



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : LON/00BK/OLR/2015/0803

Property : 90 North Gate, Prince Albert Road,
London NW8 7EJ

Applicant : Selston Trading Limited

Representative : Solomon Taylor & Shaw

Respondent : Lordsgate Properties Limited

Representative : Layzells Solicitors

Type of Application : Lease extension
s.24 Leasehold Reform, Housing
and Urban Development Act 1993

Tribunal Members : Judge Dickie
Mr W R Shaw, FRICS

Date and venue of
Hearing : 8 September 2015
10 Alfred Place, London WC1E 7LR

DECISION

Decision of the tribunal

The tribunal determines that the premium payable for the lease extension is £548,300 according to the attached calculation.

The application

1. Application has been made under s.48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms on which an extended lease of the

subject premises ("the premises") is to be granted. Those premises are the property known as 90 North Gate, Prince Albert Road, London NW8 7EJ.

2. The Respondent is the freeholder. The Applicant is the current holder of the leasehold interest pursuant to a lease of the premises with the following terms:

(i) Date 19 December 1972

(ii) Ground rent £260 pa, rising to £390 pa on 1 April 2019

(iii) Expiry 31 March 2068 (99 year term from 1 April 1969)

3. A Notice of Claim under section 42 of the Act was served by the Applicant on 26 November 2014 (the valuation date) proposing a premium of £320,000 in respect of the grant of the new lease pursuant to the provisions of Part II Schedule 13 of the Act. The landlord's counter notice is dated 7 January 2015 and proposed a premium of £800,000. By an application to the First Tier Tribunal dated 23 April 2014 the Applicant sought a determination under s.48 of the Act.

The Premises

4. The subject premises are a raised ground floor flat within North Gate, an extensive purpose built block which was predominantly constructed between 1907 and 1910, although there is an extension at the eastern end which was constructed around 1935. It consists of a lower ground, raised ground and between 5 to 8 upper floors and contains around 158 flats, as well as 6 porters' flats. The development is comprised of 9 blocks, blocks 1-8 being located within the period part of the building (that built between 1907 and 1910) and block 9 located in the building built around 1935. the subject property is a self contained flat situated on the ground floor with access via the communal entrance. The tribunal conducted an inspection on 16 September 2015.

The Hearing

5. As at the hearing, which took place on 8 September 2015, the only issue in dispute between the parties was the premium payable for the lease. All other matters had been agreed.
6. The Applicant was represented by Mr S Gallagher of counsel and the Respondent by Mr M Walsh of counsel. The Tribunal heard oral evidence at the hearing from the Applicant's valuer Miss J Ellis, FRICS, and from the Respondent's valuer Mr A M Lester, MRICS in support of their respective valuations and accompanying written reports. Ms Ellis asked the tribunal to determine a premium of £400,258 in her report, though at the hearing she

changed her position in oral evidence since subsequent to her report she had agreed the term of the lease for one of the comparables – flat 28. Ms Ellis therefore submitted her revised valuation after the hearing in support of a premium of £409,877. Mr Lester now contended for £607,180.

7. The experts had on 10 July 2015 jointly agreed in a Memorandum of Agreed Facts that:
 - (i) The unexpired term was 53.35 years;
 - (ii) The value of the property on the extended lease should be taken to be 99% of the freehold value;
 - (iii) The Deferment rate was 5%.
 - (iv) The GIA is 2,393 ft²

Issues for Determination

8. The experts had themselves identified a number of issues for the determination of the tribunal:
 - (i) Whether it is appropriate to adjust sale prices of comparable flats for time according to the date of exchange of contracts (Mr Lester) or the completion date (Miss Ellis).
 - (ii) Whether there are any works carried out to the premises, other than the installation of air conditioning, the value of which falls to be disregarded under paragraph 3(2)(c) of Schedule 13.
 - (iii) The values of the premises held on the current lease and on the extended lease.

Adjustment for Time

9. Mr Lester took the view that when making adjustments to the sale prices of comparable properties in order to reach the freehold value, it is appropriate to use the date on which contracts for sale were exchanged, where such data is known. In the present case, Mr Lester gave evidence that he had communicated with all of the estate agents who had handled the sales of the comparable properties on which he relied, and thus he had confidence in his data. Mr Walsh argued that on the date of exchange a binding contract for sale had been created, which gave rise to an equitable interest in the property. He observed that the completion date was not the date of transfer of the legal interest, which as provided by statute is the date of registration at the Land Registry.

10. Ms Ellis used the date of completion of the comparable sales for the purposes of making adjustments, and indeed gave evidence that she had never used the date of exchange for this purpose. Mr Gallagher emphasised that the completion date can be known with certainty from the Land Registry entry, rather than relying on secondhand information as to the date of exchange from estate agents who had not themselves handled the contract of sale.
11. The tribunal firmly rejects Mr Lester's position. Adjusting from the date of completion is standard valuation practice, and Mr Lester produced no evidence that his approach was adopted in the production of any industry indices. At the date of exchange of contracts the parties' commitment to the purchase is not irrevocable in all cases (though there are financial penalties if they do not complete). In any event, the date of exchange often cannot reliably be ascertained. When exchange of contracts takes place the date of completion is agreed and the price the purchaser contracts to pay is the price that it is willing to pay on the completion date, and thus the tribunal understands it to be the value of the property at completion. The tribunal agrees with Ms Ellis's analysis that "sold" in Paragraph 3 of Schedule 13 of the Act, which provides that "the value of any such interest of the landlord ... is the amount at which the relevant date that interest might be expected to realise if sold on the open market" means the completion of the sale.
12. In spite of there having been agreement between the experts in the Memorandum of Agreed Facts to adjust "by reference to Savills' index of capital values for flats in North West London", they had not expressly agreed which version of that index should be used. Ms Ellis used the index published in July 2015, which was slightly different to the earlier index which Mr Lester's used. The tribunal heard oral submissions from counsel as to which version of the index should be preferred, and at the close of the hearing it gave oral directions that the parties could by 16 September 2015 file written submissions on the point.
13. Submissions from Mr Gallagher were received in time. Out of time, Mr Lester himself provided further submissions and evidence on the correct Savill's index to use. Whilst the tribunal has considered these, Mr Lester's position amounted to new expert evidence which could only properly be tested at an oral hearing, and this is not what the tribunal had invited. It appears that Mr Lester relied on the March 2015 index because that was the one Ms Ellis had provided to him, as he did not subscribe to receive it directly. He now sought to justify this version however as a matter of expert evidence.
14. The tribunal considers that it was the responsibility of the parties to have identified sufficiently matters agreed and to produce expert evidence and argument at the hearing on any issue that was not agreed. The tribunal considers it would be a disproportionate use of resources to reconvene an oral hearing to consider expert evidence on this single point, upon which evidence and argument could have been given at the full hearing.

15. Having considered the parties' written representations, and found assistance in the submissions of counsel at the end of the hearing, the tribunal accepts the position expressed by Mr Gallagher that the Memorandum of Agreements dated 10 July 2015 agreed by necessary implication the latest version of the Savill's index available on that date. In any event, the tribunal agrees with the submission on behalf of the Applicant that the July version would be the more appropriate index because this reflects updated inputs to adjust the earlier statistics. The July 2015 version superseded the earlier versions of it, incorporating changes and corrections to the sample of properties valued.

Freehold Vacant Possession Value

Tenant's Improvements

16. It was agreed that the installation of air conditioning is a tenant's improvement which added value at the valuation date.
17. It was Ms Ellis's view that a number of other tenant's improvements added value including:
- (i) replacement of double doors and partition between entrance and study with glass partition and sliding doors
 - (ii) removal of partition and sliding doors between reception and dining rooms
 - (iii) creation of two en suite shower rooms and cloakroom, relocation of bathroom and conversion to shower rooms.
 - (iv) relocation of kitchen to allow enlargement of double reception room
 - (v) installation of double glazed windows
 - (vi) marble flooring throughout, other than in bedrooms, and full height marble wall coverings to shower rooms.
18. Ms Ellis considered that the improvements which required landlord's consent (such as relocating bathrooms) would be likely to add value to a purchaser who would thus not have to incur the cost of obtaining it. Mr Lester was of the opinion that these improvements would not add any value. The tribunal had the benefit of an inspection and took the view that the marble floor and wall coverings were matters of taste which would not appeal to all purchasers. Indeed their removal would be costly.
19. The tribunal takes the view that a likely purchaser would undertake a refurbishment of this property to their own taste. Taken in the context of the

scale of such a project, the tribunal considers that the tenant's improvements argued for by Ms Ellis would not have a material effect on the market value of the property. The cost of altering the layout to create, for example, en suite bathrooms would be negligible. Furthermore, the relocating of the kitchen is a layout option amongst others which is also likely to be a matter of personal preference rather than adding value.

Comparables

20. The experts differed in their opinions as to which evidence of sales of other flats within Northgate provided the best indicator of the value of the long lease of the subject property. Ms Ellis considered the best approach was to begin with an analysis of the sales of other ground floor flats. This block faces Regents Park, with flats at the front of the building above the ground floor having some view of the park, and in her opinion ground floor flats, which did not have a view, were the best comparables.
21. However, in the view of the tribunal this gave Ms Ellis a rather limited and unsatisfactory pool of comparable sales, in that of the three sales of ground floor flats on which she relied, two were rather old – completion having taken place in 2012 for flats 7 and 28. These flats were also significantly smaller than the subject. The third such comparable was a ground floor rear flat in the 1920s block, flat 116, which was less than one third of the size of the subject flat and sold in March 2014. The flats in the 1930s block would have substantially lower ceiling heights and the block itself is slightly less attractive and desirable, and since flat 116 has a rear aspect as well, the tribunal finds this an unhelpful comparable.
22. When considering comparable sales above the ground floor, Ms Ellis made an adjustment for a park view, regardless of floor height, for flats with rooms at the front of the building of £250 per square foot.
23. The tribunal had the advantage of inspecting the interior both of the subject flat and a first floor flat of the same (but mirrored) footprint elsewhere in the period block. It also looked at the view from the flat roof above the fifth floor flats in the period block, which was slightly higher than the front penthouse flat in the 1930s block. From the 1st floor the view was of dense tree coverage beginning at the park wall and not of open spaces, though there may be some seasonal variation. The tribunal observed that from the roof of the 5th floor the superior view was generally across and above the tree canopy of Regents Park, to the City of London skyline and beyond. It took the view that the 5th floor flats in the period block and the front penthouse would enjoy a similar view, and that the 4th floor flats in the period block would be likely to have a view above or through the tree canopy at least in part or for part of the year. However, below that level the view would not be of such an open aspect and would be limited to a relatively short range view of the tree canopy.
24. The tribunal considers that the very attractive long range view of the City from the top floor(s) would attract a premium on the price which would

not be reflected in the value of the flats from the first to the third floor, and therefore it does not agree with Ms Ellis's standard valuation for a view. It notes that she derived a 12.5% differential in rates (or £263 per ft²) achieved for the sale of the two new penthouse flats in the 1930s block (Penthouse 1 having a view over Regents Park from rooms situated at the front of the building, Penthouse 2 having no view of the park from any rooms). However, this rate included a differential for the prime view afforded at this height in the building.

25. As a support for her value derived from the ground floor flat sales, Ms Ellis referred to the sale of the subject property in August 2010, adjusting for improvements, for time and for lease length. However, given the age of this sale, the tribunal did not consider it was safe to place any reliance on it.
26. Mr Lester demonstrated a more in depth knowledge of the block in relation to the valuations, and generally the tribunal prefers his analysis of the comparable sales. He divided them into three bands. His primary sales were large flats located within the period building with rooms directly facing south towards Regents Park and accommodation running from the front of the building to the rear, this type of flat being considered in his experience the most prestigious in the building. The most desirable such flats have three rooms at the front (the subject flat has two).
27. Mr Lester's secondary comparables are medium sized or rear facing flats within the period building, both recently constructed penthouses and large flats in the 1930s building. His tertiary comparables are sales of other flats in the buildings, or sales that took place more than 6 months before or after the valuation date.
28. The tribunal has looked closely at the comparable sales relied on in each of these bands, and has produced its own analysis in the attached Schedule which takes into account its reservations about the sale of flat 100 in May 2014, as this was sold with a 54 year lease and thus would require more adjustment to arrive at freehold value. The tribunal has therefore attached less weight to this sale.
29. With regard to the secondary comparables, the tribunal is not comfortable placing reliance on the sales of the penthouse flats. These are very different in character and ceiling height, and were sold newly constructed, with the premium that would attract. The tribunal is of the view that too many adjustments would be required to these sale prices to derive reliable evidence of the freehold value of the subject flat.
30. Both 32 and 22A are smaller than the subject flat by about 900 square feet, the former being rear facing and the latter being only a 54 year lease. The tribunal acknowledges that Mr Lester has taken into account these differences in placing these comparables in the second band not the primary band, but nevertheless the tribunal considers it safer to place more weight on the

remaining comparables in this band being flats 107, 12 and 19. Flat 63, described as “immaculate” does appear to stand out to be too high.

Relativity

31. Ms Ellis relied on the decision of the Upper Tribunal (Lands Chamber) in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39 as to determining the appropriate rate of relativity to apply:

“In such circumstances, in our view, it is necessary for the tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world. Regard can also be had to graphs of relativity.”

32. Ms Ellis adjusted the three most recent sales of flats in the building held on short leases (which were on the 4th or 5th floor) to derive a rate of relativity. Making adjustments for condition, layout, size and lack of views, Ms Ellis achieved very different rates of relativity which led her to adopt a rate of £1,575 per ft² for a 53.9 year lease with rights, on the 4th or 5th floor.

33. Ms Ellis then adjusted for “no Act rights” under the 1993 Act. She referred to the decision of the Upper Tribunal in *Nailrile Ltd v Earl Cadogan* [2009] 2EGLR 151 in which the tribunal said (at paragraph 217) that those benefits “*will always lead to a higher price being paid for an existing leasehold interest in the Act world compared to the no Act world*”. The Upper Tribunal had adopted a reduction of 7.5% in *Nailrile* and the lease presently under consideration is 20% longer than the one considered in that case. Ms Ellis adopted 6% for the no Act rights, but rejected the suggestion she had reached this figure by mathematics, explaining that she had only applied her professional judgement. Making adjustments she considered appropriate to long lease sales within the block, Ms Ellis achieved a market based relativity of 77.28%.

34. Ms Ellis went on to consider an average of all of the Prime Central London graphs of relativity in the RICS Report at 76.7% for 53.35 years unexpired, though she considered the Cluttons graphs most relevant as they related to properties in St. John's Wood and Maida Vale, and the Cluttons flat graph specifically to have the greatest weight. She therefore derived a relativity from the graphs of 76%, and considered £2,100,000 to be the appropriate figure for the subject flat held on the current lease (76.64% being the appropriate relativity taking into account all the evidence).

35. Mr Lester began his analysis with reference to the graphs of relativity, and he adopted the figure derived from the Cluttons graph for flats of 74.91%. Most of the graphs are based in full or in part on settlement. He considered that for the NW8/St. John's Wood area Cluttons had build up a comprehensive database of enfranchisement and lease extensions which was accurate for the conditions prevalent in that area. Mr Lester checked this

against his main comparable of 86 North Gate, and used 100 North Gate as his primary short lease comparable, adjusting both for the property having two front rooms instead of three, to suggest that his relativity of 74.91% was about right.

36. The tribunal considered that the market evidence approach to relativity fell short. Ms Ellis's position required too many subjective adjustments to her market sales of short leases to provide reliable evidence of relativity, and Mr Lester's "check" approach relied on only one sale. The tribunal however is of the view that Ms Ellis's approach to the graphs of relativity is more robust and reasonable in having regard to an average of the Prime Central London graphs whilst placing particular reliance on Cluttons as the most relevant to this particular property. The tribunal finds that 76% is the most appropriate figure for relativity based on that approach to the graphs, and obtains general support for this figure from market evidence of short lease sales.
37. Accordingly, the tribunal derives the valuation according to the attached schedules.

F. DICKIE

22 OCTOBER 2015

Appendix 1

90 Northgate, NW8 7EJ – Comparables

Flat (front facing rooms)	Floor	Lease yrs	Sale price	Deduct for FH	Completion Date	Sq. ft	£/sq.ft	Savills Q2 2015	£/sq.ft Adjusted	FHVP £/sq. ft OR deduct for Act rights 6.88% on 54yr lease	FHVP of Subject	Adjust for GF	Adjust for front rooms
Subject	GF	53.35				2,393		191					
100 (3)	5	54	4,400,000		30/10/2014	2,843	1,548	191.4	1,545	1,439	3,443,527	2,926,998	2,853,823
42 (2)	4	113	3,200,000		5/08/2014	2,108	1,518	192.1	1,509	1,539	3,682,827	3,130,403	3,130,403
86 (3)	5	113 + SoF	6,100,000	5,985,000	27/6/2014	3,140	1,906	192.5	1,891	1,929	4,616,097	3,923,682	3,825,590
63 (2)	1	112	5,250,000		18/5/2015	2,512	2,090	191	2,090	2,132	5,101,876	4,591,688	4,591,688
107 (3)	1	113	3,800,000		22/9/2014	2,180	1,743	191.9	1,735	1,770	4,235,610	3,812,049	3,716,748
12 (3)	1	113 + SoF	3,100,000	2,985,000	5/2/2015	1,803	1,656	189.9	1,666	1,699	4,065,707	3,659,136	3,567,658
19 ((3)	4	113	3,550,000		17/10/2014	1,843	1,926	191.4	1,922	1,960	4,690,280	3,986,738	3,887,070

FHVP £/sq.ft adjustment = 98% for leases 100 – 114 yrs

Valuation Date 26 November 2014

Adjust for Ground Floor = FF -10%, 4 & 5 floors -15%

Adjust for three front rooms = -2.5%

Appendix 2

New Lease Claim

Valuation Date 26/11/2014

Unexpired term 53.35 yrs

FH £3,600,000

Extended lease @99% £3,564,000

Present lease @ 76% £2,736,000

Diminution in value of landlord's interest

Value before grant of new lease

Term

agreed at

5,313

Reversion

Flat value (FH)

3,600,000

Deferred 53.35 yrs @ 5%

0.07405

266,580

271,893

Less value after grant of new lease

Reversion

Flat value (FH)

3,600,000

Deferred 143.35 yrs @ 5%

0.000917

-3,301

Diminution in value of landlord's interest

268,592

Marriage Value

Aggregate of values of interests after grant of new lease

Landlord's interest

3,301

Tenant's proposed interest

3,564,000

3,567,301

Less Aggregate of values prior to grant of new lease

Landlord's interest

271,893

Tenant's interest

2,736,000

3,007,893

Marriage value

559,408

50%

279,704

548,296

Premium

£548,300