

4015



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

**Case Reference** : VG/LON/OOAW/OLR/2015/0566

**Property** : Flat 3, 47 Cadogan Square. London SW1X  
OHX

**Applicant** : Aeges Holdings Limited

**Representative** : Mr Harrison of Counsel

**Respondent** : Farnaz Fazaipour (tenant)

**Representative:** : Mr Jeffries of Counsel

**Type of Application:** : **For the determination of the premium payable under section 48**

**Tribunal Members** : Mrs Sonya O'Sullivan  
Mrs Helen Bowers MRICS

**Date and Venue of Hearing** : **30 June and 1 July 2015 10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **30 July 2015**

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**DECISION**

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## **Background**

Property:	A third floor flat known as Flat 3, 47 Cadogan Square, London SW1X OHX
Date of tenant's notice:	5 September 2014
Date of landlord's counter-notice:	27 October 2014
Valuation date:	Agreed at 5 September 2014
Details of tenant's leasehold interest -	
(i) Date of lease :	21 August 1989
(ii) Expiry of lease:	17 March 2023
(iii) Ground rent:	£827 per annum
(iv) Unexpired term at valuation date:	8.53 years
Tenant's proposed premium:	£1,219,000
Landlord's proposed premium:	£1,601,000

## **Inspection**

1. The tribunal inspected the flat known as Flat 3, 47 Cadogan Square, London SW1X OHX on 7<sup>th</sup> July 2015.
2. The subject property is a third floor flat, that comprises an entrance hall, reception room, kitchen, bedroom with ensuite bathroom and a separate shower room and WC off the hall. Outside of the flat's curtilage is a further room and a small ensuite WC and shower. This is separated from the flat by the lift shaft and accessed via the communal landing. The main reception room has views directly onto the Cadogan Square gardens.
3. Whilst at Cadogan Square, the tribunal also took the opportunity to make a brief external inspection of all of the comparables referred to by the experts.

## **The hearing**

- 1) At the commencement of the hearing Counsel for the parties confirmed that the matters remaining in dispute between the parties were the valuation of the freehold in possession, the existing lease value and the appropriate deferment rate.
- 2) We noted that the gross internal area of the flat had been agreed by the parties at 874 ft<sup>2</sup> on the basis that the rear separate room had an attributable area of 50% of the main flat area.
- 3) Both parties relied on expert evidence. The Applicant relied upon a report dated 22 June 2015 and a supplemental report dated 29 June 2015 of Mr Orr-Ewing. The Respondent relied upon a report by Mr Harris dated 21 June 2015 and a supplemental report dated 29 June 2015. Both experts attended the hearing to give evidence. The Respondent had also made a witness statement, the contents of which were agreed and, accordingly, although she attended the hearing she did not give evidence.
- 4) The evidence heard and the Tribunal's decision is set out below. What follows is necessarily a summary of the evidence, the majority being in any event contained in the bundles before the tribunal.

## **The Estimated Value of the Freehold in possession**

- 5) Mr Harris had made some adjustments in relation to what he described as a two tier market in relation to larger flats of over 1,000 square feet and flats less than 1,000 square feet which he described as the Pied a Terre market. His evidence was that larger flats tended to attract a much larger premium. He acknowledged that due to many value significant

variables, a comparative valuation was difficult. However he had identified various pairs of flats which were as near as possible otherwise similar. He suggested that analysis showed a clear pattern of flats under 1000 square feet attracting a discount of 20%. These pairs of flats were shown on a schedule and covered a number of years. The only adjustment made to the pairs was for lease length. Mr Orr –Ewing did not agree that there should be any discount. He pointed out various differences between the pairs of flats which he said did not make them comparable such as condition or flats with lifts paired with those with direct access. Quite simply he said that Mr Harris was not comparing apples with apples. He had prepared his own schedule making adjustments to Mr Harris' schedule and including two pairs of his own.

- 6) We were not convinced by Mr Harris' argument. We agreed that the 1,000 sq ft threshold appeared to be arbitrary and were concerned that there was very limited evidence to support the theory with evidence in relation only to limited pairs over a long period. In addition having considered the particulars of the pairs relied upon there were many different features of particular flats which we considered would also require further adjustment such as ensuite bathrooms, location and lift facilities. We therefore concluded that there was insufficient evidence to support any reduction based on size alone as suggested by Mr Harris.
- 7) Both experts relied on a number of direct comparables. Mr Orr- Ewing relied only on comparables within the square whereas Mr Harris also considered comparables outside the square in Lennox Gardens and Lowndes Square. We did not consider the comparables off square to be good evidence in view of the adjustments we would have to make, especially when we had 5 good comparables on square, which were sufficient for our purposes. Given that the on square comparables would require the least adjustment we considered these to be the best comparables and confined our consideration to the following;

i. Flat B, 30 Cadogan Square

We made an adjustment of 10% for the poorer location of this flat, without direct views of the gardens. Mr Harris' analysis showed a figure for improvements of 16.68% although he had adopted 20%. Mr Orr- Ewing had adopted a rate of £400 psf but acknowledged in cross examination that a rate of £500 would be acceptable. Accordingly we adjusted the rate by 10% for the location and 15% for improvements making an adjusted rate of £2460 psf.

ii. Flat 4 at 69 Cadogan Square

Mr Orr- Ewing made no adjustments save for lease length and time in respect of this flat. Mr Harris made a further adjustment for size of 15% which we had rejected (see above). We accepted Mr Orr- Ewing's rate of £2675 psf being satisfied that he had made appropriate adjustments using the Savills index.

iii. Flat 3, 40 Cadogan Square

The evidence in relation to this flat was settlement evidence which we considered should be given little weight.

iv. Flat 7 at 72 Cadogan Square

This flat had views of the square and the benefit of a balcony. Mr Harris had adopted a modernisation rate of £100 psf which had not been challenged. The adjusted rate was £2702. However given the flat was almost double the size of the subject flat we did not consider it to be a good comparable.

v. Flat 3 at 50 Cadogan Square

This flat was again much larger than the subject flat and therefore we did not consider it to be a good comparable.

- 8) Having considered all the comparables as above we considered the best comparables to be Flat 4 at 69 Cadogan Square and Flat B at 30 Cadogan Square which had both been relied on by both experts. We therefore took an average of the adjusted rates for both flats to reach a figure of £2567.50 psf. This equated to a capital value of £2,243,995.

### **End adjustments**

- 9) Both parties agreed that an adjustment of 5% be made for the Local Government and Housing Act 1989 rights.
- 10) The Respondent argued that an adjustment should be made of 2.5% to reflect the ownership and/or control of the building by Mr Panagopoulos. It was said that any prospective purchaser would require a deduction of 2.5% as a building which was effectively under the control of one individual would be an unattractive prospect. Evidence was contained in the Respondent's witness statement which was unchallenged. We were not convinced that any deduction should be made. The interests in the flats in the building were not all held by Mr Panagopoulos personally but by different corporate entities although we were told were all ultimately controlled by him. It was our view that any purchaser would have to carry out thorough investigations to discover the ownership structure which would not in our view form part of the standard pre contract enquiries. Accordingly we rejected this proposition.
- 11) Mr Harris also argued that a deduction should be made to account for redevelopment rights. It was said that there was a risk of the landlord exercising redevelopment rights to join the third and upper flat or convert to a house. The tribunal had very little evidence in this regard and was not convinced that there was any real risk of redevelopment given Mr Orr-

Ewing's evidence that this was more likely in the case of ground and first or second floor flats.

12) Similarly we were not convinced that there was any prospect of securing a ransom.

13) Mr Harris had also deducted £50,000 in relation to prospective lift repairs and the risk of future litigation. This deduction was made on the basis that a report by J Beckwith Lift Consultancy Limited had identified the need for extensive lift modernization with prices being quoted in 2011 for repairs in excess of £126,000. In addition we heard that apportionment of these charges may be contentious as there had been previous litigation between Mr Panagopoulos and a leaseholder in relation to service charge matters and that a deduction should be made to reflect future similar litigation. We did not consider any deduction should be made in respect of these matters. It is standard for properties to face major works bills and we do not consider any special circumstances arise in this regard. As far as the risk of litigation is concerned again we were not convinced that there was any particularly greater risk of litigation, indeed it could be argued that the reverse is true if matters of principle in relation to the service charge have been settled.

### **Existing lease value**

14) The experts differed in their approach to existing lease value.

15) Mr Orr-Ewing acknowledged that the conventional method of assessing lease value where the lease has more than 10 years unexpired is by reference to the specialist graphs. The tribunal was referred to the authority of *Latifa Kosta v Francis Anthony Armstrong Carnwarth CBE* [2014] UUT 0319 (LC) in which an attempt was made to persuade the tribunal to abandon the graphs in favour of a statistical analysis of pre-Act sales but this new analysis was rejected. Neither side relied on the hedonic regression approach. Mr Orr-Ewing's evidence was that where a lease has less than ten years unexpired the approach is not clear. He placed some reliance on the

decision in Vale Court [2011] UKUT415 where the lease had about 4.75 years remaining. In Vale Court the tribunal found that graphs were unreliable in the case of such a short lease and adopted the approach of taking the net rental yield of 3.31%. In addition a deduction of 5% was made from the freehold vacant possession as an “*end allowance*” to reflect the lack of control a freeholder might have at that time. In Vale Court regard was also had to the RICS Report at paragraph 4.6 which states “*For leases with very short terms (say under 5-10 years) the graphs may be found to be unreliable because, in most cases, they simply have a straight line from zero to the five year point. Most practitioners will establish this value by capitalising the net rental value over the unexpired term*”. The reliance on that paragraph was approved by the tribunal at paragraph 23 of its decision. This was Mr Orr-Ewing’s rationale for using the net rental yield approach in addition to the graphs. To assess the net rental yield Mr Orr-Ewing used two approaches; adopting a yield published by Knight Frank and Savills and looking at what third floor flats have let for in Cadogan Square on or about the valuation date. The average of the Knight Frank and Savills figures produced a figure of 2.55%. He then went on to make a deduction of 30% to reflect expenses incurred by the landlord such as insurance, service charges, voids etc. this reduced the net yield to 1.79%. As an alternative he looked at third floor flats which were let in Cadogan Square around the valuation date which averaged at £57psf. Making an adjustment of gross to net resulted in a net rental of £41psf or £35,463 per annum. The lease length for the subject flat is between the two approaches but is nearer to the “graphs of relativity” approach than the Vale Court approach. Accordingly Mr Orr-Ewing blended the two approaches by talking a straight line between the two to reach a figure of £1,601,211, the difference between the two approaches being £354,800.

16) Mr Harris relied on the conventional method of the graphs although he agreed that the net rental yield was appropriate as a cross check. Mr Harris relied on the graphs submitted to RICS at 15.6 of his report. He took the average of 27.33%. Mr Orr-Ewing used different figures for Knight Frank and Cluttons. Although the Knight Frank figures appeared to have been

published the Cluttons ones had not and in this regard Mr Orr-Ewing relied on a private letter from Cluttons. The Respondent submitted that it was preferable to take the published RICS figures as representing the contributors considered positions based on years of research rather than new figures based unsupported by research and without the balancing effect of updated information from all the original contributors. The Respondent also submitted that the average of 27.33% was supported by the market evidence, which showed an average of 27.8%. In this regard reliance was placed on paragraph 228 of Nailrile Limited (1) Earl Cadogan (2) William Hallman and Nancy Hallman LRA/114/2006 in which the tribunal concluded "*in the absence of any better evidence we think it is right to rely in such transactions and graphs in this instance*" basing its decision on transactions as well as the graphs and on the 38 Cadogan Square decision (UKUT 154 (LC) in which the UT based its decision on the transactional evidence. As the market evidence supports the graphs in this case it was said to be particularly helpful.

17) As far as the Vale Court decision was concerned this was said not to be expressed as guidance unlike in relation to its conclusion on deferment rate set out at paragraph 143 of the decision in which it is clearly stated "*for future guidance we conclude that the deferment rate for reversions of less than 5 years should be the net rental yield*". Mr Orr-Ewing's blended approach was criticised as being no answer to blend two inconsistent methods.

18) The tribunal considered the Vale Court decision carefully. The Upper Tribunal held as follows:

*"Since possession is deferred for only a short time, such short term reversions are much more akin to freehold interests in possession, and the correct approach in valuing them appears to us to start with the value of the freehold interest and to make explicit adjustments to reflect the fact that the right to possession is deferred."*

19) In Vale Court the tribunal went on to consider three potential adjustments and concluded by deferring at the net rental yield. In Vale Court there were six leases where the unexpired term was 4.74 years. The lease in this case is closer to 10 years. Vale Court does not purport to give any guidance for leases with an expiry of more than 5 years as in this case and is therefore of no assistance to us. We did not consider therefore that we should place any reliance on the method outlined in Vale Court and note that Mr Orr-Ewing himself was unhappy to use this approach alone as it resulted in too high a figure. Whilst we appreciate that Mr Orr-Ewing has suggested what he says is a logical way to resolve the position in relation to a lease of between 5-10 years by using a blended approach we were concerned that there was no guidance or evidence to support this blended approach. We therefore concluded that it was appropriate to rely on the graphs. We agree that it is appropriate to disregard WA Ellis as this relates only to houses. As a general approach we consider it right to take published figures in the graphs submitted to RICS as to take only some revised figures would not be appropriate without having approached all publishers with a request for their updated figures. We agreed with Mr Harris' approach who having disregarded WA Ellis simply took an average of all the other graphs.

20) There was some discussion as to whether the Knight Frank Graph should be relied upon given they contain data from LVT decisions. However as clarified by Kosta and Coolrace data from LVT decisions is admissible although it is a matter for the tribunal to consider what weight may be given.

21) We therefore adopted Mr Harris' rate of 27.33%.

### **Deferment rate**

22) Relying on the decision in *Cadogan Square Properties Ltd v Earl Cadogan* [2011] 1EGLR 155 ("31/37 Cadogan Square") Mr Orr-Ewing acknowledged that the starting point as set out in *Sportelli* was 5%. In 31/37 Cadogan Square the tribunal had then gone on to adjust the deferment rate on account of expert evidence that there had been an extended period of above

average growth and a period of sub trend could be expected to follow. The issue between the experts was whether this should be adjusted if the market was not "*in equilibrium*" at the valuation date because of the Vale Court decision. It was submitted that the 31/37 Cadogan Square was simply a starting point. Mr. Orr Ewing considered that the applicable deferment rate was 5% as the market was in equilibrium. In reaching this conclusion he relied on statistical evidence with a supporting memorandum in which he had considered growth in the market over the period since 1976. He then went on to consider whether the rate should change if this were a Vale Court situation in which case he adopted a rate based on rental yields or the adjusted rate of flats in the square of 1.75%.

23)Mr Harris relied solely on the 31/37 Cadogan Square approach. It was submitted for the Respondent that the ultimate question was what the vendor and purchaser would agree to be the prospects for growth over 8.5 years by reference to the cycle. It was suggested that Mr. Orr-Ewing's evidence was difficult to follow and that Mr. Harris' analysis was more comprehensible. It was submitted that the Vale Court approach could be readily dismissed as this resulted in a huge unexplained difference from the Sportelli approach. Mr Harris' evidence was that the market was not in equilibrium and as a result adopted a rate of 5.25%. In reaching this conclusion he had looked at growth patterns in the market over the past 8.53 years

24)We considered it appropriate to look at the longterm position in relation to growth as we considered that looking at only 8.53 years may well have given an inaccurate snapshot. In coming to this conclusion we considered that the market would look at the long-term position in order to judge the anticipated position in the property cycle. We accepted the findings of Mr Orr Ewing set out in his analysis which we found fully comprehensible and logical and adopted a deferment rate of 5%. We did not consider that this was a Vale Court situation for the reasons set out above.

## Summary of the Tribunal's Decision

We therefore determined that the premium to be paid by the tenant on the grant of a new lease, in accordance with section 56 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 is £1,495,915 as shown on the attached valuation.

**Name:** Sonya O'Sullivan                      **Date:** 6<sup>th</sup> August 2015

**Appendix 1**  
**Flat 3, 47, CadoganSquare**  
**London, SW1X 0HX**

Valuation Date	05/09/2014
Capitalisation Rate	6.00%
Deferment Rate	5.00%
Freehold Value	£2,243,995
Discount re 1989 Act	5%
Adjusted FH value	£2,131,795
Long Lease value @ 99% of FH	£2,110,477
Relativity	27.33%
Short Lease Value	£582,620

**Freeholder's Existing Interest**

**Term 1**

Ground Rent	£827	
YP for 8.53 years @ 6%	<u>6.5278</u>	
		£5,398

**Reversion**

Freehold value (adjusted)	£2,131,795	
Deferred 8.53 years @ 5.0%	<u>0.6596</u>	
		<u>£1,406,132</u>
		<b>£1,411,530</b>

**Freeholder's Proposed Interest**

**Reversion**

Freehold value (adjusted)	£2,131,795	
Deferred 98.53 years @ 5.0%	<u>0.0082</u>	
		<u>£17,481</u>

		<b>£17,481</b>
<b>Marriage value</b>		
Proposed		
Freeholder's Interest	£17,481	
Leaseholder's Interest	£2,110,477	
less		
Existing		
Leaseholder's Interest	£582,620	
Freeholder's Interest	<u>£1,411,530</u>	
Marriage Value		<u>£133,808</u>
50:50 division		<b><u>£66,904</u></b>
Total Payable		
Freeholder's Existing Interest		£1,411,530
less		
Freeholder's Proposed Interest		£17,481
plus		
50% of Marriage Value		<u>£66,904</u>
<b>Total Premium Payable</b>		<b>£1,495,915</b>