaken by an owner (which might include expenditure to reflect their taste which is not an improvement) and actual improvements.
- 5.4 Mr Shapiro also submitted that Mr Mellor was incorrect in adding up his various percentage deductions before applying them. He argued that such deductions should be applied sequentially.

Relativity

6. Both Mr Mellor and Mr Shapiro accepted that regard can be had to graphs of relativity in determining existing lease value, but disagreed as to the weight to be placed on such graphs, and which should be taken into account.

6. Mr Mellor relied heavily on two sales of Flat 9 Oakwood Court within a short period of time to argue for a relativity of 93.6%. He accepted that this was a higher relativity than found elsewhere in central London. In support of this figure referred to the decision in *Pirzoi-Biroli v Scottish Widows* where a higher than usual relativity of 70% was accepted for a flat in the block where the unexpired term of the lease was 37.79 years.

Mr Mellor then considered the relativity graphs of five firms, where the relevant relativity ranged from 79.5% to 86.8%, preferring those that relate to flats.

Mr Mellor then proposed an appropriate relativity of 86%.

7. Mr Shapiro adopted published graphs for properties in prime central London as his preferred basis of establishing relativity. He did not accept Mr Mellor's contention that there is a micro market in Oakwood Court which meant that relativity was higher in this block than for other prime central London property. He submitted (without any supporting evidence) that historically the most authoritative graphs were those of Gerald Eve and Knight Frank, and on the basis of an average of the relativities from these two graphs he submitted that the appropriate relativity was 82.62%.

Inspection

1. The Tribunal inspected the Property on 6 November.
2. Oakwood Court comprises approximately 160 flats in 11 mansion blocks which run along both sides of the road. The flats were built in about 1900 and vary between six and eight storeys in height with red brick elevations under mansard style tiled roofs. Oakwood Court is a side turning off the A3220 Addison Road and Abbotsbury Road near Holland Park.
3. In the eight storey block in which the Property is located there are two flats per landing and the Property runs front to back with two side aspects overlooking light wells. The Property is located on the third floor approached via a communal hallway with stairs and lift to the upper floors.
4. The accommodation accorded with the plan of the flat provided by Mr Shapiro at Tab 4 of his report. It contains three reception rooms, four bedrooms, kitchen and three bathrooms.
5. The Property has an open front and back aspect; but does not overlook the communal gardens. The rooms (bedrooms and bathrooms) that only overlook the side light wells are dark

The comparable properties

6. The Tribunal inspected the five agreed comparable properties and 59 Oakwood Court from the outside only.
- 6.1 Of the comparables Flat 110, also a third floor flat, had the best location, fronting on the communal gardens.
- 6.2 Flats 20 and 28 did not overlook the communal gardens, but had a slightly better aspect than the Property.
- 6.3 Flats 75 and 77 had similar aspects to the Property but, by reason of the floors on which they are situated, their side windows did not overlook light wells.
- 6.4 Flat 59 is in a more recently rebuilt block.

Reasons for the Tribunal's determination and directions

1. The Tribunal did not consider that either of the respective methods of adjusting the values of the comparable properties adopted by the respective valuers was the conclusive way of making such adjustments.
2. The Tribunal reached its determination acting as an expert Tribunal. They took aspects of each expert's submissions into account and made a general adjustment to the long leasehold value of the Property to reflect those of the matters referred to by the experts it considered impacted on the leasehold value. They also made such adjustments as they considered appropriate to reflect the impact on value of the floor on which the Property is situated, its front and side aspects when compared to the comparables and improvements carried out at the expense of the tenant.
 - 2.1 The Tribunal accepted Mr Shapiro's submission that the Savills' index could be applied to post-dated as well as pre-dated evidence. They did not consider that 59 Oakwood Court should be discounted entirely as a comparable, but also took into account that it is significantly smaller than the Property and the other comparables, and located in a different type of block.
 - 2.2 The Tribunal were not persuaded by Mr Shapiro's submission that the discount for improvement should be primarily based on the cost of removing internal walls but did accept Mr Shapiro's submission that the size of the Property (and of the comparables) meant that an allowance for improvements based solely on a square footage sum produced an anomalous result. They did not consider that there was enough evidence as to what determined the uplift in value in Flat 9 Oakwood Court or the other properties referred to by Mr Mellor at his TAB 10 for them to be able to rely upon these as evidence. The

allowance the Tribunal made in respect of improvements was therefore based on a lump sum rather than a percentage.

- 2.3 The Tribunal accepted that a small percentage increase (between 1% and 1.5%) is required to reflect the difference between the unexpired term of the lease in question and the freehold value.
- 2.4 The Tribunal do not accept Mr Mellor's submission that a "micro climate" exists in respect of Oakwood Court, so that relativity in respect of properties in Oakwood Court should be treated differently from relativities of other properties in prime central London. They accept the submission made by Mr Heather that that the decision in *Arrowdell Limited v Coniston Court (North) Hove Limited* does not say that the evidence available from presently available relativity graphs should be treated as "compelling" but they also note that the decision did endorse that regard can be had to graphs of relativity. The Tribunal also notes that that decision confirmed that the percentage figure adopted in any particular LVT case is of no evidential value, because each Tribunal is dependent upon the evidence before it.
- 2.5 The Tribunal have, in their present determination, preferred to adopt the evidence available from all the graphs of relativity available in respect of prime central London property (rather than adopting an average of only two of the graphs as Mr Shapiro submitted was appropriate).

The Law

The relevant statutory provisions are set out in Appendix 2 to this decision.

Name:

Date:

APPENDIX 1

**Assessment of premium for a new lease
In accordance with the Leasehold Reform, Housing and Urban
Development Act 1993
PJ/LON/00AW/OLR/2013/0936**

Components

Valuation date:	14 th November 2012		
Deferment rate:	5%		
Freehold value:		£3,352,246	
Long lease value		£3,318,723	
Existing leasehold value		£2,756,144	
Relativity	83.04 %		
Unexpired Term	62.11 years		
Agreed income as a capital value:			£3,600
Reversion to:		£3,352,246	
Deferred 62.11 years @5.00%	0.04830		<u>£161,913</u>
			£165,513
Less value of Freeholders proposed interest			
Reversion to VP value:		£3,352,246	
Deferred @ 5% for 151.11 years	0.00060		<u>2,011</u>
			£163,502

Marriage Value

Value of Proposed Interests

Extended leasehold interest		£3,318,723	
Value of Freehold interest	<u>£2,011</u>	£3,320,734	

Value of Existing Interests

Landlord's existing value	£161,913		
Existing leasehold value	<u>£2,756,144</u>	<u>£2,918,057</u>	
		£402,677	

Freeholders share @ 50% **£201,338**

LEASE EXTENSION PREMIUM **£364,840**

APPENDIX 2

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

s 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, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

- (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.

s 56 Obligation to grant new lease.

- (1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—

- (a) in substitution for the existing lease, and
- (b) on payment of the premium payable under Schedule 13 in respect of the grant,

a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

S 60 Costs incurred in connection with new lease to be paid by tenant.

- (1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken of the tenant’s right to a new lease;
- (b) any valuation of the tenant’s flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
- (c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

- (2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

SCHEDULE 13 PART II PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE

Premium payable by tenant

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

Diminution in value of landlord’s interest

- 3(1) The diminution in value of the landlord's interest is the difference between—
- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
 - (b) the value of his interest in the flat once the new lease is granted.
- 3(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant 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 following assumptions—
- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
 - (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
 - (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
 - (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.
- 3(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).
- 3(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).
- 3(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.
- (6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—
- (a) any transaction which—
 - (i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and
 - (ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or
 - (b) any alteration on or after that date of the terms on which any such superior interest is held.

Landlord's share of marriage value

4(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.

4(2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—

- (a) the aggregate of—
 - (i) the value of the interest of the tenant under his existing lease,
 - (ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and
 - (iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and
- (b) the aggregate of—
 - (i) the value of the interest to be held by the tenant under the new lease,
 - (ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and
 - (iii) the values of all intermediate leasehold interests (if any) once that lease is granted.

4(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.

4(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date .

4A(1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

4A(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

4A(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4A(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4A(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

4B(1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at the relevant date that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at the relevant date ;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at the relevant date then has effect.

4B(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

4B(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4B(4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—

- (a) any transaction which—
 - (i) is entered into after 19th January 1996, and
 - (ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or
- (b) any alteration after that date of the terms on which any such inferior interest is held.

4B(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

- (a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and
- (b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.5(2) This paragraph applies to—

- (a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and
- (b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

5(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.

5(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).