

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2016] UKUT 0288 (LC)
UTLC Case Number: LRA/111/2015

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT - Premium - Leasehold Reform, Housing and Urban Development Act 1993 Schedule 13, Part II - terms of new lease - unimproved freehold value - gross internal area basis preferred - deferment rate - Sportelli rate of 5% preferred - relativity following Sloane Stanley and Ors v Mundy and Ors - RICS report graphs - Gerald Eve graph preferred starting point - premium determined at £260,000

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE
FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

MS REBECCA DENHOLM

Appellant

and

MS CANDIDA STOBBS

Respondent

Re: Upper Maisonette,
12 Needham Road,
London
W11 2RP

Before: His Honour Judge Huskinson and Mr Peter D McCrea FRICS

Sitting at the Royal Courts of Justice, London WC2A 2LL

on

18-19 May 2016

The Appellant appeared in person
Stuart Armstrong for the Respondent

© CROWN COPYRIGHT 2016

The following cases are referred to in this decision:

Earl Cadogan and Anor v Sportelli and Anor [2007] 1 EGLR 153

Arbib v Earl Cadogan [2005] 3 EGLR 139

Kosta v Carnwath & Ors [2014] UKUT 0319 (LC)

The Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 0223 (LC)

DECISION

Introduction

1. This is an appeal by way of a re-hearing by Ms Rebecca Denholm (“the appellant”) against a decision of the First-tier Tribunal (Property Chamber) (“the F-tT”) dated 8 September 2015 within which the F-tT determined that the premium payable by the respondent long leaseholder, Ms Candida Stobbs (“the respondent”) to acquire an extended lease of the upper maisonette, 12 Needham Road, Notting Hill, London, W11 2RP (“the appeal property”) under section 56 of and schedule 13 to the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”) should be £293,500.

2. The appeal’s progression through the F-tT was not straightforward. The case was heard on 30 September 2015 following which the F-tT issued a decision of 26 November 2014. Following representations from the parties, that decision was corrected on 23 December 2014. Both parties sought leave to appeal against the corrected decision, which the F-tT refused but indicated that it would review the corrected decision and invited further representations. Following receipt of those representations the F-tT published its reviewed decision on 26 May 2015. Both parties applied for permission to appeal against the reviewed decision. The F-tT again refused these applications but further amended the reviewed decision which was published as above. Both parties applied for permission to appeal against that decision.

3. On 24 November 2015 the Deputy President granted permission to appeal to the appellant and permission to cross appeal to the respondent, observing that the parties agreed that the final decision of the F-tT contained at least one error of calculation and for that reason permission to appeal must be granted. The F-tT’s decisions provided three different figures for the premium but neither party considered that any of those figures had been arrived at on a correct basis of valuation. The Deputy President therefore determined that the appeal and cross appeal would be heard as a re-hearing with no further concern given to the consideration of the decisions of the F-tT. For convenience, we refer to Ms Denholm as the appellant and Ms Stobbs as the respondent, whilst noting that Ms Stobbs was also granted permission to cross appeal.

4. The appellant represented herself. At the F-tT, Mr J W Hamand MRICS gave expert valuation evidence for the appellant. Mr Hamand’s report was submitted to us but he did not appear. The respondent was represented by Mr Stuart Armstrong of counsel who called Mr Timothy Lee FRICS to give expert valuation evidence.

5. On the morning of Friday 20 May we internally inspected the appeal property accompanied by the parties, following which we made unaccompanied external inspections of the properties which the parties had cited as comparable evidence.

Facts

6. From our inspections and the evidence, we find the following facts.
7. Needham Road is a short link street between Artesian Road and Westbourne Grove in Notting Hill within the City of Westminster. The area is primarily residential in nature, with some retail uses and a public house.
8. 12 Needham Road (“the building”) is owned by the appellant. It has two elements. There is a ground floor and basement retail/live-work unit until recently occupied by the respondent. The appeal property is the two-storey first and second floor maisonette which lies above it. The building is not listed but lies within the Westbourne Conservation area.
9. The building is of brick stucco-fronted construction, with a “London invert” slated roof and flat felt-roofed rear additions. The appeal property has its own front door, giving access to a narrow entrance hall from which a staircase leads to a small half landing and kitchen at mezzanine level with a return staircase leading up to the first floor which comprises a combined reception/dining room. There is a narrow front balcony accessed by sash windows but which, owing to both its limited depth and raised height above the first floor level, is used by the respondent as an area for plants and pots. The landing at first floor has a small desk and telephone point. A short staircase gives access to the bathroom situated above the kitchen, at a mezzanine level between the first and second floors, and a return flight of stairs gives further access to the two second floor bedrooms.
10. Owing to the configuration of the roof, there are two attic areas, each accessed by a loft hatch, one of which is on the second floor landing and the other of which is in a bedroom. Each attic has a mono-pitch roof with a maximum internal height of around four feet.
11. The appeal property offers a relatively basic level of accommodation in comparison with the comparable evidence, and would benefit from refurbishment, particularly to the kitchen and bathroom. It has a gross internal area of 907sq ft excluding the attic space.
12. The appellant purchased the freehold interest of the building at auction in February 2012 at a price of £560,000 plus costs.

The Lease

13. The appeal property is held on a lease dated 28 February 1967, for a term of 90 years from 25 December 1966, at a fixed ground rent of £45 per annum. The First Schedule to the lease defines the demised premises, for which the tenant had an obligation to well and substantially repair etc, as including “...the internal and external walls of the maisonette and the roof thereon.”
14. Under part 2 of the lease, the tenant covenants:

“(x) not at any time during the said term to erect or place any additional building or erection on any part of the demised premises and not to make any alterations in the plan or elevation of the premises hereby demised or in any way [to] the party walls or floors of the principal or bearing walls or timbers thereof nor to affix to or hang from the exterior of the demised premises any window box sign or other matter or thing.”

15. Under part 3 of the lease, the freeholder covenants:

“(v) at the reasonable request of the Lessee to enforce the repairing covenants given by the present tenant of the lower part in the lease thereof, but without prejudice to the right of the Lessee to enforce such repairing covenants direct against the said tenant of the lower part.

(vi) if the lower part comes into the possession and occupation of the Lessor at the expiration or determination of the existing lease thereof to maintain the said lower part in accordance with the terms of the said existing lease as if it were the Lessee thereunder during such time as the said lower part remains in the possession and occupation of the Lessor.

(vii) to use its best endeavours to ensure that any subsequent lease tenancy or occupation of the lower part shall contain repairing covenants not less onerous than those at present contained in the existing lease thereof.”

Notices under the 1993 Act

16. On 12 August 2013 solicitors for Ms Stobbs served a Notice under section 42 of the 1993 Act seeking a new 90-year lease to commence on 26 December 2056 and proposing a premium of £171,275. The Notice also sought changes to the lease relating Ms Stobbs’s repairing obligations, so that Ms Denholm as freeholder would be responsible for the repair, maintenance etc of all external walls, roofs etc, and then to recover a fair proportion of the costs of so doing from her.

17. On 24 October 2013 solicitors for Ms Denholm served a Counter-Notice under section 45, admitting Ms Stobbs’s right to a new lease, rejecting the proposed changes in terms, and proposing a premium of £264,200.

18. On 22 April 2014, Ms Stobbs made an application to the F-tT for the determination of the premium, which it did as outlined above, at a premium of £293,500.

Statutory provisions

19. Part II of Schedule 13 to the 1993 Act provides the framework under which the premium payable in respect of the grant of a new reversionary lease shall be calculated. In so far as relevant to this appeal, this is, in essence, that the premium payable by the tenant shall be the aggregate of—

(a) the diminution in value of the landlord's interest in the tenant's flat (being the difference between the value of the landlord's interest prior to the grant of the new lease and the value of her interest in the flat once the new lease is granted, in each case assuming a sale on the open market subject to the relevant lease, with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy);

and

(b) 50% of the marriage value created by the new lease (being the difference between the aggregate of the value of the tenant's interest under the existing lease and the landlord's interest prior to the new lease being granted; and the aggregate of those interests following the grant of the new lease).

Agreed matters

20. Both parties have adopted the framework under Schedule 13 in calculating the premium to be paid. Within these calculations there was common ground as to the following:

- (a) that at the relevant valuation date of 13 August 2013, the existing lease had 43.37 years unexpired.
- (b) that a future extended 133.37-year term would have relativity of 99% compared with the unimproved freehold value.
- (c) that the unusual repairing covenants of the existing lease, and if mirrored in the new lease, would in each case be reflected by a 1.5% discount to that relativity.
- (d) that the freeholder's current interest has a value of £647, equivalent to the current ground rent of £45 per annum capitalised for 43.37 years at a yield of 6.5%.

Issues for Determination

21. The issues in dispute, which we deal with in turn, are as follows:

- (a) the terms of the new lease;
- (b) the unimproved freehold value of the appeal property at the relevant date of 13 August 2013;
- (c) the deferment rate to be applied to the freeholder's reversionary interests;
- (d) the relativity of a normal short lease value with 43.37 years remaining at the valuation date;
- (e) and therefore the premium to be paid for a new 90-year reversionary lease. Ms Denholm, after some alteration at the hearing, contended for a premium of £379,376.07, compared with Mr Lee's figure of £244,030.

The Terms of the New Lease

22. Notwithstanding their respective positions stated in the Notice and Counter-Notice, by the time of the Ft-T hearing, Ms Stobbs had conceded that the terms of the new lease should not change, and the Ft-T was therefore not required to make a determination. Despite her previous objection, it is now Ms Denholm who seeks to alter the lease terms, to remove from the demise the external walls and roof, which she proposes to repair and maintain subject to recovery of proportionate amounts from Ms Stobbs. She also seeks to recover the cost of employing any managing agents. Ms Denholm submitted correspondence between the parties which she said showed that Mr Stobbs struggled independently to manage her repairing obligations.

23. For Ms Stobbs, Mr Armstrong submitted that since the Ft-T did not deal with changes to the lease (apart from rent and term), there is no issue to appeal as regards changes to the lease under the scope of the Deputy President's permission to appeal. In the alternative, Ms Denholm's proposed changes did not bring the case within any of the circumstances envisaged under section 57(6) of the 1993 Act and Ms Denholm had not shown that the lease was defective. Mr Armstrong said that the current lease terms, under which Ms Stobbs was responsible for external and structural repairs, whilst unusual were perfectly workable.

24. Whilst we agree with Mr Armstrong on this point, it seems to us that there is a further difficulty, about which we made a provisional observation at the hearing, namely that the proposed changes would involve the demise of the premises physically reducing, in that the exterior of the walls and roof would no longer form part of the demised premises. In the absence of agreement between the parties, we have no power to order the grant of a new lease of less than the extent of the current demise.

25. Accordingly, our determination of the premium payable is based upon the terms of the new lease mirroring those of the existing lease, save for a rent of a peppercorn, and having a term of 90 years from 26 December 2056.

Unimproved freehold value

Basic approaches

26. Prior to dealing with the comparable evidence in any detail, we now outline the valuation approaches of the two parties, and explain why we prefer one to the other.

27. Mr Hamand's report to the Ft-T was submitted to us, but since he was no longer instructed by Ms Denholm he did not appear and his evidence was therefore untested. It was not referred to in any detail at the hearing, and we have not placed any weight upon it. By her own admission Ms Denholm is not an expert in the valuation of property, but she does have expertise and experience in architecture, floor plans, and the analysis of data. By any measure, she had put in a large amount of time and effort in presenting her case.

28. Mr Armstrong called Mr Timothy Lee FRICS to give expert evidence. Mr Lee also appeared for Ms Stobbs at the Ft-T. Mr Lee is a Chartered Surveyor of 45 years standing, and has worked for many of the leading residential practices. He has practised in leasehold reform for many years, including acting for several hundred leaseholders, and some freeholders, mostly in central London, and has carried out valuations in Notting Hill for a variety of purposes.

29. Both Ms Denholm and Mr Lee used comparable transactions in the Notting Hill area as the basis of their valuations of the freehold interest of the appeal property, but they adopted differing methods of devaluation of those comparables.

30. Ms Denholm's approach had two strands. First, she used evidence to submit that different floors of a building attracted different values per sq ft, with lower floors (starting at the first floor) being more valuable in general terms than upper floors. Secondly, that the devaluation of comparable transactions, and the valuation of the appeal property, should be on what she termed a net useable area basis.

31. In respect of the first strand, Ms Denholm relied upon four transactions within two buildings at Sutherland Place – a short distance away from Needham Road. The properties involved, together with Ms Denholm's devaluations and notes, were as follows:

Property	Price/Date Adjustment	Position/Size	Notes	Adjusted Price	Price per sq ft
Flat C, 52 Sutherland Place	£500,000 Aug 12 +6.95%	366 sq ft 1st floor	Balcony. Low spec and alterations to front window which required replacement. Missing original features	£540,151	£1,475 (adjusted to £1,544 mid spec)
Flat E, 52 Sutherland Place	£415,000 April 12 +7.95%	427 sq ft 3rd floor attic	Newly refurbished to a high spec	£447,992	£1,049 (adjusted to £962 mid spec)
Flat 3, 19 Sutherland Place	£650,000 Sep 13 -1%?(sic)	346 sq ft 1st floor	Balconette. Good spec original fireplaces and cornices	£643,500	£1,860
2 nd /3 rd Floor Maisonette, 19 Sutherland Place	£1,375,000 Dec 14 -7.4%	508 sq ft 2nd floor 444 sq ft attic	Good spec	£1,280,260	2 nd floor £1,083 3rd floor £1,186

32. Ms Denholm said that the above results showed that, broadly, if the second floor of a property was worth a factor of 1 per sq ft, the first floor, which tended to have higher ceilings of approximately 3m, was worth 1.2 and the attic space was worth 0.8. The Sutherland Place comparables showed a greater range than this, but Ms Denholm said that she had been conservative in adopting ratios of 20%.

33. As regards her second strand, Ms Denholm adopted what she described as a useable floor space method in both analysing comparable evidence and valuing the appeal property to determine the floor area efficiency, as she termed it. This method excluded hallways and stairs, but included the principal rooms together with bathrooms and wc's. The market operates on a gross internal area basis, and when properties are marketed for sale, floor plans are generally included in the agent's marketing particulars. Ms Denholm had used a software package in order to convert the gross internal areas of these comparables to her useable floor space basis in each case. This useable floor space was then subjected to multipliers, drawn from Ms Denholm's analysis on the Sutherland Place properties, in order to arrive at a total number of "points" (an adjusted floor area). Hence for example the first floor was subject to a multiplier of 1.2 in comparison to the second floor rate.

34. Accordingly, whilst Ms Denholm agreed that the gross internal area of the appeal property was 907 sq ft (without the attic storage space which we shall consider shortly), she calculated that the adjusted useable floor space was 787 sq ft, comprising:

<u>Floor/Room</u>	<u>Area (sq ft)</u>	<u>Factor</u>	<u>Adjusted Area (sq ft or "points")</u>
1 st / Reception Rooms	327	1.2	392
2 nd /Bedrms & Laundry	341	1	341
Mezz/Kitchen	34	0.8	27
Mezz/Bathroom	34	0.8	<u>27</u>
		Total:	787

35. Mr Lee's approach was based on gross internal areas, both for the devaluation of comparable properties and in his valuation of the subject property. He said that he had never come across Mr Denholm's method in his years in practice, and had never used it himself.

36. At this point it is convenient to deal with the attic. Ms Denholm calculated this to be 344 sq ft, and, when adjusted using a factor of 0.2, an adjusted area of 69 sq ft or points. She considered that the attic was of benefit, and could be developed as a roof terrace, relying on a precedent at 15 Needham Road, opposite the appeal property.

37. We do not attribute any material value to the attic, for several reasons. First, having inspected the two attic compartments, we consider that they are of very limited use. They hardly justify the use of the word attic – they are in substance merely areas of roof space into which it would be difficult for a person to gain access. Secondly, Ms Denholm's thought of the attic having development potential is flawed. In evidence it transpired that the development at 15 Needham Road had been carried out without planning permission, and accordingly is unreliable as a planning precedent. Additionally, the development cannot be carried out without the landlord's consent. As clause 2(x) referred to at paragraph 14 is an absolute covenant, there is no implication that any consent cannot be unreasonably withheld.

38. Ms Denholm used her adjusted floor area basis in a lengthy examination and analysis of the comparable transactions, and showed how the evidence which that analysis produced can be applied to the appeal property, again on a usable floor area basis. She arrived at an unimproved freehold value of £1,547,000.

39. Whilst we acknowledge the considerable amount of care and thought Ms Denholm has put into her case, we do not agree with her basic method. As we observed during the hearing, the principle that, all other things being equal, the higher a flat is within a building the less it is worth per sq ft is uncontroversial. Mr Lee agree there would be some difference, but not as high as Ms Denholm's adopted 20%. But Ms Denholm's analysis is in our view unreliable for several reasons. It compares flats of differing sizes, ranging from 366 sq ft to 952 sq ft, without any adjustment for quantum. It relies upon her subjective (and by her own admission non-expert) adjustment for quality or fit out. There was no evidence in support of her contentions of the effect on value of specification, or for instance that a purchaser would pay less for a property with an altered front sash window. Accordingly, the basic method of devaluation of the comparables is not, in our view, on a sound footing.

40. Additionally, Ms Denholm's internal floor area basis relied upon the accuracy of scanning from sales particulars to arrive at net floor areas, which we are not persuaded is sound. But we have a more fundamental concern about Ms Denholm's concept of efficiency of floor area. During our inspection of the appeal property we noticed that the stairs were relatively steep. Using Ms Denholm's approach, the property would attract more value if the steps were even steeper, and thus used less floor area than currently. That cannot be right.

41. The unreliability of Ms Denholm's approach was highlighted in her analysis of the appeal property in comparison with 4 Needham Road, where she considered that the value of the attic of the appeal property (at something in the order of £120,000), could be offset against, or cancel out, the value of the garden at 4 Needham Road. That is plainly not right in our view.

42. In the background to these concerns, (although we would not rely on this with greater force than our views above) there is the question of credibility. Ms Denholm is a layperson, albeit one that has submitted documents of considerable detail. However, we place greater weight on Mr Lee's opinion, as a Chartered Surveyor who has practised in residential property in the area for decades.

43. Having made that finding, it is unnecessary for us to recount in detail how Ms Denholm compared the valuation of the appeal property to her analysis of the comparable transactions. Instead we have generally adopted Mr Lee's approach, although not wholly so as we will now explain.

Analysis of comparable evidence

44. Ms Denholm relied upon a proposed sale of 15 Needham Road, which she said was under offer at £1,649,000. Whilst as a comparable this has the attraction of being immediately opposite the appeal property, both Mr Denholm and Mr Lee confirmed at the hearing that the sale had not taken

place. We do not find the proposed sale to be of any assistance, as it does not represent an actual transaction, and we have not placed any weight on this.

45. Ms Denholm also relied upon the sale of two upper floor maisonettes at 200 and 228 Westbourne Grove. Having inspected them, we do not find the locations to be comparable. This end of Westbourne Grove is a busy shopping street, and the properties are set back behind large garden terraces. We do not derive any assistance from these transactions as comparable evidence.

46. Mr Lee relied on 12 sales of comparable properties, five of which post-dated the valuation date¹. His schedule of these properties, after some amendment at the hearing, is attached at Appendix 1. Many of these were common comparables, as Ms Denholm had also referred to them. Briefly, they were:

<i>Locations with pre-claim date transactions</i>	<i>Locations with post-claim date transactions</i>
Flat 1, 14 Needham Road	154 Westbourne Grove
Flat A, 4 Needham Road	Flat C, Lonsdale Road
Upper Maisonette, 4 Needham Road	19 Sutherland Place
35 Artesian Road	21 Colville Terrace
Upper Maisonette, 8 Moorhouse Road	Flat 2, 10 Colville Gardens
Flat 3, 28 Sutherland Place	
Flat D, 50 Lonsdale Road	

47. Having externally inspected the comparables, we do not consider the locations of 10 Colville Gardens and 21 Colville Terrace are sufficiently comparable for us to attach any weight the transactions at those locations. The maisonette at 8 Moorhouse Road is considerably larger than the appeal property, and its adjusted price appears to be, perhaps for this reason, noticeably low in comparison with the majority of the comparables. Mr Lee accepted in cross examination that a case could be made for its exclusion. We endorse that, and have placed no weight on the sale of 8 Moorhouse Road as a comparable.

48. Mr Lee explained the adjustments he had made to the various comparable sales, for example for layout, floor, gardens, parking spaces etc, and we accept that these accurately reflect the differences between the various properties. He also made amendments to reflect the extended lease of the appeal property, and again we accept these.

49. Both parties reflected the changes in levels of value between the various dates of transactions and the valuation date by using indices. Mr Lee's approach was to use the Savills Prime London Residential Capital Values Index for Central London flats and maisonettes, and which reports quarterly figures. He said that this accurately reflected the changes in values of properties comparable to the appeal property until a point about 12 months after the valuation date – a period which covered all of the relevant comparable transactions.

¹ Neither party indicated that there was any difficulty in applying post-valuation date evidence.

50. For transactions after Autumn 2014, Mr Lee considered the Savills index to be of less help. He said that since changes in SDLT in the autumn/winter of 2014, the market at upper levels - which dominates the Savills index - has been depressed, whereas properties of less than £2 million continued to increase in value. This was only really relevant in respect of 15 Needham Road, but as we have indicated above we do not consider the fact that that property is under offer to be of any assistance, and accordingly we need not comment on this aspect any further.

51. Despite referring to all of the comparables, and making adjustments to bring them into line with the appeal property, Mr Lee on reflection agreed to the Ft-T's preference of only four comparable properties - Flat 1, 14 Needham Road, both flats at 4 Needham Road, and 35 Artesian Gardens. We do not agree with that approach. Whilst physically close to the appeal property, we have sufficient doubts in respect of three of the four to consider that limiting the evidence to only them is likely to give an incorrect result.

52. Flat 1, 14 Needham Road would ordinarily be as good a comparable as one might hope for, being very similar to the appeal property and next door to it. However, its sale in September 2006 is historic, causing an index-based adjustment of over 60% to be necessary. Both flat A and the upper maisonette at 4 Needham Road were purchased by the same party, on the same date, and the whole property is now on the market as a house. Whilst there was no direct evidence that there was any element of special purchase, again we question whether these two sales, forming half of Mr Lee's limited pool, can be wholly reliable.

53. We consider a better approach is to take account of Mr Lee's nine comparables after the exclusions referred to above. The larger the number of comparables, the less one particular comparable can affect the end valuation. We are satisfied that the nine are comparable following adjustment and can be relied upon.

54. There were some slight errors in Mr Lee's interpolation exercise in which he calculated index figures for intermediate months not reported in the quarterly index. For instance, for the valuation date of August 2013, he calculated a figure of 215.4². The published indices are 213.1 for June 2013, and 217.7 for September 2013. We consider that the correct index for August 2013, interpolating on a straight line basis, is 216.2 (with July being 214.6). There were similar slight errors elsewhere in Mr Lee's use of indices, but it is unnecessary for us to outline these in detail. However, we have corrected them in our own analysis.

55. Additionally, Mr Lee's table aggregated the adjusted sales prices of his comparables, and divided this by the aggregate square footage of those comparables. We prefer to average the rate per sq ft produced by each individual comparable. Again, the difference is not great.

56. Following corrections to the index adjustments, outlined as Appendix 2, the average price arrived at is £1,310 per sq ft, but this on the basis of an extended leasehold, not freehold. We agree with the parties that an extended 133.37-year lease would have a relativity of 99%. Accordingly, we consider that the freehold value per sq ft at the valuation date would be £1,323.74, resulting in a total

²We think Mr Lee has divided the difference between the two indices, 4.6, by four rather than three.

unimproved freehold value of £1,200,629.59. Neither party felt it necessary to round this figure to reflect an actual sale in the market, and we do not do so.

57. The equivalent long leasehold value, on an extended lease, and on “normal” lease terms, would be £1,188,623.29. On a “stand back and look” basis, we are satisfied that a long leasehold value of this level sits comfortably with the comparables. 14 Needham Road, next door and slightly larger, would have an equivalent value of £1,219,000. 154 Westbourne Grove, on the corner of Needham Road, would have an equivalent value of £1,390,354 before an adjustment for quality but was far superior. 35 Artesian Road, a much larger property but again just around the corner, would have an equivalent value of £1,772,878 before adjustment.

58. Mr Lee also relied upon a marketing report on the appeal property from his former firm, Strutt and Parker, in August 2014. We have placed little weight upon this as the valuers were not called as witnesses, but note in passing that the suggested asking price of £1,300,000, once adjusted for time using the Savills index, would suggest an asking price of £1,208,000 which again sits comfortably with our valuation.

59. Before leaving this topic we should mention one other aspect. Ms Denholm relied upon her purchase of the freehold interest in February 2012 at £560,000 plus costs. To arrive at a value for the appeal property she deducted the value of the ground floor and basement. To find this, she used a comparable of 15 Needham Road, which she said had the same layout and which she said was sold in June 2010 at £390,000. She then made several adjustments for length of lease and deferment rate, and time using the Savills index, to arrive at a freehold value of the appeal property of between £1.67 million and £1.85 million.

60. We reject that approach for several reasons. First, it included the costs of purchase which do not represent the net purchase price. Secondly, it assumed that the commercial element of 15 Needham Road was very similar, if not identical, to that of the building, and there is no evidence that this was the case. Thirdly, it assumed that the sum of the parts would equal the whole which is not necessarily the case in valuation. Finally, it ignored the fact that the purchase price at auction, for a property which was the subject to a short residential lease, would include an expectation of a premium receipt when that lease was extended – as it the case here. We are not assisted by this approach, which seems to be founded on the premise that the present exercise should wholly recoup Ms Denholm for her initial purchase. That is not the basis of the statutory valuation exercise.

61. Accordingly, our determination of the premium payable is based upon an unimproved freehold value of £1,200,629.59.

Deferment Rate

62. We can deal with this point in short order. Mr Lee considered the appeal property to be a flat, and adopted the *Sportelli*³ rate of 5%. Ms Denholm argued for a rate of 4.75%. She submitted that

³ From *Earl Cadogan and Anor v Sportelli and Anor* [2007] 1 EGLR 153

the appeal property does not have standard lease terms, and the repairing responsibility lies with Ms Stobbs. The only responsibility of the landlord, Ms Denholm argued, was to insure the building. Otherwise the building is owner occupied, and does not compare to a block of flats.

63. We do not agree with Ms Denholm. In addition to insuring, the landlord also has obligations which we have outlined at paragraph 15 above, in terms of either enforcing the repairing liabilities of the ground floor/basement occupier, or carrying them out herself should that space be in hand.

64. As regards individual flats versus blocks of flats, the Lands Tribunal in *Sportelli* confirmed a previous decision in *Arbib v Earl Cadogan* [2005] 3 EGLR 139 that there should be a differential between houses and flats, having regard to the lesser management problems of a single house, and that it was not necessary to assume a different risk factor for a single flat compared with a block of flats.

65. We consider Mr Lee is correct in adopting 5% as the appropriate deferment rate, and have done so in our determination of the premium.

Relativity

66. Relativity means the ratio between the value of a property held on a lease of a given term, with that property's freehold vacant possession value. It is expressed as a percentage, and is relevant in a calculation under the 1993 Act as it informs the leasehold interest on a "before" and "after" basis when calculating the marriage value, 50% of which will be payable to the freeholder in return for the new reversionary lease being entered into.

67. In this case, the parties agree that the unusual terms of the existing lease should be reflected in a 1.5% discount being applied to the relativity. As we have determined above that there should be no change to the terms of the lease, save for rent and duration, this agreed 1.5% discount should also be applied to the relativity of any new lease. Accordingly, the issue between the parties is the appropriate relativity for a lease with normal covenants with an unexpired term 43.37 years.

68. Relativity is a presently a topical issue. We dealt with it in *Kosta v Carnwath & Ors* [2014] UKUT 0319 (LC), and the Tribunal (Mr Justice Morgan and Mr A J Trott FRICS) has very recently revisited the subject in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 0223 (LC).

69. In his expert report, Mr Lee said that the relativity of a 43.37-year unexpired term, without rights, in Prime Central London ("PCL"), would be 68.7% in accordance with the graph drawn up by Gerald Eve, and included in the RICS Research Report "Leasehold Reform: Graphs of Relativity" (October 2009) ("The RICS report"). The appeal property was not in PCL, and Mr Lee said that he had agreed settlements out of PCL, but close to it, at 1% or sometimes higher than the figures indicated in Gerald Eve graph.

70. Mr Lee said that, following our decision in *Kosta*, the averaging of all of the graphs in the RICS report, would result in a relativity of 69.5%. He commented that Mr Hamand had agreed this figure as evidenced in the Ft-T decision. Mr Lee therefore adopted 69.5% on normal lease terms, and therefore 68% for the subject lease, as his relativity for the existing short lease term. In giving evidence, he said that his position had not changed as a result of the Tribunal's decision in *Sloane Stanley*.

71. Ms Denholm, relying on Mr Hamand, originally argued for a relativity rate in line with the Gerald Eve graph. Her position subsequently altered after she had studied the RICS graphs. Ms Denholm preferred the evidence of the graphs that deal with transactions, rather than settlements, to avoid what she called a Chinese whisper effect. She preferred the Gerald Eve, WA Ellis and Austin Gray charts, which on average showed a relativity of 67.52% inside PCL⁴. Outside PCL, the average of the Austin Gray and Beckett & Kay charts produced an average of 60.22%.

72. Ms Denholm was struck by the comment by Austin Gray in the RICS report that "the assumption has been made that investors will enter the market for leases sub 40 years at around 50% relativity for rental income with a diminishing capital return, for this reason the curve levels somewhat at around 40 years". This led her to make further investigations, and considered the real issues relevant to prospective buyers who were owner occupiers, and those who were investors. She said that an owner-occupier would be unlikely to pay more than the aggregate rent over the unexpired period of the short lease. She made a series of calculations on this basis, allowing for a rental yield of 3.39% for Notting Hill (based on the John D Wood index for the valuation date), inflation at 0.5%, and an 8% adjustment to reflect costs and responsibilities that would normally be the landlord's. On this basis she arrived at a relativity of 77.7%. In terms of the investor, she used a similar method, and assuming a yield of 4%, she arrived at a relativity of 56.2%.

73. Ms Denholm then blended her two results to arrive at a relativity of 65.15% for a lease with normal covenants, adjusted down by the agreed 1.5%, resulting in 63.65% on the unusual lease terms.

74. Whilst again we note the considerable amount of work Ms Denholm has carried out in her analysis, we reject her approach. It is based on subjective inputs and assumptions from a party who, by her own admission, is not a qualified valuer. In respect of the graphs in the RICS report, the Austin Gray graph is of no assistance as it reflects properties that were primarily in Brighton and Hove, and in respect of leases of less than 50 years unexpired, it relied upon very limited settlement data. The Beckett and Kay graph was based on opinion only, and in respect of mortgage-dependent properties only.

75. Ms Stobbs's purchase of the leasehold interest is of no assistance, as it pre-dates the valuation date by some years, and the purchase price was not in evidence. Ordinarily, that would have been the best guide to value, once adjusted for Act rights. In its absence, we look to the relativity graphs.

⁴ We suspect Ms Denholm meant a firm other than Austin Gray as they did not provide a graph for properties inside PCL.

76. In *Sloane Stanley*, the Tribunal had the benefit of extensive evidence in respect of the various relativity graphs that featured in the RICS report which was not available to us in *Kosta*. We have no hesitation in endorsing the Tribunal's approach in *Sloane Stanley*. It is apparent from Mr Lee's evidence, and the evidence before the Tribunal in *Sloane Stanley*, that the market only began to take a relativity figure from an average of the graphs in the RICS report following our decision in *Kosta*, which was issued in July 2014. It would not have been available to the parties at the valuation date in this case. We are satisfied that, at that time, the Gerald Eve graph would have been the starting point. Mr Lee used it. We note, in passing, that Mr Hamand also adopted it, without adjustment, as evidenced in the Ft-T decision. We endorse the Tribunal's comments (Appendix C, paragraph 64) in *Sloane Stanley* that the Gerald Eve graph might overstate relativities.

77. Another approach from *Sloane Stanley* would be to use the Savills 2002 enfranchiseable graph, and make an adjustment for Act rights. The Savills 2002 graph has relativity at 75.2% for a 40-year unexpired term, and 78.1 % for 45 years. We estimate that for 43.37 years the relativity would be something in the order of 77%. A ten percent deduction for Act rights would arrive at a relativity of 70%. We follow the Tribunal's approach in *Sloane Stanley* in considering that to be too high, as relativity is likely to have fallen since 2002.

78. Based on the material before us, we accept Mr Lee's evidence that there is a slight differential between properties in PCL and properties just outside it. However, we also endorse the Tribunal's findings in *Sloane Stanley*, that whilst the Gerald Eve graph is the most reliable (or, the least least-reliable graph), it is only a starting point. Doing the best we can, we consider that the correct relativity at the valuation date for an unexpired term of 43.37 years, without Act rights, was 67.7%, arrived at by reducing the figure from the Gerald Eve graph by 1%. With a discount to reflect the unusual lease terms, agreed at 1.55, the relativity reduces to 66.2%.

Determination of the Premium Payable

79. There is one final point at issue. In her valuation, Ms Denholm applied a multiplier to the freeholder's reversion of 0.1536 which she said reflected an assumed completion date of the transaction of August 13 2016.

80. We reject that approach. The statute provides a fixed valuation date which we must adopt. The fact that a freeholder can be effectively kept out of their money by the tenant first applying to the Ft-T, and then the Tribunal, is part of the value of the Act rights. If we were to adopt Ms Denholm's approach, our determination of the premium would alter depending upon when the case was heard by the Tribunal. That cannot be right. We prefer the figure of 0.12015 which is the present value of £1 after 43.37 years at an assumed growth rate of 5%.

81. Accordingly, having regard to our decisions outlined above, viz.: that the lease terms will remain unaltered save for rent and term; a freehold value of £1,200,629.59; a deferment rate of 5%, and relativity of 66.2%; we arrive at a premium payable for a new 99-year term commencing on 26 December 2056 of £259,669.36, say £260,000. The Tribunal's valuation is attached as Appendix 3.

Conclusion

82. We determine the premium payable by the respondent for the extended lease of the upper maisonette, 12 Needham Road, London, W11 2RP to be £260,000.

83. We would conclude by saying that Ms Denholm submitted evidence of an impressive amount of detail, and whilst we did not agree with the thrust of her submissions, she is to be commended for the way in which she presented her case. However, we found her repeated and at times trenchant criticisms of Mr Lee to be totally unfounded.

Dated :20 June 2016



His Honour Judge Huskinson



P D McCrea FRICS