



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

Case Reference : **LON/00BK/OLR/2018/0453**

Property : **Flat 11 Oslo Court, Prince Albert Road, London MW8 7EN**

Applicant : **Ms Yelena Konnova**

Representative : **Mr. Richard Roberts (lay representative)**

Respondent : **Brickfield Properties Ltd.**

Representative : **Wallace LLP & Mr. E Shapiro BSc, FRICS, FCI Arb (valuer)**

Types of Application : **Lease extension**

Tribunal Members : **Judge Tagliavini
Mrs E Flint FRICS**

Date and venue of Hearing : **6 November 2018
10 Alfred Place, London WC12 7LR**

Date of Decision : **25 November 2018**

DECISION

Decision of the tribunal

- I. The premium payable for an extension of the lease for the subject property is £53,380.
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The application

1. This is an application made by the Applicant lessee under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') seeking a 90 year extension at a peppercorn ground rent of the lease dated 2 August 1974 granted for a term of 99 years, with an unexpired term of 56.36 years at a current ground rent of £100 per annum rising from 25 March 2040 to £150 per annum for the remainder of the term.

The premises

2. The premises comprise a Ground Floor 1 bedroom flat in a 1930's Art Deco block of 133 flats on 7 floors most of which are 1 bedroom flats, many of which like the subject property also has the benefit of a balcony.
3. By a Notice of Claim dated 14 August 2017 the Applicant asserted her right to extend the lease for a premium payable of £50,500. In a Counter Notice dated 10 October 2017 the Respondent landlord admitted the right to extend but asserted that a premium of £133,786.00 was payable.

The hearing and evidence

4. At the hearing of the application Mr. Shapiro submitted that Mr. Roberts should be required to speak to his report (undated) and not seek to go outside of that report.
5. Prior to the hearing the parties in a signed Statement of Agreed Facts had agreed the following:
 - (i) the valuation date – 15/08/2017
 - (ii) the GIA of 431 sq. ft (40.06 m²)
 - (iii) the value of the tenant's improvements (£5,000)
 - (iv) the deferment rate – 5%
 - (v) the capitalisation rate – 6.5%
 - (vi) the value of the extended lease is agreed at 99% of the value of the freehold reversion.
6. Therefore, the issues requiring the tribunal's determination were the value of the freehold reversion and the long lease value, the short lease value and the premium payable.

The Applicant's case

5. The Applicant was represented by Mr. Roberts, who accepted he was not a qualified valuer but who had prepared a report which was undated and without a statement of truth. In his oral evidence Mr. Roberts stated he was in agreement with Mr. Shapiro's valuation methods and that his report should be used with some adjustments as his own report was now 'redundant.' Mr. Robert's primary disagreement with Mr. Shapiro's report was that the sale prices or GIAs were not all accurately recorded (Flats 21 £600K not £625K; Flat 78 GIA 462 sq. ft. not 456 sq. ft and Flat 42 463 sq. ft. not 459 sq. ft.). Although these differences were not substantial, they nevertheless made a significant difference to the premium payable.
6. However, the tribunal requested that Mr. Roberts speak to his report and explain how he reached his calculated premium. Mr. Roberts had used for his comparable sales flats entirely within Oslo Court both at around the valuation date and after making adjustments for time, condition, floor level and pre and post Brexit conditions. Mr. Roberts submitted that by applying these factors to the comparable sales a long lease value for the subject flat of £1,217 per sqft. was produced.
6. Mr. Roberts told the tribunal that he had reduced the above figure of £1,217 by £11.60 (reflecting the tenant's improvements of £5,000 on a square footage basis) to provide a full lease market value of £519,527 and a freehold market value of £524,722.
7. In his report Mr. Roberts stated he went on to make an adjustment of 6.77% by relying on three earlier decision of 20C Mountview Road which found 2.5% at 78 years; 3A Valebrook, Iford which made a deduction of 7.5% for an unexpired lease term of 52.6 years and an Upper Tribunal decision which consolidated Cadogan and found the appropriate adjustment increases as the lease gets shorter and made an adjustment of 10% for an unexpired lease term of 44 years; *LRA/128/2007* & *LRA/17/2008*.
8. Mr. Roberts stated in his report he had sought to carry out a cross check of his figures with the Graphs of Relativity from John D Wood; Savills (2015); CEM Report Inner London and Gerald Eve. Mr. Roberts stated that he distinguished the graphs from his approach of using actual sales by relying on the approach approved in previous cases; *Munday*; see *Adrian Howard Mundy v The Trustees of the Sloane Stanley Estate* [2018] EWCA Civ 35. Mr. Roberts told the tribunal that he had adopted a relativity of 85%.
9. Mr. Roberts concluded his report by reaching a calculated premium of £53,500.
10. After the close of the hearing Mr. Roberts sent further evidence to the tribunal in support of the application. However, this evidence was not considered by the tribunal in reaching its decision, as no provision had been made at the hearing for further evidence to be submitted to the tribunal by either party. The tribunal considered that sufficient evidence had been provided by the parties at the hearing from which it could properly determine the application and that to rely on further unsolicited evidence from the Applicant was unnecessary and unfair to the Respondent.

The Respondent's case

10. Mr. Shapiro spoke to his signed report (undated) in which he too had relied on long lease and short lease sales comparables solely within Oslo Court. Mr. Shapiro made adjustments for time, floor, for views and condition reaching a value of £1,212 per sqft. to give an extended lease value of £522,372 which when adjusted by 1% gave a freehold value of £527,648.
11. Mr. Shapiro told the tribunal that the short lease component needs to be adjusted for the “Act World” which he assessed at 7.11% using the Savills’ graph in order to arrive at this figure and a “No Act World” value of £996 per sqft. giving a value of £434,879 and a relativity of 82.42%. However, Mr. Shapiro preferred to adopt a relativity of 80% as being more appropriate thereby arriving at a premium of £67,616.
12. On questioning by the tribunal and by Mr. Roberts, Mr. Shapiro asserted that any differences in his figure of sale prices or GIA with those produced by Mr. Roberts was irrelevant as they were such small difference and refused to make any adjustments although did not seek to assert that his figure were correct and those of Mr. Roberts were wrong. Mr. Shapiro state he had made adjustments for all sales comparables and not distinguished between sales pre and post *Munday*. Mr. Shapiro stated he stood by his report and this should be preferred to that of Mr. Roberts, who in any event seemed to not wish to rely upon it any longer but preferred to make changes to the report of Mr. Shapiro as he accepted the methodology if not all the sales prices or measurements used or the final premium price reached.

The tribunal’s decision and reasons

13. The tribunal finds that the parties do not differ significantly in their approach to the valuation. However, the tribunal accepts Mr. Robert’s argument that the small differences between the parties as to the sale price and GIA do in fact make a significant difference to the valuation calculation. The tribunal finds that Mr. Shapiro did not seek to assert that Mr. Robert’s figures were wrong only that it made little difference to the outcome even if adjustments were made.
14. Although the tribunal found Mr. Robert’s jettison of his report in his oral evidence and reliance on that of Mr. Shapiro, rather unusual the tribunal recognised that Mr. Roberts was neither a qualified valuer or lawyer and treated his evidence with a degree of latitude, recognising that Mr. Roberts had obviously spent a great deal of time and effort in writing his report.
15. The tribunal arrived at the appropriate capital values by correcting the discrepancies in Mr Shapiro's tables. The amendments were: (i) long lease information sale price of Flat 21 reduced to £600,000, giving an adjusted average of £1205 per sqft; (ii) short lease information: floor area of Flat 42 amended to 463 sqft. The tribunal finds that the revised analysis fits better with the analysis of the other comparables, as using the original measurement for the floor area produced a figure outside of the norm. Therefore, adopting the same adjustments as the parties, the tribunal determines that the adjusted average is £1118 per sqft. The tribunal finds that this figure should then be adjusted for Act rights, Mr Shapiro adopted 7.11% and since the tribunal had no other evidence to work with and finds this figure is supported by the Savill’s graph, the tribunal determines that an adjustment of 7.11% should be made for the Act rights. Consequently, the adjusted price of £1038 per sqft. which is nearly

identical to the Applicant's original approach at £1037 per sqft. Therefore, by using this analysis the premium reached by the tribunal is £53,380 as shown on the attached valuation.

Signed: Judge Tagliavini

Dated: 25 November 2018

11 Oslo Court Prince Albert Road London NW8 7EN

Valuation date 15 August 2017

Lease 99 years from 25 December 1974

rent passing £100 pa, increasing to £150 from 25 March 2040 for remainder of term

Capitalisation rate 6.5%

Deferment rate 5%

Landlord's present interest

Ground rent	100		
YP 22.61 years at 6.5%	<u>11.6794</u>	£1,168	

Ground rent	150		
YP 33.75 years at 6.5%	13.54818		
x PV for 22.61 years	<u>0.24084</u>	<u>3.262944</u>	£489

Reversion to freehold	524,548		
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Deferred 56.36 years at 5%	<u>0.06394</u>	<u>£33,540</u>	£35,197
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less proposed interest	524458		
Deferred 146.363 years at 5%	<u>0.00079</u>		<u>414</u>
Diminution in Landlord's interest			£34,783

Marriage Value

Proposed interests			
landlord		£414	
Extended lease	<u>519,355</u>		£519,769

less Present Interests

landlord		£35,197	
Existing lease	<u>£447,378</u>		<u>£482,575</u>

Marriage Value			£37,194
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50% marriage value			<u>£18,597</u>
			<u>£53,380</u>

Premium payable

£53,380