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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

Case Reference:	**LON/00AC/OLR/2012/0487**
Premises:	First Floor Flat 37 and Garage, Queensborough Court, Finchley Road, London N3 3JP
Applicants (landlord):	Hurstway Investment Company Limited
Represented by:	Winckworth Sherwood LLP
Respondent (tenant):	Ashok Joshi
Represented by:	SD Rosser & Co.
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister, Chairman Mrs H Bowers, FRICS
Date of Hearing:	14 August 2012
Date of determination:	12 September 2012

Summary of Decision

The Tribunal determines the premium for the lease extension at £67,037 in accordance with the attached valuation.

Preliminary

1. Application has been made under s.48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium

to be paid and the terms on which an extended lease of the subject premises ("the premises") is to be granted. Those premises are the properties known as First Floor Flat 37 and Garage, Queensborough Court, Finchley Road, London N3 3JP.

2. The interest of the competent landlord (the Applicant) is a head lease for a term of 125 years from 25 December 2003 at a rising ground rent. The Respondent is the current holder of the following sub-lease:

   Land Registry Title nos. AGL127585 (flat) and AGL 128354 (garage)

   Date 12 December 1969, Term 67 years less 3 days from 29 September 1968

   Rent £15 per annum for the flat and £10 per annum for the garage.

3. A Notice of Claim under section 42 of the Act was served by the Respondent on 27 January 2012 (the valuation date) proposing a premium of £45,500.00 in respect of the grant of the new lease. The landlord's counter notice dated 20 February 2012 admitted the tenant's right to acquire a new lease of the premises and proposed a premium of £100,000.00. The unexpired term of the lease on the valuation date was 23.66 years. By application to the Leasehold Valuation Tribunal the Applicant sought a determination under s.48 of the Act. The tribunal issued directions on 16 May 2012.

4. The tribunal carried out an inspection on 14 August 2012 and found the premises to be a one bedroom first floor flat. The agreed gross internal area was 40.29 square metres. The flat is situated in a detached building with garages to the ground floor, located adjacent to Queensborough Court. The tribunal also made a brief external inspection of the comparables within that main building that were considered by the experts (Flats 17 and 24). The following description of the premises is based on that in the experts' memorandum of agreement.

5. The property is located in the London Borough of Barnet. It is situated close to the Junction of the North Circular Road and Regents Park Road. Queensborough Court comprises 37 flats, 36 of which are situated in the main court building and no.37 is located above garages situated slightly to the rear of the court. However, this particular property directly overlooks the Junction of the North Circular Road and Regents Park Road. The premises were constructed, it is understood, in the 1930s. Since the property was originally constructed and in fact in the last few years, a hotel has been built directly in front of the subject premises, although not screening it from the North Circular and the A598.

6. The property was constructed originally as a mansion block with communal gardens to the rear and some garage units. It is believed that the subject premises, located completely separately from the main court block, were constructed as the caretaker's property. All the windows other than one at the end overlook the service road and the junction with the North Circular. The premises are of solid construction under a pitched roof. The principal building is built on ground with two upper floors. The subject premises are constructed on ground and first floor. Beneath the property is a block of garages. Immediately in front is a service road, which is now utilised for some tenant parking and an

access to the hotel. The access to the property is from this service road and there is a single garage located immediately below which is part of the premises.

The Hearing

7. At the hearing, which took place on Tuesday 14 August 2012, the parties were represented by their respective valuers: Mr C Stone, FRICS, of Prickett and Ellis for the Applicant and Miss V E Roper, FRICS for the Respondent.

8. The parties' professional representatives attending the hearing were not instructed in relation to the terms of the new lease. The issues for determination at the hearing were as follows:

   a. Long leasehold unimproved values of the flat.

   b. Deferment rate

   c. Relativity between the existing leases and the extended leases of the flat in connection with the calculation of the marriage value

The Valuation Evidence

9. Mr Stone contended that an appropriate premium for an extension of 90 years in accordance with the terms of the Act was £74,057.00. Ms Roper was at £49,850.00. Both valuers gave evidence in support of their respective valuations and written reports.

Long leasehold unimproved values of both flats

10. The experts had been unable to identify any sales of comparable one bedroom flats over garages in the area. They both referred to sales of flats at Queensborough Court within the main building as the best comparable evidence in the circumstances.

11. Mr Stone relied principally on the same of Flat 17 at £250,000 in March 2012 with a GIA of 738 square ft, equating to £338.75 per square ft (£3648.00 per square metre). Since the sale was two months after the valuation date he considered adjustment for time was unnecessary. He adjusted the price to £4,000 per square metre to allow for a premium on small flats. Mr Stone did not consider there were any tenant's improvements for the purposes of valuation, since the replacement of the windows and the installation of central heating were repairs, and because the true rate for Flat 17 may be higher in any event because of the £250,000.00 stamp duty barrier.

12. Applying £4,000.00 per square metre to the subject premises gave an unimproved extended lease value of £160,000.00. Mr Stone also referred to the sale of Flat 23 in April 2009 for £245,000.00 as a check on his valuation. This was a three bedroom unit and he adjusted the sale price by the Land Registry price index for flats in Barnet to produce a current value of £280,729.00. This flat has recently been let on an assured shorthold tenancy at £1,450.00 per month, equating to a gross yield of 6.2% on the indexed price. Applying that yield to the

rent on the subject property of £9,880, produced a capital value of £159,355, which was a check to his main valuation.

13. The subject premises had various advantages and disadvantages over flats in the main block, Mr Stone considered. It was detached with its own entrance and overlooks the rear of the hotel rather than the North Circular Road. However, it sits in part above garages occupied by other parties. He assumed these differences balanced out in valuation terms.

14. Miss Roper relied on the sale of Flat 17 in 2012 and produced sales particulars with photographs showing its modernised condition. She also relied on its previous sale in 2005 for £204,950 to increase her valuation, though this date was remote. She ignored the intervening sale of that flat in October 2011 as the very low price could not be accounted for by subsequent improvements to it. She also used the sale of Flat 24 in July 2007, a flat of 915 square ft. These were the only flats sizes she had been able independently to verify. Miss Roper reached adjusted valuations per square ft of between £325 and £334. Using an average she arrived at a valuation of the subject premises of £145,000, even though she considered this valuation might be suppressed by the difficulty in obtaining a mortgage for a flat situated above garages.

15. Neither expert could produce comparable evidence of the value of the garage. Using his experience, Mr Stone added £20,000.00 for its value. Miss Roper considered that the value of the garage ought to be a function of the value of the flat. She adopted 3% because estate agents canvassed said it would add £5,000 - £10,000 to the value of a flat priced between £250,000 and £310.000 (a figure of 2%-4%).

16. Miss Roper understood that when the lease was originally granted the property was without central heating and had standard windows. It had been provided with full central heating and the windows (which were demised to the lessee) had been replaced with double glazed double sliding sash windows. She deducted the £8,100 estimated cost of these improvements, using the BCIS Pricing Guide dated 2011. Adjusting for the garage and improvements, Miss Roper considered the correct valuation of the unimproved long lease to be £141,000. She did not consider this valuation to be too low given the considerable disadvantages of this property's location.

Tribunal's Determination on Long Lease value

17. This is not the simplest of flats to value, given its position and the lack of comparables. The tribunal has considered the appropriate valuation in light of the approaches advocated by the experts. It is appropriate to adjust for improvements to Flat 17, since the photographs in the sales particulars show this flat to have been thoroughly modernised with a good quality fittings in a new kitchen and bathroom.

18. Having had the benefit of an inspection the tribunal is of the view that, notwithstanding its location above garages and less attractive building, the subject premises have marginal advantages over a flat within the main block. The most significant factor affecting values at Queensborough Court is proximity to the North Circular Road and its very substantial round the clock traffic

producing noise and pollution. It would not be unrealistic to describe it as one of the busiest roads in London. The approach to the main door to all the flats in Queensborough Court is by foot along the North Circular Road. The subject premises are situated back from the main road and access is from the service road and not via the North Circular Road. Its situation means that there is a very significant reduction in traffic noise and the aspect, though not attractive, is improved by the presence of the adjacent hotel. The premises have their own entrance and greater privacy.

19. Owing to the risk of a single comparable sale being unreliable, the tribunal prefers the approach taken by Miss Roper in seeking to take an average of sales within the main block. It is appropriate for the sake of consistency when doing so to adjust all prices for time. The adjusted average of the two sales of Flat 17 and the sale of Flat 24 is £332. The tribunal uplifts this figure by 10% to allow both for the marginally better location, and for a premium on one bedroom flats which the tribunal considers appropriate. Arriving at a price per square foot of £365 produces a valuation of £158,410. The tribunal considers that the capital value of approximately £160,000 derived from applying the rental yield provides useful support for this valuation.

20. The tribunal takes the view that at £20,000 and approximately £4,500 the valuations of the garage were wide of the mark. Mr Stone's comments about the value of a garage were without reference to location. Miss Roper reported that estate agents would add £5,000 - £10,000 for a higher value flat. The tribunal considers it proper to add about 5%, or £7,500, for the garage, to arrive at a market value of £165,910.

21. Regarding improvements, in the absence of observational support from Miss Roper on inspection or other evidence to demonstrate that no form of central heating had been present at the commencement of the lease term, the tribunal does not consider it appropriate to adjust for its installation. Whilst repair of the windows is the tenant's responsibility, there can be no doubt that the tenant's choice to replace them with double glazed units rather than a basic like-for-like repair ought to be reflected in the property's valuation. The tribunal considers it appropriate to make a reduction for the additional cost of their installation in the sum of £4,000. The extended leasehold value is therefore determined to be £162,000.

Relativity

22. The decision of the Lands Tribunal in Arrowdell Limited v Coniston Court (North) Hove Ltd. supported the use of graphs of relativity as capable of providing the most useful guidance. Mr Stone relied on the average of the figures for an unexpired term of 23.66 years shown on the graphs by Beckett & Kay, Austin Gray and Andrew Pridell, being 47.89%. The South East Leasehold and Nesbitt & Co. Graphs started at 30 and 25 years respectively and he did not use the extrapolated figures from these. Mr Stone averaged these three percentages with the average of two settlements reached by his firm in 2010 – one in NW8 where a relativity of 55% was agreed for a 25.96 year term and the other in N6

where 50% was agreed for a term of 23.82 years. He thus reached a figure for relativity of 48.90%.

23. Miss Roper considered and discussed the relevance of all of the available graphs of relativity. She concluded that the figure should be based on the John D Wood graph (58.39% for an unexpired term of 23.66 years) and Andrew Pridell (58.22%). Though the former related to Prime Central London properties she considered it relevant as it was drawn from a huge number of sales, and those valuers act for landlord and tenants. She rejected the Austin Gray graph because it was based on sales in Brighton and Hove, and though the Andrew Pridell graph also was, they do a lot of work in the outer areas of London as well. Miss Roper did not think the Beckett & Kay graph was reliable as it was mortgage reliant data based on "opinion". She avoided using on the graphs of valuers who act principally for landlord (the "Delaforce effect" – Delaforce v Evans (1970) 215 EG 315), such as Nesbitt & Co., even though they are located in Edgware. The figure extrapolated from their graph to 23.66 years unexpired was 52.93% but Miss Roper considered this to be too low.

Tribunal's Decision on Relativity

24. The tribunal accepts that the RCIS Graphs on Relativity provide a useful guide. It considered that Miss Roper's approach was too selective and rejects her suggestion that it should rely on the John D Wood graph, since this is based on Prime Central London sales. On balance, the tribunal accepts Mr Stone's view, which coincides with common valuation practice, that PCL relativities are not representative of other areas. The tribunal agrees with Mr Stone that an average of relevant graphs and transactional evidence is a reasonable approach in the present case and adopts a relativity of 48.90%.

Deferment Rate

25. Mr Stone argued for a deferment rate of 5%. He relied on the starting point in the decision of the Court of Appeal in *Cadogan v Sportelli* [2008] 1EGLR 137 and though the property is outside Prime Central London he saw no reason to depart from that rate.

26. Miss Roper's view, based on her understanding of recent authorities (though she did not cite any) was that because there is structural movement to this particular property a higher figure was more appropriate, and she had adopted 5.25%. Miss Roper did not produce anything other than observational evidence of cracking. She considered the property an unattractive investment and noted that the landlord retained the right to redevelop in the future. She considered was a building which would not be there for long.

Determination of the Tribunal on Deferment Rate

27. The tribunal understood Miss Roper to be arguing that obsolescence was a factor (according to the decision of the Lands Tribunal in *Zuckerman & Others v Trustees of the Calthorpe Estates* [2009] (concerning the deferment rate applicable on new lease claims for flats in the West Midlands), in which a 0.25% adjustment for obsolescence was considered appropriate for the type of property. Considerations of development value were not one of the grounds for departure

from the Sportelli rate in *Zuckerman* and the tribunal considered that the structural cracking would be covered by the landlord's repairing covenant and circumstances justifying adjustment of the deferment rate in this case. The cracking was not related to anything intrinsic in the structure or design of the premises which would suggest it had any increased obsolescence.

28. The Upper Tribunal was considering purpose built flats ("Kelton Court") on a large 1970s development in Edgbaston. The difference in values between those and the Sportelli PCL properties was "striking". The Upper Tribunal accepted the view that it was likely to remain economically viable to repair high value properties in PCL for considerably longer than it will remain for similar sized flats in Kelton Court, and there is a greater risk of deterioration than in PCL which is not reflected in the respective vacant possession values.

29. In the present case, the subject premises are within a building subsidiary to an attractive substantial period block of purpose built flats of a type typical in central and suburban London. The tribunal is of the view that the obsolescence considerations in Zuckerman related largely to the particular type of development, and were not relevant to properties of the type of the subject premises simply because of their situation outside of PCL. It is likely in the long term to continue to be economically worthwhile to repair and maintain the subject premises as compared to rebuilding. The tribunal concludes that no adjustment for obsolescence is appropriate in this case and, there being no other arguments advanced for departure from the Sportelli rate, adopts 5%.

Premium

30. The premium for the extension of the lease is £67,037 in accordance with the attached appendix

Signed ......

Ms F. Dickie, Chairman

Dated 12 September 2012

Leasehold Valuation Tribunal Valuation

First Floor Flat, 37, Queensborough Court and Garage, North Circular Road, Finchley, London, N3 3JP

Date of valuation:	28th January 2012
Unexpired term:	23.66
Extended Lease Value	£162,000
Existing Lease Value	£79,218
Relativity	48.90%
Capilisation rate	8.00%
Reversion rate	5.00%

Present Interest						
	Term 1					
		Loss of Rent		£25.00		
		YP 23.66 years @ 8.0%		10.4770		
					£262	
	Reversion					
		Unimproved Extended Lease Value		£162,000		
		PV 23.66 years @ 5%		0.315		
					£51,030	
less						£51,292
Proposed Interest						
	Reversion					
				£0		
						£0
						£51,292
	Marriage Value					
Proposed						
	Value of Extended Lease		£162,000			
	Value of Reversion		£0			
				£162,000		
Present		less				
	Value of Existing Lease		£79,218			
	Value of LH Interest		£51,292			
				£130,510		
	Marriage Value				£31,490	
			50% share			£15,745
						£67,037