

4294



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

Case reference : **LON/OOBK/OLR/2016/0357**

Property : **22 Grove Hall Court, Hall Road
NW8 9NR (“the flat”)**

Applicants : **Humza Shaheed Malik and Asma
Usman Malik (“the tenants”)**

Representative : **Attwells LLP, solicitors**

Respondent : **Brickfield Properties Ltd (“the
landlord”)**

Representative : **Wallace LLP, solicitors**

Type of application : **A new lease claim**

Tribunal member : **Angus Andrew
Mr I B Holdsworth BSc MSc FRICS**

**Date and Venue of
hearing** : **2 August 2016
10 Alfred Place, London WC1E 7LR**

Date of decision : **24 August 2016**

DECISION

Decision

1. The extended lease value of the flat at the agreed valuation date was £1,064,250.

The application and hearing

2. The tenants applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the price to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of the flat.
3. We heard the application on 2 August 2016. Both parties were represented by expert valuers who also gave evidence on their behalf. The tenants were represented by Mr Andrew M Lester MRICS and the landlord by Mr Eric Shapiro BSc (Est Man), FRICS, FCI Arb. Having heard the evidence we did not consider it necessary to inspect the flat or the comparable flats referred to in this decision.

Background

4. Grove Hall Court consists of three large blocks of flats built in the mid 1930s. Two similar if not identical blocks face Hall Road to the south and are separated by a private access road. The third block is to the north of the two front blocks and spans their entire length. The middle flats on the south side of the rear block have a view towards Hall Road across the access road that separates the two front blocks. Both front blocks have 9 storeys whilst the rear block has an additional 10th storey.
5. The flat is on the second floor of the front eastern block. On one side it overlooks the rear northern block and on other side it overlooks the front western block. The flat comprises one large reception room, two bedrooms, a kitchenette and bathroom/wc.
6. The tenants hold the flat under a lease granted in 1996 for a term of 99 years from 24 June 1977. The current annual ground rent is £150, which will rise to £300 on 24 June 2043 for the remainder of the term.
7. The landlord holds an overriding the lease of the front eastern block which was granted for a term of 999 years from 19 May 2011 and for the purpose of these proceedings is the competent landlord. The freehold reversion to all three blocks is owned by Daejan Investments (Grove Hall) Ltd but they played no part in the proceedings.
8. On 1 July 2015 the tenants' predecessor in title gave notice of their claim to extend the lease. On 2 September 2015 the landlord gave notice in reply

admitting the claim. On 10 July 2015 the benefit of the claim notice was assigned to the tenants and on 25 February 2016 they made their application to the tribunal.

Issues agreed and in dispute

9. The parties had agreed the following:
- a. The valuation date at 3 July 2015
 - b. An unexpired term of 60.97 years
 - c. A capitalisation rate of 6.5%
 - d. A deferment rate of 5%
 - e. The gross internal area at 965 square feet
 - f. A 1% uplift from the extended lease value to the freehold value
 - g. At the valuation date the flat was “unimproved” with no leaseholder improvements but with the repairing and decorating covenants having been met
 - h. The existing lease value at the valuation date of £872,270
 - i. The terms of the new extended lease.
10. The only issue in dispute was the extended lease value of the flat. Mr Lester on behalf of the tenant contended for an extended lease value of £976,368 and a freehold vacant possession value of £986,230. Mr Shapiro on behalf of the landlord contended for an extended lease value of £1,127,237, which is equivalent to a freehold vacant possession value of £1,138,623 at the agreed uplift of 1%.

Mr Lester’s approach

11. Mr Lester relied on 9 sales of flats within Grove Hall Court all within 18 months of the valuation date. These were the sales of flats 9, 40 102, 112, 170 (twice), 177 (twice) and 186. He then adjusted the sales prices for time using the Land Registry Index for flat sales in the City of Westminster. He then adjusted for condition to reflect the agreed “unimproved” condition of the flat. He reduced the sale prices of those flats that were in reasonable condition by 2.5% and the sale prices of those flats that had been refurbished by 5%.
12. He then adjusted to the freehold vacant possession value by using the opinion given by the Upper Tribunal in *Earl Cadogan v Erkman* [2011] UKUT 90(LC). For example he assumed a relativity of 98% for those leases with unexpired terms of between 100 and 114 years. Mr Lester then converted the adjusted sales prices to a price per square foot (“£psf”). He then made a number of further adjustments to the £psf for floor, aspect or view and roof terrace. It was difficult to identify the individual adjustments because he had compounded them. In answer to questions from Mr Shapiro and ourselves he said that he had made a deduction of 2.50% to the £psf of those flats on the 5th floor and above to reflect a better view and increased brightness. He made a further 2.5% adjustment to those flats with a southerly aspect because “*they would be lighter internally*”. Finally

he made downward adjustments of 2.5% to those flats that have the benefit of a roof terrace.

13. Having considered these finally adjusted £psf he discounted the highest and lowest figures being the sale of flat 40 and the first sale of flat 170. An average of the remaining seven adjusted sale prices produced 1,022 £psf that Mr Lester then applied to the agreed area of 965 square feet to produce a freehold value of £986,230 that in turn gave an adjusted extended lease value of £976,368.

Mr Shapiro's approach

14. Mr Shapiro relied on only 4 comparable sales although all of them had also been relied upon by Mr Lester. They were the sales of flat 9, 40, 102 and the second sale of flat 170. He then immediately converted the sale prices to £psf and adjusted for time using the Savills Prime North West Flats Index. He made a downward adjustment of 5% to flat 102 to reflect its location on the 7th floor of the rear block. He then made a condition adjustment that was based on his assessment of the increase in the value of the comparable flats resulting from their improved condition. Thus he considered that the price of flat 9 should be discounted by £10,000, the price of flat 40 by £12,500, the price of flat 102 by £40,000 and the price of 170 by £25,000. These price reductions were then converted to a £psf that was then deducted from the previously adjusted £psf. An average of the finally adjusted figures gave 1,168.12 £psf that equated to an extended lease value of £1,127,237.

Reasons for our decisions

Indexation for time adjustments

15. The choice is between the Land Registry Index for flat sales in the City of Westminster and Savills' Prime North West Flats Index. The Land Registry Index records lower increases in flat prices, at the valuation date, than the Savills Index and was largely responsible for Mr Lester's lower valuation.
16. The Land Registry Index is based on actual sale prices for flats within the City of Westminster in any particular month. The basis for the Savills Index is more problematical and it is unfortunate that Mr Shapiro was unable to produce any clear evidence of the methodology underpinning the index. He told us that it was based on periodic valuations by a number of valuers of a basket of flats within Prime North West London. He could not however say how many flats are in the basket, who the valuers are or how the valuations are undertaken.
17. Mr Shapiro emphasised that the flat is in a prime area, being in St John's Wood. As the Savills index relates to prime areas Mr Shapiro said that it is to be preferred because even within the City of Westminster there are pockets that could not be describe as prime areas.

18. In answer to our questions we were told that the Savills Index covers "*Highgate, Hampstead, Primrose Hill, St Johns Wood, Belsize Park and Regents Park*". That is also a large area and from our extensive knowledge of North London it equally contains pockets that would not generally be regarded as prime areas.
19. We accept that in prime Central London it is generally common practice to use the Savills Indices for time adjustments much as it is common practice to use the Gerald Eve graph when assessing relativity (that was not in dispute in this case). Although St John's Wood is certainly a prime area it is not within prime Central London and we do not accept that outside prime Central London there is a convention that the Savills graphs should be used for time adjustments. Indeed our experience of similar cases is that outside prime Central London the Land Registry Indices are increasingly being accepted as the standard for time adjustments.
20. It is also appropriate to have regard to the flat itself. Although it is certainly within a prime area it cannot be said to be a prime property and the sales prices of flats within Grove Hall Court are very close to the average of sales prices for flats within the City of Westminster.
21. Finally it is appropriate to have regard to our own experience as an expert tribunal and our recollection is that the market within Inner London, at the time of the valuation date, with generally flat and more consistent with the Land Registry Index.
22. Essentially the Land Registry Index is based on evidence whilst the Savills Index is based on opinion. Consequently and for each of the above reasons we prefer to use an index based on achieved sale prices during the relevant periods and we adopt the Land Registry Index in adjusting for time.

Choice of comparables

23. We reject the two sales of flat 177 because it is a one bedroom flat. The market for studio and one bedroom flats is markedly different to that for two or three bedroom flats and it would not be safe to rely on the sale of a one bedroom flat when valuing a two or three bedroom flat.
24. We also discount both sales of flat 170. That flat was sold on two occasions within 18 months of the valuation date. It was sold for £750,000 on 21 May 2015 and for £1,080,000 on 23 June 2016 after the completion of what appear to be minimal improvements. Mr Shapiro accepted that the improvements could not account for the price differential and he chose to disregard the first sale. In reality the unexplained price differential calls both sales into question. Certainly it seems that one of the sales cannot have been at a market value. In such circumstances the only safe approach is to discount both sales.
25. Of the remaining five comparable sales four were effectively agreed by both valuers. That is the sales of flats 9, 40, 102 and 186. Although Mr Shapiro had not, in his report, relied on the sale of flat 186 he accepted at the

hearing that it was a good comparable. It will be recalled that Mr Lester ultimately rejected the sale of flat 40 only because it was one of the two outliers, the other being the first sale of flat 170. Having rejected both sales of flat 170 we see no reason to reject the sale of flat 40 simply on the grounds that it gives a higher £psf than the other four comparables.

26. The one comparable that was in dispute was the sale of flat 112. In answer to our questions Mr Shapiro said that he rejected that flat because it was on the south side of the rear block. He considered that none of the flats on the south side of the rear block should be used as comparables because they overlook a new development that either has or will shortly be completed. We were told however that this development consists of a number of four storey town houses and although Mr Shapiro may consider them unsightly we find it inherently unlikely that the development would depress the sale prices of the flats on the south side of the main rear block. Indeed many prospective buyers might prefer to overlook a development of town houses rather than a main road or a nine or ten storey block of flats.

Adjustment for lease length

27. Mr Shapiro had effectively assumed that that the relativity for all long leases was 1%. Thus in valuing the freehold vacant possession value he had not differentiated between the sale price of flat 186 that has an unexpired term of 112 years and the sale prices of his other comparables flats that have unexpired terms of 150 or more years. Having regard to the Upper Tribunal's opinion in *Erkman* we prefer Mr Lester's approach and we have used his relativity of 1.5% to ascertain the freehold vacant possession value of flat 186.

Other adjustments

28. In terms of the other adjustments we found the evidence of Mr Lester more persuasive. Mr Shapiro's condition adjustments appeared to reflect the cost of the improvements rather than the resulting increase in value of the flats. Certainly there was no evidence to support the sales price adjustments of between £10,000 and £40,000 to which he spoke. We agree with Mr Lester that in the absence of concrete evidence (such as a reliable second sale of an improved flat) it is preferable to deal with condition adjustments by applying a percentage rather than a fixed price reduction.
29. Equally we were surprised by Mr Shapiro's failure to make a downward adjustment to the sales prices of flats 9, 40 and 112 to reflect their location on the 5th, 6th and 7th floors. We agree with Mr Lester that flats on the higher floors would command higher prices because they have better views and, as he put it, they would generally be brighter. Equally we accept his downward adjustment to the sales prices of flats 102 and 186 that are respectively south and south west facing and have more open aspects than the other flats in the block.

30. Finally we agree with Mr Lester that the roof terrace to flat 186 warrants a significant downward adjustment to the sale price of that flat. It is a considerable advantage and his downward adjustment of 2.5% appears extremely modest.

Conclusions

31. A schedule is attached that shows the outcomes from our analysis of the selected basket of comparable sales transactions. The adjusted sale prices gives an average of 1,114 £psf that, when applied to the agreed gross internal area of 965 square feet, gives a freehold vacant possession value of £1,075,000 and an extended lease value at the valuation date of £1,064,250.

Name: Angus Andrew

Date: 24 August 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

22 Grove Hall Court Road, London NW8 9NR						
Analysis of Long Leasehold sales						
Valuation Date: 3rd July 2015						
Address	Floor	Sale Price (£)	Purchase Date	Sq.ft	Sale Price after indexation	Value £/sq ft after all other adjustments
Subject property						
22 Grove Hall Court Road	2			965		
Long leasehold sales						
112 Grove Hall Court Road	6	£630,000	31/01/2014	678	£720,393	1,020
40 Grove Hall Court Road	7	£1,175,000	14/03/2014	982	£1,304,762	1,243
9 Grove Hall Court Road	5	£1,025,000	17/03/2014	1004	£1,138,196	1,088
186 Grove Hall Court Road	1	£1,000,000	17/06/2015	913	£1,012,454	1,071
102 Grove Hall Court Road	7	£1,175,000	19/01/2016	877	£1,101,405	1,149
			Average £/sq.ft			1,114
			FHVP value			£1,075,000
			Long Leasehold value			£1,064,250