

4409



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

Case Reference : LON/OOAW/OLR/2016/1417

Property : Flat D, 9 Holland Road, Holland Park, London W4 8HJ

Applicant : Nicholas Kullman and Galina Kullman

Representative : Mr M Feldman – Counsel instructed by BTMK Solicitors
Mr Wilson Dunsin FRICS Chartered Surveyor of Dunsin Surveyors

Respondent : Caroline Ann Mason (nee Norris)

Representative : Hodders Law
Mr A M Lester MRICS of AML Surveyors and Valuation Limited

Type of Application : Application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993

Tribunal Members : Tribunal Judge Dutton
Mr M Martindale FRICS

Date and venue of Hearing : 10 Alfred Place, London WC1E 7LR on 25th January 2017 and 28th February 2017

Date of Decision : 7th March 2017

DECISION

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DECISION

The Tribunal determines that the premium payable for the leasehold extension is £38,517 as set out on the attached valuation sheet.

BACKGROUND

1. On 5th January 2016 the Applicants Nicholas Michael Gustav Kullman and Galina Vladlenova Kullman (Applicants) served on the Respondent Caroline Ann Mason nee Norris, a notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The notice related to the Applicants' property at Flat D, 9 Holland Road, Holland Park, London W4 8HJ (the Property). The notice proposed a new lease with a premium of £15,000. A counter notice was sent to the Applicants by the Respondent's solicitors dated 3rd March 2016 in which the Applicants' right to a lease extension was acknowledged but the premium proposed was £62,584. Agreement could not be reached on the premium and an application was therefore lodged with the Tribunal dated 24th August 2016. The matter came before us for hearing on 25th January 2017.
2. Prior to the hearing we were provided with two bundles of documents. The first contained what can perhaps be loosely described as the technical information such as copies of the Register of Title, copies of the leases, the notices, the new draft lease and also of some relevance the decision of this Tribunal dated 20th August 2016 under section 27A and 20C of the Landlord and Tenant Act 1985.
3. In a second bundle we were provided with copies of the experts' reports from Mr Dunsin and Mr Lester. In Mr Dunsin's report at Appendix 7 was a signed statement of agreed facts and issues in dispute.
4. The matters which are agreed include a description of the Property being a converted flat over two floors of a four storey mid-terrace property. The lower ground floor is currently not in use although has been used and is rated as commercial premises, being a nursery school. It is agreed that the property is two bedroomed and has a gross internal floor area of 610 square feet.
5. The other matters agreed are as follows:-
 - The Property has the private roof terrace at the top of the building about which more later.
 - The date of valuation is of 5th January 2016.
 - The lease is dated 6th February 1989 for a term of 99 years from 25th March 1988 with an unexpired term of 71.22 years.
 - The deferment rate has been agreed at 5% and the capitalisation at 6.5% with the uplift between the extended lease value and freehold vacant possession value of 1%. Both parties have agreed that the landlord's present interest utilising the capitalisation rate of 6.5% is £5,465.
6. It falls, therefore, for us to consider the following matters:-
 - Current lease value.
 - The unimproved freehold vacant possession value.
 - The premium payable for the lease extension. We were told that the terms of the lease had been agreed.

7. We had the opportunity of considering both experts' reports. We will briefly set out the contents of same bearing in mind that the reports are common to both parties. Mr Dunsin in his report by reference to various comparables arrived at an adjusted freehold rate from those comparables of £969 per square feet, which he applied to the subject property having a square footage of 610 and arrived at a freehold value of £591,090, which included adjustments for the value of the roof terrace. However, there were certain deductions that he wished to make. Firstly, his comparable properties had no commercial element whereas his view was that the presence of the nursery school in the basement would drive down the value of the residential units and from his experience he considered there should be a reduction of 10% thus reducing the adjusted freehold vacant possession value to £532,000.
8. He also considered there were serious service charge and management problems as evidenced by the decision of the Tribunal in August of 2016 and that, based on this allegation of mismanagement, he considered that there would be a reduction of £20,000 from the freehold value thus reducing the vacant possession value to £512,000. He did not appear to include any value for the roof terrace
9. As to the extended lease value, he had agreed with Mr Lester that there should be a 1% uplift and that accordingly applying the opposite, that is to say, a reduction of 1% he arrived at an extended lease value of £506,880.
10. To ascertain the existing lease value, he indicated that he considered there were three methods set out at paragraphs 5.03.17 onwards of his report. He considered that in this case the relativity graphs were appropriate and referred to the cases of Arrowdale, Costa and Mundy as well as the Upper Tribunal case of Denham and Stobbs. Copies of some of these authorities were included in Mr Lester's report. His view was that the Property was neither in prime central London nor suburbia. He considered, therefore, relativity should be derived from the average of the five Greater London and England graphs set out in the RICS report as well as the five PCL graphs also set out in the report on relativity. He had, however, ignored the WA Ellis graph and the Cluttons houses graph as they related solely to houses. The result of this amalgam was a relativity of 90.74% which he applied to the vacant possession value giving an existing lease value of £464,589. Feeding these figures into his calculation lead to a premium payable of £31,708.
11. Mr Lester's report gave similar information as the Property, locality and other issues. He had utilised a number of the same properties that Mr Dunsin had used for comparable evidence, although had treated them slightly differently insofar as the adjustments that should be made. These adjustments were perhaps more detailed than Mr Dunsin and included a 5% adjustment for the location of the property at second floor level, adjustments for condition, adjustments for the type of outside area and perhaps more by luck than judgement had produced an average price per square foot the same as Mr Dunsin at £969. This produced on his analysis a freehold vacant possession value for the subject property of £591,090 which is the same as Mr Dunsin although he had of course made further reductions in respect of the commercial element and mismanagement.
12. On the question of relativity, this was dealt with by Mr Lester at paragraph 19 of his report and reference is made to the case of the Trustees of the Sloane Stanley Estate and Mundy together also with the decision in the Upper Tribunal case of

Denham and Stobbs and reference to a publication produced by Savills in June of 2016 headed Leasehold Enfranchisement Analysis of Relativity. At paragraph 19.8 he set out the basis upon which he relied on a relativity of 86.73%.

13. One of the major areas of contention between the valuers was the value of the roof terrace. In Mr Lester's report he considered that this would have minimum value of 12.5% thus increasing the freehold vacant possession value to a rounded figure of £665,000 reduced back to £648,375 because of a deduction he made of 2.5% in respect of the service charge dispute and what was colloquially referred to as mismanagement. Factoring these elements into his report gave rise to a premium payable of £52,430.

HEARING

14. Mr Feldman representing the Applicants opened by confirming details of the commercial premises in the basement and said that the main points of dispute centred around relativity, the value of roof terrace and the deduction if any to be made for commercial use. He told us that Mr Dunsin had valued the roof terrace at £20,000 and that we should not take note of the fact that £969 appeared to be the square footage rate that both valuers had reached as this was not an agreed matter. He also referred us to a refusal for planning permission in respect of a rear extension at third floor level and other matters, which was submitted originally on 4th August 1998 and the subject to an appeal, which was unsuccessful from the tenant's point of view dated 26th February 1999.
15. We then heard from Mr Dunsin who confirmed his report was correct. He was asked about the commercial usage but said that he had not inspected the nursery. He felt, however, that the existence of the nursery particularly cooking would create smells, noise and pest infestation. He did not know how many children attended the nursery but considered that a 10% deduction was appropriate, this being a discount he had used in the past. He was not able to confirm whether the upper ground floor was used as residential but conceded it may be. He said he considered the usage in the basement and the floor above to be nursery with office over.
16. Asked about the roof terrace, he confirmed that access was by a form of step ladder-style stairs which were permanently fixed but at a steeper angle than would be normal. Access to the roof was through a permanent fixture. He was asked then to compare the relevant merits of garden or roof terrace. He considered that a garden would be best, next would be a roof terrace with direct access that is to say at the same level as the main property and the third would be the present situation. He did not think that the roof area would be used as much as a garden or a roof terrace and that a value of £20,000 for same was appropriate. It was not, he said, benefitting from beautiful views of neighbouring properties. He disagreed with Mr Lester's assessment of 12.5% or around £74,000 for the roof terrace which he thought was too great. He did not accept that adjustments for condition was required and as to the question of mismanagement and service charges, he relied on the decision promulgated in August of 2016, a copy of which was in the papers before us.
17. On the question of relativity, he referred to his report and the cases cited therein. He considered, however, that it was appropriate given the evidence available to

him at the valuation date to take the average of the ten graphs to which he referred. He confirmed also that the capitalisation of the ground rents had been agreed at £5,465.

18. He was then cross examined by Mr Lester and asked why he had not used 2015 data on relativity. He said he thought that the RICS report graphs were appropriate and they were the ones that valuers used and that the market had followed. As to the service charge issues, he accepted that the common parts and the communal areas looked acceptable.
19. Asked about the commercial reduction of 10%, he confirmed that this was not scientific. He just thought there had to be some allowance for the commercial unit. He accepted that the entrance to the nursery was via steps going down to the basement and that there was no access by utilising the main building. Although he accepted the property was on one of the busier roads, there would be more people using the building than would be the norm and that he might have added an additional 5% if, for example, the commercial usage had been that of a public house.
20. Mr Kullman confirmed that when he had bought the Property he had received a substantial reduction because of the dispute and mismanagement and also indicated that he would have paid perhaps £0.5m if it had been in good condition in 2013.
21. We then heard from Mr Lester who confirmed his report. He took us through his comparables, which he had listed. He said he had not included basement flats because they were affected by noise and vibration and were dark at the front. He had taken his condition from the estate agent's particulars and discussions he had with them. He confirmed that he had made various adjustments for condition, location in the building and time and had reached the average of £969 on that basis. He was of the view the roof terrace had a lot of benefit and attraction and his percentage of 12.5 came from talking with agents whose opinions had varied from 10 to 15%. With regard to the dispute he considered there was little difference between his valuation and that of Mr Dunsin. Relying on the Upper Tribunal case of Mundy he concluded that relativity should be linked to the Gerald Eve graph less 1%.
22. After the luncheon adjournment, Mr Lester was cross examined by Mr Feldman. He was asked whether he agreed Mr Dunsin's categorisation of outside space but couched his responses having a dependency on the size and the location. He did concede that if the Property had a garden that he would have perhaps attributed the value of say 17.5% to that. He confirmed that he had not included the planning potential, if any, within the assessment of the value. He was referred to the earlier refusal in 1999 and apparently the fact that the new local plan indicated it would not be possible to add another floor although it may have potential to build a conservatory. He did, however, confirm that a roof terrace on the same floor might attract an uplift of 15% and confirmed again that his 12.5% included no development value.
23. Asked about the commercial unit, that is to say the nursery, he accepted that there might be greater "traffic" in and out than in a normal residence. There was,

however, no external evidence of a nursery and he did not think it would affect the value.

24. Asked in more detail about his views on relativity, he confirmed that the best evidence would be the sale of short leases in the Property or close by. The second was comparable with Act rights and the third was relativity graphs. He accepted that the valuation date pre-dates the Mundy decision and that, therefore, the findings of the Tribunal in the Kosta case might be appropriate.
25. Mr Lester made no submissions to us.
26. Mr Feldman made short submissions asking us to prefer the evidence of Mr Dunsin, particularly with regard to the value of the roof terrace where he said access was difficult, it was not blessed with a good view and will be subject to noise and pollution. We were also invited to accept Mr Dunsin's reduction of 10% for the commercial use and that Mr Dunsin was correct in his legal analysis in leading to the relativity percentage.
27. It was agreed that we would inspect the subject property but could not do so until sometime later.

INSPECTION

28. We were able to inspect the Property on 28th February 2017. Externally the Property is of four storeys including a basement, being end of terrace, although connected to the property next door which abuts the terrace. The Property is situated on a busy road with restricted parking. We noted that there had been a limited development of the roof area on neighbouring properties. In close proximity, however, appeared to be an eight-storey purpose built modern block and, in addition also, at least two hotels.
29. Internal inspection revealed that the common parts were somewhat grubby with stained carpets. They did, however, at the time of our inspection have the benefit of lighting. We were able to view the basement area but will return to that element of the inspection once we have dealt with our inspection of the flat.
30. In the presence of Mr Kullman, who did not wish Ms Norris to be present, we inspected the flat. Stairs rising from the front door lead to a single bedroom to the rear, with further stairs riding to the second floor of the Property which contained a good sized double bedroom to the rear and a large living room/kitchen to the front. There was also a bathroom with the usual amenities. To the front the Property had the benefit of UPVC double glazed windows, although to the rear they appeared to be a wooden sash-type although in good condition. The Property had the benefit of gas central heating and a relatively modern kitchen.
31. We inspected the roof space which is reached by a fairly steep set of stairs and a somewhat awkward access onto the roof not helped by the existence of a bag of golf clubs and a bicycle. The actual access area is a somewhat Heath Robinsonish wooden construction with felt covering and a door in somewhat poor order. The roof itself is of a good size, sloping from front to rear and with a slight v shape encouraging the water to channel through the middle and through a gully to the rear. The covering, which was of felt, appeared to be in good order. There was a

BBQ in the dividing wall which housed the chimneys. Two storage boxes were also in situ. The views to the rear were pleasant overlooking neighbouring gardens but to the front the aspect was not so pleasing, looking over the road and to properties opposite.

32. Thanks to Ms Norris, now Mrs Mason, we were able to look at the basement which is no longer being used as a nursery school but instead appears in the process of conversion to a residential unit. There are some rooms under the pavement and a passageway leading to the rear with rooms off leading to open plan flat roof extension to the rear. There was a fire escape giving access to the neighbouring property at the very end of the garden but the rear extension with a flat roof above was in need to attention.

FINDINGS

33. We are grateful to the valuers for agreeing a number of issues. We confirm as can be seen from the attached valuation that we have accepted the landlord's present interest at £5,465 and the capitalisation rate and deferment rates at 6.5% and 5% respectively. The issues we, therefore, need to consider are the freehold unimproved value, any addition to represent the value of the roof space and any reduction to represent the problems with management and service charge issues. We also need to deal with the relativity applicable to the freehold/short lease value.
34. We will deal firstly with the freehold unimproved value. We should say we preferred the evidence of Mr Lester on this point. In his report, he had taken comparable properties at Flat 4, 124 Holland Road, Flat 4 and 112 Holland Road, 58 Holland, Flat C at 94 Holland Road and finally 46 Holland Road. To these he had applied adjustments for the date, by reference to Land Registry indices in the borough uplifted by 1% for leasehold to freehold and adjusted for floor levels, condition, and outlook. He also made adjustments for the locality of the flat within the building and taking all these factors into account came to the average value with a square footage of 969 square feet of £590,964. This figure, in fact in his report recorded as £591,090, required an adjustment in respect of the roof terrace which he considered would add a value of 12.5% giving his overall freehold vacant possession figure of £664,976. He deducted from that, however, 2.5% in respect of the service charge dispute giving a freehold vacant possession value of £648,375.
35. Our position is that we are comfortable with Mr Lester's assessment of the freehold vacant possession value at £590,964 set out in his schedule of comparables within his report at Appendix F. However, we do not consider that the roof terrace is as valuable as he has attributed. Equally, however, we do not consider that Mr Dunsin has given sufficient uplift for this asset.
36. The roof terrace is undoubtedly of benefit to the Property. It is perhaps not being used to its full potential at present. There is no doubt that access to it via the steep stairs and the somewhat restricted doorway does not assist. However, we suspect that could be improved. Further, although we do not consider that is necessary for us to delve into the possibility of planning permission, there is evidence of works to roof terraces in the row and in the road. The roof terrace has the benefit of a BBQ and the boundary walls are of a sufficient height to provide some privacy to

the user. An open space of this size in London must have value. We think Mr Dunsin is being parsimonious at £28,000 and Mr Lester perhaps airing on the side of generosity at 12.5%. We conclude that something in the region of 10% would be appropriate for a value to be added in respect of the roof terrace. We bear in mind that the lease clearly indicates that the roof terrace falls within the demise of the subject Property and contains at paragraph 2(4) a prohibition against alterations to the "structure or arrangements of the demised premises" without the prior consent in writing of the lessor.

37. On the question of the impact of commercial usage we are of the view and find that this would have no real impact on the value of the subject property. Holland Road is busy with traffic. In close proximity is an hotel and a pub hotel. The nursery at basement level, with its own entrance, would not affect the subject property. The suggestion of cooking smells and pest infestation made by Mr Dunsin is without any evidence. Accordingly we make no deduction for this element. One further matter we need to reflect in the freehold vacant possession value is the service charge dispute. The valuers really are little apart on this. We conclude that a reduction of 3% to reflect this issue would be reasonable and on our valuation as will be seen, this gives a freehold unimproved figure of £632,331 and a long lease unimproved reduced by 1% of £626,008.
38. We must then deal with the question of relativity. We noted all that has been said by Mr Lester. The valuation date is 1st January 2016 before the Mundy case. The Mundy case had some concerns relating to certain graphs and of course the Leasehold Enfranchisement Analysis of Relativity referred to by Mr Lester post-dates the valuation date. Taking the matter in the round, it seems to us that at the time of the valuation date it would be reasonable to have relied upon the graphs prepared under the "instructions" of the Upper Tribunal by the RICS. Holland Road, whilst not being prime central London, is neither suburbia. It is in a sought-after area and Mr Dunsin's use of all graphs both prime central London and the greater London ones, excluding of course in PCL the ones relating to houses, gives we consider a fair reflection of the relativity attributable in this case. We, therefore, prefer Mr Dunsin's evidence on relativity and have utilised a rate of 90.74% in our valuation.
39. Inserting these various components gives rise, with a marriage value of 50%, to a premium payable for the lease extension of £38,517.

Judge: *Andrew Dutton*

A A Dutton

Date: 7th March 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Flat D, 9 Holland Road
London W14 8HJ

FLAT - Lease Extension

Freehold - improved (£590,964 + 10% roof -3% man)	£632,331
Freehold - unimproved	£632,331
Long LH - unimproved 161.11 yrs (FH -1%)	£626,008
Valuation Date	05-Jan-16
Expiry of existing lease	24-Mar-87
Existing Term unexpired	71.22 years
Capitalisation rate	6.50%
Deferment rate	5.00%
Relativity (FH to SLH)	<u>90.74%</u>
Short Leasehold value (unimproved) before extension	£573,777

Diminution of Landlords Interest

Landlords Present Interest

Term

Agreed at		£5,465
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Reversion

Freehold unimproved	£632,331	
PV £1 in 71.11 years @ 5%	0.03097	£19,581

Total

£25,046

Landlords Proposed Interest

Reversion

Freehold	£632,331	
PV £1 in 161.11 years @ 5%	0.00038	£243

Landlords Present less the Proposed

£24,804

Marriage Value

Tenants Proposed Interest

Add Landlords Proposed Interest		£626,008
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Less Landlords Present Interest		£243
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Less Tenants Present Interest	£573,777	
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Less Landlords Present Interest	£25,046	
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Total		£598,824
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Marriage Value		£27,427
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50% share of marriage value		£13,713
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Lease Extension Premium

Landlords Present - Proposed + Marriage share		£38,517
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