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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : LON/00AF/OLR/2016/1226

Property : Flat 55 The Oasis, 124 Widmore Road,
Bromley BR1 3BA

Applicant : Alexandra Jean Knight

Representative : William R S Bradley MRICS

Respondents : Jonathan Howard Roberts and Janet Ann
Thain

Representative : Mr Jonathan Roberts

Type of application : Application to determine the premium
payable on a flat lease renewal under
section 48(1) of the Leasehold Reform
Housing and Urban Development Act
1993

Tribunal member(s) : Judge Pittaway
Mr D Jagger MRICS

Date and venue of hearing : 23 November 2016 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 9 February 2017

DECISION

Decisions of the tribunal

Capitalisation Rate	6%
Premium for extended lease	£ 19,069.00

The tribunal's valuation is attached as the Appendix to this decision.

1. The Application

By an application dated 25 July 2016 the applicant sought a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "Act") as to the premium payable for the extension of the lease of the Property

2. The Property

The Property the subject of the application is described by the Applicant's valuer as a one bedroom purpose built flat of approximately 47.2 sq.m., on the second floor of a three storey apartment block, with an allocated parking space.

3. Background

3.1	Date of tenant's notice:	5 February 2016
3.2	Date of landlord's counter-notice:	16 February 2016
3.3	Date of application to Tribunal:	22 July 2016

4. Details of tenant's leasehold interest

- 4.1 Term of lease: 99 years from 25 March 1989
- 4.2 Ground rent: an initial rent of £150 (the "Initial Rent") subject to review. The lease states that "such rent shall be subject to review on each twenty first anniversary of the grant hereof and shall then be increased to such sum as is the same percentage of the Review Value of the Flat as the Initial Rent is of the Purchase Price". The Lease states that the "Review Value of the Flat" means "the open market value selling prices of the Demised Premises which the Chartered Surveyor....considers on each review would be achieved at the time of such review" assuming the flat is being sold individually without being inhibited by the sales of any other flat in the block.

5. Matters agreed

From the bundles provided the following matters are agreed between the parties

5.1	Valuation date	5 February 2016
5.2	Unexpired term	72.13 years
5.3	Current passing ground rent	£316.46
5.4	The deferment rate:	5%
5.5	Floor area	47.2 sq.m
5.6	Value of improvements	£5,000.00

6. Matters in Dispute

6.1 The extended lease value.

- (a) The applicant's surveyor, Mr Bradley, valued this at £250,000;
- (b) Mr Roberts valued this at £275,000

6.2 The existing lease value.

- (a) Mr Bradley valued this at £233,175, net of improvements based on a relativity of 93.2%; and
- (b) Mr Roberts valued this at £230,000, net of improvements, based on a relativity of 85%.

The tribunal noted that the two valuers are only £3,175 apart on existing leasehold value

6.3 The capitalisation rate

- (a) Mr Bradley adopted a rate of 7%; and
- (b) Mr Roberts adopted a rate of 5%

7. Evidence

7.1 The tribunal had before it a valuation prepared by Mr Bradley MRICS, acting as an expert witness for the applicant.

The Tribunal also had before it a report prepared by Mr Roberts, one of the respondent landlords, a qualified barrister (who has not practised since 1978) but who advised the tribunal of his considerable property experience.

7.2 Both Mr Bradley and Mr Roberts gave evidence at the hearing and were each cross-examined.

7.3 At the end of the hearing the tribunal indicated that it did not consider an inspection of the Property necessary and the respective parties agreed that inspection was unnecessary.

7.4 The tribunal has had regard to

- (a) Mr Bradley's valuation and Mr Roberts' report.
- (b) the evidence, the cross examination and the other papers before them;
- (c) the decision in *Sloane Stanley v Mundy*, and the following cases cited by Mr Bradley

Norwich Union Life Insurance Company v TSB Central Board
[1986]
The Ritz Hotel (London) v Ritz Casino [1989]
Lynnthorpe Enterprises Limited v Sydney Smith [1990]

in reaching their determination and comment on specific aspects of these in their reasons below.

Reasons for the tribunal's decision

8. Evidence

Mr Roberts is not a qualified valuer and as a joint owner of the freehold has an interest in the outcome of the application. The tribunal have borne these facts in mind when considering the weight to be given to his evidence.

9. The extended lease value

9.1 Mr Bradley provided a schedule of comparable evidence in his report; He concentrating on No 1 The Oasis, which sold with a lease of 124 years for £257,500 on 17 December 2015 and no 24 The Oasis which sold with a long lease extended on statutory terms for £248,000 on 19 October 2016. He adjusted these sale prices by reference to the House Price Index for Bromley. Mr Bradley took an average of these two transactions which equated to £255,000 and made a £5000 deduction for tenant's improvements.

9.2 The tribunal preferred Mr Bradley's approach, using actual evidence of long leasehold transactions, to that of Mr Roberts, who took short leasehold values which he then adjusted to calculate long leasehold values, adding a further £5000 for four onerous provisions in the in the leases, namely

- (a) The liability to pay 1% plus VAT premium on any sale
- (b) The liability to pay a contribution in excess of £600 towards the leisure centre
- (c) The liability to pay a high ground rent
- (d) The requirement for a licence to assign

The tribunal noted that Mr Roberts' figure of £275,000, based on this approach, bore no relationship to recent sales in the block and consider that his method did not provide a reliable valuation.

10. Relativity

10.1 Mr Bradley submitted that the RICS Graphs of Relativity provided a good basis to work from and of these he adopted an average of relativities produced by the graphs of South-East Leasehold, Nesbitt

and Pridell, on the basis that they were the most appropriate geographically.

- 10.2 Mr Roberts, conversely, looked to the evidence available from schedule of actual short lease transactions which he calculated the relativity to be 85%. The Tribunal considered the key evidence in this schedule was 25 The Oasis sold on 31 March 2016 with a lease of 71 years unexpired. This calculated a relativity of 91.08%.
- 10.3 The tribunal determine that given the decision in *Mundy* Mr Roberts' approach is the correct one and preferred to use the evidence provided by the transaction of 25 The Oasis.
- 10.4 Consideration was given to whether there should be an adjustment for the "No Act World". The tribunal agree with Mr Roberts that given the length of the unexpired term it was not necessary to make an adjustment for the "No Act World".
- 10.5 The tribunal did not agree with Mr Bradley's submission that costs of 3% to extend the lease should be taken into account

11. **The capitalisation rate**

- 11.1 Mr Bradley proposed a capitalisation rate of 7%; Mr Roberts a valuation of 5% or less.

It was common ground between the parties that the current ground rent is £316 pa subject to review on 24 March 2031 to the proportion of the original ground rent (£150 pa) to the then purchase price (£82,950) to the "Review Value of the Flat" but they disagreed as to the term of lease that should be assumed at each review.

- 11.2 Mr Roberts proposed a capitalisation rate of 5% or less, based in part on valuations prepared by Allsop LLP for HSBC and in part that it must have been the parties' intention that the ground rent should keep price with property prices generally. Allsop were not before the tribunal so that there could be no cross examination of their reports (which were not prepared for the present tribunal). The tribunal did not have any evidence before it to substantiate what Mr Roberts said to have been the parties' intention at the time.

Mr Roberts submitted that the lease had to be valued at each review on the basis of a lease of a term of 99 years but provided no authority to support this submission. Mr Roberts included in his bundle a previous first tier tribunal decision in relation to a lease where the rent increase was linked to rising property values (LON/00AF/OLR/2014/1209) to substantiate his claim for capitalising the ground rent at 5%. The tribunal are unable to draw any assistance from this decision as they were not provided with a copy of the lease in question and do not know whether the wording of the review clause was similar to that in this

case. It certainly does not appear that the length of term to be assumed at review was considered in that case.

- 11.3 Mr Bradley submitted that the review provisions made the lease a diminishing asset, because they did not require the valuation to assume a lease of 99 years and that it therefore needed to be valued on the basis of the term remaining at the relevant review date. He referred the tribunal to the authorities referred to above; namely the review at each review date is of market value of the lease at the date of review without assuming a hypothetical term that is longer than the then term.
- 11.4 The Review Value of the Flat is defined in the lease as "the open market selling prices of the Demised Premises which the Chartered Surveyor referred to in clause 1(a) hereof considers on each review would be achieved on a vacant possession sale without encumbrances at the time of such review." The "Demised Premises are defined as "the property hereby demised" i.e. by the lease dated 17 April 1999 for a term of 99 years from that date.

The tribunal accept Mr Bradley's submission in relation to the length of term to be assumed; however the tribunal noted and drew to the parties' attention that the rent clause says the rent must be increased. That would not be the case if the asset is wasting so there is an inherent contradiction between the two provisions.

- 11.5 Accordingly the tribunal has had to adopt a capitalisation rate which
- (a) takes into account that until a point in time when the length of the lease impacts on the then market value of the lease there is a rising ground rent clause based upon 0.18% of the market value at the time of review;
 - (b) that at some point the review value of the lease will reflect a residue of the term which will cease to be as an attractive an investment; and
 - (c) that the rent payable is not permitted to decrease
- and in the circumstances considers that it is appropriate to adopt a capitalisation rate of 6%.

12. The Law

- 12.1 Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.
- 12.2 The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold

interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

- 12.3 Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.
- 12.4 Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
- 12.5 Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Name: Judge Pittaway

Date: 9 February 2017

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).

APPENDIX
55 The Oasis, 122-124 Widmore Road, Bromley BR1 3BA
The Tribunal's Valuation
Assessment of the premium for a lease extension
In accordance with Leasehold Reform, Housing and Urban
Development Act 1993
LON/00AF/OLR/2016/1226

Components

Valuation date:	5 th February 2016	
Yield for ground rent:	6.0%	
Deferment rate:	5.0%	
Long lease value	£250,000	
Freehold value	£252,500	
Existing leasehold value	£229,977	
Relativity	91,08 %	
Unexpired Term	72.13 years	
Ground rent currently receivable	£316.46	
Capitalised @ 6% for 15.13 years	9.8	£3,101
Rising to:	£450	
Capitalised @ 6.0% for 57 years	16.065	
Deferred 15.13 years @ 5%	0.477	£3,448
Reversion to:	£252,500	
Deferred 72.13 years @ 5%	0.02962210	£7480
Freeholder's Present Interest		£14,029
Landlords interest after grant of new lease	£252,500	
PV of £1 after reversion @ 5% 0.00035	£88	£13,941
Marriage Value		
Extended lease value	£250,000	
Plus freehold reversion	<u>88</u>	
	£250,088	
Landlord's existing value	£9,856	
Existing leasehold value	<u>£229,977</u>	
	£239,833	
Marriage Value	£10,255	
Freeholders share @ 50%		£5,128
LEASE EXTENSION PREMIUM		<u>£19,069</u>