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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 48 OF THE LEASEHOD REFORM HOUSING & URBAN
DEVELOPMENT ACT 1993**

Case Reference: LON/00BJ/OLR/2011/0914

Premises: 83 Balvernie Grove, London SW18 5RQ

Applicant(s): Shirley Hazel Greenaway

Representative: Ms Hemani Pathirama (Solicitor)
Mr David Ambrose MRICS (Valuer)

Respondent(s): Mr Chung Shin Yung Chung Kin Chong

Representative: Ms Margaret Ilori (Solicitor)
Mr Wilson Dunsin MRICS (Valuer)

Date of hearing: 14 February 2012

Appearance for Applicant(s): Applicant, Solicitor and Valuer

Appearance for Respondent(s): Respondent, Solicitor and Valuer

Leasehold Valuation Tribunal: Mr G M Jones MA LLM
Mr J C Avery FRICS

Date of decision: 15 February 2012

Decisions of the Tribunal

- (1) The Tribunal assesses the price to be paid by the Applicant to the Respondent for an extended lease of 83 Balvernie Grove, London SW18 5RQ pursuant to section 48 of the Leasehold Reform Housing & Urban Development Act 1993 in the sum of £16,603.00
- (2) The Tribunal declares that the Applicant shall pay the Respondent's reasonable costs of dealing with the Application, such costs to be assessed by the Tribunal if not agreed.

1. Application and Issues

- 1.1 The application is for a lease extension pursuant to Chapter II of Part I of the Leasehold Reform, Housing and Development Act 1993 and relates to a purpose built ground floor flat in an end terrace, late Victorian or Edwardian, building in Balvernie Grove on the corner of Smeaton Road between Wandsworth and Wimbledon. Accommodation comprises entrance hall; living room; one adequate double and one adequate single bedroom; kitchen and a small bathroom. Outside at the rear is a small patio garden. The flat has been modernised and is fitted with double-glazing and central heating. There have been no material tenant's improvements. It is a small flat in a pleasant suburban street but not in a particularly smart area.
- 1.2 The existing lease dated 24 July 1981 is for a term of 99 years from 26 June 1981 at a ground rent of £20.00 per annum and provides for the lessee to repair and maintain the demised premises, which include the lower part of the building and foundations. The lessee of the upper flat covenants to maintain the upper flat and the roof.
- 1.3 The Respondent admits the Applicant's right to extend the lease. There were originally three issues between the parties; however, an issue as regards the terms of the extended lease has been resolved. The parties are agreed that a rider should be added to clause 5 the purpose of which is to make the landlord responsible for the repair and maintenance of the upper flat and roof in the event the lease of the upper flat falls in for any reason. This is a sensible provision and one which the Tribunal would have been inclined to approve had it been necessary so to do.
- 1.4 The valuation date is agreed as 28 February 2011, the capitalisation rate at 7.5% and the deferment rate at 5%. The remaining issues are the freehold value of the flat and the "relativity", i.e. the percentage to be applied to the freehold value in the statutory calculation of the purchase price to ascertain the current value of the existing lease. The existing lease has only 69.32 years to run, which naturally makes it worth less than a freehold, (which continues indefinitely).

- 1.5 The freehold value has been assessed by both valuers by reference to comparables; the valuers have adopted quite different methods of ascertaining the relativity. The Applicant's valuer puts the freehold value at £290,000 and the relativity at 92%; the Respondent's valuer puts the freehold value at £335,546 and the relativity at 85%.

2. The Law

- 2.1 Under section 42 of the Leasehold Reform Housing & Urban Development Act 1993 a qualifying tenant of a flat may serve notice of his desire to acquire an extended lease of the flat. He must pay a premium in accordance with the provisions of Schedule 13 and the landlord's reasonable costs under section 60. Tenants' improvements and disrepair attributable to the tenant are to be disregarded. In case of dispute, the tenant can apply to the LVT under section 48. By section 56(1) the new lease will be for a term extending to 90 years from the term date of the existing lease at a peppercorn rent. The property comprised in the new lease will be the flat, together with any garage, gardens etc. as defined in section 62(2).
- 2.2 The terms will be the same as in the existing lease, save that under section 57 the LVT may order such modifications as may be required or appropriate to take account of the omission of property included in the existing lease but not comprised in the flat; of alterations made to the property demised since the grant of the existing lease; or in certain cases where the existing lease derives from more than one separate leases, of their combined effect and of the differences (if any) in their terms. Where, during the continuance of the new lease, the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance, the lease may also require due contribution to be made by the tenant and may provide for enforcement of such contributions as though they were rent.
- 2.3 The tenant is not liable under section 32 or section 60 to pay costs incurred by the landlord in connection with the application, save to the extent that costs relating to valuation evidence may have been reasonably incurred for the purpose of fixing the premium, as provided by the relevant subsection. The Tribunal has only limited power under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to award inter-party costs of the application (limited to £500) in the event of misconduct by a party, which may include cases whereby reason of that party's conduct in relation to the application, costs have been wasted.

3. The evidence

- 3.1 The Tribunal inspected the subject property and made external inspections of the nearby comparables. Externally, all the properties appeared very similar. Nos 108 and 110 Balvernie Grove are a pair (one above the other). Photographs showed that some of the comparables were equipped to a particularly high standard, well beyond the extent of the tenant's liabilities under the repairing covenants applicable to the subject property.
- 3.2 The valuers have not reached any further agreement since the exchange of reports. Each put forward a wide range of comparables, a number of them in the same street or very nearby. They had used some common comparables; but each put forward properties the other had not considered. These were, unsurprisingly, sold on different dates and with differing terms remaining on the leases. There was also a fairly wide range of size and quality amongst them. The Tribunal had to decide which properties represented the best comparables for the subject property and then make appropriate adjustments for any differences and for the date of sale and remaining lease term.
- 3.3 Mr Dunsin, for the Respondent, approached the issue of freehold value in a structured fashion, providing full particulars of the majority of his comparables and setting out his methodology for making adjustments for the date of sale and length of term. However, the Tribunal did not agree with his selection of appropriate comparables from which to assess the freehold value of the subject property. Indeed, he himself conceded at the hearing that, on the evidence now available, some adjustment to his figure is called for. Mr Ambrose did not appear to have researched his comparables as thoroughly as Mr Dunsin and adopted an approach which relied to a considerable extent upon "feel". While this approach may work well for day-to-day practical purposes, the Tribunal did not find it particularly helpful for present purposes.
- 3.4 In the end, the LVT is an expert tribunal and is able to draw its own conclusions from the primary evidence. We do not entirely agree with the reasoning of either valuer. We have selected our own comparables from those offered to us and made our own calculation. In our judgment, some of the comparables are unhelpful, because either they differ too greatly from the subject property in location, size or character or the information about them is too unreliable. Thus 23 Trentham Street in an area known as "the Grid", which both valuers acknowledge to be a better location. There is insufficient information about 89 Standen Road, 77 and 91 Longfield Street. 79 Balvernie Grove we considered unreliable because of uncertainties about the

circumstances of the sale (as to which, see below). 182 Balvernie Grove we rejected as being a much larger flat equipped to a high standard and thus not truly comparable at all.

- 3.5 On the face of it, 74 Balvernie Grove is in our judgment broadly equivalent in value to the subject property. Nos 108, 110 and 172 Balvernie Grove are fairly similar but, in our judgment an adjustment of 5% is required in each case as those properties are better than the subject property. We accept Mr Dunsin's methodology in making other necessary judgments. The result is as follows: -

Flat No.	Dunsin adjusted value £	Tribunal's adjustment %	Comparable value £
74	316,000	nil	316,000
108	343,200	-5	326,040
110	334,930	-5	318,184
172	327,700	-5	311,315
Average			317,885

- 3.6 Accordingly, rounding as any seller would, we assess the freehold value of the subject property on the valuation date to be £318,000.

- 3.7 Mr Dunsin assessed relativity by reference to 79 Balvernie Grove, which was sold on 26 November 2010 for £242,500, the lease having 71 years to run. Making appropriate adjustments for condition (+ 20%), date of sale and lease term, and deducting 1% for the benefit of the 1993 Act rights (which we must disregard) he arrived at an adjusted value for the existing lease of £285,140. This is 85% of his average adjusted freehold values of £335,546, which we have rejected. Interestingly, it is just under 90% of the adjusted freehold value we have adopted. However, there is an unexplained anomaly in the sale of 79 Balvernie Grove. On the day of the sale, the landlord appears to have granted the purchaser an extended lease with a term of 999 years for a nominal sum. In our judgment, this does not appear to be an arm's length transaction. In any event, the adjustment for condition was not supported by any detailed reasoning and, in any event, a single transaction is unlikely to be a reliable method of assessing relativity.

- 3.8 Mr Ambrose has assessed relativity using graphs prepared by valuers from firms incorporating data from large numbers of transaction. This is a conventional method and, on the facts of this case, we agree with it. Accordingly, we adopt Mr Ambrose's figure of 92% for relativity. This gives a value of £292,560 for the existing lease. The value of the extended lease both valuers say (and we agree) is 99% of the freehold value.

3.9 The Tribunal's valuation is set out in the Appendix hereto. It results in a price of £16,603 for the lease extension.

Chairman: Geraint M Jones
MA LLM (Cantab)

A handwritten signature in black ink, appearing to read 'Geraint M Jones', written over a horizontal line.

Date: 24 February 2012