4559

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAF/OLR/2017/0660**
Property	:	**75 Andace Park Gardens and Garage, 46 Widmore Road, Bromley BR8 3DH**
Applicant	:	**Shila Keshvari**
Representative	:	**Mr P L W Morgan FRICS MCIArb Chartered Surveyor**
Respondent	:	**Jonathan Howard Roberts and Janet Ann Thain**
Representative	:	**Mr J H Roberts**
Type of Application	:	**Application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs H C Bowers BSc (Hons) MSC MRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on30th August 2017**
Date of Decision	:	**4th October 2017**

DECISION

DECISION

The Tribunal determines that the premium payable for the lease extension in respect of the property at 75 Andace Park Gardens, Widmore Road, Bromley, Kent BR1 3DH including the garage, is £22,818 as set out on the valuation attached and by reference to the reasons below.

BACKGROUND

1. On 13th February 2017, the Applicant Shila Keshvari gave notice under section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) of her wish to seek a lease extension for her property.

2. The property is known as 75 Andace Park Gardens, Widmore Road, Bromley, Kent BR1 3DH together with garage 75 (the Property). The notice of claim proposed a premium for the new lease of £15,855. Further, the notice proposed that the new lease should be on the same terms as the existing subject to the increased term and the reduction of the rent to a peppercorn.

3. By a counter notice dated 27th February 2017, the Respondents, Jonathan Howard Roberts and Janet Ann Thain, admitted the Applicant's right to extend the lease but counter proposed that the premium should be £35,000. The other proposals were accepted.

4. The parties were unable to agree the premium payable and accordingly an application was made to this Tribunal on 9th May 2017 under section 48(1) of the Act.

5. The matter came before us for determination on 30th August 2017 but before then we were provided with bundles of documentation. These included the notices, copies of the register of title, a copy of the existing lease with the draft of the new lease. In addition, we were provided with copies of the reports relied upon by the parties. These were a valuation report by Mr Peter Morgan FRICS MCIArb on behalf of the Applicant and a statement by Mr Jonathan Roberts of behalf of the Respondents.

6. Certain terms had been agreed between the parties:-

   - The valuation date is 13th February 2017.
   - The unexpired term is 68.1 years.
   - The terms of the new lease are agreed.

HEARING

7. At the hearing, Mr Morgan represented the Applicant and Mr Roberts, himself and his co-owner. At the commencement of the hearing, Mr Roberts made an application for Mr Morgan's expert report to be debarred on the grounds that it was late in being submitted to him. The response from Mr Morgan was that he only received Mr Roberts' report yesterday. It is quite clear from a review of the

correspondence and all that was said to us, that both sides have been in breach of the directions order and we refused to make any form of debarring order.

8. We considered Mr Morgan's evidence first. His report dated 30th July 2017 confirms the basic facts relating to the Property. The flat is a one bedroom, third floor flat in one of two purpose-built blocks containing some 88 flats apparently built around 1985. The blocks are four storeys high and front Widmore Road. The leaseholders have the right to use an open-air swimming pool and gymnasium and pay additional rent and service charges for this privilege. It appears that all flats either have a garage or a parking space. Flat 75 we were told has a garage and has an internal floor area of approximately 482 square feet. The lease is for a term of 99 years from 25th March 1986 and as at the valuation date, there are 68.1 years unexpired.

9. A copy of the lease of the Property was enclosed and we noted the rent review provisions contained therein. This is a rising ground rent commencing at £150 and rising thereafter each 25 years by reference to the increase in the index of retail prices. The rent was reviewed in 2011 and increased to £359. The lease also contains somewhat unusual provision which requires at clause 28 that upon assignment, underlease, assent or transfer to pay to the landlord a fee of 1% plus VAT of the consideration passing. This is a liability that will continue into the extended lease.

10. In his report, Mr Morgan asked us to consider a decision of the Upper Tribunal in reference [2015]UKUT0106(LC) relating to 70 Andace Park Gardens. In that case, the Upper Tribunal had accepted a capitalisation rate of 7%, a deferment rate of 5.25% and on a lease with an unexpired term of 71.964% a relativity of 93.3%. It was Mr Morgan's assertion that decisions of the Upper Tribunal are binding on the Lower Tribunal and, therefore, he had not sought to argue for any better figures for the variables raised above.

11. On the value of the flat, he had produced evidence of other properties sold in Andace Park Gardens, being Flats 59, 47, 58 and 26. In respect of Flat 59, he deducted £10,000 for the value of improvements which included double glazing, kitchen, bathroom and gas heaters to give an unimproved value of £262,400. In respect of Flat 47, having updated it for the passage of time, which he had done with Flat 59, he came to the conclusion that with improvements valued at £15,000 this had an unimproved value of say £212,000. As to Flat 58, there was an error in the report in that he had indicated a sale price of £245,000 when in fact it seemed to be £233,000. As to Flat 26, an adjusted price of £246,600 was reached. He took an average of these four adjusted prices to give an unimproved long lease value of £243,600.

12. As to relativity, he relied on the graphs and also considered the Upper Tribunal decision previously referred to where a relativity of 93.7% for 72 years had been accepted. On the basis of a 68.1 year unexpired term he thought the relativity was 91.33%. He did indicate there was some actual transactions in the block which would be of assistance and listed four unextended leases with values updated to February 2017 giving an average of £230,175. He then contrasted these with extended lease values in eight cases, four of which he had referred to earlier, which now gave an average of £252,400. However, this did include

something of an anomaly in that Flat 47 appeared to have only sold for £212,000 considerably below the other flats in the list. If this were extrapolated, it gave an average of £256,000. This was not, it seemed, used for the purposes of assessing the long lease value which remained at £243,600. These comparables appeared to have been put forward to support the relativity position only. Putting that to one side, however, he concluded that the difference gave a relativity of 91.2%. For reasons not wholly clear, he carried out the same exercise for two bedroom flats which gave a relativity of 94.63%.

13. He then moved on to consider the 'no Act world' position. He was of the view that there was no "empirical" evidence. He thought many purchasers were unaware of their statutory rights, although would be aware that extending a lease would not come free. He did, however, contrast the sums sought by Mr Roberts of £35,000, which if added to the price they might be paying for the existing lease, would result in them paying far more for the same flat with its lease already extended.

14. He then went on to consider that in theory in a no Act world a prudent purchaser would set aside either a sufficient annual sinking fund or a capital sum which would grow over the years, to be sufficient to pay him back that which he paid in the first place to compensate for the lose of the flat at the end of the lease. He had taken an example using 4% as an accumulative rate of compound interest over 70 years and calculated that the capital sum a purchaser would need to put aside to replace £240,000 would be £16,670 and that this capital fund represented 6.94% of the total price which somehow appeared to support his views on relativity. He then considered which relativity rate should apply. The sinking fund proposition gave 93%, the two bedroom flat sales was 94.63% and the one bedroom sales 91.2%. The practitioner's graphs gave a figure, he said of 91.33% and this was what he used.

15. On the question of capitalisation rates, he thought 7% was correct, the more so as the Upper Tribunal had accepted this. He said he had acted for a number of leaseholders on lease extension cases and that 7% was a figure he always agreed with the freeholder's valuer. He did not consider that the auction results produced by Mr Roberts were of any help.

16. On the question of the deferment rate, he decided that the 5.25% used by the Upper Tribunal was appropriate. He did not consider that the ground rent was onerous and concluded that the appropriate premium payable should be £16,269.

17. Annexed to his report was a copy of the Upper Tribunal decision in respect of 70 Andace Park Gardens which we will refer to as necessary. We also had copies of some sales particulars in relation to comparable properties and Mr Morgan's valuation calculations. Finally, there were what purported to be explanations of the relativity graphs and a schedule of recent settlements by Mr Morgan showing the capitalisation rates and the ground rent activity.

18. Expanding on his report at the hearing, he confirmed that the extended lease value at £243,600 was correct and made no uplift for the freehold. His reason for this was that the Property was situated in a large block and that the freehold was, in his view, worthless.

19. On the question of relativity, he asserted that there was no evidence in the 'no Act world' and although there was some evidence of sales, the averages between the extending and existing leases was around 8.8%. He had used the two bedroom flat comparables to provide supportive evidence of a relativity at 90% or thereabouts.

20. He confirmed his use of the Upper Tribunal's capitalisation rate of 7% and the same for the deferment rate.

21. He was asked questions by Mr Roberts and accepted that there was a contribution to be made to the amenity land at around £26 per month. In fact, it seemed this had increased once other maintenance costs were factored in giving around £43 per month, which Mr Morgan considered to be not expensive for the use of the facilities that were available. He was then taken through the comparables that he had referred to and confirmed that he believed Flat 59 did not have a garage but did not accept there was any evidence to show that purchasers paid more for a garage than a parking space.

22. As to the comparable at Flat 58, he told us that whilst the lease had been extended, the existing rent review pattern remained. He thought that this perhaps should result in some £6,500 being added to the purchase price but he did not consider that leaseholders often asked about this issue. Questions were then put to him about the mortgageability of leases with declining terms and reference made to the Halifax purportedly refusing to lend. Reference was made by Mr Roberts to the CML mortgage site but no copies were included within the papers.

23. On the question of the sinking fund route, it was put to him by Mr Roberts that the provisions that he had suggested at paragraph 15 of his report made no provision for the increase in price of the Property. His response to that was that if that were the case the purchaser would put aside additional sums. He was asked about his final set of papers relating to capitalisation rates and increasing ground rents, but he was not in truth able to say by what amount the ground rent in these examples increased.

24. As to the deferment rate, he relied just on the Upper Tribunal decision and had no evidence to put to us to explain the move from the Sportelli rate of 5%. Asked by the Tribunal whether all the leases in the blocks were on the same terms, he told us that he thought they were. On the improvements, he did not know when the property at Flat 59 had been improved and asked how he had achieved a reduction of £10,000, he told us this was on the basis of what he thought it would cost being around £20,000 to carry out the works of improvements and he allowed for depreciation. He was also referred to photographs of Flat 47, which appeared to indicate that the improvement works were more recent, but nonetheless thought that £15,000 was a sensible sum to put forward. He did tell us he thought that the unextended leases would not be improved.

25. We then heard from Mr Roberts. Mr Roberts does not have qualifications as a surveyor. His report was presented to us as a witness statement not as an expert but as he indicated in his introduction, he has long experience in property

matters. He has been involved in lease extensions for a number of properties in Andace Park Gardens and on a number of occasions has dealt with Mr Morgan. Although in respect of 70 Andace Park Gardens rates were agreed, he told us that on other occasions the capitalisation rate put forward on 70 Andace Park Gardens had not been followed. Furthermore, there were applications for leave to appeal.

26. On the question of the value of the existing leasehold interest, he provided a schedule showing sales of various leases at around the valuation date. Three were short leases at Flats 18, 7 and 59 Andace Park Gardens the latter being before extension and improvement. He did, however, feel that the sales of 7 and 18 represented extremes. Nonetheless, taking those comparables and considering Flat 59 revised for the passage of time, he concluded that at the valuation date the value of the existing leasehold interest should be £230,000.

27. This he said was in the 'Act world' and there needed to be adjustments made for Act rights. He referred us to a document from Savills headed Spotlight Lease Enfranchisement Analysis of Relativity dated June 2016. This showed that the difference between enfranchised and unenfranchised relativity was around 3.86% for a 68.1 year lease term and asked us to adopt that figure giving a reduction of £8,800 from the current leasehold value to represent the no Act world.

28. He contrasted this by reference to relativity between existing and extended lease values and suggested that by reference a First Tier Tribunal case in respect of 70 Seymour Road, the Beckett and Kaye now including transactional evidence had been accepted. The mortgage dependent graph produced by Beckett and Kaye in 2017 showed a relativity of around 84%. As to the long lease values, he thought that the sale of No 59 was helpful. He deducted some £7,000 for the improvements but added back £5,000 on the basis that the subject Property has a garage and not a car parking space. His view was, therefore, that a figure of £270,000 was reasonable assessment of the current market value of the Property with an extended lease and he would uplift this by 1% to arrive at the freehold value. If this figure were used and compared against the short lease value, it gave a relativity of around 85% which matched the Beckett and Kaye mortgage dependency graph and was in line with the Savills research paper referred to before. He did, however, think that market evidence was the better method of assessing the difference between short and extended leases, rather than graphs.

29. However, the matter did not stop there because he considered that particular attention should be paid to paragraph 3 of schedule 13 of the Act. The reasons for this was as follows:

1. The liability to pay 1% plus VAT premium on any sale.
2. The liability to contribute over £300 per year towards the leisure centre with running costs of nearly £200 per annum.
3. The liability to pay a fairly high ground rent, reviewable every 25 years.
4. The requirement for a licence to assign and for any under-letting.

By reference to a decision by this Tribunal in 2008 in respect of the Oasis, apparently a sister block to this Property, he thought that there should be an allowance of at least £5,000.

30. The capitalisation rate he thought was incorrect at 7%. Notwithstanding an unsuccessful attempt by him to have the Court of Appeal review the matter, this has not occurred. We noted all that was said. To assist us he provided us with a security valuation prepared by Allsop LLP for his bankers in June of 2012 and a similar valuation in March of 2016. These showed the assessment of the value attributable to the ground rent which influenced him to suggest that the capitalisation rate should in fact be 4.5%. He said that this was bolstered by considering what an investor in the market might secure. He highlighted what the investment may benefit from and he had included within the papers extracts of ground rent comparables through Allsop Residential. His report spoke to a premium payable of £33,487.87.

31. He made general comments in presenting his witness statement. He mentioned that there appeared to be no real evidence as to whether floor levels have any impact. He thought not as the flat had the use of a lift. The 'no Act world' element needed to be reflected and in that regard he thought the Savills paper annexed to his report was of help. He did not think that the relativity graphs reflected the reality.

32. On the question of relativity, he thought the market evidence sat closely with the Beckett and Kaye mortgage graph which now contained some transactional evidence, but that he had used this more as a cross check rather than relying on same. The transactions in the block were, he said, mortgage assisted. He thought that it was difficult to get a mortgage for this type of property and that the lease was indeed onerous. On the question of the uplift for the freehold, he thought in the evidence to us that it was worth more than the extended lease value. This he said was because of the onerous lease terms. Originally he appeared to be suggesting that the uplift for the freehold should be some £7,500 but for ease of reference agreed that this could be reduced to £5,000 giving a value of the extended lease for the Property at £270,000 uplifted for the freehold of £275,000.

33. On the question of the capitalisation rates, we heard from him concerning auction evidence and the yields that might be expected in those circumstances which he thought would, with an RPI increase, be not less than an initial yield of 3%. In his view, an open market rent at the valuation date would give rise to a capitalisation rate of 4.5%. There was, he thought, no certainty as to what the RPI figure might be in the future.

34. Mr Morgan then asked Mr Roberts some questions, pointing out that the head lease expires in 2085 so there will be no liability to the freeholder after that date. He thought there was no reason, therefore, to add the freehold value as the head lease would expire. As to the Savills graph, it was not clear what the geographical basis was for this. As to whether or not the lease was onerous, Mr Roberts was of the view that the flats in this block were about the cheapest available in Bromley. At the conclusion of his evidence, Mr Roberts had nothing further to add by way of submissions.

35. Mr Morgan was of the view that it was appropriate to assess the value by reference to as many comparables as there were. As to relativity, he had used

comparables in the block. The 'no Act world' deduction was merely guess work. The capitalisation rate was that adopted by the Upper Tribunal in an earlier decision in respect of another property in the block which we have referred to above and he also relied on the Upper Tribunal's assessment of the deferment rate. Both parties agreed that it would not be necessary for us to inspect.

THE LAW

36. In assessing this matter, we have relied on the terms of the Act and schedule 13 thereof. We have also noted the decision of the Upper Tribunal referred and relied upon by Mr Morgan. Whilst we accept that the Upper Tribunal can create law which we are bound to follow, we do not accept that their findings on yield rates and other matters in a specific case are binding on us. We accept that this relates to another property close to the subject Property, although is dated back to 2013. We have noted the terms of that decision in so far as it relates to the matter before us.

FINDINGS

37. We are going to deal firstly with the deferment rate point. There was no evidence put to us that there was a reason to depart from the Sportelli rate of 5%. Mr Morgan could not say anything to us that persuaded us to do so and in our view the Upper Tribunal decision in respect of 70 Andace Park Gardens is not binding on us on this issue. It is also noted that at paragraph 45 the Upper Tribunal records that the Appellants indicated that they were prepared to accept a reduction of 0.5% from 5.75% determined by the First Tier Tribunal and it seems to be on that basis that the Upper Tribunal accepted a deferment rate of 5.25%. We are not so persuaded as no evidence was before us from either side to suggest that the Sportelli rate of 5% was wrong.

38. As to the capitalisation rate, we noted all that was said to us. A suggestion was made by Mr Morgan that there may be no increase in RPI, which in our opinion we find highly unlikely. In our findings we conclude that in general the market would consider that future increases in RPI in the long term are likely and there is in our findings greater income potential for a lease that provides for RPI increases rather than on a fixed basis. Reference to Flat 11 Tower Side appears to us to be unhelpful because that would appear to be an increase geared to property value. That is not the situation in this case where the increase is linked to RPI. There are factors that need to be considered, not least the recoverability of the ground rent and the costs associated therewith. The 1% payment on sale of course remains within the terms of the extended lease and, therefore, seems to us to have no particular impact on the capitalisation rate of the rent. And the other benefits set out at paragraph 43 of Mr Roberts' report do not seem to us to impact to any degree. The auction evidence was unhelpful, lacking in particulars. Taking the matter in the round, we think that a capitalisation rate of 6% would be appropriate and are comfortable with that.

39. Insofar as the values of the existing and extended leases are concerned, we have considered the market evidence put to us. Flat 59 is of assistance, although we consider that the reduction made by Mr Morgan of £10,000 too high. The improvements of kitchen and bathroom would occur under the usual repairing obligations. The improvements in double glazing obviously have some value but

we are not convinced that gas heaters make a great deal of difference. We would, however, accept a reduction of £5,000 for improvements reducing the value to £267,400. In respect of Flat 47, a reduction of £10,000 to reflect the double glazing and central heating is we consider adequate, thus reducing that flat to £217,000. Accepting for the sake of the argument the adjusted figures for Flats 58 and 26 and adding in Flat 87 included in the list of eight comparables, gives an average of £251,520 based on a gross capital value for those five properties of £1,257,600.

40. On the question of any uplift for the freehold, we preferred Mr Roberts' evidence on this point. He came down from £7,700 to £5,000. The lease in this case does contain some onerous provisions and the acquisition of the freehold would enable these onerous terms to be removed and, in our findings, would have a value of more than the usual 1% that is suggested. Indeed, Mr Morgan put forward no figure for this element. We find that £5,000 as suggested by Mr Roberts is not an unreasonable addition to make for the total freehold value. This, therefore, provides an unimproved freehold value of £256,520. There is no evidence before us as to the value to be attributed on a garage v parking space basis.

41. We must then consider the value attributable to the short leases. In this regard, we consider that the parties are not really apart. Both have suggested that the short lease value should be around £230,000 but Mr Roberts of course factors in an element of 'no Act world' reduction. We find that the market evidence available to us in this case removes the need to consider relativity graphs.

42. On the question of the impact of the 'no Act world' with respect to Mr Morgan, his suggestion that there should be some form of capital sum set aside to deal with the potential reduction in value of the Property at the expiration of the lease, just seemed fanciful. As was pointed out, it gave no allowance for the increase in capital values over the period of the remaining term and just did not seem to us to be a logical operation of the 'no Act world' provisions. By contrast, the Savills graph provided us with some assistance and indicated a figure of 3.86%. That does not seem to us to be an unreasonable element to factor in in respect of the Act rights. There is a dearth of evidence before us but acceptance on our part that there must be some reduction in value to reflect the 'no Act world'. A lease with rights must be worth more than one without and putting aside a capital sum to cover this just seems wrong. In the absence of any evidence from Mr Morgan which would persuade us otherwise, we therefore make that percentage reduction reducing the short lease value to £221,122. These figures find their way into the valuation attached. By way of explanation, we should perhaps just comment upon the uplift for the ground rent from the valuation date. We are content with the figure of £44 suggested by Mr Morgan.

43. Factoring these figures into the valuation gives a premium for the lease extension of £22,818 as set out on the schedule attached.

Judge: Andrew Dutton

A A Dutton

Date: 4th October 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

75, Andace Park Gardens, Widmore Road
Bromley, BR1 3DH

Valuation Date	13/02/2017			
Unexpired Term	68.11			
Capitalisation Rate	6.00%			
Deferment Rate	5.00%			
Long Lease (Unimproved)	£251,520			
Freehold (Unimproved)	£256,520			
Short Lease (Unimproved)	£221,122			
Freeholder's Present Interest				
Term				
Hardcore Rent Reserved	£358.68			
YP for 68.11 years @ 6%	16.3517			
		£5,865		
Additional Rent/Slice uplift from review to valuation date	£44.00			
YP for 50 years @ 6%	15.7619			
PV of £1 in 18.11 years @ 6%	0.3481			
		£241		
Reversion				
FH reversion	£256,520			
PV of £1 in 68.11 years @ 5%	0.0360			
		£9,235		
			£15,341	
less				
Reversion				
FH reversion	£256,520			
PV of £1 in 158.11 years @ 5%	0.0004			
			£103	
				£15,238
Marriage value				
Proposed				
Long Lease Value	£251,520			
Freeholder's Interest	£103			
less				
Existing				
Freeholder's Interest	£15,341			
Short lease value	£221,122			
Marriage Value		£15,160		
50:50 division			£7,589	
Premium for Lease Extension				**£22,818**