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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF SECTION 48 of the Leasehold Reform, Housing and Urban Development Act 1993

Ref: LON/OOAE/OLR/2007/0509

Applicant: Marc and Susan Sperber

Represented by: S D Rosser & Co

Respondent: Mardan (Bristol) Ltd

Premises: 21 Ashford Court, London NW2 6BN

Appearances for Applicant: Mr Jeremy Taylor BSc MRICS, Wenlock & Taylor

Appearances for Respondent: Mr Andrew Cohen, MRICS, Talbots Professional Services Limited

Date of Hearing & Inspection: 15 &16 January 2008

Leasehold Valuation Tribunal: Mr S E Carrott LLB
Mr D Huckle FRICS

Date of Tribunal's Decision: 18 February 2008

1. **Background**

This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 for the determination of the price to be paid for a new lease of Flat 21 Ashford Court, Ashford Road, London NW2 6BN.

2. The Applicant tenants are Mr and Mrs Sperber. The Respondent landlord is Mardan (Bristol) Ltd.

3. At the hearing of this application the Applicants were represented by Mr Jeremy Taylor BSc MRICS of Wenlock & Taylor. Mr Andrew Cohen MRICS of Talbots Professional Services Limited represented the Respondent.

4. The following matters were agreed between the parties –
   (1) valuation date – 6 September 2006;
   (2) lease term – 99 years from 1 January 1976 [the lease is dated 11 July 1977];
   (3) unexpired term at the valuation date – 68.36 years;
   (4) ground rent - £20 per annum;
   (5) the value of the ground rent for the unexpired term agreed at £265 (without prejudice to the yield rate); and
   (6) tenant's improvements £3000 (attributable to the installation of double glazing);

5. The following matters were in dispute –
   (1) the deferment rate;
   (2) relativity; and
   (3) the capital value of the unimproved flat.

6. The Tribunal inspected the subject property following the hearing and found the property to be as described by the parties. Ashford Court is in the Cricklewood area of Northwest London. It fronts the south-eastern side of Ashford Road, which is a residential road that runs

approximately southwest from Cricklewood Broadway to Heber Road. It consists of a substantial purpose built inter war block of flats on nine floors with porterage, lifts and entryphone and comprises approximately one hundred and eighty flats of a similar kind. Flat 21 consists of a 2 bedroom flat.

7. **Deferment Rate**

Mr Taylor in his written proof of evidence and oral submissions contended for a deferment rate of 6.5%. He submitted that as a result of the decision of the Court of Appeal in Sportelli the deferment rate of 5% was set for Prime Central London ('PCL') properties but that Carnwarth LJ, who gave the leading Judgment in that case, had considered that there was an implicit distinction between the PCL area and other parts of London. Mr Taylor submitted that there were three main factors to be taken into account namely, location, length of term and the financial market prevailing at the relevant date. In the present case he considered that the location was secondary/tertiary, that the unexpired term (68.36 years) was longer than that of the properties considered in Sportelli and that interest rates were notably lower at the time of the valuation date. Reference was also made to a homeless persons shelter which was in the process of being enlarged. On that basis he considered that a deferment rate of 6.5% was appropriate. He relied upon a post Sportelli decision, 299 Ladbroke Grover [LON/AW/OCE/07/234, where the Tribunal had adopted a deferment rate of 5.25%.

8. Mr Cohen on behalf of the Respondent landlord contended that the deferment rate should be 5% on the basis that this was the generic starting point advocated in Sportelli for flats and that there was nothing either in the terms of the location, lease length, obsolescence or any long term market trends to justify departure from the generic starting point. He submitted that the market value at the valuation date reflected all of the factors which could have been anticipated at a future date. He argued that relatively higher service charges due to lift and

porterage would be reflected in current values as would the presence of a homeless persons shelter which was being rebuilt. Neither would there be likely to be a deterioration of the property before the end of the lease because of the nature of its structure. He submitted that 299 Ladbrooke Grove was a case where the unexpired term was 123 years and that this therefore justified the marginal departure from the generic deferment rate. Mr Cohen pointed out that in the present case the unexpired term was 68.36 years and that that this was not out of the range of properties considered in Sportelli because one the properties considered in Sportelli had an unexpired term of 71 years.

9. Mr Cohen referred the Tribunal to the post Sportelli decision of Flat F, College House, New College Parade, Finchley Road, London NW3 (LON/00AG/0LR/2007/0699), a case in which he had appeared and where the Tribunal had rejected an argument for a deferment rate of 6% in circumstances where it had been contended that the property, a one bedroom flat situated above shops on the Finchley Road, represented a more volatile and illiquid investment than property located in the PCL area.

10. **Relativity**

Mr Taylor contended for a rate of 90% derived from an analysis of the Beckett & Kay Graph of Graphs, having regard to three components of it: the Lease All LVT, the Charles Boston and the Moss Kaye graphs which showed relativities of 92%, 88.5% and 88% respectively for an unexpired term of 68 years. He argued that these three graphs were tainted in that the Lease ALL LVT graph was nationwide, whereas the Charles Boston and Moss Kaye graphs were based solely on an analysis of central London. He submitted therefore that an adjustment was necessary bearing in mind the location of the subject property and that 90% was the correct figure in the circumstances.

11. Mr Cohen reminded the Tribunal of the dicta in Arrowdell Limited v Coniston Court (North) Hove Limited (LRA/72/2005) which stressed

that whilst relativity will vary between one type of property and another and from area to area that the predominant factor in all cases was the length of the term.

12. With regard to the Beckett & Kay Graph of Graphs, Mr Cohen submitted that the only component graphs which were comparable were the Moss Kaye, Charles Boston and John D Wood graphs. He submitted that the range of these graphs was between 88% and 89% and therefore derived a figure of 88.5%.

13. **The Capital Value of the Unimproved and Un-extended Lease.**
Mr Taylor referred the Tribunal to seven sales in Ashford Court between January and December 2006 and in particular the sales of three properties, numbers 28 (£145,000) 145 (£195,000) and 9 (£155,000). All were similar to the subject property and were located on the first or fourth floors (flats 28 and 145 being on the fourth floor and flat 9 on the first floor). The average was £165,000. All had double-glazing and central heating (whether communal or independent) and were held on un-extended leases but he did not know the condition of the flats. He accepted that Mr and Mrs Sperber had paid £209,950 for the subject property on 11 August 2004 but could not assist the Tribunal with whether or not values generally had increased between that date and the valuation date. Mr Sperber told the Tribunal that as at the date of purchase he considered that he had paid an excessive amount but that this was because both his wife and himself wanted accommodation situated close to family.

14. Mr Cohen on the other hand contended that the price paid by Mr and Mrs Sperber in August 2004 was not an overpayment. He referred the Tribunal to appendix F of his report which showed the increase in property prices in Brent generally during the relevant period. He said that the price paid by Mr and Mrs Sperber was supported by other sales in the building which were listed at Appendices D & E of his report and referred in particular to the sales of numbers 28 (£204,000

and later £243,000), 80 (£240,000), 34 (£240,000), 18 (£175,000) and 90 (£200,000).

15. Mr Cohen's valuation was £201,500 for the un-extended unimproved lease and £227,684 for an extended improved lease based on a relativity of 88.5% and allowing a 1% difference in value between a long leasehold and freehold.

16. **Determination**

With regard to the deferment rate, the Tribunal was bound by the decision of the Court of Appeal in Sportelli. Although the decision in 299 Ladbrooke Grove London W10 showed that in certain circumstances the Tribunal would depart from the generic rate of 5%, that was a case where the Tribunal did not make explicit its reasons for so doing. However in that case the unexpired term was 123 years. In the present case the unexpired term was 68.36 years, close to one of the properties considered in Sportelli which had an unexpired term of 71 years. In the present case the market value at the valuation date reflected all factors which could have been anticipated at a future date. Relatively higher service charges due to lift and porterage would be reflected in current values as would the presence of a homeless persons shelter which was being rebuilt. Neither was there likely to be a deterioration of property before the end of the lease because of the nature of its structure. The decision of the Tribunal in Flat F, College House, New College Parade, Finchley ROAD, London NW3, although turning upon the particular evidence in that case and although not binding upon this Tribunal, provided useful guidance as to the proper approach to be taken post Sportelli. Accordingly the Tribunal, in the absence of any compelling reasons or persuasive evidence to depart from the generic rate determined in Sportelli, concluded that the appropriate deferment rate was 5%.

17. With regard to relativity, the Tribunal preferred the submissions of Mr Cohen. The predominant factor as highlighted by the decision of the

Lands Tribunal in Arrowdell was lease length. Having regard to the Beckett & Kay Graph of Graphs which identifies the appropriate relativity between the freehold and un-extended lease, the Tribunal considered that the three component graphs identified by Mr Cohen were the most appropriate and it was clear that an unexpired term of 68.36 years fell between 88% and 89%. The Tribunal accordingly determined the correct relativity to be 88.5%.

18. With regard to the capital value of the unimproved un-extended lease, both parties submitted evidence of a large number of sales of similar flats in the same building which, when adjusted for time differences in a rising market, showed a wide range between £145,000 and £220,000. Neither party had inspected any of their comparables internally and it was not known which flats had been refurbished. The Tribunal concluded that there must be a significant variation in internal standards. The Tribunal was mindful of the price paid by the Applicants for the subject flat in August 2004 but considered that this price might well have been excessive. Certainly, Mr Cohen in his valuation arrived at a figure of £5450 lower than the sale price two years earlier disregarding improvements. Having regard to the submissions of the parties and the material before it, the Tribunal determined that the unimproved un-extended value was £187,000.

19. **Decision**

Accordingly the premium to be paid for the lease extension in the present case is £14,993. A copy of the Tribunal's valuation is attached.

Chairman.................................

Date ....18/2/08.......

Reference:LON/00AE/OLR/2007/0509

LEASEHOLD VALUATION TRIBUNAL DECISION

Valuation in accordance with s.56 & Schedule 13 of the
Leasehold Reform Housing & Urban Development Act, as amended

21 ASHFORD COURT, LONDON, NW2 6BN

- Valuation date (date of Notice of Claim): 6 September 2006
- Lease term: 99 years from1 January 1976. Ground rent £20 per annum
- Unexpired term at valuation date: 68.36 years
- Capitalised value of ground rent: £265 (agreed)
- Deferment rate: 5% on unexpired term at valuation date
- Value in unimproved state on 68.36 year lease at rent of £20 pa: £187,000
- Freehold VP value in unimproved state (relativity 88.5%): £211,300
- Value in unimproved state on 158.36 year lease at peppercorn rent: £209,200 (99% of freehold value)

Dimunition in Value of Landlord's Interest

Value before extension of lease			
Capitalised ground rent		£ 265 (agreed)	
Reversion to freehold VP value £211300			
PV £1 in 68.36 years @ 5%	.0356	£ 7522	£7787
Less			
Value after extension of lease			
		NIL	NIL
			£7787

Marriage Value

Value of interests after extension of lease			
Value of extended lease		£209200	
Value of freehold interest		NIL	
		£209200	
Less			
Value of interests before extension of lease			
Value of existing lease	£187000		
Value of freehold interest	£ 7787	£194787	
	Marriage Value	£ 14413	
	50%	£ 7206	£ 7206
			£14993