

London Leasehold Valuation Tribunal File Ref No.

LON/00AP/OLR/2008/0548

Leasehold Valuation Tribunal: reasons**Leasehold Reform, Housing and Urban Development Act 1993 section 42**

Address of Premises

The Committee members were

45B Hampden Road,
London N8 0HXMr Adrian Jack
Mr Frank W James FRICS**The Landlord: Wonderful Ltd****The Tenant: Russell Sessford****Introductory**

1. The tenant applies for the determination of the price payable by him to extend his lease of the subject property. The parties' respective solicitors had agreed the terms of the grant to be made.

Hearing

2. The Tribunal held a hearing on 17th September 2008. The respective surveyors for the parties, Mr David Cooper MRICS for the landlord, and Mr Christopher Stone for the tenant, gave evidence and spoke on their client's behalves. We deal with their evidence below.

Points of agreement and disagreement

3. The surveyors for the parties agreed the following issues:
 - a. the valuation date was 24th September 2007;
 - b. the lease was for 99 years from 25th March 1987,
 - c. the unexpired term as at the date of valuation was 78.5 years,
 - d. the capitalisation rate was 7.5 per cent, and
 - e. the deferment rate was 5 per cent.
4. The following points were not agreed:

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the valuation date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).

(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

(6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—

(a) any transaction which—

(i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and

(ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or

(b) any alteration on or after that date of the terms on which any such superior interest is held.

4. (1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent of that amount.

(2) ...the marriage value is the difference between the following amounts, namely—

(a) the aggregate of—

(i) the value of the interest of the tenant under his existing lease, (ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and

(iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and

- (b) the aggregate of—
- (i) the value of the interest to be held by the tenant under the new lease,
 - (ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and
 - (iii) the values of all intermediate leasehold interests (if any) once that lease is granted."

Paragraphs 4A and 4B of the Schedule make further presumptions, but it is unnecessary to refer to these for the purpose of this decision.

Inspection

6. The Tribunal inspected the property on the day after the hearing: We also inspected the outside of the comparables relied upon.
7. The subject flat is on the second floor of a converted house, probably dating from the late nineteenth century. The front door had a hole kicked in it and the common parts were generally poorly kept. The stairs from the communal hallway go up to the first floor where the front doors to the subject flat and the flat on the second floor are to be found. The front door to the subject flat opens onto a corridor which goes through to the back of the flat.
8. At the front of the flat is a moderately sized living room with fairly new PVC windows in the bay. The ceiling over the bay showed signs of water ingress. Behind the living room was a bathroom/WC and a galley kitchen. The kitchen has new units installed. Further behind the kitchen, but set in from the kitchen, was a single bedroom currently used as a study. At the very back of the flat was a double bedroom with a bay window overlooking a garden of about 40 feet.
9. The bay window was showing signs of movement. On the right, from the window sill down to the floor there was cracking, at its worst of about a quarter of an inch. There was some cracking on the left, but not as bad.
10. We were unable to inspect the outside of the property at the back and thus were unable to see whether the cracking went through the brickwork. The adjacent terrace property appeared to be suffering from the same problem and the cracking there was visible from outside. We concluded that the cracking in the subject flat probably did go through to the outside.
11. We were less sure of the cause of the cracking. There was clearly some movement in the bay, but whether this was caused by subsidence or merely a weakness in the bonding of the bay to the back wall was unclear in the absence of access to the downstairs flat and the garden.

Valuation

12. Mr Stone gave evidence that the value of the existing lease at the valuation date was £242,500, whereas Mr Cooper gave a valuation of £285,000. Each expert cited comparables in support of his respective valuation. Both experts agreed there were no relevant tenant's improvements.
13. The most relevant comparable was the sale of 45B Hampden Road itself. This completed on 24th September 2008, just days before the service of the tenant's initial notice on 27th September 2008 (the agreed valuation date). The tenant had purchased the flat for £245,000. It was common ground that this was an arm's length transaction.
14. Mr Stone reduced his valuation by one per cent to reflect the tenant's rights under the 1993 Act, so as to give his figure of £242,500.
15. Mr Cooper said that the property was suffering from subsidence which was known at the time of the purchase and that this depressed the price. In his report he wrote that "it is my opinion that the sale price of £245,000 reflected the known subsidence and that the price without subsidence would have been £285,000." He too deducted one per cent from that figure to reflect a "No Act" world, so as to give a value of £282,150.
16. The other very relevant comparable was the sale of the existing lease of the ground floor flat, 45A Hampden Road, at a price of £285,000 with completion in December 2007. This property had the same footprint as the upstairs flat, save that the front living room was reduced by the width of the communal hallway. The property had the benefit of a 40 foot garden at the back. Mr Stone gave evidence that there had been no evidence of subsidence in this ground floor flat at the time of the purchase.
17. The other comparables relied on were: 105B Hewitt Road, N8 0BP; another unidentified flat in Hewitt Road; 66B Cavendish Rd N4 1RS; 80A Beresford Rd N8 0AH; 202 Wightman Rd N8 0BU; and 97 Mattison Rd N4 1BQ.
18. This area of Harringay is colloquially known as "the Ladder", because the roads running east-west between Green Lanes and Wightman Rd look like a ladder on the map. Mr Stone said that property prices reduced as one went north from Cavendish Rd up to Hampden Rd, whereas Mr Cooper said the opposite.
19. The Tribunal did not find it necessary to resolve this issue, in the light of the availability of the two Hampden Rd comparables. We did look at all the other comparables from the outside. They all seemed very similar to the subject property. The prices tended to support Mr Stone's valuation

rather than Mr Cooper's, however, in view of our reliance of Hampden Rd, we considered this merely as corroboration.

20. The main difference between the upstairs and the downstairs flat at Hampden Rd was that the downstairs flat had use of the garden. Mr Stone said that the value of a garden in the area might be between £20,000 and £40,000, with £30,000 as perhaps the best estimate for this particular garden. Mr Cooper said that £12,000 to £15,000 was more likely and the increase in the value of the ground floor flat was offset by the greater size of the upstairs flat.
21. We preferred the evidence of Mr Stone on this. A mature garden of the type in question here is a major benefit to a flat owner and is likely to appeal particularly to a wider family market. In consequence it is likely to increase the value of a property by much more than the five per cent Mr Cooper was willing to credit.
22. In our judgment too, Mr Cooper fell into error in valuing the upstairs flat on the basis "the price without subsidence". The Tribunal's duty to assess the value on an "as is" basis at the date of valuation. Since the property had subsidence damage on that date, the valuation has to proceed on that basis.
23. Both the experts were agreed that the effect of subsidence on a sale price can be much more than the (possibly modest) cost of repair. In particular the mere existence of historic subsidence may cause insurers to be chary of insuring the building.
24. Accordingly we find that the purchase price of £245,000 paid three days before the valuation date represents the value of the leasehold interest then existing. Both valuers were agreed that there needed to be a one per cent deduction to reflect the "No Act" world. We therefore fix the value of the lease at the valuation date at £242,500.

Relativity

25. Mr Stone gave evidence that on a 78.5 year lease in this part of London a relativity of 96 per cent was appropriate. Mr Cooper argued in favour of 94.5 per cent.
26. Mr Stone relied on seven settlements which he or his firm had reached in the previous year with the other side. With one exception, the terms varied from 75 years to 77.7 years and relativities agreed were between 94.15 and 95.2. The exception was a property at 34 Wimbourne Drive NW9 where on a lease with 78.25 years remaining he agreed a relativity of

97.03. He said, however, that the landlord in that case was very keen to sell, so that the settlement was slightly unusual.

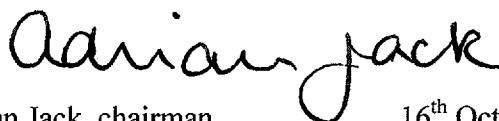
27. Mr Stone's evidence was that in this part of London mortgagability at the time only started to become an issue when a lease reached 70 years. (Since the credit crunch, he said mortgagees were starting to insist on 80 years remaining on leases, but that this was not the case in September 2007.) A lease, such as the present lease, with 78.5 years to run would have a narrower relativity than the 94 to 95 of the slightly shorter leases
28. Mr Cooper's evidence on relativities was solely the figures reached in two decisions of the Leasehold Valuation Tribunal: 2A Eccles Road, SW1 (LON/NL/3824/05), where a 94 per cent relativity was determined on a 78 year lease; and 12 Chester Rd, Tottenham N17 (LON/ENF/2055/06) where a 95 per cent relativity was determined on a 79 year lease. Mr Cooper did not produce copies of the determinations, so we do not know what evidence was placed before the Tribunals in those cases.
29. In any event, the evidence of other Tribunal decisions on matters of fact is of little or no weight, because each Tribunal has to make a determination on the evidence adduced to it. Other decisions can sometimes provide a useful check, so as to ensure that no relevant factors have been overlooked, but cannot in our judgment replace the task of determining issues on the evidence. The Eccles Rd decision in any event was in Central London and the valuers were both agreed that Central London was a different market to outer London, because in Central London even very short leases were saleable.
30. Again the Tribunal prefers the evidence of Mr Stone. It considers that 96 per cent was the proper figure for relativity.

Our decision

31. We attach as appendix A our calculation of the premium payable.

DECISION

The Tribunal accordingly determines that the premium payable for a new lease of 45B Hampden Road, London N8 0HX is £7,064.



Adrian Jack, chairman

16th October 2008

Leasehold Reform, Housing and Urban Development Act 1993

45B Hampden Road London N8

Valuation

Base Facts

Valuation Date	24 September 2007 (Agreed)
Lease	99 Years from 25 March 1987 (Agreed)
Expiry Date	24 March 2086 (Agreed)
Ground Rent	£75.00pa Fixed (Agreed)
Deferment Rate	5% (Agreed)
Yield	7.5% (Agreed)
Improvements	None (Agreed)
Freehold Value	£252604.00 (LVT Decision)
Extended Lease Value	£250078.00 (LVT Decision)
Existing Lease Value	£242500.00 (LVT Decision)

Diminution of Freehold Value

	£	£	£	£
Ground Rent	75.00pa			
YP for 78.5 yrs @7.7%	<u>13,288</u>			
		997.00		
Reversion to	252604.00			
PV of £1 in 78.9 yrs @5%	<u>0.021709</u>			
		<u>5484.00</u>		
			6481.00	

Marriage Value

Value of extended lease		250078.00		
Value Landlords fresh interest	252604.00			
PV of £1 in 168.5 yrs	<u>0.000269</u>			
		<u>68.00</u>		
		250146.00		
<u>Less</u>				
Value of Existing Lease	242500.00			
Value Freeholders Interest	<u>6481.00</u>			
		<u>248981.00</u>		
Marriage Value		1165.00		
50%			<u>583.00</u>	
Total			7064.00	