

2023



Residential  
Property  
TRIBUNAL SERVICE

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON  
AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM,  
HOUSING AND URBAN DEVELOPMENT ACT 1993 ("the Act")**

**REF:** LON/00AW/OLR/2010/0661

**Property:** Flat 16, 21/22 Stanhope Gardens, London SW7

**Applicant:** Mr M Barker (tenant)

**Respondent :** Mr S Manzoor (landlord)

**Date of Hearing:** 2 November 2010

**Appearances**

**For the Applicant:** Mr M Shulman, GH Canfields LLP  
Mr G M Pope FRICS

**For the Respondent:** Mr C M Avery FRICS

**Members of the Leasehold Valuation Tribunal**

Mrs J.S. Pittaway LL.B  
Mr W.R. Shaw FRICS

**Date of Decision:** 18 November 2010

## **Background**

<b>Date of tenant's notice:</b>	19 January 2010
<b>Date of landlord's counter-notice</b>	10 March 2010
<b>Date of application to Leasehold Valuation Tribunal</b>	1 July 2010
<b>Valuation date</b>	19 January 2010

### **Details of tenant's leasehold interest**

i) <b>Date of lease</b>	9 June 1987
ii) <b>Term of lease</b>	80 years from 25 December 1981
iii) <b>Ground rent</b>	£900pa since 25 December 2006 subject to review in 2031 and 2056
iv) <b>Unexpired term at valuation date</b>	51.93 years

**Details of any intermediate interest** None

<b>Tenant's proposed premium</b>	£106,975.00
<b>Landlord's proposed premium</b>	£122,935.00

## **Inspection**

Neither party suggested that an inspection of the Properties was necessary and the Tribunal did not consider an inspection necessary.

## **Matters agreed**

1. value of unencumbered freehold interest	£636,364.00
2. value of long leasehold interest	£630,000.00
3. deferment rate	5%
4. the terms of the lease	

## **Matters in Dispute**

1. the ground rent payable following the reviews in 2031 and 2056;
2. the capitalisation rate; and
3. the relativity; namely the applicable proportion, expressed in percentage terms, to a lease of a property located in central London with an unexpired lease term of 51.93 years bears to the value of the freehold with vacant possession.

## Evidence

The Tribunal had before it Proofs of Evidence from Mr Pope on behalf of the Applicant and from Mr Avery on behalf of the Respondent, including in each case their respective valuation of the premium to be paid for the new lease.

### 1. Ground Rent

1.1 Mr Pope adopted a revised ground rent of £1,178 with effect from 2031 in his valuation with no increase for the review in 2056 as he submitted that this was too far into the future for it to be possible to estimate what the rent might then be, as value can only be based on current valuation evidence. He submitted that the correct methodology for calculating the rent payable following each review date, where the lease provided for the review to be by reference to a percentage of the value of the Property (in this case 0.2%) was to look at the current value at the valuation date and to calculate the reviewed rent with reference to that sum.

1.2 Mr Avery adopted revised ground rents of £2,250 and £4900 in his valuation. He submitted that the correct approach was to look into the future to determine the likely level of property price inflation until the next ground rent review in 2031, and on that basis predicted that prime central London prices would rise on average by 3% per annum compound for the unexpired term of the lease. Mr Avery made the point that such an increase was less than the increase in the rent in 2006 when it was increased from £200 p.a. to £900 p.a., equivalent to a 6% compound increase in the value of the Property. In support of his submission he referred to the following Leasehold Valuation Cases

Flat 3, 89 Onslow Square, London SW7 3LT LON/NL/4327/05; and  
Gleneagle Court, Gleneagle Road, Streatham, London SW16 6BS  
LON/NL/4535/05

1.3 Mr Shulman, in cross-examination, put it to Mr Avery that his approach was not adopted in the *Onslow Square* case and that the figure reached in that case suggested that the Tribunal had adopted the approach favoured by Mr Pope. Mr Avery replied that the value might equally have been reached based on an anticipated value of the Property at the date of review. Mr Shulman accepted that the decision is silent as to how the figure for the reviewed rent was reached.

1.4 Mr Shulman cross-examined Mr Avery as to the basis upon which he had reached the conclusion that values would rise 3% compound for the unexpired residue of the term of the lease. Mr Avery referred to the *Gleneagle* decision where the Tribunal accepted Mr Avery's increase of 3% per annum, rising to 4% .

1.5 Mr Avery stated, without providing any evidence to back his assertions, that in January 2010 the market in prime central London property was

buoyant with no mention of a general election, government debt or the possibility of a double-dip recession. He referred to the previous 6 months in London having seen a 10% growth, again without providing evidence to substantiate this assertion.

1.6 Both Mr Pope and Mr Avery agreed that the rent increase in the *Onslow Square* case was onerous but that the rent increase in relation to the Property was not.

## 2. The Capitalisation Rate

2.1 Mr Pope considered the appropriate capitalisation rate to be 6%, given the higher risk element in a shorter lease.

2.2 Mr Avery considered the appropriate capitalisation rate to be 5.25%, the same rate as was adopted in the *Onslow Square* case. Mr Avery disagreed with Mr Shulman when Mr Shulman put it to him that 5.25% was too low a rate, arguing that it is a rate which is dependent on an investor's expected return on his investment. Mr Avery submitted that the better location of Onslow Square made it more attractive to an investor notwithstanding that it had more onerous rent review provisions than the Property.

## 3. Relativity

3.1 Mr Pope relied on the John D Wood & Co (1996)/Gerald Eve graph of relativity ("GE Graph") to value the leasehold interest without rights at 75.6%. He submitted that as a joint author of that graph it would be disingenuous of him not to rely on it.

3.2 Mr Avery argued for a relativity figure of 73%. He submitted that the GE Graph was not the most appropriate graph to use, as it is weighted toward houses and covered the Grosvenor and Cadogan Estates, prime property, which the Property is not. Mr Avery submitted that relativities are less important in property negotiations where high value properties are involved but did not produce any evidence to substantiate this assertion. Mr Avery based his relativity upon the Clutton's graph of relativities, accepted by the Tribunal in the *Onslow Square* case. He calculated the relativity figure on the basis of Clutton's graph to be 73.97%

3.3 In connection with the use of the Clutton's graph there was a difference of opinion between Mr Pope and Mr Avery as to the actual relativity adopted by the Tribunal in the *Onslow Square* case. Mr Avery submitted that the Tribunal took a gross relativity (before making a deduction for the onerous rent review provisions) of 57.713% whereas Mr Shulman submitted that a gross relativity of 62% had been used; which, when the deduction for the onerous rent review provisions had been made resulted in a net relativity of 57.713%. This argument turned on paragraph 31 of the *Onslow Square* case.

3.4 Mr Shulman cross-examined Mr Avery as to the appropriateness of the Clutton's graph on the basis that the notes to it in the RICS Research state

that it relates to "Flats and houses: NW8, W9, St John's Wood and Maida Vale" and that it did not relate to property south of Hyde Park. Mr Avery submitted that he considered the location of the Property to be comparable to the areas covered by the Cluttons' graph as it was not prime property.

3.5 Mr Avery proposed a reduction of 1% in the relativity percentage used to reflect the underground rumble experienced at the Property. Mr Avery submitted that it was appropriate to make this reduction to the leasehold value but not to make a similar deduction from the freehold valuation as the rumble impacted on the leasehold value only.

### The Law

**Schedule 13** to the **Leasehold Reform, Housing and Urban Development Act 1993** (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

**Paragraph 4 of Schedule 13**, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage value shall be taken to be nil.

**Paragraph 5 of Schedule 13** provides for the payment of compensation for loss arising out of the grant of a new lease.

**Schedule 13** also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

### **The Tribunal's Decision**

#### **1. Ground Rent**

The Tribunal preferred Mr Pope's approach as to the value of the reviewed ground rent. The Tribunal accepted that Mr Avery's approach had been adopted in the *Gleneagles* case but in that case, which was in 2006, Mr Avery's submission had been based on evidence from the Council of Mortgage Lenders, the Centre for Economic and Business Research and comments in a Daily Telegraph article. In this case Mr Avery provided no recent evidence to substantiate his conclusion.

#### **2. The Capitalisation Rate**

The Tribunal considered a capitalisation rate of 6% to be more appropriate than one of 5.25% given the length of the lease, the security of recovery, the attractiveness of a higher rent to an investor and the rent review provisions.

### 3. Relativity

3.1 On balance the Tribunal preferred to rely on the GE graph, given the location of the Property, in preference to Cluttons' graph.

3.2 The Tribunal did not agree with Mr Avery's submission that a reduction of 1% should be made in the relativity to reflect the impact of underground rumble. They considered that this must impact on both the freehold and leasehold values and that it would have already been taken into account in the agreed valuations.

#### **Premium payable by Tenant on Grant of New Lease**

The Leasehold Valuation Tribunal determines that the premium to be paid by the tenant on the grant of a new lease, in accordance with section 56 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993, is **£106,975**

  
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Chairman

  
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Date

18 November 2010