



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

Case Reference : **LON/00BK/OLR/2020/0243
CVP:REMOTE**

Property : **9 Harley Place London W1G 8QE**

Applicant : **Mr T S G Grimstone**

Representative : **Mr P Harrison of Counsel**

Respondent : **Rami Bekhit**

Representative : **Ms D Doliveux of Counsel**

Type of Application : **S.48 Leasehold Reform Housing and
Urban Development Act 1993**

Tribunal Members : **Mrs F J Silverman MA LLM
Mrs S Redmond MRICS**

Date of Hearing : **16 and 17 February 2021.**

Date of Decision : **09 March 2021**

DECISION

The Tribunal determines that the premium to be paid by the Applicant for an extended lease of the property is £297,600 (Two Hundred & ninety-seven Thousand six Hundred Pounds).

The Tribunal's valuation is attached at Appendix A .

Reasons

1. The Applicant seeks a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. **This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents which the Tribunal was referred to are contained in electronic bundles the contents of which are referred to below. The order made in these proceedings is described above.**
3. At the hearing the Applicant tenant was represented by Mr P Harrison of Counsel and Ms D Doliveux of Counsel represented the Respondent landlord.
4. On behalf of the Applicant the Tribunal heard evidence from Ms M Joyce and for the Respondent evidence was given by Mr D Nesbitt the respective parties' valuers.
5. A number of issues, had been agreed by the parties' surveyors prior to the hearing and these were accepted by the Tribunal. The terms of the new lease had been agreed prior to the hearing.
6. The following issues remained extant and remained to be determined by the Tribunal:
 - The unimproved notional freehold value of the Property. The value of the tenant improvements, if any.
 - The relative value between the freehold interest and of a 146.4 year lease.
 - The relative value between the freehold interest and of a 56.4 year lease.
 - Deferment Rate.
7. Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property but had the benefit of photographs included in the hearing bundle.
8. The subject property, 9 Harley Place, is described by the Applicant's valuer (page 145) as being located in the City of Westminster within the Harley Street conservation area. It is located close to the local amenities provided by Marylebone High Street and within ten minutes' walk of Oxford Street. In terms of transport links, it is within walking distance of both Baker Street and Oxford Circus Underground stations. Harley Place is accessed from Harley Street and is a slightly irregular shaped mews serving a whole street block formed by Harley, Queen Anne, Wimpole and New Cavendish

Streets. The properties are a combination of 19th Century and more modern buildings. The mews is quite narrow and, according to the Applicant's valuer's description, feels quite enclosed.

9. The subject property is an unlisted three-storey mid-terrace building, situated in the northern section of Harley Place, which would originally have been the mews serving 57 Harley Street, providing a coach house and stables on the ground floor with rooms above, accessed by a recessed external staircase. Since then, the property has undergone a number of alterations and is currently configured with a kitchen with dining area, snug, cloakroom and garage on the ground floor. An internal staircase leads to the first floor drawing room and library with three bedrooms and two bathrooms on the second floor, accessed by a further internal staircase. The property has no outside space and a small area on the ground floor is excluded from the demise and remains within the ownership of the freeholder.

10. The property is held on an underlease dated 16 June 1977 for a period of 99 years from 25 March 1977 and made between E J K Holdings Ltd (1) and Hinchley Nominees Ltd (2). The head lease dated 30 September 1935 was made between General Real Estates Investment and Trust Ltd (1) The Right Honourable Thomas Evelyn Baron Howard De Walden and Seaford (2) and Robin Young (3). The superior landlord is not a party to these proceedings.

11. At the valuation date (30 October 2019) the unexpired term of the underlease was 56.4 years.

12. In relation to the deferment rate the parties' valuers expressed contrasting views. For the Applicant, Ms Joyce took the conventional approach of adopting the 5% rate advocated by *Sportelli* in relation to flats. Because of the small storage area on the ground floor reserved to the freeholder the property cannot be classified as a 'house' within the definition under the Leasehold Reform Act 1967 and this claim has therefore been correctly brought under the Leasehold Reform and Urban Development Act 1993 which is the appropriate enfranchisement legislation applicable to flats. Some of the lease covenants also reflect the property's status as a flat not a separate house eg insurance (clauses 1 and 3 pp 73 and 82) the tenant's obligation to repair (clause 6 p 75) and the absolute ban on structural alterations (clause 2 p 77).

13. Mr Nesbitt took a different view, namely, that despite the reservation of the storage area and covenants the property was in essence a house and therefore the *Sportelli* 'house' rate of 4.75% should be used. He produced no legal authority in support of this contention.
14. It is clear from *Sportelli* that the court intended that there should be a distinction between the deferment rates applicable to flats and houses and without a substantive and reasoned argument to depart from that norm the Tribunal is reluctant to do so. An applicant under the 1993 Act (as here) can never acquire the freehold of the property which is an option available to a 1967 Act claimant. That alone is a major distinction which Mr Nesbitt failed to address. The Tribunal is unconvinced by his argument and determines that it will use the recommended rate of 5% in this case. This is reflected in the valuation below.
15. In relation to the unimproved value of the freehold it was agreed that the gross internal floor area of the property is currently 1702 sq ft (page 177) which area takes into account 632 sq ft added to the original property by works undertaken by the Applicant's predecessor in title in 1980 and a further 74 sq ft due to alterations carried out by the Applicant in 2015. Licences had been obtained from the landlord to authorise both sets of works. Beyond those sparse facts the parties' valuers' views and methodology differed radically.
16. Ms Joyce had approached the calculation in two different ways and had then averaged the results to reach her final figure of £1,937,500.
17. First, she had sought to value the property in its unimproved state with the development potential implied. To achieve this calculation she used two comparables which had sold with the potential to extend, 11 Devonshire Mews South and 6 Wimpole Mews. Both properties are geographically very close to the subject property although Ms Joyce considered Devonshire Mews to be in a slightly superior position; both had garages and similar living accommodation and both had an open market transaction recorded within a short time of the valuation date for the subject property.
18. Ms Joyce analysed these comparables adding 50 % of the proposed additional floor area to give the

effective floor area and using this to calculate the rate per square foot with the benefit of the potential to improve.

19. Devonshire Mews, with the benefit of development potential in the attic and the benefit of a garden sold for £3,850,000 in April 2020. Taking the additional GIA into account, the development sold as a whole for an equivalent FHVP implicit of development value at a rate of £1,338 per sq ft. After adjusting for time and the garden she derived a rate of £1,263 per sq ft. We note that Ms Joyce clearly intended also to adjust for a garden at 5% but failed so to do both in the comparable analysis and at page 304. We therefore further adjust for the garden at the rate suggested by Ms Joyce. Her £1,338 psf then becomes £1,197 after adjusting for time, location and outside space.
20. The freehold interest of 6 Wimpole Mews was sold on 7 October 2019 just prior to the subject property's valuation date for £2,200,000. The GIA of that property is 1,266 sq ft constructed over part of the lower ground, ground and first floors comprising an open plan reception room, three bedrooms, a bathroom and a garage. Since the sale took place so close to the valuation date, no adjustment for time was required. The property was redeveloped within a year of the sale and Ms Joyce assessed the proposed floor area from the planning application was 2,120 sq ft. Taking the additional GIA into account, the development sold as a whole for an equivalent FHVP at a rate of £1,299 per sq ft. There was no need for an adjustment for time in this case, however, there was a roof terrace for which Ms Joyce made an adjustment of 2.5% in her comparable analysis. She had not made this adjustment in her calculations at p.304. A similar issue arises in relation to these figures and we have made the assumption that once again Ms Joyce intended to rely on page 304. After adjusting the rate of £1,299 for Ms Joyce's suggested 2.5% for the terrace the corrected rate is then £1,267 psf.
21. From the average of these two comparables Ms Joyce derived a price per square foot of £1,281 and that implies a FHVP on the statutory hypothesis of £1,730,000 (calculations at p304). The Tribunal finds that using the corrected rates the average rate is £1,232 which applied to the effective floor area of 1,349 sq ft gives an implied FHVP of £1,661,968.
22. Ms Joyce then went on to look at two sets of comparable properties within close proximity of the subject. The first set comprised 10 unmodernised comparable properties, the second 3 refurbished comparable properties (page 159 et seq). On the basis of the first set of comparables Ms Joyce derived an average value of £1467 psf but noting that the 4 comparables in Harley Place produced an average of £1,410 psf she adopted a

value of £1,450 psf for the gross internal floor area of the premises prior to any improvements being carried out (995 sq.ft). That resulted in a figure of £1,443,399. Since that sum would undervalue the premises because it does not reflect the potential to improve the premises Ms Joyce then valued the potential to improve by analysing the second set of comparables at £1990 psf and ascribed 50% of the value of improvements to the additional area of 707sq ft. She then added the site value referable to the area added by the improvements to the first value referable to the premises prior to any improvements having been carried out.

23. This second approach implies that the unimproved freehold value of the Property is £2,145,000 (p 164). Ms Joyce gave each approach equal weight and took the average of the two to arrive at the figure of £1,937,500. Her calculations for each approach and the average of the two approaches are set out at p 304. Adjusting the average of the unimproved list to £1,459 to allow for the corrected analysis of 11 Devonshire Mews South (where the adjusted rate becomes £1,378 psf taking account of the garden). The Tribunal notes Ms Joyce's further averaging after looking at the 4 Harley Place comparables but prefers to take the average of the total basket where adjustments have been made for location. The Tribunal prefers Method 2 and does not use Ms Joyce's averaging approach but uses this revised rate in the Method 2 calculation to give an unimproved FHVP of £2,154,724, say £2,155,000 which we adopt for the calculation.

24. In contrast to this, Mr Nesbitt's hypothesis was that none of the improvements added any value to the property and therefore no deduction should be made for them. He argued that the mansard addition, a major part of the 1980 alterations, had not achieved the full development value of the property because it did not make use of all the available area. He showed photographs of other properties in the locality which had larger second floor extensions the front edge of which was flush with the front exterior wall of the lower floors. Having looked at what he considered were appropriate building costs and using what he assessed as the full development potential, he concluded that the existing mansard did not add any value.

25. In this respect the Tribunal prefers the evidence of Mr Watson, a planning specialist whose report, annexed to Ms Joyce's supplementary report, suggests that mansard extensions (ie like that on the subject property) are Westminster City Council's preferred option in this location citing their guidance for Mews property as follows: 'future extensions should normally be in the form of a mansard'. He did not consider the current mansard to be undersized and expressed the view that he could not see 'what reasonable justification could be put forward to convince the Council to grant planning permission for a flush second floor extension at 9 Harley Place'.

26. Mr Nesbitt also asserted that the repairing obligations under the lease under discussion were full and explicit, requiring renewal as well as repair. This led to his conclusion many of the works carried out by the tenant and his predecessor should be classified as repairs and not improvements. As repairs they could not be said to add value to the property. He applied this logic not only to the replacement of an avocado coloured bathroom suite, which may be a credible suggestion, but also to the complete removal and re-instatement of a kitchen from first to ground floor in circumstances where the ground floor had previously not been fitted out or used as living accommodation. The Tribunal does not agree with this assertion nor with the similar view expressed by Mr Nesbitt that infilling the front of the property to create an internal staircase to the first floor was also a repair or renewal and added no value to the property.

27. Mr Nesbitt made no attempt to analyse Ms Joyce's comparables or calculations. He achieved a freehold value of £3,450,000 on the basis of analysing the only two properties he offered, numbers 7 and 16a Harley Place. These comparables are rejected by the Tribunal as not being timeous with the valuation date. Number 7 Harley Place sold in October 2015 and no 16a in March 2016. Ms Joyce had considered these comparables in her analysis but had disregarded them as being more than 3 years prior to the valuation date.

28. In the Tribunal's view these are too distant in time from the valuation date to be reliable evidence, particularly in a situation where it has been demonstrated by Ms Joyce that there exists a wide selection of perfectly acceptable alternative properties close in location, time and size.

29. The parties' respective valuers had taken different paths to establishing relativity.

30. For the diminution in value of the landlord's interest Ms Joyce applied a relativity of 99.5% to adjust for a lease of 858.03 years and for the Marriage valuation calculation she valued the tenant's proposed lease of 146.4 years at a relativity of 98.5% of freehold value in accordance with the Savills' graph whereas Mr Nesbitt adopted the conventional 99% and made no adjustment for the fact that the interest of the competent landlord is not a freehold interest. This is a statutory valuation and the Tribunal does not accept that Mr Nesbitt's approach is correct in the present circumstances and prefers that of Ms Joyce.

31. Similarly, the parties' valuers expressed different opinions on the short lease value. Ms Joyce adopted the average of the two established graphs of relativity: the Gerald Eve 2002 and the Savills 2015 giving a relative value of 77.35% (p168). Mr Nesbitt relied on the historic sale of the subject property which he said was in March 2013 (the date of registration). Ms Joyce stated that the sale had been agreed in November 2012 nearly seven years prior to the valuation date. Whichever of those two dates is correct both are in the Tribunal's opinion too old to be of reliable value in this exercise. Relying on Savills 2016 graph and adopting an average based on that graph and the historic sale Mr Nesbitt arrived at a relativity of 71%. The Tribunal again prefers the evidence of Ms Joyce to the historic evidence produced by Mr Nesbitt.

32. Applying those figures the Tribunal's calculation results in a total of £296,571, say £297,600 (Two Hundred and Ninety Seven Thousand Six Hundred Pounds) for the price payable for a new lease.

33. The Tribunal's calculation is attached as Appendix A .

34. **The Law**

35. Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a 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 for other loss.

36. The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any

owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

37. Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil

38. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

39. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Judge F J Silverman

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As Chairman

.....09 March 20121.....

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

9 Harley Place, London W1G 8QE
 Leasehold Reform Housing & Urban Development Act 1993
 Schedule 13

Matters Agreed:

Valuation Date: 30th October 2019
 Date of underlease and expiry date: 16/06/1977
 64,369
 Unexpired term: 56.4 years
 Underlessee Ground Rent: £150 per annum

Date of Headlease and expiry date: 05/12/1935
 377,758
 Unexpired term of headlease: 914.4 years

Capitalisation Rate: 6.50%
 GIA at claim date: Grd 537 sq ft
 1st 616sq ft
 2nd 549sq ft
 Total 1,702 sq ft

Matters Determined:

Unimproved Notional Freehold Value: £2,155,000
 Relativity to 858.03 and 768.03 year lease: 99.50%
 Relativity to 146.4 year lease: 98.50%
 Relativity to 56.4 year lease: 77.35%
 Deferment rate: 5%

Diminution in value of Landlord's interest: £ £

Present:

Ground Rent 150
 Years' Purchase for 56.4 years at 6.5% 14.9435
 2,242
 Reversion to a lease of 858.03 years 2,144,225
 Present value of £1 after 56.4 years at 5% 0.063815
 136,834
 139,075

Less Proposed:

Reversion to lease of 768.03 years 2,144,225
 PV after 146.4 years at 5% 0.0008 1,715 1,715
 137,360

Marriage Value:

Aggregate value of proposed interests:

Landlord	1,715	
Tenant on a lease of 146.4 years		2,122,675

	2,124,390	
Less aggregate value of present interests:		

Landlord	139,075	
Tenant on a lease of 56.4 years		1,666,893

	1,805,968	
Marriage value		318,423
Landlord's share of marriage value at 50%		
159,211		

Price for the New Lease:		296,571
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say £297,600