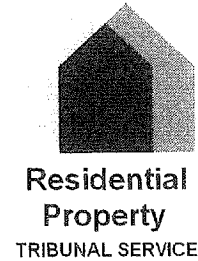


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London Rent Assessment Panel

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S48 LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Case Reference: LON/00AY/OLR/2012/0170

Premises: Flat 12 Newlands Court, Streatham Common North London SW16 3HH

**Applicants : Martin Douglas Glassborow
Rachel Mildred Glassborow
Laura Joanna Glassborow**

Representative: : Mr Michael Green BSc MRICS

**Respondent : Remstar Properties Limited
Representative : Mr Michael Lee BSc (Hons) MRICS**

Date of Decision : 29 May 2012

**Leasehold Valuation Tribunal : Mr John Hewitt Chairman
Mr Luis Jarero BSc FRICS**

DECISION

Decision

1. The decision of the Tribunal is that the premium payable by the Applicants to the Respondent for the new lease of the Premises is the sum of £70,140.
A valuation appended to this Decision shows how this sum has been arrived at.
2. The reasons for our decision are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

The Application and the hearing

3. By an application dated 3 February 2012 the Applicants sought a determination of the premium to be paid for a new lease and determination of other terms of acquisition which were in dispute.
4. Directions were duly given and in broad terms the parties have complied with them.
5. The application came on for hearing before us. Mr Green acted as advocate and expert valuer witness for the Applicants. Mr Lee acted as advocate and expert valuer witness for the Respondent. The only witnesses called were Mr Green and Mr Lee both of whom were cross-examined.

The background

6. The Respondent is the reversioner freeholder of a purpose built development of flats known as Newlands Court which is located on the north side of Streatham Common. The development was constructed in the 1930s and comprises 16 broadly similar flats laid out in two blocks and over ground floor and three upper floors. There are two entrance halls with two flats on each level.
7. The subject flat, Flat 12, is located on the first floor.
8. On 5 June 2009 the Applicants were registered at the Land Registry as proprietors of the subject flat; the price stated to have been paid was £65,000 [81].
9. By notice dated 30 June 2011 given pursuant to section 42 of the Act the Applicants sought a new lease. The premium proposed was £58,000 [24].
10. By a counter-notice dated 8 September 2011 given pursuant to section 45 of the Act the Respondent admitted that on the relevant date the Applicants had the right to acquire a new lease of the flat. The proposed premium of £58,000 was not accepted and the Respondent counter-proposed the sum of £113,409 [28].
11. As noted above by an application dated 3 February 2012 the Applicants sought a determination of the premium payable and a determination of the other terms of acquisition which were then still in dispute.

The issues for the Tribunal

12. By the time of the hearing the lease terms had been agreed and the only issue which the parties requested the Tribunal to determine was the premium payable.
13. Prior to the hearing Mr Green and Mr Lee had agreed some of the components of the valuation formula as follows:

Valuation date:	30 June 2011
Lease term:	99 years from 20 September 1935
Ground rent:	£22 per year
Unexpired term at valuation date:	23.25 years
Gross internal floor area:	704 sq ft
Capitalisation rate:	7.5%

Comparables as follows:

Flat 5 Newlands Court

A similar two-bedroom flat located in the same block as the subject flat Sold on a long lease in May 2010 for £166,000 and re-sold on a long lease in September 2010 for £215,000.

Flat 11 Newlands Court

A two bed-roomed flat located in the same block as the subject flat sold on a short lease (but with the benefit of a section 42 notice) as a probate sale in July 2009 for £70,000 and re-sold at auction in August 2009 for £101,000.

Flat 12 Newlands Court

The subject flat sold by private treaty on a short lease in May 2009 for £65,000.

House price inflation

The sales prices for the comparables are to be adjusted for house price inflation in accordance with the Land Registry House Price Index of the London Borough of Lambeth.

14. The matters which were not agreed with the rival contentions are set out below:

	Mr Green	Mr Lee
Deferment rate:	6.00%	5.00%
Short lease value of the subject flat	£93,621	£81,207
Long lease value of the subject flat	£167,000	£190,000
Freehold VP value of the subject flat	£168,687	£191,900
Relativity	55.50%	42.31%

New lease premium	£58,000	£85,000
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(It should be noted that part way through the hearing Mr Lee amended his short lease value from £76,126 to £81,207 in order to correct an arithmetical error in the adjusted value of Flat 11 from £77,352 to £87,413).

15. Our determinations of the matters in dispute are set out below.

Deferment rate

16. Mr Green submitted this should be 6%. He arrived at this drawing on his 30 years or so experience in the field and from his 'water'.
17. Mr Green contrasted the location of the subject flat in the London Borough of Lambeth with flats in prime central London (PCL), principally the Royal Borough of Kensington and Chelsea (RBKC). Mr Green drew attention to differences in capital growth rates. He relied upon the Savills Residential Capital Value Index for PCL and the House Price Index for Lambeth and a comparison of one year June 2010 to June 2011 which showed that the growth rate in Streatham was 0.2% compared with PCL of 11.8%. Put another way, he said that in the year prior to the valuation date the value of flats in PCL grew 59 times faster than in Streatham.
18. Mr Green accepted that this was a departure from the 5% generic rate mentioned in *Earl Cadogan and anor v Sportelli and anor and similar appeals* [2007] EWCA 1042, hereafter simply referred to as *Sportelli*.
19. Mr Green sought comfort from the Upper Tribunal decision in *Zuckerman v Calthorpe Estates Trustees* [2009] UKUT 235 (LC) in which the Lands Tribunal considered a 1970's block of flats and increased the generic deferment rate from 5% to 6%.
20. Mr Lee made rival submissions. He was critical of Mr Green's one year growth rate evidence as being far too short a time period. He produced a comparison of the Land Registry House Prices Indices for RBKC and Lambeth for the period January 1995 (when the LR started to issue the indices) to January 2012 [124]. From this he concluded that between 1995 and August 2009 the Lambeth growth was greater than RBKC and that it has only been since October 2010 – 8 months before the valuation date that RBKC began to outperform Lambeth.
21. In *Sportelli* in the Lands Tribunal Ref: LRA/50/2005; 2006/2178 the Lands Tribunal settled a generic deferment rate of 4.75% for houses and 5.00% for flats made up as follows;

Risk free rate	2.25%
Less: Real growth rate	<u>2.00%</u>
	0.25%

Plus: Risk premium	4.50%
Increased management risk for flats	<u>0.25%</u>
	5.00%

In doing so the Lands Tribunal said:

*"121. ... It is obviously undesirable, and indeed it would be impossible, for the sort of financial and valuation evidence that we have heard to be called and considered in every enfranchisement case. It is, in our judgment, unnecessary that it should be, because LVTs and this Tribunal are entitled to rely on their own expertise, guided by this decision. **The prospect of varying conclusions on the deferment rate in different cases reached on evidence that was less comprehensive than that before us can therefore be avoided by LVTs adopting the practice of following the guidance of this decision unless compelling evidence to the contrary is adduced.** This is justified because, as we have explained above, the deferment rate is unlikely to vary according to factors particular to the individual case. Some factors, including in particular the prospect of long-term growth, will not vary from case to case, while other factors, such as location and obsolescence, will already be reflected in the vacant possession value. Hope value would be a factor that could lead to different deferment rates for different lengths of term if it was not reflected elsewhere in the valuation; but we have concluded that hope value is excluded as a matter of law. The case for adopting a single deferment rate (with a standard adjustment for flats) for all reversions in excess of 20 years is thus, in our view, strong. Indeed we think that statutory prescription could well be appropriate and could usefully give a greater certainty to the market than a decision of the Lands Tribunal setting a guideline is capable of doing."*

*"123. The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. **Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate.**"*

(Emphasis added)

22. On appeal to the Court of Appeal Carnworth LJ (as he then was) said:

102. The Tribunal's later comments on the significance of their guidance do not distinguish in terms between the PCL area and other parts of London or the country. However, there must in my view be an implicit distinction. The issues within the PCL were fully examined in a fully contested dispute between directly interested parties. The same cannot be said in respect of other areas. The judgement that the same deferment rate should apply outside the PCL area was made, and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with different areas. The deferment rate adopted by the Tribunal will no doubt be the starting point; and their conclusions on the methodology, including the limitations of market evidence, are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas. That will be a matter for those advising future parties, and for the tribunals, to consider as such issues arise.

23. In *Zuckerman* the Upper Tribunal adjusted the risk premium from 4.50% to 5.25% to reflect two factors; first 0.25% for deterioration and obsolescence and 0.50% for the prospect of future growth not achieving the PCL growth rate. Mr Green conceded that deterioration and obsolescence was not in issue in the subject valuation. Thus at best *Zuckerman* supported him only to the extent of 0.50% in respect of growth rate. The facts of *Zuckerman* are however quite different from this of the present case.
24. We are satisfied on the authorities that Tribunals such as us are to apply the generic deferment rate of 5% for flats unless there is compelling evidence to take a different view. Both the Upper Tribunal and the Court of Appeal have endorsed the need for such evidence.
25. In *Hildron Finance Limited v Greenhill Hampstead Limited* [2008] 1 EGLR 179 the Lands Tribunal considered the long term growth rate of flats in north London and the period over which movement in values might be helpful. In paragraph 39 the Lands Tribunal concluded:
- "39. We should add that, in an effort to show that the long-term growth rate of flats in north London was comparable to that in the PCL, Mr Orr-Ewing produced a graph showing the movement in values in both areas over a 13 year period. We do not consider that such a short period which coincided with a general upward movement in values is adequate for the purpose for which it was intended. In order to provide a reliable indication of the long term movement in residential values so as to justify a departure from the Sportelli starting point, we consider that a period in the region of 50 years should be looked at, and that a series of statistics with different starting dates should be considered in order to ensure that an unrepresentative period is not relied upon."*
26. In the light of the above guidance we reject the one year growth period which Mr Green relied upon in support of his case as being reliable or compelling evidence upon which we can rely with confidence to justify a departure from the 5% generic deferment rate. Further as demonstrated by Mr Lee the one year period selected was not a representative period.
27. Similarly whilst we have respect for Mr Green's 30 years' experience in the field and his 'water' we find that such characteristics do not amount to compelling evidence to justify a departure from the generic rate of 5%.
28. For these reasons we have adopted a deferment rate of 5%.

The comparables

29. The basic details of the comparables at 5, 11 and 12 Newlands Court were not in issue. We considered that they offered the most helpful evidence available to us.

Flat 12

30. Mr Green sought to exclude the sale of Flat 12 to the Applicants in May 2009 on the footing that it was not an 'arms' length' transaction. What

little evidence was available to us was that the vendor was an elderly lady well known to the Applicants as a long standing family friend and fellow member of the local Baptist Church and who had recently suffered bereavement and wanted to sell and move into a nursing home. The Applicants were interested to purchase and did so at the price of £65,000. Thus the property was not put on the market. No evidence was given as to how the price of £65,000 was arrived at. The price paid was either below the market, the market price or above the market price. The circumstances in which the price of £65,000 was arrived at must be within the knowledge of the Applicants, yet no evidence about this was provided by them. Mr Green simply submitted that we cannot assume the price paid was a market price and thus we should ignore it. We consider that if the Applicants contend that they under paid or over paid they should have provided evidence to explain the circumstances. We prefer the submission of Mr Lee that this is a transaction we should take into account.

Flat 11

31. This was the sale of a short lease of an unimproved flat very similar to the subject flat.
Mr Green and Mr Lee sought to analyse the transactions in different ways. The first sale was a probate sale and there was general agreement that such sales tend to under achieve. We thus consider we should ignore the first sale.
32. The second sale was an auction sale from which we infer the property was exposed to the market and which produces a clearer view of the market. The second sale adjusted for time produced a value of £113,524.
This was the sale of a short lease but with the benefit of a section 42 notice. Both Mr Green and Mr Lee accepted that such a notice has a value. Mr Lee placed that at 23%. He arrived at this figure by adopting the table mentioned by the Lands Tribunal in *Cadogan v Cadogan Re 38 Cadogan Square* [LRA/128/2007]. Mr Green placed the value at 15% and this was based on his general experience.
33. We recognise the paucity of evidence available to show with any degree of certainty what the value of a section 42 notice might be. This is not simply an arithmetical exercise because of course different vendors and purchasers will have their own personal circumstances in mind when entering into any particular transaction.
34. Doing the best we can with the limited materials before us we prefer the approach adopted by Mr Lee and we find that we should adjust the value of £113,524 by 23% to reflect the value of the section 42 notice and this brings the value of the lease down to £87,413.

Flat 5

35. This property also changed hands twice in a short space of time. However in the interim a significant refurbishment had taken place.

Both sales were of a long lease. The first was in May 2010 at a price of £166,000. The second was in September 2010 at a price of £215,000.

36. Both Mr Green and Mr Lee analysed the two transactions in different ways. Mr Lee said that at the time of the first sale the property was in disrepair in that there was no kitchen or bathroom. He suggested the price should be adjusted to reflect this. He submitted that the second sale was of a refurbished flat and the price achieved had to be adjusted to strip out value attributed to the improvements. Having arrived at two adjusted figures Mr Lee then averaged them.
37. Mr Lee correctly observes that the exercise is to value the flat on the assumption that it is in repair but not improved. The subject development was constructed in the 1930's. We infer that the kitchen sink would amount to a fixture and the tenant would be under an obligation to keep it in repair. We infer it is improbable that units and white goods would have been fitted and that such items were likely to have been free standing and thus tenant's chattels and outside of the tenant's repairing obligation. There would, of course, have been a bathroom probably comprising a w.c., a hand basin and a bath. These would amount to fixtures and the tenant would be under an obligation to keep them in repair.
38. It appears that the May 2010 sale was with the kitchen sink and bathroom stripped out. The price achieved was £166,000. Mr Lee asks us to assume that if the original kitchen sink and bathroom were still in place, dated and perhaps no doubt chipped and stained, but serviceable so as to be in repair a higher price would have been achieved. We were not persuaded. We are not satisfied that such minor disrepair as there may have been had any material effect of the price achieved. We conclude that the May 2010 transaction is a reasonable reflection of the market value of a long lease of an unimproved flat in Newlands Court.
39. Both Mr Green and Mr Lee sought to make adjustments to the September 2010 sale in order to arrive at the value of a long lease of an unimproved flat in Newlands Court. In our experience the more adjustments that have to be made to a transaction the greater the risk of error and the resulting figure becomes more unreliable and so it must be treated with caution. We reject both analyses because we find them to be unreliable. We find that the May 2010 sale of a long lease of an unimproved flat is a reliable guide to the market price at that time and we adopt it.

31 Madeira Road

40. Mr Green sought to rely on a sale of the long lease (with a share of freehold) in August 2011 at a price of £173,750. This flat has a floor area of only 550 sq ft. Mr Green made adjustments for size, share of freehold and time.

41. We prefer the submissions of Mr Lee to the effect that the size, location, age and style of construction is so dissimilar to the subject flat that it is not a comparable from which we can derive much assistance. We therefore reject it.

The valuation

42. Our preferred approach to the valuation is take actual transactions and to adjust only for time where that is possible. In the case of Flat 5 we also have to adjust for the value of the section 42 notice but otherwise no other adjustments are required.
43. Where we have two values to consider we have adopted Mr Lee's approach to average them because in our accumulated experience and expertise in these matters this is often the most appropriate course to take.
44. We have arrived a short lease value of £81,200 because this is the average of the sales of Flat 12 in May 2009 and Flat 11 August 2009 both adjusted for time and in the case of Flat 11 adjusted to take out the value of the section 42 notice.
45. We have arrived at a long lease value of £167,500 based on the May 2010 sale of Flat 5 at £166,000 adjusted for time.
46. As ever with the art of valuation it is usually helpful to look at other factors as a check before firming up on a figure. The relativity of the values of short leases to long leases can be a complex subject. There are numerous graphs deployed to try and demonstrate the relativity. Some of these have been considered by a specialist working party set up by the RICS and a report has been issued. Unhappily little consensus was achieved and the issue of relativity and which graph or graphs to deploy remains as contentious as ever and the graphs thus have to continue to be treated with caution.
47. As a matter of arithmetic the relativity of our short lease value to our long lease value is 48.48%. This compares favourably with the average of relevant graphs within the RICS report. It also sits well with the rival relativities contended for by the parties, Mr Green was at 55.5% and Mr Lee was at 42.31%.
48. Both Mr Green and Mr Lee were in agreement that the long lease value is 99% of the freehold value. Thus we have arrived at a figure of £169,200 for the freehold value.

John Hewitt
Chairman
29 May 2012

Leasehold Valuation Tribunal

Ref: LON/00AY/OLR/2012/0170

Valuation of Flat 12 Newlands Court, Streatham Common North London SW16 3HH

Freehold value of flat	£169,200
Long lease value	£167,500
Value of existing leasehold	£81,200
Length of lease remaining	23.25 yrs
Capitalisation rate	7.5%
Deferment rate	5%

Valuation date 30 June 2011

Value of freeholder's present interest

Ground rent	£22	
YP 23.25 yrs @ 7.5%	10.8520	£239
Reversion to freehold value	£169,200	
Deferred 23.25 years at 5%	0.3216	<u>£54,415</u>
Freeholder's present interest		£54,654

Freeholders Interest after grant of long lease

Ground rent	£0	
Reversion to freehold value	£169,200	
Deferred 113.25 years at 5%	0.003984	<u>£674</u>

Freeholder's loss £53,980

Calculation of marriage value

Value of property after grant of long lease

Freeholder's interest	£674	
Tenant's interest	<u>£167,500</u>	£168,174

Value of existing interests

Freeholder's interest from above	£54,654	
Tenant's interest	<u>£81,200</u>	£135,854
Marriage value		£32,320
Marriage value to be divided equally between freeholder and tenant		<u>£16,160</u>

Premium payable to freeholder £70,140