



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : LON/00BA/OLR/2016/0053

Property : 12A Wimbledon Close The Downs
London SW20 8HW

Applicant : Karen June Dixon and Hugh
Ronald Freedberg

Representative : Edward Denehan of counsel

Respondent : Brickfield Properties Ltd

Representative : Martin Dray of counsel

Type of application : Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993 (the "Act")

Tribunal members : Judge Pittaway
Mr W R Shaw FRICS

Date of hearing and
venue : 17 May 2016 at
10 Alfred Place, London WC1E 7LR

Date of decision : 26 May 2016

DECISION

Summary of the tribunal's decision

The tribunal determines the appropriate premium to be **£80,772**.

A copy of its comparable sales adjustments and valuation calculation are annexed as the Appendices to this decision.

Background

1. This is an application made by the applicant leaseholders pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the grant of a new lease of 12A Wimbledon Close, The Downs, London SW20 8HW (the "property").
2. By a notice of a claim dated 27 July 2005, served pursuant to section 42 of the Act, Francis James Marshall, the then leasehold owner of the property gave notice claiming to exercise his right for the grant of a new lease in respect of the subject property. The existing lease granted on 5 November 1979 is for a term of 99 years from 29 September 1978 at an annual rent of £75 rising to £300. Mr Marshall proposed to pay a premium of £45,800.00 for the new lease. By a transfer of the property dated 31 July 2015 Mr Marshall transferred the property with the benefit of the Notice of Tenant's Claim to the applicants.
3. On 1 October 2015, the respondent landlord served a counter-notice admitting the validity of the claim and counter-proposed a premium of £180,335.00 for the grant of a new lease.
4. On 8 January 2016 the applicant applied to the tribunal for a determination of the premium.

The issues

Matters agreed

The following matters were agreed by either party prior to the hearing:

1. The property is a 3rd floor lift access purpose built flat with 3 bedrooms, reception, dining room, kitchen, bathroom and separate WC. There are no tenants' improvements;
2. The gross internal floor area is 1140 square feet;
3. The valuation date: 29 July 2015;
4. Unexpired term: 62.17 years;
5. Ground rent: passing rent £150 p.a. rising to £300 p.a. from 29 September 2044;

6. Ground Rent capitalisation rate: 6%;
7. Deferral rate: 5%;
8. Extended lease/freehold relativity: 1%
9. Purchase price of short leasehold interest inclusive of Act rights: £600,000 at 31 July 2015.

Matters not agreed

The following matters were not agreed:

1. The extended lease value;
2. The value of the freehold in possession;
3. The value of the tenants' existing interest disregarding rights to enfranchisement; and
4. The resultant premium payable under Schedule 13 of the Act.

The hearing

1. The hearing in this matter took place on 17 May 2016. The applicants were represented by Mr E Denehan of counsel and the respondent by Mr M Dray of counsel.
2. The tribunal had before it the proofs of evidence of Mr M Tibbatts MRICS MEWI for the applicants and Mr R D Sharp BSc FRICS for the respondent and heard oral evidence from both.
3. The bundles before the tribunal included the various cases of the first tier property tribunal, including those referred to below, and the Upper Tribunal case *Cadogan vs Cadogan Square Limited*. During the hearing the tribunal was provided with the *Sloane Stanley Estate* Upper Tribunal case [2016] UKUT 0223 and a copy of the lease of Flat 27 Wimbledon Close dated 11 May 2006 which had been sold on 27 August 2015.
4. Neither party suggested that an inspection of the property was necessary and the tribunal did not consider an inspection necessary..

The law

1. Schedule 13 of the 1993 Act provides that the premium to be paid by the tenant for the grant of the new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable to the landlord.

2. The diminution in the value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and (b) the value of his interest in the flat once the new lease is granted. The value of the landlord's interest is the amount which at the relevant date that interest might be expected to realise if sold in the open market by a willing seller (with neither the tenant nor any owner of an intermediate interest buying or seeking to buy) applying the assumption and requirements set out in paragraph 3 of Schedule 13 to the Act.
3. Paragraph 4 of Schedule 13 to the Act provides that the landlord's share in the marriage value is to be 50%, except where the unexpired term of the residue exceeds 80 years at the valuation date when the marriage value shall be taken to be nil.

The evidence

Extended lease value and value of freehold in possession

1. Mr Tibbatts relied on three comparables; all flats within Wimbledon Close. Flat 42 a two bedroom flat on the second floor sold on 26 June 2015 for £575,000; 27 Wimbledon Close a 2/3 bedroom flat on second floor sold for £795,000 on 27 August 2015; and 34 Wimbledon Close a 2/3 bedroom flat sold for £649,950 on 18 September 2014. He adjusted the sale prices, by reference to the Savills prime South west London flats index, to the level of values at the valuation date. He then weighted these sale prices to adjust for proximity to the valuation date of the property (attributing a weighting of 45% each to Flats 42 and 27 and 10% to Flat 34). He did not consider any adjustment was required to reflect the floor on which each property was located, its configuration or whether it was single, double or, as the property is, triple aspect.

He had no explanation for the apparently low price at which Flat 42 had sold (after having been on the market for a year) nor the apparently high price achieved for Flat 27. He said he could not explain the figures, only use them. In his opinion Wimbledon Close is an idiosyncratic set of three blocks of flats, popular with people downsizing in the Wimbledon area. He had used both as comparables as they were evidence of market value, suggesting that one sold at an apparently low value was counterbalance by another sold at an apparently high value. He was prepared to continue to use 27 Wimbledon Close as a comparable even after it transpired that it was a lease extension outside the Act with a ground rent continuing to be payable.

He valued the long lease value of the property at £680,000; and the Freehold VP value at £686,800.

2. Mr Sharp included two further comparables, Flats 11 and 18 Wimbledon Close, which had been sold on 23rd July 2013 and 7th November 2013 respectively. He adjusted the sale prices of all the properties with reference to the land registry data for the London Borough of Merton, with further adjustments to reflect the floor on which each flat is situated (1/2 % per floor), whether a ground rent was payable (1/2% if a peppercorn only payable), and 2% for better configuration.

He valued the extended lease value at £727,500 and the freehold VP value at £734,848.

Existing lease value

1. The valuers agreed, particularly in light of the *Sloane Stanley Estate case*, that the appropriate approach is to take a market transaction at around the valuation date in respect of the existing lease with rights under the Act (if a true reflection of market interest for that value) and then to express an independent opinion as to the amount of the appropriate deduction to reflect the statutory hypothesis that the existing lease does not have rights under the Act. Both surveyors took the sale price of the flat with the existing lease on 31 July for £600,000 as their starting point
2. Mr Tibbatts then used the methodology adopted by the Upper Tribunal in *Cadogan vs Cadogan Square Limited* to adjust value to reflect Act rights. He calculated that the deduction for the no Act world for a lease with an unexpired term of 62.17 years (using Savills 2002 enfranchisable graph and the John D Wood/Gerald Eve 1996 graph) was 4.5%. In his opinion this percentage should be reduced as the property is not in Prime Central London. He analysed a number of previous sale prices for shorter and longer leases at Wimbledon Close but concluded that there was no specific formula for properties outside Prime Central London. His proposed deduction for the property was half that suggested in the *Cadogan* case, namely 2.25%, to reflect the different location of the property, outside prime Central London. Alternatively he proposed a nominal deduction of 1%.
3. Mr Sharp simply stated that he would usually assess the value of Act rights as requiring a deduction of 10%. He enumerated 13 benefits of the Act but did not attribute a value or proportion of his 10% deduction to any of these benefits. He referred the tribunal to previous tribunal decisions (not at Wimbledon Court) where a discount of 10% had been allowed. He also referred to the tribunal decision in relation to Flat 9 Wimbledon Close (when it had a lease with an unexpired term of 65.16 years) where a 5% discount has been applied; arguing that as the lease term reduced the value of the Act rights must increase.

Mr Sharp added £5,000 to the sale price of the short lease to reflect that the flat had not been kept decorated in accordance with the terms of the lease. He then applied a 10% discount to £605,000 to reflect no statutory right for a new lease.

He therefore proposed an existing lease value of £544,500.

Premium

1. On the basis of his evidence Mr Tabbitts provided the tribunal with two valuations showing the premium payable for the extended lease to be £64,137 if a discount of 2.25% for the no Act world was adopted in establishing the existing leasehold value; and in the alternative £60,703 if the tribunal adopted a nominal discount of 1%.
2. On the basis of his evidence Mr Sharp provided an expert valuation proposing a premium for the lease extension of £110,438.

The basis of the tribunal's determination

Extended lease value and value of freehold in possession

1. The tribunal agree with Mr Tibbatts that the sales of flats 11 and 18 are too far removed in time from the valuation date to be used as reliable comparables. The Tribunal does not accept his view that the evidence should be weighted. Both of the sales to which he gives greatest weight are inexplicably higher and lower than both valuers expected. The Tribunal prefers to take a straight average of the accepted sales evidence.
2. The tribunal determine that the Land Registry index for Merton is more reliable than the Savills index for the purposes of adjusting the sale prices of the comparables to the valuation date. The data that forms the basis of the land registry index is known. Mr Tabbitts was not able to explain how the Savills' data was obtained.
3. The tribunal consider that the comparable premiums should also be adjusted, by 2% to reflect configuration and fenestration. They do not consider that in a block of four floors it is necessary to adjust the comparables depending upon which floor each comparable is situated. The tribunal accepts Mr Tibbatts' submission that there are differences. However, no clear advantage or disadvantage has been demonstrated.
4. There should be a further adjustment of 1/2%, as proposed by Mr Sharp, in relation to Flat 27 to reflect that a ground rent continues to be reserved under that lease.

Existing leasehold value

1. The tribunal accept that it is appropriate to add £5,000 to the price of £600,000 at which the existing lease was sold to reflect that the property was not in the decorative state required by the lease.
2. Neither surveyor offered compelling evidence to the tribunal to substantiate their suggested deduction to this price to reflect the non Act world.

The tribunal reject Mr Tabbitts suggestion that only a nominal deduction should be made as this is not what is contemplated by any of the previous decisions referred to in the hearing. The tribunal are not persuaded by Mr Tabbitts' submission that there needs to be a distinction between the deduction made in Prime Central London and in Wimbledon. Nor are the tribunal persuaded by Mr Sharp's submission that the deduction should be 10%, without any substantive evidence to back up this proposition.

3. Having regard to the decision in *Cadogan*, and noting that in the decision in 2010 in relation to Flat 5 Wimbledon Court a tribunal, on the basis of their professional experience and knowledge, determined that in principle a deduction of 5% would be reasonable to take account of the existence of statutory rights, the tribunal considers that a deduction of 5% is appropriate in relation to this property.

The Tribunal determines that the existing lease value without statutory rights is £574,750

Name: Judge Pittaway

Date: 26 May 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix 1

12A Wimbledon Close, The Downs, London SW20 8HW

1140 sq ft Valuation Date 29 July 2015

Comparable sales

Flat/Sale date	Sale Price	Size Sq ft	Adjust by Land Registry	Layout and fenestration	Adjust for ground rent	Adjusted price	Adjusted price sq ft	Weighting	Weighted price/sq ft
34 18/9/2014	649,950	1068	662,904	+ 2%	0	676,162	633	10%	£63
42 26/6/15	575,000	1068	576,961	+ 2%	0	588,500	551	45%	£248
27 27/8/15	795,000	1213	779,197	+ 2%	+ ½%	798,677	658	45%	£296
								100%	£607
							Av £614		

Average £/sq ft with no weighting

Long lease value £614 x 1140 = £699,960

Freehold value (Long lease value + 1%) = £706,960

Appendix 2

New Lease Claim

Present lease	62.17 years unexpired		
Valuation date	29-Jul-15		
Long lease value	£699,960	Freehold value	£706,960
Existing lease value	£574,750		
YP = 6%	PV = 5%		

Diminution in value of Landlord's interest

Value before grant of new lease

Term

Rent	£150		
YP 29.17 yrs @ 6%	13.621	2,043	
Rent	£300		
YP 33 yrs @ 6%	14.23		
Deferred 29.17 yrs @ 6%	0.183	781	

Reversion

Flat Value (F/H)	706,960		
Deferred 62.17 yrs @ 5%	0.048	33,934	
			36,758

LESS value after grant of new lease

Reversion

Flat value (F/H)	706,960		
Deferred 152.17 yrs @ 5%	0.0006	424	
			-424

Diminution in value of Landlord's interest 36,334

Marriage Value

Aggregate of values of interests after grant of new lease

Landlord's interest	424		
Tenant's proposed interest	699,960		
		700,384	

LESS aggregate of values prior to grant of new lease

Landlord's interest	36,758		
Tenant's interest	574,750		
		611,508	

Marriage value 88,876

50% 44,438

Premium 80,772