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

Case reference : **LON/00AW/OCE/2015/0288**

Property : **27-29 Cadogan Square, London,
SW1X 0HO**

Applicant : **Cadogan Estates Ltd**

Representative : **Did not attend and was not
represented**

Intermediate Landlord : **Sub-Alpine Ltd**

Representative : **Mr Gallagher QC of Counsel**

Respondent : **CAS (Mount Farm) Ltd & Amorini
Investments Ltd**

Respresentative : **Mr Johns QC of Counsel**

Type of application : **Section 24 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge I Mohabir
Mr D Jagger MRICS**

**Date of determination
and venue** : **8 March 2016 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **6 May 2016**

DECISION

Background

1. This is an application made by the Applicant as the nominee purchaser pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid for the collective enfranchisement of 27-29 Cadogan Square, London, SW1X 0HO (“the property”).
2. By a Notice of Claim dated 13 May 2015 served pursuant to section 13 of the Act, the Respondent, as the nominee purchaser, exercised the right to acquire the freehold interest of the property.
3. The freehold interest is subject to two intermediate leasehold interests granted to Holding Plus Ltd in part of the premises and to the Sub-Alpine Ltd respectively in the remainder of the premises at 27 Cadogan Square. The Notice of Claim proposed a purchase price of £4,191,192 for the freehold interest, £500,000 (inclusive of marriage value) for the leasehold interest of Holding Plus Ltd and £124,000 (inclusive of marriage value) for the leasehold interest of sub-Alpine Ltd (“the intermediate landlord”).
4. By a counter notice dated 17 July 2015 served pursuant to section 21(2)(a) of the Act, the Applicant admitted the Respondent’s right to acquire the freehold interest and counter proposed a purchase price of £13,102,327 for the freehold interest and £36,885 and £8,635 respectively for the two intermediate leasehold interests set out above.
5. By a notice dated 3 November 2015 served pursuant to Schedule 1, paragraph 7(1) of the Act, the intermediate landlord, notified the Applicant and Respondent that it was acting independently and was going to deal directly with the latter in relation to its intermediate interest.
6. The expert valuation evidence relied on by the Respondent and the intermediate landlord is set out in the reports of Mr Orr-Ewing FRICS

and Miss Ellis FRICS dated February (and 3 March) 2016 and 24 February 2016 respectively.

Matters Agreed & Not Agreed

7. The Tribunal was told that all other terms were agreed and the only issue that remained to be determined was the sum to be paid by the Respondent to the intermediate landlord for its intermediate leasehold interest. On the basis of their valuation evidence, the Respondent contended for a value of £58,750 whereas the intermediate landlord contended for a value of £176,000.

8. The valuation approach taken by both valuers to arrive at the notional rent for the caretaker's flat by assessing the market rent and then discounting that figure by 50% to reflect the covenants in the intermediate lease that require the flat to be used for the purpose of a caretaker. The valuers were able to agree the majority of the valuation issues save for the following¹:
 - (a) whether the utility room forms part of the common parts or whether it forms part of the demise of the caretaker's flat and, consequently, the GIA and the freehold value of the flat.

 - (b) the rent recoverable by the intermediate landlord of 27 Cadogan Square for the flat.

 - (c) the rate to capitalise the intermediate landlord's profit rent.

Decision

9. The hearing in this case took place on 8 March 2016. For the purpose of the hearing it was agreed that the intermediate landlord would be regarded as the Applicant. It was represented by Mr Gallagher QC of Counsel. The Respondent was represented by Mr Johns QC of Counsel.

¹ see the schedules at pages 86-89 of the bundle

The Tribunal had the benefit of inspecting the caretaker's flat on the following day.

Extent of the Flat

10. Miss Ellis argued that the utility room should be regarded as part of the demise of the caretaker's flat because it was only being used by him and that it would be simple to create an opening in the wall between the hallway and the flat and the utility room to make it self-contained. It is not necessary to set out Mr Orr-Ewing's arguments on this point.

11. The Tribunal found that the utility room did not form part of the caretaker's flat for the following reasons:
 - (a) on inspection it was clear that, historically, the property was a single dwelling and the caretaker's flat and the utility room were used to provide domestic services for the occupants. Subsequently, when the property was converted into a self-contained flat with its own facilities, the utility room was no longer required to serve the building's occupants and, therefore, was only used by the caretaker, as was the present case.

 - (b) materially, the description of the extent of the caretaker's flat found at clause 2(x) of the headlease² did not include the utility room. This was accepted by Miss Ellis in cross-examination.

 - (c) in negotiations, the Applicant freeholder had treated the utility room as being part of the common parts of the building.

12. Accordingly, the Tribunal concluded that the freehold value of the caretaker's flat, excluding the utility room, is based on a GIA of 870 sq ft at an agreed rate of £1,250 psf to provide a value of £1,087,500.

Rental Value & Capitalisation Rate

13. Under clause 2(xiii) of the headlease, the lessee is obliged to provide a full-time caretaker. Paragraph 3 of the Fourth Schedule, Part 1 of the residential underlease³ requires the lessee to pay in advance a service charge contribution on the usual quarter days in respect of the services provided by the lessor as set out in Part 3 of the Schedule.
14. Paragraph 5.4 of Part 3 includes a sum equivalent to the market rent of the accommodation for the provision of a caretaking service⁴. There is no corresponding provision in the headlease.
15. The approach taken by Miss Ellis in valuing the market rent of the caretaker's flat was as a return on the capital value. The other reason for her preferred approach is the freehold rate agreed by the parties of 5%. The same rate should be used both to capitalise and decapitalise otherwise an adverse differential is produced, which results in an instant loss for the landlord.
16. Therefore, applying the rate of 5% to her freehold value of the flat of £1,192,500 provided a rental value of £59,625 and when discounted by 50% lead to a valuation of, say £30,000 per annum. However, Miss Ellis accepted that there have been very few Tribunal cases that provided assistance when considered the capitalisation rate to be applied when valuing the freehold interest (the remunerative rate). She also accepted in cross-examination that there was no established income of £29,500 in this case for the caretaker's flat. Nevertheless, she maintained that the quantum of the profit rent was an attractive investment and justified the rate of 5% she contended for.
17. The first approach adopted by Mr Orr-Ewing in relation to the market rent was to use an average of comparable rents and discount the figure

² see page 33 of the bundle

³ see page 66 of the bundle

⁴ see page 69 of the bundle

by 50%. He used a “basket” of 8 basement properties⁵ in Cadogan Square and Lennox Gardens over the preceding 2 years. Having adjusted for condition and other factors such as a patio or garden, Mr Orr-Ewing arriving at an average market rent of £39 psf. When applied to the GIA of 870 sq ft for the subject flat, it provided a rental figure of £16,965 per annum.

18. The second approach used by Mr Orr-Ewing was to consider the rent charged for caretaker flats on the Wellcome Trust Estate⁶, which is managed by his firm. The rents are subject to an upward phasing programme. Averaging these led to rental figure of £12,200 per annum. When averaged together with his other rental figure, a figure of £14,582 per annum was produced, which he contended was the appropriate rent for the caretaker’s flat.
19. Importantly, in his supplementary report, Mr Orr-Ewing said that he had in fact carried out a check of 7 flats let at the rental figure contended for by Miss Ellis. He concluded that none were comparable to the subject flat and that in reality there was no market evidence to support her rental valuation. Moreover, as a cross-check, when the Prime Central London yield rate of 2.95% of the Knight Frank Index in July 2015 was applied to the freehold value of £1,087,500 it produced a rental figure of £15,905 per annum, which compared favourably with his valuation.
20. As to the capitalisation rate, Mr Orr-Ewing contended for a rate of 6% on the basis that it is settled valuation practice that the capitalisation rate for an intermediate landlord should be higher than for a freeholder by the addition of 1%. This reflected the fact that the head lessor has to collect the rent from a number of under lessees whereas the freeholder only has to collect it from the head lessor. The intermediate landlord

⁵ see Appendix 4 of his report

⁶ see Appendix 5 of his report

has a liability as well as a benefit whereas only the benefit accrues to the freeholder.

21. The Tribunal preferred the valuation approach adopted by Mr Orr-Ewing using adjusted comparable evidence for properties in the locality. Miss Ellis's valuation methodology ignored the market evidence preferring to use the reverse 'adverse differential' method based upon the agreed capital value. This approach however, bears no relationship to rental values in the market and is somewhat theoretical.
22. The Tribunal have used a capitalisation rate of 5%. This is based upon the Savills and Knight Frank Central London yield information provided by Mr Orr-Ewing which provides a figure of 3%. A one percent adjustment is made for collection of the rent through the service charge for four properties. A further one percent adjustment is made for the 'special purchaser'.
23. The Tribunal calculated the market rent by using the Comparable Analysis Sheet prepared by Mr Orr-Ewing, which sets out comparable evidence of eight flats in Lennox Gardens and Cadogan Square. A further adjustment was made by the Tribunal for the condition of 8 Codagan Square. This resulted in a market rent of £16,608.
24. The schedule of rents of caretakers on the Wellcome Trust Estate was discounted and not given any weight by the Tribunal, as floor areas and condition were unknown. Therefore, the blending of the two schedules was not considered appropriate.
25. The Tribunal's valuation is attached which calculates the purchase price payable to be £76,911.

Judge I Mohabir

6 May 2016

Caretakers Flat, 27 Cadogan Square London SW1 0JU
The Tribunal's Valuation

APPENDIX A

Assessment of price under Schedule 6

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

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Components

Valuation date:	13 TH May 2015
Capitalisation Rate:	5%
Rental Value	£16,608
Unexpired Term	7.87 years
Term to increase	1.64 years
Term of increased rent	6.23 years

Valuation of Headlease interest

Rent currently receivable	£2,500
Less rent received	<u>£500</u>
Profit rent	£2000

Years purchase for 1.64 years @ 5.0% 2.225% SF	1.5258	£3,052
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Rental value rising to:	£16,608
Less rent received	£500
Profit rent	£16108

Years purchase for 6.23 years @ 5.0% 2.225% SF	4.9672	
Deferred 1.64 years @ 5%	0.9231	£73, 859

Premium payable	£76,911
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