

4754



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

Case Reference : **CAM/38UC/OLR/2018/0124**

Property : **17, 19 and 21 Demesne Furze, Oxford OX3 7XF**

Applicant : **Jill Roland (17), Andrew Charles Eichholtz (19), Stephen Kenneth Dexter (21)**

Representative : **Mr P Wortley, PG Dip Surv BSc (Hons) MRICS of Allied Surveyors and Valuers Limited**

Respondent : **Proxima G R Properties Limited**

Representative : **Mr R Foulkes MRICS instructed by Estates and Management Limited**

Type of Application : **Section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993**

Tribunal Members : **Tribunal Judge Dutton
Mr D S Brown FRICS**

Date and venue of Hearing : **Magistrates' Court, Oxford on 11th October 2018**

Date of Decision : **7th November 2018**

DECISION

DECISION

The Tribunal determines that the premium payable for each of the three properties at 17, 19 and 21 Desmesne Furze, Oxford OX3 7XF is £18,000.

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission in the heading under 'Decision' and at paragraph 33 of our Decision dated 7th November 2018. Our amendments are made in bold. We have corrected our original Decision because an incorrect figure for the tenant's current interest was included in the Valuation Schedule attached and repeated in the decision. Our apologies to the parties.

Signed: *Andrew Dutton* - Tribunal Judge

Dated: 22nd November 2018

BACKGROUND

1. By applications dated 12th, 18th and 20th June the Applicants named on the front of this decision applied to this Tribunal for a determination of the premium payable in respect of a lease renewal for their respective property. Each lessee had served notice of claim under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) putting forward proposals for a new lease both in respect of the premium payable and the lease terms. Counter notices were served by Estates and Management Limited on behalf of Proxima G R Properties Limited (the Respondents) accepting the tenants' right to seek a lease extension but putting forward counter proposals in respect of the premium. Terms could not be agreed in respect of the premium and the matter came before us for hearing on 11th October 2018.
2. Prior to the hearing we were provided with a bundle of papers which initially included reports from Mr Wortley and Mr Foulkes but these were lacking detail. Subsequently, further reports were filed by both valuers and in the case of Mr Wortley, not until the day before the hearing. In this regard Mr Foulkes confirmed notwithstanding this late delivery he was willing to proceed with the case.
3. A number of matters had been agreed set out on a joint statement signed by both valuers. The matters agreed were as follows:
 - All three leases commenced on 1st January 1993 for a term of 99 years at an initial ground rent of £50 with review every 33 years and rising to £200. The leases have an agreed remaining term of 74.15 years.
 - The deferment rate is 5%.
 - The capitalisation rate is 7%.
 - There are no unduly onerous covenants within the leases nor tenants' improvements to be deducted.
 - The description of the flats is not in dispute. Flat 17 is a ground floor, purpose-built property set in a block of six with a small garden for the private use of the lessee. Flats 19 and 21 are first floor, purpose-built flats in a three storey block of six with the use of a common garden area.

- It was agreed there was a 1% discount to reflect the difference between the freehold value and the long lease value.
 - The size of the flats was agreed at 44.6 square metres for Flat 17 and 45.7 square metres for Flats 19 and 21.
4. Accordingly, the matters in dispute, and for which a determination was required, were the long lease values of the properties, the rate of relativity and any deduction to be applied for the “no act world.” As far as we were aware, there was no continuing dispute in connection with the costs payable under section 60 of the Act nor the terms of the proposed new leases.

INSPECTION

5. We inspected the subject premises in the company of Mr Wortley and Mr Foulkes. We were able to enter the interior of all three flats. Flat 17 is a ground floor property with a sitting room, a double bedroom, bathroom with bath and shower above and a WC and wash hand basin. There are cupboards in the hallway. The kitchen has a full range of units and is in a relatively modern condition. To the rear is a small garden area which is paved and with gravel and provides rear access to the property.
6. Flats 19 and 21 are entered by a communal hallway which is carpeted and clean although in basic order. To the rear of the property is a communal garden for the four flats that use same together with a shelter for bikes and access to the private car parking to the rear.
7. Flat 19 on the first floor has a good sized living room with kitchen off and a full range of units. There is a double bedroom, bathroom with bath, WC and hand wash basin. There is a shower attachment above the bath. There are also airing cupboards in the hallway. There was evidence of some mould in the flat.
8. Flat 21 is a similar layout to Flat 19 although the kitchen was not so “cluttered” with units. Again, it had a good sized sitting room, a double bedroom and bathroom with wash hand basin, shower attachment and sink.
9. We noted the car parking to the rear and side of the property and the development generally appeared in good order. The locality was pleasant, close to the local hospital and local colleges, thus ideal for renting or for first time buyers.

HEARING

10. At the hearing Mr Wortley gave his evidence first. He had provided a report dated 10th October 2018, which we had the opportunity to read. As with Mr Foulkes he had confined his comparables to those within Desmesne Furze. These were numbers 46, 25 and 23. No 46 was a ground floor flat with a private garden and a share of the freehold. Numbers 25 and 23 Desmesne Furze were first floor flats with what he described as short leases. He indicated that having conducted an analysis of the market in Oxford he was of the view that the 3% uplift in stamp duty at the end of March 2016 had had a significant uplift on prices. He therefore had assessed transaction evidence from the beginning of April 2016 hence leading to his comparables stated above. To adjust for time he had concluded

that there were an insufficient number of sales of flats in the Oxford area to be statistically significant and had therefore used a wider database being the Oxfordshire data set for all property types which gave a wider spread and, in his view, showed that the market had remained relatively static over the period. Using the comparables we have referred to above and adapting for time, he arrived a long lease value of £275,000 for Flats 19 and 21 and a long lease value for Flat 17 of £280,000. The difference he said was represented by the private garden attributable to Flat 17.

11. In respect of the short lease sales, he had taken an average of the two comparables at 25 and 23 Desmesne Furze, which when adjusted, gave a value of £266,423 for the first-floor flats and £271,423 for Flat 17. Applying these short lease comparable values gave an average relativity of 95.8%. He felt that this compared with the RICS graphs of relativity for Greater London and England prepared in 2009 which apparently gave a range of between 93.09% and 96.09%. He could see no reason for adopting the prime central London relativity. In respect of the “no act world” deductions he relied on the graphs of Gerald Eve (1996) and Savills (2002) and concluded that as set out in his report a relativity of 1.07% was reasonable.
12. During the course of the hearing he had been questioned on his reasoning behind using the 'all house index' for Oxfordshire rather than the flat index for Oxford and we noted all that was said. Subsequent to the hearing, he did provide a review of the valuation that he had put to us as there had been an error. He also helpfully gave details of the adjustments for time if this were confined to the Oxford flats for the period.
13. For the Respondent, Mr Foulkes produced a report which was very similar to that provided by Mr Wortley, at least in layout. In respect of his comparables and the analysis thereof, he had taken examples from July 2015 to the summer of 2018. He had corrected the older comparables using the Landlord Registry price index for Oxford flats and maisonettes between the sale date and the valuation date. His considered view was that the market had been fairly stable in this period rising perhaps by 1%. He had carried out some averaging exercises and had applied unity rate on a square footages basis, which he utilised.
14. He told us he had acted for the purchaser of Flat 25, one of the comparables that he used, which completed in 2018. He indicated that in his opinion the price was relatively high for the reasons that he set out at paragraph 9(5) of his report.
15. He like Mr Wortley had used the comparables at Flats 23 and 46 to provide assistance on the valuation but also a property at Flat 34, although this had two bedrooms. Utilising his pounds per square metre assessment, he came to the conclusion that on a freehold basis the value for Flat 17 was £276,520 and for Flats 19 and 21 £283,340. With a downward reduction to the long lease values of 1% he concluded that the value for Flat 17 was £273,755 and for Flats 19 and 21 £280,507.
16. The short lease comparables in his report, as we have indicated, were again 23 and 25 Desmesne Furze and also 19 Desmesne Furze one of the subject properties

which had completed in September of 2015. We should say at this stage that 23 Desmesne Furze was not actually a sale, it having apparently fallen through.

17. On the question of “no act world” deduction and relativity, he relied on the difference between the Freehold and short lease values to give a relativity of 89.29% which he thought was appropriate. He had also in the question of the “no act world” deduction considered the Savills unfranchiseable and enfranchisable graphs showing a difference of 2.14%. He had also considered the Gerald Eve table giving an unfranchiseable relativity of 89.48%. He accepted that these represented properties in prime central London and having considered the Upper Tribunal case of *Sinclair Gardens Investments (Kensington) Limited* concluded that a no world deduction of 3% was a realistic figure.
18. Having considered these matters we record that for the Applicants, Mr Wortley was of the conclusion that the premium payable for Flat 17 Desmesne Furze was £11,725. However, subsequent to the hearing and having reviewed certain elements, he came to the conclusion that the premium for Flat 17 should be £10,100 and for Flats 19 and 21, £10,500. We should record that this post hearing review gave a long lease vacant possession value for 17 Desmesne Furze of £280,000 and a relativity of 96.94%. In respect of the other two flats, the long lease vacant possession value was £275,000. The relativity figure he proposes varies from that in respect of 17 Desmesne Furze at 96.49%, but one might be a typographical error as we can see no reasons for any difference.
19. We have taken all that was said to us into account and have also reviewed the reports and this late submission from Mr Wortley.

FINDINGS

20. The elements of the valuations which are not agreed are:
 - Freehold value
 - Adjustment for long leasehold
 - Relativity to give short lease value
 - Additional value of a private garden
21. There is a dearth of market evidence. All of the comparables referred to by both valuers are on Demesne Furze and they include sales evidence for “share of freehold”.
22. The ‘share of freehold’ sale of No 46 in June 2018 for £283,000 is closest in time to the valuation date but requires some adjustment to the sale price for the time difference. The sale of No 38 in September 2015 for £271,000 is somewhat historic but when adjusted for time indicates a price in reasonable proximity.
23. The price of £292,500 for No 64 in March 2016 is out of line with those two and tallies with the hike in prices during that part of 2016 referred to by Mr Wortley and clearly shown on the Land Registry house price index. It is not therefore representative and we reject it as evidence.

24. The valuers have produced evidence of three sales of short leases. No. 25 sold for £270,000 in July 2017, which is very close to the valuation date. The sale of No. 23, negotiated in June 2018, fell through but was a freely negotiated sale at arms' length and so can be given some weight. No 19 sold for £220,000 in September 2015 is out of line with the other two when adjusted for time and so we disregard it.
25. In making adjustments for the time differences Mr Wortley has referred to the Land Registry house price index for 'all properties' in Oxfordshire. We indicated at the hearing that the index for flats and maisonettes would be more appropriate and he subsequently provided calculations on that basis also. Mr Wortley prefers the county wide index because it has a larger database which, he says, makes it more reliable. The problem is that the movement of prices for flats in Oxford city is not necessarily the same as the movement of prices in the whole of the county. This must be particularly true in a city such as Oxford where the presence of the University creates a particular lettings market for properties which are within easy reach of University premises and are suitable for students and academics. Neither index is entirely satisfactory for our purpose but we consider that the Oxford one is more relevant.
26. Mr Foulkes has adjusted the sale prices of his comparables by reference to the difference in the average price of flats at the respective dates. We consider that a more logical and appropriate adjustment is to apply the differential in the Land Registry index to the price achieved in each case.
27. Mr Foulkes has also extrapolated his values on a £ per square metre basis. Where the comparable flats are of generally similar size, we consider that to be less reliable than a direct comparison of prices achieved. Purchasers of second-hand flats in the market do not formulate their bids on a price per square metre basis.
28. Neither valuer was able to produce any evidence as to the effect on value of a small private garden. As was discussed at the hearing, some purchasers of flats are attracted by the fact that they do not have to maintain a private garden. Buy-to-let landlords tend not to want gardens because transient tenants do not generally carry garden tools and so private gardens become neglected. Some purchasers prefer ground floor flats because of the convenience of access but others prefer upper floors because of the additional security they provide. The availability of a communal garden would be an attraction to some tenants of ground floor or upper floor flats. In the absence of any reliable evidence, we do not consider that there is any demonstrable difference in value of ground floor and first floor flats or those with private garden and communal garden.
29. Our assessment of the evidence is therefore as follows: –

No	Price	Date	LR Index – Oxford flats		Adjusted price
			Sale date	Val. date	
SHARE OF FREEHOLD					
46	£283,000	6/18	116.4	119.1	£289,564
38	£271,000	9/15	112.4	119.1	£287,153

SHORT LEASE					
23	£256,000	6/18	116.4	119.1	£261,938
25	£270,000	7/17	117.7	119.1	£273,211

30. On the share of freehold, we have shaded the average upwards to reflect that the sale of No 46 is closer in time and so, arguably, more reliable, and we have adopted a freehold value of £288,500. Both valuers agree that the adjustment for long lease should be 1%, which gives a long lease value of £286,600.
31. One the short lease, we have again shaded the average to reflect the fact that the sale of No 25 was much closer in time to the valuation date, and have taken £268,500.
32. The differential between the freehold value of £288,500 and short lease of £268,500 is 93%. For the adjustment for 'no Act', we accept Mr Foulkes's figure of 3%. This is in line with the adjustments made by the Upper Tribunal (Lands Chamber) in several cases as listed in Sinclair Gardens Investments (Kensington) Ltd [2017] UKUT 0494 (LC). This gives a relativity of 90% which we consider to be a credible relativity for 74.15 years.
- 33. Our valuation, producing a premium of £18,000 is set out in the appendix.**

Judge: Andrew Dutton
A A Dutton

Date: 7th November 2018

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to 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 identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

DEMESNE FURZE VALUATION

Diminution in Landlord's interest

Ground rent	£1,195	
Reversion to freehold £288,500 PV 74.15 years @ 5% 0.0268	<u>£7,732</u>	
		£ 8,927

Marriage Value

Landlords interest after extension

Freehold £288,500 PV 1644.5 years @ 5% 0.000333	£ 96	
Tenant's interest after extension	<u>£286,600</u>	
		£286,696

Landlord's current interest £ 8,927

Tenant's current interest £259,650

£268,577

£ 18,119

50% £ 9,059

£17,986

Say £18,000