

4263



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

Case reference : LON/00AG/OLR/2015/1399

Property : Flats 1,2 and 3, 22 Buckland
Crescent, London NW3 5DZ (“the
flats”)

Applicants : Flat 1 – Mr E B Niestat
Flat 2 – Oriental Arbor Holdings
Ltd
Flat 3 – Justin Barrington
 (“the tenants”)

Representatives : Andrew M Lester MRICS

Respondent : IZA Limited (“the landlord”)

Representatives : Samuel Laughton, Counsel

Type of application : A new lease claim

Tribunal members : Richard Athow FRICS
Richard Shaw FRICS

**Date and Venue of
hearing** : 8th December 2015
10 Alfred Place, London WC1E 7LR

Date of decision : 15th December 2015

DECISION

Decision

1. The Freehold vacant possession value of the flats at the agreed valuation date were
 - a. Flat 1 - £1,030,000
 - b. Flat 2 - £875,500
 - c. Flat 3 - £354,660
2. Relativity of 86% is to be applied to calculate the existing lease value of flat 2.
3. The prices to be paid for the new extended leases are
 - a. Flat 1 £21,743
 - b. Flat 2 £76,705
 - c. Flat 3 £11,547

in accordance with our Flats 2 and 3 valuation at appendices 1 and 2.

The application and hearing

4. The tenant applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the prices to be paid under section 56(1) and schedule 13 of the Act for the grant of new extended leases of the flats.
5. On the morning of 8th December 2015 we heard evidence from the parties' expert witnesses. Andrew Lester MRICS gave evidence on behalf of the tenants whilst Emma Biddle MRICS gave evidence on behalf of the landlord.

Background

6. 22 Buckland Crescent was originally a semi-detached house that had been occupied as bed-sits until it was converted to form eight flats over four floors. The roof space was converted into living accommodation some years ago, but has since been removed and restored as roof space as it did not have the planning consent required.

7. The tenants hold the following leases
 - a. Flat 1 – 99 years from 9th July 1996
 - b. Flat 2 – 99 years from 25th March 1980
 - c. Flat 3 – 99 years from 9th July 1996.
8. The flats comprise
 - a. Flat 1 – ground floor flat with 2 bedrooms, 1 reception, kitchen and 2 bathrooms. The garage is included in the lease of this flat.
 - b. Flat 2 – rear lower and raised ground floor flat with 2 bedrooms, 1 reception with open plan kitchen, 2 bathrooms.
 - c. Flat 3 – first floor flat with 1 bedroom, 1 reception/open plan kitchen, bathroom.
9. On 16th March 2015 the tenants gave notice of their claim to extend their leases. On 19th May 2015 the landlord gave a notice in reply admitting the claim. On 18th August 2015 the tenants made their application to the tribunal.

Issues in dispute

10. The two experts had agreed the following:
 - a. The valuation date at 16th March 2015
 - b. An unexpired term at the valuation date of 80.31 years for Flats 1 and 3, and 64.02 years for Flat 2 .
 - c. The annual Ground rent for Flats 1 and 3 for the whole of the remaining period of the leases is £100, and Flat 2 is currently £200, increasing to £400 on 9th July 2029, and finally on 9th July 2062 to £800 for the balance of the lease.
 - d. A capitalisation rate of 6.5%.
 - e. A deferment rate of 5%
 - f. The gross internal floor areas are Flat 1 1000 square feet, Flat 2 850 square feet, Flat 3 345 square feet.
 - g. A deferment rate of 5%
 - h. A capitalisation rate of 7%.
11. The matters remaining in dispute are
 - a. The freehold vacant possession value of all three flats.
 - b. The Relativity rate.
 - c. The current lease value of Flat 3.
 - d. The premiums payable for a statutory lease extension of all three

flats.

12. Mr Lester on behalf of the tenants contended for extended lease values for Flat 1 of £958,500, Flat 2 of £784,800 and Flat 3 of £313,200. Miss Biddle on behalf of the Freeholder contended £1,030,000 for Flat 1, £875,500 for Flat 2 and £378,465 for Flat 3.
13. Mr Lester contended that the relativity for Flat 2 should be 86.00% whilst Miss Biddle contended it should be 83.26%.

The Applicants' approach

14. Mr Lester drew our attention to the sale of six properties comparable to Flat 1, four for Flat 2, and four for Flat 3. He set these out in a schedule and made adjustments for the different sale completion dates, based on The Land Registry database. He felt that the Cluttons database was restricted to sales made by this agent and they tended to deal with the high end of the market. As a result their database was biased towards this end of the flat market. The flats in this block and other buildings around the subject property were not of the same calibre as those within the Cluttons database.
15. He then made a deduction of 10% because of the poor relationship between the Freeholder and their associated companies and the Applicants. He cited the issuing of a Section 20 consultation notice in 2010 which included the cost of restoring the roof area back to its correct state as a result of the illegal conversion into a flat. This Notice has subsequently been withdrawn. Some of the lessees subsequently applied for, and obtained via the LVT, a Right to Manage. Recently there has been a move by the freeholder to remove the current directors and replace them with their own preferred directors. Additionally, a large proportion of the flats are not owner occupied, but let on Assured Shorthold Tenancies whose occupants do not treat the block with the same respect as owner-occupiers. As a result the mix of occupancy detracts from the value of the flats within the building.
16. The Tribunal questioned the evidence, in particular the view that 1 bedroomed flats and studio flats were treated equally and yet they appeared to have differing rates per square foot in his analysis. Mr Lester felt that studio flats had a more spacious feel about them, even though they may have smaller floor areas and as a result he felt they had similar features resulting in similar values.
17. The matter of Relativity only concerned Flat 2 as Flats 1 and 3 still had a little more than 80 years remaining. In respect of Flat 2, the premises are outside the acknowledged Prime Central London area, and most of the graphs in the RICS Research Report from 2009 referred to cases within the PCL area. He accepted that the premises were close to the outer limits of the PCL envelope, but the quality of housing in this area is lower than those in PCL. He went on to explain the basis behind most graphs published by the RICS. He placed much reliance on the Nesbitt graph

which produced a relativity of 87.02%, the LEASE graph at 90.22% and the John D Wood graph at 85.31%. He found many had short comings but took a broad view and adopted 86%

18. With respect to the Premiums to be paid, Mr Lester was of the opinion that the recent history of the management of the property was a material matter that adversely affected the value and saleability of the flats.

The Respondent's approach

19. Miss Biddle had adopted the "42 Cadogan Square" approach to valuation and relied on ten comparable sales for Flats 1 and 3, and eight for Flat 2. She made adjustments for time by using the Savills Research for North-West London. Tenure, condition, outside space, location and floor area had also been accounted for. Each comparable was analysed in her proof of evidence.
20. When questioned by Mr Lester and the Tribunal that she had included some 2 bedroomed flats in her lists of comparables, she expressed her opinion that there was not a lot of difference between studio, 1 and 2 bedroomed flats when analysed. She explained her reasoning on each of the comparables queried. Some of the flats had a poorer outlook.
21. Turning to Relativity, Miss Biddle relied on the relativity graphs from W A Ellis, Knight Frank (2015), Cluttons (Houses) (2015), Cluttons (Flats) (2015), John D Wood (Tribunal Graph), Charles Boston (2015), and Gerald Eve. These gave an overall average of 83.26%. In particular the Cluttons, Charles Boston, and Nesbitt graphs included outer parts of London in their analysis. She relied on three cases, (see Reference 1 on Page 7 of this decision), substantiating her opinion that Prime Central London figures were also appropriate in this instance.
22. Mr Lester felt that the inclusion of Cluttons (houses) (2015) database was inappropriate in this instance. Miss Biddle accepted the point.
23. Mr Laughton denied that the recent history of disputes was a serious matter. Such events occur regularly in blocks and yet the flats continue to sell readily on the open market. He was of the opinion that the problems were only perceived problems, which in reality did not exist, nor did they affect the saleability of the flats. The Section 20 Notice matter had occurred more than five years ago and had been withdrawn. Consequently that would not need to be referred to in any Enquiries before Contract. Miss Biddle said that if the remaining matters came out in Enquiries before Contract, a buyer who was concerned about them would either wish to obtain a small reduction in the price, or if seriously concerned they would withdraw from the deal.

Reasons for our decision

Extended lease value

24. We were not convinced that there is a genuine reduction in value due to the claimed problems in the management of the block; although there seems to have been some friction we accept that now there is no more than often happens between landlords and tenants. Indeed, the fact that the Freeholder has an associated company buying flats within the block could add to the saleability of the flats as there is a ready potential buyer in the wings. Accordingly we reject the argument for a 10% reduction in the basic value of the flats.
25. After examining the comparables we consider that Flats 1 and 2 should value on the same price per square foot. Having rejected Mr Lester's 10% reduction we are unable to value Flat 1 FHVP higher than that contended for by the Respondent.
26. In respect of FHVP for Flat 1 the Applicant submitted a value of £1,065,000 against £1,030,000 by the Respondent. We adopt the FHVP value for flat 1 at the lower of the two.
27. In respect of Flat 2 the Applicant submitted £872,000 against the Respondent's £875,500. As we have adopted the Respondent's price per square foot we adopt £875,500 for FHVP.
28. From the various comparables submitted, and after hearing the evidence we felt that three flats were the most appropriate comparables upon which to base our decision on flat 3. They are Flat 3 134 Fellows Road, Flat 3 126 Fellows Rd, and Flat 9 54 Fellows Road. The analysis of both valuers equates to an average of £1,028 per square foot. This produces a FHVP of £354,660.

Relativity

29. We felt that the flats were located in a district adjacent to, but outside the PCL area. Whilst, the approach made by Miss Biddle would normally be acceptable, on this occasion the detailed analysis of graphs and Upper Tribunal decisions by Mr Lester was preferred. Mr Lester's commentary on relativity over nearly four pages of his proof was persuasive.
30. Consequently we find for a relativity of 86%.

Conclusion

31. In the case of Flat 1 we have adopted the valuation submitted by Miss Biddle, giving a premium of £21,743.

32. In the case of Flat 2 We decide that the premium is to be £76,705 as shown in Appendix 1.

33. In the case of Flat 3 we decide that the premium is to be £11,547 as shown in Appendix 2.

References

- 1 *Hildron Finance Limited v Greenhill Hampstead* - [2008] 1 E.G.L.R. 179
William Thomas Bushell v Joseph and Stella Kateb – LON/00AN/OLR/2014/1742
Kosta v Carnwarth and others – [2014 UKUT 0319 (LC)]

Name: Richard Athow

Date 15th December 2015

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include, with the application for permission to appeal, a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix 1

Flat 2
22 Buckland Crescent, London NW3 5DX

| | | | | | |
|---|------------|------------------------------|-----------|------------|-----------------------|
| | | Valuation Date 16 March 2015 | | | |
| New lease claim | | | | | |
| Present lease | 99 | Years | | From | 25/03/1980 |
| Years unexpired | | | 64.02 | | |
| Long lease value | | | £866,745 | Freehold | £875,500 |
| Existing lease value | | | £752,930 | Relativity | 86% |
| YP= | 6.50% | | PV= | 5% | |
| | | | | | |
| Diminution in value of landlord's interest | | | | | |
| Value before grant of new lease | | | | | |
| Term | | | | | |
| Rent | | | £ 100 | | |
| YP | 64.02 yrs | @ 6.5% | 15.112 | | 1,511 |
| | | | | | |
| Reversion | | | | | |
| Flat value (F/H) | | | £ 875,500 | | |
| Deferred | 64.02 yrs | @5% | 0.044 | | 38,522 |
| | | | | | 40,033 |
| | | | | | |
| Less value after grant of new lease | | | | | |
| Term | | | | | |
| New lease at a peppercorn rent | | | | | 0 |
| | | | | | |
| Reversion | | | | | |
| Flat value (F/H) | | | £ 875,500 | | |
| Deferred | 154.02 yrs | @5% | 0.0005 | | 438 |
| | | | | | -438 |
| | | | | | |
| Diminution in value of landlord's interest | | | | | |
| | | | | | 39,595 |
| | | | | | |
| Marriage value | | | | | |
| Aggregate of values of interests after grant of new lease | | | | | |
| Landlord's interest | | | 438 | | |
| Tenant's proposed interest | | | 866,745 | | |
| | | | | | 867,183 |
| | | | | | |
| Less Aggregate of values prior to grant of new lease | | | | | |
| Landlord's interest | | | 40,033 | | |
| Tenant's interest | | | 752,930 | | |
| | | | | | 792,963 |
| | | | | | |
| Marriage value | | | | | 74,220 |
| | | | 50.00% | | 37,110 |
| | | | | | Premium 76,705 |

Appendix 2

Flat 3
22 Buckland Crescent, London NW3 5DX

| | | | | |
|---|-------------------------|-----------|-----------------|---------------|
| | Valuation Date 16 March | | | |
| New lease claim | 2015 | | | |
| Present | | | | |
| lease | 99 Years | | From 09/07/1996 | |
| Years unexpired | | 80.31 | | |
| | | | Freehold | £354,660 |
| | YP= 6.50% | | PV= 5% | |
| Diminution in value of landlord's interest | | | | |
| Value before grant of new lease | | | | |
| Capitalisation of Ground rents | | Agreed | 4,560 | |
| Reversion | | | | |
| Flat value (F/H) | | £ 354,660 | | |
| Deferred | 80.31 yrs @5% | 0.0199 | 7,058 | 11,625 |
| Less value after grant of new lease | | | | |
| Term | | | | |
| New lease at a peppercorn rent | | | 0 | |
| Reversion | | | | |
| Flat value (F/H) | | £ 354,660 | | |
| Deferred | 170.31 yrs @5% | 0.0002 | 71 | -71 |
| | | | Premium | 11,547 |