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Ref LON/00AW/OLR/2009/0465

**IN THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION
UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND
URBAN DEVELOPMENT ACT 1993**

Applicant Ms Siobhan Keating

Represented by Mr R G Macdonald LLB MRICS Valuer of the
Macdonald Partnership (acting as an advocate)

Respondent: The Mayor and Burgesses of the Royal Borough
of Kensington and Chelsea

Represented by Mr G Van Tonder of counsel instructed by Wilson
Barca LLP solicitors

Re: Flat 9/86 Elm Park Gardens London SW10

Date of Application 18th August 2009

Date of Valuation 6th January 2009

Date of Hearing 1st and 2nd December 2009

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB(Hons)
C Norman FRICS

Date of Tribunal's decision: 16th March 2010

1.0 Introduction

- 1.1** By an application dated 18th August 2009 the Applicant applied to the tribunal for a determination of the premium payable in respect of the grant of a lease extension to the property known as Flat 9 /86 Elm Park Gardens London SW10 (“the property”) under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”)
- 1.2** The hearing took place on 1st and 2nd December 2009 when the Tribunal received evidence from Mr Macdonald MRICS who acted both as an advocate for the Applicant and as her expert witness and Mr Cerian Jones FRICS of Cluttons who was called on behalf of the Respondent. Following the conclusion of the hearing each side was given the opportunity of making written submissions which were sent to the Tribunal by Mr Macdonald and Mr Van Tonder counsel for the Respondent.

2.0 Inspection

- 2.1** The Tribunal inspected the subject property on 2nd December 2009. The property is a fourth floor flat within a converted terrace house dating from the early 20th century. The house is situated in Elm Park Gardens SW10 which abuts Fulham Road along its northern side and has a communal garden at the rear running along the length of the street.
- 2.2** The building, which is of traditional brick construction consists of 10 flats and includes a basement. The Tribunal was unable to view the roof. The common parts are carpeted and decorated to a good standard and there is a small lift serving all floors. There is also a substantial staircase, which is carpeted throughout and has an attractive timber and wrought iron balustrade.
- 2.3** From the evidence given at the hearing including photographs taken in September 2009 comprised two bedrooms , one bathroom and wc

- with hand basin, a kitchen and reception room. The area of the flat was agreed at 1062.5 square feet.
- 2.4 There is some mansarding to both front and rear elevations but in the view of the Tribunal it is modest in its extent .The tribunal established that the floor to ceiling height in the rooms was 2.6 metres which is a reasonable height for a fourth floor flat in a converted block.
- 2.5 The Tribunal noted that the flat had Crittall windows which were in fair condition at the time of the inspection. The property was in course of repair and improvement which the Tribunal disregarded as this work had commenced after the valuation date.
- 2.6 Although there is no porter in the block itself there is a porter's lodge which provides a service to the estate but no evidence was given as to the extent of the services provided by the porter
- 2.7 The Tribunal also inspected Flat 16/68 Elm Park Gardens which was a property relied upon by Mr Macdonald the Applicant's valuer as a comparable. This was a third floor one bedroom flat in a purpose built block dating from the 1960s or 1970s The common parts of this block were carpeted on the ground floor but with thermoplastic tiles on the floor landings above. There is a subsidiary staircase to the rear of the building which was not carpeted. This building also included a small lift serving all floors and which was of comparable size to that in the subject building .It also enjoyed access to the communal gardens at the rear of the property

3.0 The Lease

- 3.1 The Applicant holds as assignee of a lease for 35 years dated 27th March 1980 which expires in March 2015. The ground rent is fixed at £40 per annum throughout the term and the lessee is required to pay a service charge which represents a proportion of the costs of

maintenance, repair and insurance of the building and contribution towards a communal central heating system.

4.0 Agreed Facts and Issues

4.1 The valuation date was agreed as 6th January 2009 and the parties agreed that a deferment rate of 5% should be applied in accordance with the guidance given by the Lands Tribunal in Sportelli -v- Earl Cadogan . The capitalisation rate was agreed at 6% and the square footage of the flat was agreed at 1062.5 sq. ft. There was no claim for compensation under Schedule 13, paragraph 5 (see below). It was agreed that there were no tenant's improvements to be disregarded as at the valuation date.

5.0 The Issues

5.1 The issues which the Tribunal had to determine were

- (1) The value of the extended lease
- (2) The value of the existing lease and
- (3) The premium

6.0 The Law

6.1 The premium falls to be calculated in accordance with the provisions of Schedule 13 of the Act. Paragraph 2 of the schedule provides that the premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of

“(a) the diminution in value of the landlord's interest in the tenants flat as determined in accordance with paragraph 3

(b) the landlord's share of the marriage value as determined in accordance with paragraph 4 and

(c) any amount of compensation payable to the landlord under paragraph 5”.

- 6.2 Paragraph 3 provides that the diminution in the landlord's interest is the difference between his interest in the flat prior to the grant of the new lease and its value after the new lease has been granted
- 6.3 Paragraph 3.2 sets out the assumptions on which the valuation is made and in particular Paragraph 3(2)(b) assumes that the tenant does not have rights under the 1993 Act so that the Tribunal is obliged to make its valuation based on a "no Act world" assumption

7.0 The Evidence

- 7.1 Mr Macdonald in his evidence placed great reliance upon the state of the market and produced a large number of press cuttings showing that there was considerable pessimism about the condition of the market generally and the profit property market in particular at the valuation date. He considered that this evidence was more reliable than the Savills' PCL SW index which in his opinion was too slow in reflecting the movements in property prices.
- 7.2 He stressed that it was important to evaluate the state of the market at the valuation date and not to use the benefit of hindsight. He relied upon the movement in prices between the end of 2008 and the latter part of 2009. He considered three properties namely 14 Roland Gardens SW10, 114 Walton Street SW3 and Flat 10, 104 Elm Park Gardens SW10. In each of these cases he stated that prices had increased allowing for adjustments by 48.85%, 28.29%, and 36.53% respectively. He also stated that over the relevant period between these sales the Savills' indices for South West flats shows a rise of 3.94% and for houses 1.99%. He concluded therefore that the indices are manifestly inadequate to deal with the real prices reflected in the market particularly in turbulent markets. 7.3 He stated that the real prices obtained in January 2009 reflected the turbulence in the market at that time and that the rapid increase in property prices

from March 2009 was entirely unexpected and ought not to be taken into account in arriving at January 2009 values.

- 7.4 He relied strongly on the evidence of the sale of flat 16, 68 Elm Park Gardens for £292,500 on 4 March 2009. The property is in a modern purpose-built block.
- 7.5 He stated that the subject flat is located on the top floor of number 86 and is constructed in the mansard roof and does not therefore have high ceilings. He also stated that flat 16 being on the third floor is not in the mansard and has more attractive windows. It is part of a larger block and has the benefit of a larger and more impressive entrance hall. He also claimed that as a modern building it attracts lower maintenance charges and will almost certainly provide better thermal insulation. He believes, therefore, that the subject flat pays a higher service charge in the sum of £18,000 per annum and he believes therefore that flat 16 represents a reasonable comparable. By making various adjustments to the price he arrives at a value of £605 per square foot for this flat.
- 7.6 With regard to Flat 10 at 104 Elm Park Gardens this flat was purchased refurbished and later sold within a period of two and half years. He has allowed a sum of £260,000, being £250 per square foot to reflect the value of the refurbishment work. He arrived at a value of £681 per square foot but considered that the Savills' index adjustment between the valuation date and the sale date only amounts to approximately 4% which he did not believe could be correct. He relied upon an adjustment of not less than 15% which he contended would provide a value of just under £609 per square foot, which he claimed to be in line with his other common comparables. Mr Macdonald in his evidence sought to rely on the two comparables Flat 16 at 68 and Flat 10 at 104 Elm Park Gardens on the basis that these were closest to the subject premises and the transactions relied upon he submitted were reliable market evidence.

- 7.7 With regard to the existing lease value Mr Macdonald accepted that he has more difficulty in valuing this because of the short unexpired term of the existing lease, namely 6.21 years. Whilst he acknowledged that it is common for leases of this length to be guided by capitalising the rental value he states that in his experience many clients who are interested in acquiring short lease properties do not favour this approach. They are attracted by the relatively low capital outlay and the convenience of a short lease
- 7.8. Accordingly Mr Macdonald considered it appropriate to look at the Savills table of leasehold relativities as the benchmark for the value of short leases. He contended that this table showed a market relativity of 28.2% for a six year lease and 32.1% for a seven year lease he therefore adopts 29% as the appropriate percentage for the subject property.
- 7.9 He then makes an adjustment to reflect rights under the Act which he evaluates at 33.3% which he then discounts and arrives at a relativity for the existing lease at 19.9% or £126,700.
- 7.10 Applying the extended lease value and the existing lease value as assessed by him he arrives at a premium of £503,000
- 7.11 Mr Cerian Jones on the other hand relied upon the average from a basket of 10 comparables of which 8 predated the valuation date and 2 post-dated it.
- 7.12 He, having considerable experience of this area, considered that the values of the modern purpose built flats bore no relationship to the value of the period flats and would not rely upon them at all as comparables in this case.
- 7.13 As to the Savills Index, he relies upon the fact that it is frequently used by LVTs and the Lands Tribunal to reflect the market movements and subdivides various parts of Central London and distinguishes between houses and flats.. He has taken the quarterly figures and interpolated them on a monthly basis

- 7.14 He has also adjusted for floor levels and for state of improvement of his comparables He has also adjusted in paragraph 4.7 of his report for two flats which are more affected by traffic noise than the subject property.
- 7.15 He states that the adjusted values of his comparables falls within a rate of £626 per square foot and £883 per square foot. He considers a reasonable average for these properties is £701 per square foot
- 7.16 With regard to the existing lease value Mr Jones relies upon the capitalisation of the rental value over the term as being the correct basis of valuation
- 7.17 He considers the rental values of two bedroom flats in the area and concludes that the average rental achieved is £645 per week but the nearest comparable rent he discovered was for flat 10 of 104 Elm Park Road at a market rent of £625 per week. He makes an adjustment for floor level of 5% and concludes that a reasonable figure is £594 per week or £30,888 per annum
- 7.18 He then concludes that to take account of the condition of the property an adjustment of 45% should be made. He states that his is an average of deductions made in cases decided by the Rent Assessment Committee. Mr Jones himself has little or no experience of rent assessment committees but cites two decisions produced by the rental section of his firm .The first relates to 15 Bolton Gardens SW3 where a deduction of 37.5% was made and the other related to a number of houses in Oakley Crescent where the committee approved a deduction of 55%
- 7.19 .Mr Cerian Jones then deducted the annual sum of £1,750 in respect of service charges and capitalised the rent on a dual rate basis of 6% plus sinking fund of 2.25%, with tax at 30%. As a result he arrived at a figure for the existing lease value of £46,000.
- 7.20 In applying the two figures for the extended and existing lease Mr Cerian Jones calculated that the premium should be £614, 218.

8.0 The Tribunal's Decision

General

- 8.1 In considering the evidence presented by both valuers the Tribunal preferred the evidence given by Mr Cerian Jones, save on one matter to which reference will be made later. His report appeared to be more logical and his methodology was based on established conventions accepted by the majority of valuers in the profession. For example his valuation of a short lease based on a capitalisation of the anticipated rental from the property is much to be preferred to the reliance on relativity graphs favoured by Mr Macdonald where the evidence is sparse. The RICS report chaired by Jonathan Gaunt QC considers the use of relativity graphs unreliable and considers that in the case of very short leases the capitalisation of rentals should be adopted.
- 8.2 Further, the latest submission received from Mr Macdonald does not appear to the Tribunal to be soundly based in so far as he deals with the capitalisation of rental figures. In that analysis he has made assumptions which were not canvassed in evidence (e.g. possible dilapidation costs) and which the Tribunal did not consider to be well founded.
- 8.3 Mr Macdonald was highly critical of the Savills Index and preferred to rely upon Lonres data to show market movement. This is not the conventional approach and the Tribunal did not find it persuasive. The Savills Index is well recognised, widely used by valuers and the Tribunal would prefer to rely upon that as a basis for calculation of market movement.
- 8.4 Further the Tribunal did not consider that the use of a comparable which had been purchased, substantially improved and later resold, as a particularly convincing indicator when considering the reliability

of that comparable, since this would require further adjustments and give rise to greater inaccuracy.

- 8.5 The Tribunal did, however, accept Mr Macdonald's submission in relation to not accepting post valuation date comparables. The Tribunal accepts that in a volatile market it would be unsafe to base a conclusion on subsequent events, which could not be readily foreseen at the valuation date. As a result the Tribunal has not placed reliance upon any of the post valuation comparables whether from Mr Jones or Mr Macdonald.

Extended Lease Value

- 8.6 The Tribunal considered Mr Cerian Jones's selection of comparables was a more reliable guide to market value of the extended lease than the two comparables relied upon by Mr Macdonald.
- 8.7 The Tribunal considered that the two comparable transactions upon which Mr Macdonald relied were not helpful. The sale of Flat 4 of 104 Elm Park Gardens was in April 2007, a considerable period before the valuation date and therefore somewhat unreliable having regard to the volatility in the market and the difficulty of making an adjustment for that long period of time.
- 8.8 Flat 16 of 68 Elm Park Gardens is of an entirely different type of building. Whereas the subject flat is in a period building the comparable is in a modern purpose built block of flats and in the view of the Tribunal is a far less attractive property. In addition, this flat is far smaller than the subject flat.
- 8.9 By the same token the Tribunal did not find the settlement evidence provided by Mr Cerian Jones helpful or necessary in the light of the other transactional evidence provided. Of the six examples he quoted 5 were of post valuation date.
- 8.10 The Tribunal preferred to rely upon the 8 pre valuation date transactions set out in Schedule 6 of Mr Cerian Jones's report. They

all related to period flats rather than modern purpose built flats, apart from Flat 4 , of 104 which he included as Mr Macdonald had relied upon it.

- 8.11 Mr Cerian Jones applied the Savills Index to these comparables and for the reasons stated above the Tribunal considered this was a more reliable method of arriving at a valuation based on changes in the market. than the methodology relied upon by Mr Macdonald.
- 8.12 in Paragraphs 4.5, 4.6 and 4.7 of his report Mr Cerian Jones explained the basis of his adjustments taking account of a number of relevant factors concerning location and the incidence of traffic noise.
- 8.13 The Tribunal calculates that the average of the 8 pre valuation date transactions after adjustment for lease length and floor level set out by Mr Jones produced a value of £683 per square foot for the extended freehold value which the Tribunal adopts.
- 8.14 The Tribunal rejects Mr Macdonald's criticism of the Savills Index , his use of Flat 10/68 which the Tribunal considered to be a non comparable on account of its younger age and far smaller size and his valuation of the extended lease value at £609 per square foot.
- 8.14 Both experts agreed that a deduction of 2% should be made to reflect the difference between the freehold and the extended leasehold value The Tribunal would not necessarily have accepted this differential but as both parties were professionally represented, it did not consider that it would be right to disturb that consensus. In light of the above, the Tribunal finds that the extended lease value is £725,688.

Existing Lease Value

- 8.15 With regard to the use of graphs the Tribunal was against Mr Macdonald's submissions that these provided a reliable guide to relativity for leases as short as 5 years for two reasons

(a) Evidence from the graphs is too sparse in relation to leases of this length and

(b) The RICS report "Leasehold Reform: Graphs of Relativity (October 2009) (reproduced at Tab 19 of Mr Jones report) says relativity graphs are unreliable for very short leases.

Paragraph 4.6 of the RICS report states In most cases for leases under 5 years the relativity graphs simply have a straight line from zero to 5 year point The RICS report further states that most practitioners will capitalise rental value over the unexpired lease length which Mr Cerian Jones has opined is the correct method.

- 8.16 The RICS report also states that the liability for dilapidations should be taken into account although not necessarily by deducting the cost of dilapidations
- 8.17 In the present case the Landlord on obtaining possession at the end of the term would almost certainly undertake substantial works of improvement. The effect of those works would almost certainly render nugatory the repairs and decorations which would have been carried out by the tenant.
- 8.18 No schedules of dilapidations have been produced in this case and in the view of the Tribunal the tenant would not do the improvement work in the no act world because he would receive no benefit by doing so
- 8.19 There is no evidence as to alleged dilapidations. Even if there were such evidence the tenant would be able to take advantage of section 18 of the Landlord and Tenant Act 1927 which provides that damages for breach of a covenant to "keep or put in repair during the currency of the lease or to leave or put in repair at the termination of the lease, are in no case to exceed the amount (if any) by which the value of the reversion (whether immediate or not) in the premises is

diminished owing to the breach of covenant." This places an upper limit on any damages which can be recovered by the landlord for dilapidations. The Tribunal is not therefore minded to make any deduction for dilapidations in its valuation of the existing lease.

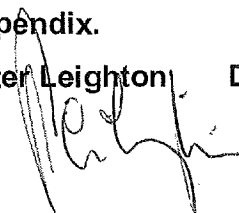
- 8.20 The Tribunal considers that the value of the lease would be based on the net rent recoverable by the leaseholder during the remainder of the term. The Tribunal accepted the figure which was advanced by Mr Cerian Jones that the starting figure for a rent of an assured shorthold tenancy of this flat in improved condition with white goods carpets and curtains would be approximately £600 per week and is content to accept Mr Jones's figure of £594 making £30,888 per annum
- 8.21 Mr Cerian Jones gave evidence that the rent which would be recoverable should be reduced by 37.5% to reflect the condition of the property in its unimproved state. As Mr Macdonald did not approve of the methodology used by Mr Cerian Jones he did not provide an alternative figure for the reduction of the rent.
- 8.22 Mr Jones relied upon two decisions of the Tribunal sitting as a Rent Assessment Committee 15 Bolton Gardens where the rent assessment committee applied a deduction of 37.5% against the rent to reflect the condition of the property and various properties at Oakley Gardens SW3 where the rent assessment committee applied a deduction of 55%. The Tribunal is not obliged to follow these decisions and in fact did not find them useful in this case.
- 8.23 15 Bolton Gardens SW3 was a case where the tenant had not provided any fixtures and fittings whereas here although the fixtures and fittings were old they had been provided by the leaseholder

- 8.24 Oakley Crescent related to a row of old houses in a conservation area where the terms of the leases were onerous and where specific considerations therefore applied.
- 8.25 The Tribunal does not consider that either is a good analogy and is of the opinion, having seen the property and the photographs showing its original condition, that a rent assessment committee would have made a reduction of not more than 25% from the market rent and the Tribunal proposes to adopt that figure namely a reduction to £23,166 in capitalising the rent. The photographs taken in September 2006 show that the kitchen and bathroom were relatively modern and whilst in need of some attention the flat was in a perfectly liveable condition.
- 8.26 The Tribunal accepts that a reduction of £1750 per annum should be made to reflect the service charges payable by the landlord for the services provided by the freeholder which reduces the annual rental further to the sum of £21,416.
- 8.27 Further it adopts the figure of 6% plus 2.25% for sinking fund adjusted for tax at 30% as adopted by Mr Jones to reflect the yield over the term. This results in a years' purchase multiplier of 3.61 as adopted by Mr Cerian Jones to capitalise the value of the lease.
- 8.28 The Tribunal concludes therefore that the value of the existing lease is £77,312.

9.0 The Premium

- 9.1 Having calculated the value of the extended lease as £725,668 and the value of the existing lease at £77,312 the Tribunal concludes that the appropriate premium payable for this lease extension is £581,710. The valuation is set out in the Appendix.

Chairman Peter Leighton Date 16th March 2010



Appendix 1
In the Matter of Flat 9, 86 Elm Park Gardens London SW10
Determination by the Leasehold Valuation Tribunal of Premium Payable for Statutory Lease Extension

Summary	
Date of Valuation	06-Jan-2009
Term Commencement Date	25-Mar-1980
Term (years)	35
Lease expiry date	24-Mar-2015
Ground Rent per annum	£40
Unexpired Term (years)	6.21
Virtual Freehold value of Flat 9, 86 Elm Park Gardens before allowance for Improvements 1062.5 sq ft @ £663 per sq ft (LVT)	£725,688
Less value of tenants improvements (agreed)	Nil
Extended lease value @98% of virtual freehold value (the relativity agreed between experts)	£711,174
Existing Lease value disregarding rights under Act	
Ground rent capitalisation rate (agreed)	6%
Reversionary deferment rate (agreed)	5%
Premium Payable	£581,710

Freeholder's Present Interest

Term

Ground Rent			£40	per annum	
6.21 Years' Purchase	@	6%	5.060		£202

Reversion

Unimproved Virtual Freehold Value		£725,688	
Present Value of £1 in 6.21 years' time @ 5%	0.7386		£535,993
			<u>£536,196</u>

Landlord's Proposed Interest

Reversion in 96.21 years time		£725,688	
Present Value of £1 in 96.21 years' time @ 5%	0.0091		£6,639
			<u>£6,639</u>

Diminution of Landlord's Interest

£529,556

Marriage Value

Value of Proposed Interests

Leasehold, Unimproved Value of 96.21 year lease	£711,174
Virtual Freehold of Flat after Lease Extension Granted	<u>£6,639.38</u>
Total Value of Proposed Interests	£717,813

Less

Value of Present Interests

Leasehold	
Value of the unimproved value of the existing lease	£77,312
	<u>£536,196</u>
Freehold (see above)	£613,507
Total Value of Present Interests	

Hence Marriage Value, difference between Proposed and Present Interests **£104,306**

Divide Marriage Value equally between the parties **£52,153**

Hence Premium Payable **£581,709**

SAY **£581,710**