


2846

		<b>FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)</b>
<b>Case Reference</b>	:	<b>BG/LON/OOBF/OLR/13/1693</b>
<b>Property</b>	:	<b>33, The Maisonettes, Alberta Avenue, Cheam, Surrey, SM1 2LQ</b>
<b>Applicant</b>	:	<b>Mr D. Baxter (leaseholder)</b>
<b>Representatives</b>	:	<b>Mr M. Martin BSc FRICS FNAEA (chartered surveyor) who appeared as an advocate and an expert witness (instructed by Grant Saw LLP (solicitors))</b>
<b>Respondent</b>	:	<b>The Halliard Property Co. Limited (landlords)</b>
<b>Representatives</b>	:	<b>Mr G. Cowen of counsel (instructed by Wallace LLP (solicitors)) with valuation evidence from Mr. R. Sharpe BSc FRICS</b>
<b>Type of Application</b>	:	<b>Applications for the determination of the premium payable in a claim made under section 48 Leasehold Reform, Housing and Urban Development Act 1993 (the 'Act') for the grant of a new lease.</b>
<b>Tribunal Members</b>	:	<b>Professor James Driscoll, solicitor (Tribunal Judge) and Mr Ian Holdsworth BSc MSc FRICS (Tribunal Member)</b>
<b>Date and venue of Hearing</b>	:	<b>7 May 2014</b>

<b>Date of Decision</b>	:	<b>9 June 2014</b>
<b>DECISION</b>		

## **Summary of the decision**

1. The premium payable for the grant of a new lease is the sum of £20,680 (Twenty Thousand six hundred and eighty pounds).

## **Introduction**

2. This is an application under section 48 of the Act for the determination of the premium payable for its grant. It is made by the leaseholder of the subject premises and the respondent is the competent landlord (within the meaning of section 40(4)(b) of the Act). We will refer to the parties as the 'leaseholder' and the 'landlord' respectively.
3. In a notice dated 22 April 2013 the leaseholder given under section 42 of the Act claimed the grant of a new lease. He proposed to pay a premium in the sum of £11,875.00 and he also proposed the terms of the new lease in a schedule to the section 42 notice. As his existing immediate landlord (the 'intermediate landlord') does not hold a term sufficient to grant a new lease, the claim was made of the freeholder as the competent landlord. The leaseholder also proposed that no sums should be payable in relation to his immediate landlord.
4. In a counter-notice given under section 45 of the Act the landlord admitted the claim, disputed most of the proposals in the leaseholder's notice and it made counter-proposals. The landlord agreed that no sums should be paid to the intermediate landlord. It proposed that a premium of £38,246 be paid and that the terms of the new lease should be those in the draft lease that was appended to the counter-notice.
5. As the parties could not agree on the premium, or the terms of the new lease, application was made to this tribunal on 17 December 2013 under section 48 of the Act. Directions were given by the tribunal on 10 January 2014. The hearing took place on 7 May 2014 when, as indicated above, the leaseholder was represented by Mr Martin a chartered surveyor who appeared as an advocate and expert witness, and Mr Cowen of counsel with Mr Sharpe also a chartered surveyor who appeared as an expert witness.
6. We did not consider it necessary to carry out an inspection of the premises and those appearing on behalf of the parties agreed that such an inspection was unnecessary in this case. We were told that there are no longer any disputes over the terms of the new lease.

## **The hearing: the leaseholder's evidence and submissions**

1. Mr Martin opened the leaseholder's case by outlining the matters in dispute. He spoke to his very detailed report dated 3 May 2014. The parties had agreed: the valuation date is 24 April 2013; the unexpired term of the lease at the valuation date was 60.43 years and the flat is a two-bedroom flat with a garden. After giving his evidence he was cross-examined by Mr Cowen and he answered questions from the tribunal.
2. The parties could not agree on the following issues: the capitalisation rate for the ground rent that is lost on the grant of the new lease under the Act; the value of the property on a long lease/freehold equivalent; the deferment rate and the value of the flat on its unexpired lease length.
3. It is common ground that the valuation is to be made in accordance with the provisions in schedule 13 to the Act.
4. He described the property or maisonette as part of a series of two-storey blocks each housing four flats facing onto communal front gardens. The subject flat is located on the ground floor of one of the blocks. His report included a number of photographs of the properties with detailed plans attached.
5. Turning to the disputed items, first, on the capitalisation rate, Mr Martin argued that the rate should be 7%. This is based on his analysis of auction results for flat freehold reversions, which show rates, he contends, of between 3.5 and 11% and also on his experience in advising investors and that his own experience as an investor.
6. On the next disputed item, the vacant possession value of the new lease of the flat, Mr Martin analysed the sale of five flats in the Maisonettes in the last two years. His analysis included a consideration of the sales details and both external and internal inspections of the flats concerned. In a table at paragraph 18.6.1 of his report he summarises the prices adjusted for the date of each sale by comparison to the valuation date and this leads him to conclusions as to the price per square foot adjusting also in some of the cases where the leaseholder had carried out improvements, the value of which must be disregarded in assessing the price (schedule 13, paragraph 3(2)(c)) of the Act. This leads him to the conclusion that at the valuation date the long lease value of the subject flat was £165,000 based on a rate of £303 per square foot.
7. He told us that he had agreed with Mr Sharpe that an additional 1% should be added to reflect the additional value of the freehold property. This produces an adjusted figure of £166,650 at 24 April 2014, that is to say the valuation date.
8. He then dealt with the vacant possession value of the existing leasehold interest in the flat. For this part of the exercise Mr Martin examined two recent sales of flats in the Maisonettes. These were the sales of number 6 (where he carried out an inspection) and number 8 (where he relied on the sales particulars). Making allowances for leaseholder improvements, the effect of leaseholder's statutory rights under the Act and other factors he

concludes that the value of the subject flat subject to the existing lease is the sum of £150,000 based on an average per square foot value of the two comparable sales of £275.

9. Having considered this transactional evidence Mr Martin then considered the effects of 'relativity'. He referred to the well-known Research Report published by the RICS on leasehold reform graphs of relativity. Noting some of the methodological difficulties in interpreting the graphs, such as the difficulties with open market evidence given the distorting effects of the Act, he then focused on the graphs of sales outside central London and the Beckett and Kaye graphs which are based on 'mortgage-dependant' transactions. Applying those graphs to the unexpired term of the current lease (61.43 years) produces a relativity of 91.01% (ignoring the second edition of the Beckett and Kaye graph as Mr Martin doubts its accuracy as it is so out of line with the other conclusions). He concludes that the correct relativity to be applied in this case is 90.01%.
10. Mr Martin then addresses the issue of the deferment rate. He starts with the decision of the court of appeal in *Cadogan Estate v Sportelli* [2008] 1 WLR 2142. On his analysis of the case the court upheld the decision of the Upper Tribunal which decided that a 'generic rate' of 5% should be used not only in prime central London ('PCL'), where the properties in the litigation were situated, but also outside the PCL. In an important caveat the court noted that for properties outside the PCL there might be evidence of obsolescence and condition which are not fully reflected in the vacant possession value and the risk premium.
11. Having regard to the fairly modest prices of modernised flats in the local area coupled with building costs being akin to those in London he concludes that in this case an additional 0.25% should be added in this case to the basic 5% deferment rate.
12. Mr Martin then addresses the growth rate issue. He has carried out detailed research into growth rates using Land Registry indices for Kensington & Chelsea and indices provided by Savills and Knight Frank by comparing those statistics to growth rates in the local area. He appends two graphs. Taking this evidence together it shows, he contends, that there has been a marked divergence in growth rates between the local area and those in the PCL. In his view this evidence points to the conclusion that the stark differences between the growth rates is such that an investor would seek a minimum of an additional 2% to the generic rate. This added to his conclusion that an additional 0.25% justified in this case a deferment rate of 7.25%. However, he submits that in practice parties would settle on a lower rate of 7% which is the rate he adopts in this case.
13. Applying these conclusions he arrives at a premium of £9,445. This is less than the figure of £11,875 proposed in the section 42 notice. Mr Martin explains this by arguing that he made a mistake in the analysis of two of the comparables and also because the additions to the Sportelli 5% rate was only arrived at the impact of the detailed research he undertook after the notice was given.

## The hearing: the landlord's evidence and submissions

14. For the landlords Mr Cowen after an opening statement called Mr Sharpe to give evidence. Mr Sharpe spoke to his report dated 2 May 2014. As well as being cross-examined by Mr Martin he answered questions posed by the tribunal.
15. He does not agree that the installation of part double-glazing into the subject flat is a relevant improvement as no consent to the works was obtained from the landlord who had already provided heating in all of the flats. In order to establish the long leaseholder and freehold values he has considered the sales of flats numbered 5,11,13,16 and 29 in the development. Making certain adjustments to the sales prices he concludes that the long lease value is the sum of £186,750. By adjusting this for 1% for the freehold he arrives the figure of £188,615.
16. As to relativity, Mr Sharpe relies on an analysis of transactions in the development as well as the published graphs of relativity. He makes similar points to those made by Mr Martin as to the care that must be taken in interpreting comparable evidence and using the graphs. As to the transaction evidence he makes a 10% deduction to reflect the effects of the Act. As it puts it in paragraph 6.23 of his written report 'Considering all the evidence in the round I decide that relativity at 77.5%'.
17. Mr Sharpe takes a very different view of the deferment rate to that expressed by Mr Martin. Unlike Mr Martin his conclusion is that the generic deferment rate promulgated in the *Sportelli* decision (referred to above) clearly applies to this case. There is no reason, in his view, for altering the rate for this case. The degree of obsolescence is not high in his view and any risk of obsolescence or decline in the condition of the property will be fully reflected in the current market value. He only briefly addressed the issue of capital growth by citing referring to the Bank of England inflation calculator which he contends shows that ..'capital growth exceeds that required by Sportelli (inflation + real growth)' (paragraph 7.4 of his report).
18. Finally, on capitalisation he relies on evidence he gave to this tribunal in a case in Lewisham (no citation was provided in his report) where a rate of 5.95% was accepted.
19. Taking these points together, Mr Sharpe concludes that the premium to be paid is the sum of £25,820.

## Reasons for our decision

20. Under schedule 13 to the Act, the premium payable is made up of (a) the diminution of the value of the landlord's interest in the flat, (b) the landlord's share of the marriage value and (c) any compensation payable to the landlord. Factor (c) is not relevant to this application.
21. As to factor (a), this is defined as the difference in the value of the landlord's interest in the flat before the grant of the new lease compared with that value once the new lease has been granted. Putting it another way it is the drop in the value of the landlord's reversionary interest once this is postponed by another 90 years once the new lease is granted. We are required, therefore, to determine the value of the landlord's interests in the flat before and after the new lease is granted.
22. These values consist of the ground rent that is lost and the values of the landlord's interest in the flat before and after the new lease has been granted.
23. Both valuers used the established method of valuing the lost ground rent by capitalising it. This part of the overall computation of the premium to be paid is relatively straight forward and the sums involved modest. On balance we preferred the evidence of Mr Martin on this particular point which by considering auction results, his experience in advising investors and his own personal experience as an investor was more elaborate and convincing than that of Mr Sharp who relies on the fact that his evidence on this point was accepted by another tribunal in a different case.
24. The other part of the valuation is to determine the landlord's current interest is its value at the valuation date. This part of the exercise is in two parts: the estimated value of the flat with a new lease (with 1% increase to adjust to notional value) and the value of the flat with the current lease. The tribunal relied upon the same evidence as the Experts: the recent sales of five flats in the The Maisonettes development. These are flat numbers 5,11, 13, 16 and 29. Table 1 provides detail on the adjustments made to transaction evidence to reflect date of sale, improvements and garden.

### 25.

Address of property	Interest	Sale date	Sale price	Deduction for Improvements	Other adjustments	Adjustment for indexation of Sale price	Adjusted sale price	Area m2	£ psm	Notes
Flat number 16	125 year from 6/2006	15/04/2012	£179,000	-£7,500	None	£7,500	£179,000	50.63	£3,535.45	1
Flat number 29	125 years from 9/2009	21/06/2012	£185,000	-£6,000	None	£8,278	£187,278	51.28	£3,652.07	1
Flat number 11	Lease extension under 1993 Act provisions	08/02/2013	£160,000	-£2,000	None	£2,000	£160,000	50.46	£3,170.83	1
Flat number 5	125 years from 9/2009	22/03/2013	£186,000	-£7,500	None	None	£178,500	52.44	£3,403.89	1

Flat number 13	125 years from 9/2011	14/06/2 013	£197,500	-£7,500	-£5,000	None	£185,000	47.67	£3,880. 85	12
						Average	£177,956		£3,529	
Notes:						Long leasehold value at 50.63m2			£178,6 54	
1. Adjustments for improvements based upon value effect.										
2. Garden value assessed as £5000										

26.

27. The outcome of the analysis is that the tribunal determined a long lease value for the property of £178,700 after rounding. The freehold notional value is calculated through application of a 1% uplift to this value. Both the valuers made detailed submissions on this and the tribunal on balance found the evidence of Mr Sharpe the more convincing on this issue.

28. The experts both valued the current lease in the range £146,000 to £150,000. The tribunal was content with the analysis of the comparable evidence provided by both parties and determined a mid-point value of £148,000. This falls within the valuation tolerance of both proposed market values for the current lease.

29. As to relativity, we have examined the graphs of relativity for properties outside the pcl and had regard for the relevance of this data commented upon by the experts. The tribunal also considered the transaction evidence provided by both experts to support their opinion of relativity. The tribunal also relied upon the outcomes from their own analysis of submitted comparables. After careful consideration of all this evidence we consider that a lease with an unexpired term of 60.43 years produces a relativity of 82%.

30. Turning to the deferment rate there is a wide divergence between the valuers with Mr Martin proposing a rate of 7% (after rounding it down from 7.25%) whilst Mr Sharpe proposes the generic 5% rate. We conclude that the generic rate should be applied to this case.

31. Mr Martin made a very detailed case for a radical departure from the generic rate and his analysis was supported by a considerable amount of research into growth rates. He puts forward a well-written case in his report which he supported in his oral evidence. As it amounts to an increase in the rate by a factor of almost 50% it is a boldly made out case.

32. His evidence on this is in two parts. First, he submits that his evidence shows that there is a greater risk of obsolescence in the circumstances of this case which justifies an adjustment to the generic rate. He refers to the decision of the Upper Tribunal in *Zuckerman v Trustees of the Calthorpe Estates* [2009] UKHT 235 where the tribunal decided that there should be an addition of 0.25% and to other UT decisions to the same effect (*Re: Lethaby & Regis* [2010] UKHT 36 and *City & Country Properties v Yeates*

[2012] UKHT 227). Mr Martin concludes on this aspect of the deferment rate by commenting on the differences in value between flats in the Maisonnets development with current values in prime central London where the costs of repairs are similar to the two areas. He added that in these circumstances 'any investor ... would require the additional 0.25% for obsolescence (paragraph 22.7 of his report).

33. Although Mr Martin makes out a detailed case we conclude that his analysis fails to take account of the fact that the obsolescence factor, as the court of appeal explained in the *Sportelli* decision, should on be used to justify a departure from the generic rate where there is evidence that it is not already reflected in the vacant possession value of the premises. We agree with Mr Sharpe that any obsolescence (which he describes as 'not high') is fully reflected in the market's perception of the relevant values (paragraph 7.5 of this report).
34. We agree with Mr Sharpe that there should be no departure from the generic rate for the obsolescence factor.
35. Turning to Mr Martin's evidence on growth rates, he has assemble an impressive body of statistical evidence (with two well-prepared graphs) showing that growth rates in the PLC has become far higher than the corresponding rates in Sutton over the period 1994 to 2012. We pause only to comment that the phenomenon of greater increases in house and flat prices in central London by comparison to outer London (and elsewhere) has become a very common observation. We accept his evidence that the rates of increase for central London has risen by a considerable factor in recent years.
36. However, we do not agree that this is a sufficiently long trend as to justify any departure from the generic rate. Mr Martin very fairly notes that the Upper Tribunal in *Hildron Finance Ltd v Greenhill Hampstead* [2007] LRA suggested that to find a reliable indication of the long-term movement in residential values one should ideally examine a period in the region of 50 years. He also noted that in the *Zuckerman* case the UT had regard to evidence going back 35 years.
37. In this case Mr Martin has assembled data over a period of some 20 years and we do not consider that, despite his labours, this is sufficient to provide a long-term movement as to justify a departure from the *Sportelli* generic rate. Answering questions from the tribunal and from Mr Cowen, Mr Martin was unable to answer convincingly how he justifies a departure of some 2% on the basis of this evidence.
38. We consider that Mr Martin despite his considerable efforts and research has failed to demonstrate that there should be a departure from the generic rate of 5% in this case.
39. To summarise, we determine that the capitalisation rate is 7%, the deferment rate is 5% and the relativity is 82%. We determine that the



leaseholder must pay the sum of £20, 680 as the premium for the grant of a new lease under the Act. A copy of our valuation is attached to this decision.

**Professor James Driscoll, solicitor (Tribunal Judge) and  
Mr Ian Holdsworth BSc MSc FRICS (Tribunal Member)**

Property:

33 The Maisonettes Alberta Avenue Cheam Surrey SM1 2LQ

BG/LON/00BF/OLR/13/1693

**Lease and Valuation Data**

Lease Term:	99 years from 29th September 1974
Lease Expiry date:	28th September 2073
Unexpired term as at valuation date:	60.43 years
Date of Valuation	24th April 2013
Rent receivable by landlord:	
Payable from 24/04/2013 for 27.43 years	£ 75
Payable from 29/09/2040 for 33 years	£ 100
<b>Values</b>	
Long leasehold value	£ 178,700
Freehold Value	£ 180,487
LHVP	£ 148,000 Relativity 82%

Capitalisation rate	7.00%
Deferment rate	5.00%

**Value of Freeholders present interest**

Term 1		
Ground rent payable	£ 75	
YP @ 27.43 yrs @ 7%	12.0526	£ 904
Term 2		
Ground rent payable	£ 100	
YP @ 33 yrs @ 7%	12.7500	
PV of £1 in 27.43 years @ 7%	0.1560	£ 199
		£ 1,103

Reversion		
Freehold in vacant possession	£ 180,487	
Deferred 60.43 years @ 5%	0.0524	£ 9,458
<b>Total</b>		<b>£ 10,560</b>

Reversion to Freehold in possession after extension		
Freehold in vacant possession	£ 180,487	
Deferred 150.43 years after lease extension at 5%	0.00060	£ 108

Residual value after reversion	<b>Total</b>	<b>£ 10,452</b>
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<b>Calculation of Marriage Value</b>		
Value of flat with long lease	£ 178,700	
Landlords proposed interest	£ 108	£ 178,808
Less		
Value of Leaseholders existing interest	£ 148,000	
Value of Freeholders current interest	£ 10,560	£ 158,560
marriage value	<b>Total</b>	<b>£ 20,248</b>

Division of Marriage Value equally between		
Freeholder		£ 10,124
Leaseholder	£ 10,124	

<b>Price payable to Freeholder</b>		
Value of freeholders current interest		£ 10,452
Plus share of marriage value		£ 10,124

<b>Total</b>	<b>£ 20,684</b>
Say	<b>£ 20,680</b>

Notes:

1. The price for Lease Extension is calculated in accordance with the Leasehold Reform, Housing Urban and Development Act 1993 as amended.
  2. Valuation based upon agreed facts except for freehold flat value, relativity, capitalisation and deferment rates which were determined by Tribunal after hearing held 8th May 2014.
- Checked

Percent	4.00	4.25	4.5000	4.7500	4.8000	5.0000	5.2500	5.5000	5.7500	6.0000	6.2500	6.5000	6.7500	7.0000	7.5000	8.00	8.50	9.00	9.50	10.00
YP Years [27.430]	16.4746	16.0169	15.5783	15.1577	15.0756	14.7543	14.3672	13.9956	13.6388	13.2961	12.9667	12.6501	9.7642	12.0526	11.4993	10.9861	10.5094	10.0660	9.6530	9.2679
PV Years [163.244]	0.0017	0.0011	0.0008	0.0005	0.0005	0.0003	0.0002	0.0002	0.0001	0.0001	0.9999	0.0000	0.0000	0.000016	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
YP Def (3 x 6)	0.02730	0.01794	0.0118	0.0078	0.0072	0.005127	0.0034	0.0022	0.0015	0.0010	12.9654	0.0004	0.0002	0.0002	0.0001	0.00004	0.00002	0.00001	0.00000	0.00000

**33 The Maisonettes Alberta Avenue Cheam Surrey SM1 2LQ**

Comparable analysis

Long Leasehold

Table 1: Analysis of comparables

Address of property	Interest	Sale date	Sale price	Improvements	adjustments	Adjustment for indexation of Sale price	Adjusted sale price	Area m2	£ psm	Notes
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Flat number 13	125 years from 9/2011	14/06/2013	£197,500	-£7,500	-£5,000	None	£185,000	47.67	£3,880.85	1,2
						Average	£177,956		£3,529	
						Long leasehold value at 50.63m2			£178,700	

Notes:

1. Adjustments for improvements based upon value effect
2. Garden value assessed as £9000