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

Case Reference : **LON/00BA/OLR/2013/0210**

Property : **Flat 4, 243 Queens Road,
Wimbledon SW19 8NY**

Applicant : **Mr Toby Christopher Noel Shellard**

Representative : **Mr William R S Bradley BSc Hons
MRICS CUEW**

Respondents : **Mr Paul Egide De Vos
Mr Richard Ronald Haughton (As
Trustees of S&K Pension Trust
Fund)**

Representative : **Mr Douglas L Struth BA DipARB
MRICS FCI Arb**

Type of Application : **Section 48 Leasehold Reform,
Housing and Urban Development
Act 1993 – to determine the price
payable for a new lease**

Tribunal Members : **Judge John Hewitt
Mr Charles Norman BSc FRICS
Mr John Barlow FRICS**

**Date and venue of
Hearing** : **25 June 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 October 2013**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the premium payable by the Applicant to the Respondents for the grant of a new lease is £13,310 calculated in accordance with the valuation appended to this Decision
2. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The Applicant holds a long lease of the Property. The Respondents together comprise the reversioner.
4. By notice dated 7 August 2012 and given pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act) the Applicant claimed a new lease of the flat [1].
5. By a counter-notice dated 16 October 2012 and given pursuant to section 45 of the Act the Respondents admitted that on the relevant date the Applicant had the right to acquire a new lease of the flat [5].
6. Subsequently the parties were able to agree some, but not all of the terms of acquisition.
7. The Applicant made an application to the Tribunal for the terms of acquisition which were not agreed to be determined. The application form is dated 5 February 2013 [7].
8. Directions were given and the application was listed for hearing on 25 or 26 June 2013.
9. The application was originally made to the Leasehold Valuation Tribunal. By virtue of the Transfer of Tribunal Functions Order 2013 SI 2013 No.1036 the functions of the Leasehold Valuation Tribunal for areas in England were transferred to the First-tier Tribunal (Property Chamber) with effect on 1 July 2013.

The proceedings now subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules), save to the extent that the Tribunal may dis-apply all or any of the Rules in favour of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (the Previous Regulations).

The hearing

10. The application came on for hearing before us on 25 June 2013. Mr William Bradley appeared as advocate and expert valuer witness on behalf of the Applicant. Mr Douglas Struth appeared as advocate and expert valuer witness on behalf of the Respondents. Both experts

produced reports addressed to the Tribunal and these included statements of truth and professional declarations.

11. Mr Bradley and Mr Struth both gave evidence. Both were cross-examined by one another and both answered questions put to them by the Tribunal. Both Mr Bradley and Mr Struth made submissions to us.
12. On 26 June 2013 we had the benefit of an internal inspection of the subject flat and external inspections of the comparable properties relied upon by the parties.

Valuation components agreed

13. We were told that the following components of the valuation process were agreed:

Date of valuation:	7 August 2012;
Ground rent payable:	£50 pa for the first 33 years; £100 pa for the next 33 years and £200 pa for the remainder of the term;
Capitalisation rate:	7.25%;
Years unexpired:	71.63;
Improvements:	None material to valuation

Valuation components not agreed

14. The components not agreed and the rival positions were as follows:

	Applicant	Respondent
Deferment rate:	5.75%	5.00%
Relativity:	93.10%	89.00%
Long lease value:	£225,000	£249,975
Existing lease value:	£209,475	£224,725
Premium payable:	£10,428	£17,024

The subject Property

15. Both parties were agreed that 243 Queens Road is a semi-detached three storey Victorian house built from solid brickwork beneath a pitched roof clad with concrete tiles and originally constructed as a single family residence.
16. Subsequently, we were told in 1986, the house has been adapted to create four self-contained flats accessed via a communal entrance way and staircase to the upper floors.
17. The subject Property is a one bedroom flat on the second (top) floor. The accommodation which is approached by a stairway and a large landing is laid out to comprise a landing, reception room with door off to a small kitchen with sloping ceilings beneath the roof, bedroom and bathroom/WC. There is gas central heating. Windows are modern UPVC units and include a Velux style window in the kitchen. There is no garden access nor off-street parking. Mr Bradley for the Applicant

said that gross internal floor area of the flat was approximately 39.6 sq m. In contrast Mr Struth for the Respondent said that the gross internal floor area was approximately 46.56 sq m. Mr Bradley said that excluding height below 1.5m the usable space was reduced to 31.68 sq m. Sketch plans of the flat are at [170 and 171].

On our inspection we noted that much of the space below 1.5m had been used and adapted to good effect to accommodate kitchen fittings and some cupboard/storage space. Neither expert asserted that there should be any adjustment for the disregard of lessees' improvements.

18. Both parties were agreed that the Property was not situated in the popular Wimbledon village itself, that being some 1 mile away, and that it was closer to Summerstown; that it was located in an attractive London suburb and enjoyed the benefit of good public transport provision.

Deferment rate

19. In his report and at the hearing Mr Bradley contended for a rate of 5.75%. His starting point was 5% for flats as recommended in *Earl Cadogan and anor v Sportelli and anor* [2007] EWCA Civ 1042. He then made three adjustments:

0.25%	for landlords' responsibility for management;
0.25%	for lack of managing agents; and
0.25%	to reflect obsolescence.

Mr Bradley did not adduce any evidence to support these adjustments. He relied upon the decision in *Zuckerman and ors v Calthorpe Estates Trustees* [2009] UKUT 235 (LC); [2008] LRA/97 and *City and Country Properties Limited v Yeats* [2012] UKUT 227 (LC)

20. After the hearing, but before the Tribunal had reached its final conclusions, the decision in *Voyvoda v Grosvenor West End Properties and anor* [2013] UKUT 0334 (LC) was made available. This decision of Sir Jeremy Sullivan, Senior President and Mr N.J. Rose FRICS, expressly addressed the question of the *Zuckerman* addition of 0.25% for landlord's responsibility for management. It was thus material to Mr Bradley's submissions to us. We invited Mr Bradley to make further written submissions addressing the *Voyvoda* decision and these are dated 22 August 2013. Mr Struth's written submissions in answer are dated 5 September 2013.
21. Mr Bradley submitted that *Voyvoda* was limited to the 0.25% *Zuckerman* adjustment for management and did not affect the other two adjustments namely, lack of managing agents and obsolescence. Mr Bradley appears to accept that *Voyvoda* is a compelling authority to the effect that the *Zuckerman* 0.25% for management is no longer sustainable, but he made further submissions and sought to increase his adjustment for lack of managing agents from 0.25% to 0.50%.

22. The further written submissions which Mr Bradley was invited to make in the light of *Voyvoda* should have been limited to the implications arising from that authority alone and should not have been taken as an opportunity or invitation to alter a position taken at and throughout the hearing on a quite different matter. Mr Struth has rightly objected to the course taken by Mr Bradley. Thus we find that Mr Bradley will be limited to his case presented at the hearing that the *Zuckerman* adjustments are 0.25% for lack of managing agents and 0.25% for obsolescence.
23. In his report at paragraph 10.04 [50] Mr Bradley asserts that the subject block comprises four flats and that the majority of managing agents have no interest in managing blocks of less than eight flats so that in consequence a landlord is left to manage them himself. Mr Bradley did not adduce any compelling evidence to support his assertion. His evidence, such as it was, was to the effect that the unit fees for smaller blocks tend to be higher than larger blocks from which economy of scale can be achieved. This strikes a chord with the experience of the members of the Tribunal but the managing agents fees are usually recovered in full from the lessees through the service charge
24. Mr Struth said the block was currently managed by managing agents and that the lessees in the block were seeking to self-manage it and that a process of due diligence was being undertaken. He submitted that this demonstrated that management was not an issue.
25. We were not persuaded that difficulty in finding a suitable managing agent was so significant that it would influence an investor such as to justify an adjustment to the *Sportelli* rate. We thus reject this adjustment.
26. The other adjustment contended for by Mr Bradley was 0.25% to reflect obsolescence. Again Mr Bradley sought to rely upon *Zuckerman* but he did not adduce any evidence to support his submission. Mr Struth submitted that the flat was in a solid Victorian property in an affluent and popular part of south west London held on the terms of a modern comprehensive lease pursuant to which the landlord will achieve a full recovery of the costs of repairs carried out, provided, of course, that the landlord complied with the relevant statutory requirements. The subject block was well maintained and there was no evidence that it was at any greater risk of obsolescence than many many other blocks. He said that in these circumstances an investor would not looking for a greater return to reflect greater risk. Mr Struth said he saw no case for an adjustment from *Sportelli* on the basis contended for by Mr Bradley. We prefer and accept the submissions made by Mr Struth on this point because they accord with the accumulated experience of the members of the Tribunal.
27. For the reasons set out above we determine that the appropriate deferment rate to adopt is 5%.

Relativity

28. In paragraph 10.07 [51] of his report Mr Bradley cited five graphs which ranged from 91.85% to 93.65%. Mr Bradley then cited six transactions which he analysed. He said they produced a wide range of results which in the circumstances was unhelpful. In the event he sought assistance from the RICS Graphs of Relativity which he considered provided a good basis from which to work. Adopting those graphs he came to a relativity of 93.10%.
29. Mr Struth also placed some reliance on graphs, some of which were the same as those relied upon by Mr Bradley. Mr Struth said that he preferred the Nesbit graph and relied upon it because it was supported by his practical example relating to Flat 2, 243 Queens Road.
30. Both Mr Bradley and Mr Struth sought to analyse a lease extension of flat 2 within the subject building [108]. This took place in January 2009 and a new long lease was granted for £267,000. Assuming a share of freehold at 1% this put the value at close to £270,000.
31. Mr Struth said that the estate agents had valued the short lease of 75.5 years unexpired at £245,000 to £250,000. Adopting the agent's most optimistic figure for the short lease of £250,000 this produced a relativity of 92.60%. If there was then a 5% adjustment to the short lease price to reflect the 1993 Act rights in a no Act world, this would place the short lease value at £238,000 and produce a relativity of 88.00%.
32. Mr Bradley's analysis is at [53]. He arrives at 93.50% but does not appear to make an adjustment for the no Act world. Mr Bradley does not consider this to be 'an actual real transaction' and thus he places little reliance on it.
33. In the present case there was little reliable transaction evidence to assist with what relativity to adopt we accept that the graphs or at least some of them are now out of date so that they do not reflect the current difficult financial market conditions. In these circumstances we do place weight on settlements reached. We find that the settlement made by Mr Bradley re 13/13A Samos Road in May 2011 where relativity for a lease of 70.35 years was agreed at 92.5% to be of assistance. For these reasons we adopt 92.5% as the appropriate relativity in this case.

Long lease value

34. Mr Bradley wished to rely upon a number of sales which are set out at [64]. There was limited supporting information available in respect of several of them.
35. Mr Struth relied upon three sales, all of properties in Queens Road. He did not consider sales of properties in nearby streets to be particularly helpful. His analysis of his comparables is at [101] and adjusted for size only the values are:

Flat 4, 70, Queens Road	£275,000	£568 psf
Flat B, 151 Queens Road	£325,000	£458 psf
Flat D, 197 Queens Road	£340,000	£473 psf

Mr Struth said that the sales were all close to the valuation date and that no adjustments for time were required.

36. Both Mr Bradley and Mr Struth relied upon the sale of Flat 4, 70 Queens Road which sold for £275,000 in May 2012. This property was superior to the subject property in a number of respects and adjustments were required. Both parties agreed adjustments of £10,000 to reflect the value of a parking space and £7,500 for the benefit of a terrace. This produces a figure of £257,500. Mr Bradley also made an adjustment of 10% (£27,500) to reflect superior location, it being closer to central Wimbledon, but Mr Struth did not agree that but he did concede that an adjustment of £2,500 to reflect location would not be unrealistic.

37. Mr Bradley's comparable sales were:

218B Haydons Road	£210,000	£398 psf
GFF 27 Ashcombe Road	£237,000	£527 psf
79 Alexandra Road	£230,640	£476 psf
Flat 2, 15A All Saints Road	£222,500	£516 psf
16 Wycliffe Road	£239,500	Not available

Both Mr Bradley and Mr Struth were agreed that an adjustment of £10,000 was required to 27 Ashcombe Road to reflect the rear outlook onto the wall of a large industrial building.

Mr Bradley considered an adjustment of 5% (£10,500) was required to 218B Haydons Road to reflect location.

38. We have given careful consideration to the rival evidence concerning the comparables. We are concerned at the lack of supporting detail available, particularly concerning Alexandra Road. Also Wycliffe Road and All Saints Road are quite a distance from the subject property with the facilities available to it and this will inevitably affect value. Taking the evidence as a whole we prefer the submission of Mr Struth that we should focus on the transactions on the properties in Queens Road. Of those we prefer the one bedroomed flat sale at 70 Queens Road. We accept that the rate per sq ft decreases as size increases making the adjustment of the larger two bedroom flats difficult.
39. In general we accept and prefer the evidence of Mr Struth, but consider that his adjustment of £2,500 for location as compared to 70 Queens Road is insufficient. 70 Queens Road is markedly closer to Wimbledon centre than the subject property. We consider that that justifies an adjustment of 5%. However, we do not accept that there should be any differential between an extended lease value and a virtual freehold. We

therefore reject the 1% adjustment. This is because the adjustment is purely theoretical.

We therefore take his virtual freehold value of £252,500 and adjust by 5%. This gives a net sum of £239,875, say £240,000. This we find to be the extended lease value of the subject flat

Short lease value

40. Having determined a long lease value of £240,000 and a relativity of 92.5% we determine the existing short lease value at £222,000.

Valuation

41. Our valuation (which is annexed and) which takes into account the determinations set out above results in a premium payable of £13,310.

Judge John Hewitt
18 October 2013

APPENDIX

**In the Matter of Flat 4, 243 Queens Road Wimbledon SW19 8NY
VALUATION BY THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

Date of valuation	(agreed)	07-Aug-2012
Leases expiry date	(agreed)	24-Mar-2084
Unexpired term	(agreed)	71.63 years
Extended lease value	(Tribunal)	£240,000
Value of 71.63 year leases @ 92.50 % of virtual freehold value	(Tribunal)	£222,000
Ground rent capitalisation rate	(agreed)	7.25%
Reversionary deferment Rate	(Tribunal)	5.00%
Premium Payable		

**Diminution in Freeholder's Interest
Value of Freeholder's Present Interest**

Term 1

Ground rent		£	50	per annum	
5.63 Years' Purchase	@	7.25%	4.4922		
				£	225

Term 2

Ground rent		£	100	per annum	
33 Years' Purchase	@	7.25%	12.4326		
PV £1 in 5.63 years	@	7.25%	<u>0.6743</u>		
			8.3833	£	838

Term 3

Ground rent		£	200	per annum	
33 Years' Purchase	@	7.25%	12.4326		
PV £1 in 38.63 years	@	7.25%	<u>0.06695</u>		
			0.83236	£	166

Reversion

value of virtual freehold flat		£	240,000		
Present Value of £1 in 71.63 years time @ 5%		0.0304			
				£	<u>7,296</u>
				£	8,525

Less

Value of Freeholder's Proposed Interest

Virtual freehold		£	240,000		
Present Value of £1 in 161.63 years' time @ 5%		0.0004			
				£	<u>96</u>
Diminution in Freeholder's Interest				£	<u>8,429</u>

Calculation of Marriage Value

Value of Proposed Interests

Lessee	£	240,000
Freehold	£	96

Total Value of Proposed Interests

£ 240,096

Value of Present Interests

Lessee	£	222,000
Freeholder (see above)	£	<u>8,525</u>

Total Value of Present Interests

£ 230,525

Hence Marriage Value, Difference Between Proposed and Present Interests

£ 9,571

Divide Marriage Value equally between the Parties

£ 4,785

Hence Premium Payable is

£ 13,311

say £ 13,310