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

Case reference : LON/00BB/OLR/2017/1294

Property : 145B Church Road, Manor Park
London E12 6AF

Applicant : Ivan Christopher Parrott

Representative : Mr K S Lomas FRICS (Surveyor)

Respondent : Lalita Anand

Representative : Mr Kumar -Cheal Asset
Management

Type of application : Section 48 (1) of the Leasehold
Reform, Housing and Urban
Development Act 1993
Tribunal Judge Daley

Tribunal members : Mrs S F Redmond BSc(Econ)
MRICS

**Date of determination
and venue** : 06 February 2018 at
10 Alfred Place, London WC1E 7LR

Date of decision : 07 February 2018

DECISION

Summary of the tribunal's decision

The appropriate premium payable for the new lease is £28,954.00

Background

1. On 8 February 2017 the Applicant served a Section 42 Notice of Claim in respect of the premises known as 145B Church Road, Manor Park, London E12 6AF. The lease of the premises was entered into on 2 March 1984 and was entered into by the parties (who are the subject of this application). The lease was for a period of 99 years commencing from 2 March 1984
2. By his notice dated 8.02.2017 the applicant proposed that A new lease be granted at a peppercorn rent for a term of 155 years from 2 March 1983.
3. The Applicant proposed the payment of a premium in the sum of £18,000 in respect of the grant of the new lease.
4. On 10 April 2017, the Respondent served a counter notice save for the premium to be paid, the Respondent did not dispute the terms set out in the notice. In respect of the premium the Respondent proposed that the sum of £28850.00 be paid in respect of the lease extension for the subject flat.
5. On 27 September 2017, the Applicant applied to the Tribunal for a determination under Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993. Directions for the hearing of this matter were given by the Tribunal on 16 October 2017.

Matters Agreed

6. The parties agreed the following matters:-
 - The period of extension of the lease is 90 years from the valuation date.
 - The valuation date 8.02. 2017
 - That the unexpired terms of the lease was 66.05 years
 - The building in which the flat is situated has one other flat a ground floor flat
 - By virtue of the lease both leases are subject to a full repairing covenant

7. The description of the premises is set out in the report of Mr KS Lomas Surveyor for the Applicant. In his report, he stated that the premises was built, Circa 1890. The subject premises is a first floor flat, situated at the end of a terrace of similarly constructed dwellings. The premises has its own street door, access is gained by an internal flight of stairs leading to the first floor. The premises benefits from a rear shared garden which is accessed by an internal flight of stairs leading to the rear. The property is currently arranged as a three bedroom flat with a living room, kitchen and Bathroom/WC. Currently access to the kitchen is through one of the bedrooms. The flat does not have the benefit of central heating.
8. The leaseholder has carried out work to the premises of installing UPVC windows, and has changed the roof of the building at his own expense.

The Evidence

9. Mr Parrot was represented by Mr Lomas, a chartered surveyor. He had prepared a valuation report for the Tribunal in accordance with the directions. His report was dated 18.01.2017, he conceded to the Tribunal that this was a mistake, and that his report should have in fact been dated 18.01 2018.
10. The landlord was represented by Mr Kumar who was employed as a senior property consultant in the company known as KLPA & Company, this was a family business run by and for the benefit of the Anand family. His report was dated 28 December 2017. Mr Kumar had also prepared a Skeleton Argument which was handed to the Tribunal just before the hearing.
11. The Tribunal heard firstly from Mr Lomas. In his report he set out that he was A Fellow of the Royal Institute of Chartered Surveyors, and that he had qualified in 1975. He had worked as a partner for the firm of *Upsdales*, he was now engaged as a consultant. *Upsdales* was located less than a mile from the subject property. He set out that he understood his duty to the Tribunal and that the facts that he states in the report and opinions were expressed truthfully and reasonably.
12. In respect of the comparable evidence, he stated that he had experienced some difficulties in finding suitable comparable premises as it was unusual to find a purpose built flat of this size as most flats in the area were conversions.
13. He stated that he had prior to selecting his comparables looked for evidence of properties which were no more than a mile from the subject property. He had looked for properties with similar unexpired terms and had also looked for similar size properties which were 2 to 3

bedroom properties The Subject flat was about 75m2 GIA. He had considered the available sales evidence, and then checked the land registry to see the actual sale price. Because of the constraints of what he was looking for, he had relied upon flats which had been registered with the land registry February to October 2016. He had however made an allowance by uplifting the sales price for his final comparator by 10% in accordance with information from the UK house price index.

14. Mr Lomas acknowledged that he had not included details of the actual sales particulars in his Report
15. Mr Lomas provided the following properties as comparators. 873 A Romford Road, 17A Rectory Road, E12 6JB (both three bedroom flats) which was smaller in size, 2 Michigan Avenue E12 5JD and 135A Gainsborough Avenue, Manor Park E12 6JN, both two bedroom flats.
16. In Mr Lomas' opinion flat 873 A Romford Road provided the best comparable evidence, for premises with an extended lease (189 Years). The premises had sold at £310,000. By uplifting this figure by 10% using the UK House Price Index for Newham to take into account the difference in value when this property was sold and the market value on 8.2.2017 Mr Lomas had a valuation figure of £341,000.
17. Mr Lomas had applied a discount of £36,000 which took into account the tenant's improvements of: re-roofing the premises at his own expense and installing UPVC windows. He also considered that a reduction was necessary to reflect the lack of central heating at the subject premises, as in his experience central heating had an elevating effect on the value of premises. This led him to a market valuation of £305,000. He also applied a further discount to reflect the relatively poor condition of the premises in general and without the benefit of the tenant's improvements.
18. This produced a value of £275,000 for the value of the extended lease unimproved.
19. He also adopted the deferment rate of 5% based on the guidance given in *Sportelli* and a capitalisation rate of 7%. In respect of the capitalisation rate, he stated that he had taken this figure as something of an industry standard that he had used in the past. He did not provide any other evidence for this rate.
20. In terms of relativity he was aware of the decision in *Trustees of Sloane Stanley Estate v Mundy*[2016] UKUT 0226 (LC), but given the lack of market evidence for the short lease length he preferred to use the established graphs and he used the Tribunal graph which produced 85.9% for the unexpired term 66 years.

21. Mr Kumar had also prepared a report, he informed the Tribunal that his evidence which also used comparables, was based on market evidence obtained from websites such as Zoopla. The comparables used by him were from between April 2017- to December 2017 and were not based on actual sales but effectively on-line desk top valuations. In his view the value of a three bedroom flat with an extended lease was between, £350,000 to £400,000 although he accepted on questioning from the Tribunal that the value of the premises after the lease extension taking into account his comparable evidence was £325,000.
22. He did not accept that a discount ought to be made for the tenant's improvements, as in his view the improvements that had been made were the responsibility of the tenant as he had a full repairing covenant, similarly any lack of repair was the responsibility of the tenant. In answer to a question from the Tribunal he did not accept that the full repairing covenant in the lease was likely to have an adverse impact on the market value of the premises.
23. In his skeleton argument he accepted the *Sportelli* deferment rate of 5%, however in respect of the capitalisation rate he considered that the appropriate figure was 6%. This was largely due to his assessment of the rates that would be used as a yield for an investment.
24. Mr Kumar spoke at length about the effect of the decision in *Sloane Stanley-v- Munday*. He stated that based on this decision the court had suggested that both the enfranchisable and unenfranchisable graphs provided by Savils should be used and he had come up with a relativity figure based on the average of 83.85%.
25. Mr Kumar's evidence although detailed in terms of comparables and graphs was less structured and was more difficult to follow than the Applicant's, however the Tribunal acknowledge that he is not a qualified surveyor and that in his report, although his conclusions were at times more difficult to follow he had provided the details upon which his assumptions were based.

Tribunal's determination

26. We have considered the comparable evidence put forward and the Tribunal accepts that the appropriate starting point is flat 873 A Romford Road, this is because of its proximity to the subject premises and although it is smaller in size, it is described as being in good condition which is not the case for the subject property. The Tribunal accepted Mr Kumar's argument that the market value ought not to be discounted as a result of the tenant's improvements as the lease is subject to a full repairing covenant.

27. However the Tribunal consider that the covenant in the lease would have an adverse effect on the value as would the lack of central heating and the more dated kitchen and bathroom fittings together with the compromised layout of the flat. Accordingly the Tribunal considers that this requires a discount of 10% producing an extended lease value of £306,900. The uplift of 1% for the freehold is un-contentious and produces a freehold value of £309,969
28. The parties agreed a deferment rate of 5%.
29. The Tribunal having considered the evidence put forward on the capitalisation rate by both Mr Lomas and Mr Kumar consider that neither provided detailed evidence, and on the basis that the Tribunal was not satisfied by either approach, it accordingly to use its own knowledge and experience. It determined that the capitalisation rate should be 6.5%
30. Tribunal has considered **Trustees of Sloane Stanley Estate**, nothing in the decision assist the Tribunal in respect of the relativity rate used by the parties. The decision at paragraphs 162 suggest that where market evidence was available this was the preferred approach, and also acknowledged the inherent limitations of all of the graphs. The Tribunal noted that of the industry graphs used, the upper Tribunal expressed less reservation with the Gerald Eve and the Savils graph.
31. The Tribunal having noted the limitations and the lack of appropriate market evidence. Neither party has satisfied the Tribunal that full consideration has been given to the graphs. Having reviewed them the Tribunal has determined a figure of 85.295% which splits the difference between the parties.
32. Applying these elements to the calculation of the premium and agreeing, as we do, the calculation of the premium as set out on the valuation attached to the report, we determine that the premium payable for the new lease shall be **£ 28,954.**

Name: Judge Daley

Date: 07 February 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

CASE REFERENCE LON/00BB/OLR/2017/1294

**First-tier Tribunal
Property Chamber (Residential Property)**

**Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993**

Appendix

VALUATION FOR PREMIUM FOR A NEW LEASE
Leasehold Reform & Urban Development Act 1993
145B Church Road, Manor Park, LONDON E12 6AF

Facts and matters agreed

Self contained 1st floor purpose built flat: 4 rooms, kitchen, bathroom/WC, no central heating
 Lease 99 years expires 1/3/2083
 Ground rent increases each 33 years: £50; £100; £150 p.a.
 Valuation date 8th February 2017
 Unexpired term 66.05 years
 Deferment rate 5%
 Relativity of Freehold value to long leasehold 99%

Matters determined

Long lease value unimproved	£306,900
Freehold value	£309,969
Relativity	85.295%
Existing lease (unimproved)	£264,388
Capitalisation rate	6.5%
Improvements:	none

Diminution in Value of Freeholder's interest

	£	£	£
Present value of Freeholder's interest			
Ground rent		100	
YP 33 years @ 6.5%		13.4591	1,346
Ground rent		150	
YP 33 years @ 6.5%		13.4591	
deferred 33.05 years @ 6.5%		0.124766	252
Value of term			1,598
Reversion			
Virtual freehold market value unimproved		309,969	
Deferred 66.05 years @ 5%		0.039852	12,353
Freeholder's present interest			15,548
less Value of Reversion after extension		309,969	
deferred 156.05 years @ 5%		0.000494	153
			15,395

Calculation of Marriage Value

Value of proposed interests:			
Landlords'	153		
Tenant's new 156.05 year lease at a peppercorn	<u>306,900</u>	307,053	
Less value of existing interests:			
Landlords'	15,548		
Tenant's existing lease	<u>264,388</u>	279,936	
Marriage Value		27,117	
50% marriage value attributed to landlord		say	<u>13,559</u>

TOTAL PREMIUM PAYABLE £28,954