



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

Case Reference : **LON/00AW/OLR/2015/1041**

Property : **Basement & Ground Floor Flat,
24 Fernshaw Road, London, SW10 0TF**

Applicant : **Miss Patricia Anne Henriques**

Representative : **Mr A J Balcombe BSc FRICS FCI Arb**

Respondent : **Fernshaw Ltd**

Representative : **Mr M Stapleton FRICS**

Type of Application : **Section 48 of the Leasehold Reform,
Housing & Urban Development Act 1993**

Tribunal Members : **Judge I Mohabir
Mr L Jarero BSc FRICS**

**Date and venue of
Hearing** : **29 September 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **3 November 2015**

DECISION

Introduction

1. This is an application made by the Applicant under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) (“the Act”) for a determination of the premium to be paid for an extended lease of Basement and Ground Floor Flat, 24 Fernshaw Road, London, SW10 0TF (“the property”).
2. The property is described as having its front door on the ground floor and internally the layout comprises a double reception room and kitchen on the ground floor with a staircase leading down to the lower ground floor where there two bedrooms, one of which has an en-suite bathroom. The second shower room is located in what was the entrance hallway as well as a cloakroom. To the rear there is small patio garden.
3. The lease presently held by the Applicant was granted for a term of 99 years from 29 September 1995 and expiring on 29 September 2095 at a fixed ground rent of £300 per annum without review. As at the valuation date, 24 October 2014, the unexpired terms was 80 years and 11 months.
4. By a Notice of Claim dated 23 October 2014 served pursuant to section 42 of the Act, the Applicant exercised the right to the grant of a new lease of the property. The proposed premium was £25,000.
5. By a counter notice dated 17 December 2014 served pursuant to section 45 of the Act, the Respondent admitted the Applicant’s right to acquire a new lease and counter proposed a premium of £45,000.
6. The parties were unable to agree the premium to be paid for the new lease and the Applicants issued this application for the Tribunal for this determination to be made.

7. The expert valuation evidence relied upon by the Applicant is set out in the report of Mr A J Balcombe BSc FRICS FCI Arb dated 21 September 2015. The valuation evidence relied on by the Respondent is set out in a report prepared by Mr M Stapleton FRICS dated 18 September 2015.

Matters Agreed & Not Agreed

10. The matters agreed are:
 - (a) the valuation date of 24 October 2014.
 - (b) the floor area of the property is 1,016 sq ft with 40 sq ft of vaults.
 - (c) the capitalisation rate of 6% for the loss of income.
 - (d) deferment rate of 5%.

11. The only matter not agreed is the freehold vacant possession value of the property.

The Relevant Law

12. Given that both parties have had the benefit of professional representation and advice throughout this matter, it is sufficient to note that the Tribunal's determination takes place under section 48 on the statutory assumptions set out in Schedule 13 of the Act.

Hearing and Decision

13. The hearing in this matter took place on 29 September 2015 and the Tribunal inspected the property on the following day. The Applicant and Respondent were represented by Mr Balcombe and Mr Stapleton respectively.

Freehold Vacant Possession Value

14. Mr Balcombe relied on two comparable properties to ascertain the freehold vacant possession value. These are Flat 3, 38 Fernshaw Road and 35b Fernshaw Road. An analysis of the sales of both properties, and adjusting for time using the Land Registry table for Kensington and Chelsea to the valuation date, provided rates of £1,234.98 psf and £1,095.78 psf respectively. However, he considered the sale of Flat 3,

38 Fernshaw Road to be the more comparable property and concluded that the rate for a flat on the upper floors should be £1,200 psf.

15. Mr Balcombe then drew a distinction in value between an upper maisonette and a lower one. As there were no sales of lower maisonettes in Fernshaw Road, he found evidence of two transactions in the neighbouring street at Flat 1, 16 Ifield Road and 25 Ifield Road. Again, an analysis of the sales of both properties led to a rate of £1,340.48 psf and £1487.31 psf (having adjusted for time) respectively.
16. Mr Balcombe, therefore, concluded that the differential value between lower and upper maisonettes was 9.11%. Applying this figure to the figure of £1,200 psf for the subject property led to a discounted rate of £1,091 psf. To arrive at the freehold vacant possession value, he then applied an uplift of 1% thereby providing a rate of £1,102 psf. When in turn this figure was applied to the agreed floor area for the property and the vaults, it gave a freehold vacant possession value of £1,130,000.
17. In his report, Mr Stapleton restricted his analysis of the sales of various flats in Fernshaw Road. These are the First and Second Floor Flats at 24, 26 and 38 Fernshaw Road together with Flats 9 and 11 Fernshaw Mansions. He too made an adjustment for time in each instance using the same Land Registry table for Kensington and Chelsea and then applied the same uplift of 1% for the freehold value to arrive at an averaged rate of £1,345.55 psf.
18. However, in contrast, Mr Stapleton considered that lower and ground floor premises had a greater value than premises on the first and second floors. He, therefore, applied an increase of 5% to his averaged rate for the subject property to provide a figure of £1,412.83 psf. He accepted in evidence that there was no evidence to support his 5% adjustment he contended for.

19. In addition, Mr Stapleton then considered that a purchaser would pay an additional £75,000 for the benefit of the rear garden at the property. He did not consider this to be double counting. When his rate of £1,412.83 was applied to the floor area of the property and the vaults and the sum of £75,000 was then added it provided an overall freehold vacant possession value of £1,528,800.
20. After carefully considering the evidence of both parties and having had the benefit of an inspection of the subject property and other comparables relied on in Fernshaw Road, the Tribunal concluded that the properties most comparable to the subject property were Flat 3, 38 Fernshaw Road, 35b Fernshaw Road and 24 and 26 Fernshaw Road.
21. The Tribunal's analysis of the sales of these properties is set out in the spread sheet annexed to this decision. As can be seen, once adjusted for time using the same Land Registry index adopted by both valuers, an average rate of £1,237 psf is produced. The Tribunal did not accept the submission made Mr Balcombe that an uplift to the freehold of 1% was not required for Flat 3, 38 Fernshaw Road and 26 Fernshaw Road because the leases of 999 years were virtual freeholds. In the Tribunal's judgement, a freehold interest is regarded as a more valuable asset in the market and consequently this realised in increased values of flats sold, for example, with a share of the freehold, as the leaseholders are no longer bound by the landlord's covenants in their lease.
22. Therefore, the Tribunal applied an uplift of 1% for the freehold interest, which in turn led to a slightly increased rate of £1,249.48 psf for the property. When applied to the agreed floor space for the property and the vaults, a freehold vacant possession value of £1,282,490.
23. For the reasons given by Mr Balcombe, the Tribunal accepted his submission that a discount of 9.1% had to be applied to the freehold vacant possession value for the location of the property on the ground and basement floors. The Tribunal rejected the upward adjustment of

5% made by Mr Stapleton. In valuation terms, it is almost universally accepted amongst valuers that flats located on the first and second floors are valued higher than flats located on the ground or lower floors invariably for considerations of less noise nuisance and greater security. In any event, Mr Stapleton's figure of 5% was completely unsupported by any evidence.

24. Similarly, the Tribunal did not accept Mr Stapleton's addition of £75,000 to the freehold vacant possession value was correct for three reasons. Firstly, even if his argument was correct in relation to the garden, any such increase in value is already reflected in the sale value. To add this amount again, would amount in effect to double counting. Secondly, his valuation of £75,000 was based on a transaction in relation to a property that bore no relationship to the subject property or its locations. Thirdly, his valuation amounted to transactional evidence, which was expressly disapproved of in *Arrowdell* as not being good or reliable evidence.
25. Accordingly, the Tribunal determined that the freehold vacant possession value for the property at the valuation date was £1,165,783. Therefore, the premium to be paid by the Applicant for the new lease is £27,152. The Tribunal's valuation is also annexed to this decision.

Judge I Mohabir
3 November 2015

First-tier Tribunal

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Ground floor and lower ground floor flat at 24 Fernshaw Road London SW10 0TF

Valuation Date	23 October 2014	
Lease	99 years from 29 September 1996	
Unexpired term	80.93 years	
Ground rent	£300 for the term	
Deferment rate	5%	
Capitalisation rate	6%	
Notional freehold value	£1,165,783	
Freehold interest		
Existing		
Ground rent receivable	£300	
YP 80.93 yrs @ 6%	16.5174	£4,955
Reversion to freehold value	£1,165,783	
PV of £1 in 80.93 years @ 5%	0.019280	<u>£22,476</u>
		<u>£27,431</u>
Proposed		
Reversion to freehold value	£1,165,783	
PV of £1 in 170.93 years @ 5%	0.00024	<u>£280</u>
Diminution to freehold interest		£27,152
Premium payable		£27,152

Address	Description	Area sq ft	Price	Date	Term	Index as per Land Registry	Price adjusted to valuation date	Leasehold Price/sq ft	Adjust for F/H	Freehold Price/sq ft
Flat 3 38 Fernshaw Road	2R,3B,2Bath 1/2 floor	1166	£1,495,000	Aug-14	999 yrs	-3.6787%	£1,440,003	£1,235	£1,454,403	£1,247
35b Fernshaw Road	2R,3B,2Bath 1/2 floor	1112	£1,200,000	Jan-15	93+yrs	-1.5383%	£1,181,004	£1,062	£1,192,814	£1,073
24 Fernshaw Road	1R,2B,1Bath 1/2 floor	1070	£1,200,000	Oct-12	99yrs	20.2877%	£1,443,452	£1,349	£1,457,887	£1,363
26 Fernshaw Road	1R,2B,1Bath 1/2 floor	1035	£1,400,000	Apr-15	999yrs	-3.7137%	£1,348,008	£1,302	£1,361,488	£1,315
								£4,948		£4,998
								£1,237		£1,250

Land Registry Index	Change to Valuation date	Date	Freehold value of the flat		
£1,065,637		Oct 14			
£1,106,336	-40699.0000 -3.6787	Aug 14	1016 sq ft 40 sq ft	£1,250 £312	£1,270,000 £12,490 £1,282,490
£1,082,030	-16393.0000 -1.5383	Jan 15	Reduce by 9.1% to give notional freehold value of a flat on the lower floors		
£885,907	179730.0000 20.2877	Oct 12			£1,165,783
£1,105,212	-39575.0000 -3.7137	Apr 15			