



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

Case Reference : LON/OOAW/OLR/2013/1422

Property : Flat A, 11 Tite Street, London SW3 4JR

Applicant : Ms J Brown (tenant)

Representative : Mr Smith of Counsel

First Respondent : Cadogan Holdings Ltd and Earl Cadogan

Representative: Mr Buckbitt of Counsel

Second Respondent : Borodex Limited

Representative : Mr Fieldsend of Counsel

Type of Application : **For the determination of the premium payable under section 48**

Tribunal Members : Mrs Sonya O'Sullivan
Mr W.R Shaw FRICS

Date and Venue of Hearing : **6 and 7 May 2014 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **27 August 2014**

DECISION

Background

Property:	A ground and lower ground floor flat known as 11A Tite Street, London SW3 4JR
Date of tenant's notice:	26 June 2013
Date of landlord's counter-notice:	28 August 2013
Valuation date:	Agreed at 26 June 2013
Details of tenant's leasehold interest -	
(i) Date of lease :	17 December 1981
(ii) Expiry of lease:	19 March 2043
(iii) Ground rent: 29.09.21	£510 per annum doubling on
(iv) Unexpired term at valuation date:	29.73 years
Tenant's proposed premium:	£433,116
Landlord's proposed premium:	£570,164

Inspection

1. The tribunal inspected the property known as 11A Tite Street, London SW3 4JR (the "Flat") on 7 May 2014.
2. The subject property comprises a ground and lower ground floor flat within a converted building. It is broadly divided between ground and lower ground. It comprises two bedrooms, two bathrooms, one reception room and a kitchen. It also has a small patio and storeroom. It has recently been extensively refurbished.

The hearing

- 1) At the commencement of the hearing Counsel for the parties confirmed that the only matters in dispute between the parties were the relativity to be adopted and the valuation of the freehold in possession.
- 2) It was also indicated that there was an issue in relation to the plan to be attached to the new lease. The parties were hopeful of agreeing the plan without the tribunal's assistance. Directions were therefore made to allow the parties time to agree that plan failing which a hearing would be held on 13 August 2014. It was confirmed in later correspondence that the plan had been agreed.
- 3) The freehold interest in the flat is held by the First Respondent. There is a single lease of the premises including the Flat, intermediate between the current lease and the freehold interest. This lease is held by the Second Respondent. The contractual term of the Intermediate Lease expires on 28.9.83. Pursuant to section 40(1) however the First Respondent is the "landlord" for the purposes of the claim. However on 10 September 2013 the Second Respondent served notice under paragraph 7 of Schedule 11 to the Act including an intention to be separately represented in any legal proceedings relating to the determination of any amount payable to it by virtue of Schedule 13 to the 1993 Act.
- 4) Both parties relied on expert evidence. The Applicant relied upon a report of Mr Hollamby. The First Respondent relied upon a report by Mr Jones and the Second Respondent on a report and supplemental by Ms Ellis. Ms Ellis attended the hearing to present her case and give evidence. Neither Mr Hollamby nor Mr Jones attended the hearing. The Applicant also relied on a witness statement of Mr Money, her partner, who appeared and gave evidence.

- 5) At the commencement of the hearing Counsel for the Second Respondent sought permission to rely on a supplemental report of Ms Ellis which had been served earlier that morning. This consisted of an analysis of three of the comparables relied upon by Mr Hollamby which had been received late the previous week. Counsel for the Applicant opposed the admission of the report as it was served so late. The tribunal allowed the admission of the report as it did not consider the Applicant would be prejudiced given it dealt only with an analysis of comparables contained in the Applicant's own report and that in any event should it be necessary the tribunal would consider a short adjournment to allow the Applicant to take further instructions. In the event no such adjournment was requested or proved necessary.

- 6) The evidence heard and the Tribunal's decision is set out below. What follows is necessarily a summary of the evidence, the majority being in any event contained in the bundle before the parties.

The Estimated Value of the Freehold in possession

- 7) There was some dispute as to the valuation approach to be adopted.

- 8) The Applicant relied on the evidence of Mr Hollamby and the witness statement of Mr Money. Mr Hollamby suggested that the price paid for the Flat was not relevant in this case as the Claimant had overpaid. The tribunal was therefore invited to disregard the sale of the Flat. It is also said that the Applicant was prepared to pay more for the Flat because of personal preferences. Evidence in this regard was given by Mr Money, the Applicant's partner and a local estate agent. His evidence was that the Flat was close to his offices, he has a long association with Tite Street and wished to have a dog for which the flat was suitable. Mr Money's evidence was that the Applicant and himself assumed the cost of extending the lease would be £411,000. A second assumption was that it

would be possible to obtain 250 sq ft of neighboring space at a very substantial discount on the assumption that a collective enfranchisement of 11 Tite Street would prove possible. Unfortunately the Applicant did not investigate this possibility before the purchase and had she done so she would have discovered that there were only two tenants at 11 Tite Street who would potentially join the claim and neither would do so. Accordingly it was submitted for the Applicant that there was no realistic possibility of acquiring this space and a prudent and knowledgeable purchaser would have been aware of that and in any event the premium paid was not just for the Flat but also for the possibility of acquiring additional space on advantageous terms. Mr Hollamby arrived at the value for the Flat by analysing a number of comparables.

9) Mr Hollamby relied on the sales of three flats as follows which he says required as little adjustment as possible;

i. Flat 1, 30 Tite Street in February 2011

Mr Hollamby adjusted the price for Flat 1 for very substantially better outside space (5%) arriving at a value of £1,224 psf

ii. Flat A, 25 Tite Street in November 2011

Mr Hollamby adjusted the sale price for Flat A for inferior arrangement (5%) arriving at a value of £1,397 psf.

iii. Flat 2, 30/31 Ormond Gate in January 2013

Mr Hollamby adjusted the price for Flat 2 for a substantially better address, proportions and outside space (10%). This comparable is said to have required the smallest adjustment in respect of the date of the transaction and accordingly is said to be the best comparable. He arrives at a value for Flat 30 of £1,235 psf.

- 10) Having made these adjustments Mr Hollamby's approach was then to stand back and consider the figures reached. He considered that the price of Flat A, 25 Tite Street seemed out of line with the other two but nevertheless gave it weight in his analysis. He also had regard to two sales of ground and basement maisonettes in neighbouring roads which were sold in very good condition and would require significant adjustment for condition as well as for superior location.
- 11) Standing back and considering the comparables Mr Hollamby reached a price for the Flat of £1,300 psf which equated to a capital value of £1,621,000.
- 12) Ms Ellis for the Intermediate landlord suggested that in this case there was no need to look away from the Flat itself as the Flat had been sold with the benefit of the claim just 19 days after the valuation date. She therefore arrived at her valuation by adjusting the price paid for the subject flat rather than by reference to comparables. The sales particulars were included within the bundle and the sale price was £1.315m. It was her view that the price paid was compliant with the RICS definition of market value (RICS Valuation – Professional Standards 2014) and there can be no better evidence. As far as the suggested overpayment was concerned Ms Ellis' evidence was that she did not understand the concept of an overpayment unless it could be shown that one of the parties benefitted in some way from the value being overstated. She did not consider this was the case in this instance. She also points out that the lease has been charged and says that the mortgagee would not have accepted the lease as security if there had been an over-valuation.
- 13) Ms Ellis did accept that of all the comparables (save the Flat itself) the best comparable in her view was Flat 2, 30/31 Ormond Gate.
- 14) The approach taken by Ms Ellis was criticised by the Applicant as novel and not previously tested. It was submitted that Ms Ellis herself conceded that she was not aware her approach had ever been relied upon in tribunal proceedings previously. It was further submitted that the

approach relied on the purchaser herself assessing the value on purchase, this was deemed unreliable given the purchaser is not an expert valuer.

- 15) The facts relating to sales of certain flats had helpfully been agreed by the valuers. It was agreed that it is appropriate to make adjustments for time according to Saville's index of Capital Values for Prime Central London flats.

The Tribunal's decision - FHVP value

- 16) The tribunal first considered whether the Applicant was a special purchaser. The Applicant relied on the evidence of the Applicant's partner in this regard who had set out the particular reasons why he said the Applicant was a special purchaser. These reasons are set out above and include the proximity of the Flat to Mr Money's offices, his connection to the area and his wish to keep a dog there. We noted that there was no evidence from the Applicant herself and the considerations appeared largely to relate to Mr Money rather than the Applicant. In addition it was noted that the Applicant's expert had not argued in his report that the Applicant was a special purchaser. As he did not appear at the tribunal to give evidence we were unable to ask his view on this submission. The tribunal had regard to the RICS guidelines at paragraphs 43 to 45. In particular we noted at paragraph 43 that "*Special value is an amount that reflects particular attributes of an asset that are only of value to a special purchaser*" and at paragraph 45 where it is stated that "*Special value can arise where an asset has attributes that makes it more attractive to a particular buyer than to any other buyers in the market.*" We were not satisfied that the Applicant fell within these provisions. The reasons put forward by the Applicant could potentially apply to many prospective purchasers and indeed these are common reasons for purchase. We therefore concluded that the Applicant was not a special purchaser.

17) We went on to consider whether the Applicant had overpaid for the Flat. The Applicant's evidence was that she had paid £20,000 over the asking price. This was not in our view a significant overpayment in any event given the level of the asking price and the fact that it is not unusual to pay more than the asking price for properties in such a desirable location. We had no direct evidence from the Applicant in this regard. We considered that the issue of the potential collective enfranchisement which was not able to proceed was a red herring given that the possibility of a collective enfranchisement remains live. We concluded on the basis of the facts before us that there was no evidence that there had been any material overpayment.

18) We went on to consider the three comparables relied upon by the Applicant. We considered that the sale of Flat A, 25 Tite Street was not a good comparable given that the sale took place in 2011. This was too remote to accurately reflect what was happening in the market at the valuation date. In addition the lease in question was 72 years which we considered required too much adjustment to be reliable. As far as Flat 1, 30 Tite Street was concerned again the sale took place in March 2011 and therefore the same issues of the need for a great adjustment arose which we consider made this comparable unreliable.

19) The parties submitted that the best evidence before it was the comparable evidence of Flat 1, 30/31 Ormonde Gate. The sale of this property took place in January 2013. We noted from the cross examination of Ms Ellis that this property had taken some time to sell and we were unaware of the exchange date. We were informed that substantial alterations had been made to the flat after sale. We also note that it is now on the market once more with a price of £2050 psf although it remains unsold. With adjustment this would be a price of £1902 compared to an adjusted price of £1235 psf from the 2013 sale. We

therefore considered that we should treat this comparable with some caution.

20) Reference had also been made to the comparables of Flat A, 11 Cheyne Place and Flat 3, 5 Sloane Court. The sales of these flats had taken place in June and July 2013 respectively. Flat A, 11 Cheyne Place had been discounted as it was sold in very good condition. We agreed that this was not a good comparable. Its adjusted rate was £1657 psf. Flat 3, 5 Sloane Court East was again discounted by the parties as it had been sold in very good condition. This had an adjusted rate of £1593 psf. Mr Hollamby's evidence was that adjustment for condition required an adjustment of £400 psf. We agreed that this was not a reliable comparable given the adjustments required in respect of its location and its access to attractive communal gardens, it also had a better layout than the subject flat but was situated on a busier road.

21) Mr Hollamby had argued that we should disregard the sale of the Flat itself which was relied upon by Ms Ellis as it was said that it was wholly out of line with the comparable evidence put forward by the Applicant. However we considered that we should have regard to the sale of the subject property given that we were satisfied that there had been no overpayment and that the Applicant was not a special purchaser. It had been the subject of an open market sale only 19 days from the valuation date and is therefore in our view an ideal example for comparison purposes since no adjustments are necessary save for lease length. There is nothing to exclude us from doing so in the basis for statutory valuation set out in Schedule 13 and indeed this was the approach taken in *Nailrile Ltd v Cadogan 2008 2 E.G. L.R.* We were also referred to a more recent decision of the tribunal in *Flat 10, 101 Mount Street LON/OOBK/OLR/2013/0503*. It was suggested by the Applicant that the approach taken by Ms Ellis was novel. We agree that to fail to take into account good comparable evidence and rely solely on the sale of a subject flat would be novel. However in this case we simply had no reliable comparable evidence before us. Ideally we would have preferred to have

regard to a range of comparators of which the subject property was only one. However given the unavailability of any good comparators we concluded that we preferred the approach taken by Ms Ellis in her focus on the sale of the Flat.

22) Ms Ellis' approach in the deductions she went on to make including the professional costs and risks were also criticised by the Applicant. We were satisfied that the adjustments made by Ms Ellis were within acceptable ranges of costs and expectation.

23) We therefore adopted Ms Ellis' valuation in relation to the new extended lease and the existing lease vacant possession values.

Relativity

24) The parties disagreed on the relativity of all leasehold values to freehold.

25) The Tribunal considered that there was no helpful market evidence other than the actual sale.

26) **Extended lease value.** Ms Ellis argues for a relativity of 98.5% and relies on the decision in *Erkman V Cadogan*. She values the freehold by working from her extended lease value. She derives this from her analysis of the subject flat sale by applying an uplift relating to actual and anticipated costs for the lease extension. Mr Hollamby says that this is not compelling.

27) Mr Hollamby points out that the Savills 2003 table puts an enfranchiseable 125 year lease at 98.1% of freehold value. He submits it cannot be right that a 119 year lease with no Act rights is worth more than a 125 year lease with Act rights. It is submitted that this is cogent and logical and the tribunal is invited to agree a relativity of 98%.

28) **Existing leasehold interests.** Mr Hollamby relied on the John D Wood graph and the CEM graph and adopted 62.93% for the 29.73 year lease and 72.46% for the 40.54 year lease. Ms Ellis first values the current

lease without rights under the Act by looking at the actual price and making a reasoned deduction of £100,000. This is a relativity of 59.84% of freehold value. She places this relativity within the range for 30 year leases provided by the six RICS PCL graphs and looking at the same six graphs decided on a relativity of 68.84% for a 40 year lease. Mr Jones, for the freeholder, said in his written report that the most appropriate graph to have regard of was the John D Wood/Gerald Eve graph. In his opinion the relativity for the intermediate lease should be 66.5%.

Relativity - the tribunal's decision

29) The tribunal considered that all graphs are open to some criticism. It did not consider that reliance should solely be placed on LVT decisions and the comments made in Arrowdell.

30) The tribunal, rather than rely on graphs alone, preferred the without Act rights valuation of the existing lease by Ms Ellis and the intermediate lease valuation which therefore follows on from this. The tribunal adopted a relativity of 59.84% and 68.84% for the existing leases and Ms Ellis's relativity of the proposed lease with the freehold of 98.5%.

Summary of the Tribunal's Decision

Whilst the methodology used by Mr Hollamby is well established the tribunal cannot accept the results of the analysis of the comparables as sufficiently robust evidence in this case. We adopt the valuation of Ms Ellis and determine that the premium to be paid by the tenant on the grant of a new lease, in accordance with section 56 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 is £570,164 divided between the freeholder and headlessee as shown in the valuation prepared by Ms Ellis.

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Judge: Sonya O'Sullivan