



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

Case Reference : **LON/00AW/OLR/2014/0827**

Property : **Flat 1A, 4 Queens Gate Place, London SW7
5NT**

Applicant : **Mr Tamy El Nemr**

Representative : **Mr Simon Radford BSc (Hons) MRICS**

Respondent : **4 Queens Gate Place Limited**

Representative : **Mr Alan Cohen BSc FRICS IRRV Hons
Mr Andrew Cohen MRICS**

Type of Application : **Section 48 Leasehold Reform, Housing and
Urban Development Act 1993 – to determine
terms of acquisition in dispute**

Tribunal Members : **Judge John Hewitt
Mrs Sarah Redmond BSc (Econ) MRICS**

**Date and venue of
Hearing** : **Tuesday 7 October 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21 November 2014**

DECISION

Decisions of the tribunal

1. The tribunal determines that the premium payable by the applicant to the respondent for the new lease is £156,234 calculated as set out on the attached valuation marked Appendix A.
2. The reasons for our decision are set out below.

NB Later reference in this decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The applicant is the long lessee of Flat 1A, 4, Queens Gate Place, London SW7 5NT by virtue of a lease dated 24 November 1983 granted by Robcliffe Design Limited to John Adrian Ferree for a term of 99 years from 24 June 1972 [10]. On 20 November 2009 the applicant was registered at Land Registry as the proprietor of the lease [41].
4. On 7 October 2010 the respondent was registered at Land Registry as the proprietor of the freehold interest in the development known as 4 and 4a Queens Gate Place, London SW7 5NT [37]. Evidently the transfer was dated 18 August 2010.
5. On or about 10 October 2013 the applicant gave to the respondent notice [33] to exercise the right to acquire a new lease of the property pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The respondent gave a counter-notice [35] pursuant to section 44 of the Act admitting that on the relevant date the applicant had the right to acquire a new lease of his flat.
6. By an application to the tribunal dated 23 May 2014 [1] pursuant to section 48 of the Act the applicant sought a determination of the terms of acquisition of the new lease that were then in dispute. The application form stated that the applicant proposed a premium of £82,000 for the new lease and that the respondent counter proposed a premium of £240,330.
7. Directions were duly given. We were disappointed to note that neither party had complied fully with the directions. Both parties were assisted by expert valuers and both parties were given permission to adduce expert evidence. The role of an expert witness is to assist the tribunal. There were clear directions [206] that the valuers were to exchange valuation calculations by 2 July 2014 and to meet to clarify issues in dispute. The valuers failed and neglected to meet to clarify issues. In consequence it was necessary for the tribunal to adjourn the hearing for a short while to enable the required meeting to take place.

Further the parties were to exchange expert reports by 20 August 2014 but they failed to do so.

No acceptable explanation about these failures was given to the tribunal at the hearing.

Parties and their professional advisers must understand that directions are orders to be complied with. Failure to do so without good reason may well result in the application of a sanction under rules 8 or 9 as may be appropriate and just.

The hearing and inspection

8. The application came on for hearing before us on 7 October 2014. The applicant was represented by his valuer, Mr Simon Radford, who acted as both advocate and expert witness. The respondent was represented by Mr Andrew Cohen as advocate and his father, Mr Alan Cohen took the role of expert witness.

9. We were told that the only issue the parties sought to be determined was the premium payable by the applicant to the respondent.

An agreed draft of the new lease is at [42].

10. Both Mr Radford and Mr Alan Cohen gave oral evidence and both were cross-examined and both answered questions put to them by members of the tribunal.

11. On the afternoon of 7 October 2014 we had the benefit of an internal inspection of the subject flat and external walk-by inspections of the comparables cited by the parties.

The rival experts' reports and valuations

12. Mr Radford's report is at [53]. His valuation in which he contends for a premium of £127,500 is at [114].

13. Mr Alan Cohen's report is at [119]. His valuation in which he contends for a premium of £222,262 is at [204].

During the course of the hearing:

13.1 Mr Radford accepted there was an error in his calculation which, when corrected, produced a valuation of £128,213; and

13.2 Mr Alan Cohen accepted that he had included some wrong figures. He did not produce a revised calculation. On reviewing his calculation after the hearing it appears that the revised calculation would produce a valuation of £213,711.

Valuation matters agreed

14. A statement of matters agreed is at [117]. It may be summarised as follows:

Valuation date: 10 October 2013

Unexpired term:	57.7 years
Ground rents:	£738 pa until 24 June 2038 and then rising to 5% pa of open market rental value (agreed at the hearing to be £1,477.50 pa)
Capitalisation rate:	6%
Deferment rate:	5%
Relativity:	79.75%
Accommodation:	Flat on ground floor totalling 736 square feet (68.4 sq m) excluding a mezzanine which, as demised, was laid out to comprise an entrance hall, reception/bedroom, kitchen, bathroom and w.c.

| _____ Additional matters agreed at the hearing:

Freehold/leasehold differential: 1%
Ground Rent review: £1,477.50 per annum

15. It was not in dispute that 4 Queens Gate Place is an imposing end of terrace period house, subsequently converted to comprise some eleven self-contained flats laid out on basement, ground and 1st to 5th floors.
16. The subject property is a raised ground floor flat facing south onto Queens Gate Place. Despite the agreed characteristics of the property as set out in paragraph 14 above, the lease defines the demised premises to be:

“Flat 1a being as situate on the Ground Floor at 4 Queen’s Gate Place aforesaid and which flat is shown edged in red on the plan attached hereto”

The plan [28] then labels 5 rooms:

“Bedsitting, Hall, Kitchen, WC, Bath”

The comparables relied upon by the parties

17. The comparable transactions relied upon by the respective valuers was as follows:
 (For ease of reference Queens Gate Place is referred to as QGP)

Mr Radford

Mr Alan Cohen

Flat 5 @ 7 QGP

Flat 4 @ 4 QGP

Flat 1 @ 8 QGP	Flat C @ 15 QGP
Flat D @ 20 QGP	Flat B @ 15 QGP
Flat B @ 15 QGP	Flat B @ 19 QGP
Flat LG @ 21 QGP	Flat 8 @ 14 QGP
Flat 1 @ 21 QGP	Flat 3 @ 31 Elvaston Place
Flat 2 @ 41 Elvaston Place	Flat D @ 17 QG Terrace
Flat A @ 44 Elvaston Place	Flat 3 @ 33 QG Terrace
Flat 6 @ 31 Elvaston Place	

Both valuers had taken their comparables from LonRes.

None of the comparables was truly like for like and thus adjustments were required.

Both valuers had adopted Kensington and Chelsea Land Registry data to index for time when an adjustment for time was made but Mr Alan Cohen was not consistent in his approach to adjustments for time.

In broad terms Mr Radford made adjustments to reflect time, location, size and outside space.

Mr Radford also made an adjustment to reflect improvements/change of lay out. Mr Radford's approach was to reduce his psf figure by 17.5% to reflect for developer's profit and risk and to deduct £150 psf to reflect an average refurbishment. Whilst we can understand this approach Mr Radford did not provide any firm evidence to support his approach.

In contrast Mr Alan Cohen generally does not make adjustments in such a methodical way, preferring to take a much more broad brush approach. We noted however that in his evidence Mr Alan Cohen included 'fulsome' descriptions from the sales' particulars which appear to emphasise the special features and high standard of properties in this part of central London. Thus we conclude it is appropriate to make some adjustment to reflect what clearly must be improvements

Mr Alan Cohen did make some adjustments for balcony/terrace where required which he applies before adjusting for time but he makes no adjustment for position in the property whereas in contrast Mr Radford makes consistent adjustments to reflect this characteristic.

18. Neither Mr Radford not Mr Alan Cohen were able to explain to us why it was that out of a total of 17 comparables cited to us only one was common to them both.
19. The common comparable was Flat B @ 15 QGP. This transaction is quite close to the valuation date. It is larger than the subject flat being 984 sq ft and with a second bedroom, but requires no adjustment for balcony. On inspection we noted that it faced on to the main part of QGP and in our view the market could perceive it to have a better outlook than the subject property.
20. The main comparable relied upon by Mr Alan Cohen was flat 4 @ 4 QGP. This is a large spacious flat comprising some 1,116 sq ft (103.7 sq m) located on the first floor of the subject building. The sales particulars are at [147]. Evidently it sold for £2.4m. It appears from [152] that completion took place on 9 May 2014, some seven months after the valuation date. Mr Alan Cohen told us that the transaction had been agreed December 2013 which he said was much closer to the valuation date we are concerned with. There was no evidence before us as whether the December 2013 agreement was subject to contract or an exchange of binding contracts and no evidence was given to explain the reason for the delay in completion.
21. For reasons which were not clear to us this transaction was not disclosed to Mr Radford until after exchange of expert's reports. Mr Radford told us that he had been informed by Mr Alan Cohen that there was a material transaction of significance but the details were not provided until after exchange of reports. Thus it was Mr Radford did not address it in his report. If Mr Alan Cohen had complied with directions and had exchanged valuation calculations and the agreed statement of facts and disputed issues Mr Radford would have been aware of the transaction and could thus have addressed it in his report to the tribunal which, in our view, is the correct and professional way in which such matters should be dealt with.
22. Having considered the transaction Mr Radford told us that it did not affect the overall gist of his evidence. He considered that a number of adjustments would be required to reflect many features that are different from the subject flat.

Improvements

23. The parties agreed that the current layout of the subject property is different to the layout on the lease plan. It was also agreed that the current layout is relatively modern providing a large reception area with a separate internal kitchen, guest w.c., a bedroom with en suite facilities and a 77sq ft mezzanine in a corner of the reception area and above the internal kitchen, which can be used for storage and/or perhaps sleeping, if preferred, but it has low headroom.

24. The respondent acquired its freehold interest in August 2010. The works to the subject flat may have been undertaken prior to that date. Mr Andrew Cohen conceded that the respondent did not have any evidence to suggest that the works were not carried out with the consent of the landlord.
25. The evidence of Mr Radford was that the original layout could reasonably be described as a studio flat or bedsit; in marketing terms the description 'studio flat' would sound better. He considered that the original layout was poorly designed and was not a layout that a developer would choose to adopt in current times. Mr Radford also assumed that the original layout description of 'Bedsitting' suggested it was in average and adequate condition.
26. Mr Radford was of the opinion that the current layout was an improvement over the original layout which required to be taken into account. He considered an allowance or adjustment of £150 psf would be cheap given the location, the quality of materials and finishes that would be adopted and the high cost of labour in central London.
27. Mr Radford was also of the opinion that as at the valuation date the flat configured to the original layout would be saleable but the market would be small with the main interest coming from a developer who would be looking to carry out a major refurbishment and then sell on at a profit. In contrast he considered that the flat with the original layout would be of less interest to the prospective owner/occupier and this would reflect in the price that would be achievable.
28. Mr Alan Cohen said in his evidence that the cost of the works to the current layout at today's prices would be in the order of £10, - £15,000. Mr Cohen did not consider the works to amount to an improvement or that the original layout would be an impediment in today's market. His view was that such a layout would appeal to younger people who would prefer the larger living space to a separate bedroom. This was based on his view that in his youth the extra living space would have been important to him. Mr Cohen stated that as the mezzanine was capable of use for sleeping he valued it at the same as the rest of the flat.

The approach to valuation

29. Mr Alan Cohen has taken a broad brush approach, making some adjustments from time to time but not doing so consistently. His overall adjusted figures lead him to arrive at a value of £2,000 psf which is heavily affected by the transaction concerning Flat 4 @ 4 QGP. Mr Alan Cohen told that his overall value was supported by various selling agents with whom he has spoken, which enabled him to arrive at a 'tone of values'.

30. Mr Cohen said that it is necessary to stand back to take an overall view and not to be too mathematical. He said that he does not adjust for flats on first or second floors because he does not consider that the floor level has any effect on value. He rejected Mr Radford's approach of an adjustment of 20% for a second floor walk-up and 10% for raised ground floor. Generally Mr Alan Cohen was rather dismissive of Mr Radford's approach and said that \pounds psf is a surveyor's tool.
31. Mr Alan Cohen did agree that it is appropriate to adjust for a balcony or outside terrace. His approach was a general \pounds 50,000 irrespective of size or outlook, although he accepted that a terrace may be worth more or less than a balcony.
32. Mr Radford adopted a different approach. He tended to look at each flat and make adjustments to reflect several factors, as detailed in his report. Mr Radford then averaged the resulting figures and then stood back to arrive at the 'tone' of sales transaction, focussing on those that were closer in size to the subject flat.

Conclusions

33. Having regard to the competing evidence and opinions put before us we find that broadly we prefer the approach adopted by Mr Radford.
34. Whilst overall we find that his approach is more methodical and has its attractions we do bear in mind that all adjustments are subjective and that the more adjustments which are made the greater the scope for error.

Further where adjustments are made there must be constituency in approach. For example, as regards adjustments for time it is helpful to adopt a common date. Rarely, in our experience, is it the case that in every comparable transaction all the key data is known. In an ideal world it would be helpful to know, the date of any subject to contract offer, the date of acceptance, the date of exchange of binding contracts and the date of completion. That level of data would enable like for like adjustments to be made. But, we are not in the ideal world. Sometimes only limited data is available. One constant tends to be the date on which the purchaser is registered at Land Registry as the proprietor, which will often also give the date of the transfer form lodged with the application for registration. It does not however give the date of exchange of contracts. That said, sometimes transactions exchange and complete on the same day. Thus whatever data is available it must be treated with caution.

35. We find that whilst the approach to adjustments is to be preferred, having arrived at the calculations the valuer still has to stand back and take an overview to see of the figure emerging is

within the right bracket or tone and that is where the skill of the valuer will come in.

36. We prefer Mr Radford's adjustments for time based on the date of registration. We also prefer his adjustments for floor level and concentration on flats of a similar size to the subject. We put little weight on Mr Alan Cohen's more exotic selections such as:

Flat B @ 19 QGP which has a GIA of 1,442 sq ft, is split level and has a balcony, a flat which is quite different in character from the subject;

Flat 8 @ 14 QGP is also quite different in that it is a split level penthouse with a large roof terrace off the main reception room, a small balcony off the master bedroom and access via a spiral staircase to a second roof terrace which leads to a further flat roof area, a dining room and two bedrooms, one of which is en suite;

Flat 5 @ 15 QCP a large first floor flat which has a GIA of 1,180 sq ft; and

Flat 3 @ 31 Elvaston Place another large first floor flat with a GIA of 1,260 sq ft excluding its balcony comprising two bedrooms, both en suite, a main reception room and a glazed eat-in kitchen area.

37. We consider that the most helpful comparables are:

Flat B @ 15 QGP which have adjusted to £1,807 psf;

Flat 4 @ 4 QCP which we have adjusted to £1,767; and

Flat GF @ 2/41 Elvaston Place which we have adjusted to £1,590.

38. Putting the most weight on the joint comparable of Flat B @ 15 QGP we arrive at a figure of £1,800 psf.
39. However we consider that an adjustment for improvements is required. On this issue we preferred the evidence of Mr Radford. We reject the evidence of Mr Alan Cohen to the effect that young purchasers would prefer the original layout because that opinion does not strike a chord with the experience of the members of the tribunal.
40. We bear in mind that we have to determine the value attributed to the improvements and not the cost of the improvements, whether that be the original cost or the current day cost. Drawing on the conflicting, but limited, evidence presented to us we find that an adjustment of £200 psf is appropriate to reflect the value of the improvements.

41. We therefore arrive at £1,600 psf as the value of the subject flat as at the valuation date, which, at 736 psf equates to £1,177,600.

The premium

42. Having determined the virtual freehold value unimproved value at £1,177,600 the premium payable for the new lease is £156,234 calculated as shown on the attached valuation marked Appendix A.

Judge John Hewitt
21 November 2014

