1552

Ref LON 00AG/OLR/2007/0178

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Applicant	**Mrs Shirley Marion Radin**
Respondent:	**North Central Investments Limited**
Property	**Flat 4 101 Greencroft Gardens London NW6 3PG**
Date of Tenant's notice:	**13th June 2006**
Date of Counter Notice:	**10th August 2006**
Application date:	**31st January 2007**
Hearing date:	**14th August and 8th October 2007**
Date of Inspection	**14th August 2007**
Valuation date:	**13th June 2006**
Appearances:	**For the Applicant** **Mr G Blaker of counsel instructed by Messrs Howard Kennedy solicitors:** **Mr T Firrell FRICS,MEWI, MAE valuer** **For the Landlord:** **Mr D Bromilow of counsel instructed by** **Mr M Mandell BSc FRICS valuer of HML Mandells Ltd.**

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB(Hons)
Mr D Huckle FRICS

Date of Decision **28th November 2007**

Introduction

1 By an application dated 31st January 2007 the Applicant applied to the Tribunal for a determination of the premium to be paid on the grant of a lease extension of the premises known as Flat 4 ,101 Greencroft Gardens London NW6 3PG("the subject flat ") pursuant to Section 48 of the Leasehold Reform ~~(~~Housing and Urban Development~~)~~ Act 1993

2 Directions were given for the conduct of the hearing on 2nd March 2007 and the matter came before the Tribunal for hearing on 14th August 2007.~~for~~ For reasons which ~~wren~~ were given separately the Tribunal acceded to an application by the claimant to adduce additional evidence and gave consequential directions for the parties to file further evidence and adjourned the hearing to 8th October 2007. The Tribunal arranged to inspect the property on the afternoon of 14th August so that the whole day could be set aside for the hearing on 8th October

Inspection

3 The Tribunal inspected the property on 14th August 2007. The property is a semi detached ~~3~~ 4 storey Victorian house converted into five flats in a tree lined avenue in West Hampstead, the top floor being ~~a dormer addition~~ within a converted mansard roof. It is constructed of brick with a tiled roof and timber sash windows. External decorations appeared to be in good condition. There is an entryphone system serving the building , a fire alarm system and a shared rear garden

4 Access to the subject flat is via a shared communal hallway with tiled floor and carpeted staircase. The subject flat is situated on the second floor and comprises two double bedrooms both en suite, (one with shower and small balcony and one with a bathroom) a large living room and fully fitted kitchen. There is full gas fired central heating in the flat The flat also has the benefit of shared use of the rear garden

5 Flat 5 is on the floor above and is reached from the second floor landing by a staircase with a door at the foot so that the area of the staircase is self contained. Flat 3 , which is leased to the London Borough of Camden is on the floor below the subject flat

The Hearing

6 The Tribunal having given directions on 21st August 2007 for the postponement of the hearing and for the submission of additional evidence received witness statements from Mrs Radin the Applicant and Ms Jai Gandhi for the Respondent. In addition both Mr Firrell and Mr Mandell revised their original reports to take account of the new evidence and the additional issues raised

7 At the adjourned hearing Mrs Radin the Applicant gave oral evidence and was questioned by the Respondent and the Tribunal and the two experts Mr Firrell and Mr Mandell gave oral evidence in accordance with their revised reports

The Lease

8 The Applicant holds the subject property on an underlease of 50 years from 23rd March 1972 at a ground rent of £250 per annum The demise includes a right to use the garden in common with the residents of other flats in the building and the right to keep a dustbin in the forecourt

9 The Tribunal did not see the underlease of Flat 5 the only comparable property which was cited to the Tribunal in evidence but the Tribunal was informed that that flat did not have shared use of the garden with the other flats

Statement of Agreed Facts

10 Both valuers agreed the terms of the lease, the valuation date as 13th June 2006 and that there were 15.75 years unexpired at the valuation date. The gross internal area of the flat was agreed at 1125 square feet excluding a room on the landing which had been used by the Applicant but was not part of the demise. It was further agreed that Flat 3 on the first floor of the premises was let to the London Borough of Camden on a long lease. The parties also agreed that the capitalisation rate for the remainder of the term should be 6.5% The Applicant was content that the Tribunal should value the flat without the use of the additional storage space on the landing which she was prepared to vacate.

Issues

11 The issues in dispute on which the Tribunal's determination was sought were (a) the deferment rate to be applied Mr Firrell for the Applicant sought a deferment rate of 6.5% while Mr Mandell for the Respondent contended for ~~5~~5% in line with the decision of the Lands Tribunal in **Earl Cadogan and**

Cadogan Estates Ltd –v- Sportelli LRA/50/2005 (b) the value of the extended lease in its improved state where Mr Firrell contended for a figure of £450,000 and Mr Mandell for a figure of £543,000. (c) the value of the extended lease in its unimproved state where Mr Firrell contends for a figure of £275,000 and Mr Mandell for a figure of £462,670

12 The difference in the two valuations of the extended lease was derived from the sale price of Flat 5 as a comparable and the adjustments made by each valuer based on a number of factors including improvements which the Applicant maintained had been carried out to the subject flat, the size and location of the two flats, and the nuisance which the subject flat allegedly suffered from the existence of flat owned by the London Borough of Camden immediately below it

13 Relativity is potentially in dispute although both valuers agree on a relativity figure of 45% but Mr Firrell applies it to a lease of 105.75 years whereas Mr Mandell contends that the relativity applies to an extended lease of 999 years

The Extended Lease Value as improved

The Evidence

14 The only comparable relied upon by the two valuers was the sale of Flat 5 in the same building. Whilst the Tribunal accepted that although this was good evidence it would have been assisted by details of sales of other comparable properties in the area, particularly as the valuers had to make a number of significant adjustments to the comparable property in order to arrive at their assessment of market value

15 Flat 5 was sold with a lease of 115 years unexpired on 6th August 2006 for £490,000 and at a ground rent of £250 per annum rising to £500 per annum in 2045, and £750 per annum in 2095 .The lessee of the flat is liable to pay 25% of the service charges on the building, whereas for historic reasons the leaseholder of the subject flat pays only 20% of the service charges

16 The distinguishing features between the two flats are that Flat 5 has its own staircase entrance from the second floor, has slightly better views and daylight and is larger in size, but has lower ceilings, a sloping mansard roof, has no access to the garden under the terms of the lease (although it is suggested that the lessees in fact use the garden) and is situated on a higher floor without the benefit of the use of a lift.

Problem Neighbours in Flat 3

17 A further issue allegedly affecting the value of Flats 4 and 5 is in relation to an alleged nuisance caused by the various occupiers of Flat 3 owned by the London Borough of Camden.

18 In her statement the Applicant speaks of the various residents who have occupied Flat 3 during her occupancy. In the first 15 years there was a family living there and the husband went to prison in connection with a robbery and the wife and lodgers who moved in kept very late and unsocial hours which caused nuisance to the Applicant

19 It was then occupied for five years by a single woman with four children and one of them ran a crack house from the premises. In the last year the flat has been occupied by a family comprising two parents and six children all under the age of 11 who make a considerable amount of noise.

20 Mrs Radin stated in her evidence that the previous owner of Flat 5 did not disclose the existence of the problems which had been experienced and she also stated that the present owner of Flat 5 had told her that the existence of these problems had not been disclosed to her.

21 The witness was not called to give evidence and no confirmatory statement had been received by the date of the adjourned hearing. Mr Blaker during the hearing applied for a further statement to be admitted from the neighbour at Flat 5 after the conclusion of the hearing to confirm what Mrs Radin had said in evidence.

22 Mr Bromilow objected on the ground that the Applicant had already obtained one adjournment to call further evidence and should not be allowed to call further evidence after the conclusion of the hearing. He further stated that he would have wished to cross examine the witness to explore to what extent the amount paid by them was or would have been influenced by this knowledge, what written enquiries before contract were made and other relevant considerations.

23 The Tribunal rejected the application to allow a statement to be adduced by the owner of Flat 5 after the hearing for the reasons stated by Mr Bromilow

and further because it was conceded that the owners of Flat 5, though not aware of all the previous history, were aware that Flat 3 was owned by Camden Council and that they used it to house families.

24 Whilst the Tribunal did not consider the behaviour of a particular tenant irrelevant it nonetheless considered that the purchaser of Flat 5 would have been on notice that the flat in question was owned by the Council, that the tenants of the flat might vary from time to time but there would be a risk of noise, nuisance or other features of Council ownership which might affect the value of the flat.

25 Mr Firrell contended for a discount of £50,000 from the value of the subject flat due to the occupancy of flat 3. He based this on an approximate reduction of 10%. Mr Mandell rejected any suggestion that the valuation of Flat 5 should be reduced to take account of this factor. He maintained that the reduction in value if any was already reflected in the price which was paid by the purchasers of Flat 5 and that no further reduction should be made.

26 Mr Blaker for the Applicant contended that the subject flat was in any event closer to the source of nuisance as it was only one floor above whereas Flat 5 was separated by a further floor and had its own separate entrance to make the flat self contained.

27 Mr Mandell also adjusted the price to reflect a flat with a hypothetical 999 year lease in improved condition to reflect the freehold value as against the underlease and added a further sum of £4344 (0.008%) for this

The Tribunal's decision

28 The Tribunal considered that the value of the flat could not fluctuate based on the changing tenure of the occupants of Flat 3. A purchaser of a flat in the house knowing of the Council's ownership would be aware that there was a risk that the existence of a tenant placed by the Council might affect the value to be placed on other flats within the block. The Tribunal is not satisfied that the price paid by the purchasers of Flat 5 was not a fair price for the property and took into account the existence of Council tenants in Flat 3 of which they were aware.

29 If Mr Firrell had been able to point to other properties in the area where there were no Council tenants and could have demonstrated the difference in price

resulting therefrom, the situation might have been different. But he was unable to do so and on the available evidence the reduction of £50,000 by way of adjustment for this feature was in the view of the Tribunal unsustainable.

30 The Tribunal therefore considered that no adjustment to the sale price of Flat 5 was required to reflect the occupancy of Flat 3. However, the ground rent justified an upward adjustment of £4000 to the sale price of Flat 5 in August 2006 of £490,000 and the difference in the features of Flats 4 and 5 as illustrated above required a further upwards adjustment of £26,000. The Tribunal therefore valued the subject flat with an extended lease at the valuation date in its improved condition at £520,000

Improvements

The Law

31 By Schedule 13 of the Act the Tribunal is required to disregard improvements installed by the tenant or his predecessor in title in order to arrive at the unimproved value of the extended lease, which is the assumption on which it is valued. The law relating to the effect which tribunals should give to improvements was stated by the House of Lords in **Shalston –v- The Keepers and Governors of the Free Grammar School of John Lyon (2003) UKHL32 (2003) 3 All E R 975** which held that in each case it was for the tenant (a) to identify improvements which he or his predecessor had carried out and (b) satisfy the tribunal that but for those improvements the house and premises would have been worth less. Improvements were alterations and additions made to the house or flat which were not mere repairs or renewal. The value of the improvements was the difference between the value of the house as it stood and the value if the improvements had not been carried out. The cost of the improvements while not irrelevant were by no means conclusive as to the value added to the property

32 What amounts to an improvement as against a repair was considered by the Court of Appeal in the recent case of **Dickinson –v- London Borough of Enfield (1996) 2 EGLR 88** cited by Mr Bromilow where a tenant had carried out considerable works to a property pursuant to a notice served by the landlord which increased the value of the property but which were not improvements because in many cases they were simply renewals or repairs of items which had been there previously. The tenant's claim under the Housing

Act 1985 under the right to buy did not permit the tenant to disregard items as improvements other than those which had been agreed between the parties.

33 Millett LJ held that the fact that works added to the value of the buiding was irrelevant if they were not improvements. "Improvements " had a specific meaning under Section 187 of the 1985 Act but the words "improvements" and "repairs" also had specific meanings in the law of landlord and tenant as explained in the legal authorities and they were mutually exclusive.

The Evidence

34 Mrs Radin informed the Tribunal that at the time of the purchase of the lease in 1984 a notice had been served by the local authority requiring various works of repair to be carried out.

35 The Applicant carried out a considerable amount of work in 1984 when she purchased the lease including works of improvement. She alleged that following her separation from her husband she obtained £85,000 after the matrimonial home was sold. She says she invested £77,500 of this into the subject flat because she had £7,500 left in the bank after the works had been completed.

36 She enclosed a letter from Mr Mullock of Mullbank Building Services Ltd asserting that they undertook work for the Applicant which at August 2007 costings would amount to £72,250. She also enclosed a statement from a plumber and assesses other items which she installed in the flat in the sum of £24.440 at August 2007 costings. Further works were undertaken in the 1980's and 1991/92 costing some £75,000. Mr Firrell claimed that the works undertaken by the Applicant would have contributed about £150,000 to £175,000 to the value of the subject flat. ~~and~~ that this sum should be allowed to reflect the unmodernised condition of the flat.

37 The items of improvement on which ~~she~~ Mrs Radin relies dare:-

(a) installation of central heating, replumbing and hot water system

(b) rewiring of the flat

(c) modernisation of the bathroom

(d) new kitchen which was relocated within the flat

(e) general redecoration and upgrading

(f) creation of shower from a wc.

(g) Replastering throughout the flat

(h) New balcony

(i) Stained glass windows

(j) Security grilles

38 Mr Mandell accepted that ~~these~~ improvements were undertaken and allowed a figure of £80,000 to deduct from the value of the flat to reflect the unmodernised condition. He states that no purchaser would allow more than £80,0000 against the purchase price in respect of those improvements because in many cases they reflect the taste of the individual owner. . Deducting this from his assessment of the value of the flat at £547,344 (on a 999 year lease), he assessed the flat in its unmodernised condition at £467,344.

39 Mr Firrell for the Applicant on the other hand assesses that the Applicant spent approximately the equivalent of £175,000 at the prices prevailing at the valuation date on improvements and refurbishment and has deducted the whole of this sum from his original assessment of £450,000 to arrive at a figure of £275,000 for the flat in its unmodernised condition (on a 105 year lease).

40 Mr Bromilow submitted that the works of rewiring decoration and replastering were not improvements but repairs or at best renewals of existing facilities and should not be allowed.

The Tribunal's Decision

41 The Tribunal considered the value of the improvements and accepted that some of the items were repairs and renewals On the other hand items (a)(c) (d) (e)~~and~~ (f) (h) (i) and (j) were certainly improvements which had enhanced the value of the property considerably. The Tribunal considered that the total amount which should be allowed against the value of the subject flat in an improved state would be £100,000 so that the value of the property in its unmodernised condition would be reduced to £420,000

42 The Tribunal considered that an addition of 1% was required to ~~which~~ produce~~d~~ a value for the freehold of £424,200

Deferment rate

43 Mr Bromilow submitted that the Tribunal was obliged to follow the deferment rate set by the Lands Tribunal in **Earl Cadogan and Cadogan Estates Ltd – v- Sportelli LRA/50/2005** and to apply a rate of 5%.. Mr Blaker submitted adopting the opinion of Mr Firrell that **Sportelli** was incorrectly decided and

was now subject to appeal and that in any event the application fell outside the **Sportelli** scope of the decision because it was issued before **Sportelli** was decided and further it related to a lease with an unexpired term of 15.75 years, less than the 21 year terms where the general rule applied. Mr Firrell contended that the Tribunal should apply a deferment rate of 6%

44 Mr Firrell asserted to the Tribunal that **Sportelli** was wrongly decided and need not be followed but this was clearly at variance with the comments made in the Court of Appeal by Carnworth LJ in **Sportelli** itself as well as the earlier decision of the Court of Appeal in **Shepherd –v- Turner (EWCA) Civ 8**

45 The Tribunal did not accept the argument that the case fell outside Sportelli on the first ground since **Sportelli** applied to all cases which had not been decided since it related to the general practice which Tribunals should apply and to that extent was retrospective in its effect. However since the hearing the Court of Appeal had published the decision in the appeal from the Lands Tribunal in **Sportelli** and whilst it had upheld the approach of the Lands Tribunal and the yield rate for prime Central London properties it did permit some scope to tribunals to adopt different rates in respect of locations outside Central London where evidence so indicated whilst stressing that the rate of 5% as laid down by the Lands Tribunal should be treated as the starting point.

46 However, the Tribunal accepted that since the unexpired term in the present case was less than 21 years it fell within one of the exceptions recognised by the Lands Tribunal in .**Sportelli** and as such the Tribunal was entitled to take that fact into account.

47 Having considered the various submissions the Tribunal concluded that no compelling evidence had been produced by the Applicant to justify a departure from the deferment rate of 5% which the Lands Tribunal had said was generally appropriate for flats. However, the subject flat had an unexpired term of less than 21 years and should attract a higher deferment rate of 5.5% to take account of ~~those~~ that differences in this case.

Relativity

48 Whilst both valuers agreed a relativity of 45% they differed as to the correct figure for which it should be taken as a percentage and therefore were not in agreement as to the appropriate relativity figure .Mr Firrell submitted that it

should be relative to a lease for 105.75 years which is what the Applicant would acquire on the grant of the extension. He referred to the well-known Beckett and Kay "Graph of Graphs" which indicates a relativity of between 32% and 53% between 15 to 16 year leases and freehold values. Mr Mandell also referred to the Beckett and Kay graph and considered that 45% was the relativity of the existing lease to the hypothetical lease of 999 years

49 The Tribunal considered that the Beckett and Kay graph provided good evidence of relativity although one might consider it appropriate to discount some of the separate graphs of which it is composed. The Moss Kaye graph (2005) showed a relativity of 40%, the John D Wood (2004)) graph 48% and the Charles Boston graph 43%. However, the parties had agreed to a relativity figure of 45% albeit on different terms. The Lands Tribunal in **Arrowdell Ltd v Conniston Court(North) Hove Ltd LRA /72/2005** considered the best evidence of leasehold relativity was to be derived from graphs because individual pieces of evidence were likely to show inconsistencies. In the Tribunal's view it is correct to adopt a relativity of the existing lease to the freehold within the ranges above and therefore adopt a figure of 45%.

Conclusion

50 The Tribunal therefore concluded that the value of the extended lease in an unmodernised state was to be assessed at £420,000, the existing lease at 45% of the freehold vacant possession value at £190,890 and that the deferment rate should be set at 5.5%. Applying those determinations to the agreed items the Tribunal concluded that the appropriate figure for the premium for the extended lease should be set at £205,800. Full details of the valuation are set out in the Appendix to this decision

Chairman Peter Leighton

Date 28th November 2007

Reference:LON/00AG/OLR/2007/0178

LEASEHOLD VALUATION TRIBUNAL DECISION

Valuation in accordance with s.56 & Schedule 13 of the
Leasehold Reform Housing & Urban Development Act, as amended

Flat 4 101 Greencroft Gardens, London, NW6 3PG

- Valuation date (date of Notice of Claim): 13 June 2006
- Lease term: 50 years from 25 March 1972. Ground rent £250 per annum
- Unexpired term at valuation date: 15.75 years
- Capitalisation rate: 6.5% (agreed)
- Deferment rate: 5.5% on unexpired term at valuation date
- Value in improved state on 105.75 year lease at peppercorn rent: £520,000
- Value in unimproved state on 105.75 year lease at peppercorn rent: £420,000
- Freehold VP value in unimproved state (+1%): £424200
- Value in unimproved state on 15.75 year lease at rent of £250 pa: £190890 (relativity 45%)

Dimunition in Value of Landlord's Interest

Value before extension of lease			
Ground rent	£ 250		
YP 15.75 years @ 6.5%	9.675	£ 2419	
Reversion to freehold VP value	£424200		
PV £1 in 15.75 years @ 5.5%	.4303	£182533	£184952
Value after extension of lease			
Reversion to freehold VP value	£424200		
PV£1 in 105.75 years @ 5%	.005744	£ 2437	- £ 2437
			£182515

Marriage Value

Value of interests after extension of lease			
Value of extended lease	£420000		
Value of freehold interest	£ 2437	£422437	
Less			
Value of interests before extension of lease			
Value of existing lease	£190890		
Value of freehold interest	£184952	£375842	
	Marriage Value	£ 46595	
	50%	£ 23298	£ 23298
			£205812
		Say	**£205800**