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Property
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Case reference: LON/00BK/OLR/2008/1062

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

Property: 12A and 19 Evelyn Mansions, Carlisle Place, London
SW1P 1NH

Applicants: Moranna Sybil de Lerisson Colvin
Catherine Moukheibir

Respondents: Norman Sinclair Properties Limited
Metropolitan Properties Company Limited

Date heard: 18 March 2009
(inspection 1 April 2009)

Appearances: I A Rennie BSc FRICS, Rennie and partners, chartered
surveyors, instructed by Radcliffes Le Brasseur,
solicitors, for the applicants

Ian Asbury BSc (Hons) MRICS, Chesterton Global
Limited, instructed by Wallace LLP, solicitors, for the
respondents

Members of the leasehold valuation tribunal:

Margaret Wilson
W J Reed FRICS

Date of the tribunal's decision: 1 May 2009

Background

1. These are applications under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the price to be paid for new leases of Flats 12A and 19, Evelyn Mansions, Carlisle Place, London SW1P 1NH. Evelyn Mansions is a large Victorian mansion block of flats, located near Victoria Station and Westminster Cathedral. It has two separate entrances in Carlisle Place, one for what is known as Block A (Flats 1 – 14) and the other for Block B (flats 15 – 39). There are 14 flats in Block A, on ground and six upper floors, and 28 flats Block B, on ground and seven upper floors. Each block has a basement which does not contain flats. The rear of the block looks on to Vauxhall Bridge Road and on the ground floor of that frontage there are retail outlets. Flats 15A, 18A, 20, 21A, 23, 24A, 26, 29, 32, 35, 38 and 39 largely overlook Vauxhall Bridge Road. There is a dental practice on the first floor of Block A. Flat 12A is on the sixth floor and has an internal floor area which is agreed to be 2379 sq ft (221.1 sq m). Flat 19 is on the first floor and has an agreed internal floor area of 2291 sq ft (212.9 sq m).

2. The freehold of the block is owned by Norman Sinclair Properties Limited and is subject to a headlease in favour of Metropolitan Properties Company Limited for a term of 99 years from 24 June 1965. The freeholder and the head lessee are members of the Freshwater Group of Companies. Flat 12A and Flat 19 are each subject to an underlease for a term of 99 years less three days from 24 June 1965. The initial ground rent for each lease was £70 per annum, rising at 33 year intervals to £140 and £210. At the valuation date for Flat 12A, which is 20 May 2008, 56.08 years of the term of the underlease remained unexpired. At the valuation date for Flat 19, which is 11 March 2008, 56.29 years of the term remained unexpired.

3. At the hearing on 18 March 2009 the applicant tenants were represented by Ian Rennie BSc FRICS, of Rennie and partners, chartered surveyors, instructed by Radcliffes Le Brasseur, solicitors. The respondents were represented by Ian Asbury BSc (Hons) MRICS, of Chesterton Global Limited,

instructed by Wallace LLP, solicitors. We inspected the flats on 1 April 2009 in the presence of their respective tenants and of Mr Rennie and Mr Asbury.

4. It was agreed that the appropriate deferment rate was 5% and that the head leasehold interest should be valued by capitalising the ground rents at 7% with provision for a sinking fund at 2.5%. It was also agreed that the value of the new lease was 99% of the freehold value.

5. The relevant comparable transactions (all in Evelyn Mansions and all the short leases with the same commencement date) were agreed to be:

i. Flat 7 on the third floor (215.82 sq m), sold in April 2005 on an extended lease for £800,000;

ii. Flat 21A on the second floor (111.13 sq m) sold in June 2005 on a short lease for £412,000;

iii. Flat 26 on the third floor (164.5 sq m) sold in January 2006 on a short lease for £570,000;

iv. Flat 9 on the fourth floor ((215.82 sq m) sold in June 2006 on an extended lease for £930,000;

v. Flat 23 on the second floor (164.5 sq m) sold in September 2006 on a short lease for £720,000;

vi. Flat 12 on the fifth floor (263.45 sq m) sold in September 2006 on a short lease for £1,450,000;

vii. Flat 5 on the second floor (215.82 sq m) sold in October 2006 on an extended lease for ££875,000;

viii. Flat 38 on the seventh floor (164.5 sq m) sold in July 2007 on a short lease for £946,750;

ix. Flat 1 on the ground floor (119.32 sq m) sold in May 2008 on an extended lease for £650,000.

6. The issues were the values of the new leases, the freeholds and the existing underleases, which involved consideration of the adjustments to be made for floor level, tenants' improvements, main frontage on Vauxhall Bridge Road, market movement and Act rights.

The issues

i. The value of the new lease and of the virtual freehold

7. Mr Rennie considered that the freehold value of Flat 12A was £1,265,355 and that the value of the new lease was 99% of that sum, namely £1,252,701. He considered the freehold value of Flat 19 to be £1,182,611 and that the value of the new lease was £1,170,785.

8. He arrived at these valuations by taking £5500 per sq m as his starting point for the extended lease value of a first floor flat, a figure which he based generally on the comparables, adjusted to reflect floor levels. From this figure he deducted £250 per sq m to reflect tenants' improvements and £250 per sq m to reflect the value of Act rights, and he adjusted for floor level on the basis that first, second and third floor flats had a value of 100% of the starting figure, with fourth floor flats at 101%, fifth floor flats at 102%, sixth floor flats at 103% and seventh floor flats at 104%, these adjustments based on an agreement he had reached in the course of a dispute relating to flats in Windsor Court, London W2. He made no adjustment to the comparables for time, other than the sale of Flat 38 in 2007, which he adjusted by reference to the Nationwide Index of Flat Sales, to reflect passage of time; and he made no adjustment to any of the comparables to reflect their outlook over Vauxhall Bridge Road. His adjusted valuations equated to approximately £532 per sq ft for Flat 12A and £516 per sq ft for Flat 19.

9. Cross-examined by Mr Asbury, he agreed that his use of a uniform deduction of £250 per sq m for Act rights, regardless of the precise length of the lease, was open to criticism, but he considered it to be broadly accurate. He agreed that would be appropriate to adjust all the comparables for passage of time and that it was reasonable to use the appropriate Savills Index as Mr Asbury had done. He said that, notwithstanding that for the purpose of previous new lease application before the tribunal (LON/NL/1890-1909/03 and LON/NL/1923 and 1982/03) relating to 22 flats in the block, he had agreed an adjustment of 10% for noise nuisance in respect of flats fronting Vauxhall Bridge Road, he had made no adjustment for noise in respect of such flats in the present case because in his opinion there was no evidence that that factor had influenced sale prices.

9. Mr Asbury had in his valuations, amended to take account of a late agreement as to the method of valuing the intermediate interests, taken a freehold value of Flat 12A of £1,257,500 and an extended lease value of approximately 99% of that sum, namely £1,245,050, although this figure appeared possibly to be based on an incorrect internal area (2239 rather than 2379 sq ft). We have assumed, however, that the final figure he reached was the one he intended and which he regarded as realistic. He considered the freehold value of Flat 19 to be £1,265,000 and the extended lease value to be £1,252,475.

10. He arrived at these valuations by adjusting the agreed comparables for time (but omitting the 2005 sales as too distant), via the Savills PCL Capital Values Index (South West Flats). He grossed up the short lease comparables to freehold values by means of the Savills 2003 (Enfranchisable) Graph on the Beckett and Kay Graph of Graphs. He deducted 2.5%, as what he considered to be a reasonable average, for improvements, and deducted 10% for a Vauxhall Bridge Road aspect. He assumed that ground floor flats had a lower value (by 5%) than those on upper floors but made no other adjustments for floor level because the block is served by lifts.

Decision

11. We have come to the conclusion that the freehold value of Flat 12A is £1,260,000, and that the freehold value of Flat 19 is £1,265,000. We considered that both Mr Rennie's and Mr Asbury's analyses of the comparable transactions were to some extent unreliable because they suggested that flats sold with extended leases were less valuable than those sold on short leases, which we did not consider to be credible, and in our view factors such as improvements, of which we have little information, must have played a significant part in sale prices. Moreover the actual sale prices of flats 7, 9 and 5, sold on extended leases, and very comparable in size to the subject flats, after adjustment for time and lease length did not in our view fully support either valuer's valuation.

12. Our approach has been to start with the valuers' valuations of the freehold reversion of Flat 12A, which are very close indeed. Mr Rennie valued it at £1,265,355 and Mr Asbury at £1,257,500, a difference of £7855, or 0.621%, which is well within valuation tolerance. We therefore adopted a value of £1,260,000, which we regard as realistic.

13. That value represents a rate per sq ft of £529.6343 per sq ft. We applied that rate to Flat 19, to produce a value for the freehold reversion of £1,213,392 as at 20 May 2008. We then adjusted this figure by $360.7/343.3$ by reference to the Savills PCL Capital Values Index (South West Flats) to reflect the earlier valuation date for Flat 19, producing a freehold reversionary value of £1,274,892 or, say, £1,275,000. However, Mr Asbury's valuation of Flat 19 was lower, at £1,265,000, and we therefore adopted his figure, as well supported by our own, more robust, approach. Having seen the flats, we did not accept Mr Rennie's adjustments for floor level and preferred Mr Asbury's approach.

ii. Relativity

14. Mr Rennie had in his first report proposed a relativity of 83% for the 56 (or thereabouts) year leases to the long lease value. In his second report he said that although the graphs suggested a relativity of between 74% and 84%, the actual sales evidence suggested a relativity of at least 85%, and the tribunal should give serious consideration to a relativity of 85.5% between the existing and extended lease values in respect of each flat.

15. Mr Asbury proposed a relativity of 78.65% of the existing lease to the freehold for Flat 12A, and of 78.75% for the slightly longer existing lease of Flat 19. He relied mainly on graphic evidence presented in the Beckett and Kay Graph of Graphs, and particularly on the Gerald Eve 1996 Graph which he considered to be most relevant to the present case. He observed that in the previous tribunal determinations (LON/NL/1890-1909/03 and LON/NL/1923 and 1982/03), Mr Rennie had agreed with Miss Ellis, then acting for the landlords, a relativity for 62.75 and 62.5 year leases to the freehold of 85%. He was satisfied that his proposed relativities were consistent with that agreement and were reasonable.

Decision

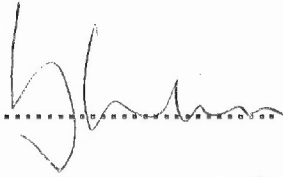
16. We have adopted a relativity of 78.75% between the existing leases and the freehold. We do not consider that it is possible to make the fine distinction between the relativities for the two flats which Mr Asbury suggested, but otherwise we adopt his approach and rely on the Gerald Eve 1996 Graph, which is widely accepted as reliable.

Determination

17. Accordingly, and in accordance with the valuations attached to this decision, the price to be paid for the new lease of Flat 12A is £168,824, of

which £165,022 is payable to the freeholder and £3802 to the head lessee,
and the price to be paid for the new lease of Flat 19 is £169,110, of which
£165,283 is payable to the freeholder and £3827 to the head lessee.

CHAIRMAN.....

A handwritten signature in black ink, appearing to be 'J. Khan', written over a dotted line.

DATE: 1 May 2009

Appendix

Flat 12A, Evelyn Mansions, Carlisle Place, London SW1P 1NH

Valuation in accordance with s.56 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993, as at 20 May 2008 – the date of the Notice of Claim, on the understanding that Metropolitan Properties Company Limited, the intermediate landlord, will continue to pay in full the rent reserved under the head-lease to Norman Sinclair (Properties) Limited, the freeholder.

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

(1) Value before extension of lease

Ground rent 20/5/2008 to 23/6/2064		£x
Reversion to freehold with vacant possession, excluding value of tenants' improvements (100%)	£1,260,000	
PV £1 56.08 yrs @ 5%	<u>0.0648</u>	£81,648

Less

(2) Value after extension of lease

Ground rent 20/5/2008 to 23/6/2064		£x
Peppercorn rent 24/6/2064 to 23/6/2154		£nil
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£1,260,000	
PV £1 146.08 yrs @ 5%	<u>0.0008</u>	£1,008
	Diminution in value	£80,640

B. Diminution in value of Intermediate Landlord's interest

(1) Value before extension of lease

Ground rent 20/5/2008 to 25/3/2031	£140 p a	
YP 22.85 yrs @ 7% & 2.5%	<u>9.7102</u>	£1,359
Ground rent 26/3/2031 to 20/6/2064	£210 p a	
YP 33.24 yrs @ 7% & 2.5%	<u>11.1541</u>	
	£2,342	
PV £1 22.83 yrs @ 7%	<u>0.2131</u>	£499
		£1,858

Less

(2)	Value after extension of lease		<u>£nil</u>
		Diminution in value	£1,858
C.	Marriage Value		
	Value of freehold interest after extension of lease	£1,008	
	Value of head-leasehold interest after extension of lease	£nil	
	Value of leasehold interest after extension of lease (99%)	<u>£1,247,400</u>	£1,248,408
	<u>Less</u>		
	Value of freehold interest before extension of lease	£81,648	
	Value of head-leasehold interest before extension of lease	£1,858	
	Value of leasehold interest before extension of lease(78.75%)	£992,250	<u>£1,075,756</u>
		Marriage value	£172,652
		50% of marriage value	<u>£86,326</u>
D.	Any other loss		£nil
E.	Total Premium		
	Diminution in the value of the landlord's freehold interest	£80,640	
	Diminution in value of head-leasehold interest	£1,858	
	50% of marriage value	<u>£86,326</u>	
			£168,824
F.	Apportionment of marriage value		
	Freehold interest	$£80,640 / £82,498 \times £86,326 =$	£84,382
	Head-leasehold interest	$£1,858 / £82,498 \times £86,326 =$	<u>£1,944</u>
			£86,326
G.	Premiums payable		
	To the freeholder	$£80,640 + £84,382 =$	£165,022
	To the head-lessee	$£1,858 + £1,944 =$	<u>£3,802</u>
			£168,824

Appendix

Flat 19, Evelyn Mansions, Carlisle Place, London SW1P 1NH

Valuation in accordance with s.56 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993, as at 11 March 2008 – the date of the Notice of Claim, on the understanding that Metropolitan Properties Company Limited, the intermediate landlord, will continue to pay in full the rent reserved under the head-lease to Norman Sinclair (Properties) Limited, the freeholder.

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

(1) Value before extension of lease

Ground rent 11/3/2008 to 23/6/2064		£x
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£1,265,000	
PV £1 56.29 yrs @ 5%	<u>0.0642</u>	£81,213

Less

(2) Value after extension of lease

Ground rent 11/3/2008 to 23/6/2064		£x
Peppercorn rent 24/6/2064 to 23/6/2154		£nil
Reversion to freehold with vacant possession, excluding value of tenants' improvements	£1,265,000	
PV £1 146.29 yrs @ 5%	<u>0.0008</u>	<u>£1,012</u>

Diminution in value **£80,201**

B. Diminution in value of Intermediate Landlord's interest

(1) Value before extension of lease

Ground rent 11/3/2008 to 25/3/2031	£140 p a	
YP 23.04 yrs @ 7% & 2.5%	<u>9.7443</u>	£1,364
Ground rent 26/3/2031 to 20/6/2064	£210 p a	
YP 33.24 yrs @ 7% & 2.5%	<u>11.1541</u>	
	£2,342	
PV £1 23.04 yrs @ 7%	<u>0.2104</u>	<u>£493</u>

£1,857

Less

(2) Value after extension of lease **£nil**

Diminution in value £1,857

C. Marriage Value

Value of freehold interest after extension of lease	£1,012	
Value of head-leasehold interest after extension of lease	£nil	
Value of leasehold interest after extension of lease (99%)	<u>£1,252,350</u>	£1,253,362

Less

Value of freehold interest before extension of lease	£81,213	
Value of head-leasehold interest before extension of lease	£1,857	
Value of leasehold interest before extension of lease(78.75%)	£996,187	<u>£1,079,257</u>

Marriage value £174,105

50% of marriage value £87,052

D. Any other loss £nil

E. Total Premium

Diminution in the value of the landlord's freehold interest	£80,201
Diminution in value of head-leasehold interest	£1,857
50% of marriage value	<u>£87,052</u>
	£169,110

F. Apportionment of marriage value

Freehold interest	$£80,201 / £82,058 \times £87,052 =$	£85,082
Head-leasehold interest	$£1,857 / £82,058 \times £87,052 =$	<u>£1,970</u>
		£87,052

G. Premiums payable

To the freeholder	$£80,201 + £85,082 =$	£165,283
To the head-lessee	$£1,857 + £1,970 =$	<u>£3,827</u>
		£169,110