

2016

Ref LON 00BK/OLR/2010/0305

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION
UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSING AND
URBAN DEVELOPMENT ACT 1993**

Applicants Howard de Walden Estates Ltd

Respondent: Crystal Isobel Fischetti

Re: Flat 42 Hallam Court 77 Hallam Street London
W1W 5HB

Date of Tenant's notice: 10th September 2009

Date of Counter Notice: 13th November 2009

Application date: 18th March 2010

Hearing date: 10th and 11th August 2010

Date of Inspection 11th August 2010

Valuation date: 10th September 2009

Appearances: For the Applicants :
Mr K Munro of counsel instructed by Speechley
Bircham Solicitors
James Souter solicitor of Speechley Bircham
Mr Kevin Ryan FRICS of Carter Jonas valuer
Mr Marcus Josey BA (Hons) MSc FRICS of
Gerald Eve valuer

 For the Respondent
Mr Aaron Walder of counsel instructed by
Druces LLP Solicitors
Mr B Lomer solicitor of Druces
Ms Marie Joyce BA(Hons) PG Dip Surv MRICS of
Marr-Johnson & Stevens valuer

Members of the Leasehold Valuation Tribunal:
Mr P L Leighton LLB(Hons) Mr W J Reed FRICS

Date of Tribunal's decision: 17 October 2010

1.0 Introduction

- 1.1 By an application dated 18 March 2010 the Applicant applied to the Tribunal for a determination of the premium payable in respect of the grant of a lease extension pursuant to section 48 of the Leasehold Reform Housing and Urban Development Act 1993("the Act") for the property known as Flat 42 Hallam Court ,77 Hallam Street London W1W 5BH

2.0 Inspection

- 2.1 The Tribunal inspected Flats 42 and 22 Hallam Court on 11th August 2010, accompanied by Ms Joyce for the Respondent and a representative from Mr Ryan's office. The building consists of 35 flats situated on 7 floors.. The subject flat and Flat 22 are both situated on the southern side of the building and overlook Hallam Street
Hallam Court has a spacious entrance hall on the ground floor with a porter's lobby .It was clean and carpeted throughout with a lift to the upper floors
- 2.2 Flat 42 now comprises an entrance lobby a reception room with an open plan kitchen, two double bedrooms , one with en suite shower/wc and a modern bathroom with bath and power shower unit , hand basin and wc. It has been completely modernised since it was purchased by the Respondent in May 2007 as can be seen from the photographs provided by Ms Joyce which were taken in 2007
- 2.3 Flat 22 has also recently been purchased by the Respondent It is identical in size and layout to Flat 42 and is immediately below on the second floor. It is currently being modernised to provide the same accommodation and facilities as Flat 42.
- 2.4 The Tribunal also inspected Rosetti House , Goodwood House and 22 Park Crescent externally .It noted that Rosetti House is a double fronted terrace building in a relatively quiet cul de sac It has metal windows to the front elevation and the common parts (as seen from the glazed front door)

has marbled floors and walls and a somewhat dated appearance. There is also a service entrance at the far end of the building

- 2.5 Goodwood House is situated on a corner at the junction of Hallam Street and Devonshire Street. with common parts similar to those at Hallam Court . 22 Park Crescent forms part of a crescent of similar buildings with a Georgian facade overlooking the gardens adjoining Marylebone Road with more traffic and noise. it has a spacious reception area on two levels with a reception desk .It was attractive and well kept The particulars suggest that the flat in question was situated on the fifth floor of the building, but the Tribunal was only able to observe four floors from the street.

3.0 The Lease

- 3.1 the Applicant holds a sub lease at a ground rent of £64 per month expiring on 6 July 2035. It is subject to a head lease which expires on 6 April 2038. At the valuation date the underlease had 25.82 years unexpired and head lease had 28.57 years unexpired

4.0 Agreed Facts

- 4.1 The valuers have agreed all the facts in this case except the value of the extended lease. The valuation date is 11 on September 2009, and the unexpired term at that date was 25.82 years. As stated the head lessees rental income capitalisation rate was agreed at 7.75% with tax at 35% and a sinking fund of 2.5%. The head lessees deferment rate was agreed 7.75%. The freeholders deferment rate was agreed at 5% and the relativity between the freehold and existing lease was agreed at 50.97%. The relativity of a lease at a peppercorn rent with an unexpired term of almost 116 years was agreed at 98.75% of the freehold value.
- 4.2 The gross internal area of the flat as measured by the RICS code of measuring practice is 682 square feet

Matter in Issue

- 5.1 The only items in issue were the value of the extended lease and the premium. The Applicant contended for a figure of £613,750 for the value of the extended lease on the basis of £900 per square foot and the Respondent contends for the sum of £ 493,750 based on a figure of £733 per square foot.

6.0 The Evidence

- 6.1 Mr Ryan of Carter Jonas and Mr Josey of Gerald Eve were called on behalf of the applicant. Mr Ryan gave evidence of the value of the property and the extended lease and Mr Josey calculated the premium payable in accordance with the principles under Schedule 13 of the Act.. Mr Josey's evidence was not largely disputed as it depend upon the evidence of Mr Ryan on the value of the extended lease.
- 6.2 Ms Joyce of Marr-Johnson & Stevens gave evidence on behalf of the Respondent and dealt with both the question of valuation and the calculation of the premium.
- 6.3 Mr Ryan and Ms Joyce both analysed the sale of a number of comparable properties in the immediate locality of the subject property on which they based their assessment of value. Ms Joyce relied upon a much larger selection of properties than Mr Ryan and appeared to analyse many of them in greater detail
- 6.4 The properties on which Mr Ryan placed reliance. including 14 Rosetti House, 19 Goodwood Court, 21 Winsley House Portland Place, Flat 9 22 Park Crescent, 33 Hallam Court, Flat 41 79 Hallam Street and 20 Rosetti House He considered these properties provided the most valuable evidence of comparability and arrived at a figure of £900 per square foot.
- 6.5 He chose to exclude a number of flats in the area which had been included by Ms Joyce in her analysis in particular the subject flat and Flat 22 both in Hallam Court He sets out the flats which he considered and rejected at paragraphs 4.15 to 4.24 of his report. They comprise three flats

in Hallam Court, 5 flats in 49 Hallam Street a block across the street from the subject block, and Flat 15 at 96-100 New Cavendish Street

- 6.6 He gave various reasons for rejecting them, either because they were different in size or the transaction in question was too far away from the valuation date in his opinion.
- 6.7 Ms Joyce analysed a much larger spread of properties and considered all of them to have some relevance . She set out the analysis in some detail in her report and considered the properties in Rosettie House, 49 Hallam Street and the flat in new Cavendish Street. She also considered two recent settlements for lease extensions in Hallam Court namely Flats 52 and 64 Hallam Court
- 6.8 She found a high degree of consistency in values for properties in the vicinity and taking an average of all the properties which she analysed she arrived at a figure of ££816 per square foot. She adjusted this figure however as it included proerties which had been refurbished and properties with garages. Her adjusted average of these figures owas £753 per square foot
- 6.9 However, she considered that the three most helpful comparables outside the subject flat were Flat 33 Hallam Court which produced a figure of £704 per square foot ,14 Rosetti House which produced a value of £713 per square foot and Flat 51 ,49 Hallam Street which produced a value of £759 per square foot
- 6.10 She had also arrived at a figure of £732 per square foot for Flat 42 and £785 per square foot for Flat 22.Hallam Court
- 6.11 Her final conclusion was that the value of the freehold was £500,000 and the value of the extended lease £493,500. This resulted in in a premium for a 115.8 year lease of £183,800

7.0 The Tribunal's Determination

- 7.1 The Tribunal considered the comparables which had been supplied by Mr Ryan and Ms Joyce, and decided that the following sales provided the best evidence on which to base its valuation of the subject flat at the valuation date.
- 7.2 **Flat 42 Hallam Court** the subject flat. This was purchased by the Respondent on 11 May 2007 for £342,000 was 28 years unexpired. Ms Joyce have allowed 10% from right under the act which produced an adjusted sale price of £307,800. Applying a relativity of 53.8% and an adjustment for time gave the valuation as at the valuation date of £499,571 for the freehold interest, equivalent to a rate of £732 per square foot. Ms Joyce made no adjustment for conditions, locality, quantity or floor level.
- 7.3 Mr Ryan had not included the sale of Flat 42 in his schedule of comparable because the sale had occurred nearly 2 1/2 years before the valuation date and he considered that there had been some drift in the Savill's Index during 2008 and 2009 which had made it unreliable over the longer period. The Tribunal was of the opinion that Mister Ryan was wrong to exclude the subject flat as in its view it provided some reliable evidence as to the value
- 7.4 **Flat 22 Hallam Court** This property was also purchased by the Respondent on 28 June 2010 for £314,000 with 25 years unexpired. Ms Joyce again allowed 10% of the value of rights under the Act which reduced the sale price to £282,600. Applying a relativity rate of 50% and an adjustment for time she arrived at the figure of £526,139 for the freehold interest which she then increased by 4% to reflect the lower floor level of the comparable and arrived at a rate of £785 per square foot.
- 7.5 Mr Ryan had not included the sale of Flat 22 Hallam Court in his schedule of comparables because he thought that it was a one-bedroom flat and because it had a short lease, and had been sold privately without any sale particulars. In this respect the Tribunal again considered that Mr

Ryan was wrong to exclude Flat 22 as it provided useful evidence of value.

- 7.6 **Flat 14 Rosetti House** was a fourth floor flat sold on 1 September 2009 for £760,000 with 86.75 years unexpired. Applying a relativity of 94.3% and an adjustment for time produced a valuation as at the valuation date of £805,938 for the freehold interest, or a rate of £771 per square foot. Ms Joyce had deducted 5% for condition and a further 5% for the balcony which produced an adjusted rate of £713 per square foot.
- 7.7 Mr Ryan had added 5% to take account of the hospital goods entrance and 15% for the poor condition of the building. This produced a rate of £897 per square foot.
- 7.8 With the benefit of its external inspection and view of the common parts through the glazed front door of the building the tribunal considered that it would be appropriate to add 10% to Mr Ryan's adjusted rate of £747 per square foot to reflect both the service goods entrance and the poorer quality of the building gave an adjusted rate of £821 per square foot for the freehold interest.
- 7.9 **Flat 20 Rosetti House** was sold on 24th of April 2009 for £675,000 with 87.25 years unexpired. As for flat 14 the tribunal added 10% to Mr Ryan's adjusted rate of £719 per square foot. This produced an adjusted rate of £790 per square foot which the tribunal reduced to £777 per square foot to reflect the difference in floor level.
- 7.10 **Flat 19 Goodwood Court** was a first floor flat sold on 21 April 2009 for £550,000 with 106 years unexpired. Both experts have adjusted the sale price to produce an adjusted rate of £951 per square foot at the valuation date. Ms Joyce had deducted 5% for condition and added 6% for floor level to produce an adjusted rate of £961 per square foot. Mr Ryan had adjusted the basic rate by 3% to £980 per square foot to reflect the different floor levels.

- 7.11 In this connection the tribunal agreed with Ms Joyce that some allowance should be made to reflect the superior quality of the building and its corner location and adopted her adjusted rate of £961 per square foot
- 7.12 This resulted in the following rates per square foot for the comparables selected by the Tribunal -
- Flat 42 Hallam Street £732
 - Flat 22 Hallam Street £785
 - Flat 14 Rosetti house £821
 - Flat 20 Rosetti house £774
 - Flat 19 Goodwood Court £961
 - Flat 9 22 Park Crescent £822
- 7.13 The Tribunal noted that the adjusted rate for Flat 42 was significantly below the adjusted rates for the other comparables, which may have been due to the condition of the flat at that time or to the unreliability of the Savills index for adjustments between May 2007 and September 2009 as claimed by Mr Ryan
- 7.14 Equally the adjusted rate for 19 Goodwood Court was very much above the adjusted rates for the other comparables, again for no apparent reason. The flat had been sold in April 2009, very close to the bottom of the market. The original asking price had been £650,000 and then reduced to £599,950 and had finally sold £550,000. The particulars of sale gave no indication for such a high price being achieved.
- 7.15 If 42 Hallam Court and 19 Goodwood Court were included in the basket of comparables the average rate would amount to £815.83 per square foot. Excluding those two comparables the average of the other four comparables is £800.50 per square foot, and the average of the averages, which gives rather greater weight to the four comparables as against the other two, is £808.16 per square foot.
- 7.16 Having considered all the comparables and applied an average as described above the Tribunal determines that the appropriate rate for the valuation of the subject flat at the valuation date is £808 per square foot

- 7.17 The gross internal area of the subject flat is 682 ft.² and the value of the freehold interest at the valuation date is therefore £551,056.
- 7.18 The value of the extended leasehold interest has been agreed at 98.75%. The value of the extended leasehold interest on this basis it is therefore £544,168 and the unextended freehold interest has been agreed at 50.97%. The value of the unextended leasehold interest on this basis is therefore £280,873.
- 7.19 Having determined the values of the freehold extended leasehold and existing leasehold interests the tribunal determines that the total premium payable for the extension of the lease of the subject flat is £202,184. Copy of the Tribunal's valuation together with an apportionment of the marriage value is attached as Appendix 1.

Chairman Peter Leighton
Date 18 October 2010

Flat 42, Hallam Court, 77 Hallam Street, London W1

Valuation in accordance with s.56 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993, as amended, as at 11 September 2009 - the date of the Notice of Claim.

A. Diminution in the value of the landlord's freehold interest

(On the understanding that the intermediate landlord, the Hallam Court Residents Association Limited, will continue to pay in full the rent reserved under the headlease).

(1) Value before extension of lease

Ground rent 11/9/2009 to 5/4/2038	£x	
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£551,056	
PV £1 28.56 yrs @ 5%	<u>0.2480</u>	£136,662

Less

(2) Value after extension of lease

Ground rent 11/9/2009 to 5/4/2038	£x	
Peppercorn ground rent 6/4/2038 to 5/7/2125	£nil	
Reversion to freehold with vacant possession, excluding tenants' improvements	£551,056	
PV £1 115.81 yrs @ 5%	<u>0.0040</u>	<u>£2,204</u>

Diminution in value **£134,458**

B. Diminution in value of the intermediate landlord's interest

(1) Value before extension of lease

Ground rent 11/9/2009 to 5/7/2035	£64.00 p a	
YP 25.81 yrs @ 7.75 & 2.5, tax @ 35%	<u>8.464</u>	£542
Reversion to market Rent 6/7/2035 to 5/4/2038 @ £500 p w	£26,000 p a	
YP 2.75 yrs @ 7.75% & .5%, tax @ 35%	<u>1.6000</u>	
	£41,600	
PV £1 25.81 yrs @ 7.75%	<u>0.1460</u>	<u>£6,074</u>
		£6,616

Less

(2) Value after extension of lease £nil

Diminution in value **£6,616**

C. Marriage Value

Value of freehold interest after extension of lease	£2,204	
Value of leasehold interest after extension of lease	<u>£544,168</u>	£546,372
<u>Less</u>		
Value of freehold interest before extension of lease	£136,662	
Value of intermediate landlord's interest before extension of lease	£6,616	
Value of leasehold interest before extension of lease	<u>£280,873</u>	<u>£424,151</u>
	Marriage value	£122,221
	50% of marriage value	£61,110

D. Any other loss **£nil**

E. Premium

Diminution in value of landlord's freehold interest	£134,458
Diminution in value of head-leasehold interest	£6,616
50% of marriage value	<u>£61,110</u>
Premium	£202,184

F. Apportionment of marriage value

Freehold interest	$£134,458 / £141,074 \times £61,110 =$	£58,244
Head-leasehold interest	$£6,616 / £141,074 \times £61,110 =$	<u>£2,866</u>
		£61,110

G. Premiums payable

To the freeholder	$£134,458 + £58,244$	=	£192,702
To the head-lessee	$£6,616 + £2,866$	=	<u>£9,482</u>
			£202,184