



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

<b>Case reference</b>	:	<b>LON/00BK/OLR/2018/0353</b>
<b>Property</b>	:	<b>13D Hyde Park Mansions, London NW1 5BD</b>
<b>Applicant</b>	:	<b>Jian Chen and Wenmin Li</b>
<b>Representative</b>	:	<b>In person</b>
<b>Respondent</b>	:	<b>Amestown Limited</b>
<b>Representative</b>	:	<b>Daniel Dovar instructed by Wallace LLP</b>
<b>Type of application</b>	:	<b>Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993</b>
<b>Tribunal members</b>	:	<b>Judge Hargreaves Duncan Jagger MRICS</b>
<b>Date of determination and venue</b>	:	<b>6<sup>th</sup> August 2019 at 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>10<sup>th</sup> September 2019 <u>Corrected pursuant to slip rule 18<sup>th</sup> September 2019</u></b>

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**DECISION**

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**Summary of the tribunal's decision**

The appropriate premium payable to the competent landlord for the new lease is £218,989.

**Background**

1. All references are to tab/page numbers in the bundle provided.

2. This is an application made by the Applicant leaseholders pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid for the grant of a new lease of 13D Hyde Park Mansions, Cabbell Street, London NW1 5BD (“the property”), the application being dated 10<sup>th</sup> March 2019. See tab 1. At that stage the Applicants proposed a premium of £142,700, and the Respondent a figure of £321,575: tab 1/7. Those figures were £179,831 and £237,154 respectively by the date of the hearing. Directions were issued on 8<sup>th</sup> April 2018 (2/13).
3. By a notice of a claim dated 11<sup>th</sup> July 2018 (3/15), served pursuant to section 42 of the Act, the Applicants’ predecessors in title (David Lain and Rosemary Lane-Priestley) exercised the right to acquire the grant of a new lease of the subject property and proposed to pay a premium of £108,900 for the freehold. The existing lease dated 11<sup>th</sup> July 1983 was for a term of 99 years from 29<sup>th</sup> September 1981 at a yearly rent of £120 for the first 33 years, for the next 33 years a rent of £240, and thereafter £480. See 4/26. The lease was transferred to the Applicants on 17<sup>th</sup> July 2018 (tabs 9 and 10).
4. The Respondent served a counter-notice dated 21<sup>st</sup> September 2018 (4/18) admitting the validity of the claim and counter-proposed a premium of £321,578 for the new lease.

### **The issues**

### **Matters agreed**

5. The following matters were agreed (11/115):
  - (a) The subject property is a walk-up flat which is on the second floor of a mansion block with 5 bedrooms (see the plan at 12/125) in need of general improvement;
  - (b) The valuation date: 12<sup>th</sup> July 2018;
  - (c) Details of the tenants’ leasehold interests:
    - (i) Date of lease: 11<sup>th</sup> July 1983
    - (ii) Term of lease: 99 years from 29<sup>th</sup> September 1981
    - (iii) Ground rents: see above: £120 rising to £480
    - (iv) Unexpired term at valuation date of existing lease: 62.21 years
    - (v) Unexpired term of proposed lease: 152.21 years
    - (vi) Date of rent review: 29<sup>th</sup> September 2047
    - (vii) Rent review basis: fixed increase to £480 pa
  - (d) Capitalisation: 6% per annum;
  - (e) Tenants’ improvements: none to take into account;
  - (f) Deferment rate: 5%;

(g) GIA (floor area): 1746 square feet.

### **Matters not agreed**

6. The following matters were not agreed:
  - (a) Long lease value (the Applicants' figure was £1,494,513 and the Respondent's £1,546,956) (see 12/143 and 13/243);
  - (b) Short lease value/Relativity (£1,211,027 and 80.22% and £1,151,231 and 74.66% respectively) (see 12/145 and 13/248-91);
  - (c) The premium payable.

### **The hearing**

7. The hearing in this matter took place on 6<sup>th</sup> August 2019. The Respondent was represented by Mr Dovar and the report and valuation relied on by the Respondent was prepared by Robin Sharp BSc FRICS (see tab 13) who is familiar with the practice and procedure of the Tribunal in respect of these applications, and with properties in this particular vicinity.
8. The Applicants took a somewhat unusual course. Having obtained the expert opinion of Samuel Corble BA (Hons) MSc MRICS (etc) (see tab 12) they dispensed with his services sometime on Monday 5<sup>th</sup> August, perhaps not realising (not being lawyers) that one possible outcome was to leave them with an expert report that might be disregarded by the Tribunal on the grounds that there was no available witness to speak to it. Although we took a somewhat softer response to this potential dilemma (which Mr Dovar did not seek to take advantage of at all), it was not helpful to the Tribunal, though that was clearly not the intention of the Applicants. By way of example, Mr Dovar's skeleton argument (paragraph 11) raised the question whether some of Mr Corble's comparables were reliable, whether sufficient adjustments had been made, and whether his evidence was accurate. He was deprived of a fair opportunity of cross examining on these points, and Mr Corble was deprived of the chance to defend his approach. That obviously has an impact on how we approached some of the evidence: see below.
9. The Applicants are demonstrably extremely able mathematicians and felt competent to conduct the hearing themselves, on the grounds – basically - that the relevant valuation exercise depends on moving the right numbers around in the right order, which will produce the correct result. Whilst they displayed a mathematical skill which matched if not exceeded the skills of any other potential or actual mathematician in the hearing room, their approach created a number of interesting clashes because it minimised the role of the valuer and any honed valuation skills and experience. On the other hand, as they explained, and as became clear, they were interested in the correct outcome to each point, whether in their favour or not.

10. The other notable point of the Applicants' presentation was that one of the reasons they had dispensed with Mr Corble's services was because they felt his valuation was too high and they could improve on it. In addition, researching relevant cases they discovered a decision dated 11<sup>th</sup> July 2019 relating to the premium payable for a lease extension for 9D Oxford and Cambridge Mansions.<sup>1</sup> The experts had included 9C Oxford and Cambridge Mansions as a comparable in that case, and also in this case. Robin Sharp was also the landlord's expert in the 9D case, and the leaseholders' expert was Charles Tellerman BSc MRICS. Mr Tellerman joined the hearing in this case as a bystander, being particularly interested in Mr Sharp's evidence on relativity and his deduction of 10% for Act rights (see below).<sup>2</sup> The 9D decision rejected Mr Sharp's position on these points, which were again a major issue in this case. The Applicants take the view that the decision on 9D is applicable to their application, with some mathematical tweaking where necessary, part of their approach which generated interesting exchanges on the differences in approach between mathematicians and expert valuers and the role of expertise in valuation exercises. As will be clear, we have approached this particular exercise on the basis of the relevant and admissible evidence before us.
11. We wish to acknowledge both the careful way in which the Applicants presented their case, and the assistance which Mr Dovar rendered to them where necessary, and his assistance to the Tribunal in not taking any unnecessarily obstructive technical points in relation to Mr Corble's report, except where appropriate in his client's best interests.
12. The Applicants produced four analyses of evidence which we describe briefly as follows, as they are not in the bundle, and were produced on the day of the hearing after Mr Dovar had the opportunity to consider them. Table A is a comparison of Mr Sharp's and Mr Corble's valuations of the subject property, but it was mathematically incorrect due to the fact that Mr Sharp had to amend his report to correct a number of figures, and Table A was produced before the Applicants were notified of the changes. So regrettably it was not as useful as it was designed to be.
13. Table B compared Mr Sharp's valuation approaches in relation to 9D Oxford and Cambridge Mansions and the subject property (a non-expert but purely mathematical exercise which neither of the experts had carried out).<sup>3</sup> The main criticism was that Mr Sharp had made an insufficient adjustment for quantum and his approach differed from that which he applied to 9D Oxford and Cambridge Mansions. Mr Dovar submitted forcefully that as Mr Corble's evidence was unclear on the point and the Applicants were not advancing a clear positive case, the exercise lacked weight. Instead of focusing on Mr Sharp's methods in relation to the different properties (and 9D was not a comparable used by either expert), the Tribunal should focus on the experts' treatment of those comparables. Whilst Table B is an interesting example of a

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<sup>1</sup> LON/00BK/OLR/2019/0133, Judge Hargreaves and Ian Holdsworth BSc MSc FRICS

<sup>2</sup> See paragraph 26-27 of the above decision for example

<sup>3</sup> The Applicants must have seen Mr Sharp's report in the 9d case to produce this table

mathematical approach to one expert's reports on two properties, it would be wrong to take it into account as expert evidence or give it weight without Mr Dovar having an equal opportunity to examine its implications with Mr Corble. And of course Mr Sharp's report on 9D is not in evidence in this case, and the same exercise was not carried out in relation to or by Mr Corble. In evidence in chief Mr Sharp admitted that he was impressed with the maths in Table B but approached each valuation on a case by case basis, and where flats are similar, he would not adjust for quantum.

14. Table C analyses the key differences between the experts' calculation methods in relation to the subject property in tabular form. It is a useful guide to the main differences between the experts and was uncontroversial to that extent. We deal with these differences below.
15. Table D consists of a graph representing the movements of the UK House Index and Savills' Central London index for flats for the period 18<sup>th</sup> August 2016-4<sup>th</sup> February 2019 (to which Mr Dovar made the correct objection that the lines were not in fact linear as they appear to be when plotted as the Applicants did).
16. So while Mr Dovar did not apply to exclude the Applicants from relying on A-D, and the contents are interesting, they do not override the critical differences between the experts or substitute the evidence on which the Tribunal has to rely at its disposal.
17. Neither party asked the Tribunal to inspect the property and the Tribunal did not consider it necessary to carry out a physical inspection to make its determination. Additional photographs were provided. The flat is located on the fringe of prime central London. There is no lift and it is on the second floor.

### **Long leasehold value**

18. For the following reasons the long leasehold value is £1,546,956.
19. Mr Corble relies on eight comparables which are listed at paragraph 7.4, 12/131, including the market transaction in relation to the subject property when the Applicants acquired the long leasehold interest for £1,270,000 in July 2018. Apart from the subject property, Mr Corble analyses three properties which are not regarded as comparable by Mr Sharp, and these are (i) 10M Hyde Park Mansions (ii) 13B Hyde Park Mansions (iii) 4J Oxford and Cambridge Mansions. Properties (i) and (iii) are fourth floor flats. But, putting it bluntly, 10M is very large and 4J is very small, and both would require considerable adjustment to be taken into account properly as comparables. Properties (i) and (ii) also have short leases at 59.86 and 62.41 years respectively and are discounted on this basis as well. Mr Sharp gave oral evidence supplementing these reasons for excluding properties (i) (ii) (iii) as comparables. In addition to the points we have made he added that 10M

(which he was familiar with) had not been sufficiently adjusted for condition by Mr Corble, a criticism he also applied in relation to 13B (where the kitchen needed replacing), and added that 4J is attractive to a completely different market. We accept his evidence on these points and exclude properties (i) (ii) (iii) as comparables, lacking evidential value.

20. Mr Corble reaches the long leasehold value by adjusting the freehold vacant possession value. His table at 12/142 provides an average figure of £864.61 psf which when multiplied by the GIA (1,746 sq feet) produces a freehold vacant possession value of £1,509,609.
21. Stripping out properties (i)(ii)(iii) but including the subject property provides a revised figure of £1,531,221 on his adjustments (£877 psf). 99% of that provides a figure for the long leasehold value of £1,515,908.70. Doing the same exercise but excluding the subject property (to replicate Mr Sharp's approach) provides a figure of £1,537,750.20, 99% of which is £1,522,372.60 (£880 psf).
22. Mr Sharp's exercise on comparables starts at 13/240. Having discounted three of Mr Corble's comparables for the reasons given above, we consider that the four properties analysed by both experts provide a solid base for going forward. It follows that in addition to the subject property both experts consider (i) 9C Oxford and Cambridge Mansions (ii) 12C Hyde Park Mansions (iii) 1F Hyde Park Mansions and (iv) 12E Oxford and Cambridge Mansions. (Neither used 9D or the recent decision.) Mr Sharp's summary is at 13/243 and produces an average figure of £886 psf which produces a figure of £1,546,956 for the long leasehold value, with a notional freehold value of £1,562,580.
23. One particular point of difference between the experts in relation to the comparables relates to the methods they applied to adjust the date of completion to the valuation date of 12<sup>th</sup> July 2018. Mr Sharp applied the Land Registry City of Westminster flats and maisonettes index to adjust for time, which is based solely on transactional evidence (section 5 of his report at 12/240). As is clear from Mr Corble's schedule he adjusted by reference to Savills' PCL Residential Capital Value Index Central Flats (section 7.10.1 of his report). The subject property is on the fringe PCL. We prefer Mr Sharp's approach which is based on transactions as opposed to the Savills' Index which is a mix of transaction and opinion and relates to PCL which is not appropriate.
24. Mr Dovar also submitted that Mr Corble's evidence on adjustments to 12E and 12C in respect of floor levels and ceiling heights was "inherently self-contradictory" and required explanation. He invited the Tribunal to prefer Mr Sharp's evidence at 13/241. We prefer Mr Sharp's approach to both floor level and ceiling height in respect of his comparables because he was able to justify them in oral evidence. In flats such as these, the question of floor level (with or without a lift) is one issue, ceiling heights another.

25. As revised by the Tribunal, the value psf range is comparatively small, from £877 to £886.
26. An even closer figure is achieved when Mr Dovar's methodology as proposed in his closing submissions is applied. He took Mr Corble's figures from the table at 12/142 for the four comparables and adjusted them to 99% (Mr Sharp's figure is in brackets adjacent):-

1F is £885.77 psf (£876)

12C is £850.86 psf (£911)

9C is £913.75 psf (£913)

12E is 837.30 psf (£852)

Average: Corble £884.93, Sharp £886

With this extremely limited difference, and given the fact that we had the advantage of hearing Mr Sharp defend his adjustments in oral evidence, not to mention his more careful choice of comparables in comparison to Mr Corble, we prefer the evidence of Mr Sharp. We therefore apply his analysis of £886 psf which produces a figure of £1,546,956 when multiplied by the GIA.

### **Freehold value**

27. We adopt the approach of both experts and apply the 1% differential to produce a freehold value of £1,562,580.

### **Existing leasehold value/relativity**

28. The Tribunal applies a figure of 76% for relativity, for the following reasons.
29. Mr Corble's approach was as follows, starting at section 10 of his report at 12/144. Relying on *Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0233 (LC) and *Mallory v Orchidbase* [2016] UKUT 468 (LC) he approached the valuation on the basis of market evidence, taking the sale of the subject property with 59.86 years on the lease in August 2018 for £1,270,000 with a deduction of 4.64% for Act rights, producing a short lease value with no Act rights of £1,211,072. His percentage of 4.64% is based on the difference between the Savills 2015 Enfranchisable Graph of Relativity and the Savills 2015 Unenfranchisable Graph of Relativity. Taking his freehold value of £1,509,609 as applied to the £1,211,072 produces a relativity of 80.22%, ultimately producing a premium of £179,831. See 12/145-147.
30. Mr Dovar submitted that the Tribunal should be cautious about using graphs and that Mr Corble's methodology was too heavily reliant on them. The

application of the Savills graphs would be appropriate if the subject property were in prime central London. The Tribunal agrees with Mr Sharp that it is not. Although there was an exchange with Mr Sharp when his oral evidence could be taken as suggesting that the property is (arguably) in Kilburn, we consider the correct description to be that the property is on the edge of PCL. The effect is the same: the use of the Savills Graphs is rejected.

31. Mr Sharp took a different approach, whilst also relying on *Mundy and Orchidbase*. See his section 7 at 13/244. He started by using the same market evidence in relation to the subject property but applied an uplift of £20,000 to take into account the need for redecoration and some minor work, valuing the lease at £1,290,000 for the existing lease value inclusive of Act rights. The Tribunal does not accept that there is any evidence to support the £20,000 adjustment and therefore proceeds on the basis that the purchase price of £1,270,000 is the correct figure inclusive of Act rights. He then deducted 10% for Act rights bearing in mind the unexpired term of approximately 60 years. He defended his 10% deduction for Act rights in paragraphs 7.5-7.15 at 13/244-246, and acknowledged that his 10% deduction has met with mixed success in various Tribunal decisions. His calculations produced a relativity of 74.3% (£1,161,000 divided by £1,562, 580). Concluding that relativity was low, he proceeded to road test other evidence in section 8 (13/246), which Mr Corble did not, taking into account other relevant market transactions for 11E and 12E Oxford and Cambridge Mansions. 11E is similar sized with a lift and a 60 year lease. 12E is the same but with a 149 year lease. See 8.6 at 13/248. He adjusted that 74.3% further by considering the relativity of 73.05% based on the 11E and 12E evidence to arrive at a relativity of 73.675% which he applied to the valuation.
32. The Tribunal rejects Mr Sharp's 10% No Act Rights deduction as being too high. We adopt the Upper Tribunal guidance in *Mallory v Orchidbase Limited* (an extract was attached to Mr Sharp's report and see paragraph 7.7 of his report. Briefly, a deduction of 5.5% was made for an unexpired lease term of 57.68 years. In *Sloane Stanley* a deductions of 10% for an unexpired term of ~~37~~ 41.32 years was made. Based on the methodology in these two cases we conclude that an appropriate deduction for an unexpired term of 62.21 years should be 6%.
33. Further, the Tribunal prefers the approach of Mr Sharp which considers both the evidence of the subject sale together with transactional evidence relation to 11E and 12E, but disagree with him about giving them equal weighting. The latter are a check for the subject sale (short leasehold and long leasehold terms respectively) and therefore it is appropriate to weight the subject sale at 70%, the other evidence at 30%. On this calculation relativity is 76%.

### **The premium**

34. The tribunal determines the appropriate premium to be ~~£151,870~~ £218,989. A copy of its valuation calculation is annexed to this decision.



**Name:** Judge Hargreaves  
Duncan Jagger MRICS

**Date:** 10th September 2019  
Corrected under the slip rule  
18th September 2019

**Appendix:** Valuation setting out the tribunal's calculations

### **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).

**CASE REFERENCE LON/00BK/OLR/2019/0133**

**First-tier Tribunal  
Property Chamber (Residential Property)**

**Valuation under Schedule 6 of the Leasehold Reform Housing and Urban  
Development Act 1993**

~~Premium payable for the freehold interest in 9d Oxford and Cambridge  
Mansions NW1 5EJ~~

~~Valuation date: 8<sup>th</sup> August 2018~~

**APPENDIX A**

**13D Hyde Park Mansions London NW1 5AZ**

**The Tribunal's Valuation**

**Assessment of the premium for a lease extension**

**In accordance with Leasehold Reform, Housing and Urban Development Act 1993**

**LON/00BK/OLR/2018/0353**

**Components**

Valuation date: 12th July 2018

Yield for ground rent: 6%

Deferment rate: 5.0%

Long lease value £1,546,956

Freehold value £1,562,580

Unexpired term 44.91 ~~62.21~~ years

Existing leasehold value £1,187,561

Relativity 76%

Ground rent currently receivable £240

Capitalised @ 6% for 29.22 years 13.63 £3,271

Future Ground rent £480

Capitalised @ 6% for 33 years

Deferred 29.22 years 2.593 £1,245

**£4,516**

Reversion to: £1,562,580

Deferred 62.22 years @ 5% 0.048 £75,004

Freeholder's Present Interest £79,520

Landlords interest after grant of new lease £1562,580

PV of £1 after reversion @ 5% 0.0006 £938 **£78,582**

**Marriage Value**

Extended lease value £1,562,580

Plus freehold reversion 938

£1,547,894

Landlord's existing value £79,520

Existing leasehold value £1,187,561

£1,267,081

Marriage Value £280,813

Freeholders share @ 50% **£140,407**

**LEASE EXTENSION PREMIUM £218,989**