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FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference

: LON/OOAZ/OCE/2018/0120

Property

22-31 (inclusive) Cedars Close, Belmont Hill, London SE13 5DP

Applicant

The Cedars (Belmont Hill) Limited

("the nominee purchaser")

Representative

Bolt Burdon Solicitors

Respondents

Anthony David Shamash & David

Shamas ("the landlords")

Representative

Anthony Shamash Property

Consultants

Type of application

A collective enfranchisement claim

Tribunal members

Angus Andrew

Duncan Jagger MRICS

Date and Venue of

hearing

12 September 2018

10 Alfred Place, London WC1E 7LR

Date of decision

:

4 October 2018

DECISION

Decision

- 1. The ground rents should be capitalised at 4.75%.
- 2. The price to be paid for the freehold reversion is £174,257 in accordance with our attached valuations.

Application and Hearing

- 3. On 9th May 2018 the Tribunal received the nominee purchaser's application under section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the price to be paid for the freehold reversionary interest.
- 4. We heard the application on 12 September 2018. The nominee purchaser was represented by Stan Gallagher, a barrister. The landlords were represented by Andrew Pridell FRICS who also gave evidence on their behalf.
- 5. Included in the hearing bundle was an expert valuation report prepared by Paul Davis FRICS who had been instructed by the nominee purchaser. However, Mr Davis did not attend the hearing. We were told that he was on holiday. However there had been no application for a postponement and we pointed out to Mr Gallagher that a completed listing questionnaire returned by the nominee purchaser on 13 July 2018 indicated that Mr Davis would be available.
- 6. Mr Gallagher requested permission to call Neil Ward ICIOB, FPWS who is a colleague of Mr Davis. We were told that Mr Ward had assisted in the preparation of Mr Davis' report and that he was able to speak to it. In answer to our question Mr Gallagher could provide no explanation for Mr Ward's failure to provide a signed supplemental report in his own name with a statement of truth and expert witnesses declaration.
- 7. The request was opposed by Mr Pridell on the ground that Mr Ward might give additional or further evidence of which he had had no notice. After conferring and with the agreement of Mr Gallagher we allowed Mr Ward to answer questions on Mr Davis' report from both Mr Pridell and ourselves but on the basis that there would be no re-examination by Mr Gallagher. We consider the weight of the nominee purchaser's valuation evidence in a later section of this decision.
- 8. With the agreement of Mr Pridell we also admitted a late short statement of fact from Michael O'Dwyer who is a leaseholder of flat 27.

Background

9. The property is a large Victorian grade two listed building that has been converted into 10 residential flats and maisonettes. Mr Pridell described the property as being "magnificent". During 1998 and 1999 all the flats were all sold by the developers on long residential leases. All 10 leases were in a similar form and a specimen lease was included in the hearing bundle. The initial ground rents reserved by the ten leases ranged from £175 to £225 and the total ground rental income is currently £1,950. The

leases however contain rent review provisions that are crucial to an understanding of the only issue between the parties.

- 10. The leases are for terms of 125 years and the rent is to be reviewed every 21 years from 1st May 1998. That is the first review is due on 1 May 2019. Thus, during the lease term there will be five reviews. It is equally apparent that on the first and second reviews the unexpired term will exceed 80 years.
- 11. Clause 2.1 of the leases provides:

"The Rent shall......if appropriate be increased to such sum as the same percentage of the Review Value of the Building as the Rent is of the First Value of the Building"

- 12. "The Rent" is the commencing rent that in the case of the specimen lease is £225 per year.
- 13. "The First Value of the Building" is effectively a total of the original selling prices of the ten flats.
- 14. "The Review Value of the Building" is:

"the total of the open market value selling prices of the Dwellings in the Building which the Chartered Surveyor referred to in Clause 2.2 hereof considers on each review would be achieved on a vacant possession sale without encumbrances AND such Chartered Surveyor is to assume that each Dwelling is being sold individually and that its sale is in no way inhibited by the sales of any other Dwelling in the Building."

- 15. The mechanism for implementing the rent review is contained in clauses 2.2 to 2.4. In summary the lessor gives a trigger notice during the 12 months prior to the rent review date specifying the new rent. If the lessee serves a counter notice within three months the reviewed rent shall either be agreed or determined by a chartered surveyor acting as an expert and not as an arbitrator, to be appointed by the president of the RICS. If determined the lessor and the lessee shall each pay half of the surveyor's fee. If the lessee fails to serve a counter notice then the reviewed rent shall be that specified in the lessor's trigger notice.
- 16. In summary therefore, the reviewed rent will reflect the increased value of the flats in the property since the 1 May 1998. Given the wording of clause 2.1 there may well be an issue as to whether the rents could be reduced on review of property prices fall but that was no explored at the hearing.
- 17. It is also relevant that responsibility for insuring, repairing and maintaining the property rests not with the lessor but with a manager, OM

Limited. The leases are therefore tri-partite leases. Furthermore, the lessees have exercised their no fault right to manage the property so that since 2011 the manager's responsibilities have been undertaken by the Cedars Close RTM Company Limited. The lease contains a fall-back provision so that the lessor can assume the managers obligations in the event of default.

18. By a claim notice dated 13 September 2017 the ten lessees gave notice of their claim to acquire the freehold interest in the property and they appointed the nominee purchaser to acquire that interest. The claim notice proposed a purchase price of £119,180 for the freehold interest in the property and £820 for appurtenant land. By a counter notice dated 27 November 2017 the landlords admitted the claim and proposed a premium of £319,275 for the freehold interest in the property and £60,000 for the appurtenant land that we understood to be a car park.

Issue in dispute

- 19. By the time that the case came before us the parties had agreed the following:
 - a. The terms of the transfer (although we were told that the transfer plan has yet to be prepared).
 - b. The valuation date at 13 September 2017
 - c. The original ground rents ranging from £175 per year to £225 per year
 - d. The reviewed ground rents as at 1 May 2019 ranging from £600.67 per year to £772.28 per year with a total of £6,691 per year.
 - e. A deferment rate of 5%
 - f. The value of the appurtenant land at £820.
- 20. Pausing there it is axiomatic that the two valuers had also agreed both the total original purchase prices of the flats (£2,130,300) and the total open market value of the flats on 1 May 2019 (£7,312,000). In doing so they had agreed that the values on 13 September 2017 (the valuation date) and the values of 1 May 2019 (the first review date) would be the same.
- 21. It is also axiomatic that the reviewed rents represented an increase in the rental income of 243% since 1 May 1998. As we pointed out to the parties this contrasts with an increase of 72% in the retail price index between May 1998 and July 2018.

· 22. In effect the only issue in dispute was the capitalisation rate to be applied to the original and reviewed rents.

Mr Davis' approach

- 23. Mr Davis contented for a capitalisation rate of 6%. His justification for this rate is contained in paragraph 4.11 his report and rests largely on his view that a review based on an increase in property values carries a greater risk than a review based on the retail price index ("RPI") and would thus be viewed less favourably by a potential investor. He identifies a number of inherent risks including the unpredictability of property prices, a potential reduction in the value of the flats in real terms in particular on the last three review dates when the lease terms will fall below 80 years, the uncertainty of Brexit and the apparently predicted increase interest rates.
- 24. Mr Davis is aware that other tribunals have determined capitalisation rates "as low as 4%" where the leases have included RPI based reviews. He considered however that the additional risks referred to above indicate that the hypothetical purchaser would pay a lower price thus indicating a higher capitalisation rate. Having observed that "most tribunals decisions in recent years have determined capitalisation rates at between 5% and 8%" he alights on a capitalisation rate on 6% that he considers to be appropriate in this case.

Mr Pridell's approach

- 25. Mr Pridell contended for a capitalisation rate of 4% and the justification for this rate is contained in paragraphs 5.19 to 5.28 of his report that he amplified in giving his oral evidence.
- 26.Mr Pridell relies in large measure on a first-tier tribunal decision in February 2018 relating to three blocks of flats in Eastbourne that he referred to as "the All Saints decision" [St Emmanuel House (Freehold) Limited and others v Berkeley Seventy-Six Limited CHI/21UC/OCE/2017 /0025, 26 and 29]. The All Saints leases included 15-year rent reviews based on the increase in the RPI. Mr Pridell gave evidence on behalf of the tenants in the All Saints case when he spoke to capitalisation rate of 6%. After hearing evidence over three days the tribunal determined a capitalisation rate of 3.35%.
- 27. The nub of Mr Pridell's evidence was that the All Saint's case has "made a dramatic difference throughout the industry to the approaches being taken on capitalisation rate".
- 28.In his report Mr Pridell's said that he could find investors "who would jump at the opportunity of acquiring this investment at a 4% yield or perhaps even lower yield". In his oral evidence he said that he had three or four client who would "buy at 4%". He also said he had recently completed

the sale of a new build reversion with £250 ground rents doubling every 25 years at the equivalent of a capitalisation rate of 4.2%.

Reasons for our decisions

- 29. We firstly deal with the weight to be attached to the expert evidence. It will be recalled that Mr Ward attended the hearing in place of Mr Davis and answered questions from both Mr Pridell and ourselves. We intend no disrespect to Mr Ward when we say that it became apparent that he was not an expert valuer. He is a building and party wall surveyor and he acknowledged that his contribution in this case was limited to technical aspects of the valuation and undertaking research into the development value of the car park. He also acknowledged that his experience in this particular field had been gained from assisting in a small number of lease extension cases and only one other collective enfranchisement case. Although he did his best to answer the question put to him we could place very little weight on his conclusion that a capitalisation rate of 6% adequately reflected the rent review provisions in the leases.
- 30. We do not discount Mr Davis' written report but his failure to attend for cross examination does, to an extent, undermine his evidence. In contrast we found Mr Pridell's evidence persuasive and we did not share the misgivings of the tribunal in the All Saints case. Mr Pridell acts for investors in the ground rent market and he spoke with some authority on the yields that investors will expect to receive when making their bids. In summary, where there was a difference in approach between the two valuers, we found Mr Pridell's evidence more persuasive.
- 31. To an extent both Mr Pridell and Mr Gallagher relied on the All Saints decision. Mr Gallagar pointed out that in All Saints Mr Pridell had given evidence on behalf of the tenants and had throughout the three-day hearing resolutely argued for a capitalisation rate of 6%. As previously observed Mr Pridell relied on the All Saints decision on the ground that it had changed the market although in doing so he overlooked the obvious fact that the valuation date in this case pre-dates the All Saints decision.
- 32. We drew the parties' attention to the Upper Tribunal decision in Arrowdell Limited v Coniston Court [North] Hove Limited [LRA/72/2005]. In paragraph 37 of the decision in the then President said that it was "inherently undesirable" for first-tier tribunals to rehear earlier determinations. We do not find the All Saints decision to be of any assistance in deciding the capitalisation rate in this case and consequently we put it to one side.
- 33. Mr Gallagher placed considerable emphasis on what he termed "the risk of management". In doing so he pointed to the age of the property and the cost of repairs as evidenced by Mr O'Dwyer. In essence the risk lies in the potential inability of the hypothetical purchaser to obtain a full recovery of its cost from the lessees through their service charges.

- · 34. However, in this case the risk is relatively small and would only materialise if both the RTM Company and the manager failed. In any event the risk of management is a generic risk that is common to all ground rent investments and in part explains why yields for such investments are generally greater than prevailing interest rates.
 - 35. In answer to our questions Mr Pridell said that if the leases had reserved fixed ground rents in the range of £175 to £225 he would have anticipated a capitalisation rate of perhaps 6% or 6½%. In answer to a similar question Mr Ward put the rate at 7 or 8%. For the reason given above we prefer Mr Pridell's evidence. As an aside we also note that his evidence is more consistent with other similar cases that we have had although we place no reliance on that.
 - 36. In essence therefore the issue is whether a reduction should be made to reflect both the substantially increased ground rents that will payable from next May and also the prospect of further increases on subsequent reviews: and if so how much should that reduction be?
 - 37. Again, Mr Gallagher emphasised what he considered to be the risks inherent in the rent review provisions of the lease. These included the possibility of a fall in the property prices, the potential cost of implementing the rent review if there is no agreement on the reviewed values of the flats and the uncertainty of the assumptions to be adopted on the review dates.
 - 38.Again, and with respect to Mr Gallagher we consider that he overstated these risks. We can see no obvious reason why a hypothetical purchaser would make a higher bid if the rent reviews were tied to the RPI. As observed above the property market has generally out-performed inflation and we can equally see an argument that most property investors would prefer value based reviews.
 - 39. Equally the risks of the parties being unable to agree the values of the flats on review appears relatively small. Mr Davis and Mr Pridell had agreed those values for the purpose of the forthcoming review and with 10 flats in the property it is unlikely that there would be an absence of market evidence. Even if the valuations had to be a determined the cost is to be shared equally between the lessor and the lessee and as Mr Pridell observed it is unlikely to exceed a single year's rent.
 - 40. As far as the assumptions were concerned Mr Gallagher agreed with our observations that an answer could probably be found in the case law relating to rent review provisions in commercial leases. In his skeleton argument Mr Gallagher had suggested that we would have to decide the proper interpretation of the rent review provisions. However, at the hearing he modified this position. In answer to our question Mr Gallagher said that he no longer expected us to decide the proper interpretation of the rent review provisions and that he was content with Mr Pridell's

observation that a buyer would factor in element of uncertainty resulting from any ambiguity in those provisions.

- 41. As from 1 May 2019 the hypothetical purchaser will receive a ground rent income of £6,691 with the individual ground rents ranging from £600 to £772 per year. That is an attractive income stream with almost guaranteed recovery rate, given the threat of forfeiture. Given the size of the income stream the cost of recovery will not be the deterrent that it is with small fixed ground rents. Furthermore, we agree with Mr Pridell that the prospect of a further increase in 21 years' time significantly increases the value of the investment that in turn reduces the capitalisation rate.
- 42. The more difficult question is, by how much? In answer to our questions Mr Pridell said that if the market had been unaware of the All Saints decision he would have expected a yield of $4\frac{1}{2}\%$ to 5%. That represents a reduction of between $1\frac{1}{2}\%$ and 2% from our starting point of $6\frac{1}{2}\%$.
- 43. Having regard to the substantially increased ground rents payable from next May and the prospect of further growth we are satisfied that the range suggested by Mr Pridell is correct and represents the yield that the hypothetical purchaser would expect to receive on an investment of this nature. Consequently, we take a mid-point of 4.75% as the appropriate capitalisation rate.

Name: Angus Andrew Date: 4 October 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Flat 22, 22-31 Cedars Close Belmont Hill London SE19 5DP
The Tribunal's Valuation
Assessment of premium for Collective Enfranchisement
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
RC/LON/00AZ/0CE/2018/0120

Components

Valuation date:	13/09/2017	
Deferment rate:	5%	
Capitalisation rate:	4.75%	
Unexpired Term	105.63	
Capital Value	£860,000	
·		
Ground rent currently receivable	£200	
Capitalised @ 4.75% for 1.63 years	1.5337	£307
Rising to:	£686	
Capitalised @ 4.75% for 104 years	20.8839	
Deferred 1.63 years @ 4.75%	0.9271	£13,282
Reversion to capital value:	£860,000	
Deferred 105.63 years @ 5%	0.005778	£4,969
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LEASE EXTENSION PREMIUM

£18,558

Flat 23, 22-31 Cedars Close Belmont Hill London SE19 5DP Assessment of premium for Collective Enfranchisement In accordance with the Leasehold Reform, Housing and Urban Development Act 1993

RC/LON/00AZ/0CE/2018/0120

Components

Valuation date: Deferment rate: Capitalisation rate: Unexpired Term Capital Value	13/09/2017 5% 4.75% 105.63 years £855,000	
Ground rent currently receivable Capitalised @ 4.75% for 1.63 years	£200 1.5337	£307
Rising to: Capitalised @ 4.75% for 104 years Deferred 1.63 years @ 4.75%	£686 20.8839 0.9271	£13,282
Reversion to capital value: Deferred 105.63 years @ 5%	£855,000 0.005778	<u>£4,940</u>

LEASE EXTENSION PREMIUM

£18,529

Flat 24, 22-31 Cedars Close Belmont Hill London SE19 5DP
The Tribunal's Valuation
Assessment of premium for Collective Enfranchisement
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
RC/LON/00AZ/0CE/2018/0120

Components

Valuation date: Deferment rate: Capitalisation rate: Unexpired Term Capital Value	13/09/2017 5% 4.75% 105.63 years £637,000	
Ground rent currently receivable Capitalised @ 4.75% for 1.63 years	£175 1.5337	£268
Rising to: Capitalised @ 4.75% for 104 years Deferred 1.63 years @ 4.75%	£600 20.8839 0.9271	£11,617
Reversion to capital value: Deferred 105.63 years @ 5%	£637,000 0.005778	£3,681

LEASE EXTENSION PREMIUM

£15,566

Flat 25, 22-31 Cedars Close Belmont Hill London SE19 5DP
The Tribunal's Valuation
Assessment of premium for Collective Enfranchisement
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
RC/LON/00AZ/0CE/2018/0120

Components

£345
£14,947
£5,766

LEASE EXTENSION PREMIUM

£21,058

Flat 26, 22-31 Cedars Close Belmont Hill London SE19 5DP
The Tribunal's Valuation
Assessment of premium for Collective Enfranchisement
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
RC/LON/00AZ/0CE/2018/0120

Components

Valuation date:	13/09/2017	
Deferment rate:	5%	
Capitalisation rate:	4.75%	
Unexpired Term	106.46 years	
Capital Value	£513,000	
Ground rent currently receivable	£200	
Capitalised @ 4.75% for 2.46 years	2.2713	£454
Rising to:	£686	
Capitalised @ 4.75% for 104 years	20.8839	
Deferred 2.46 years @ 4.75%	0.8921	£12,781
Reversion to capital value:	£513,000	
Deferred 106.46 years @ 5%	0.005549	<u>£2,846</u>

LEASE EXTENSION PREMIUM

£16,081

Flat 27, 22-31 Cedars Close Belmont Hill London SE19 5DP
The Tribunal's Valuation
Assessment of premium for Collective Enfranchisement
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
RC/LON/00AZ/0CE/2018/0120

Components

Valuation date: Deferment rate: Capitalisation rate: Unexpired Term Capital Value	13/09/2017 5% 4.75% 105.63 years £931,000	
Ground rent currently receivable Capitalised @ 4.75% for 1.63 years	£200 1.5337	£307
Rising to: Capitalised @ 4.75% for 104 years Deferred 1.63 years @ 4.75%	£686 20.8839 0.9271	£13,282
Reversion to capital value: Deferred 105.63 years @ 5%	£931,000 0.005778	<u>£5,379</u>

LEASE EXTENSION PREMIUM

£18,968

Flat 28, 22-31 Cedars Close Belmont Hill London SE19 5DP

The Tribunal's Valuation **Assessment of premium for Collective Enfranchisement** In accordance with the Leasehold Reform, Housing and Urban Development Act 1993

RC/LON/00AZ/0CE/2018/0120

Components

Valuation date: Deferment rate: Capitalisation rate: Unexpired Term Capital Value	13/09/2017 5% 4.75% 105.63 years £893,000	
Ground rent currently receivable Capitalised @ 4.75% for 1.63 years	£200 1.5337	£307
Rising to: Capitalised @ 4.75% for 104 years Deferred 1.63 years @ 4.75%	£686 20.8839 0.9271	£13,282
Reversion to capital value: Deferred 105.63 years @ 5%	£893,000 0.005778	£5,160

LEASE EXTENSION PREMIUM

£18,749

Flat 29, 22-31 Cedars Close Belmont Hill London SE19 5DP

The Tribunal's Valuation
Assessment of premium for Collective Enfranchisement
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993

RC/LON/00AZ/0CE/2018/0120

Components

Valuation date: Deferment rate: Capitalisation rate: Unexpired Term Capital Value	13/09/2017 5% 4.75% 105.63 years £893,000	
Ground rent currently receivable Capitalised @ 4.75% for 1.63 years	£200 1.5337	£307
Rising to: Capitalised @ 4.75% for 104 years Deferred 1.63 years @ 4.75%	£686 20.8839 0.9271	£13,282
Reversion to capital value: Deferred 105.63 years @ 5%	£646,000 0.005778	£3,733

LEASE EXTENSION PREMIUM

£17,322

Flat 30, 22-31 Cedars Close Belmont Hill London SE19 5DP
The Tribunal's Valuation
Assessment of premium for Collective Enfranchisement
In accordance with the Leasehold Reform, Housing and Urban Development Act
1993
RC/LON/00AZ/0CE/2018/0120

Components

Valuation date:	13/09/2017	
Deferment rate:	5%	
Capitalisation rate:	4.75%	
Unexpired Term	105.63 years	
Capital Value	£485,000	
Ground rent currently receivable	£175	
Capitalised @ 4.75% for 1.63 years	1.5337	£268
Rising to:	£600	
Capitalised @ 4.75% for 104 years	20.8839	
Deferred 1.63 years @ 4.75%	0.9271	£11,617
Reversion to capital value:	£485,000	
Deferred 105.63 years @ 5%	0.005778	<u>£2,802</u>

LEASE EXTENSION PREMIUM

£14,687

Flat 31, 22-31 Cedars Close Belmont Hill London SE19 5DP The Tribunal's Valuation Assessment of premium for Collective Enfranchisement In accordance with the Leasehold Reform, Housing and Urban Development Act 1993 RC/LON/00AZ/0CE/2018/0120

Components

Valuation date: Deferment rate: Capitalisation rate: Unexpired Term Capital Value	13/09/2017 5% 4.75% 105.63 years £494,000	
Ground rent currently receivable Capitalised @ 4.75% for 1.63 years	£175 1.5337	£268
Rising to: Capitalised @ 4.75% for 104 years Deferred 1.63 years @ 4.75%	£600 20.8839 0.9271	£11,617
Reversion to capital value: Deferred 105.63 years @ 5%	£494,000 0.005778	<u>£2,854</u>

LEASE EXTENSION PREMIUM

£14,739