



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

Case Reference : LON/00AS/OLR/2017/1372

Property : 22 Waterside, Uxbridge, Middlesex
UB8 2LG

Applicant : Leigh Hossback

Representative : Mr Hurst MRICS

Respondent : Elmbirch Properties plc

Representative : Mr McKeown MRICS

Type of Application : S.48 Leasehold Reform Housing and
Urban Development Act 1993

Tribunal Members : Mrs F J Silverman Dip Fr LLM
Mr R Shaw FRICS

**Date and venue of
Hearing** : 13 February 2018.
10 Alfred Place, London WC1E 7LR

Date of Decision : 16 March 2018

DECISION

The Tribunal determines that the premium to be paid by the Applicant for an extended lease of the property is £25,106 . The Tribunal's valuation is attached at Appendix A .

Reasons

1. The applicant seeks a determination pursuant to s.48 Leasehold Reform Housing and Urban Development Act 1993.
2. The hearing of this matter took place before a Tribunal sitting in London on 13 February 2018 at which Mr C Hurst represented the Applicant tenant and Mr K McKeown represented the Respondent landlord .
3. On behalf of the Applicant the Tribunal heard evidence from Mr Hurst and for the Respondent evidence was given by Mr McKeown the respective parties' valuers.
4. The sole issue which the Tribunal was asked to determine was relativity. Other criteria had been agreed by the parties' surveyors prior to or at the commencement of the hearing and these were accepted by the Tribunal.
5. The Tribunal considered that it would not be proportionate to inspect the subject property and were not asked by the parties to do so. The Tribunal has seen photographs of the property and understands that it is a top floor flat in a small purpose built block situated on a residential street which forms part of a large estate comprising similar housing. The property itself comprises a living room separated from a small kitchen by an archway and breakfast bar, one bedroom and a bathroom. There is no outside space but the property does have the benefit of an allocated parking area. The building in which the flat is situate is of conventional construction with a tiled pitched roof having been constructed in the 1980's.
- 6 The parties' respective representatives had taken different paths to establishing relativity. Mr Hurst had presented three separate tranches of evidence to support his assertion that the appropriate relativity figure was 91.75%. Mr Hurst said that he was not happy to use graphs as evidence to establish relativity but nevertheless presented the Tribunal with data collated from the South East Leasehold graph, together with data from those of Nesbitt and Co and Andrew Pridell Associates Ltd. The Tribunal preferred not to rely on the graph evidence because market evidence, which it considered was more reliable, was available .
7. Similarly, and for the same reason, the Tribunal declines to rely on Mr Hurst's investor approach which was largely based on professional knowledge unsubstantiated by factual evidence . The Tribunal considers that this type of evidence would be more useful in a situation where the reversion was extremely short and there was little live market evidence to rely on .
8. Mr Hurst's third approach was by way of a very comprehensive analysis of the movement of the property market from 1995 onwards which produced some interesting statistics but regrettably insufficient evidence for the Tribunal to prefer to override the recent sales evidence put forward by Mr McKeown.

9. Mr McKeown presented to the Tribunal a conventional analysis of both short and extended lease flat sales which took place during 2016/2017 on the estate on which the subject property is situated. This evidence is derived from live open market sales which the tribunal considers to be the most realistic evidence of the true market values of similar property close to the valuation date. Mr McKeown concluded that the relevant relativity rate should be 86%. This is the relativity between the long and short lease values. Mr McKeown is incorrect in not taking relativity as between the Freehold and short lease value. Based on Mr McKeown's evidence but increasing the long lease value by the agreed 1% then the relativity is 85%. The Tribunal has noted that the lease sales evidence of 15 Robins Close is subject to a significant ground rent still payable. This has been taken into account is coming to the view of 85% relativity, in the real world.

10. Mr McKeown accepted that his figure of 86% needed to be adjusted to reflect a 'no Act world' and suggested a deduction of 4.3% following an Upper Tribunal decision (20c Mount View Road LRA-108-2008) where a 2.5% deduction was applied with 78 years remaining and another Upper Tribunal decision (Mundy) where 10% was deducted with 40 years remaining. On a straight line basis he calculated the deduction at 4.3% for 68.8 years remaining. After further evidence and questioning he revised this to 3.1% during the hearing. Mr Hurst in evidence referred to a First Tier Tribunal decision in 2016 which related to a similar property in a nearby location to the subject property (128 Ryeland Close : LON/00AS/OLR/2016/0279) which determined a 'no Act world' deduction at 2.5%. The Tribunal however, prefers to follow the guidance of the Upper Tribunal which has consistently used a deduction of 3.1% in similar cases.

11. For the reasons cited above the Tribunal broadly prefers the evidence of Mr McKeown to that of Mr Hurst on this point and finds that the relativity rate to be applied in the present case is 82.4% ($85 - 3.1\% = 82.4$).

12. Applying that figure to the figures previously agreed by the parties the Tribunal calculates that the sum payable by the Applicant in respect the premium on the extended lease is £25,106.

13. The Tribunal's calculation is attached as Appendix A .

The Law

15. 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.

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.

Judge F J Silverman

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As Chairman

.....16 March 2018

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix A

New lease claim	Valuation Date 1 March 2017			
Present lease	99	Years	From	01-Jan-87
Years unexpired		68.84		
Long lease value		£234,160	Freehold	£236,525
Existing lease value		194,897	Relativity	82.40%
Diminution in value of landlord's interest				
Capitalised rents agreed at				£2,826
Reversion				
Flat value (F/H)		£	236,525	
Deferred	68.84 yrs	@5%	0.03478	8,226
				11,052
Less value after grant of new lease				
Term				
New lease at a peppercorn rent				0
Reversion				
Flat value (F/H)		£	236,525	
Deferred	158.84 yrs	@5%	0.000431	-102
				10,950
Diminution in value of landlord's interest				
Marriage value				
Aggregate of values of interests after grant of new lease				
Landlord's interest				102
Tenant's proposed interest		234,160		
				234,262
Less Aggregate of values prior to grant of new lease				
Landlord's interest				11,052
Tenant's interest		194,897		
				205,949
		Marriage value		28,313
		50.00%		14,156
			Premium	25,106