



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

**Case Reference** : LON/00AE/OLR/13/0309

**Property** : 85A CHEVENING ROAD  
LONDON NW6 6DA

**Applicant** : (1) NICHOLAS IAIN HALL  
(2) JULIE ANN HALL

**Representative** : MR N P BRAHAM  
(Braham Sears & Partner,  
Surveyors & Valuers)

**Respondent** : (1) DANIEL HOUGH  
(2) CECILY ANNE TOSHACK

**Representative** : IN PERSON

**Type of Application** : Application for the grant of a new  
lease pursuant to the provisions of  
the Leasehold Reform, Housing &  
Urban Development Act 1993,  
Section 48

**Tribunal Members** : Tribunal Judge S Shaw  
Mr J Barlow FRICS

**Date and venue of  
Hearing** : 2<sup>nd</sup> July 2013  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 6<sup>th</sup> August 2013

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**DECISION**

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## **Introduction**

1. This case involves an Application for the determination of the premium to be paid in respect of the grant of a new lease pursuant to the provisions of the Leasehold Reform, Housing & Urban Development Act 1993 (“the Act”). The terms of the new lease have been agreed subject to the matters in dispute which will be referred to below.
  
2. The Application to the Tribunal was made on 26<sup>th</sup> February 2013. The Applicants are Nicholas Iain Hall and Julie Ann Hall (“the Applicants”) and they are the long leasehold owners of the property which is 85A Chevening Road, Queens Park, London NW6 6DA (“the Property”). The Respondents are Daniel Hough and Cecily Anne Toshack who are the freehold owners of the property.
  
3. By the time the matter came before the Tribunal on 2<sup>nd</sup> July 2013, most of the contentious matters had been agreed between the parties. Directions had been given by the Tribunal on 20<sup>th</sup> March 2013. The parties were represented at the hearing in the following manner: the Applicants were represented by Mr Nigel Peter Braham who is a director of the company Braham Sears & Partner Limited. That company practises as surveyors and valuers. Mr Braham himself, although a director of the company, is not a qualified chartered surveyor but has very extensive experience over a period of more than 45 years in agency and valuation matters and has been involved in several previous enfranchisement cases before the Tribunal. Prior to the establishment of Braham Sears & Partner some 19 years ago, Mr Braham was a senior partner in Ellis & Co who are well known established estate agents and surveyors with 29 offices throughout London. Mr Braham prepared a report dated 2<sup>nd</sup> July 2013 which will be referred to in the context of this Decision. Mr Braham attended at the hearing and gave evidence in accordance with his report and somewhat expanded on some of the matters contained therein.

4. The Respondent freeholders appeared in the person of the first-named freeholder namely Mr Daniel Hough. Mr Hough is himself not a chartered surveyor, but does have a qualification in real estate investment, that qualification being an MSc from the Cass Business School in London. He works in the financial sector and is an Associate Director at Macquarie Group, working within the real assets division of that group. He too prepared a report dated June 2013 and again appeared before the Tribunal to give evidence in accordance with that report.
  
5. The parties in accordance with the Directions prepared a bundle of documents which was used throughout the hearing. The parties also agreed a Memorandum of Facts or Issues agreed and in dispute. It was agreed between the parties that the date of valuation is 21<sup>st</sup> November 2012 and that the gross internal area of the property is 870 square foot. The contentious issues, upon which the Tribunal was invited to make findings, were as follows:
  - (i) Capitalisation rate – the Applicants argued for 7% and the Respondents contended for 5%.
  - (ii) The freehold value of the flat – the Applicants argued for £592,500 whereas the Respondent freeholder’s valuation was £739,500.
  - (iii) The Deferment rate – the Applicants argued for the standard *Sportelli* rate of 5%. The Respondent freeholders contended that the appropriate rate was within a range of 3.65% to 4.05%.
  
6. It is proposed to deal with the matters in dispute in turn, to summarise the parties respective evidence and in respect of each issue, to give the Tribunal’s determination.

## Capitalisation Rate

7. The Applicants argued through Mr Braham that the appropriate rate was 7%. Mr Braham's rationale for this was that the lease presently has 84.65 years to run. The Applicants will be entitled to a 90 year lease extension as a result of this Application and the ground rent will be reduced to a peppercorn for the entire length of the lease. The freeholder is entitled to compensation for the loss of ground rent and the loss of reversion and a share of the marriage value where this is applicable. In this case there is of course no marriage value since the unexpired term exceeds 80 years. So far as the compensation for loss of the ground rent is concerned the rate of 7% has been adopted by Mr Braham because the ground rent is low (£25 per annum) and there is no provision for review. In Mr Braham's experience this would make it an unattractive investment for a would-be purchaser because the income would be eroded by inflation every year. In order to compensate for this the potential investor would think in terms of a purchase price producing a 7% return. In Mr Braham's experience, which he told the Tribunal was extensive in properties in this area, he found that the range was generally between 6% to 7%. Often it would be 6% to 6½% if there is provision for review. In this case given the low ground rental income, and the lack of provision for review coupled with the extensive term before any reversion could be enjoyed, 7% was the correct rate.
8. Mr Hough told the Tribunal that he had no strong opinion in respect of the capitalisation rate. His argument however was that Queens Park is a very desirable area and is 42 metres from the park itself. He produced for the Tribunal a recent article from the Wall Street Journal describing Queens Park as "*quietly becoming London's answer to Beverley Hills.*" The Tribunal regarded this comparison as somewhat in the nature of journalistic hyperbole, although it did note that several apparently well-known cinema personalities and other high profile individuals have in recent years moved into the Queens Park area. That of itself so far as the Tribunal is concerned would not necessarily impress the would-be

investment purchaser, given the very long period before any reversionary interest could be enjoyed. On balance, the Tribunal preferred the evidence and rationale of Mr Braham in this regard and determines that the appropriate capitalisation rate is 7%.

### **Deferment Rate**

9. Mr Braham on behalf of the Applicants used the 5% reversionary rate provided in the guidance from the Supreme Court in the *Sportelli* Decision. Although it is right to say that the property is outside the Central London area he could see no particularly compelling reason to vary from *Sportelli*, certainly at any rate not in a downwards direction. He made the point that the *Sportelli* guidance is against a background of long term rather than short term trends, and given that this property has a term of just under 85 years to run, there would appear to be no reason for moving from the *Sportelli* rate.
  
10. Once again Mr Hough took a different view. His contention was that there were no onerous management factors associated with this property ( compared to with those existing in a large block) to discourage an investor. He pointed out that the property is part of a large Victorian house and that the subject property is on the ground floor and there is only one other property (in fact the property which he and his wife own and occupy upstairs on the first floor). The insurance is shared between the parties and management is carried out on a genial and informal basis. For the purposes of the fixing of the appropriate deferment rate, he argued that Queens Park is Prime Central London property. He once again emphasised the proximity of the local park, good schools and the fact that certainly Wall Street journalists regard the Queens Park area as highly desirable and a somewhat more economic alternative to the very popular and highly priced Notting Hill area, not very far away. He referred the Tribunal to some Decisions which have moved away from *Sportelli* in particular circumstances, in particular the case of *Cadogan*

*Square Properties Limited v. Earl of Cadogan* 2010 and the *Kelton Court* case and *Ulterra v. Glenbar (RTE Company) Limited* 2007.

11. The Tribunal has considered those Decisions and the analysis of Mr Hough of those cases at pages 12 and 13 of his helpful report. Whilst the Tribunal takes on board the fact that this is a property with management responsibilities not akin to those of a large purpose built block, the Tribunal does not consider that that of itself is a sufficiently compelling reason to depart from the *Sportelli* rate. Neither does the Tribunal consider that however more attractive the Queens Park area has become in recent years, (which contention the Tribunal does not dispute) it nonetheless does not rank as Prime Central London property. The Tribunal was not persuaded that the arguments referred to, nor the financial analysis contained in the earlier part of Mr Hough's report (arguing for rates as low as 2.4%) were of a kind to require the Tribunal to depart from the guidance contained within *Sportelli* and the reasoning of Mr Braham as referred to above. The Tribunal's determination is that the appropriate deferment rate in this case is 5%.

### **Valuation of the Property**

12. Both parties dealt with this issue on the basis of comparables and on the basis that the property was effectively a freehold property given the long length of the lease in issue. The Applicants argued for a valuation of £592,500. The Respondent through Mr Hough contended that the property was worth £739,500. Given the long term of the lease, both parties approached this matter on the basis of a freehold valuation. The evidence from Mr Braham on behalf of the Applicants was that his valuation of £592,500 had come about after consideration of the various comparables set out in his Schedule of Comparables attached to his valuation. His contention was that the two flats constituting best comparable evidence were 23A Chevening Road, a few doors away in the same road – and 84A Wrentham Avenue. His contention was that given that both flats are ground floor flats with gardens and have similar accommodation they afforded good comparable evidence. He conceded

that Wrentham Avenue has an NW10 postcode, arguably less prestigious than that of the subject property, but that it nonetheless afforded good comparable evidence given that it adjoins Chevening Road. He distinguished the three flats at 72-75 Chevening Road. These were flats upon which Mr Hough placed some considerable reliance. 72-75 Chevening Road is a high-end development in the form of a modern block with very high specifications and finishes and Mr Braham handed the Tribunal a copy of the glossy brochure which had been used for marketing purposes in the sale of these properties. He argued (and the Tribunal agrees) that they are not sufficiently comparable to the subject property to provide good comparable evidence. As indicated, Mr Hough did rely on these properties. They had produced values in a range up to £776.49p per square foot. The Tribunal considered these properties distinguishable from the subject property, because the overall price per square foot had been inflated by the high specifications, and the fact that they are of a smaller internal gross area (producing a higher value per square foot). The Tribunal considered that these factors which the subject property was able to offer (period features, high ceilings, set back from the road, private allocated gardens, off-street parking) somewhat neutralised the other factors which had tended to inflate the prices of the new-built properties.

13. The Tribunal considered the other properties referred to by Mr Braham in his report and indeed inspected the subject property and drove past some of his comparable properties. The Tribunal was of the view that the property in Wrentham Road was less attractively situated than the subject property and was less helpful than the comparable in Chevening Road itself at number 23A.
14. Mr Hough relied upon a series of comparables again helpfully set out in his report at page 16. So far as the Tribunal was concerned, it noted, as was observed by Mr Braham, that several of these comparables did not involve actual transactions. The prices given were advertised prices by

local agents which had not materialised in sales. For example, Creighton Road, the first comparable on Mr Hough's list had not sold at the price initially asked of £750,000. Keslake Road had also not sold nor had 41 Chevening Road. Several of the comparables produced by Mr Hough were in respect of houses rather than flats and he had placed significant reliance upon a letter from Foxtons Estate Agents dated 19<sup>th</sup> April 2013 in which they had advised that his property, the subject property, should be put on the market at an asking price of £750,000. He was arguing for a price of £739,500 based on these comparables, but for the reasons indicated, the Tribunal considered this price to be somewhat inflated. Advice from local agents certainly provides some evidence to be put in the balance but the best evidence is that of actual transactional sales. The suggested price per square foot argued for by Mr Hough was £850 per square foot (as opposed to the £681 per square foot argued for by Mr Braham). Mr Hough's price per square foot was largely influenced by the very high square footage value attributed to the first of his comparables in Creighton Road, (£1,019.02p) which comparable as indicated did not in fact result in a sale at that price. In the view of the Tribunal that comparable somewhat artificially inflated the overall price that he was arguing for.

15. The Tribunal did indeed find the comparable of 23A in the same road as the subject property as the best comparable in this case. However the Tribunal did not agree with Mr Braham in suggesting that it was directly comparable. Having seen this property and the subject property, the Tribunal's view was that the subject property was significantly superior for a number of reasons. First 23A is not set back from the road to the degree that the subject property is and does not have the same area of attractive front garden. Secondly and importantly there is no parking area associated with 23A. Thirdly the comparable property is in a less attractive position of Chevening Road which is a relatively long road. Chevening Road is part of the overall common "gentrification" which is taking place in the Queens Park area and it seemed to the Tribunal that



that process had been further advanced at the end of the road in which the subject property is situate than at the other end in which 23A is situate. Finally, the subject property is indeed very much closer to the park than the comparable at 23A, a factor that may weigh importantly with would be young family purchasers.

16. Doing the best it could on the evidence and against the background of the above comments, the Tribunal took the view that the appropriate price per square foot for the subject property would be in the order of £775 per square foot. Given that the overall area concerned in respect of the subject property is 870 square foot this produces a value of rounded out at £675,000. This seemed to the Tribunal to reflect the comparable evidence referred to above and also, on a “stand back” basis seemed appropriate for this up and coming area of North West London.

### **Conclusion**

17. For the reasons indicated above the Tribunal was satisfied that the appropriate capitalisation rate in this case was 7%, the deferment rate was 5% and the value of the property was £675,000. These conclusions result in payment of a premium for the new lease in the sum of £11,211 in accordance with the valuation attached to this decision. The Tribunal’s Determination therefore is that the appropriate premium to be paid is £11,211.

**Tribunal Judge: S Shaw**

**Dated: 6<sup>th</sup> August 2013**

## 85A Chevening Road London NW6 6DA

### PURCHASE PRICE PAYABLE BY NOMINEE PURCHASER

in accordance with the Leasehold Reform, Housing and Urban Development Act 1993

Valuation Date	21/11/2012
Yield	7.00%
Deferment rate	5.00%
Unexpired Term	84.34 years
Ground rent	£25pa

#### Freeholders interest

<u>Ground rent receivable</u>			25	
YP	84.65 yrs	7 %	14.23920227	356
<u>Reversion</u>				
Freehold VP value of flat			675,000	
Defer	84.65 yrs	5 %	<u>0.01608147</u>	<u>10,855</u>
<u>Freeholder's existing interest</u>				<u>11,211</u>