

2536



HM Courts
& Tribunals
Service



LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993**

Case Reference: LON/00BK/OLR/2012/0233

Premises: 26 Cavendish Buildings, Gilbert Street,
London W1K 5HJ

Applicants: Melvyn Markus

Represented by: Batchelor Myddleton Solicitors

Respondents: Grosvenor West End Properties
Mountview Estates Plc (Intermediate Landlord)

Represented by: Mr J Fieldsend, counsel
Instructed by Winckworth Sherwood LLP
Solicitors

Leasehold Valuation Tribunal: Ms F Dickie, Chairman
Mr L Jarero BSc FRICS

Date of Hearing: 29 May 2012

Date of Inspection: 29 May 2012

Date of determination: 11 July 2012

Summary of Decision

1. The Tribunal determines the extended lease value for the subject premises is £988,000.

Preliminary

2. Application has been made under s.48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for an extended lease of the subject premises ("the premises"). Those

premises are the property known as 26 Cavendish Buildings, Gilbert Street, London W1K 5HJ, being a self contained purpose built raised ground floor flat comprising reception room, 3 bedrooms, bathroom and kitchen. The agreed gross internal area is 988ft².

3. The Applicant is the current holder of the following lease:
 - Land Registry Title no. NGL 555253
 - Date, Term 65 years (less 3 days) from 25 December 1985 expiring 21 December 2050
 - Rent £65 per annum to 24 March 2006 rising to £130 per annum until 25 March 2027 and to £195 per annum for the residue of the term.
4. There are a number of intermediate leases. The immediately superior interest is a lease in respect of the whole building for a term of 65 years from 25 December 1985, vested in Cavendish Building Ltd. (a company owned by the flat owners). Immediately superior to that lease is a lease in respect of the whole building for a term of 131.25 years from 29 September 1979 vested in Mountview Estates PLC at a rising ground rent. Immediately superior to that lease is the head lease of the whole building for a term of 185 years from 29 September 1979, vested in Grosvenor West End Properties at a peppercorn rent and granted by the freeholder Grosvenor (Mayfair) Estate. The reversion under this head lessee being fairly distant, the head lessee receives only a small proportion of the premium and has not taken part in these proceedings.
5. Cavendish Buildings is in the City of Westminster at Bond Street tube station on the south side of Oxford Street. It is located on the corner of Gilbert Street and Weighouse Street. The West One Shopping Centre is at the rear. One of the entrances to Bond Street Underground Station is incorporated into the Block, which was purpose built about 125 years ago. There are 47 flats on basement, raised ground floor and 4 upper floors. Flat 26 is on the raised ground floor, facing Gilbert Street and a rear lightwell. The subject premises comprise entrance hall, reception room, 3 bedrooms, kitchen and bathroom. The GIA is 988 ft². There are no parking facilities with the subject premises.
6. A Notice of Claim under section 42 of the Act was served by the Applicant on 15 June 2011 (the valuation date). A counter notice was served by on behalf of Grosvenor West End Properties, Mountview Estates PLC and Cavendish Buildings Ltd. 22 August 2011 admitting the tenant's right to acquire a new lease of the premises. There was no agreement as to the premiums payable. The unexpired term of the lease on the valuation date was 39.52 years.
7. Notice of separate representation was given by the Intermediate Landlord on 5 September 2011. By an application to the Leasehold Valuation Tribunal dated 13 February 2012 the Applicant sought a determination under s.48 of the Act. The tribunal issued directions on 7 March 2012.
8. The tribunal carried out an inspection on 29 May 2012 of the building and the interior of the premises. The comparable flats in the building were not available for inspection internally.

The Hearing

9. At the hearing on 29 May 2012, the parties' valuers gave expert evidence: Mr C Stone of Prickett & Ellis for the Applicant and Ms J Ellis, FRICS of Langley-Taylor for Mountview Estates PLC. Mr Stone also acted as advocate for his client.
10. Mr Stone contended that an appropriate premium for an extension of 90 years in accordance with the terms of the Act was reached by using an extended lease value for the subject premises of £830,000. Ms Ellis was at £1,085,000. Both valuers gave evidence in support of their respective valuations and written reports.
11. The experts were in agreement as to a number of matters, including relativities, deferment rates and the absence of tenant's improvements affecting value at the valuation date. The terms of the new lease were not in issue. The single outstanding matter in dispute was the vacant possession value of the premises held on the extended lease. Ms Ellis and Mr Stone had agreed on the five following comparable sales, all of flats within the subject building, and that adjustments for time should be made using Savills' index for Prime Central London.

Flat	Floor	Aspect	Beds	GIA	Sale Price (£000)	Sale Date	Term at sale (yrs)	£ Price adj to June 2011
47	4	Weight St	1	453	410	23/3/12	38.8	389,290
44	4	Gilbert St	1	489	300	5/5/11	39.63	304,800
23	LG	Gilbert St	3	980	770	29/5/11	129.73	794,600
29	1	Gilbert St	1	489	362	7/5/10	40.62	405,600
33	2	Corner	2	578	480	16/3/10	40.77	539,450

12. Flat 23 is directly below the subject premises, is more or less then same size, also has no outside space, and is the only flat in the block to have been sold on a long lease. It is a basement flat approached by going down stairs from the entrance hall. The experts had been the valuers instructed in relation to the lease extension for that flat prior to its sale in May 2011, and did not identify any tenant's improvements having a value on the premium. The experts disputed the size of the adjustment that should be made on account of the floor level. The experts also agreed that the sale of Flat 44 appeared to be an aberration, off market and unsafe to rely upon.

Applicant's Case

13. Mr Stone considered it best to rely upon comparable sales which occurred immediately prior to the valuation date. He said there was little difference in value between the floors but quite few adjustments to be made for time, area and length of lease between the upper, smaller, flats and the subject premises. He tended therefore to place his emphasis on Flat 23 as comparable.
14. He made modest adjustments to the sale of Flat 23, observing that the lower ground floor level is no more than one metre below outside ground level, giving significantly better daylight and aspect than is achieved in most lower ground floor flats. He did not think Flat 23 would be noisier or dirtier than the subject premises by virtue of its basement position, except for the possibility of rubbish collecting in the well, and noted it was set well back from the pavement. He also considered there was no significant difference to the aspect to the rear of flats 23 and 26 since both looked out on a blank wall. He argued for an extended lease value of £830,000. This represented an uplift of £30 per square foot from Flat 23.

Respondent's Case

15. Ms Ellis was of the opinion that a discount of 20% was a minimum to obtain a basement value and a total of at least 30% should be added to the price achieved for Flat 23 in the present case. The windows are at pavement level so occupants would see the feet of people walking by, and some windows are obstructed by steps down to the front area. At the rear the windows of Flat 23 are obstructed by the rear boundary wall and it therefore had no views. Flat 23, however, is on the raised ground floor and its front door opens off the entrance hall. There are no light or pavement issues at the front. At the rear the natural light is better because the top of the rear boundary wall is only just above the head of the ground floor windows.
16. Ms Ellis considered it unsafe to rely on a single comparable sale, and so analysed the sales of Flats 29, 33 and 47 though they were smaller. She said there was little evidence of a premium on smaller flats in this block. She made no adjustment for the absence of a lift, as she was surprised to note that there was no evidence of this having an effect on value in this block. The remaining 3 flats (between the 1st and 4th floors) gave an average of £874 per ft² for a lease of 39-40 years, which she considered was within a comfortable valuation tolerance of her adjusted figure for Flat 23. Adjusting for time and approximately averaging the resulting figure with that derived from the sale of Flat 23, Ms Ellis arrived at an extended lease value of £1,085,000.

Tribunal's Determination

17. The parties invited the tribunal simply to determine the extended lease value in order to enable them to calculate the full valuation. Neither expert produced evidence in support of their judgement as to the appropriate adjustment to Flat 23. Since there was such disparity between them it was for the tribunal to determine the matter. Having inspected the premises including the stairwell at all levels in the building, the tribunal adopts the following approach used its judgement and professional knowledge to arrive at its decision

18. The subject premises have no view and restricted light from the rear rooms (kitchen, bathroom, one bedroom and entrance hall). The kitchen is of ample size, accommodating a dining table, but the appeal of this arrangement is substantially diminished by the absence of view.
19. Largely the same disadvantage would affect Flat 23 at the rear, though the natural light will be even more restricted. Nevertheless, the tribunal was clear that in comparing Flats 23 and 26 one is not comparing a flat with all of the disadvantages of a basement position to one with none. The rear of Flat 26 suffers from similar disadvantages and the front of Flat 23 is not at deep basement level. The tribunal in the circumstances considered that an adjustment of 15% on the sale price of Flat 23 was appropriate:

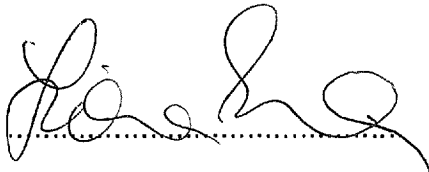
Flat 23	£811 psf
15%	£932.65, say £933

20. However, recognising that it is undesirable to rely on a single comparable where others are available, the tribunal also considered it appropriate to analyse the sales of the smaller Flats 29, 33 and 47 at higher levels. Neither expert adjusted for floor height between the 1-4th floor and the subject premises. However, on inspection the tribunal observed that the rear wall represents a significant disability to the rear rooms in the basement and raised ground floor flats which does not affect those at higher level. These are not the principal rooms (other than the kitchen), and the tribunal considers the appropriate adjustment is 7.5%: half of the adjustment between Flat 23 and 26:

Upper flats	£1153 psf
7.5% for	£1066.52, say £1067

21. There is insufficient evidence of a premium on smaller flats in this block. The tribunal considered it appropriate to take the average of £933 and £1067, being £1000 psf, as representing in the opinion of the tribunal the appropriate valuation of the extended lease of the subject premises when multiplied by its area of 988 sq ft.

Signed



Ms F. Dickie, Chairman

Dated 11 July 2012