



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

Case reference : **LON/00AW/OLR/2019/0757**

Property : **Flat 10, 21 De Vere Gardens,
London W8 5AN**

Applicant : **Mr Q Gilbertson**

Representative : **Mr C Fain of counsel**

Respondent : **Mountview Estates plc**

Representative : **Mr C Stone FRICS**

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

Tribunal members : **Judge S Brilliant
Mr P Casey MRICS**

**Date of determination
and venue** : **5 November 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **13 January 2020**

DECISION

Summary of the Tribunal's decisions

(1) The appropriate premium payable for the extended lease is £948,000.

Introduction

1. The applicant is the long lessee of Flat 10, 21 De Vere Gardens, London W8 5AN ("10/21 DVG") under a lease dated 27 April 1978 for a term of 65 years from 25 December 1977 ("the lease")¹. The respondent is the immediate landlord of the applicant under a lease of 10/21 DVG dated 11 November 2002 for a term of 999 years from 25 December 2001 at a peppercorn rent².

2. On 24 October 2018, the applicant gave notice of his claim for an extended lease. He asked for a term of 90 years plus the unexpired term of the existing lease. He proposed a premium of £690,000.

3. By a counter-notice dated 20 December 2019, the respondent admitted that the applicant had the right to acquire a new lease, but proposed a premium of £1,250,000.

4. By an application notice dated 14 June 2019, the applicant applied to the tribunal for it to determine the premium to be paid for the lease.

The experts

5. The applicant instructed Mr Richard Hardingham FRICS to prepare a report. His report is dated 22 October 2019. He also relied upon a supplementary report dated 4 November 2019. In his supplementary report Mr Hardingham valued the premium payable as £784,000.

6. The respondent instructed Mr Christopher Stone FRICS to prepare a report. His report is dated 21 October 2019. He concludes that the premium to be paid is £1,152,569.

The issues

7. The experts had in advance of the hearing agreed most matters. What they could not agree upon were (a) the long leasehold value of 10/21 DVG and (b) the deferment rate.

8. The respective positions at the start of the hearing were as follows:

¹ Registered at HM Land Registry under title number NGL331426.

² Registered at HM Land Registry under title number BGL43606.

	Long leasehold value	Deferment
Applicant tenant	£2,063,348	5.25%
Respondent landlord	£2,600,000	5.00%

9. The matters agreed by the start of the hearing were as follows:

Date of valuation	25 October 2018
Term date of the lease	25 December 2042
Unexpired term of the lease.	24.17 years
Unexpired term of the new lease.	114.17 years
Annual rent under the lease.	£150 rising to £300
Freehold adjustment.	1%
Ground rent capitalisation.	6%
Short leasehold value.	£1,097,903

The hearing

10. At the hearing the applicant was represented by Mr Fain of counsel. Mr Stone represented the respondent. The tribunal carried out an inspection on the second day of the hearing.

The premises

11. 10/21 DVG is situated in Kensington within the PCL³ area. 10/21 DVG is a third floor flat in a six storey terraced building with a front bay and first floor balcony. The building was constructed in about 1880. The accommodation consists of (1) a large hallway, (2) a reception room, (3) a front bedroom with a basin, (4) a second bedroom with an en suite shower room with basin and WC, (5) a third bedroom which was at the material date accessed through the kitchen in breach of

³ Prime Central London.

current regulations, (6) a bathroom with basin and WC, (7) a separate WC and basin, and (8) a kitchen. The floor area is 1,249 sq ft.

12. At the relevant date 10/21 DVG was, according to Mr Hardingham, mostly unmodernised and in need of complete modernisation. According to Mr Stone, it was in a dated condition. But in his opinion, the applicant had complied with the repairing covenants in the lease (paragraph 3.15 of his report).

The respondent's valuation evidence

13. The following six comparables were relied upon by Mr Stone.

Flat 2, 15 De Vere Gardens, London W8 5A ("2/15 DVG")

14. This is a four bedroom, ground, first and second storey flat with an area of 2,775 sq ft. It sold in September 2017 for £5,500,000, which equates to £1,983 per sq ft. It was sold on a long lease with 101 years remaining. Mr Stone has used the Land Registry index to adjust the price up to £5,775,442, which equates to £2,081 per sq ft.

Flat 3, 3 De Vere Gardens, London W8 5AR ("3/3 DVG")

15. This is a three bedroom, second floor flat with an area of 1,567 sq ft. It sold in July 2017 for £2,850,000, which equates to £1,819 per sq ft. It was sold with a share of the freehold. The Land Registry index adjusted price is £2,902,940, which equates to £1,853 per sq ft.

Flat 15, 2 De Vere Gardens, London W8 5AE ("15/2 DVG")

16. This is a basement and ground floor flat with an area of 1,873 sq ft. It sold in October 2017 for £3,980,000, which equates to £2,125 per sq ft. It was sold on a long lease of 999 years from 1 January 2014. The Land Registry adjusted price is £4,156,745, which equates to £2,219 per sq ft.

Flat 4, 37 De Vere Gardens, London W8 5AW ("4/37 DVG")

17. This is a four bedroom, first floor flat with an area of 2,288 sq ft. It sold in December 2017 for £5,500,000, which equates to £2,404 per sq ft. It was sold on a long lease with 177 years remaining. The Land Registry adjusted price is £5,375,238, which equates to £2,349 per sq ft.

22 Fordham Court, 9-13 De Vere Gardens, London W8 5AP ("22 FC")

18. This is a two bedroom, third floor flat with an area of 828 sq ft. It sold in July 2018 for £1,760,000, which equates to £2,126 per sq ft. It was sold on a long lease with 179 years remaining. The Land Registry adjusted price is £1,756,337, which equates to £2,132 per sq ft.

4 Hale House, 34 De Vere Gardens, London W8 5AQ ("4 HH")

19. This is a four bedroom, first floor flat with an area of 2,684 sq ft. It sold in November 2018 for £5,500,000, which equates to £2,068 per sq ft. It was sold on a long lease with 980 years remaining. The Land Registry adjusted price is £5,410,303, which equates to £2,016 per sq ft.

20. Mr Stone takes the average Land Registry adjusted figure of these six comparables to reach a long leasehold value of 10/21 DVG at £2,600,000 (1,249 sq ft at £2,108 per sq ft = £2,626,262).

The applicant's valuation evidence

21. Mr Hardingham relied upon eight comparables.

22. Four of those comparables listed immediately below were also used by Mr Stone.

4 HH

23. Mr Hardingham says this flat sold for £5,550,000, £50,000 more than Mr Stone says. This equates to £2,068 per sq ft. There is no adjustment for time. In his supplemental report Mr Hardingham reduces this figure to £1,918 per sq ft as it is on a better floor than 10/21 DVG.

3/3 DVG

24. Mr Hardingham agrees with Mr Stone that the flat sold at £1,819 per sq ft. But Mr Hardingham has used the Savills Residential Research paper on flat price movements to adjust the price down to £1,764 per sq ft.

15/2 DVG

25. According to Mr Hardingham, this is a four bedroom, ground, first and second floor flat with an area of 2,775 sq ft, which sold in October 2017 for £3,980,000. This equates to £1,434 per sq ft. Mr Hardingham has used the Savills Residential Research paper to adjust the price down to £1,390 per sq ft. There is some confusion between the details of this flat and 2/15 DVG⁴. In his supplemental report Mr Hardingham removed this comparable as being a far superior building.

4/37 DVG

26. Mr Hardingham agrees with Mr Stone that the flat sold at £2,404 per sq ft⁵. But Mr Hardingham has used the Savills Residential Research paper to adjust the

⁴ See paragraphs 14 and 16 above.

⁵ Actually Mr Stone said £2,403, but nothing turns on this.

price down to £2,207 per sq ft.

27. The other four comparables listed immediately below were used by Mr Hardingham alone.

Fourth floor flat, 11 Kensington Court Gardens, London W8 (“4/11 KCG”)

28. This unmodernised flat was sold in September 2017 on a long lease for £4,000,000. It is the only comparable that was not modernised. The sale price equated to £1,667 per sq ft. Mr Hardingham has used the Savills Residential Research paper to adjust the price down to £1,471 per sq ft.

Flat 7, 25 De Vere Gardens, London W8 (“7/25 DVG”)

29. This is a three bedroom, second floor flat with an area of 1,255 sq ft. It was sold in August 2017 for a sum equating to £1,733 per sq ft. It was sold on a long lease with 102 years remaining. Mr Hardingham has used the Savills Residential Research paper to adjust the price down to £1,681 per sq ft.

9 Fordham Court, 9-13 De Vere Gardens, London W8 5AP (“9 FC”)

30. This is a two bedroom, third floor flat. It was marketed in the summer of 2018 for a sum of £1,800,000, equating to £1,889 per sq ft. It was offered as a long lease with 118 years remaining. The flat was withdrawn from sale. It had been modernised 5 years earlier at a cost of £295 per sq ft.

3 Hale House, 34 De Vere Gardens, London W8 5AQ (“3 HH”)

31. This is a three bedroom ground floor flat. It has been on the market at a sale price equating to £1,911 per sq ft.

32. Mr Hardingham has reduced each of the unmodernised flats by £195 per sq ft. He says that this is a very conservative figure, given that Vertigo Design and Build modernise comparable flats at £295 per sq ft.

Summary of differences

33. The following table summarises the above data showing the value per sq ft.

	Mr Hardingham	Mr Stone
2/15 DVG		£2,081
3/3 DVG	£1,569	£1,853

15/2 DVG		£2,219
4/37 DVG	£2,012	£2,349
22 FC		£2,132
4 HH	£1,723	£2,016
4/11 KCG	£1,471	
7/25 DVG	£1,486	
Total	£8,261	£12,650
Average	£1,652	£2,108

34. There is an issue as to time adjustment. Mr Stone relies upon the Land Registry House Price Index for flats and maisonettes in Kensington and Chelsea which shows an increase from 97.65 in September 2017 to 102.677 in October 2018. Mr Fain criticises this data in that it does not distinguish between the different number of rooms in the subject properties.

35. There is an issue as to what if any adjustments should be made for the fact that 10/21 is unmodernised whilst all the comparables, except for 4/11 KCG, were modernised.

36. Mr Hardingham says that his figures are conservative ones, as he been sent an email from Mr Allen at Strutt & Parker indicating that an unmodernised third floor flat in De Vere Gardens would achieve a price of approximately £1,300 per sq ft.

Discussion

Comparables

37. We have already said in paragraph 25 that Mr Hardingham no longer relies upon 15/2 DVG.

38. He also agreed that 2/15 DVG on three floors was not a great comparable, but he accepted Mr Hardingham's 7/25 DVG which he had not been able to find on Rightmove. Mr Stone had not been aware of 4/11 KCG, but he accepted it as helpful. Mr Hardingham disregarded 22 FC as being too small, but we do not accept this argument as both surveyors use comparables twice the size of 10/21 DVG but make no adjustment for size. The other comparables are common to both experts, but details for unsold properties and estate agents' opinions are not helpful.

Time adjustment

39. Mr Hardingham's adjustments of 2–3% to reflect price movements between the valuation date and the sale dates of the comparables is based on an email from Savills saying that their research shows a 5% fall between Q3 2017 and Q3 2018 across the whole PCL area, but he does not exhibit the tables in Savills Research paper showing the full picture. The report can be criticised for being valuation and not transaction based.

40. Mr Stone uses Land Registry data for Kensington & Chelsea, but this table shows declines and increases across the period against a background of steep declines in transaction numbers. There is no guarantee that similar properties in similar numbers are sold in each monthly period, but between July 2017 and Oct 2018 it shows a small increase. Save for 4/37 DVG, where both experts reduce the comparables price by 2%, which we accept, we choose to make no adjustment to the other comparables for the passage of time. Such movements, if any, are small, and the evidence of each valuer contradicts the other with both using approaches which can be validly criticised.

Adjustment for Improvements

41. It is accepted by both experts that all the comparables, save for 4/11 KGC, have been modernized in comparison with 10/21 DVG. Mr Hardingham made an across the board deduction of £195 per square foot based on an email from Vertigo Design & Build that three recent modernization projects which they had been involved in cost in the region of £295 per square foot. However, none of those projects are among the sales comparables and no specifications have been given. Mr Hardingham did not say when or to what degree the comparables were modernized. Mr Stone accepted in his evidence that some allowance should be made and suggested some £100 per square foot or so, but he made the point that it is effect on value not cost that should be reflected, and without better information we adopted a mid-point of £150 per square foot.

Floor level adjustment

42. Mr Hardingham deducts £150 per square foot from the sale price of 4 HH and 4/37 DVG for being on the first floor with better ceiling heights etc, but he gives no evidence that this supposition is correct. It clearly is not when viewing 4 HH from the road. All are purpose built flats with lifts and we make no adjustment for floor level.


4/11 KGC

43. Mr Hardingham says that this is a better building with a very good portorage service, and he deducts £150 per square foot. Mr Stone accepts that something for portorage should be deducted, but not that much. From an external viewing the building and the street not as attractive as De Vere Gardens, but given Mr Stone's concession we deduct £75 per square foot. However Mr Stone pointed out that Mr

Hardingham had failed to adjust for the lease length with 90.83 years unexpired. Savills Enfranchisable Lease Relativity Graph included in Mr Stone's report suggests some 95% of freehold value and as both valuers treat the freehold as being 1% more valuable than an extended lease, we adjust by 4% for long lease value.

44. The comparables we find helpful thus show:

	Sale Price/sq ft	Time	Improvements	Lease Length	Porter
3/3 DVG	£1,819		£1,669		
4/37 DVG	£2,403	£2,349	£2,199		
22 FC	£2,126		£1,976		
4 HH	£2,068		£1,928		
4/11 KCG	£1,667			£1,736	£1,661
7/25	£1,733		£1,538		
			<u>£1,661</u>		
			£1,836		
			Average		



So extended lease value 1249 sq ft @ £2,293,164
£1,836

Say £2,293,150

Freehold value x 100/99 £2,316,325

45. Both valuers took an average without weighting any particular comparable.

Overview of values

46. Mr Stone asked Mr Hardingham if he had looked at the relativity graphs as a check. Mr Hardingham said no as agreed on the basis of the sale price discounted for Act rights. However, the price paid was £1,375,000. Savills Enfranchisable 2002 Graph suggests with 24.17 years unexpired this is some 54.6% of the freehold value, or £2,518,315. The value agreed for the existing lease ignoring Act rights is £1,097,903. Gerald Eve's Graph, the only one given some credence by the UT in Mundy v the Trustees of the Sloane Stanley Estate [2016] L & TR 32, suggests this is some 48.84% of the freehold value or £2,247,958. Using this only as a cross check, it suggests that Mr Hardingham's figures are clearly too low.

Deferment Rate

47. Mr Hardingham could not say why or how the instant case differs from Cadogan v Sportelli [2010] 1 AC 226. He just referred to Nailrile Ltd v Cadogan and other cases (2008) LRA/114/2006 but in the Regency Lodge case (Daejan Properties Ltd v The Trustees of the Eyre Estate) the reversion to the head leasehold was only 54 years, whereas in the instant case reversion is some 980 years - so 5% is appropriate.

Conclusion

48. Using the above figures, the premium to be paid is £948,000. The calculation is at Appendix 1.

Name: Judge Simon Brilliant **Date:** 13 January 2020

Appendix 1

Determination of the premium payable for an extended lease of Flat 10, 21 De Vere Gardens, London W8 5AN

Valuation date: 24 October 2018 – Unexpired term 24.17 years

Diminution in Value of Head Leasehold Interest

Capitalization of ground rent as agreed		£3,238
Reversion to extended lease value with VP	£2,293,150	
Deferred 24.17 years @ 5%	<u>0.308</u>	<u>£706,290</u>
		£709,528
Less value of long lease after grant of new lease	£2,293,150	
Deferred 114.17 years @5%	<u>0.0038096</u>	<u>£8,736</u>
		£700,792

Marriage Value

After grant of new lease

Value of extended lease	£2,293,150	
Plus long leasehold value	<u>£8,736</u>	£2,301,886

Before grant of new lease

Value of existing lease	£1,097,903	
Plus long leasehold value	<u>£709,528</u>	<u>£1,807,431</u>
		£494,455

50% share to Freeholder		<u>£247,228</u>
		£948,020

Premium Payable Say £948,000

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).