



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

**Case Reference** : **MAN/00DA/OLR/2021/0018, 0019, 0020,  
0021, 0022, 0023, 0024, 0025, 0026, 0027,  
0028, 0033, 0034, 0039**

**Property** : **1,3,5,6,7,12,12A,14,15,16,17,19,23 & 24 The  
Hall, Allerton Hill, Chapel Allerton, Leeds  
LS7 3NZ**

**Applicant** : **Various Leaseholders**

**Respondent** : **Allerton Hill (CB) Limited  
Allerton Hill (BH) Limited  
Allerton Hill (CY) Limited**

**Type of  
Application** : **s48(1) Leasehold Reform Housing and Urban  
Development act 1993**

**Tribunal Members** : **Mr John Murray LLB  
Mr Neil Swain MRICS**

**Date of Decision** : **8 July 2022**

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## **REASONS FOR DECISION**

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### **DECISION**

The Tribunal determines that the premium payable for the 90 year lease extensions in relation to the subject matter apartments will be as follows:

Flat 1: £9851  
Flat 3: £9799  
Flat 5: £9825  
Flat 6: £9812  
Flat 7: £9812  
Flat 12: £9825  
Flat 12A: £9825  
Flat 14: £9825  
Flat 15: £9825  
Flat 16: £9903  
Flat 17: £10855  
Flat 19: £9825  
Flat 23: £9825  
Flat 24: £9903

### **INTRODUCTION**

1. The Tribunal received applications to determine the premiums to be paid for the grant of 90 year lease extensions under s48(1) Leasehold Reform Housing and Urban Development Act 1993 for 14 apartments at The Hall, Allerton Hill Chapel Allerton Leeds LS7 3NZ.
2. The Applicants had all served notice under s45 for an additional term of 90 years to be added to the lease proposing a premium of £4718.
3. The Respondents had served counter-notices admitting the right to the new lease but proposing a premium of £15,500.

## **THE PROCEEDINGS**

4. Directions were made by a Procedural Judge on 29 December 2021 as follows:
  - (a) Each party was to send within 28 days of the directions an electronic bundle containing a statement of case, including any valuation evidence and reference to the terms of the new lease that are in dispute.
  - (b) Within 14 days of the above, the parties might lodge a statement in reply.
  - (c) The parties were entitled to rely on the evidence of one expert valuer whose report, prepared in accordance with Rule 19(5) of the Tribunal Procedure (First tier Tribunal)(Property Chamber) Rules 2013, shall be served with the bundle of documents.
  - (d) The valuers were directed to discuss the case and provide a joint statement within 14 days of discussions.
5. A Tribunal was appointed and an inspection of the Property was carried out on the morning of the hearing.

## **THE INSPECTION**

6. The Tribunal inspected the development situated close to the heart of Chapel Allerton. The development was seen to be a Victorian mansion building with additional new build property attached, with an extensive lawned and wooded garden area attached. The garden area had signs marked "Private Property". There was limited parking on site, for approximately one vehicle for each apartment.
7. At the invitation of two of the leaseholders, the Tribunal was provided access to two apartments at the Property which were both of similar size and footprint having two bedrooms, a bathroom, en-suite shower room and combined living room/kitchen.

## **THE LEASES : PERTINENT TERMS**

8. The Properties were let on leases mostly identical in terms, between the three Applicants, Allerton Hall Management Company Limited and individual lessees, for a term of 125 years from 1 January 2004.

9. The leases are subject to a rent of £250 per year with provision for revised rents during successive Review Periods as a rent equal to £250; or such revised rent as might be ascertained in accordance with the provisions of Schedule 7, whichever was the greatest.
10. The "Review Date" is stipulated as 30<sup>th</sup> July 2016 and thereafter on the tenth anniversary of the most recent preceding Review Date and "Review Period" defined as the period starting with any Review Date up to the next Review Date or starting with the last Review Date up to the end of the Term.
11. The Seventh Schedule provides that the Landlord should give written notice of the new rent, with a formula for calculation. The New Basic Rent is to be the higher of the Basic Rent payable immediately before the relevant Review Date (in this case £250) and the Ground Rent . The Ground Rent is defined as 0.015625% ( $1/24^{\text{th}} \times 0.25\%$ ) of the Open Market Value likely to be paid at the relevant Review Date.
12. As the report prepared by Simon Nabarro in the bundle noted, the defined Ground Rent percentage figure appears to be a typing error ;  $1/24^{\text{th}}$  of 0.25% calculates as 0.010417%.
13. The rent review clause necessitated assessing the Open Market Value of the individual apartments as at the review date (19<sup>th</sup> July 2016). Mr. Simon Nabarro FRICS of Nabarro McAllister had carried out a desktop valuation exercise dated 2<sup>nd</sup> October 2017.
14. The lease provides for arbitration in the event that agreement as to the new rent is not reached.

## **THE LEGISLATION**

The relevant legislation is contained in s48(1) Leasehold Reform Housing and Urban Development Act 1993 which reads as follows:

### **s48(1) Leasehold Reform Housing and Urban Development act 1993**

(1)Where the landlord has given the tenant—

(a)a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b)a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, [F]ithe appropriate tribunal] may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where—

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by [F2the appropriate tribunal] under subsection (1), but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is—

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by [F3the appropriate tribunal] under subsection (1)—

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

## **EXPERT REPORTS**

15. The Respondents produced an expert report by Mr. Andrew Cohen MRICS of Talbot Surveying Services dated 26<sup>th</sup> January 2022.
16. The Applicants produced an expert report by Mr. James Laughlin LLB PGDip Assoc RICS dated February 2022
17. Apartment values as at the Review Date were agreed as follows:
  - (a) Flat 1: £245,000
  - (b) Flat 2: £235,000
  - (c) Flat 5: £240,000
  - (d) Flat 6: £237,500
  - (e) Flat 7: £237,500
  - (f) Flat 12: £240,000
  - (g) Flat 12A: £240,000
  - (h) Flat 14A: £240,000
  - (i) Flat 15: £240,000
  - (j) Flat 16: £255,000
  - (k) Flat 17: £255,000
  - (l) Flat 19: £245,000
  - (m) Flat 21: £205,000
  - (n) Flat 23: £240,000
  - (o) Flat 24: £255,000

18. The experts had agreed
  - (a) the valuation date was 24<sup>th</sup> February 2021;
  - (b) the lease terms was 125 years from 1<sup>st</sup> January 2004;
  - (c) Remaining term 107.86 years
  - (d) 1% uplift to FHVP
  - (e) No marriage value payable
  - (f) No s13 compensation payable.

19. Matters not agreed and therefore to be determined were
  - (a) the appropriate capitalisation rate to assess the value of the term;
  - (b) the appropriate deferment rate to be applied to the reversion.

## **THE HEARING**

20. The Hearing was held by Video hearing, with the consent of the Parties. The Applicants were represented at the Hearing by Ms. Brooke Ward of Counsel. The Respondents were represented by Mr Piers Harrison of Counsel.

## **PRELIMINARY ISSUES**

21. The Parties were in agreement that the calculation of the valuation to be paid was dependent upon the ground rent payable under the various leases being determined. Rent review notices were served by the Respondents in 2016. Only Flat 17 had agreed the rent review and signed the memorandum in 2016 agreeing to a rent of £611 per year. No other leaseholder had agreed to the rent, and none had been arbitrated. By the time of the hearing, the parties had agreed that ground rent would be set at £550 per apartment, with the exception of Flat 17, which was agreed at £611.
22. Counsel for the Respondents clarified that the agreed ground rent of £550 was subject to a proviso to the effect that if lease extensions did not proceed, then the agreed figure would be "voided" and the parties might go back to arbitration.

## **SUBMISSIONS AND EVIDENCE**

### **THE APPLICANTS**

23. The Applicants filed a statement of case confirming that they had issued notices of claim dated 23 February 2021, setting out a premium of £4719. The Landlord had issued a counter notice with a value of £15,500.
24. They confirmed that the valuation date of 24 February 2021 was agreed, and a lease term of 125 years from 1 January 2004.
25. The Applicants relied upon an expert report prepared by Mr. James Laughlin, who was called and invited to attest to his expert report. He confirmed that the level of Ground rent had been agreed at £550 per annum with the exception Flat 17, which had been agreed at £611. He said that there was nothing he would alter in his original report, other than the calculations based on the agreed ground rents which had been revised.
26. In relation to capitalisation, Mr. Laughlin considered the rent review clause would make the ground rents portfolio an attractive investment, because the ground rent was in excess of 0.1% of the capital value. Because of this he said they were rarely seen on the open market, and he had been unable to find evidence of any comparables.
27. Mr. Laughlin relied on (non-binding) Tribunal decisions for a "steer" on calculations, notwithstanding the Upper Tribunal decision in Arrowdell. He considered guidance given by the Lands Tribunal in Nicholson in relation to the factors influencing capitalisation rate for ground rent would be:
  - (a) Length of lease term; at 107.86 years, this would not have an impact.

- (b) Size of the ground rent provisions, and nature of provisions for review of rent : with eleven rent reviews over the remainder of the term, aligned to the property market which would outperform inflation, this would present as an attractive investment proposition.
28. Mr. Laughlin referred to the FTT case of the Cedars, which had produced a capitalisation rate of 4.75%. He alluded that the terms of the leases, and the increase in ground rents were similar, and that consequently a similar conclusion should be arrived at in this case, were it not for the onerousness of the provisions in this case, which he then explored in depth.
29. The Council for Mortgage Lenders had determined that onerous ground rents would be those that were frequently doubling (usually more than once every 20 years) or those that brought a lease within the assured shorthold tenancy regime (over £250 per annum outside London) or with Ground rents in excess of 0.1% of property value. He brought evidence of some lender's comments in respect of such mortgages from the UK Finance Lenders Handbook.
30. The leaseholders at the Hall, with ground rents in excess of £250 would find themselves holders of an assured shorthold tenancy. Their ground rent, at £611 per annum, would be 0.251% of the average extended lease value of £252,857, which would be well beyond the point at which a mortgage lender would be prepared to take a view, and would be described as onerous.
31. Mr. Laughlin referred to earlier Tribunal (non-binding) decisions where the prospect of future legislation would be likely to deter purchasers.
32. Security of recovery: Mr. Laughlin explored in depth the Government announced reforms from January 2021, whereby the Secretary of States had announced that the Government would cap the treatment of ground rents at 0.1% of the freehold value.
33. Mr. Harrison in cross examination challenged him on this aspect of his report; Mr Laughlin had put no calculations before the Tribunal, because government announcements re leasehold reform had made a big impact upon ground rent sales. He had done research on ground rent sales, to consider effect on ground rent caps but found a lack of evidence of those particular type of ground rents.
34. Mr. Harrison asked him if he had analysed Mr. Cohen's comparables? He confirmed that there had been some he had not seen, which had included a degree of onerousness. He did not feel that they were relevant and had not put them in his report.



## **THE RESPONDENT**

35. Mr Harrison for the Respondent introduced his expert evidence from Mr. Cohen. Mr. Cohen discussed in greater detail his evidence of ground rent portfolios sold at auction with onerous ground rents. He said that in his experience, Investors were not put off by onerous ground rents particularly when they were at low levels at start. He said that in his view, the market could be ignoring leasehold reform proposals because they may never happen; the government may not "get around" to doing anything about it. Investors were relatively relaxed about the reforms, and there had been no mention that the reforms would be retrospective.

36. Since the ground rent review had been triggered in 2016, nine flats at the Hall had sold; so the review had not reduced demand, and properties were mortgaged.

## **THE DETERMINATION**

37. The Tribunal was asked to determine the premium payable on 14 apartments in a residential development in Chapel Allerton Leeds.

38. The revised ground rent had been agreed prior to the hearing at £550 per annum for all flats except flat 17, which had previously been agreed at £611

39. The items not agreed were the capitalisation rate and the reversion rate which it fell to the Tribunal to determine.

### **The Capitalisation Rate**

40. The Applicant argued that the rent was attractive, given the annual amount payable and that this would be reflected in a lower capitalisation rate. However, the amount of the rent led them to believe it was onerous, and therefore at risk from proposed government legislation. They split the rent into the amount up to 0.1% of property value and the amount over. It was suggested that the amount under 0.1% should be capitalised at 6%, but the Applicant's witness ultimately accepted in cross examination that it should be at the same rate as the second portion and used a rate of 4.75%.

41. The amount over 0.1% was very attractive as it stood and should be capitalised at 4.75%, but with a 75% discount to reflect the risk of new government legislation on onerous ground rents.

42. The Respondents provided evidence of various transactions that had completed around the same time as the valuation date. They accepted that only two of them were really comparable as the others had ground rents below the 0.1% threshold. They argued that it was questionable whether the rents were truly onerous given the number of flats in the development that had been mortgaged in recent years.
43. The Applicant argued a novel case, suggesting that the Tribunal could approach the matter of an onerous rent with a method similar to hope value. However, on the whole the Tribunal preferred the Respondents case supported by comparable evidence that there was a market for these ground rent investments (even with the possible risk of future government legislation).
44. In preferring that evidence, careful note was taken of the capitalisation rates presented. It was noted that whilst the Respondent's witness had suggested a lower rate, the evidence presented suggested that investors were being cautious about possible future legislation. This resulted in capitalisation rates higher than those proposed. Having considered the argument and evidence presented, the Tribunal decided that a capitalisation rate of 6.4% was appropriate.

### **The Reversion Rate**

45. The Applicants argued that the rate should be based on Sportelli, but should allow a 0.5% uplift for "reduced growth" (as per Zuckerman). They had presented information to suggest that the Leeds area had a much lower growth rate compared to Prime Central London, based on various house price indices. They also suggested that the development itself showed a much lower growth rate than the surrounding area and that this alone justified the uplift.
46. The Respondents witness had not presented any evidence on this matter, feeling that there was no clear reason for the uplift. The Respondents argued that the variation in growth rates very much depended upon the point in time that the indices were selected from. They also argued that the case law on this subject was clear that it refers to an area as a whole and not individual developments. Further, as a relatively new development, the flats would have achieved a significant premium on first sale and that it would take a significant period of time to smooth out that initial peak.
47. The Tribunal immediately discounted the suggestion of low growth rate on an individual development. It is clear that the intention of the Tribunal in Sportelli and later, is that it is looked at on a regional basis. With regard to the regional growth rates, the evidence provided was felt insufficient to justify a departure from the Sportelli ruling. Therefore, in conclusion the deferment rate to be applied in this case is 5%.

48. The Tribunal determined the premiums in accordance with the attached calculations and determined that the premiums payable for lease extensions for the individual apartments will be:

Flat 1: £9851  
Flat 3: £9799  
Flat 5: £9825  
Flat 6: £9812  
Flat 7: £9812  
Flat 12: £9825  
Flat 12A: £9825  
Flat 14A: £9825  
Flat 15: £9825  
Flat 16: £9903  
Flat 17: £10855  
Flat 19: £9825  
Flat 23: £9825  
Flat 24: £9903

**Tribunal Judge  
Mr J Murray**

**8 July 2022**