



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

Case reference	:	GM/LON/00AW/OLR/2016/0864
Property	:	Flat 8, 28/29 Hans Place, London SW1X 0JY (“flat 8”)
Applicant	:	Anneke Katherine Volkers (“the tenant”)
Representative	:	Forsters LLP, solicitors
Respondent	:	28/29 Hans Place Freehold Limited (“the Landlord”)
Representative	:	Bircham Dyson Bell LLP, solicitors
Type of application	:	A new lease claim
Tribunal members	:	Angus Andrew Luis Jarero BSc FRICS
Dates and Venue of hearing	:	27 and 29 September 2016 10 Alfred Place, London WC1E 7LR
Date of decision	:	14 October 2016

DECISION

Decisions

1. The freehold value of the flat at the agreed valuation date was £2,634,150.
2. The building works do not impact on the marriage value.
3. The premium to be paid to the landlord is £934,350.

The application, inspection and hearing

4. The tenant applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the price to be paid under section 56(1) of and schedule 13 to the Act for the grant of a new extended lease of flat 8.
5. We inspected 28/29 Hans Place and the exterior of the comparables properties referred to in this decision during the morning of 27 September 2016. During the inspection of 28/29 Hans Place we were accompanied by the barristers and experts for both parties and the tenant and her father were also in attendance. We inspected the exterior of the comparable properties on our own after we had inspected 28/29 Hans Place
6. We heard the application during the afternoon of 27 September 2016 and on the following day. The tenant was represented by Antony Radevsky and the landlord by Alan Johns QC, both of whom are barristers. Graham Marks FRICS gave expert evidence on behalf of the tenant whilst Robert Orr-Ewing gave expert evidence on behalf of the landlord.

Background

7. Hans Place is a garden square a short distance to the north Pont Street and to the west of Sloane Street. With the exception of two post-war blocks of flats Hans Place consists of imposing Victorian houses that have in the main been converted into flats.
8. At some time 28 and 29 Hans Place were combined to form one property and then converted into 8 flats. On the basis of the official copy of the freehold registrar of title the leases of all 8 flats remain in place. Flat 8 apart the other 7 flats no longer exist as physical entities. At the time of our inspection 28/29 Hans Place comprised two large maisonettes and flat 8. We were told that the owners of two large maisonettes control the landlord and those two individuals presumably acquired the other 7 flats.
9. Flat 8 is situated to the front of the first floor of 28/29 Hans Place. It comprises a large living room, a bedroom with an ensuite bathroom and w/c and to the rear of the living room a second bathroom/wc and a

kitchen. Both the living room and bedroom have views over Hans Place Gardens. The bedroom can only be accessed from the living room.

10. At the time of our inspection 28/29 Hans Place was effectively a building site and we were told that the works started over a year ago and it is apparent that they will continue for some time. The works are extensive. The basement, ground floor, rear first floor and second floor are in the process of being converted into a large maisonette that now surrounds flat 8. As we understand it the conversion works include the excavation of the existing basement to provide a new sub-basement floor. The development of this lower maisonette will certainly continue for a further year. Planning permission has also been obtained for the development of the third and fourth floors to form a single maisonette. We were told that planning consent for the development of the upper floors has been granted although we were not given details of the proposed works.
11. The tenant acquired flat 8 in 2007. At the date of purchase it was subject to a Rent Act protected tenancy and was occupied by Mrs Dennis, the elderly tenant. Mr Marks told us that she had lived there for some 40-50 years. It was apparent from our inspection and we find as a fact that flat 8 has been and will remain uninhabitable because of the building works that we have described. Indeed the landlord rehoused Mrs Dennis at its own expense when the lift was removed.
12. The experts agreed that flat 8 is in an unimproved condition reflecting its occupation by a statutory tenant for many years. That is the kitchen and bathroom and toilet fittings are old and are not of type that one would find in modern conversion although flat 8 is in reasonable decorative order.
13. The lease of flat 8 was granted to the tenant on 31 August 2007 so that she is the original lessee. The lease is for a term of 65 years (less 3 days) from 25 December 1977 at a peppercorn rent. Although the lease was granted as an under-lease we were told that the landlord has acquired the original head lease that has merged in the freehold reversion.
14. On 9 October 2015 the tenant gave notice of her claim to extend the lease. On 9 December 2015 the landlord gave notice in reply admitting the claim. On 23 May 2016 the tenant made her application to the tribunal.

Issues agreed and in dispute

15. The parties had agreed the following:-
 - (a) The valuation date of 14 October 2015
 - (b) An unexpired term of 27.19 years
 - (c) The capitalised value of the ground rent at nil
 - (d) A deferment rate of 5%
 - (e) The gross internal area at 1,033 sq ft
 - (f) The existing lease to freehold relativity at 53.77%.

- (g) The extended lease to freehold relativity at 98.5%
- (h) That the building works do not impact on the value of the landlord's freehold reversionary interest.

16. On one level the only issue in dispute was the freehold vacant possession value of flat 8. Mr Marks on behalf of the tenant contended for a freehold value of £2,464,449. Mr Orr-Owing on behalf of the landlord contended for a freehold value of £2,685,800.
17. However this single issue disguised a second issue. That is the impact of the building works at the valuation date on both the extended and existing lease values of flat 8 and thus on the marriage value.

The freehold value of flat 8

18. The experts identified 10 potential comparable sales although neither of them relied on all 10. The sales related to flats 5, 6 and 7 at 26 Hans Place, flat 2 at 31/32 Hans Place (twice), 5 Clunie House, 15 Denbigh House, flat B at 44 Pont Street, Flat 7 at 49 Pont St and Flat 12 at 56 Pont Street. Both experts agreed not to use flat 12 at 56 Pont Street and consequently we do not refer to it again in this decision.
19. The experts agreed time adjustments by using the Saville Prime London Capital Value Index – Central Flats. They also agreed lease length adjustments using the Savills 2002 Enfranchisable Graph. These agreed adjustments gave both experts an adjusted price per square foot (“psf”) for each of the remaining 9 comparable sales. After that their evidence diverged both in terms of further adjustments and in terms of the selection and weighting of the comparable sales. In terms of the further adjustments we group these under the generic headings of floor, condition, location, layout and other adjustments. We consider each in turn.
20. Finally Mr Marks relied on two previous valuations that had come into his possession. The first was a valuation by Mr Orr-Ewing dated 1 April 2014. The second was prepared by Savills and is dated 3 April 2014. Both valuations were prepared for the owner of what is now the lower maisonette. Both valuations valued the freehold interest in flat 8. Mr Orr-Ewing put the value at between £2,168 psf and £2,250 psf: Savills at £2,000 psf.

Reasons for our decision

Selection or weighting of comparable

21. Mr Marks relied on all 9 comparable sales but weighted his fully adjusted price psf for each sale. He allocated 20% to flats 5 and 7 at 26 Hans Place, because he considered that they were the best comparables. In contrast he allocated only 5% to the two sales of flat 2 at 31/32 Hans Place because he considered they were the least relevant comparables. He allocated 10% to the other 6 comparable sales.

22. Mr Orr-Ewing selection or weighting of the comparables was more opaque. In speaking to a price psf of £2,600 he relied principally on the sale of flat 5 at 26 Hans Place on the grounds that it was the best comparable for flat 8 being, in his words, similar in layout, to the front of the building, sold within a year of the valuation date and with no adjustment for condition. He also had some regard to the sale of flat 6 at 26 Hans Place. As far as the other comparable sales were concerned he said that they gave him "comfort" over his rate of £2,600 psf.
23. Clunie House and Denbigh House are two low-rise blocks of flats built in the immediate post-war period. They are wholly different in character from all the other properties under consideration. In our experience the market for flats in converted period properties is different from the market for flats in purpose built blocks. It is not safe to rely on the sale of a flat in a purpose build block when valuing a flat in a period converted property. Consequently we disregard the sales of both 5 Clunie House and 15 Denbigh House.
24. In general term we prefer Mr Marks' approach, of taking all relevant comparable sales into account and then weighing them on the basis of their suitability, to Mr Orr-Ewing's apparent approach of relying almost entirely on one comparable sale whilst drawing some "comfort" from the other sales.
25. We consider that flats 5 and 7 at 26 Hans Place are the most appropriate comparable sales. They are in a similar converted property both with two front rooms overlooking Hans Place. Although flat 6 at 26 Hans Place is in the same building it overlooks Pont Street rather than Hans Place. The suitability of these two flats is so marked that we have allocated 25% to each sale. We have allocated 10% to each of the other 5 sales because we consider that they are of equal relevance. Certainly we do not consider that any perceived differences justify the lower rating of 5% given to the two sales of flat 2 at 31/32 Hans Place by Mr Marks: they are dealt with through the other adjustments considered below.
26. As an aside we should explain that the experts adopted a different approach when making their adjustments. Mr Marks adjusted upwards to 100%: that is he assumed that adjusted price equalled 100%. Mr Orr-Ewing in contrast assumed that the comparable sale price equalled 100% and he added or subtracted his adjustment to establish the final adjusted price. The different approaches resulted in a marked difference in their adjusted valuations of the comparable sales. We prefer the approach of Mr Orr-Ewing for each of two reasons. Firstly because it is more transparent: that is on the printed page it is easier to see what he has done. Secondly because in our experience it is consistent with usual valuation practice. Certainly we cannot recall having previously seen Mr Marks' approach in cases that come before us.

Floor adjustment

27. The purpose built blocks apart there was little difference between the experts in terms of floor adjustments. Both agreed that first floor flats in converted properties command the highest prices. Their adjustments for floor differed only in respect of the two sales of flat 2 at 31/32 Hans Place and the sale of flat 7 at 26 Hans Place.
28. In terms of flat 2 at 31/32 Hans Place Mr Marks had increased the sale prices by 10% and Mr Orr-Ewing by 15% to reflect the perceived disadvantages of a ground floor flat. We agree with Mr Orr-Ewing's assessment. The disadvantages of a ground floor flat in a location such as this are considerable. Passersby can look into the flat: the view from the front windows is obscured by parked cars: there will be greater noise pollution from both vehicular traffic and foot traffic (both internally and externally). Furthermore as Mr Orr-Ewing pointed out the ground floor common parts tend to "take a chunk" out of ground floor flats. The parties had agreed that the perceived disadvantages of a second floor flat merited a 10% adjustment. On that basis we have no hesitation in concluding that the disadvantages of a ground floor flat merit a 15% adjustment.
29. Flat 7 at 26 Hans Place is a third floor flat. Mr Marks adjusted by 15% and Mr Orr-Ewing by 12.5%. In effect Mr Marks considered that the difference between the second and third floor merited a 5% adjustment whilst Mr Orr-Ewing considered that it merited a 2.5% adjustment. That is a fine distinction. Nevertheless having inspected the comparables we agree with Mr Orr-Ewing. On the basis of the agents particulars the two flats are of similar height. The third floor will enjoy better views and the lift offsets the inconvenience of the third floor location.

Condition adjustments

30. The condition adjustments reflected the agreed unimproved condition of flat 8. These adjustments were made on the back of either agent's particulars or comments made to the experts by the selling agents. As in nearly all cases such condition adjustments are extremely subjective and incapable of independent verification.
31. In this case the experts were not very far apart. The only sales requiring condition adjustments were the second sale of flat 2 at 31/32 Hans Place and the sale of flat 7 at 49 Pont Street. The experts had agreed the condition adjustment for flat 7 at 49 Pont Street at £350 psf. In respect of flat 2 at 31/32 Hans Place Mr Mark contended for a downward adjustment of £300 and Mr Orr-Ewing for a downward adjustment of £200. Given the unsatisfactory nature of the evidence upon which such adjustments are made we have adopted an average downward adjustment of £250 psf.

Location adjustments

32. Mr Orr-Ewing made an upward adjustment of 10% to all the Pont Street properties and also to flat 6 at 26 Hans Place that overlooks Pont Street. These adjustments were made on the basis of his opinion that Pont Street is an inferior location and indeed there is some substance to that because it is a busy road and flats do not have a garden square view.
33. Nevertheless Mr Orr-Ewing's location adjustment is not borne out by the prices achieved on the sales of flats in Pont Street. Indeed the agreed initial adjusted prices for all the comparable sales indicate that flats overlooking Pont Street achieve higher prices than flats overlooking Hans Place. On the basis of our external inspection of the comparable properties there is a rational explanation for this. The flats overlooking Pont Street are generally in better proportioned buildings that are more suitable for conversion into individual flats. The evidence does not support Mr Orr-Ewing's location adjustment and we reject it.

Layout

34. The bedroom in flat 8 is adjacent to the living room and can only be accessed from the living room. Mr Marks considered this to be a substantial disadvantage and he made a downward adjustment of 5% to all the comparables sales prices to reflect the perceived disadvantage.
35. Having inspected the flat we do not agree with Mr Marks' assessment. If this were a two bedroom flat there might be some substance to it. However this flat will be occupied either by a single person or more probably a couple. The bedroom itself has an en-suite bathroom and we even though of limited in size. Mr Mark's downward adjustment was unsupported by any evidence, which we find a little surprising.
36. Furthermore as both Mr Orr-Ewing and Mr Johns pointed out many of the other comparable flats suffer from disadvantages. Flat 2 at 31/32 Hans Place is in a narrow building, the bay window at Flat 6 at 26 Hans Place is cut in two by an internal partition wall, the master bedroom at flat 7 at 26 Hans Place does not have a en-suite bathroom/wc and occupants have to walk down two short flights of stairs to reach the bathroom/wc. Flat 7 at 49 Pont Street is located at the rear of the building and overlooks the flank wall of the first property in Cadogan Square. Mr Marks had simply alighted on one perceived disadvantage of flat 8 whilst ignoring the disadvantage of other comparable flats.
37. Given the market for flat 8 we do not consider that the layout of the flat constitutes a significant disadvantage justifying Mr Marks' downward adjustment to the comparable sale prices.

Other adjustments

38. Mr Marks made an upward adjustment of 5% to the sale price of flat 2 at 31/32 Hans Place because both the flat and the building are narrow. Under cross examination Mr Orr-Ewing agreed with that adjustment but he did so in the context of Mr Marks lower (10%) adjustment for floor. That is he agreed with Mr Marks that a total upward adjustment of 15% was appropriate.
39. We agree with Mr Orr-Ewing's approach. As explained in paragraph 36 most of the comparable flats have a particular disadvantage and no useful purpose is served by making wholly subjective adjustments that are unsupported by any evidence.
40. The final adjustment related to two terraces to the rear of flat 7 at 49 Pont Street. The terraces are certainly an advantage but it could equally be said that that advantage is off-set by the poor outlook of the flat that is towards the flank wall of the first house in Cadogan Square. Nevertheless under cross-examination Mr Orr-Ewing conceded a downward adjustment of £100,000 that we have adopted.

Two previous valuations

41. Mr Orr-Ewing's valuation was prepared for negotiating purposes. Savills' valuation was a "without liability" desk-top valuation. The statutory tenant was still in situ. Both valuations pre-date the valuation date by some 18 months and rely on a completely different basket of comparable sales. We do not find them to be of any assistance and we do not take them into account.

Impact of the building works

Mr Marks' approach

42. We will explain Mr Marks' methodology in our reasons. For the time being it is sufficient to say that he considered that the building works would, at the valuation date, have depressed both the extended lease value and the existing lease value of flat 8 but by different amounts. He considered that the building works would have depressed the extended lease value by £331,594 and the existing lease value by £245,680.
43. Mr Marks' assessment of the impact of the building works on the extended and existing lease value has two consequences. Firstly it changes the relativity that had been agreed by the two experts. However Mr Orr-Ewing very fairly said that he would not take the point. He accepted that if Mr Marks had disclosed his calculations at an earlier stage he would have accepted that the point was in issue. Although in his closing submissions Mr Johns did not seek to resile from Mr Orr-Ewing's concession he did nevertheless point out the incongruity in Mr Marks' evidence.
44. The second consequence of Mr Marks' assessment of the impact of the building works is to reduce the marriage value by

£85,910 and thus the landlord share of the marriage value and the premium by £42,955.

Mr Orr-Ewing's approach

45. Mr Orr-Ewing's primary position was that the building works would have no impact on either the extended or existing lease value of flat 8. His secondary position was that if it did have any impact it would only be on the existing lease value. If the existing lease value alone is reduced the effect would be to increase the marriage value and hence the premium to be paid for the new extended lease.
46. During the hearing Mr Orr-Ewing handed in a revised valuation. He reflected the impact of the building works by reducing the remaining existing lease term by two years: that is from 27.19 years to 25.19 years. He justified this on the basis of his assessment that the building works would continue for two years from the valuation date. The reduction in the existing lease term had the effect of substantially increasing the value of the freehold reversion whilst reducing, to a lesser extent, the marriage value. The overall effect was to increase his proposed premium from £952,500 to £1,019,602.
47. However, Mr Orr-Ewing did not contend for the increased premium on the basis that it would be unfair to the tenant, his revised valuation having been tendered for illustrative purposes only. It might also be added that his revised valuation was not consistent with the experts' agreement that the building works has no impact on the value of the freehold reversionary interest.

Reasons for our decision

48. In contrast to Mr Orr-Ewing, Mr Marks considered that the building works would continue for another two years: that is three years from the agreed valuation date. In his closing submissions Mr Radevsky said that Mr Marks had deferred his existing and extended lease values of flat 8 by 3 years. The implication being that Mr Marks had assumed that his valuations would only be realised after the works had been completed: that is 3 years from the agreed valuation date. Consequently he had by implications simply calculated the present value of those future values assuming a compound interest rate of 5%.
49. That is not however an adequate description of Mr Marks' methodology. He calculated the impact of the building works by comparing the value of the right to receive £1 pa (years purchase) for the remainder of each term deferred for 3 years with the right to receive £1 pa for the full length of each term. In doing so he used a valuation technique intended to calculate an income stream, to calculate a reduction in a capital sum. Consequently we consider that his methodology is flawed. In fairness to Mr Marks it should be said that in answer to our questions he accepted that there were a number of ways of calculating the impact of the building works and he had alighted on his chosen methodology only after considerable hesitation.

50. That apart we have considerable difficulty with the concept that the building works would reduce the extended and existing lease values by different amounts. As Mr Johns pointed out the effect of such an approach would be to encourage tenants to claim extended leases whilst building works are being undertaken to the buildings of which they form part, an occurrence that is common in this part of London. There was also force in his observation that a hypothetical purchaser would not factor in the possibility of future work and that consequently it would be perverse for the current work to affect the valuation.
51. There is a distinction between the underlying value of an asset and the price that a buyer might pay for it at any given time. As Mr John's pointed out "no seller in his right mind" would market flat 8 during the currency of the existing building works. If they did a potential buyer would seek a price reduction to compensate it for its inability to use flat 8 until the building works are completed. If the buyer were purchasing flat 8 as an investment that compensation or price reduction would no doubt reflect the loss of rental income. If the buyer intended to live in flat 8 the compensation would no doubt reflect all the cost of finding alternative accommodation. At the end of the day both approaches would probably amount to a similar reduction.
52. What a potential or a hypothetical buyer would not do is to carry out the complex calculations undertaken by Mr Marks when negotiating a price reduction to compensate it for the two or three year's loss of use. The buyer would seek the same compensation and thus the same price reduction whatever the outstanding term of the lease. Thus the extended and the existing lease values of flat 8 would be reduced by the same amount and the agreed relativity would remain unchanged as would the marriage value and the premium to be paid for the extended lease.
53. Consequently and for each of the above reasons we are satisfied that the building works have no impact on the valuation of the premium to be paid. Rather than attempting, without any evidence before us, to calculate the price reduction that would be sought by a hypothetical buyer we have simply disregarded the effect of the building works.
54. For the sake of completeness we are satisfied and find that the building works are more likely than not to continue for another two years and to that extent we agree with Mr Marks. The works to the lower maisonette are far from complete and Mr Orr-Ewing accepted that they would continue for another year. Works to the upper floors have not even started. We were surprised that Mr Orr-Ewing appeared to have little or no knowledge of the proposed works to the upper floors. Having regard to the prestigious nature of the neighbourhood we are satisfied that no one would want to live in flat 8 until all the works, including those to the upper floors, have been completed. Given that the works to the upper floors have not yet started we are satisfied that flat 8 will remain uninhabitable for a further two years: that is three years from the valuation date.

Conclusions

55. A table showing our adjustments to the comparable sales is annexed to this decision. We value flat 8 at £2,549.98 psf. Applying that price per square foot to the agreed area of 1,033 sq ft gives a freehold vacant possession value of £2,634,150 (rounded to the nearest £50).
56. The building works do not impact on the marriage value.
57. The premium to be paid to the landlord is £934,350 in accordance with our attached valuation.

Name: Angus Andrew

Date: 14 October 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

First Tier Tribunal (Property Chamber)

Appendix A

Ref: LON/00AW/OLR/2016/0864

Valuation of Flat 8, 28/29 Hans Place, London SW1 0JY

Valuation Date	14 October 2015
Lease expiry date	21 December 2042
Unexpired term	27.19 years
Unexpired term of extended lease	117.19 years
Ground rent	£0
Unimproved vacant freehold value pfs	£2,550
Floor area	1033fs
Unimproved vacant freehold value	£2,634,150
Relativity for existing lease	53.77%
Value of existing lease	£1,416,382
Relativity for extended lease	98.50%
Value of extended lease	£2,594,638
Deferment rate	5%

Valuation of Freeholder's current interest

Ground rent	£0		
Reversion to freehold value	£2,634,150		
Deferred 27.19 yrs @ 5%	0.2654		
Freeholder's current value		<u>£699,103</u>	£699,103

Value after grant of extended lease

Ground rent for 158.82 years	£0		
Reversion to freehold value	£2,634,150		
Deferred 117.19 yrs @ 5%	0.003287		
			<u>£8,658</u>

Diminution in freeholder's interest

£690,445

Marriage Value

Value after enfranchisement			
Freeholders interest	£8,658		
Tenant's interest	<u>£2,594,638</u>	£2,603,296	
Value before enfranchisement			
Freeholders interest from above	£699,103		
Tenant's interest	<u>£1,416,382</u>	<u>£2,115,485</u>	
Marriage value		£487,811	
Divide equally between parties			<u>£243,905</u>

Premium payable to freeholder £934,350

Comparables for Flat 8, Hans Place London SW1 X0JY Adjusted as per FtT Decision							
Address		Agreed F/H Value £pfs	Adjust for floor	Adjust for condition £pfs	Adjusted F/H Value £pfs	Weighting	Weighted value
Flat 2	31-32 Hans Place Later sale	£2,255	+15%	-£250	£2,343.25	10%	£234.33
Flat 2	31-32 Hans Place Earlier sale	£1,857	+15%	--	£2,135.55	10%	£213.56
Flat 5	26 Hans Place	£2,424	+10%	--	£2,666.40	25%	£666.60
Flat 6	26 Hans Place	£2,194	+10%	--	£2,413.40	10%	£241.34
Flat 7	26 Hans Place	£2,461	+12.5%	--	£2,768.63	25%	£692.16
Flat B	44 Pont Street	£2,573	--	--	£2,573.00	10%	£257.30
Flat 7	49 Pont Street	£2,797	--	-£350	£2,447.00	10%	£244.70
						100%	£2,549.98
							F/H Value pfs

NB Flat 7 49 Pont Street Adjust F/H value by £100,000 for Terraces as conceded by Mr Orr-Ewing
This equates to £88 pfs, giving a revised F/H value £2797 pfs