



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

Case reference : **LON/00BK/OLR/2015/0420**

Property : **Flat 5, 53 Ennismore Gardens,
London SW7 1AJ**

Applicant : **John Zeno Souglides**

Representatives : **B D Laddie, solicitors**

Respondents : **Thomas Cunningham Tweedie and
John Mathieson Tweedie**

Representatives : **Forsters LLP, solicitors**

Type of application : **A new lease claim**

Tribunal members : **Angus Andrew
Richard Shaw FRICS**

**Date and venue of
hearing** : **16 July 2015
10 Alfred Place, London WC1E 7LR**

Date of decision : **30 July 2015**

DECISION

Decisions

1. The freehold vacant possession value of the flat at the agreed valuation date was £2,194,200.
2. The price to be paid for the new extended lease is £1,203,000 in accordance with our valuation at appendix 3.

Application and hearing

3. On 20 February 2014 John Zeno Souglides (“the tenant”) applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of flat 5, 53 Ennismore Gardens, London SW7 1AG (“the flat”). The respondents to the application were Thomas Cunningham Tweedie and John Mathieson Tweedie (“the landlords”).
4. On 16 July 2015 we heard evidence from the parties expert witnesses. Mr S M Radford MRICS gave evidence on behalf of the tenant whilst Mr A Ingram-Hill MRICS gave evidence on behalf of the landlords. The tenant was represented by Adam Deacock and the landlord by David Holland QC both of whom are barristers. We inspected the flat and the exterior of the comparable flats on the morning of 17 July 2015. During our inspection of the flat we were accompanied by both expert witnesses and the tenant was also present.

Background

5. 53 Ennismore Gardens was originally a 6 storey house on the east side of a garden square. In contrast to the houses on the north side of the square it is separated from the gardens by a residential road. On 17 November 1949 the then freehold owners granted a lease of the house for a term of 80 years from 25 December 1948. This head lease therefore expires on the 24 December 2028 and has just less than 13½ years left to run. The head lease permitted 53 Ennismore Gardens to be used either as a private dwelling house or as residential flats or maisonettes. It is apparent that 53 Ennismore Gardens was converted into flats and on 2 June 1975 the owner of the head leasehold interest granted a lease of the fourth floor flat for a term expiring on 21 December 2028 (“the 1975 lease”). At the time the fourth floor was the top floor of 53 Ennismore Gardens.
6. By 1981 Thomas Tweedie, one of the joint landlords, had acquired the 1975 lease and during the following years he constructed the additional fifth floor and the roof terrace on top of it. Both the fifth floor and the roof terrace fell outside the demise of the 1975 lease. Whether the work was completed with the agreement of the head lessee is not clear but in any

event on 2 October 1986 the head-lessee and Thomas Tweedie entered into a deed that varied the 1975 lease by incorporating the fifth floor (but not the roof terrace) into its demise (“the 1986 deed”). From the documents in the hearing bundle it is apparent that HM Land Registry considered that this deed simply varied the 1975 lease and it was not treated as a deed of surrender and re-grant.

7. By 1987 the landlords (that is Thomas Tweedie and his brother) had acquired the freehold reversionary interest so that Thomas Tweedie was both a joint owner of the freehold reversionary interest and the owner of the sub-lease of flat 4 which then included both the fourth and fifth floors but not the roof terrace. On the 10 April 1987 the landlords granted Thomas Tweedie an option to purchase a lease extension for a term of 60 years from 25 December 2028. Thus the extended lease would come into effect upon the expiration of the head lease. The option could not be exercised until 25 December 2008 and if exercised the extended lease was to be granted on payment of one red rose.
8. In July 1993 the tenant and his then wife purchased the lease of the fourth and fifth floor flat and also the option to acquire an extended lease, from Thomas Tweedie’s mortgagee in possession. The price that they paid presumably reflected the presumed entitlement to acquire an extended lease for a nominal payment.
9. On 20 May 1994 the head lessee and the tenant and his then wife entered into what was described as a “supplemental deed of variation” (“the 1994 deed”) by which the roof terrace was incorporated into the lease of the fourth and fifth floor flat. Apparently and in contrast to the 1986 deed HM Land Registry treated the deed of variation as a deed of surrender and re-grant and consequently that deed rather than the 1975 lease constitutes the tenant’s leasehold title and is so registered at HM Land Registry.
10. In 2009 the tenant (having since divorced) sought to exercise the option previously granted to Thomas Tweedie. That attempt resulted in litigation between the parties that eventually found its way to the Court of Appeal. In essence Sir Andrew Morritt C, in delivering the lead judgment, found that because the 1994 deed operated as a deed of surrender and re-grant the tenant was not a successor in title to Thomas Tweedie. For reasons that are outwith this decision the consequence of that finding was that the option was void because it did not comply with section 9 of the Perpetuities and Accumulations Act 1964.
11. There is no lift in 53 Ennismore Gardens. From the ground floor hall 66 steps lead to the third floor entrance to the flat. A further 15 steps provide access to the fourth floor that is situated behind a parapet wall, the top of which is 1.5 meters above the floor of the flat. Although two sets of French windows open onto the parapet wall only the top of the tree canopy above the garden square can be seen from inside the flat. The fourth floor comprises a reception room and kitchen. Stairs lead to the fifth floor,

which comprises two bedrooms and two bathrooms with steps leading to a roof terrace, which is accessed through a sliding hatch.

12. Although large in area and providing extensive views the roof terrace is rudimentary with low railing to the front and rear and enclosed on the other two sides by chimney pots.

Issues in dispute

13. The two experts had agreed the following:
 - a. The valuation date at 26 June 2014
 - b. An unexpired term at the valuation date of 14.49 years
 - c. A gross internal area of 1,255 square feet
 - d. A deferment rate of 5%
 - e. A ground rent of £100 per annum to be capitalised at 6%
 - f. A relativity of 98% for the extended lease to the freehold
 - g. A relativity of 37.09% for the unexpired term to the freehold.
14. Until the day prior to the hearing four issues remained in dispute. The first issue was one of law. The tenant contended that the addition of the fifth floor and the roof terrace were improvements carried out either by him "*or by any predecessor in title*". Consequently any increase in the value of the flat attributable to those improvements was to be disregarded pursuant to paragraph 3(2)(c) of schedule 13 to the Act.
15. The landlords, relying upon the Court of Appeal decision referred to above, contended that the because the 1994 deed operated as a deed of surrender and re-grant the addition of the fifth floor and the roof terrace were not improvements carried out "*by any predecessor in title*" and that consequently the flat fell to be valued on the basis that it included both the fifth floor and the roof terrace.
16. The second issue was the freehold value of the flat that was itself dependent upon the first issue. However at 2pm on the 15 July 2015 the tribunal received a letter from the tenant's solicitors in which they conceded the improvement issue so that the flat was to be valued "*as a whole*".

17. The third issue was a term of the proposed draft lease whilst the fourth issue was agreement on a lease plan that complied with the Land Registry's current requirements. Both advocates were confident that both the new lease and the lease plan would be agreed between the parties without difficulty. At their request we did not deal with those issues. If however the new lease and the lease plan have not been agreed within the 14 days from the issue of this decision either party may apply to restore the hearing. If no such application is received within a further 14 days the tribunal will close its file.
18. Consequently when the matter came before us on 16 July 2015 the only issue between the parties was the freehold value of the flat in its existing configuration.

Agreed evidence

19. The experts had identified 6 sales of residential flats in the vicinity of the flat, within 15 months of the valuation date. Four of the flats were in Ennismore Gardens while the other two were a little distance away, on the other side of Brompton Road, in Egerton Gardens. The agreed evidence can be summarised in the following table:

Address	Floor	Square feet	Lease length	Sale date	Lease price	FHVP
3, 53 Ennismore Gardens	GF	862	105	28 March 2014	1,950,000	£1,989,796
G, 22 Ennismore Gardens	4	857	101	12 March 2015	1,595,000	£1,627,551
3, 8 Egerton Gardens	3,4	1,310	SOF	16 October 2014	2,475,000	£2,475,000
3, 49 Egerton Gardens	3,4	1,704	92	1 July 2014	3,150,000	£3,230,769
H, 21-22 Ennismore Gardens	3	894	104	18 April 2013	1,950,000	£1,989,796
E, 2 Ennismore Gardens	3	1,365	104	4 April 2013	1,970,000	£2,010,204

20. Both experts then adjusted the agreed freehold vacant possession values (“FHVP”) of the 6 comparables for time but in doing so they used different indices. Mr Radford used an average of the Land Registry House Price Index for flats in the London Borough of Kensington and Chelsea and the Savills’ Prime Central London capital values index for central flats. Although the flat is in the City of Westminster he considered the immediate locality had more in common with Kensington and Chelsea.
21. It became apparent during the hearing that when adjusting for time Mr Radford had mistakenly used the April 2014 index rather than the June 2014 index in the Land Registry Index. Accordingly we gave permission to Mr Radford to correct his report. His corrected report was received on the Tuesday following the hearing after the corrections had been agreed by Mr Ingram-Hill.
22. In contrast Mr Ingram-Hill adjusted for time by using an average of two Savilles’ indices. He used an average of the Prime Central London capital values indices for central flats and south-west flats.
23. Having adjusted for time the experts then made a number of adjustments to reflect their perception of the differences between the flat and the comparable flats. Those adjustments are summarised in Appendix 1 to this decision. Some adjustments reflect only a single perceived difference while others are composite adjustments reflecting more than one difference. For example Mr Radford adjusted the FHVP of flat G, 22 Ennismore Gardens by 15% to reflect his perception that that flat was in a better position, had higher ceilings and enjoyed a better view of the gardens than the flat.
24. As will be seen from the schedule in appendix 1 the experts did not agree the overall effect of the adjustments in respect of any of the comparable flats and in some instances the difference between them was substantial. Again using Flat G, 22 Ennismore Gardens as an example Mr Ingram-Hill, after making 5 separate adjustments, concluded that no adjustments were required to the FHVP. In contrast Mr Radford considered that it should be reduced by 19%.
25. Having calculated the FHVP for the comparable flats Mr Radford then gave more weight to the 4 comparables that he considered to require the least subjective adjustment. He concluded that the FHVP of the flat at the valuation date was £2,025,570 which gave a premium of £1,110,500.
26. In contrast Mr Ingram-Hill did not give more weight to any of the comparables and took an average of the adjusted FHVPs. However he then made an allowance for the effect of the mansard roof on the fifth floor. He valued the 72 square feet with a ceiling height of less than 1.5 meters at half the value [in terms of pounds per square foot (“£psf”)] that he applied to

the rest of the flat. He concluded that the FHVP of the flat at the valuation date was £2,375,000 which gave a premium of £1,302,000. Thus in terms of value the experts were just under £350,000 apart whilst in terms of premium they were £191,500 apart.

Reasons for our decisions

Indexation

27. Mr Radford having corrected his report by adopting the correct Land Registry Index for the agreed valuation date there was, in practical terms, little to choose between the two approaches adopted by the experts.
28. Although the flat is in Westminster, but very close to the Kensington and Chelsea boundary, both experts used a combination of appropriate area indices to fully reflect its location.
29. Mr Radford used the Land Registry index because it was based on actual sales. There are however disadvantages in using the Land Registry index. As Mr Radford acknowledged the top end of the market has been depressed since the valuation date and there have been few sales. It was suggested that the depressed market results from a variety of factors including the sharp increase in stamp duty and subsequent uncertainty over the Scottish referendum and the general election. We agree with Mr Ingram-Hill that when adjusting for time there are dangers in relying on an index based upon a small number of transactions.
30. In contrast the Savilles indices are based on that company's valuation of a basket of relevant properties that are re-valued at 3 monthly intervals. They take into account not only sales but also properties that are being offered for sale, offers received and the valuers' perceptions of the market. That is a particular advantage in the thin market that has existed since June 2014. In our experience central London valuers usually prefer Savilles indices although the Land Registry index is increasingly used elsewhere.
31. Consequently and for each of the above reasons we consider it more appropriate to use the combination of the two Savilles indices adopted by Mr Ingram-Hill.

The mansard roof

32. Although Mr Deacock was critical of Mr Ingram-Hill's methodology when discounting for the disadvantage of the mansard roof Mr Radford in his report made no explicit adjustment to reflect the reduced ceiling height to the front of the mansard.

33. In any event we prefer the methodology adopted by Mr Ingram-Hill, which is consistent with the RICS measuring code. Mr Deacock made the point that Mr Ingram-Hill did not adjust for that strip of the fifth floor that has a ceiling height of more than 1.5 meters but less than 2 meters. That however is compensated for by 2 factors. Firstly the experts had not included the cupboards in the eave of the mansard in the agreed gross internal area. Secondly the adoption of a 50% valuation for the strip with a ceiling height of less than 1.5 meters provides a reasonable average. Consequently and for each of these reasons we consider that the methodology adopted by Mr Ingram-Hill when adjusting for the reduced height of the front of the mansard was both reasonable and proportionate and we also adopt it.

Other adjustments

34. Neither expert had had the opportunity to inspect the interior of any of the comparable flats. Their adjustments were entirely subjective and were not based on any empirical evidence, or if they were that evidence was not produced to us. The adjustments relating in particular to condition were based either on unsupported comments made by estate agents or upon inferences drawn from the sales particulars. In one case the absence of a photograph led the expert to conclude that the comparable flat must have been unimproved.

35. Flat 3, 53 Ennismore Gardens is in the same building as the flat but is on the ground floor. The 81 steps leading to the fourth floor are a distinct disadvantage that would deter many potential purchasers. Consequently a significant adjustment has to be made. It is however impossible from the evidence before us to say whether that adjustment should be 20% as contended for by Mr Ingram-Hill or 25% as contended for by Mr Radford.

36. It is equally impossible to identify the exact adjustment that should be made to reflect the quality of the roof terrace when neither we nor the experts have been able to inspect the other roof terraces. Equally there are considerable dangers in making somewhat arbitrary adjustments for layout, condition or quality without having the opportunity to inspect the interiors of the comparables flats.

37. In most central London cases of this type it is usually possible to identify one or two similar flats that require only minor adjustments and they will usually inform the valuation. However in this case there are no such similar flats. As observed the one comparable in the same building requires considerable adjustment for floor level alone. Even where Mr Ingram-Hill suggests that no overall adjustment was required that resulted from a number of conflicting adjustments rather than from the similarity of the flats.

38. Having inspected the interior of the flat and exterior of the comparable flats we are satisfied that a case can be made for all the adjustments made by the experts. Both experts prepared their reports and delivered their

evidence in a professional manner. This was not a case in which we could legitimately prefer the evidence of one expert over another. On the basis of the information available to us all the adjustments are within a range of reasonableness and we do not disagree with them. Consequently we consider that the only sensible and realistic way of dealing with the experts' adjustments is to average them (or take the halfway point when one expert is at zero). This is what we have done and our adjustments are set out in the schedule in appendix 1 to this decision.

39. Surprisingly Mr Radford did not explicitly adjust for the parapet wall that, as Mr Deacock pointed out, limits the view over the gardens and is a disadvantage. However on closer analyses it is apparent that he takes the parapet wall into account when adjusting for view in particular when adjusting flat G, 22 Ennismore Gardens, flat H, 22 Ennismore Gardens, and Flat 3, 8 Egerton Gardens. Consequently in taking an average of the adjustments proposed by the experts we have recognised that disadvantage.

Conclusions

40. Our conclusions are set out in the schedule in appendix 2 to this decision. The greater the time adjustment the more unreliable the comparable. We would therefore usually give more weight to the 2014 sales, which produce an adjusted £psf of £1,785. However on the basis of our inspection we are satisfied that the character of Egerton Gardens is different from Ennismore Gardens. Accordingly we give greater weight to the Ennismore Gardens comparables. As can be seen from the schedule in appendix 2 these competing factors largely cancel each other out. We therefore adopt a £psf of £1,800. Applying that to the agreed gross internal floor area of 1,255 square feet after adjusting for the reduced height of the mansard produces a FHVP for the flat at the valuation date of £2,194,200. That valuation gives a premium of £1,203,000 in accordance with our valuation in appendix 3 of this decision.

Name: Angus Andrew

Date: 30 July 2015

Appendix 1

Schedule of adjustments

Flat G, 22 Ennismore Gardens

Mr Radford	Refurbishment - £75 psf Say 4% (£75 of £1,879)	Position, higher ceilings and view - 15%				Overall - 19%
Mr Ingram- Hill	Building/position, - 5%	Condition -2.5%	Quantum - 2.5%	Quality/terrace + 7.5%	Range/layout + 2.5%	0
Tribunal						- 9.5%

Flat E, 2 Ennismore Gardens

Mr Radford	Floor level - 10%	Position - 5%	No roof terrace + 5%			Overall - 10%
Mr Ingram- Hill	Floor/position - 5%	Building/position - 2.5%	Terrace + 7.5%	Layout/Accommodation + 5%		+ 5%
Tribunal						- 5%

Flat 3, 53 Ennismore Gardens

Mr Radford	Ground floor - 25%					Overall - 25%
Mr Ingram- Hill	Floor position - 20%	Ceiling height - 5%	Quantum - 2.5%	Quality/position + 7.5%	Condition + 2.5%	- 17.5%
Tribunal						- 21.25%

Flat H, 21-22 Ennismore Gardens

Mr Radford	Refurbishment - £75 psf Say - 3% (£75 of £2,500)	Position, higher ceilings, view - 15%	Floor level - 10%			Overall - 28%
Mr Ingram- Hill	Floor position - 5%	Condition - 2.5%	Building/position - 5%	Quantum - 2.5%	Quality/position + 5%	- 10%
Tribunal						- 19%

Flat 3, 49 Egerton Gardens

Mr Radford	Condition/layout - £150 psf Say -8% (£150 of £1,875)	Floor levels - 10%	No roof terrace + 5%			Overall - 13%
Mr Ingram- Hill	Floor position - 5%	Condition - 10%	Building/square position + 2.5%	Terrace + 7.5%	Quantum + 2.5%	- 2.5%
Tribunal						- 7.75%

Flat 3, 8 Egerton Gardens

Mr Radford	Floor level - 10%	View/lack of mansard - 5%				Overall - 15%
Mr Ingram- Hill	Floor level - 5%	Building/square position + 2.5%	Quality/terrace +2.5%			0
Tribunal						- 7.5%

Appendix 2

Comparable Schedule for Flat 5, 53 Ennismore Gardens

Property	Lease Price £	FHVP	Savills	FHVP Adj	GIA	Adj £sqft	Tribunal Adjustments	Adjusted rate per sq ft
3, 53 Ennismore	1,950,000	1,989,796	217.2	2,003,996	862	2,325	- 21.25%	1,831*
G, 22 Ennismore	1,595,000	1,627,551	210.6	1,690,937	857	1,973	- 9.5%	1,786
3, 8 Egerton Gardens	2,475,000	2,475,000	214.6	2,522,666	1,310	1,926	- 7.5%	1,782*
3, 49 Egerton Gardens	3,150,000	3,230,769	219.6	3,218,997	1,704	1,889	- 7.75%	1,743*
H, 21-22 Ennismore	1,950,000	1,989,766	191.3	2,275,514	894	2,545	- 19%	2,061
E, 2 Ennismore	1,970,000	2,010,204	191.3	2,298,852	1,365	1,684	- 5%	1,600

Average of all = 1801

Average of 2014* sales = 1,785

Average of Ennismore Gardens = 1,820

Average of pre (2013) and post (2015) sales = 1,816

The Tribunal adopts £1,800 psf.

Valuation 1,183 sq ft @ £1,800 = £2,129,400

+ 72 sq ft @ £900 = £64,800

Total = £ 2,194,200 FHVP

Appendix 3

New Lease Claim - Flat 5, 53 Ennismore Gardens, London SW7 1AJ

Present lease 14.49 years unexpired

Valuation Date 26 June 2014

FHVP £2,194,200

Extended Lease value (98%) £2,150,316

Existing lease value relativity 37.09%

YP =6%

Deferment rate 5%

Diminution in value of landlord's interest

Value before grant of new lease

Term rent agreed at 950

Reversion

Flat value (FH) 2,194,200

Defer 14.49 years @5% 0.493 1,081,741

1,082,691

Less value after grant of new lease

Term

New lease at a peppercorn rent 0

Reversion

Flat value (FH) 2,194,200

Defer 104.49 years @ 5% 0.006 13,165 -13,165

Diminution in value of landlord's interest

1,069,526

Marriage value

Aggregate of values of interests after grant of new lease

Landlord's interest 13,165

Tenant's proposed interest 2,150,316

2,163,481

LESS Aggregate of values of interests prior to grant of new lease

Landlord's interest 1,082,691

Tenant's interest 37.09% 813,829

1,896,520

Marriage Value 266,961

50%

133,481

1,203,007

Premium Say

£1,203,000