

2823



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

**Case Reference** : **LON/OOBK/OLR/2013/0965**

**Property** : **Flat 238 Lauderdale Mansions, Lauderdale Road, London NW9 1NQ**

**Applicants** : **Mr Andrew Peck and Mrs Lucy Peck**

**Representative** : **Mr David Cooper BA (Hons) BSc (Hons) MRICS of David Cooper Associates, Chartered Surveyors**

**Respondent** : **Pearl Property Limited**

**Representative** : **Mr S Radford BSc (Hons) MRICS of Boston Radford, Chartered Surveyors**

**Type of Application** : **Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal Members** : **Mr A A Dutton (Judge)  
Mr P M J Casey MRICS**

**Date and venue of Hearing** : **12<sup>th</sup> and 13<sup>th</sup> November 2013 at 10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **16<sup>th</sup> December 2013**

---

**DECISION**

---

**The Tribunal determines that the premium payable for the lease extension in respect of the property 238 Lauderdale Mansions, Lauderdale Road, London NW9 1NQ is £89,000 as set out on the attached schedule.**

### **BACKGROUND**

1. On 23<sup>rd</sup> November 2012 the Applicants served their initial notice under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) to both Pearl Property Limited, the Respondents and Lauderdale Mansions (West) Limited. On 24<sup>th</sup> January 2013 the solicitors for Pearl Property Limited served their counter notice admitting the Applicants' right to acquire a new lease but disputing the proposals as to premium put forward by the Applicants, which had been £59,500. The counter proposal from the Respondent was a premium of £113,600.
2. By a letter dated 22<sup>nd</sup> July 2013 from Conway and Company, solicitors acting for the Applicants, to the Tribunal, it was confirmed that because the Respondent Pearl Property Limited held a 999 year lease over the flat at 238 Lauderdale Mansions the freeholder need not be a party to the lease extension application as there was no restriction on the Respondent's granting a lease to the Applicants.

### **HEARING**

3. The Hearing of this matter started on 12<sup>th</sup> November and continued to 13<sup>th</sup> November 2013. We had before us a report prepared by Mr Cooper, acting for the Applicants and a report prepared by Mr Radford, acting for the Respondent. In addition Conway and Company, solicitors have lodged a bundle which included the application to the Tribunal. This application dated 20<sup>th</sup> July 2013 indicated that the terms of acquisition had not been agreed. The matters in dispute at the time of the application were the terms of the lease, the premium payable for the lease extension and the costs to be paid pursuant to Section 60 of the Act. In addition to the application we had copies of the initial and counter notice, copies of the register of title both for the freehold and leasehold interests, a copy of the existing lease which is dated 14<sup>th</sup> December 1979 for a term for 99 years from 29<sup>th</sup> September 1977, as well as a copy of the lease of 999 years made between Park City Limited and PP1 Limited who we were told was the present Respondent. The form of draft lease to be entered into following the determination of the premium was also included in the bundle. We were not told whether this had been finally agreed.
4. The valuers had been able to agree certain matters and in the papers before us was a statement of agreed facts. This was dated 6<sup>th</sup> November 2013 and signed by both Mr Cooper and Mr Radford. It confirmed as follows:-
  - The valuation dated is 23<sup>rd</sup> November 2012.
  - The gross internal area for the subject property is 998 square feet.

- The date of the lease is agreed as 14<sup>th</sup> September 1979 with an original term of 99 years from 29<sup>th</sup> September 1977 thus expiring on 28<sup>th</sup> September 2076. The unexpired term at the valuation date is agreed at 63.84 years.
  - The rental income is a rising ground rent of £50 per annum for the first 33 years increasing to £100 per annum for the following 33 years and £200 per annum for the remainder of the term. It has been agreed that this should be capitalised at 7%.
  - The deferment rate is agreed at 5%.
  - The relativity between the virtual freehold and the extended lease is 99%.
- The matters that were still in dispute and upon which our determination were required were as follows:
- Virtual freehold vacant possession value
  - Existing lease value at 63.84 years/relativity
  - The premium payable.
5. We had the opportunity of reading both Mr Cooper and Mr Radford's reports, the latter as a result of the case being adjourned to continue on Wednesday 13<sup>th</sup> November.
  6. It does not seem necessary for us to recount in detail that which is contained in both experts' reports.

#### **EVIDENCE OF MR COOPER**

7. Mr Cooper's report was dated 8<sup>th</sup> November 2013 and argued for a premium payable for the lease extension of £72,300. His report, to which he spoke in evidence to us, set out the agreed matters and his qualifications. The subject property is on the second floor of a mansion block on the north western side of Lauderdale Road towards its western end. The property apparently falls within the Maida Vale conservation area and its close proximity to Underground and other facilities was clearly set out. The flat is a three bedroomed property in a purpose built mansion block built at the turn of the 19<sup>th</sup>/20<sup>th</sup> century served by a lift to all floors. The front aspect of the flat overlooks Lauderdale Road whilst the rear overlooks communal gardens. The mansion block is over six floors and details of the accommodation were set out. Under the heading 'Condition' it was confirmed that the block of flats within Lauderdale Mansion comprises those numbered 118 through to 258 and it appears has suffered from subsidence and was so suffering at the time of the valuation in November of 2012. We were told by Mr Cooper that the underpinning works had started in 2010 and it was his view that this had caused a difficulty in selling the flats. Although the subsidence was covered by insurance, it was not clear whether the works had been completed.
8. Under the heading 'Valuation Considerations' he set out the terms of the lease and the comparable evidence with adjustments that he sought to rely on. There were some eight comparable properties in Lauderdale Mansions which had been sold in the period 28<sup>th</sup> September 2012 to 27<sup>th</sup> February 2013, copies of the estate agents' particulars and, when available, land registry entries were attached in the appendix. He considered that of those eight comparables, four should be, to all intents and purposes, disregarded and he relied essentially on

the comparable properties in date order at 90 Lauderdale Mansions sold on 21<sup>st</sup> November 2012, 221A Lauderdale Mansions sold on 29<sup>th</sup> November 2012, 140 Lauderdale Mansions sold on 6<sup>th</sup> December 2012 and finally 36 Lauderdale Mansions sold on 27<sup>th</sup> February 2013.

9. In formulating his evaluation he told us that he had made adjustments as to whether or not the property had the benefits of a lift, or a balcony/terrace, whether it suffered from subsidence and whether it had been modernised or not. As to relativity, he had used graph evidence and taking all matters into account, concluded that the closest comparable was that of 140 Lauderdale Mansions because it required only two adjustments but particularly did not require any adjustment in respect of subsidence as it was in the block affected.
10. He told us that he had not internally inspected any of the comparables but had relied upon the estate agents' particulars and discussions he had had with Chestertons. He told us that there had been no agreement between himself and Mr Radford about improvements and disregards, although he made no adjustments for any improvements to the subject premises.
11. The comparables which he wished to rely upon required some adjustments, although not all and the first that he discussed was that relating to the lift. It appears that most of the blocks in Lauderdale Mansions do not have a lift, but this block does as does one other. He asserted that the service charge for a block with a lift was in the region of £5,000 per annum compared to those blocks that do not have a lift where the service charge was £2,500. This evidence, however, seemed to be somewhat undermined by the documentation provided to Mr Cooper by Mrs Peck. The lift costs for the block in 2011 had been £2,009 and in 2012 £11,765. It was believed that 20 flats were obliged to contribute towards these lift costs and quite clearly, therefore, for the two years for which financial data was available, the cost was not an additional £2,500 per flat having the benefit of the lift. Mr Cooper was asked to indicate whether he accepted that the costs of the lift were not £2,500 as suggested but he was unwilling to accept this position.
12. The next adjustment to be made by Mr Cooper was for a balcony or terrace. Although the balconies at Lauderdale Mansions were of a non-reinforced type, they were nonetheless of benefit and Mr Cooper was of the view that where a flat did not benefit from a balcony he would make an adjustment of 2½%. Where the flat had the benefit of a roof terrace or direct access to communal gardens, he thought this was a far greater benefit than the balcony and therefore adjusted downwards by 5%.
13. The third adjustment related to subsidence. He accepted that there was no evidence that there had been any problem in obtaining insurance for the subject property but was of the view that sales in the group of flats numbered 118 to 258 had proved difficult because of the underpinning works. This was one reason why he found the comparable at 140 Lauderdale Mansions the most appropriate as it was of course in a block that had been subject to subsidence and, therefore, no adjustment was required. He sought to argue that a reduction of 10% in respect of subsidence was appropriate. This was based on the fact that there had been 22 sales of flats in Lauderdale Mansions of which four were within the

subsidence block since the beginning of 2010. That, he said, represented 18% whereas the total number of flats in the group was 70 dwellings out of a total of 236 giving a 30% figure. The Applicants had owned and sold 236 Lauderdale Mansions and it was asserted that the property had been marketed for approximately a year, notwithstanding that it had been refurbished to a very high standard and this evidenced difficulties associated with the subsidence issues. He considered 10% a reasonable allowance to make.

14. The final adjustment made related to improvements. He was of the view that four of the eight flats that he had put forward required modernisation and that it was appropriate to look at the sales of the four unimproved properties and to derive his valuations from those as they required no adjustment for this matter. Insofar as the sale of short leases was concerned, 236 Lauderdale Mansions was the property that had been sold by his clients and he had made adjustments to reflect that.
15. Under the heading 'Comparable Evidence of the Eight Properties' he went through each of those shown on his table setting out the variations that would be made giving rise to an adjusted rate per square foot which was also set out. His summary of comparable evidence highlighted the reasoning behind the adjustments that he had made and subsequently set out the weighted average giving in his view the virtual freehold value for the subject property of £780,000. This was based on an average adjusted sale price for the four unimproved properties, which he said equated to £780 per square foot.
16. As to relativity, he was of the view that the graph evidence was most appropriate but also considered two sales transactions of short leases, one being his client's property at 236 Lauderdale Mansions and the other 134 Lauderdale Mansions. The values of those flats subject to adjustments for, in the case of 236 Lauderdale Mansions refurbishment at a cost of £100,000, and for both time, length of lease, and no act world gave an average for the two sales of £664 per square foot which on his calculation equated to 85.1% of the freehold value. When this was compared with the graph evidence, in particular the John D Wood Pure Tribunal graph, he concluded that the appropriate relativity was 85%.
17. Mrs Peck also gave some evidence to us although we did not have any witness statement. She told us that a company controlled by her and her husband had purchased Flat 236 Lauderdale Mansions in October of 2010 and had undertaken substantial improvement works to turn the flat into what was called 'a turn-key property'. The flat had been purchased at around £650,000 in October 2010 and had been sold in June of 2012 at £807,246 which included contents. Apparently the refurbishment works commenced immediately and the property was put on the market in July of 2011 at £875,000. An offer, not far away from that figure, had been accepted but it had not proceeded. It appears that the purchasers had difficulty in raising money but it was not clear whether that was because of the lease length or the subsidence. No evidence from estate agents was produced to indicate what had caused the difficulties with regard to the sale. She told us that she had been living in the block for some eight years and was not clear whether the subsidence works had been completed. She was told that in its improved state, the agents thought that the

property would command a premium “north of £900,000”. She told us that the project had cost some £135,000 but this included all expenses, excluding any loss of income on investments. She believed that they had made a profit of £59,000.

18. This concluded the evidence for the Applicants.

#### **EVIDENCE OF MR RADFORD**

19. Mr Radford gave evidence on the second day of the Hearing and, as with Mr Cooper, took us through his report. As we had had the opportunity of reading this, he did not seek to take us through the minutiae of same. The matters in dispute were highlighted as being the effective freehold value of the subject premises and the relativity to be adopted. He did not consider that there were any requirements to make adjustments for improvements in respect of the subject property, a matter that had been agreed by Mr Cooper. Unlike Mr Cooper he took a wider date range for comparable properties going back to late September 2011 and up to September and October of this year. He adjusted those comparables to the valuation date by using the Land Registry house price index for the City of Westminster. Further adjustments were also made in respect of the floor levels, whether the property had the benefit of a lift, adjustments for improvements, and the benefit of a roof terrace. In addition, he considered it relevant to rely on settlement evidence. Since September of 2011 he told us he had negotiated eighteen settlements within Lauderdale Mansions and of those 16 had resulted in agreements as to floor areas, values and relativities. A schedule was attached giving average effective freehold values for the various flats that he suggested were of comparable assistance. Taking these flats and the various adjustments into account, he concluded that his assessment of the square footage rate for the subject premises was £950 giving an equivalent freehold value of £948,000. As to relativity, again relying on the settlements, he proposed a relativity of 84.35% which was approximately 1% below the Gerald Eve graph. This gave rise to a premium of £91,000. There was a number of property details included in his report.
20. In the evidence to us at the Hearing, he told us that he did not believe the block was blighted insofar subsidence was concerned. He believed that the management company were dealing with the matter and he thought that the works may in fact have been concluded. He saw no reason to accept that vendors would agree to a 10% reduction because of the subsidence problems. He did not, for example, think that it affected the settlement that he had achieved with Mr Cooper in respect of Flat 136. As to his adjustments he thought that, insofar as improvements were concerned, the standard of the comparables were all pretty much the same, all having been redecorated and carpeted. He accepted that there were some speculative adjustments for improvement. As to the other adjustments he confirmed he would normally have allowed 10% for a roof terrace but thought that 7½% was reasonable, but made no adjustment for the balconies as he thought they were worth little. The balconies, he said, overlooked the road and he had never seen anyone using them. Insofar as the lift was concerned, he could not accept the low adjustment made by Mr Cooper. He had no knowledge as to why one would argue that this was a building particularly populated by young people. He thought a reduction

as he had made of 25% for a lift to the fourth floor was perfectly reasonable. In his view the major factor for people buying a property on the upper floor was the fact that the lift was available. He was also unwilling to accept Flat 140 as a comparable as he believed this had been sold privately.

21. He did argue that his settlement evidence was helpful. Although he accepted that surveyors did not generally like to go on to the record as to how they had achieved their figures, he told us that all had been agreed, apart from two settlements and he had good knowledge of this particular group of blocks having dealt with 18 in the fairly short period between 2011 and 2013. This was throughout the subsidence period and had not affected the settlements he had reached. He accepted that the scaffolding would affect the marketability but not the ultimate price. He was critical of Mr Cooper's limited use of comparables, his weighted average included two walk up flats from the third and fourth floor with roof terraces. Looking at the broader sweep of evidence, to suggest that a 10% should be wiped off the value because of subsidence was unrealistic.
22. He was asked some questions by Mr Cooper. He told us that this was the first case that had come to the Tribunal for some time as he had been able to generally settle matters with other valuers. It was put to him that he had not considered No 115 Lauderdale Mansions as a comparable, which he readily accepted. However, he indicated that he was happy to add this property but was not happy with the comparable 140 Lauderdale Mansions. He said that he had spoken to the estate agent, who it appears was initially instructed, who said that they had no record of the flat having been sold. He did, however, accept that 140 Lauderdale Mansions was the only long lease/freehold sale in the block but his concerns over the background to the sale meant in his view it was not a comparable that should be relied upon. When questioned about the extent of the comparables and the period of time covered, his view was that the bigger the sample size the more likely he was to get an accurate figure. It seemed to him perfectly reasonable to use such a number and to adjust for the passage of time. As he pointed out the adjustment for passage of time was based on actual sale prices whereas the other adjustments were somewhat subjective.
23. At the conclusion of his evidence we asked whether it would be appropriate for us to inspect. Neither valuer thought that it would add to anything and accordingly we did not so inspect.

## **FINDINGS**

24. A number of matters have been agreed and are reflected in the attached valuation. We should comment that we have rounded some of the elements of the values. Both valuers agreed that there were no improvements to be claimed at the subject property. Mr Cooper had used eight comparables cut down to four which he said were selected as closest to the valuation date. Six of those were also relied upon by Mr Radford as part of his wider spread of comparables, all within Lauderdale Mansions. The valuers were agreed on the methodology to make any necessary time adjustments to equate prices to the valuation date and both made adjustments in some instances to reflect superior condition to the average for the blocks on the basis of their readings of the estate agents' particulars. The impact of the adjustments varied. For example, Mr Radford

made no adjustment for balconies while Mr Cooper made a 2½% adjustment and only 5% for roof terraces against Mr Radford's 7½%. Mr Cooper made no differentiation for floor level but did make a small adjustment for the presence of a lift. Mr Radford had a comprehensive scheme addressing floor levels within the block and the presence or otherwise of a lift. He had allowed a comparative discount of 2½% for a ground floor flat, 5% for second floor, 15% for third floor and 25% for fourth floor, all without lifts.

25. We find that Mr Cooper's adjustment for the lift factor was undermined by the evidence of the service charge accounts for the block, which were produced on the second morning of the Hearing. These showed that his assertion that those who had the benefit of the lift paid an addition £2,500 per annum in service charges could not possibly be right. The sums were considerably below this amount, in the hundreds only. In addition his approach to the condition adjustment, particularly with regard to his client's property that was sold, £100,000, seemed to us to be incorrect. Including her loss of rent for the period when she was doing the works and marketing the finishing product, may have been a true cost to her but it is not in our finding a cost that an intended purchaser would consider when paying for a superior condition flat.
26. Mr Radford on the other hand told us of the negotiated settlements that he had achieved where in 16 of those cases the basis of his scheme of adjustments applied in this matter, such as the percentage reductions for the floor level, were agreed.
27. Of the comparables used by Mr Cooper that had not been included in Mr Radford's list, Mr Radford told us that he was happy to include No 115 which he had not been aware of, but was unhappy to include No 140 because, as he stated, there had been no evidence of a sale through an estate agent. Even if both of these sales are included, together with the remainder of Mr Radford's evidence as adjusted, the resulting average price per square foot differs little from his adopted £950 per square foot, which we find is an acceptable starting point.
28. We must comment on Mr Cooper's adjustment in respect of subsidence at 10%. In support of this view of the effect of subsidence he relied almost exclusively on the sale of No 140, the only long lease flat sold in the block within his chosen time frame. At the valuation date the block was apparently in the process of being underpinned, seemingly with insurers meeting the bulk of the obligations, although there was potential dispute with the local authority concerning neighbouring trees. The service charge account showed significant amounts in reserve fund for repair works to the building. Mrs Peck in her evidence acknowledged that she was aware of the underpinning works when she purchased Flat 236 on its existing lease for £650,000 in October 2010, the property she indicated being in poor internal repair. She had carried out works to turn the property into a "turn-key" apartment but the sale had taken some time because of the difficulties in obtaining mortgage funding. It was not wholly clear whether it was the subsidence or the length of the lease term which has caused this difficulty. She and her husband, through their company had purchased 236 without a mortgage. We are not satisfied, therefore, that the



evidence of the difficulties that Mrs Peck had in selling 236 supports Mr Cooper's assertion that a 10% reduction for subsidence should be made.

29. In the case of the flat at 140, because it appears little is known of the facts relating to the sale, it was not possible to establish whether the vendor had a particular need to effect an early sale, or the state of condition. Mr Radford was of the view that people might hold back on the sale whilst there were ongoing works and uncertainty, but it would not affect the value merely the marketability of the property.
30. We are, of course, required to assume a sale at the valuation date with the ongoing works.
31. We must say that we found the evidence of Mr Radford more compelling than that Mr Cooper. Mr Cooper's inability to accept that the submissions he had made on the question of the costs of the lift to an individual leaseholder were not supported by the evidence, did not help. Furthermore, the evidence that he sought to adduce relating to the subsidence was not compelling. We do not accept that there is evidence for an adjustment on the scale suggested by Mr Cooper. We do accept, however, that the existence of the underpinning works at the valuation date would affect the marketability and place some uncertainty in the mind of a purchase that would require some adjustment to the property price to reflect the uncertainty.
32. Doing the best we can, we believe that there should be some adjustment made and in our finding a reduction in the region of 2% or £18,000 or thereabouts, would be a reasonable allowance to make. Therefore, by and large, accepting Mr Radford's evidence in preference to Mr Cooper's would reduce Mr Radford's valuation of the unencumbered virtual freehold value of £948,100 down to £930,000.
33. Both valuers approached the value of the existing leasehold interest on the basis of published graphs and there is little between them. Mr Radford sought further support for his figures by reference to the settlement evidence which he had brought forward in this case. We are aware of the criticism such evidence has received. However, it does seem to us that settlements in the Lauderdale Estate over a relatively short period of time should not be ignored. Mr Cooper for his part sought support from his analysis of two sales of existing leases but these were heavily dependent upon his refurbishment adjustments and his unsupported adjustment at 5% to reflect the no act world. Again, doing the best we can on the evidence before us, we determine the relativity of 84.8% (somewhere between the two parties) of the 999 year share of freehold would give an existing lease value of £788,640.
34. Applying these figures to the valuation leads us to the finding that the premium to be paid for the extension in respect of the subject premises is £89,000 as per the attached valuation.

Andrew Dutton  
Tribunal Judge

---

---

**CASE REFERENCE LON/OOBK/OLR/2013/0965**

**First Tier Tribunal  
Property Chamber (Residential Property)**

**Valuation under Schedule 13 of the Leasehold Reform Housing and Urban  
Development Act 1993**

**Premium payable for an extended leasehold Interest in 238 Lauderdale Mansions**

**Valuation date: 23 November 2012**

<b>1. <u>Landlord's existing interest</u></b>			
Capitalised ground rent agreed at			£1,568
<b>Reversion to</b>			
Unencumbered virtual freehold value	£930,000		
Deferred for 63.84 years @ 5%	0.0444		£41,292
Total value of landlord's existing interest			£42,860
<b>2. <u>Value of landlord's proposed interest</u></b>	£930,000		
Deferred 153.84 years @ 5%	0.00055		£510
<b>3. <u>Loss to landlord in granting new lease</u></b>			£42,350
<b>4. <u>Marriage value calculation</u></b>			
Landlord's proposed interest	£510		
Tenant's proposed interest	£920,700	£921,210	
<b>Less</b>			
Landlord's existing interest	£42,860		
Tenant's existing interest	£784,920	£827,780	
		£93,430	
Landlord's share of marriage value		50%	£46,715
			£89,065
<b>5. <u>Premium payable</u></b>			£89,065
		<b>Say</b>	<b>£89,000</b>