

4132



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

**Case reference** : LON/OOAW/OLR/2015/1219

**Property** : Flat 46/47 Daver Court,  
Chelsea Manor Street,  
London SW3 3TS (“the flat”)

**Applicant** : Giovanna Tomacelli (“the tenant”)

**Representative** : Brice Droogleever & Co

**Respondent** : The Right Honourable Charles  
Gerald John Earl Cadogan and  
Cadogan Holdings Limited (“the  
landlord”)

**Representative** : Pemberton Greenish LLP

**Type of application** : A new lease claim

**Tribunal member** : Angus Andrew  
Marina Krisko BSc (EstMan) FRICS

**Date and Venue of  
hearing** : 1 and 2 March 2016  
10 Alfred Place, London WC1E 7LR

**Date of decision** : 30 March 2016

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**DECISIONS**

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## **Decisions**

1. The freehold value of the flat at the agreed valuation date was £1,353,164.
2. Relativity of 31.60% is to be applied to the freehold value to calculate the existing short lease value of the flat.
3. The price to be paid for the new extended lease is £798,912 of which £934 is to be paid to Shellpoint Trustees Limited in accordance with our attached valuation.

## **The application and hearing**

4. The tenants applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the price to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of the flat.
5. We heard the application on 1 March 2015. The tenant was represented by Christopher Mann, a barrister. George Pope FRICS gave expert evidence on behalf of the tenant. The landlord was represented by Ellodie Gibbons, a barrister. Daniel Walmsley MRICS gave expert evidence on behalf of the landlord. On the 2 March 2016 we inspected the flat, the interiors of 9 Forsyte House and 47 Swan Court and the exterior of all the comparable flats referred to below. During the inspection we were accompanied by both Mr Pope and Mr Walmsley.

## **Background**

6. Daver Court is a five storey block of flats built in the mid 1930s. It is one of four similar blocks on the section of Chelsea Manor Street to the north of King's Road. The other blocks are Britten House, Forsyte House and Meriden Court. The fourth floor of each block is constructed within a mansard roof. Daver Court, Forsyte House and Meriden Court overlook Chelsea Manor Street whilst Britten Court overlooks St Luke's Church and its extensive park like grounds.
7. Swan Court is on the section of Chelsea Manor Street to the south of Kings Road. It was also built in the 1930s but is much larger than the other four blocks referred to above. It comprises in excess of 150 flats on 9 floors with a large internal court yard.
8. 46 and 47 Daver Court were originally two small studio or one bedroom flats that were converted to form the existing two bedroom flat pursuant to a licence to alter granted in 1995. The flat comprises a reception room, two double bedrooms, two bathrooms and a kitchen. Although the flat is not in

disrepair it is apparent that it has not been decorated for some considerable time and the kitchen and bathroom fittings are old and by modern standards would be considered inadequate.

9. The tenant holds the flat under two leases dated 9 July 1971 (46 Daver Court) and 16 November 1971 (47 Daver Court). Both leases are for terms of 57 years (less one day) from 25 March 1971. The landlord holds the freehold interest in Daver Court and is the competent landlord for the purpose of the Act. Shellpoint Trustees Limited hold an intermediate lease for a term of 99 years from 25 March 1929 but they played no part in the proceedings.
10. On 5 December 2014 the tenant gave notice of her claim to extend the existing leases. On 12 February 2015 the landlord gave a notice in reply admitting the claim. On 15 July 2015 the tribunal received the tenant's application for a new extended lease.

### **Issues in dispute**

11. The parties had agreed the following:
  - a. The valuation date at 5 December 2014
  - b. An unexpired term of 13.30 years
  - c. A deferment rate of 5%
  - d. A dual capitalisation rate of 7% & 2.5% and 0% tax
  - e. An extended lease to freehold relativity of 98%
  - f. The gross internal area at 892 sq ft
  - g. The terms of the new extended lease
12. Two issues remained in dispute. The first was the freehold value of the flat. The second was the relativity to be applied to that value to calculate the existing lease value at the valuation date.
13. Mr Pope on behalf of the tenant contended for a freehold value of £1,205,000 and relativity of 35.09%.
14. Although the experts had agreed that the freehold value of the flat was in dispute Mr Walmsley contended for a long lease value of £1,440,000. On the basis of the agreed extended lease to freehold relativity that equates to a freehold value of £1,469,388. Mr Walmsley contended for a relativity of 31.60% to be applied to that value to calculate the existing lease value at valuation date.

### **Mr Pope's approach**

15. As far as the freehold value was concerned Mr Pope relied upon 12 sales and 4 settlements between March 2013 and June 2015. The 12 sales related to 9 flats because 3 of the flats (13 and 31 Britten Court and 69 Swan Court) were purchased in an unimproved condition and then resold

following refurbishment. All the sales and settlements relied on by Mr Pope were in the blocks referred to above.

16. Mr Pope reduced all the sale and settlement prices to a price per square foot ("£psf"). He then upgraded those leasehold prices to freehold prices by using the Savills with Rights Index 2003. Finally he adjusted for time by using Savills PCL Central Flats Index. These two adjustments gave Mr Pope a freehold £psf for each of the comparable sales and settlements at the valuation date.
17. At this stage Mr Pope made only one subjective adjustment. He accepted that when 31 Britten Court was first sold it was in a state of disrepair and he added £150 to the freehold £psf to bring into repair.
18. The process by which Mr Pope then reached the freehold £psf for the flat was somewhat opaque. He placed little weight on the settlement evidence. In contrast he placed particular weight on the sales of 33 Daver Court and 56 Meriden Court. Both flats are small studio flats and 33 Daver Court is on the second floor.
19. Mr Pope accepted that small studio or one bedroom flats in central London sell for a "*disproportionately high rate per square foot*". He therefore reduced the £psf for each of these two flats by 10% for what he termed the "*Kiosk effect*". In respect of 33 Daver Court he reduced the £psf by a further 5% to reflect the perceived disadvantage of a second floor location.
20. These adjustments produced £1,320 psf for 33 Daver Court and £1,358 psf for 56 Meriden Court. He considered that these prices were supported by the first unimproved sales for 13 Britten Court and 69 Swan Court and also by the sale of 91 Swan Court although the extent to which he took these sales into consideration is not entirely clear. "*Standing back*" Mr Pope concluded that at the valuation date the flat would have sold for a freehold price of £1,350 psf thus indicating a price of £1,205,000 for the freehold interest in the flat.
21. It will be recalled that 13 Britten Court, 31 Britten Court and 69 Swan Court had been sold twice. After refurbishment 13 Britten Court sold for an additional £417 pfs, 31 Britten Court for an additional £651 pfs and 69 Swan Court for an additional £508 pfs. On the basis of these second improved sales Mr Pope concluded that the refurbishment of a dated flat to modern standards added about £500 £psf to its value.
22. Turning to the existing short lease value of the flat Mr Pope considered that there was no relevant open market evidence that could be used to establish the price. Consequently he turned to the relativity graphs. Mr Pope acknowledged that in tribunal proceedings he has historically relied on the John D Wood & Co (1996)/Gerald Eve Graph ("the Gerald Eve Graph") because he considers it to be correct.
23. Mr Pope nevertheless drew our attention to the Upper Tribunal decisions in *Kosta v Trustees of the Phillimore Estate* [2014] UKUT 0319 (LC) and

82 Portland Place (Freehold) Limited v Howard de Walden Estates Ltd [2014] UKUT 0133 (LC). Both of those decisions determined relativity by reference to the seven graphs in the Prime Central London section of the October 2009 RICS research report. Mr Pope clearly considered that notwithstanding his personal opinion he was bound to adopt a similar approach and in contending for relativity of 35.09% he took an average of all seven graphs.

### **Mr Walmsley's approach**

24. Mr Walmsley considered that a prospective purchaser of the flat when making an offer would consider only the prices achieved for similar sized two and three bedroom flats. Consequently in contending for an extended lease value of £1,440,000 he relied on six sales of similar sized flats four of which had also been relied on by Mr Pope. (9 Forsyte House, the two sales of 31 Britten House and the second sale of the refurbished 69 Swan Court). In addition he relied on the sales of 66 Swan Court and 108 Swan Court.
25. He adjusted the sale prices for time by using the Savills PCL Central Flats Index also used by Mr Pope. The lease of 69 Swan Court had an unexpired term of 94.5 years and Mr Walmsley adjusted for lease length by applying a relativity of 97%. It was not entirely clear where this adjustment came from and it contrasted with Mr Pope's adjustment of 96.5%.
26. Mr Walmsley then made a number of more subjective condition adjustments. He increased the first sale price of 31 Britten House at a rate of £100 £psf to reflect its disrepair at the time of sale. He reduced four of the sale prices to reflect the refurbished or improved condition of the flats. The reductions ranged from £200 psf to £400 psf. Only 108 Swan Court required no reduction for condition because its condition was similar to the existing condition of the flat.
27. He reduced the sale prices of Britten House by 5% to reflect the advantage of the views enjoyed over the grounds of St Luke's Church and along Britten Street. He reduced the sale price of 108 Swan Court by 4% to reflect the perceived advantage of its sixth floor location.
28. He then converted each final long lease sale price to a £psf and he weighted those unit prices by allocating 30% to Forsyte House, 20% to each of the two 31 Britten House sales and 10% to each of the three Swan Court sales. Allowing for rounding this gave £1,614 psf that equated to a long lease value of £1,440,000.
29. Mr Walmsley also analysed a number of sales of smaller studio and one bedroom flats in Daver Court and Meriden Court some of which had also been relied on by Mr Pope. His analysis produced an identical result although as he did not put any great weight on those sales it is not necessary to explain his methodology in any detail save to observe that his analysis did not identify the "kiosk effect" relied on by Mr Pope when he adjusted the sale prices of the smaller flats on which he relied.

30. In contending for a relativity of 31.60% Mr Walmsley relied entirely on the Gerald Eve Graph. In answer to Mr Mann's question he accepted that this was the first occasion on which he had given evidence to the tribunal. He said however that he had negotiated about 130 settlements under the Act. On the basis of that experience he said that valuers in Prime Central London will generally adopt the Gerald Eve Graph when negotiating settlements under the act.
31. Mr Walmsley had also analysed a number of short lease sales. His analysis of two sales of two bedroom flats in Swan Court indicated a short lease value of £320,000. His analysis of a number of sales of studio and one bedroom flats indicated a short lease value of £440,000. These values would indicate a relativity of 22% and 30% respectively but in the final analysis Mr Walmsley did not rely on those market transactions.

### **Reasons for our decisions**

#### **The freehold value**

32. We first consider the valuers selection of comparable sales and settlements. Mr Pope relied on the sales of a number of small studio and one bedroom flats. His 10% adjustment to the sale prices for "kiosk effect" was however unsupported by any empirical evidence. If there is a "kiosk effect" then a valuer of Mr Pope's experience should be able to substantiate it by an analysis of the sale prices of smaller and larger flats within the Chelsea area but no such analysis was offered. Indeed only Mr Walmsley offered an analysis of the sales of studio and one bedroom flats which suggested that the "kiosk effect" may be illusory.
33. Ultimately we agree with Mr Walmsley that a prospective purchaser of a two or three bedroom flat will not have regard to the prices achieved for smaller studio and one bedroom flats because they are in a different market. Consequently and for each of the above reasons we discount the sales of the small studio and one bedroom flats relied on by Mr Pope.
34. We also discount the settlements to which Mr Pope alluded for reasons that have been canvassed in previous Upper Tribunal decisions and which we assume do not need to be repeated here. In discounting those settlements we note that Mr Pope placed little or no reliance upon them in his concluding observations.
35. Of the remaining sales 69 Swan Court and 31 Britten Court were sold twice, in both unimproved and a refurbished condition. All condition adjustments are to an extent subjective and where possible it is prudent to rely on sales that do not require such an adjustment. Consequently in determining the freehold value we rely on the original unimproved sales of both 69 Swan Court and 31 Britten Court.
36. Consequently in determining the freehold value of the flat we rely on the sales of 9 Forsyth, 66, 92 and 108 Swan Court and the original unimproved sales of 31 Britten Court and 69 Swan Court.

37. We then consider the generic adjustments required for time and lease length. We adopt Savills Prime Residential Capital Value Index for time adjustment that was agreed by both valuers.
38. The valuers had also agreed an extended lease relativity of 98% and they both adopted 100% relativity for flats sold with a share of the freehold. Two flats did not fall within either category: 69 and 91 Swan Court. As far as 69 Swan Court was concerned Mr Pope used 96.50% and Mr Walmsley 97%. As neither valuer was challenged on their choice of relativity we adopt an average of 96.75%.
39. Only Mr Pope relied on 91 Swan Court. His use of 66.50% relativity was not challenged by Ms Gibbins and as it is based on the Savills With Rights Index 2003 we accept it.
40. Consequently our generic adjustments can be summarised by the following table:-

Property	Price	Time adjusted	Long lease to freehold Relativity	Adjust to freehold
9 Forsyte House	2,000,000	1,964,286	98%	2,004,373
31 Britten Court	999,999	1,078,946	100%	1,078,946
66 Swan Court	1,700,000	1,722,147	98%	1,757,293
69 Swan Court	1,025,000	1,012,272	96.75%	1,046,276
91 Swan Court	710,000	708,741	66.50%	1,082,047
108 Swan Court	1,600,000	1,557,186	98%	1,588,965

41. We then consider the valuers' adjustments for physical characteristics. On the basis of our inspection we are satisfied that a 5% downward adjustment to the sale price of 31 Britten Court is required to reflect the considerable advantage of the views enjoyed over St Luke's Church with its extensive grounds and the open aspect of Britten Street.
42. Although four of the comparable flats are on the 4<sup>th</sup> floor, 91 Swan Court is on the 5<sup>th</sup> floor and 108 Swan Court on the 6<sup>th</sup> floor. Having inspected that block we do not consider that any adjustment is required to reflect floor level. Such adjustments are inherently arbitrary and the suggestion that a long distance view of the masts of Albert Bridge might warrant an adjustment appears to us to be fanciful. In the absence of any clear evidence that a flat on the 5<sup>th</sup> or 6<sup>th</sup> floor of Swan Court might fetch a higher price than a flat on the 4<sup>th</sup> floor we reject a floor adjustment.
43. Finally we return to the condition adjustments. The valuers agreed that an upward adjustment was required to the sale price of 31 Britten Court to reflect its disrepair. Mr Pope contended for an upward adjustment of £150 psf whilst Mr Walmsley contended for an upward adjustment of £100 psf. Neither valuer offered any evidence to support their adjustment. We consider that Mr Walmsley's adjustment considerably understates both the

cost of bringing a prime central London flat into repair and also the resultant increase in value following refurbishment that is supported by Mr Pope's evidence. Consequently we adopt Mr Pope's proposed adjustment that is more realistic.

44. Both 9 Forsyth House and 66 Swan Court were in substantially better condition than the flat, when sold. Accordingly a downward adjustment has to be made to the sale price of each flat for condition. We accept Mr Pope's evidence that the refurbishment to a modern standard of a dated flat will add approximately £500 psf to its value because it was supported by an analysis of the sale prices of three flats that had been sold in both unimproved and refurbished condition.
45. However we had the opportunity to inspect the interior of 9 Forsyth House. Although it is in good condition and has at some stage been improved the refurbishment was not undertaken to a particularly high standard and dated bathroom fittings remain. If £500 psf is the benchmark for a refurbishment to modern standards we consider that an adjustment of £250 psf is appropriate to reflect the improved condition of 9 Forsyth House.
46. 66 Swan Court was relied upon only by Mr Walmsley. He proposed a downward adjustment of £250 psf whilst acknowledging that the flat had been "*beautifully refurbished*". However we had very little information about this flat other than very brief agent's particulars and Mr Walmsley had not inspected it. Having regard to Mr Pope's evidence we are satisfied that Mr Walmsley's adjustment was too small and we consider that a downward adjustment of £400 psf is more realistic.

47. Consequently our adjustments for physical condition can be summarised by the following table:-

Property	Adjusted freehold price	Adjust for view	Adjust for disrepair	Adjust for imp'ment	Area	£psf
9 Forsyte	2,004,373			1,758,123	985	1,785
31 Britten	1,078,946	1,024,999	1,144,399		796	1,438
66 Swan	1,757,293			1,373,293	960	1,431
69 Swan	1,046,276				807	1,297
91 Swan	1,082,047				780	1,387
108 Swan	1,588,965				902	1,762
					<b>Total</b>	<b>9,100</b>
					<b>Average</b>	<b>1,517</b>

48. Applying the average £psf to the agreed gross internal area of 892 square feet produces a freehold value for the flat of £1,353,164.



## Relativity

49. Apart from *Kosta v Trustees of the Phillimore Estate* [2014] UKUT 0319 (LC) and *82 Portland Place (Freehold) Limited v Howard de Walden Estates Ltd* [2014] UKUT 0133 (LC) our attention was drawn to a number of other decisions including *Nailrile Limited V Cadogan* [2009] 2 EGLR 151. We have read all of them. Having done so we do not accept that *Kosta* and *82 Portland Place* in particular bear the weight that both Mr Pope and Mr Mann seek to place on them. They cannot be read either as guidance or a direction that when considering relativity graphs the first tier tribunal must take an average of all the relevant graphs listed in the 2009 RICS report.
50. In *Kosta* the tenant relied solely on the hedonic regression model which was rejected by the Upper Tribunal for want of any supporting valuation evidence. The Upper Tribunal simply preferred the evidence of Mr French, the landlord's valuer, who in the absence of any reliable market evidence relied on an average of the Prime Central London Graphs in the 2009 RICS report.
51. In *82 Portland Place* the parties had agreed the real world relativity and the tribunal had only to determine the deduction to be made for the Act rights. Mr Becket on behalf of the applicant principally valued those rights as a proportion of the marriage value whilst Mr Ryan on behalf of the respondent simply applied a banded reduction that was dependent on lease length. Both valuers clearly considered that some assistance could be derived from relativity graphs but they did not agree on the Gerald Eve Graph. Mr Becket dismissed it as being "*unreliable*" whilst Mr Ryan used it as a benchmark.
52. The Upper Tribunal was unimpressed by the primary approach used by both valuers and turned to the relativity graphs. Faced with conflicting evidence in respect of the Gerald Eve Graph the Upper Tribunal looked at all the Prime Central London graphs although it did not base its decision solely on those graphs. Still less did it take an average of all the graphs because it discounted the W A Ellis graph.
53. If there is a common thread to all the cases to which our attention was drawn it is that we must have regard to all the evidence before us. As the Upper Tribunal put it at paragraph 228 of the *Nailrile* decision:-

*"Looking at the evidence overall we agree with the comments of the Tribunal in Arrowdell:*

*"In such circumstances, in our view, it is necessary for the tribunal to do the best it can with any evidence of transactions that can be usefully be applied, even though such transactions take place in the real world rather than the no-act world. Regard can also be had to graphs of relativity...."*

54. As observed Mr Walmsley had analysed a number of real world short lease sales. However his analysis appears to be flawed. He adjusted for lease length by using the Gerald Eve Graph, which (as with all the relativity graphs in the 2009 RICS report) seeks to identify relativity in the no-act world. He then concluded his analysis by making significant downward adjustments to reflect the benefit of the Act. There is clearly a risk that such an approach results in a double discount for Act rights.

55. This approach was rejected by the Upper Tribunal in Nailrile. In commenting on a valuer's evidence the Upper Tribunal at paragraph 214 said:-

*"He expresses the sale price of comparables in terms of what it would have been had the length of the lease in each case been 44.1 years. He does so by reference to the relativities of each lease length as derived from the GE graph. In our opinion the approach begs the question since the purpose of Mr Wilson's analysis is to determine whether the market transactions support the GE graph. We reject the adjustment...."*

56. Furthermore in answer to our questions Ms Gibbons accepted that Mr Walmsley should have used a real world graph to adjust for lease length and then discount for Act rights.

57. Consequently we have no alternative but to turn to the relativity graphs. In doing so we have regard to the opening sentence of the Upper Tribunal's conclusions in Kosta when it said:

*"We remind ourselves that we must decide this appeal only on the basis of the evidence and arguments that have been presented to us".*

58. Having read the authorities to which our attention was drawn we are aware that the Gerald Eve Graph has been criticised. However no such criticisms were made to us either in evidence or by submissions. The reason for that is obvious: both valuers believe the Gerald Eve Graph to be correct.

59. Mr Pope's evidence on this was quite clear. He was with others responsible for the creation of the Gerald Eve Graph. He produced a witness statement given in another case explaining how the Gerald Eve Graph was created and in his oral evidence he told us that it was based entirely on pre-Act transactions and settlements. In his previous witness statement he said:

*"...if the matter proceeds to a Tribunal I agree the relativity at the level indicated by the graph, because I believe it is correct. That opinion has not changed over the passage of time and I still believe the Graph to confirm the appropriate relationship between leasehold and freehold properties".*

Before us he said: *"I still believe the Gerald Eve Graph to be correct"*. It is a belief shared by Mr Walmsley who told us that valuers in Prime Central

London will generally adopt the Gerald Eve Graph when negotiating settlements under the act.

60. The evidence of valuers in other cases may be different but that evidence is not relevant to this case. The evidence of both valuers before us was that the Gerald Eve Graph accurately reflects relativity in the no Act world. On the basis of that evidence it is reasonable to conclude that that a successful hypothetical purchaser of a flat in Prime Central London would base its bid on the Gerald Eve Graph. We accept the evidence of both valuers and determine relativity at 31.60% in accordance with the Gerald Eve Graph.

### Conclusion

61. Adopting the freehold value of £1,353,164 and relativity of 31.60% we calculate the price to be paid for the extended lease at £797,978 of which £934 is to be paid to Shellpoint Trustees Limited, in accordance with our valuation attached to this decision.

**Name: Angus Andrew**

**Date: 30 March 2016**

## TRIBUNAL VALUATION

46 and 47 Daver Court, 26-33 Chelsea Manor Street, London, SW3 3TS

Valuation Date	5 <sup>th</sup> December, 2014.		
Freehold value	£1,353,164		
PV 13.30 years @ 5%	0.52262	£707,190	
Less:			
Value of new lease; share of			
Freehold value	£1,353,164		
PV 103.30 years @ 5%	0.00647	£8,755	£698,435
Diminution of intermediate			
Leaseholder's interest			
Rent £120 pa			
YP 13.30 years @ 7%			
& 2.25%	7.3891		£887
Marriage value:			
Leasehold interest (98%)	£1,326,100		
Landlord's interest	£8,755	£1,334,856	
Less:			
Existing lease value			
(31.60%)	£427,600		
Landlord's interest	£707,190		
Intermediate leaseholder's			
Interest	£887	<u>£1,135,677</u>	
		£199,179	
	50%		<u>£99,590</u>
	Premium		<u>£798,912</u>
Apportionment:			
Cadogan Holdings Limited	£797,978		
Shellpoint Trustees Limited	£934		