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

Case Reference : **LON/00AE/OLR/2015/0887**

Property : **GFF, 15 Howard Road, London NW2 6DS**

Applicant : **Mohammed Shazad Amin**

Representative : **Mr Jeremy Taylor BSc MRICS**

Respondent : **Mr John Nolan**

Representative : **None**

Type of Application : **Section 48 Leasehold Reform, Housing and Urban Development Act 1993 – to determine terms of acquisition in dispute**

Tribunal Members : **Judge John Hewitt
Ms Marina Krisko BSc(EstMan) BA FRICS**

Date and venue of Hearing : **26 August 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **3 September 2015**

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 The premium payable by the applicant to the respondent for the new lease is the sum of £3,664.00 calculated as shown on the valuation attached to this decision.
 - 1.2 The terms of the new lease shall be the same as the lease dated 24 June 1988 now vested in the applicant save that the new lease shall:
 - 1.2.1 be granted by the respondent to the applicant;
 - 1.2.2 be for a term of 215 years from 25 December 1996 at a rent of a peppercorn rent (if demanded);
 - 1.2.3 contain a statement that it is granted pursuant to section 56 Leasehold Reform, Housing and Urban Development Act 1993; and
 - 1.2.4 be compliant with the requirements of the Land Registration Act 2002 and the current Land Registration Rules 2003 issued pursuant to that Act.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 3 August 1984 the respondent was registered at Land Registry as the proprietor of the freehold interest in 15 Howard Road, London NW2 6DS [9].
4. 15 Howard Road was constructed as a house in the early 1900s. Subsequently it was adapted to comprise two self-contained flats. In 1988 those flats were sold off on long leases [10].
5. On 13 June 2007 the applicant was registered at Land Registry as proprietor of the lease of the ground floor flat [13].
6. By a notice dated 22 December 2014 [5] given by the applicant to the respondent the applicant claimed a new lease of the ground floor flat. The notice was given pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act). The notice proposed a premium of £2,500 and that the new lease shall be on the same terms as the existing lease save that it be for a period of 90 years from the expiry of the current lease at a ground rent of a peppercorn.
7. By a counter-notice dated 3 March 2015 [7] given by the respondent to the applicant the respondent admitted that on the relevant date the applicant had the right to acquire a new lease of the subject flat. The

counter-notice accepted the proposals contained in the applicant's notice, namely; "*A lease term for an additional 90 years on top of the existing unexpired term at a peppercorn rent*" but did not accept the applicant's proposal of a premium of £2,500 and counter-proposed a premium of £65,000. The respondent did not, in terms, make any counter-proposals as to the terms of the new lease to be granted by him.

8. The parties were unable to agree the terms of acquisition of the new lease and on 12 May 2015 the applicant made an application to the tribunal pursuant to section 48 of the Act [1].
9. Directions were given on 28 May 2015 [4]. Evidently the parties have not complied with the directions. The applicant's expert valuer's report is dated 19 August 2015 [not paged numbered but comprised within tab 8 of the trial bundle].
The respondent has not engaged in the proceedings. The respondent has not served a report of an expert valuer dealing with the premium to be paid and he has not served a draft of the new lease he contends for.
10. The parties were notified that the application would be heard on 25 and/or 26 August 2015. On 25 August 2015 the applicant was represented by his valuer, Mr Taylor and the respondent represented himself.
The respondent made an application to postpone the hearing. The application was heard by a tribunal comprising Regional Judge Timothy Powell and Mr Pat Casey FRICS.
The application was refused for the full reasons set out in a decision dated 25 August 2015 and the parties were informed that the hearing of the application would commence at 10:00 Wednesday 26 August 2015.
11. The substantive hearing of the application came on before us on 26 August 2015. At 09:45 the respondent telephoned the tribunal office and spoke with our case officer. Evidently he made an enquiry as to the hearing of the application and he was informed it was scheduled to commence at 10:00 that day. That conversation was reported to us and we requested that the respondent be informed that we would defer the commencement of the hearing to 10:45 in order to give the respondent time to get to Alfred Place. By 10:45 the respondent had not arrived. We waited a further 15 minutes but by 11:00 the respondent still had not arrived and we were told that no further communication had been received from him.
12. Thus at 11:00 the application was called on for hearing. The applicant was again represented by Mr Taylor. The respondent was not present. We considered rule 34. We were satisfied that the respondent had been notified of the hearing and we considered that it was in the interests of justice to proceed with the hearing in the absence of the respondent.

The hearing

The premium payable

13. Mr Taylor took us carefully through his report and the various components of his valuation at appendix 4. In his original report the valuation calculated out at £3,993. Evidently during the course of the hearing of the postponement application the previous day an arithmetical error in the valuation had been drawn to the parties' attention by Mr Casey and Mr Taylor was given permission to submit a corrected valuation. Mr Taylor handed to us a corrected valuation which showed a premium of £3,644. We noted that Mr Taylor had adopted a deferment rate of 5% and a capitalisation rate of 7%. We considered both rates to be well within the range appropriate for this type of property and this type of investment and in accord with accepted valuation principles.
14. Mr Taylor answered a number of questions put to him by members of the tribunal. In the light of particular circumstances of Howard Road, including the location of a mosque halfway down the road, which Mr Taylor considered had an effect on property values, Mr Taylor had restricted his comparables to transactions of similar flats in Howard Road to arrive at a long lease value of £327,500. Some of these were rather dated and Mr Taylor adjusted them for time using conventional data issued by Land Registry.
15. We accepted the expert evidence of Mr Taylor and his approach to valuation which struck a chord with experience of the members of the tribunal and which was in accordance with conventional valuation principles.
16. It is to be borne in mind that as at the valuation date the unexpired term was 97 years. Accordingly marriage value is deemed to be nil. Thus the compensation to which the respondent is entitled is limited to the present capital value of the loss of the modest ground rent income over the 97 years and the deferral of the reversion for that period. Thus inevitably the premium payable is always going to be a modest sum. In the respondent's counter-notice he counter-proposed a premium of £65,000. The respondent has not provided any valuation evidence to support such a figure. We doubt that such evidence is available. If the respondent has been informed by someone that he is entitled to a premium in or around £65,000 we can only conclude that he has been mis-informed by someone who is not conversant with the provisions of the Act. It may be helpful to the respondent if we explain that what he is entitled to is the aggregate of the:
 - 16.1 current capital value of the loss of ground rent income which he would have received, namely £50 pa until 2026, then £100 pa until 2066 and then £150 pa until 2111; and
 - 16.2 the present value of the reversion which he would have received 2111 but which he will not now receive until 2201.

Lease terms

17. Mr Taylor told us that he had no instructions concerning the lease terms. Mr Taylor complained that the respondent had not submitted a draft new lease as required by the directions.
18. We noted that in his notice the applicant proposed that the new lease shall be on the same terms as the existing lease save for the length of the term and the ground rent payable. In his counter-notice the respondent did not object to that proposal.
19. The respondent has not put forward a draft lease containing any different terms.
20. In these circumstances we have determined that the new lease shall be granted on the same terms as the existing lease save as modified in paragraph 1.2 above. The modifications we have identified are to ensure that the new lease is granted in conformity with the Act and in conformity with the requirements of the Land Registration Act 2002 which has been enacted since the original lease was granted.

Post hearing note

21. The hearing concluded at 11:20 following which the members of the tribunal made their determinations as recorded above and then went about their other business.
22. Judge John Hewitt remained in the hearing room on his own attending to other matters when at about 12 noon he was informed that the respondent had arrived in the building. He was invited into the hearing room. I explained that the tribunal had waited until 11:00 and as he has not arrived by then the hearing took place in his absence and had concluded at 11:20. The respondent was rather intemperate and made plain his intention to exercise what he said was his right to appeal because three estate agents had told him that he was entitled to £80-90,000.
23. Of course upon receipt of this decision the respondent is entitled to make an application for permission to appeal. If the basis of the appeal is to be an assertion that the respondent is entitled to a premium greatly in excess of that which the tribunal has determined, any application for permission to appeal should explain clearly why the respondent had failed to arrive promptly for the hearing to commence at 10:45 and ought to have attached to it a report of an expert valuer (not an estate agent) supporting the premium which the respondent contends for.

Judge John Hewitt
3 September 2015

APPENDIX FOUR

LEASE EXTENSION VALUATION

125 year lease from 25/12/1986, ground rent £50 rising to £150.
Date of valuation: 25/12/2014, therefore unexpired term 97 years.
Notional unimproved freehold interest £327,500.
Unimproved extended leasehold interest assessed at £324,210, 99% of unimproved freehold interest.

1. VALUE OF LANDLORD'S INTEREST

Ground rent 2015-2026	£50		
YP 12 years @ 7%	7.9427		£397
Ground rent 2026-2066	£100		
YP 40 years @7%	13.3317		
Deferred 12 years PV £1 @ 7%	0.44012	5.9194	£592
Ground rent 2066-2111	£150		
YP 45 years @ 7%	13.6055		
Deferred 52 years PV £1 @ 7%	0.02965	0.4034	£61
Reversion to capital value	£327,500		
Deferred 97 years @ 5%	0.008031		<u>£2,630</u>
Value of landlord's interest before extension			£3,680
LESS value of landlord's interest after extension			
Reversion to capital value	£327,500		
Deferred 187 years PV £1 @ 5%	0.000109		<u>-£36</u>
Total diminution in value of landlord's interest			£3,644

2. MARRIAGE VALUE

Lease in excess of 80 years, therefore taken as nil. £nil

3. TOTAL PREMIUM PAYABLE

£3,644