

LON/00AW/OLR/2007/0239**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER S.48 OF THE
LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993**

Address: Flat 3, 3 Cadogan Square, London, SW1X 0HT

Applicants: (1) Mr C Damico
(2) Mrs S Damico

Respondent: The Earl of Cadogan

Application: 27 February 2007

Inspection: 4 July 2007

Hearing: 3 July 2007

Appearances:**Landlord**

Mr K S Munro
Winward Fearon
Mr A Ford

Counsel
Solicitors
Chartered Surveyor, Cluttons

For the Applicant

Tenants

Mr T Jeffries
Mr G Buchanan

Counsel
Chartered Surveyor, Knight Frank

For the Respondent

Members of the Tribunal: Mr I Mohabir LLB (Hons)
Mrs E Flint DMS FRICS IRRV

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AW/OLR/2007/0239

**IN THE MATTER OF SECTION 48 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

**AND IN THE MATTER OF FLAT 3, 3 CADOGAN SQUARE, LONDON, SW1
0HT**

BETWEEN:

THE EARL OF CADOGAN

Applicant

-and-

**(1) CHRISTOPER DAMICO
(2) SUSAN DAMICO**

Respondents

THE TRIBUNAL'S DECISION

Introduction

1. This application is made by the Applicant pursuant to s.48 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to determine the premium to be paid and the terms of the new lease to be granted to the Respondents in respect of Flat 3, 3 Cadogan Square, London, SW1X 0HT ("the subject property").
2. The Respondents occupy the subject property by virtue of a lease dated 11 November 1964 granted by The Honourable John Julian Chetwynd to William Arthur Chapple and Gerald Tooth for a term of 58.5 years (less 10 days) from 29 September 1964.

3. By a s.42 Notice of Claim dated 11 October 2006, the Respondents exercised their right to claim the grant of a new lease under Chapter II of Part I of the Act in respect of the subject property. The premium proposed for the new lease was £470,780.
4. By a Counter Notice dated 15 December 2006, the Applicant admitted the Respondents right to acquire a new lease and counter proposed a premium of £1,248,000 with the new lease being granted on the same terms as the existing lease for a term of 90 years from 19 March 2023, being the date of termination of the present lease.
5. In the absence of the parties being able to reach agreement on the premium to be paid and the terms of the new lease, the Applicant applied on 27 February 2007 for that determination to be made by the Tribunal.

The Issues

6. The valuation evidence was provided by Mr A Ford of Cluttons and Mr G Buchanan of Knight Frank, who were instructed by the Applicant and the Respondent respectively. Their expert evidence was set out in their respective reports dated 29 June and 2 July 2007. On the day of the hearing they had agreed a statement of facts and issues. The material matters agreed were:
 - (a) the tenure of the subject property.
 - (b) the valuation date: 11 October 2006.
 - (c) the description of the subject property (including any alterations), the building and its surroundings.
 - (d) the unexpired term of the lease at the valuation date: 16.42 years.
 - (e) the capitalisation rate: 5.5%.
 - (f) GIA: 1528 sq ft.
 - (g) adjusting for time: Savills' PCL SW index.
 - (h) the terms of the extended lease.

The matters not agreed were:

- (a) the value of the freehold and extended leasehold interests.
- (b) the value of the existing leasehold interest.
- (c) the value of rights under the Act.
- (d) adjusting the extended lease to freehold.
- (e) the effect, if any, of improvements.
- (f) the deferment rate.
- (g) hope/latent value.

The Tribunal's determination in this application was, therefore, limited to those issues at (a)-(g) above which are dealt with in turn below.

Inspection

7. The Tribunal inspected both the subject property and comparables on 4 July 2007. On inspection the Tribunal found the subject flat to be on the upper ground floor of a converted Victorian end terrace house situated on the road south of Pont Street leading to the eastern side of Cadogan Square. Consequently the flat had no views over the Square, there is access to and views over a communal garden situated to the rear of the houses in Pont Street. The flat comprises entrance hall/dining area with access to communal garden, front reception room, 3 bedrooms (1 en suite), kitchen, bathroom and shower room. All refurbished to a high standard. The tribunal inspected externally the comparables all of which were situated in converted houses and as described in the respective reports of Mr Ford and Mr Buchanan. -Of those in Cadogan Square Number 8 appeared to be the most prestigious building with views over the central gardens, numbers 51, 75, and 70/72 had direct views and 17 and 78 had angled views over the Square. Number 18 fronted Pont Street, as did Number 2 although the access to the latter was almost opposite the subject premises, and 22 had no views of the Square being situated on one of the access roads into the Square. In Lennox Square number 52 appeared to have better views than the subject flat however number 5 appeared to be a less imposing building.

Decision

8. The hearing in this matter took place on 3 July 2007. Mr Munro of Counsel appeared for the Applicant. Mr Jeffries of Counsel appeared for the Respondents.

(a) Freehold & Extended Leasehold Values

9. Both valuers essentially adopted the same valuation approach when considering the freehold and extended leasehold values. Mr Ford began by considering the comparable properties set out in Appendix 2 of his report. This included properties located both in Cadogan Square and Lennox Gardens, located in the immediate vicinity. These comparables were of properties sold with long leases where the unexpired terms were in excess of 100 years. It is not necessary to particularise each property here, as they are considered in detail in the Tribunal's decision below. Mr Ford then made two adjustments to the prices achieved. Firstly, using Savills PCL South West Flats Index, he made an adjustment to reflect the valuation date. He then made a second adjustment to reflect the difference in value between the freehold vacant possession value and enfranchisable leases using research figures obtained by Savills in 2003.
10. Mr Ford further refined his valuation to take account of the specific characteristics, including any improvements, of the particular property being considered. He was of the opinion that the minor internal layout alterations carried out to the subject property in 2004 did not have a material effect on value. Mr Ford applied this valuation approach to each of his comparables. This produced a valuation range of £984 psf to £1,428 psf¹, giving an average of £1,200 psf. Having regard to the particular characteristics of the subject property², he concluded that the accommodation was "above average" and, therefore, a value of £1,300 psf was appropriate. Having applied this figure to the agreed GIA of 1,528 sq ft, he arrived at a value for the freehold with vacant possession of £1,976,000. Mr Ford was of the view that the extended leasehold value was 98% of this figure, producing a value of £1,936,480.

¹ see para. 2.20 of his report

² see para.2.25 of his report

11. Mr Buchanan also principally relied on comparable evidence of recent sales but confined this to properties located solely in Cadogan Square³. He made adjustments to the sales prices mainly for the layout of the accommodation, condition (including any improvements) and the unexpired term of the lease. Again, this produced a range of figures expressed as £s psf. Although Mr Buchanan did not expressly comment on whether the alterations carried out to the subject property in 2004 affected the value, he seemed to infer that it did in cross-examination. However, he did not say how he valued this. Mr Buchanan concluded that the extended leasehold value was £1,537,168⁴. To this figure he applied an upwards adjustment of 1%, as he had always done, to arrive at a freehold value of £1,552,539.
12. In the Tribunal's view, neither party advanced any compelling evidence as to whether there should be a 1% or 2% uplift in the value of the long leasehold value and the freehold value. This appeared to be simply the opinion held by each valuer. The Tribunal determined that a figure of 2% was appropriate in the circumstances since it would be inconsistent to make all other adjustments for lease term based on the Savills 2003 Index and adopt a different approach when valuing the subject property.. The Tribunal, having inspected the subject property, was of the opinion that the internal alterations carried out in 2004 did not have a material affect on value. The Tribunal then went on to consider each of the comparable properties relied on by the parties and that analysis is set out below.
13. The basic price per sq ft has been adjusted for time using Savills PCL SW Index

Flat 2 18 Cadogan Square

L70 yrs 27/04/2007 £1,295,000 1323 sq ft

		£902/sq ft
+ 10% Spiral staircase, part accessed from o/s	90	
+5% Part lgfl	45	<u>135</u>
		1037
Adjusted to freehold		£1156/sq ft

³ see Tab 2 of his report

⁴ see para.12.6 of his report.

Flat 2 22 Cadogan Square

L124 years 14/06/2006	£3,500,000	2528 sq ft	£1437/sq ft
-10% Private garden		144	
- 15% Condition		216	
+ 5% part lgfl		72	<u>288</u>
			1149
Adjusted to freehold			£1170/sq ft

Flat 2 17 Cadogan Square

L109 yrs 01/05/2006 £600,000 726 sq ft Not analysed.
 This flat is too small to be considered to be in the same market as the subject premises, is situated at the rear of the building, hence no views and a less imposing reception room.

2 Cadogan Square

L70 yrs 21/03/2006	£1,600,000	2100 sq ft	£816/sq ft
+ 5% no o/s space		41	
+10% condition		82	
+10% pt lgfl, side access, office nml, Restricted layout due to structure		82	<u>205</u>
			1021
Adjusted to freehold			£1146/sq ft

Flat 2 78 Cadogan Square

L71 yrs 27/09/2004 £1,550,000 1468 sq ft
Too old to be very helpful, not analysed by Tribunal as sufficient evidence closer to valuation date.

Lennox Gardens

Lennox Gardens can be used as guidance however the Tribunal was of the view that less weight should be placed on these transactions than those in Cadogan Square

5 Lennox Gardens

L72 years 16/11/05	£2,200,000	1901 sq ft	£1287/sq ft
+ 5% no outside space		64	
-20% condition, own access, prestigious entrance		257	<u>193</u>
			1094
Adjusted to freehold			£1220/sq ft

52 Lennox Gardens

L97 yrs 04/03/2005	£1,200,000	1252 sq ft	£1084/sq ft
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+5% no o/s space

54
1138
£1172/sq ft

Adjusted to freehold

14. The Tribunal, therefore, adopted £1150/sq ft giving a freehold value £1,757,000 and £1,722,000 for the extended lease value.

(b) Existing Leasehold Value

15. Again, both Mr Ford and Mr Buchanan in their respective reports began with an analysis of market evidence. Mr Ford stated that there was only limited evidence of two sales within the preceding 12 months of ground floor flats with similar unexpired terms, such as the subject property. However, both sales had taken place in the “Act world”. He further stated that in the open market a purchaser was prepared to pay an additional amount to reflect the fact that they can immediately seek a lease extension, provided that the purchase is made with the benefit of a s.42 notice having been served, or within 2 years of purchase. On the grant of an extended lease, the lessee would benefit from the release of the marriage value. Mr Ford’s opinion was that it could increase the purchase price by between 5% and 15%. Given the level of demand in Cadogan Square, he was of the view that a prospective purchaser would be prepared to bid up to the full 50% of marriage value, which led him to conclude that the value of the “rights” under the Act should be placed at 15% in this instance.
16. Mr Ford then went on to consider two comparable properties, namely, GF Flat 8 Cadogan Square and 51 Cadogan Square and make, where necessary adjustments for condition and location⁵. However, this produced a broad divergence in valuations and he did not consider it to be a sufficiently large sample from which to draw any conclusions as to the short leasehold value.

⁵ see App. 5 of his report

17. Mr Ford then turned to graphs of relativity and, in particular, the Graph of Graphs produced by Beckett & Kay⁶. An analysis of this shows a range of relativities between 30% and 52%. He discounted the lowest and two highest graphs. The remaining 9 graphs provided an average relativity of 38.44% as a starting figure. Mr Ford then had regard to negotiated settlements with Mr Buchanan's firm where it was agreed that an unexpired term of 9 years should have a relativity of 23% for properties close to the subject property. This was approximately 1% below the relativity shown on the Gerald Eve graph and appeared to be consistent. This would result in a relativity of 37% in this instance, having regard to the unexpired term.
18. Mr Ford then went on to consider the evidence given by Mr Buchanan's colleagues in other cases before the Tribunal in respect of other properties located in Cadogan Square with similar unexpired terms. This revealed that Knight Frank had variously contended for relativity figures of 42.75% and 45%. He suggested that it was, therefore, not open to Mr Buchanan to contend for the higher figure of 52%, as he was seeking to do here. Mr Ford contended for a figure of 38% on the basis that the decision of the Lands Tribunal in *Sportelli* reducing deferment rates and thereby increasing the amount of premiums for lease extensions, had led to a fall in the price paid by purchasers for short leases. Accordingly, he valued the existing lease at £750,880.
19. Mr Buchanan carried out an analysis of the sales of the ground floor flats at 8, 51, 75 and Flat 3, 70/72 Cadogan Square⁷. He also made similar adjustments to take account of the particular merits or otherwise for each property, including location, condition and layout. This produced varying figures between £763 psf to £449 psf. An average of these figures produced a figure of £588 psf. Mr Buchanan then made a further adjustment of 10% downwards to reflect that additional value attributable for "rights" under the Act. He provided no explanation about how he reached this figure.

⁶ see App 6 of his report

⁷ at para. 11 of his report

20. As to relativity, Mr Buchanan accepted that his proposed relativity was above most of those set out in the Beckett & Kay Graph of Graphs. The reason for this, in his view, was that Cadogan Square was a 'micro market' and this was supported by the market evidence. The Gerald Eve graph had not in fact changed since 1996. Indeed, in *Arrowdell Ltd v Coniston (North) Hove Ltd* [LRA/72/2005] the Lands Tribunal expressly disapproved of the use of graphs of relativity and that they could not be relied upon in enfranchisement valuations.
21. As to settlement evidence, Mr Buchanan stated that guidance had been given by the Lands Tribunal and other Tribunals but that this was only of assistance where a detailed analysis of the agreed price had been undertaken and had not been influenced by the Delaforce effect. Moreover, he believed that settlement evidence in Cadogan Square had now become self-perpetuating and no longer reflected what was happening in the market. He, therefore, attached no weight to it. Mr Buchanan also did not agree with the proposition that *Sportelli* had led to a fall in prices. On the contrary, his experience was that prices had in fact increased as a result of the demand for short leases.
22. It was a matter of common ground between Mr Ford and Mr Buchanan that "rights" under the Act to seek and obtain a lease extension attracted an increase in the premium paid for short leases such as this. They respectively contended for 15% and 10%. Their conclusions seem to have been based almost entirely on their expert opinion alone. There were no compelling reasons for finding for either figure. The Tribunal determined, using its expert knowledge and experience, that the value of the actual or potential entitlement to seek a lease extension should be placed at 10%.
23. Turning to the issue of relativity, the Tribunal attached little weight to the relativity graphs, settlement evidence or other Tribunal decisions which at best are secondary evidence to be used as a check. These invariably prove to be a "moveable feast" for the party seeking to rely on this kind of evidence and the arguments are, so it seems, always self serving. In any event, the Tribunal considered in this instance that there was sufficient market evidence from

which it could make a finding on the existing lease value and its analysis of the comparables is set out below.

Ground Floor 8 Cadogan Square

L16 yrs 18/12/2006	£1,300,000	1362 sq ft	£923
-15% location/imposing building			<u>138</u>
			£785/sq ft

The price reflects the benefit of S42 notice served March 2006. The other leaseholders in the block had applied to enfranchise and the lease extension was suspended at the date of purchase. Therefore the price reflects the ability to extend the lease in the future based on historic values, making the notice a particularly attractive feature in this sale. Consequently the Tribunal has attached little weight to this transaction.

Ground Floor 51 Cadogan Square

L16.5 yrs 15/09/2006	£960,000	1498 sq ft	£641
-10% overlooking Sq			<u>64</u>
			£577/sq ft

Ground Floor 75 Cadogan Square

L19 yrs 18/11/2005	£1,500,000	2489 sq ft	£673
-10% overlooking Sq		67	
+5% poor layout		34	
-3% lease length		20	<u>53</u>
			£620/sq ft

Flat 3 70-72 Cadogan Square

L18 yrs 08/06/2005	£900,000	2012 sq ft	£504
+15% poor condition		76	
-1.5% lease length		8	<u>68</u>
			£572/sq ft

24. Accordingly, the Tribunal adopted a figure of £590/sq ft on basis of above comparables less approximately 10% for rights under the Act giving £530/sq ft for the existing lease value, this gives a capital value of £810,000.

(c) Deferment Rate

25. Mr Ford contended that a deferment rate of 5% should also be adopted here because this case did not fall within any of the exceptional circumstances set

out by the Lands Tribunal in *Sportelli*. In his view, the relatively recent increases in the Bank of England base lending rate would not have an adverse effect on investor activity in the market. In addition, it was clear that at the valuation date, the market was still in a steep upward trend driven by wealthy foreign individuals, investors and corporate organisations. The potential investor seeking to purchase a reversionary residential investment in October 2006 would therefore be less concerned by a crash in the market detrimentally affecting values in Cadogan Square. In the circumstances, there was no basis for finding for a higher deferment rate than 5%.

26. Mr Buchanan contended that because the subject property had an unexpired term of less than 20 years, *Sportelli* had little or no application and the deferment rate had to be determined by having regard to the prevailing property cycle at the time. He further contended that, as at the valuation date, the property market was near or at the top of the cycle and, therefore, the deferment rate should be higher than 5%. He found support for this contention by reference to Savills PCL Indices⁸ and a graph of real house prices in the UK from 1953 to 2005⁹, which was referred to in *Sportelli*. He concluded that the deferment rate in this instance should be adjusted upwards by 0.5% to reflect the risk that at the end of the term the property cycle would be at a lower level and that an investor or individual could expect a lower rate of growth. He submitted that the deferment rate should be 5.5%.
27. It is clear that *Sportelli* had little or no application in this instance because the unexpired term was less than 20 years. It follows that the deferment rate has to be determined by reference to the prevailing market conditions as at the valuation date. The Tribunal did not accept Mr Ford's contention that the prime Central London market was somehow unaffected by general market trends and cycles. In the Tribunal's view any wealthy foreign individual, investor or corporate organisation would be professionally advised in the purchase of any such property and, in the event of a falling market, it would seem reckless and/or negligent for any professional adviser to ignore those

⁸ at App. 7 of his report

⁹ at App. 8 of his report

factors when recommending a purchase. Furthermore, the Tribunal did not consider it appropriate to use hindsight to demonstrate that the market had not reached its peak, as the valuation date is at a fixed date and the Tribunal is required to determine the market value as at that date. This is not the same as adjusting sale prices before and after by looking at market movement but, in any event, post valuation date sales must carry less weight than those prior to the valuation date.

28. The Tribunal largely agreed with Mr Buchanan's arguments. A prospective purchaser, as at the valuation date, would be aware of the danger that at the expiry of the term, the property cycle might have already peaked or not yet reached its peak. Inevitably, this increased risk must be reflected in the deferment rate. Accordingly, the Tribunal concluded that the appropriate deferment rate to be adopted in this instance was 5.5%.

(d) Hope Value

29. Although Mr Ford argued in favour of hope value in his report (20%), Mr Buchanan contended there was none. Indeed, in his skeleton argument Mr Munro conceded that *Sportelli* was against him on this point. Nevertheless, he invited the Tribunal not to follow the decision of the Lands Tribunal in that case where hope value had been disallowed on the basis that it had decided the point incorrectly. It is not necessary to set out the arguments advanced by Mr Munro in his skeleton because he made no submissions at the hearing and was mindful that the issue was shortly to be considered on appeal by the Court of Appeal. As at the date of this Decision, the Court of Appeal has heard the appeal but its judgement has not been handed down as yet. In the circumstances, the Tribunal accepted the submission made by Mr Jeffries that it was bound by the decision in *Sportelli* on this point and it disregarded hope value in reaching its valuation for the same reasons set out by the Lands Tribunal in that case.
30. The Tribunal, therefore, determined that the premium to be paid by the Respondents for the grant of the new lease was **£819,600**. The Tribunal's valuation is annexed to this Decision.

Dated the 11 day of October 2007

CHAIRMAN..... *J. Mohabir*

Mr I Mohabir LLB (Hons) 

Flat 3, 3 Cadogan Square London SW1

Valuation Date 11 October 2006

Lease 58.5 years (less 10 days) from 29 September 1965 @ £350 pa.

Diminution in value of Landlord's Interest

Value of Landlord's present Interest

Ground rent receivable	£350	
YP 16.42 years @ 5.5%	10.6338	£3,722

Reversion to:

Virtual freehold value with vacant possession	1,757,000	
Deferred 16.42 years @ 5.5%	0.41514	<u>729,401</u>
		733,123

less

Value of Landlord's proposed interest	1,757,000	
Deferred 106.42 years @ 5.5%	0.0033533	<u>5,892</u>
		727,231

Calculation of Marriage Value

Landlord's proposed interest	5,892	
Tenant's proposed interest	<u>1,722,000</u>	1,727,892

less

Value of landlord's existing interest	733,123	
Tenant's existing interest	<u>810,000</u>	<u>1,543,123</u>
Marriage Value		184,769

Split 50:50		92,384
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Premium payable		819,616
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say		£819,600
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