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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

CASE NUMBER: LON/00BK/OLR/2010/0119

**IN THE MATTER OF THE LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993**

**IN THE MATTER OF FLATS 37 AND 39, 88 PORTLAND PLACE, LONDON
W1B 1NX**

**Parties : Mrs Sharon Russell-Gicelter Applicant
Howard de Walden Estates Limited Respondent**

**Appearances : For the Applicant:-
Mr T J L Harrison FRICS IRRV(Hons) and
Mr David Isaacs - Solicitor of Blount Petre Kramer**

**For the Respondent:-
Mr T Dutton of Counsel
Mr K P Ryan FRICS and
Mr C N Carter-Pegg BSc(Hons) MSc MRICS**

**Tribunal Members : Mr A A Dutton (Chairman)
Mr I B Holdsworth BSc MSc FRICS**

Date of Hearing : 16th June 2010

Date of Inspection : 30th June 2010

Date of Decision : 12th August 2010

DECISION

The Tribunal determines that the premium payable for the lease extensions in respect of these two flats is as follows:-

For Flat 37, the sum of £385,230.00

For Flat 39, the sum of £436,780.00

Details of which are set out on the respective Valuation Schedules attached hereto.

REASONS

A. BACKGROUND

1. This application came before the Tribunal on the 16th June 2010 as a result of applications made to the Tribunal on the 2nd February 2010. These followed service of Notices under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). In the Notice in respect of Flat 37 the price of £261,066 for the lease with a further sum of £583 for the intermediate landlord was proposed. In respect of the Notice for Flat 39, a figure of £302,440 for the new lease and £673 for the intermediate landlord's interest was proposed.
2. The Counter-Notices under Section 45 of the Act admitted the tenant's right to acquire a new lease, but in respect of the property at Flat 37, a figure of £491,500 was sought as the premium for the lease extension with £550 for the intermediate landlord. In respect of Flat 39, a figure of £605,400 was sought for the premium and £650 to the intermediate landlord.
3. Both Mr Harrison on behalf of the Applicant and Mr Ryan and Mr Carter-Pegg on behalf of the Respondent had agreed a large number of the issues. We record those as follows:-

- In respect of Flat 37, its location and square footage at 1045 were agreed. The intermediate leaseholder's interest was agreed at £557.
- In respect of Flat 39, again the location and the square footage at 1168 was agreed, with an intermediate leaseholder's interest of £648.
- In respect of both flats, it is agreed that:-
 - a) The Valuation Date is the 23rd June 2009
 - b) The addition for the freehold is 2%
 - c) The deferment rate is 5%
 - d) The relativity between freehold and existing lease was agreed at 48.6%
 - e) Up-dating of comparables has been based upon the Savilles Prime Central London Residential Capital Value Index adopting a mix of the PCL North Flats and PCL South West Flats Indices.
 - f) In addition a Schedule of Agreed Comparables was contained in the Statement of Agreed Facts.

4. The only issue therefore that fell to be determined by us was the extended lease value of the unimproved flat.

B. EVIDENCE

5. At the hearing on the 16th June we had before us reports prepared by Mr Harrison on behalf of Mrs Russell-Gicelter dated the 14th January 2010 and reports by Mr Ryan and by Mr Carter-Pegg both dated 14th June 2010 on behalf of Howard de Walden.

6. We hope that the parties will forgive us if we do not recount in extensive detail the matters contained their respective reports.
7. Mr Harrison's report confirmed the location and description of the two properties. The flats are to be found in a purpose built block at 88 to 90 Portland Place which, as described by Mr Harrison, was "the grandest street of 18th Century London". The block has some 40 flats, with each floor comprising four units, 2 facing Portland Place and 2 facing to the rear. The question of the "value" of the views of the subject flats was an issue between the valuers.
8. We will deal with the floor level and the layout of the subject flats later in these Reasons.
9. The issue for us to determine was the extended lease values of the unimproved flats, and in that regard both Mr Harrison and Mr Ryan had an agreed number of comparables which they asked us to consider. Obviously different weight was put to these comparables, but the transaction evidence was common to both sides.
10. Mr Harrison's view was that the best comparable evidence must come from the sale of unimproved flats on long leases in the same building. In that regard he felt that the sale of Flat 26 in May 2008 and the sale of Flat 41 in May 2009 were useful. Insofar as Flat 26 was concerned, this had gross internal floor area of 1,012 square feet and was sold in May of 2008 for £985,000. Adjusting this for the passage of time, gave a rate per square foot of £848. Mr Harrison made further adjustments to this for the location in the block, arriving at an adjusted rate of £869 p.s.f.
11. Insofar as Flat 41 was concerned, this he told us was on the same floor as Flat 39 and had sold in September of 2009 at £874,000. That gave a rate per square foot of £968 which adjusted for the passage of

time and for location in the building gave in Mr Harrison's view a rate of £928 p.s.f.

12. In addition to these two comparables he also considered a property at Flat 12, 88 Portland Place, which was on a short lease, having been sold in August 2009 for £1.75m.
13. Moving away from the subject block, he referred to comparables to be found at 82 Portland Place, in particular Flats L and N, but he did not find them helpful. The final comparable property was at Flat 21, 37 Portland Place, which had been sold in September 2009 for £850,000, giving a price per square foot of £868 and with adjustments as he had with previous comparables, he came to a figure of £865 p.s.f. He did not, however, think this building was as attractive as the subject premises. His conclusion, having considered the comparable evidence, was that the unimproved extended lease value for Flat 37 is £912,500 and for Flat 39, £1,015,000. This led him to the conclusion that the premium for the lease extension in respect of flat 37 should be £379,975, and for Flat 39, £414,385.
14. Under cross-examination by Mr Dutton, counsel for the Respondent, he confirmed he had no issue with the basis of the valuation undertaken by Mr Carter-Pegg and had no issue with his evidence, other than of course the end figure.
15. He was steadfastly of the view that the two flats in the subject block at numbers 26 and 41 were the most relevant comparables. Flat 26 had been sold some 18 months before the Valuation Date and Flat 41 just 3 months after. Adjustments were made to these two properties for time and floor levels and also whether the properties were at the front or back of the block. He believed that the leasehold sale prices for flats in 82 Portland Place supported his evidence. Under further cross-examination he did indicate that in his view Flat 26 was perhaps the prime comparable and that the other properties provided a check

against that figure. He did not dispute that a "basket of evidence" is a reasonable approach, provided of course that the comparables in the basket were best suited. He also maintained his position when questioned as to whether there should be a reduction for the location of the flat in building and the effect of the views on the value. In Mr Harrison's view the flats to the rear were of a lower value because the rear elevation was less attractive than the front façade. He was also asked about evidence relating to the sale of Flat 41, where it appeared to be suggested that the property had been sold at under value and subsequently re-offered for sale at £1.25m. He did not think that a potential sale considerably above the original purchase price of £874,000 caused him to review same. He was content that the first sale was an open market transaction and therefore could be relied upon.

16. After the luncheon adjournment Mr Ryan gave evidence in support of his report.
17. His report, as with Mr Harrison's, listed the comparable evidence upon which he sought to rely. These included the flats referred to by Mr Harrison, being numbers 12, 26 and 41 in 88 Portland Place, Flat 21 at Winsley House, 37 Portland Place, the two properties at Flats L and N in 82 Portland Place, although in the case of Flat N, he gave comparable evidence relating to two transactions, one in February 2007 where the extended lease had achieved a premium of £1.8m, and in February of 2009 when a figure of £2.65m had been reached. Indexing that 2009 figure up, gave a value of £2,710,419 or a square footage rate of £1,358. It was noted, however, that this flat had been extensively refurbished.
18. Mr Ryan made adjustments to the various comparable transactions using the Savilles Indices as agreed, and taking an average of the comparable properties, he concluded that for a flat on the 8th floor the average square footage rate was £1,036 and for the 9th floor,

adjusting it by 1% which was agreed with Mr Harrison, this gave rise to a square footage value of £1,046. Applying these square footage rates to the subject premises, gave a value for an extended lease for Flat 37 of £1,082,500 and for Flat 39 £1,221,750. Mr Ryan then indicated that standing back and looking at the values, he concluded that these were reasonable.

19. His report dealt with the closest comparable at Flat 41 in terms of location and layout and he told us in his report that the property had been sold for £874,000 in September 2009, and immediately re-offered for sale, apparently without any work having been done to it, at £1.25m. He told us that from his own knowledge, that one of the partners at Carter Jonas had made an offer of £1m for the flat, which was rejected. We were told that the vendor had concluded that he would achieve a better price by refurbishing the flat and selling it on and the evidence given to us by Mr Ryan was that the flat was now under offer at £1,425,000. His conclusion was that it was better to take a larger sample of market evidence and average it rather than to rely on any one particular comparable. He also thought that there was little difference between front and rear flats, and would make no adjustment in respect of same.
20. With these values, Mr Carter-Pegg had concluded in his written report that the premium payable for the extension to the lease for Flat 37 would be £441,850 and for Flat 39, £498,700. In both cases this included intermediate leaseholder's interests.
21. Mr Ryan was then asked questions by Mr Harrison and, in particular, why there had been an adjustment made in respect of the Flat 12, 88 Portland Place of 25% in respect of statutory rights. Mr Ryan said that he had a tariff depending upon lease lengths and if less than 20 years, would have made a deduction of 25% which is in accordance with the Savilles' Enfranchisement Index. Insofar as the improved flats are concerned, he told us that if he had ignored improved

properties, the sample would in his view have been too narrow. He concluded that he had made adequate adjustments to reflect the refurbishment works. In questioning from the Tribunal, he confirmed his view that the safest way of achieving the correct lease value was to take not one comparable, but a basket and a balanced view. He accepted that there was a wide divergence both in the nature of the premises and the time differences, but he thought that his averaging exercise would flatten that out. When asked as to ranking of his comparables, he confirmed that Flat 41 was probably the best, although in his view sold at below market value. The second best comparable was Flat 12 at 88 Portland Place, and the least helpful the first sale of Flat N at 82 Portland Place in February of 2007.

22. At the conclusion of the valuer's evidence, Mr Dutton made a short submission to us, highlighting the difference between Mr Harrison's view that essentially one flat was the comparable, and Mr Ryan's view that all comparables should be considered, adjustments made and averaged out. He told us if we were going to apply a filter as to the comparables probably it is the oldest comparable that should go first and that the commonsense approach adopted by Mr Ryan was the preferred route.
23. Mr Harrison reminded us that the only issue to be decided was the extended lease value. He told us that he had concentrated on the sales in the building, although the basket of sales did include those in the locality. Three properties had been refurbished and gave high figures, one flat had a short lease length, and if the highest value flats were extrapolated from the schedule of comparables, the figures come back to fit a pattern consistent with his view with regard to Flat 26.

C. INSPECTION

24. We inspected both flats on the 30th June. The Applicant, Mrs Sharon Russell-Gicelter was able to give us access to both properties. Starting with Flat 39, this is on the 9th floor of the building, having views to the rear. Its accommodation is agreed between the valuers and we noted that were indeed impressive views to the side, over Regents Park, and the rear towards Canary Wharf. It was in good order although we believe that it would be the subject of some works if put to the market.
25. Flat 37, on a lower floor and fronting onto Portland Place was as described by the valuers. There was a door leading to a narrow balcony, the use of which we think would be limited. We noted also that some of the windows appeared to be in poor condition and the fittings in the bathroom somewhat dated.
26. The common parts to 88 Portland Place were in our view somewhat dated although in good order and having the benefit of a Porter and, at the time of our inspection, only one lift that was functioning.
27. We also externally viewed the other comparables at 82 Portland Place and 37 Portland Place. The entrance hall to 82 Portland Place was more impressive than the subject block. 37 Portland Place (Winsley House) was not as imposing as either the subject premises or 88 Portland Place. It was located more towards the 'commercial' end of Portland Place.

D. FINDINGS

28. We are grateful to Mr Harrison and Mr Ryan for the hard work that they have undertaken in narrowing the issues to the degree that they have done. It has also been helpful that they have agreed the

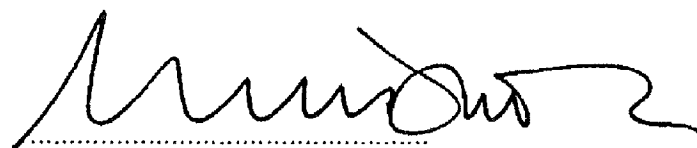
comparables that we should consider, although of course giving different weight to those properties.

29. Mr Harrison nails his colours to the mast in adopting the Flats at 26 and 41 in the subject block as being his main comparable evidence. Mr Ryan, however, goes for a broader approach.
30. Our views on the comparables based on the evidence we have in the reports and that which was given to us at the hearing and our inspection is as follows.
31. We think that it must be preferable to rely, where practicable, upon comparable evidence from flats within the same building. In our view, the Flat 12 in the block is not of great help. It is a short lease, subject to substantial deductions in respect of statutory rights by Mr Ryan and substantially larger than either of the subject flats.
32. We feel that Flat 21 Winsley House does not help us. The location is certainly not so good and the exterior of the property not as impressive as either the subject block or its neighbour at 82 Portland Place. It is interesting to note however that in Mr Ryan's and Mr Harrison's list of comparables, the adjusted rate per square foot is not so far removed from the adjusted rates in respect of Flats 26 and 41 in 88 Portland Place.
33. When considering the properties in 82 Portland Place, we note that Mr Ryan has had to make substantial adjustments to bring them back to an unimproved level of between 18.5% and 20%. There is no particular evidence as to how those percentages have been reached. The flats in 82 Portland Place are also quite a bit larger than the subject premises, and with an allowance being made in respect of lack of views, it causes us concern as to how compelling this comparable evidence is when these various adjustments have to be incorporated.

34. We find therefore that the best comparables in this matter are to be found at Flats 26 and 41 in the subject block. It is interesting to note that there is not in fact a great deal of difference between Mr Harrison and Mr Ryan as to the figures. Mr Ryan has concluded that after adjustments the pounds per square foot based on Flat 41 as a comparable are for flat 37 is £937 and for Flat 39, £946. When considering Flat 26 as a comparable, those figures are £869 for Flat 37 and £878 for Flat 39.
35. Mr Harrison had taken an adjusted rate based on Flat 26 at £848 and applied a 3% uplift for the floor levels (which was not in dispute) and concluded that for Flat 37 the rate p.s.f. would be £873. For Flat 39 he had applied an upward adjustment of 4.5%, adding an extra 1.5% for the top floor because of the benefit of not having a property above, but then a downward adjustment of 2% because of the location of the property at the rear of the block and effect of the external appearance. This gave an adjusted rate of £869p.s.f.. For our part we cannot see that it is reasonable to make any adjustment for the rear location of Flat 39. As the entrance to the subject premises would be from Portland Place we could not accept that the external appearance of Flat 39 would have any bearing on its value. Accordingly, taking Flat 26 as a comparable, we concluded that a rate p.s.f. for Flat 37 would be £873 and for Flat 39 £886, close to the adjusted figures reached by Mr Ryan.
36. Turning then to Mr Harrison's adjustments in respect of the comparable of Flat 41, he had started with an adjusted rate of £947 which he further adjusted downwards by 1.5% for Flat 37 which was the floor below, giving a rate of £933 p.s.f. For Flat 39 he made an downward adjustment of 2% because of the rear location, giving a figure of £928. We find that if one used Flat 41 as the comparable, then for Flat 37 we would achieve a rate p.s.f. of £933, taking the adjusted rate of £947 and reducing it by 1.5%. In so far as flat 39 is

concerned as we have said we would not make an adjustment for the rear location and, accordingly, the rate p.s.f. would be £947. If one takes an average between the comparable evidence for Flat 41 and Flat 26, one derives an average rate p.s.f. for Flat 37 of £903, and for Flat 39, £916. This also is very close to the adjusted rates on average basis that Mr Ryan had taken for Flats 26 and 41.

37. We therefore find that the most compelling evidence must be the sales of 2 unimproved flats in the subject premises, not so far removed from the Valuation Date. The adjustments to be made are largely agreed between the valuers. We do not accept Mr Harrison's further deduction for the rear aspect, and conclude therefore that applying these square footage rates to the square footage of the subject premises, results in an unimproved extended lease value for Flat 37 of £943,635 and for Flat 39, £1,069,888. That in turn gives the premiums that we find are payable as set out on the attached Schedules



ANDREW A DUTTON

Dated 12th August 2010

Property:	Flat 37 88 Portland Place London W1
LVT Reference:	LO/LON/00BK/OLR/2010/0119

Lease Data		Valuation data	
Lease Term:		Deferment rate	5.00%
Head Lease Expiry date:	July 6th 2033	Capitalisation Rate	7.5%, tax at 40%
Unexpired term as at valuation date:	24.02	Landlords share of marriage value	50%
Annual Rent receivable by landlord:		Relativity	48.6%
Payable from 31/3/1995 for 10.78 years	£ 65	Unimproved extended lease value	£ 943,635
Payable from 31/3/2020 for 13.24 years	£ 85	Freehold added value	2%
Valuation date	23rd June 2009	Freehold value (FHVP)	£ 962,508
		Intermediate Leaseholders existing interest	£ 557

Diminution In value of Intermediate Leaseholder's interest

Value of intermediate leaseholders proposed interest Agreed at	£	557	
less			
Value of intermediate Leaseholders proposed interest	£	-	
		Total	£ 557

Diminution of the Freeholder's interest**Value of Freeholder's Existing Interest on Reversion**

Reversion to value freehold in possession defer 24.04 years	5%	£ 962,508	0.3095	£ 297,896	
Less					
Value of Freeholders proposed interest on reversion Defer 114.02 years	5%	£ 962,508	0.004	£ 3,850	
Diminution in value of Freeholder's Interest					£ 294,046
Add diminution in intermediate leaseholders interest					£ 557
Total Diminution					£ 294,603

Calculation of Marriage Value**Value of proposed interests**

Freeholders	£	3,850
Intermediates Leaseholder	£	-
Tenants	£	943,635
	£	<u>947,485</u>

Value of Existing Interests

Freeholders	£	297,896
Intermediates Leaseholder	£	557
Tenants 48.6% of FHVP	£	467,779
	£	<u>766,232</u>

Marriage value

Attributed to Landlord	50%	£ 181,263	£ 90,627
Lease extension premium			£ 385,230
Compensation payable for any other losses		£ -	
Premium payable			£ 385,230

Apportionment of marriage value and premium between freeholder and intermediate leaseholderTo Intermediate leaseholder

Diminution in value of interest	£	557
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Share of marriage value

Marriage Value	£	90,627
Loss as proportion of total loss = Intermediate interest diminution / Total diminution		0.0019

Share of Marriage value

Premium share	£	171.35
Other losses	£	557
Total payable	£	-
		£ 728

To Freeholder

Diminution in value of interest	£	294,046
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Share of marriage value

Marriage Value	£	90,627
Loss as proportion of total loss = Freeholder interest diminution / Total diminution		0.9981

Share of Marriage value

Premium share	£	90,455.23
Other losses	£	294,046
Total payable	£	-
		£ 384,501

Freeholder and intermediate leaseholder receipts

£ 385,230**Notes:**

1. The price for Leasehold Extension is calculated in accordance with the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 as amended.
2. The Date of Notice is 23/09/2010.
3. Unimproved Extended Leasehold Value as determined after hearing at the Leasehold Valuation Tribunal held on 15 and 16th June 2010, Ref: L0/LON/008K/OLR/2010/0119. Valuation disregarding tenants improvements is based upon a revised value per m2 of £9,718 (or £903 per ft) . The agreed GIA is 97,06m2 or 1045ft2
4. All valuation parameters are taken from the Memorandum of Agreed Facts dated 14 June 2010.

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Property:	Flat 39 88 Portland Place London W1
LVT Reference:	LO/LON/00BK/OLR/2010/0119

Lease Data		Valuation data	
Lease Term:		Deferment rate	5.00%
Head Lease Expiry date:	July 6th 2033	Capitalisation Rate	7.5%, tax at 40%
Unexpired term as at valuation date:	24.02	Landlords share of marriage value	50%
Annual Rent receivable by landlord:		Relativity	48.6%
Payable from 31/3/1995 for 10.78 years	£ 75	Unimproved extended lease value	£ 1,069,888
Payable from 31/3/2020 for 13.24 years	£ 100	Freehold added value	2%
Valuation date	23rd June 2009	Freehold value (FHVP)	£ 1,091,286
		Intermediate Leaseholders existing interest	£ 648

Diminution in value of Intermediate Leaseholder's Interest

Value of intermediate leaseholders proposed interest	£	648
less		
Value of intermediate Leaseholders proposed interest	£	-
Total	£	648

Diminution of the Freeholder's Interest

<u>Value of Freeholder's Existing Interest on Reversion</u>			
Reversion to value freehold in possession		£	1,091,286
defer 24.04 years	5%	0.3095	£ 337,753
Less			
Value of Freeholders proposed interest on reversion		£	1,091,286
Defer 114.02 years	5%	0.004	£ 4,365
Diminution in value of Freeholder's Interest			£ 333,388
Add diminution in intermediate leaseholders interest			£ 648
Total Diminution			£ 334,036

Calculation of Marriage Value

<u>Value of proposed interests</u>			
Freeholders		£	4,365
Intermediates Leaseholder		£	-
Tenants		£	1,069,888
		£	1,074,253
Value of Existing Interests			
Freeholders		£	337,753
Intermediates Leaseholder		£	648
Tenants 48.6% of FHVP		£	530,365
		£	868,766
Marriage value		£	205,487
Attributed to Landlord	50%		£ 102,744
Lease extension premium			£ 436,779
Compensation payable for any other losses		£	-
Premium payable			£ 436,779
	Say		£ 436,780

Apportionment of marriage value and premium between freeholder and intermediate leaseholder

To Intermediate leaseholder

Diminution in value of interest £ 648

Share of marriage value

Marriage Value £ 102,744
 Loss as proportion of total loss = Intermediate interest
 diminution / Total diminution 0.0019

Share of Marriage value	£	199	
Premium share	£	648	
Other losses	£	-	
Total payable			£ 847

To Freeholder

Diminution in value of interest £ 333,388

Share of marriage value

Marriage Value £ 102,744
 Loss as proportion of total loss = Freeholder interest
 diminution / Total diminution 0.9981

Share of Marriage value	£	102,544	
Premium share	£	333,388	
Other losses	£	-	
Total payable			£ 435,932

Freeholder and intermediate leaseholder receipts

Say	£ 436,779
	£ 436,780

Notes:

1. The price for Leasehold Extension is calculated in accordance with the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 as amended.
 2. The Date of Notice is 23/06/2010.
 3. Unimproved Extended Leasehold Value as determined after hearing at the Leasehold Valuation Tribunal held on 15 and 16th June 2010, Ref. LQ/LON/00BK/OLR/2010/0119. Valuation disregarding tenants improvements is based upon a revised value per m2 of £9,856 (or £918 per ft²). The agreed GIA is 108.51m² or 116882.
 4. All valuation parameters are taken from the Memorandum of Agreed Facts dated 14 June 2010.
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