



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

Case Reference	:	LON/00BH/OLR/2014/0877
Property	:	24 Grosvenor Court, Brewster Road, London E10 6RH
Applicants	:	Robert Miller and Yvonne Allen
Representative	:	Clinton Davis Pallis
Respondent	:	Better Properties Ltd
Representative	:	Rice Jones & Smith
Type of Application	:	Enfranchisement
Tribunal Members	:	Robert Latham Evelyn Flint DMS FRICS IRRV
Date and venue of Hearing	:	30 September 2014 10 Alfred Place, London WC1E 7LR
Appearance for Applicant	:	Derek Rona FRICS
Appearance for Respondent	:	John Naylor MRICS
Date of Decision	:	15 October 2014

DECISION

The Tribunal determines that the premium payable by the Applicants in respect of the extension of its lease at 24 Grosvenor Court, Vicarage Road, London E10 6RH is £20,920. We have determined that the virtual freehold value of the property is £202,000 and a relativity rate of 83.86%. Our working calculation is set out in the Appendix.

Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms for a new lease.

Background

2. The background facts are as follows:
 - (i) The flat: 24 Grosvenor Court, Vicarage Road, London E10 6RH.
 - (ii) Size of the subject property: 52 sq m.
 - (iii) Date of Tenant's Notice: 4 November 2013.
 - (iv) Valuation Date: 4 November 2013.
 - (v) Date of Application to the Tribunal: 28 August 2014.
 - (vi) Tenant's leasehold interest:
 - Date of Lease: 22 February 1978.
 - Term of Lease: 99 years from 24 June 1975.
 - Ground Rent: £25 for the first 33 years, increasing to £50 for the next 33 years and to £75 for the remainder of the term.
 - Unexpired Term at Valuation Date: 60.63 years.
 - (vii) Landlord: Better Properties Limited
 - (viii) Tenants: Robert Anthony Miller and Yvonne Allen.
 - (ix) Tenant's Proposed Premium: £16,400.
 - (x) Landlord's Proposed Premium: £26,499.

The Hearing

3. The hearing of this application took place on 30 September 2014. The Applicant, tenant, was represented by Mr Derek Rona FRICS. The Respondent, landlord, was represented by Mr John Naylor MRICS. Both experts gave evidence and put questions to each other.
4. On 1 October, the Tribunal inspected the subject flat and the four comparables. Mr Miller was present when we inspected the subject flat. We inspected the comparables externally. However, we were able to gain access the communal staircases. We found the inspection to be extremely helpful in assessing the evidence that we had heard about the subject flat, its improvements and the comparables.
5. On 21 August 2014, the parties had agreed the following:
 - (i) Valuation Date: 4 November 2013;
 - (ii) Unexpired Term: 60.63 years;
 - (iii) Capitalisation Rate: 6.0%;
 - (iv) Deferment Rate: 5%;
 - (v) Uplift from long leasehold to virtual freehold: 1%.

6. There are two issues which we are required to determine:
 - (i) The extended leasehold value of the property. The Applicants contend for £207,500; the Respondent for £214,500.
 - (ii) The rate to be adopted for relativity. The Applicants contend for 86.5%; the Respondent for 80.08%.

Issue 1: The Extended Leasehold Value of the Subject Flat

7. The subject property at 24 Grosvenor Court is a two bedroom purpose built flat on the third (top) floor of a four storey block. Most of the flats have the benefit of at least one bay window. However, none of the flats on the top floor have any bay windows. This makes them significantly smaller. The internal design minimises circulation space, seeking rather to maximise the living areas.
8. Grosvenor Court is a traditionally built part rendered block with parapet walls. It consists of three separate blocks. The subject flat is situated in the longest of the three blocks in which there are three entrances serving Nos. 1-8; 9-17; and 18-25. There was a separate entrance for a ground floor unit at the end (No.26).
9. The common parts were Spartan and in need in decoration. We did not get the feeling that the blocks are well maintained. There is a communal area at the rear which provided limited parking. There was broken concrete and works were required to the drains.
10. The subject flat is centrally located within the block. It comprised a living room, two bedrooms, a kitchen and a bathroom. The agreed floor area is 52 sq m. One of the bedrooms was a single. There was a small balcony leading off the kitchen. The flat had been refurbished with new plasterwork and rewiring. The kitchen and bathroom had been refitted some 3 to 5 years earlier. There is central heating. The flat still has the original single glazed Crittall windows.
11. Mr Rona sought to rely on just one comparable, namely 3 Grosvenor Court. Mr Naylor agreed that No.3 was the best comparable, but also sought to rely on 30 Grosvenor Court where an offer had been made in July 2014. However, the sale has not yet completed. He also sought to rely on two further comparables at 16 Egerton Court and 1 Orchard Court. Both these properties were situated in blocks which were constructed in a similar style.
12. We first deal with 3 Grosvenor Court. This is a two bedroom flat on the first floor. It is significantly larger (71 sq m). It is situated in the same block as the subject flat. However, it is situated at the end of the block.

This flat has the benefit of three bay windows. We have been provided with the room sizes and know that whilst the kitchen and bathroom are similar in size, the living room and the two bedrooms are significantly larger. The second bedroom is a double. The bay windows would make the living spaces lighter and more attractive.

13. 30 Grosvenor Court is a two bedroom flat on the first floor. It has two double bedrooms. The overall size of the flat is 62 sq m, some 18% larger than the subject flat. It is situated in a separate block which has a single staircase and 8 flats. The block has its own front garden. It fronts onto Vicarage Road, rather than Brewster Road. All these factors make this block significantly more attractive.
14. 1 Orchard Court is a two bedroom flat on the ground floor. The layout is somewhat different. There are two blocks each of which has a single staircase. There was no entry phone system. There are just three floors. No.1 is situated in the front block which looks out onto Vicarage Road. There are two flats on each floor of this block. Externally, the block looked well maintained. All flats had double glazed windows. The living room has the benefit of a bay window, albeit that this flat is somewhat smaller than the subject flat (49 sq m). We considered the location to be more desirable than the subject flat.
15. 16 Egerton Court is a two bedroom flat on the top (third) floor. The block has double glazing. The common parts are well maintained with an attractive grassed area with trees and shrubs. It is about the same size as the subject flat (55 sq m). Hainault Road is busy. However, we felt that this was the most attractive location of all the comparables.
16. We agree with both experts that 3 Grosvenor Court is the best comparable. It is in the same development. The transaction was within weeks of the valuation date.
17. We turn to the adjustments that we are required to make. The first is for improvements. We must disregard any increase in the value of the flat attributable to any improvements carried out at his own expense by the tenant or any predecessor in title. Mr Rona argued for an adjustment of £5,000 on the basis that the tenant had expended some £20,000 on refurbishments over the previous five years including refitting the kitchen and bathroom and the installation of gas central heating. Mr Naylor would have allowed £8,000 for these improvements, namely £3,000 for the kitchen, £2,000 for the bathroom and £3,000 for the central heating.
18. Mr Naylor adopted a somewhat different approach. He rather made adjustments to the comparables to assess their value in an unimproved condition with original kitchen and bathroom and no central heating. 3 Grosvenor Court had a refitted bathroom and central heating, but not a

refitted kitchen. He therefore reduced the value of this property by £5,000. We agree with this approach.

19. We next make an adjustment for size. 3 Grosvenor Court is significantly larger than the subject flat (71 as opposed to 52 sq m). Mr Naylor argued that no adjustment should be made for size as Mr Rona had made no such adjustment in his report. However, when Mr Rona became aware of the difference in size, he said that he would have made an adjustment of between £5,000 to £10,000. Mr Naylor was unwilling to assist the Tribunal on this matter. We recorded his evidence as follows: "I accept, that other things being equal, a larger flat would sell for a higher price. However, I feel unable to indicate what the impact would be without making further inquiries". The Tribunal did not consider this response to be either helpful or consistent with the duties of an independent expert.
20. We are satisfied that size would be a significant factor and make an adjustment of £10,000 in respect of this. The living room is significantly larger (4.42m x 4.04m compared with 4.01m x 3.45m). The second bedroom is a double (3.66m x 3.33m) rather than a single (3.96m x 2.44m). The main bedroom is also larger (4.27m x 3.3m as opposed to 3.35 x 3.35m).
21. Finally, we must make an adjustment for time. Mr Rona makes no adjustment for time. The valuation date is two months after this transaction. We therefore make an adjustment of +3.81%.
22. The total adjustments which we make are:

Long Lease Sale Price:	£207,500	
Less for improvements	5,000	
Less for Size	<u>10,000</u>	
	£192,500	
Plus 3.81% for time	£199,834,	say £200,000
Plus 1% for Virtual Freehold Value:		£202,000

23. We have had regard to the three other comparables to which Mr Naylor relied to confirm whether we are justified in relying on 3 Grosvenor Court as our sole comparable:

(i) 30 Grosvenor Court: This flat is the next closest comparable. Mr Naylor's adjusted figure is £203,225, which is very close to our figure. We found it to be more attractive. It is also slightly larger. Mr Naylor has had to make significant adjustments for the date of the transaction (8 months later) and improvements (it has double glazed windows). A sale has yet to be completed.

(ii) 1 Orchard Court: Mr Naylor's adjusted figure is £215,556. We are satisfied that this reflects its more desirable location.

(ii) 16 Egerton Court: Mr Naylor's adjusted figure is £228,376. We are satisfied that this reflects its more desirable location and the higher level of maintenance. Had we been required to do so, we would have made adjustments of 10-12.5% in respect of these factors.

Issue 2: Relativity

Relativity

24. The following guidance on relativity is provided by the learned editors of "Hague on Leasehold Enfranchisement" (6th Ed, 2014) at [33.17]:

"The assessment of the value of the tenant's existing lease is often problematic. Sales of flats in the locality on leases of a comparable unexpired term will invariably be "tainted" by being sold with 1993 Act rights, which have to be disregarded. If there is evidence of sales of flats in the locality on very long leases, valuers can assess the value of the flat on its existing lease by taking a proportion of the long lease value. The relative value of a lease when compared to one held on a very long term varies with the unexpired term. This "relativity" has not proved easy to establish. A number of organisations publish tables or graphs of relativity, representing their views, which views may be based on market transactions, settlements, expert opinion and/or tribunal decisions. This topic was recently considered in detail by the Lands Tribunal (in *Nailrite Ltd v Cadogan* [2009] 2 E.G.L.R. 151). It held that relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity (see *Nailrite Ltd* [2009] 2 EGLR 151 at [228] applying the guidance of the Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] R.V.R. 39)."

25. In a footnote, the Editors note:

"In October 2009, the RICS published its report on Graphs of Relativity, in response to the suggestion in *Arrowdell*. The Leasehold Relativities Group, chaired by Jonathan Gaunt QC and comprising eight surveyors, considered all the published graphs but were unable to agree upon definitive graphs to be used as evidence by tribunals as had been proposed by the Lands Tribunal. The report reproduced all the published graphs together with details of the data that lies behind each. In *Re Coolrace Ltd* [2012] UKUT 69 (LC); [2012] 2 E.G.L.R. 69, the Lands Chamber adopted the Lease graph of relativities, based on Tribunal decisions across the country, in preference to a local West Midlands graph, which

had been applied by the LVT. A plea for a further attempt to agree a graph was made. In *Trustees of Sloane Stanley Estate v Carey-Morgan* [2011] UKUT 415 (LC); [2012] R.V.R. 92, the Lands Chamber assessed the value of short leases with 4.74 years unexpired by capitalising the unimproved rental value to the end of the term. This was appropriate for such a short lease, instead of using graphs of relativity.

In *Earl Cadogan v Cadogan Square Ltd* [2011] UKUT 154 (LC); [2011] 3 E.G.L.R. 127, the Upper Tribunal was faced with the difficulty of conflicting evidence as between evidence of adjusted transactions (producing a relativity of 53 to 56%) and evidence from graphs (producing a relativity of 38%). An analysis of the evidence from the Savills 2002 enfranchisable graph as against the Gerald Eve non-enfranchisable graph suggested that the adjustment of 10% made by the nominee purchaser to adjust the transactional evidence to reflect 1993 Act rights was too low and the Tribunal decided that a deduction of 25% was appropriate. The unexpired terms in that case were 17.75 years.”

26. A number of recent decisions of the Upper Tribunals have highlighted the problems that First-tier Tribunals have to confront. As was noted most recently by HHJ Huckinson in *Latifa Kosta v F.A.A.Carnwath and Others (47 Phillimore Gardens)* [2014] UKUT 0319 (LC), (at [143]):

“We would conclude by saying that this Tribunal, its predecessor, the LVTs and indeed the profession at large has, unsuccessfully thus far, been seeking to find a settled position on relativities for leasehold properties”.

27. The Upper Tribunal had regard to new research by Dr Bracke who was found to be an impressive and unbiased witness whose work was “by common consent, a formidable piece of research”. However the Upper Tribunal felt unable to place weight upon his evidence.

28. The Upper Tribunal gave the following guidance in reaching their decision that they should dismiss the appeal:

“139. There is however a point which leads us to conclude that the published graphs would constitute an important ingredient in the decision of potential hypothetical purchasers of the existing lease at the valuation date as to how much to bid for the existing lease. At the valuation date these graphs were in existence and, as Mr French says, were widely referred to and relied upon by valuers. A hypothetical purchaser considering bidding in the open market for the existing lease at the valuation date on the statutory assumptions would be aware that they were likely to have to pay substantially more than £10 million for the prospective purchase

and would be likely to conclude (unless rash – which we should assume they were not) that they should obtain some valuation advice as to how much would be appropriate to pay before ultimately deciding upon their final bid. The potential purchaser seeking such advice would inevitably go to a valuer experienced in valuing prime central London houses. Such a valuer in giving the advice which was sought would in our judgement inevitably have in mind, as one of the ingredients which informed the advice, these published graphs.

140. We conclude that the advice which the well-informed hypothetical purchaser would be likely to obtain would include advice that these graphs existed, that they had some strengths but also some weaknesses, and that some suggested prices higher than others.

141. We remind ourselves that the successful purchaser is the purchaser who, consistent with being prudent and well-informed rather than rash, placed the highest bid. But that is equally the case for the transactions, and to an extent the assumptions behind settlements, reflected in the graphs. Mr French confirmed that the graphs are showing relativity points after an allowance for no Act rights has been made, and no further adjustment was required.

142. We note that the average relativity as shown across the various graphs is approximately the 76% adopted by the LVT and supported by Mr French. We observe that one graph, namely the John D Wood graph, shows a relativity of about 82.5% which is substantially higher than that shown by all the other graphs. We conclude that the successful hypothetical purchaser would not be prepared to base their bid upon this graph, because they would see that it was out of step with all these other graphs. However we conclude that the successful hypothetical purchaser would be the purchaser who was prepared to base their bid upon the average of all the graphs referred to by Mr French, including the John D Wood graph and who would in consequence outbid the more cautious potential purchaser who was only prepared to bid to the level of the average of the graphs excluding the John D Wood graph. We therefore determine that 76% is the relativity as decided upon by the LVT. Accordingly the appeal is dismissed.”

The Submissions of the Parties

29. Mr Naylor argues for a relativity figure of 80.08% which he derives from the sale of 5 Grosvenor Court which was completed on 26 September 2013 for £170,000. This property was sold with an unexpired term of approximately 60 years.

30. The Tribunal is unable to accept the evidence relating to this transaction. Our reason is that on 30 September 2013, the lease was extended to expire on 23 June 2125. There is nothing on the Office Copy Entries to indicate what additional premium, if any, was paid. Mr Naylor conceded that he did not know. He invited us to infer that an appropriate premium would have been paid despite the close proximity between the completion date and the lease extension date. We are not willing to make this inference. We consider that it is probable that there were special factors relating to this transaction. This assessment is confirmed by the fact that this evidence would lead to a relativity rate which would be out of line with those in the RICS's tables.
31. Mr Rona, on the other hand, argues for a relativity figure of 86.5% based on the RICS's graphs. He excludes Prime Central London, but seeks to rely on an average of all the other graphs.
32. Mr Naylor agrees that if we fall back on the RICS's graphs, we should exclude Prime Central London. He also argues that we should exclude the following:
- (i) Austin & Gray because the properties are primarily in the Brighton & Hove areas;
 - (ii) Beckett and Kaye because it is based on opinion and not sales; and
 - (iii) South East Leasehold because it is out of kilter suggesting a figure 90%, significantly above the other tables.
33. We agree with the approach adopted by Mr Naylor. We prefer to rely on the RICS's graphs which we consider to provide the most helpful evidence of relativity. If we exclude these three graphs, the parties are agreed that the relevant figure for relativity is 83.86%.

The Tribunal's Decision

34. We make the following determinations on the two issues in dispute:
- (i) The virtual freehold value of the subject property is £202,000;
 - (ii) Relativity is to be taken as 83.86%;
 - (iii) We determine the premium payable to be £20,920. Our working calculation is set out in the Appendix.

Robert Latham
Tribunal Judge

15 October 2014

Appendix

24 Grosvenor Court Brewster Road London E10 6RH

Valuation date 4 November 2013

Lease 99 years from 24 June 1975 at £25 pa for 1st 33 years, £50 pa next 33 years and £75 pa remainder

Capitalisation rate 6%

Deferment rate 5%

Landlord's present interest

Ground rent	50	
YP 27.63 years at 6%	<u>13.334</u>	£667

Ground rent	75	
YP 33 years at 6%	14.2302	
x PV for 27.63 years	<u>0.1998</u>	<u>2.84319396</u> £213

Reversion to freehold	202,000	
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Deferred 60.63 years at 5%	<u>0.0519</u>	<u>£10,484</u> £11,364
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less proposed interest	202000	
Deferred 150.63 years at 5%	<u>0.000643</u>	<u>130</u>
Diminution in Landlord's interest		£11,234

Marriage Value

Proposed interests

landlord	£130	
Extended lease	<u>200,000</u>	£200,130

less Present Interests

landlord	£11,364	
Existing lease (83.86%)	<u>£169,400</u>	<u>£180,764</u>

Marriage Value		£19,366
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50% marriage value		<u>£9,683</u>
		<u>£20,917</u>

	Premium payable	£20,920
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