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

Case Reference : LON/00AN/OLR/2016/1813

Property : 59 Bush Court, Shepherd's Bush Green,
London, W12 8PL

Applicant : Mr Alistair Malcolm Kerr

Representative : In Person

Appearances : (1) Mr Kerr
(2) Mrs Jeanette Cunningham

Respondent : Top Shop Centres Limited

Representative : Cripps LLP, solicitors

Appearances : (1) Ms E Fibbins, counsel
(2) Mr A Channer, MRICS

Type of Application : Application under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993

Tribunal : 1. Judge Amran Vance
2. Mr P Casey, MRICS

Date of Hearing : 7 March 2017

Date of Decision : 2 April 2017

DECISION

Decisions of the tribunal

1. The tribunal determines that the premium payable by the applicant under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") on the grant of a new lease of the subject property is **£75,130** with £74,700 payable to the respondent freeholder and £430 payable to the Mayor Alderman and Burgesses of the London Borough of Hammersmith and Fulham.
2. The tribunal approves the terms of the draft lease included in the hearing bundle subject to the amendments referred to in paragraph 48 below.

Background

3. This is an application under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the "1993 Act").
4. The applicant is entitled to a new lease of Flat 59 Bush Court, Shepherd's Bush Green, London, W12 8PL ("the Flat") under Chapter II of the 1993 Act. The Flat is situated on the 12th floor of a 19-storey purpose built block ("the Building"). The respondent is the freehold owner of the Building.
5. The ground to second floors of the Building consist of commercial premises forming part of the Shepherd's Bush Green Shopping Centre. Located nearby are three blocks that are almost identical to the Building, Shepherd's Court, Roseford Court and Woodford Court. The ground to second floors of Shepherd's Court, like the Building, also comprise commercial premises.
6. The applicant served notice of a claim to take a new lease of the Flat by notice dated 30 March 2016. In that notice, he stated that the proposed terms of the new lease should be the same as those in the existing lease except for terms required by virtue of section 57 of the 1993 Act, namely a 90-year extension of the lease term at a peppercorn rent. The premium proposed was £33,860.60 and £139,40 to be paid to the intermediate landlord under schedule 13 of the 1993 Act.
7. On 24 May 2016, the respondent served a counter-notice admitting the applicant's entitlement but disputing the proposed terms of acquisition. The counter-proposal made was for a premium of £95,525 and £215 to be paid in accordance with schedule 13 of the 1993 Act. The counter-notice was also given on behalf of the Mayor Alderman and Burgesses of the London Borough of Hammersmith and Fulham ("Hammersmith & Fulham") as an intermediate landlord who hold a lease for a term of 107 years less 10 days from 25 March 1961.
8. The applicant applied to this tribunal for the determination of the disputed terms in an application dated 18 November 2016.
9. The following are particulars of the applicant's leasehold interest:
 - (a) Date of lease: 14 October 1996
 - (b) Term of lease: 107 years (less 15 days) from 25 March 1961

(c) Ground rent: £10 per annum

(d) The unexpired term at the valuation date of 30 March 2016 (the date of service of the applicant's notice) is therefore 52.45 years.

10. The respondent's proposed premium before the Tribunal was £91,583 comprising £91,056 to the respondent and £312 to Hammersmith & Fulham.
11. The applicant was previously represented by solicitors who had engaged the services of a valuer, Mr A Lester, MRICS. However, the applicant represented himself at the tribunal hearing, having ceased to instruct his former solicitors and Mr Lester. The applicant did not adduce any expert evidence as to the appropriate premium and his position was that he wanted the tribunal to determine a fair and realistic premium.
12. Before Mr Lester's retainer was terminated, the following matters were agreed between the parties' valuers in a statement of agreed facts and disputed issues dated 10 February 2017. The applicant confirmed that the agreed matters identified in the statement were all still agreed by him:
 - (a) a valuation date of 30 March 2016.
 - (b) an unexpired term for his under lease at the valuation date of 52.45 years;
 - (c) an unexpired term for the intermediate lease at the valuation date of 52.46 years;
 - (d) an annual ground rent payable under the under lease of £10 per for the term;
 - (e) an annual ground rent payable under the head lease of £8,000 for the term;
 - (f) a gross internal area ("GIA") for the Flat of 87.6 sqm (943 ft²); and
 - (g) that there have been no improvements that added to the value of the Flat.
13. The following issues were said in the statement to be in dispute:
 - (a) the capitalisation rate of the ground rent;
 - (b) the deferment rate;
 - (c) apportionment of the annual £8,000 ground rent payable by the intermediate leaseholder to the freeholder and profit rent arising after deducting the annual ground rent payable by the under lease holder
 - (d) the virtual freehold vacant possession value ("FHVP") of the Flat;
 - (e) the existing and extended lease values of the Flat; and

(f) the premium.

Inspection

14. We inspected the Flat and the exterior of the Building on 8 March 2017. The entrance to the Building is off a busy street. Two lifts serve all floors of the Building. The ground floor entrance hall and the 12th floor communal areas are in a fair decorative condition. The Flat comprises three bedrooms, a reception room which is being used as a bedroom, a kitchen/breakfast room, a separate WC and a bathroom/WC. Laminate flooring was installed throughout the Flat which was in a very good decorative condition.

The Law

15. Schedule 13 of the 1993 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.
16. 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.
17. 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.
18. Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
19. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

The Hearing

20. The applicant sought permission to rely upon a statement of case dated 4 March 2017. This was not opposed by Ms Gibbon and we admitted it in evidence despite its late admission.

The Respondent's Case

Mr Channer's Evidence

21. Mr Channer had been unable to identify appropriate examples of sales of extended leases of three-bedroom flats in the Building or in the area. His starting point was the sales of two short lease sales of three-bedroom comparable flats and adjusted these for lease length using the Savills Enfranchisable Graph. He carried out the

same exercise for three short lease sales of two-bedroom comparable flats. He then compared these results with three long lease comparables that he had identified.

- 22.** As part of this exercise he adjusted the comparables for, firstly, non-physical factors of time and lease length/relativity and then for physical factors of condition, location and position, floor level and GIA. In terms of floor level, he applied a cumulative adjustment for flats above first floor level. His rationale was that the higher the flat level the better the flat because of improved light levels and reduced traffic/noise disturbance. For flats above third floor level he considered the beneficial impact of height diminished because of the increasingly detrimental impact of the risk that the lifts might break down. The net result was that he considered a 2.5% cumulative adjustment was appropriate for flats on the second floor, 2% for third floor flats, 1.5% for fourth floor flats, 1% for fifth floor flats and 0.75% for flats from sixth floor level upwards. He therefore considered a 2.5% adjustment was appropriate for any flat on the second floor, rising to 17.5% for a flat on the 19th floor. He conceded that this scheme was not based on an analysis of the evidence of comparable sales and that did not have evidence as to the frequency of lift breakdowns.
- 23.** His two three-bedroom flat comparables were Flat 26, located on the seventh floor of the Building and Flat 53 Bush Court, located on the 11th floor. Both flats have an identical layout to the subject Flat. Flat 26 sold for £405,000 on 21 August 2015 with a lease with an unexpired term of 53.03 years. Flat 53 sold for £320,000 on 21 February 2014 with a lease with an unexpired term of 54.56 years.
- 24.** For Flat 26, he adjusted for lease length to a 999-year lease with a share of the freehold and for time, to the valuation date, using the Land Registry Index for Hammersmith and Fulham. He deducted 3% for improvements, added 3.75% for floor level variation and adjusted for floor area, arriving at a final ft² value of £546. He carried out the same exercise for flat 53, but this time adding 0.75 for floor level variation, arriving at a final of £481 per ft².
- 25.** He adopted the same approach for his two-bedroom comparables with the following outcomes:

Flat	Sold	Floor	Years Unexpired	Improvements	Floor Level Adjustment	Adjusted ft ² value
70 Bush Court	30.03.16	14	52.46	3%	1.5%	565
52 Shepherd's Court	30.03.16	11	142.44	3%	0.75%	527
52 Shepherd's Court	15.11.13	11	54.83	3%	0.75%	476
97 Shepherd's Court	2.08.13	19	55.12	3%	5.25%	453

4 Bush Court	12.6.12	3	145.24	3%	7.75	602
67 Bush Court	11.02.13	14	145.07	3%	1.5	503*

* Average after making both a 3% and a nil adjustment for improvements due to unavailability of sales particulars and therefore uncertainty if sold with the benefit of improvements

- 26.** Mr Channer then took the average per ft² value for the three bedroom flats (£514 ft²) and the two bedroom flats (£521 ft²) and gave the three bedroom flats twice the weighting of the two-bedroom flats, arriving at a value of £516 per ft² for the subject flat on a long lease with a share of the freehold. He calculated the long lease/FHVP of the subject Flat on the valuation date to be **£486,600**. He considered that the value of the long leasehold interest in the Property once extended by 90 years would be equal to 99% of that figure, namely **£481,734**.
- 27.** To calculate the existing lease value of the subject Flat he took the value of the three short lease comparables referred to in the table above, adjusted for time to the valuation date, made a 3% adjustment for improvements and adjusted for floor level. He then averaged the resulting figures to arrive at an average short lease ft² value of £412 ft². He then divided that figure by the average of the three long lease sales referred to in the table (£544 ft²) to arrive at a real-world relativity of 75.74% for a lease term with 54.14 years unexpired. To arrive at a relativity for the subject Flat with the 52.45 years that were unexpired as at the valuation date, and with the benefit of the 1993 Act, he used the Gerald Eve graph to arrive at a relativity 74.42%.
- 28.** He then considered what deduction was needed for the benefit of the 1993 Act and did so by comparing Savills 2002 Enfranchise graph and the Gerald Eve graphs. He concluded that the value of the Flat without Act rights was 92.7743% of the value of the flat with Act rights and arrived at a value of **£335,949** for the existing lease value of the subject Flat without 1993 Act rights.
- 29.** As to the intermediate leasehold interest held by Hammersmith & Fulham Mr Channer calculates the profit rent in the flat to currently be minus £123, being £10 minus the £133 proportion of the head rent applicable to the Flat. After the grant of the new lease the council will receive no rent but will have a liability to continue to pay the £133 proportion of head rent applicable to the Flat until expiry of the head lease. He values that liability at minus £2,872 and the profit rent at minus £2,657 meaning a diminution in value of the council's interest of £215. Marriage value is payable at 50% of all the interests after the lease extension less the sum of the interests prior to the extension in proportion. He calculates the diminution in the council's interest to be £312 and that the total premium payable to be £91,583, split £91,056 to the respondent and £528 to Hammersmith & Fulham.

The Applicant's Case

30. Mr Kerr did not make any substantive representations on Mr Channer's valuation and nor did he rely on an alternative valuation. He did not challenge the suitability or relevance of any of the comparable sales relied upon by Mr Channer.
31. His position was that he considered the premium sought to be unfair and excessive. He was also of the view that freeholders often adopt sharp practice when seeking a premium for lease extensions and that valuers generally provided valuations that they were unable to justify. He provided us with copies of several newspaper articles that he considered supported these assertions.
32. In cross-examination, Mr Kerr drew Mr Channer's attention to a mortgage valuation report dated 26 November 2015, prepared in respect of one of his properties at 50 Roseford Court, which he asserted was a similar property and which was valued at £275,000. He queried why this was so different to Mr Channer's valuation given that the sale was close to the valuation date. Mr Channer, however, did not accept that this was an identical flat as it had an additional room to the subject Flat.

Decision and Reasons

Long Lease/freehold value

33. Mr Channer has identified eight transactions involving comparable properties which he has adjusted for passage of time, lease length, floor level and improvements. He has devalued the resulting adjusted sale prices to give a price per square foot and has taken an average of all the devaluations but giving greater weight to the two transactions involving three bed flats on existing leases. In our view, the number of transactions and the averaging mean result in the outcome being less affected by the largest adjustments, particularly for floor level. We consider that Mr Channer's adjustments and analysis is consistent and fair and we accept his extended lease/share of freehold valuation of **£486,600**. We also agree that a 1% adjustment is appropriate to calculate the value of the long leasehold interest in the Property once the lease is extended and accept his resulting figure of **£481,734**.

Existing lease value

34. Having identified both long lease and existing lease comparable transactions (albeit of 2 bed flats) Mr Channer, rightly in our view, prefers to derive the "no Act" world existing lease value from this evidence, as recommended by the Upper Tribunal in *Sloane Stanley Estate v Mundy* [2016] UKUT 0226 (LC) rather than relying on any of the relativity graphs in currently in use.
35. However, he has identified only three long lease sales and three short lease sales and the average of the devalued prices/ft² of these transactions, after the adjustments referred to above, are more susceptible to the effects of the larger adjustments. When valuing the long lease, Mr Channer's average rate for two bed flats is £521 ft² but when considering the evidence for relativity the three long lease sales give an average of £544 ft².

36. We consider it preferable to give the greatest weight to the sale, on 30 March 2016, of 52 Shepherd's Court. Although this was a sale of a two-bed flat, the flat is located in a very similar building on a floor below the floor level of the subject Flat and with a sale that took place on the valuation date. In our view, the other sales relied upon by Mr Channer support the use of this sale as a reliable transaction which needs no adjustment for time and only a minimal adjustment for floor level. The adjusted figure for 52 Shepherd's Court is £527 ft², which suggests that the wider drawn average of £521 ft² for two-bedroom flats is a safe figure to use for the extended lease share of freehold value.
37. According to Mr Channer's calculations, the three sales of short leases result in adjusted values of £463 ft² for 70 Bush Court, £395 ft² for 52 Shepherd's Court and £377 ft² for 97 Shepherd's Court. At the time the last two sales took place the unexpired terms were slightly greater than that for the subject Flat, requiring an adjustment of approximately 1½% to leave £389 ft² and £371 ft² respectively. However, 70 Bush Court is a sale at the valuation date requiring minimal adjustment, whilst the other two transaction prices are adjusted by more than 20%. In our view, it is appropriate to give twice the weighting to the former. This gives an average rate of £426 ft², although this represents value in the real world.
38. Mr Channer says that a comparison between the Savills 2002 and the Gerald Eve graphs for this length of unexpired term suggests the value of Act rights as being about 7½%, which we accept as appropriate. This gives a "no Act" rate of £394 ft² and shows a relativity of 75.8%, which is in line with the Gerald Eve Graph. The value for the existing lease in the subject Flat is therefore **£368,843**.
39. Normally the diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the grounds rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the 1993 Act. The superior landlord in this instance suffers no loss of ground rent. The intermediate leasehold interest being a minor interest is dealt with separately.
40. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the freehold value with vacant possession of £486,600. In our view the appropriate deferment rate is 5% as authoritatively determined to be in the case of *Earl Cadogan v Sportelli (2006) LRA/50/2005*. Although that decision concerned flats in central London we see no reason to depart from it in this case.
41. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholder and the landlord before the new lease; and (on the other) the aggregate value after the grant of the new lease. It is to be shared equally between the parties, as required by the Act.
42. Mr Channer correctly identifies Hammersmith & Fulham as having a minor intermediate leasehold interest as defined by the 1993 Act. The calculation of compensation for such interests is set to change under regulations to be made under the Housing and Planning Act 2016 but these are not yet in force. In the absence of any evidence to the contrary, we accept Mr Channer's calculation under the current formula.

43. We do not think Mr Kerr's concerns over freeholders adopting sharp practices when seeking a premium for lease extensions or his criticisms about valuers are relevant to this application. We noted that Mr Channer conceded in cross-examination that it was common for freeholders to insert a higher figure in a counter notice for a lease extension than the sum they would be willing to settle for. However, he also considered that tenants often inserted a lower figure in a claim notice than the sum they were willing to pay. It is not our role to speculate on the motives of landlords or tenants and we do not consider the newspaper articles produced by Mr Channer are of assistance to us. Mr Channer's report contains a signed statement of truth and a declaration that he understands that his duty as an expert witness is to help the tribunal and that this duty overrides any obligation to the person who instructed him. We are satisfied that Mr Channer's evidence to us was impartial and in line with his duty to us. There was no suggestion by Mr Kerr that it was not.
44. In our view 50 Roseford Court is not a useful comparable. Firstly, the valuation report relied upon by Mr Kerr was for the purpose of determining a figure for lending and is not evidence of the price realised on an actual sale. Secondly, in the 'General Remarks' section of the report it is stated that the flat was originally a two-bedroom flat that had been altered to provide three-bedroom accommodation which gives credence to Mr Channer's assertion that the subject Flat had an additional bedroom when compared to 50 Roseford Court. Finally, whilst the mortgage company's valuer valued the flat at £275,000 we note that the estimated purchase price provided to the valuer was £475,000 which casts doubt on the accuracy of the valuation figure.
45. The premium payable by the applicant under Schedule 13 of the 1993 Act, on the grant of a new lease of the Property, is therefore £75,130 with £74,700 payable to the respondent freeholder and £430 payable to Hammersmith & Fulham. A copy of the Tribunal's valuation is attached to this decision.

Lease terms

46. The respondent's solicitors have prepared a draft lease which we are invited to approve. The terms are agreed between the parties. The draft lease provides for the surrender of the existing Lease and the grant of a new lease term expiring on 10 September 2158.
47. The Tribunal is satisfied that the terms proposed by the Applicant are appropriate for the new lease subject to the following:
- (a) It appears to us that the correct date for expiry of the new lease is 10 March 2158 and that this is the date that should be inserted in box LR6;
 - (b) Unless already included, the new lease should, as per section 57(7) of the 1993 Act:
 - i. make provision in accordance with section 59(3) that no long lease granted as a sub-tenancy shall confer on the sub-tenant (as against the tenant's landlord) any right to acquire a new lease under the 1993 Act; and

- ii. reserve to the tenant's immediate landlord the right to obtain possession of the flat in accordance with section 61 (right to terminate new lease on grounds of redevelopment).

Name: Amran Vance

Date: 7 April 2017

Appendix 1 – The Tribunal’s Valuation

LON/00AN/OLR/2016/1813

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

S48 Leasehold Reform Housing and Urban Development Act 1993

**Determination for the premium payable for an extended lease of
Flat 59 Bush Court, shepherd’s Bush Green, London W12 8PL**

Valuation date: 30 March 2016 – Unexpired term 52.45 years

Diminution in Value of Freehold Interest

Reversion to F/H value with VP	£486,600		
Deferred 52.45 years @ 5%	0.07733	£37,632	
			<hr/>
Less value of F/H after grant of new lease	£486,600		
Deferred 142.45 yrs @5%	0.000975	£466	
			<hr/>
			£37,166
Diminution in value of Intermediate Leasehold Interest			£215
			<hr/>
			£37,381

Marriage Value

After grant of new lease

Value of extended lease	£481,734		
Plus freehold value	£466	£482,200	
			<hr/>

Before grant of new lease

Value of existing lease @74.75% f/h	£368,843		
Plus freehold value	£37632		
Plus Intermediate Leasehold Interest	£215	£406,690	
			<hr/>

£75,510 £37,755

**50% share to Freeholder
and Intermediate
Leaseholder**

£75,136

Premium Payable Say £75,130

Premium Apportionment

Freeholder	$£37,166 + £37,166/£37,381 \times £37,755$	£74700
Intermediate Leaseholder	$£215 + £215/£37,381 \times £37,755$	£430

Appendix 2 - 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 Tribunal 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 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.
4. 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.