



Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

LON/00AY/OLR/2009/0039

Premises: 23 Dumbarton Road
London SW2 5LX

Applicant: Mr Simon McGee

Represented by: Mr Lindsay Johnson, counsel

Respondent: Ms Marcelle Armstrong

Represented by: Mr David Whitney, Hubbard Pegman & Whitney

Tribunal: Mr NK Nicol
Mr R Potter FRICS

Date of Hearing: 27/05/09

Date of Decision: 27/05/09

REASONS FOR DETERMINATION

1. The Applicant is the lessee of the subject property, a first floor maisonette in a two-storey purpose-built mid-terrace building in the Brixton area of south London. He seeks an extended lease in accordance with s.42 of the Leasehold Reform, Housing and Urban Development Act 1993. He and the freeholder Respondent agreed the following matters:-
 - (a) The terms of the transfer and of the new lease;
 - (b) The existing lease is for a term of 99 years commencing 24th June 1977;
 - (c) The valuation date is 21st April 2008, at which point the lease had just under 69 years left to run;
 - (d) The capitalisation rate should be 6%;
 - (e) The relativity between the values of the lease in its extended and current forms should be 87.5%.
2. For the reasons set out further below, the Tribunal has accepted the valuation of the premium to be paid by the Applicant for the extended lease made by the Respondent's valuer, Mr Michael Tibbatts MRICS. His calculation is adopted and attached to this determination as an appendix.
3. The first item in dispute was the value of the extended lease. Mr Christopher Witts FRICS, valuer for the Applicant, put the value at £275,000 as at 29th June 2007 by reference to sales of three comparable properties. He then reduced that figure to take account of the reduction in property values up to the valuation date of 21st April 2008 to reach a final amount of £259,200.
4. Mr Tibbatts said that he was unable to find sales of comparable properties around the valuation date and that this might be explicable by the significant reduction in sales volumes in the borough of Lambeth as revealed in Land Registry statistics. Instead, he relied on two sales in early October 2007 to reach a figure of £297,500. He agreed with Mr Witts that an adjustment had to be made to take account of the reduction in property market values but did not put it as high. The Land Registry statistics indicated that there had been a slight increase in values but Mr Tibbatts's experience suggested that was wrong. He looked for guidance instead from the Savills index for flats in neighbouring south west London which suggested a reduction of 3%. This reduced his figure to £288,000. Based on his

experience, he still thought this was too high and reduced it conservatively to £280,000. He cross-checked this figure by comparing current sales of other comparable properties and indexing back to April 2008 – the results were generally in line with his calculations.

5. The Tribunal prefers Mr Tibbatts's assessment of the value of the extended lease because it is based on sales which were closer to the valuation date and he had better evidence of the size of the reduction in property values over the relevant period. His approach was more comprehensive, both in its reasoning and the supporting evidence, and so was more credible and reliable. Mr Witts supplied no details of his comparable properties, no lease details or corroboration of completion and had apparently relied on verbal evidence only from local estate agents. Neither it seemed had he made any attempt to ascertain whether there was any market evidence of transactions between his first valuation date of 29th June 2007 and the actual valuation date of 21st April 2008. In relation to the reduction in market values, Mr Witts had relied entirely on his opinion, without supporting evidence. On the other hand, Mr Tibbatts relied on Savills Index, accepting that it could only be regarded as a guide.
6. Mr Witts and Mr Tibbatts disagreed on the deferment rate. The Court of Appeal in *Earl Cadogan v Sportelli* [2008] 1 WLR 2142 established a generic deferment rate of 5%. Mr Witts said that should be increased to 6% to take account of the inferior location of the subject property compared with those in the *Sportelli* case. Mr Tibbatts asserted that the rate of 5% could only be departed from in the light of suitably substantial evidence to counteract that provided in *Sportelli*. The Tribunal agrees with Mr Tibbatts. Views differ on the correctness of the decision in *Sportelli* but, as well as carrying the weight of the Court of Appeal, binding on this Tribunal in matters of law, it is based on extensive expert evidence. Mr Witts offered no evidence of his own other than his own expertise relating to the impact of the differing geographical location. In the light of the matters dealt with in *Sportelli*, that is not enough.
7. It was alleged on behalf of the Applicant that a reading of the relevant clauses of the lease showed that they were defective:-
 1. THE Lessor HEREBY DEMISES unto the Lessee ALL THAT the first floor maisonette known as No. 23 Dumbarton Road London S.W.2.

together with those parts of the front gardens now or generally used in conjunction with 23 Dumbarton Road aforesaid the separate front and rear entrances and the staircases leading from the ground floor to the said first floor maisonette

2. THE Lessee HEREBY COVENANTS with the Lessor as follows :-

(3) Whatever may be the condition thereof at the commencement of the term hereby granted to keep the interior and exterior of the demised premises and each and every part thereof including the water and sanitary apparatus and all fixtures and fittings at all times and from time to time to the satisfaction of the Lessor's Surveyor in good and substantial repair and condition ...

(14) To keep in common with the lessee of 25 Dumbarton Road aforesaid or with the Lessor if and so long as possession of the last mentioned premises is retained by the Lessor in good repair and as a separate covenant to pay one half of the cost of repairing maintaining renewing or rebuilding any thing or part of the Building used or enjoyed in common with the lessee of 25 Dumbarton Road or the Lessor as aforesaid all of which shall be party matters to be repaired maintained renewed or rebuilt at the equally shared expense of the Lessee and the lessee of 25 Dumbarton Road or the Lessor as aforesaid

5. IF during this Lease any dispute arises between the Lessee and the lessee or occupier of No. 25 Dumbarton Road aforesaid relating to the Building or No. 25 Dumbarton Road or any joint or party matter or thing relating to either of the said premises or the Building or any repairs or contributions towards repairs or any alleged nuisance or annoyance then such dispute shall be referred (at the joint expense of the Lessee and the lessee or occupier of No. 25 Dumbarton Road) to the Lessor's Surveyor whose decision shall be final

8. It was alleged on behalf of the Applicant that the lack of definition in the demise resulted in a significant lack of clarity in the repairing covenants and, in particular, who was responsible for instituting repairs to non-demised areas. Further, the lease contained no mutual enforceability clause such as would be found in any modern lease. Mr Witts had recently had the opportunity to address

the effect on property values of defective lease terms when he was called as an expert in High Court litigation on a negligently drafted lease. He asserted that the market value of the lease of the subject property should be reduced by 20% to take account of the defective nature of the above terms. He accepted that the agreed mutual enforceability clause to be inserted in the new extended lease met his concerns for the future.

9. It was asserted on behalf of the Respondent that there was no defect or, if there was, its effect on the value of the lease was marginal. Mr Whitney conceded that the lease was not drafted in an acceptably modern form but asserted that repairing obligations were sufficiently covered and, to the extent that they were not, the lease was saved by the mechanism in clause 5 for resolving any disputes. Mr Tibbatts asserted that such poor drafting was not uncommon in leases of this age and would not affect prices offered and accepted in the market. Mr Whitney further asserted that, even if a purchaser perceived a difficulty, the problem could be effectively addressed by indemnity insurance costing as little as £300. In support of this last point, Mr Whitney handed up a policy form from Guaranteed Conveyancing Solutions which claimed to provide cover for “the lack of a satisfactory enforcement covenant” and “a lack of clarity in defining respective obligations under the Lease” for £300 for an indemnity between £250,001 and £300,000.
10. The Tribunal accepts as a matter of principle that poorly-drafted terms might have an effect on the value of a lease. However, in this case the Tribunal is satisfied that, although the lease terms fall short of what they could or should be in the light of the latest standards, it provides sufficiently for the repair of the building and its funding so that there would be no material impact on the value of the lease. To the extent that there is a lack of clarity about the demise, the whole of the building would appear to be covered by clause 2(3) and the first part of clause 2(14) taken together. There is then a mechanism provided in the lease at clause 5 for overcoming any further lack of clarity or problems of enforceability.
11. Moreover, the provisions of the lease need to be relied on when things go wrong. As Mr Witts pointed out, there is no problem with the lease if the lessees and lessor are in agreement. The reduction in value suggested by Mr Witts is intended to reflect the risk that necessary repairs could not be carried out or could

only be carried out with difficulty and/or at additional expense due to the nature of the lease terms. The Tribunal is satisfied that, to the extent that there is any lacuna in the terms of this lease, it is not significant enough to produce a risk which should be reflected in the market value of the lease. In particular, the Tribunal is satisfied that the issue of most concern, the roof covering, would be regarded as part of the building used in common within the meaning of clause 2(14).

12. For the above reasons, the Tribunal determines that the premium to be paid by the Applicant to the Respondent for the extended lease on the agreed terms is £22,670 in accordance with the calculation in the attached appendix.

Chairman.....*N.K. Neal*.....

Date 27th May 2009

Assessment of premium for a new lease (an additional 90 year term at a peppercorn ground rent) in accordance with Schedule 13 of the Leasehold Reform, Housing and Urban Development Act, 1993, as amended by the Housing Act, 1996 and the Commonhold and Leasehold Reform Act, 2002.

INPUT SUMMARY

Original Term Lease Length	99.00	
From Date	24/06/1977	
Date of Valuation	21/04/2008	
Capitalisation Rate	6.00%	
Deferment Rate	5.00%	
Relativity	87.50%	
First Period (years)	<u>68.17</u>	£25.00 rent
Total (years)	<u><u>68.17</u></u>	

Extended freehold value (net of tenant's improvements) £280,000.00

A. DIMINUTION IN VALUE OF LANDLORD'S INTEREST

A1 Ground Rents Receivable:

68.17 years @ £25	£25	
YP 68.17yrs @ 6%	16.3528	
		£409

A2 Reversion to freehold in possession:

	£280,000	
PV of £1 in 68.17 yrs @ 5%	0.0359	
		£10,062

A3 Landlords interest after grant of new

158.17 year lease

	£280,000	
PV of £1 in 158.17 yrs @ 5%	0.0004	
		£125

Diminution thus (rounded): £10,346

B. CALCULATION OF MARRIAGE VALUE

Value of proposed interest after grant of new

158.17 year lease:

Landlord's:	£125	
Tenant's:	£280,000	£280,125

LESS

Value of existing interests:

Freehold:	£10,471	
Leasehold (87.5% X 280000):	<u>£245,000</u>	<u>£255,471</u>
Marriage Value thus:		£24,654
50% attributable to Landlord:		£12,327

TOTAL £22,673

ESTIMATE OF PREMIUM PAYABLE FOR NEW LEASE, say: £22,670
(plus statutory recoverable costs)