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

Case Reference : LON/00BD/OLR/2013/0450

Property : 11 Old House Gardens, Park Road,
Twickenham TW1 2QB

Applicants : Gareth Tudor Morgan, and
Rebecca Sian Morgan

Representative : Mr David Ambrose MRICS

Respondent : Brickfields Properties Limited

Representative : Mr Robin Sharp BSc FRICS

Type of Application : Section 48 Leasehold Reform,
Housing and Urban Development
Act 1993 – determination of the
terms of acquisition of a new lease

Tribunal Members : Judge John Hewitt Chairman
Mr Ian Holdsworth BSc MSc FRICS

**Date and venue of
Hearing** : 7 August 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 10 September 2013

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:
 - 1.1 the premium payable by the Applicants to the Respondent for the grant of the new lease is the sum of £25,280 as set out in the calculation appended to this Decision; and
 - 1.2 the application for a wasted costs order made by the Applicants be refused.
2. The reasons for our decisions are set out below.

Procedural background

3. The Applicants gave to the Respondent a notice pursuant to section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act), seeking to exercise the right to acquire a new lease of the subject property. The notice is dated 24 September 2012.
4. The Respondent gave to the Applicants a counter-notice pursuant to section 45 of the Act. The counter-notice, which is dated 29 November 2012, admitted that the Applicants had, on the relevant date, the right to acquire a new lease.
5. The parties were unable to agree all of the terms of acquisition of the new lease and the Applicants made an application to the Leasehold Valuation Tribunal (LVT) pursuant to section 48 of the Act.
6. The task before the LVT was to determine the terms of acquisition which were in dispute.
7. With effect from 1 July 2013 the functions of rent assessment committees in England (and hence LVTs) were abolished by the Transfer of Tribunal Functions Order 2013, SI 2013/1036. The relevant functions were transferred to the First-tier Tribunal (Property Chamber). As from 1 July 2013 the application has been subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules).
8. Directions were duly given and the application came on for hearing on 7 August 2013. Mr David Ambrose appeared as advocate and expert valuer witness on behalf of the Applicants. Mr Sharp appeared as advocate and expert valuer witness on behalf of the Respondent.
9. Mr Ambrose and Mr Sharp both gave evidence. Both were cross-examined by one another and both answered questions put to them by the Tribunal. Both Mr Ambrose and Mr Sharp made submissions to us.

Matters not in dispute

10. The following matters were not in dispute:
 - 10.1 Valuation Date: 25 September 2012

- 10.2 Original Term: 99 years from 25 March 1983
- 10.3 Unexpired Term: 69.49 years
- 10.4 Ground Rent: £75 until 24/3/15 then £130 for 33 years and then £300 until lease expiry
- 10.5 GIA: 625 sq ft
- 10.6 Accommodation: Ground floor flat comprising three rooms kitchen and bathroom. Rear door to communal garden
- 10.7 Notional Freehold: 1% to long lease value
- 10.8 The terms of the new lease:
- 10.9 The section 60 costs.

Matters in dispute

11. The following matters were in dispute:

	Mr Ambrose	Mr Sharp
11.1 Capitalisation Rate	7.00%	6.00%
11.2 Deferment Rate	5.25%	5.00%
11.3 Improvements	£2,500	Nil
11.4 Relativity	91.5%	82.00%
11.5 Long lease value	£324,225	£342,270
11.6 Premium payable	£18,000	£36,250

Capitalisation Rate

12. Mr Ambrose told us that he had settled a number of similar transactions at 7.00% and this was his fall-back position in respect of properties not in prime central London. He also relied upon an LVT decision in respect of a property at 83 Balvernie Grove, London SW18 5RQ (Case Ref: LON/00BJ/OLR/2011/0914).

13. Mr Sharp contended for 6% because interest rates are currently low.

14. We decided upon 7.00% because we prefer Mr Ambrose evidence on the transactions concluded by him and which underpinned his evidence, which also strikes a chord with the experience of the members of the Tribunal. Mr Sharp was unable to explain to us the basis on which he arrived at 6.00%. Paragraph 9.2 of his report cites the figure of 6.00% but does not explain how he arrives at it, other than to assert that the risk of non-payment was low.

Deferment Rate

15. It was common ground that since the decision in *Sportelli* the starting point for flats is 5.00% made up as to:

Risk free rate	2.25%
Less real growth	<u>2.00%</u>
	0.25%
Risk premium	<u>4.75%</u>
	5.00%

16. Mr Ambrose sought an additional 0.25% based on obsolescence. He claimed the development had not been well managed and that it had been poorly maintained and allowed to deteriorate over the years. He sought to demonstrate this by several photographs but accepted that it was difficult to appreciate. He did not wish to belabour the point but submitted that an investor would take into account the depreciation will be greater and he would seek a better yield. Mr Ambrose accepted that there were no special features concerning the development that might deter an investor, such as asbestos, HAC or any other deleterious material.
17. Mr Sharp said that demand for the residential function in this relatively affluent and sought after suburb of London will continue at a high level due to the shortage of housing. He contended that there was nothing different from the subject 1930's block to any other 1930's block. Mr Sharp did not concede that the development was not well managed. He asserted that it was managed in-house, the Respondent being part of the Freshwater Group.
18. We preferred Mr Sharp's evidence and submissions on this point. Mr Ambrose had not presented us with any compelling evidence that obsolescence was so significant that we should depart from *Sportelli*. We considered that the development was a typical 1930's block. There was no evidence of any disrepair and deleterious materials. If maintenance levels have been low in recent years an investor would be able to carry out a planned maintenance programme over a relatively short period and recover the full costs through the service charge. For these reasons we find the deferment rate to adopt is 5.00%.

Improvements

19. Mr Ambrose contended for £2,500. He submitted that the Applicants had carried out a general refurbishment which improved the value of the flat. Mr Ambrose conceded that he had no supporting sales evidence.
20. It was not in dispute that the Applicants had replaced old-style 1930's Crittall windows with double glazed units. It was also not in dispute that the windows are demised to the lessee and that the lessee is obliged to keep them in repair. Replacing windows which are out of repair with new windows amounts to a repair in law even though the new replacement windows are of a new and improved design or specification.
21. Mr Ambrose was not able to identify any specific improvements which had been carried and which we ought properly to take into account.
22. In these circumstances we find that no adjustments are to be made to reflect improvements.

Relativity

23. The parties were quite apart.

24. Mr Ambrose said that he did not have any transaction evidence to rely upon. Instead he sought to rely upon the graphs. He adopted an average of five non-PCL graphs. He considered the Nesbitt graph to be the most appropriate because it dealt with properties in similar locations. This gave him a value of 91%. He also looked at the Lease graph (LVT determinations) which gave him a value of 93%. He also placed some reliance on the LVT decision in Balvernie Road which adopted a value of 92%. Drawing this evidence together Mr Ambrose considered, in his professional opinion, that a relativity of 91.5% was the appropriate to adopt.
25. Mr Sharp said that in his experience market transactions tend to be lower than the graphs would suggest. He submitted that market evidence should be considered first and then, if need be, the graphs should be considered. Mr Sharp was generally critical of the graphs and contended that they were now out of date and did not properly reflect the effect of the financial crisis and the difficulty in obtaining mortgage finance.
26. Mr Sharp sets out in his report several transactions upon which he relies to support his value of 82.00%. Mr Sharp also drew to our attention that his value was above both the Beckett and Kaye 2013 Mortgage Dependant Graph and below Gerald Eve.
27. The transactions relied upon by Mr Sharp are long dated and they have been adjusted for time by the use of indices. Our attention was drawn to both the Savills Prime South West London index and also the Nationwide index. However there are problems with the construction of such indices. This and the length of an adjustment for time and the associated volatility in the market cause us to conclude that we cannot rely with any confidence on these transactions.
28. We accept that the graphs or at least some of them are now out of date so that they do not reflect the current difficult financial market conditions; also some are inappropriate for use in any event. In the absence of reliable market transaction evidence and in the absence of reliable and appropriate graphs we can but fall back on the experience and expertise of the members of the Tribunal and do the best we can with the imperfect materials before us. In doing this and standing back we come to the conclusion that the appropriate value to adopt is 88.00%.

Long lease value

29. In broad terms the parties were not so far apart.
30. Mr Ambrose sought to rely upon transactions concerning 5 Old Hall Gardens which he adjusted for time using the Nationwide Index to arrive at £321,000 and 10b Queen's Keep which he also adjusted for time to arrive at £327,000. He took an average of both values to arrive at his figure of £324,325.

31. Mr Sharp also adopted 5 Old Hall which he adjusted for time using the Savill's Index to arrive at £342,272. He also sought to rely upon 34 Kelvin Court which sold pretty much on the valuation date for £365,000, but which accepted needed to be adjusted for location to £342,270. Hence Mr Sharp arrived at a figure of £342,270.
32. We have given careful consideration to the rival evidence before us. We have approached the issue by taking an average of three transactions:

5 Old House Gardens – The mid-point between Mr Ambrose and Mr Sharp	£332,000
34 Kelvin Court	£342,270
10b Queen's Keep	<u>£327,000</u>
Total	£1,001,270

Average £333,757, say £334,000

Premium payable

33. Having made our determinations on the elements of the valuation in dispute, we have determined a premium payable of £25,280 arrived at as shown in the valuation appended to this Decision.

Costs application

34. By an email dated 7 August 2013 the Applicants' solicitors made an application for a wasted costs order. They did not specify the amount of costs sought.
35. Evidently the basis of the application was that Mr Sharp was not available on 6 August and so the hearing had to be deferred to 7 August 2013.
36. The application was opposed by the Respondent's solicitors in an email dated 7 August 2013. It was correctly pointed out that the application was listed for hearing on 6 or 7 August 2013 and that final listing would be determined on the morning of 6 August 2013.
37. In accordance with usual practice, the Tribunal listed a number of cases for hearing on 6 and/or 7 August 2013. On the morning of 6 August 2013 the Tribunal determined which cases were live and required to be heard and using its discretion made administrative arrangements for the order in which those cases would be heard and by which Tribunal. It happened that Mr Sharp was due to appear in two hearings. Obviously he could not do that simultaneously. Taking a wider number of factors into account, the Tribunal decided which of Mr Sharp's cases would be heard on the Tuesday and which one on the Wednesday. The listing was matter for the Tribunal and not Mr Sharp.
38. The application for a wasted costs order is misconceived and it is refused.

Appendix 1

Property: 11 Old House Gardens Twickenham TW1 2QB

Reference: LON/00BD/OLR/2013/0450

Lease and Valuation Data

Lease Term:	99 years from 25 March 1983		
Lease Expiry date:	24 March 2082		
Unexpired term as at valuation date:	69.49	years	
Date of Valuation	25 September 2012		
Rent receivable by landlord:			
Payable from 25/09/2012 for 3.5 years	£	75	
Payable from 25/03/2016 for 33 years	£	150	
Payable from 25/03/2049 for 33 years	£	300	
Values			
Extended lease value VP	£	334,000	
Freehold Value with 1% uplift	£	337,340	
LHVP	£	296,859	Relativity 88.00%

Capitalisation rate	7.00%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1			
Ground rent payable	£	75	
YP @ 3.5 yrs @ 7%		3.0057	£ 225
Term 2			
Ground rent payable	£	150	
YP @ 33 yrs @ 7%		12.7538	
PV of £1 at 3.5 years @ 7%		0.7896	£ 1,511
Term 3			
Ground rent payable	£	300	
YP @ 33 yrs @ 7%		12.7538	
PV of £1 36.5 years @ 7%		0.0847	
			£ 324
			£ 2,060
Reversion			
Freehold In vacant possession	£	337,340	
Deferred 69.5 years @ 5%		0.033691	£ 11,365
Less eventual reversion			
PV of £1 159.5yrs @ 5%	£	337,340	
		0.000417	£ 141
			£ 11,225

Total £ 13,285

Calculation of Marriage Value

Value of flat with extended lease	£	334,000
Landlords proposed interest	£	141
Less		
Value of Leaseholders existing interest	£	296,859
Value of Freeholders existing interest	£	13,285

Marriage value

Total £ 23,997

Division of Marriage Value equally between

Freeholder		£	11,998
Leaseholder	£	11,998	

Price payable to Freeholder

Value of freeholders current interest	£	13,285
Plus share of marriage value	£	11,998

Total £ 25,283

Say £ 25,280

Checked:ibh