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

Case Reference : LON/OOAF/OLR/2014/1209

Property : First floor flat, 18, Widmore Road, Bromley,
BR1 3BA

Applicants : Mrs E. Baikie and Mr P. Baikie
(leaseholders)

Representative : Not represented at the hearing but in receipt
of legal advice from Allen Barfields,
solicitors and valuation advice from Mr M.
Chittenden MIRCS of Edward Payne &
Veness, chartered surveyors

Respondent : Mr J. Roberts and Ms J. Thain (landlords)

Representatives : In person

Type of Application : To determine the premium payable for the
grant of new lease under Part I of the
Leasehold Reform, Housing and Urban
Development Act 1993 ('the Act')

Tribunal Members : Professor James Driscoll (Judge) , Ian
Holdsworth, MSc, FRICS

Dates of Hearing : 7 October, 2015

Date of Decision : 17 November, 2015

The decision summarised

1. The premium payable by the applicant leaseholders to the landlords for the grant of a new lease is the sum of £12,600.

Background

This is an application under section 48 of the Act seeking a determination of the price to be paid for the grant of a new lease. It is made by the joint leaseholders of the subject premises which is one of 44 purpose-built flats in a block of flats owned by the respondents (which forms part of a larger estate known as the Oasis estate). Under the Act they are entitled to a new lease for a term 90 years longer than the unexpired term of the current lease on the same terms as the current lease but for a nominal rent.

3. There is no disagreement over the applicant's entitlement to a new lease but as the parties did not reach agreement over the premium to be paid application was made to this tribunal on 6 August 2014. Directions were given on 24 June 2015.

The hearing

4. Mr and Mrs Baikie, the leaseholders, attended the hearing held on 6 October 2015. They told the tribunal that although they have had legal and valuation advice they could not afford to pay for representation at the hearing. However, their solicitors prepared a bundle of documents which included a copy of a valuation report compiled for them by Mr Chittenden MRICS. They want the tribunal to consider their valuation report even though the valuer is not present to speak to the report.
5. Mr Roberts is one of the two freeholders of the block of flats. He is a qualified barrister and he has had considerable experience in dealing with residential property matters. He and his wife own an extensive portfolio of residential properties and he has given evidence on value and related matters in previous proceedings before this tribunal and in the Upper Tribunal. He has not instructed a valuer to deal with this matter. He has prepared a statement on value and related matters which is included in the bundle of documents.
6. This bundle includes copies of the application to the tribunal, the directions, the claim and counter-claim notices, HM Land Registry entries, copies of the current lease, and the draft lease that will replace it once the claim has completed, a copy of Mr Chittenden's report, a copy of Mr Robert's statement and a summary of the valuation issues on which the parties disagree on which a determination of the tribunal is required.
7. We were told that the terms of the new lease are not in dispute.
8. As to the valuation report prepared for the leaseholders, Mr Roberts, very reasonably in our view, told us that he did not object to Mr and Mrs Baikie relying on it, but as the author of the report was not present to answer questions he submits that the tribunal should give only limited weight to the evidence.

9. Mr Robert's statement includes his proposals on the premium and he accepts that we cannot give his opinion on valuation full weight either. He is not a qualified valuer and he is not in a position to sign off his statement in the way required by the RICS. Moreover, as Mr Roberts, as the joint owner of the freehold, has a clear interest in the outcome of the application, his opinion must for this reason alone be treated with some caution.
10. In their claim notice dated 29 January, 2014 the leaseholders proposed paying a premium of £6,960 for the grant of the new lease. In response the counter-notice was given by the landlords dated 24 February 2014 accepting that the leaseholders are entitled to a new lease but putting forward a counter-proposal for the premium. The landlords propose that a premium of £14,500 should be paid.
11. Early on in the hearing we established that the parties dispute the premium payable and that the terms on which the new lease is to be granted are not in dispute.
12. Several matters were agreed: the valuation date is 29 January, 2014 (the date on which the claim notice was given). At this date the unexpired term of the lease (which was originally granted for 99 years) was 74.15 years. The ground rent started at £150 per annum and under the lease is to be reviewed every 21 years by reference to a change in the value of the premises.
13. The following matters were in dispute. First, what capitalisation rate should be applied in valuing the ground rent that will be lost to the landlord once the new lease is granted? The leaseholders propose 7% but the landlords consider that the rate should be 5.5%. Second, on the applicable deferment rate to be applied to the value of the premises. The leaseholders propose 5.5% whilst the landlords consider that the appropriate rate should be 5%. Third, the value of the unmodernised flat. According to the leaseholders this should be the figure of £172,000 whilst the landlords counter with a figure of £148,000. Fourth, the appropriate relativity where the leaseholders propose 94.30% with the landlords countering with 82% and a different approach to determination. The landlords argued for reliance upon comparable transaction evidence to determine relativity.
14. At the conclusion of the hearing we told the parties that we did not consider it necessary for us to carry out an inspection of the premises. We have been given sufficient information to assist us in reaching a conclusion on the premium to be paid. The parties did not suggest that an inspection was necessary either.

Reasons for our decision

15. We considered the report prepared by Mr M. Chittenden MRICS who works for Edward Payne and Veness, a firm of chartered surveyors. He states that the appropriate rate for capitalising the ground rent is 7%, which he states is the usual rate agreed by valuers for rents such as the one in this case. As to the deferment rate his report stated that he had agreed this with Mr Roberts (that is one of the landlords) at a rate of 5.25%. (At the

hearing, Mr Roberts told us that he did not agree with this as he proposes the so-called 'generic rate' of 5%.)

16. Turning to the value of the subject property, Mr Chittenden has relied on relevant sales evidence and he concludes that the value of the property with a long lease of 164 years would be approximately £172,000 at the valuation date.
17. This brings him finally to the value of an unextended lease (which has to be assessed in order to decide on the marriage value payable as part of the premium). To deal with this it is necessary to form a view on the relevant 'relativity rate'. In his report, Mr Chittenden relies upon the relativity graphs in the RICS Research Report Leasehold Reform: Graphs of Relativity and he uses these to decide that the appropriate rate for a property of this type is 94.3%. Applying this to the long lease value of the property produces a figure of £160,310.
18. We then considered the report which was prepared by Mr Roberts and dated 28 September 2015. He relies on previous decisions of this tribunal to support his conclusions.
19. On the deferment rate he submits that the 'generic rate' propounded by the Upper Tribunal in the case of *Sportelli v Cadogan Estate* [2007] should apply.
20. He takes a different position to that taken by Mr Chittenden on the appropriate capitalisation rate for valuing the ground rent. According to Mr Roberts a ground rent with a review provision such as the one in the case of this lease which is what he calls 'dynamic' warrants a different rate to the one usually agreed by the parties. In reaching this conclusion, he relies on previous decision of this tribunal concerning other properties in the development.
21. As to the current leasehold value he relies on recent transactions and concludes that the value (allowing for leaseholder improvements) is the sum of £148,000.
22. Turning to relativity, he takes an approach based on relevant market transactions, the approach taken by the tribunal in the decision referred to in paragraph 20 above. He also refers to provisions in the lease which he contends are onerous such as the ground rent reviews and the service charges which provide (amongst other things) for contributions to be payable to the landlord's costs in maintaining a swimming pool and other facilities on the estate.

Our decision

23. First, on the capitalisation rate we note that the next ground rent review is not until 2032 though we accept Mr Roberts point that in this case the rent increases are linked to rising property values. Mr Chittenden is correct in submitting that ground rents often attract a capitalisation rate of 7% but we consider that whilst this may be appropriate for small rents with modest increases, it is not in this case where increases are linked to changes in the value of the premises. This leads us to the conclusion that the capitalisation rate for this case is 5.0%.

24. Second, on the deferment rate, we can see no justification for departing from the generic rate of 5%. Mr Chittenden incorrectly referred to the rate having been agreed at 5.25%.

25. The third issue is 'relativity'. After careful review of the transaction evidence submitted by Mr Roberts the tribunal identified a number of comparable flat sales with unexpired terms of 74 years or less which could be used in the determination of relativity. These sales had occurred after the valuation date of 29th January 2014 with no adjustment made to the sale prices for this passage of time. We were told that the dwellings were all situated in The Oasis estate and, therefore, a good match to the subject premises in terms of size and accommodation. The selected transactions are listed below.

Sales Transaction evidence provided by Mr. Roberts

at or near valuation date

Address	Date of Sale	Sale Price	Lease Length
Long Lease transaction			
14 The Oasis	21/03/2014	£175,000	125
Short Lease Transactions			
2 The Oasis	12/03/2014	£155,000	74
30 The Oasis	17/04/2014	£165,000	73
49 The Oasis	28/05/2014	£165,000	73
	Average short lease sale prices	£161,667	
	Relativity	92.38%	

1.

26. The analysis of the comparable transactions produces a relativity of 92.38%. The outcome derived from the average of four graphs of relativities taken from the RICS Research Report Leasehold Reform is 94.3%. This broad similarity in outcomes for leases with 74 years unexpired offers support for reliance upon the selected sales transaction evidence listed in the table.

27. The tribunal has adopted a relativity of 92.4%.

28. Mr Chittenden and Mr Roberts both acknowledged the onerous lease terms and adjusted the freehold interest value to reflect the specific terms and benefits that would be associated with the purchase of the freehold.

29. The current leasehold value is calculated by applying the relativity percentage to the long leasehold value. The submissions from both parties adopted this approach. No representations were made for a notional uplift to reflect the attributes of a freehold and the application of the relativity percentage to the notional freehold rather than long leasehold value. The tribunal has used the same approach in preparation of their valuation as that adopted by the valuers.

30. This leads us to the conclusion that the premium to be paid for the grant of a new lease in this case is the sum of £12,600. Our valuation is attached to this decision.

James Driscoll and Ian Holdsworth

17 November, 2015

APPENDIX (our valuation)

LON/OOAF/OLR/2014/1209			
Property: Flat 18 The Oasis 122-124 Widmore Road Bromley Kent BR1 3BA			
Lease and Valuation Data			
Lease Term:	25/03/1989		
Lease Expiry date:	24/03/2088		
Unexpired term as at valuation date:	74.15	years	
Date of Valuation	29/01/2014		
Rent receivable by landlord:			
Payable from valuation date for 18.65 years	£	312.69	
Payable from review date for 55.49 years	£	447.50	
Values			
Reversionary lease value on statutory terms	£	175,000	
Notional Freehold with consolidated leases	£	180,000	
LHVP	£	161,700	Relativity 92.40%
Capitalisation rate (%)	5.00		
Deferment rate (%)	5.00		
Value of Freeholders present interest			
Term 1			
Ground rent payable	£	312.69	
YP @ 18.65 years @ 5%		11.94900	£ 3,736
Term 2			
Ground rent payable	£	447.50	
YP @ 55.49 years @ 5%		18.66575	
Deferred for 18.65 years @ 5%		0.4025	£ 3,362
Reversion			
Freehold value of flat	£	180,000	
PV of £1 in 74.15 years at 5%		0.02684	£ 4,832
Less			
Freehold value after leasehold extension	£	180,000	
PV of £1 in 163.44 years at 5%		0.00034	£ 62
Freeholders interest value			£ 11,868
Calculation of Marriage Value			
Value of flat with long lease on statutory terms	£	175,000	
Landlords proposed interest	£	62	£ 175,062
Less			
Value of Leaseholders existing interest	£	161,700	
Value of Freeholders current interest	£	11,868	£ 173,568
Marriage value	Total		£ 1,494
Division of Marriage Value equally between			
Freeholder			£ 747
Leaseholder			£ 747
Price payable to Freeholder			
Value of freeholders current interest			£ 11,868
Plus share of marriage value			£ 747
		Total	£ 12,615
		Say	£ 12,600