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

Case Reference : LON/00BC/OLR/2017/0847

Property : 1 Frinton Mews, Ilford, IG2 6JB

Applicant : Catherine Doyle

Representative : In person

Appearances : Mr Oliver Doyle

Respondent : Gurvinder Kaur Kataria

Representative : Metrolaw, solicitors

Appearances : Ms McDonell, counsel

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

Tribunal :
1. Judge Amran Vance
2. Mr C Norman, FRICS

Date of Hearing : 19 September 2017

Date of Decision : 20 September 2017

DECISION

Decisions of the tribunal

1. We determine that the premium payable by the applicant under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") on the grant of a new lease of the subject property is **£14,962**. The reasons for our decision are set out below and a copy of our valuation is annexed to this decision at Appendix 2.
2. We approve the terms of the draft lease included in the hearing bundle as agreed between the parties.

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 1 Frinton Mews, Ilford, IG2 6JB ("the Property") under Chapter II of the 1993 Act. The respondent is the freehold owner of the Property. Her interest was registered at HM Land Registry on 11 January 2005. The applicant's leasehold interest was registered on 12 December 2003.
5. The applicant served notice of a claim to take a new lease of the Property by notice dated 7 November 2016. In that notice the applicant stated that the proposed terms of the new lease should be the same as those contained in the existing lease except for those terms required by virtue of Part 1, Chapter II of the 1993 Act, including a 90 year extension of the lease term at a peppercorn rent. The premium proposed was £12,000.
6. On 13 January 2017, the respondent served a counter-notice admitting the applicant's entitlement but disputing the proposed terms of acquisition. The counter-proposal was a premium of £25,000.
7. The applicant subsequently applied to this tribunal for the determination of the disputed terms.

Lease

The following are particulars of the applicant's leasehold interest:

- (a) Date of lease: 30 July 1983
 - (b) Term of lease: 99 years commencing on 24 June 1982
 - (c) Ground rent: £50 per annum
 - (d) The unexpired term at valuation date of 7 November 2016 (the date of service of the applicant's notice) is therefore 64.62 years.
8. The following matters were agreed between the parties:

- (a) A valuation date of 7 November 2016.
 - (b) An unexpired term at the valuation date of 64.62 years.
9. The following issues were in dispute:
- (a) the capitalisation rate of the ground rent;
 - (b) the deferment rate;
 - (c) the virtual freehold vacant possession value (“FHVP”) of the Property; and
 - (d) relativity

Inspection

- 10. We inspected the Property on 20 September 2017 in the presence of the applicant’s brother, Mr Oliver Doyle. It is a two-bedroom first floor flat situated in a three-storey 1930’s development comprising commercial units at ground level with residential flats above. The front of the Property overlooks a very busy and noisy street. It is located above a nail bar shop and very close to Gants Hill underground station.
- 11. Access to the Property is gained via a service road to the rear of the building where two steep and narrow staircases lead to a flat roof area and to the front door of the subject flat.
- 12. The windows at the rear of the Property are the original single-glazed metal Crittall windows. The windows at the front are double-glazed UPVC windows.
- 13. The Property comprises a small entrance lobby, a double bedroom, a single bedroom, a reception room, a kitchen, and a bathroom/WC. The single bedroom, reception room and kitchen are all small in size. The flooring in the Property is the original, varnished, floorboards apart from in the bathroom where linoleum flooring is present. The Property has the benefit of central heating throughout, provided through a gas combination boiler situated in the kitchen.
- 14. The Property has been maintained to a fair decorative standard and there was no evidence of disrepair aside from some internal cracking to the wall and ceiling next to the entrance lobby. Externally, it is in a good condition.
- 15. Despite the double-glazed windows, traffic noise, emanating from the very busy Cranbrook Road, was audible in both bedrooms. Also noticeable in both bedrooms was a chemical odour that we were informed by Mr Doyle emanated from the Nail Bar immediately below the Property.
- 16. We also carried external viewings of three properties referred to by the respondent’s valuer, Mr Peter Gunby, MRICS, in his valuation report dated 1 March 2017, namely 9a and 18b Beehive Lane and 562 Ley Street. Our comments on these properties are set out below.

The Law

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

The Hearing

22. Mr Doyle attended the hearing on behalf of his sister. Ms McDonnell attended on behalf of the respondent. Neither of the two valuers instructed by the parties attended the hearing.
23. At the start of the hearing we refused Mr Doyle's request for a postponement of the hearing that he had requested, by email, the previous day. The application was made on the basis that he needed more time to consider material that the respondents wished to include in the hearing bundle and because he needed to familiarise himself with the application. He stated that he needed more time to do this than would be usual because he has a specific medical condition. We refused the application because: (a) it was made very late; (b) postponing the hearing would involve disproportionate cost and wasted time for both the tribunal and the landlord; and (c) the material that the landlord wished to include referred to its statutory costs of this application recoverable from the applicant and alleged service charges due from her. These were not issues relevant to this application and Ms McDonnell agreed that we did not need to consider them.
24. One matter raised by Mr Doyle at the hearing was that when his sister acquired the lease for this flat she had a right of access to the Property, granted in the lease, along the rear service road the Property is situated. He said that this right had been interfered with by the landlord, or by the owners of the commercial shops occupying the ground floor units in the building, who had installed a keypad-operated gate at the top of the road. We informed the parties that whether or not this right of access had been interfered with is not a matter relevant to the valuation exercise we had to carry out. This is because, by virtue of Schedule 13, paragraph 3(2)(d) of the Act we have to value the diminution in value of the

landlord's current and future interests on the assumption that a hypothetical vendor is selling with, and subject to, the rights and burdens granted by the existing and intended lease.

The evidence before the Tribunal

- 25.** Mr Doyle relied upon a letter from Mike Stapleton, FRICS to the applicant dated 20 October 2016. This was not an expert valuation report prepared for the purposes of this tribunal. Rather, it was a valuation prepared for the benefit of the applicant, setting out Mr Stapleton's view of the likely premium for a 90-year lease extension under the Act. In his letter, Mr Stapleton also sets out his prospective fees for dealing with the future lease extension, including his costs of preparing a prospective expert witness report.
- 26.** In Mr Stapleton's view, the appropriate ground rent capitalisation rate is 7%, the deferment rate should be 5%, and the virtual freehold interest value of the Property is in the region of £180,000 - £190,000. As to leasehold relativity, he suggested that this was in the region of 88-89%. No details of any comparable sales of similar properties to the subject Property are referred to in Mr Stapleton's letter because, as he records, he was unable to find any helpful evidence of recent sales of flats over lock up shops in the locality.
- 27.** Mr Gunby, in his report, relied on five comparable sales in his valuation report. These are of 9A Beehive Lane, 18B Beehive Lane, 1A Gantshill Crescent, 562 Ley Street and 84 Dellow Close. He does not, however, analyse these comparables in any way or explain how he arrived at a virtual freehold interest value for the Property of £225,000. Nor did he provide any letting agents particulars for these sales and so we were not able to identify the layout and size of the rooms in each property. At the hearing, and on our request, Ms McDonnell contacted her instructing solicitors to ascertain how Mr Gunby had arrived at his figure of £255,000. She informed us that Mr Gunby had confirmed that the figure reflected his expert opinion.
- 28.** In his report, Mr Gunby specifies the sizes of the rooms in the Property and concludes that the total floor area is about 50.4 sqm. However, he has overlooked the bathroom in arriving at that calculation, possibly because he may have based his measurements on a floor plan attached to his report which also omits the bathroom. We did not carry out any measurements when we inspected the Property but in our view the bathroom area was about 5 sqm. In total, therefore, we consider the likely size of the subject Property is about 55 sqm.
- 29.** Mr Gunby suggested a ground rent capitalisation rate of 7%, a deferment rate of 5% and a relativity rate of 88.19% which he arrived at by averaging figures produced by seven graphs of relativity namely the Gerald Eve, Andrew Pridell, Austin Gray, Beckett & Kay, Moss Kaye, Nesbit & Co and South East Leasehold graphs. His proposed premium was £18,445.
- 30.** Neither party contended that the effect of any improvements carried out by the lessee should be disregarded when assessing value and the tribunal did not note any during its inspection.

Decision and Valuation

31. An assessment of the virtual freehold interest value as at the valuation date is required in order to value the respondent's reversionary interest and the value of the long leasehold interest in the Property once extended.
32. The starting point in this assessment, in our view, has to be evidence of sales of comparable properties. None were identified by Mr Stapleton. Mr Gunby identified five. We do not, however, consider the sale of 1A Gantshill Crescent for £200,000 on 20 September 2016 to be a useful comparable as it is a ground floor maisonette and not located above commercial premises, which we consider to be an important feature of the subject Property.
33. Nor do we consider the sale of 9A Beehive Lane for £199,000 on 14 April 2016 to be a helpful comparable as although it is located above commercial premises it is a much larger flat than the subject Property at 76 sqm and comprising three bedrooms.
34. As for the sale of 84 Dellow Close for £250,000 on 21 October 2016, this is a 2-bedroom ground floor flat in a purpose-built block and, again, we do not see this as a useful comparable sale.
35. Turning to the sale of 562 Ley Street for £255,000 on 2 November 2016, this is a sale very close to the valuation date of a flat located above commercial premises. However, the flat has the benefit of direct access from street level as opposed to the narrow external staircases and walkway that the applicant has to navigate to obtain access to the Property. In addition, 562 Ley Street is a maisonette and is located in a much more modern development of significantly different design and construction. For these reasons, we attach limited weight to its usefulness as a comparable.
36. In our view, the best comparable sale identified by Mr Gunby was that of 18B Beehive Lane for £170,000 on 31 March 2016. At 55 sqm it is of a similar size to the subject Property and it is also a 2-bedroom flat located above commercial premises, in this case, a hairdresser.
37. Mr Gunby has not, however, made any adjustments for market movement during the time that has elapsed between the sale dates for these five properties and the valuation date. Doing the best that we can on the limited evidence available, our expert opinion is that the extended lease value of the Property as at the valuation date is **£190,000**. In reaching that figure we have had regard to the seven months that elapsed between the sale of 18B Beehive Lane and the valuation date as well as the other comparable evidence produced by Mr Gunby. Support for that assessment is provided by Mr Stapleton's conclusion that the virtual freehold interest value of the Property was in the range of £180,000 - £190,000 which opinion was expressed in in October 2016.
38. As the extended lease will still be less than a freehold, Mr Gunby has made a 1% adjustment when assessing the virtual freehold value. The tribunal accepts this approach as correct and we therefore find that the virtual freehold interest is worth **£191,900**.
39. To determine the value of the unexpired residue of the lease Mr Gunby adjusted the virtual freehold value of the Property by a factor of 88.19%, arrived at by taking

the average of seven graphs of relativity referred to above. We accept that approach as legitimate, given the lack of transactional evidence before us of sales with similar unexpired lease terms. We also consider that in the absence of any evidence to the contrary from the applicant that there is no reason for us to interfere with Mr Gunby's choice of graphs. However, we do not consider that relativity can be expressed as precisely as Mr Gunby suggests and adopt 88%.

40. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the ground rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the Act. Both Mr Gunby and Mr Stapleton capitalise that income stream at 7%, which we accept is appropriate in this case.
41. 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 by that period. The present value of the reversion is determined by applying a deferment rate to the virtual freehold value of £191,900. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli (2006) LRA/50/2005*. Both valuers suggest a deferment rate of 5% which we agree is appropriate.
42. Marriage value is the difference between (on the one hand) the aggregate value of the present interests of the leaseholders, the landlord and the intermediate leaseholder 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 landlord(s) and the tenant, as required by the Act.
43. The premium payable by the Applicants under Schedule 13 of the Act on the grant of a new lease of the Property is therefore **£14,962**.

Lease terms

44. The parties have prepared a draft lease which we are invited to approve. The draft lease provides for the surrender of the existing lease and the grant of a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease in accordance with section 56(1) of the Act. The terms of the new lease are the same as those of the lease (with the addition of statutory rights of termination for redevelopment). We are satisfied that the terms proposed are appropriate for the new lease.

Name: Amran Vance

Date: 24 September 2017

APPENDIX 1 - 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.

APPENDIX 2 – THE TRIBUNAL’S VALUATION

APPENDIX											
IN THE MATTER OF 1 FRINTON MEWS ILFORD ESSEX IG2 6JB											
VALUATION BY THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)											
Date of Valuation							07-Nov-2017				
Lease expiry date							23-Jun-2081				
Unexpired Term /years							64.62				
Virtual Freehold Value of Flat							(determined)		£ 191,900		
Relativity							(determined)		88%		
Value of 64.62 year lease@ 88% of virtual freehold value							(determined)		£ 168,872		
Ground rent capitalisation rate							(determined)		7.00%		
Reversionary deferment Rate							(determined)		5.00%		
Premium Payable							(determined)		£14,962		
Diminution in Value of Freeholder's Interest											
Term 1											
Ground rent							£ 50.00		per annum		
64.62 years @ 7.00 %							14.105		£ 705.25		
Reversion											
value of virtual freehold							£ 191,900				
Present Value of £1 in 64.62 years' time @ 5%							0.0427				
									£ 8,194.13		
Freeholder's present interest									£ 8,899.38		
Less											
Freeholder's Interest							Proposed				

value of virtual freehold		£					
		191,900					
Present Value of £1 in 154.62 years time @ 5%		0.000529				£	
						101.52	
Diminution in Value of Freeholder's Interest						£	
						8,797.86	
Calculation of Marriage Value							
Value of Proposed Interests							
Leaseholder					£		
					190,000.00		
Freehold after lease extension					£		
					101.52		
Total Value of Proposed Interests						£	
						190,101.52	
Value of Present Interests							
Existing lease (£191,900 x 0.88)					£		
					168,872.00		
Freeholder (see above)					£		
					8,899.38		
Total Value of Present Interests						£	
						177,771.38	
Hence Marriage Value, Difference Between Proposed and Present Interests						£	
						12,330.14	
Divide Marriage Value equally between the Parties						£	
						6,165.07	
Premium Payable							£
							14,962.93

