

2812



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

Case Reference : LON/00AL/OLR/2013/0831

Property : 5 Mottingham Court, Sidcup Road, Eltham,
London SE9 4ER

Applicant : Deborah Ellen Martin

Representative : Parker Arrenberg Solicitors

Respondent : Dean Golding

Representative : ODT Solicitors LLP

Type of Application : Enfranchisement

Tribunal Members : Mr Robert Latham
Mrs Evelyn Flint FRICS

**Date and venue of
Hearing** : 9 October 2013
10 Alfred Place, London WC1E 7LR

**Appearance for
Applicant** : Peter Morgan FRICS MCI Arb

**Appearance for
Respondent** : Mr John Thompson BSc (Hons) MRICS

Date of Decision : 25 November 2013

DECISION

The Tribunal determines that premium payable by the Applicant in respect of the extension of their lease at 5 Mottingham Court is £67,507. Our calculation is set out in the Appendix.

Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993, as amended ("the Act") for a determination of the premium to be paid for a new lease.

Background

2. The relevant background facts are as follows:
 - (i) The flat: 5 Mottingham Court, Sidcup Road, Eltham, London SE9 4ER.
 - (ii) Date of Tenant's Notice: 14 January 2013.
 - (iii) Valuation Date: 14 January 2013.
 - (iv) Date of Application to the Tribunal: 21 June 2013
 - (v) Tenant's leasehold interest:
 - Date of Lease:
 - Term of Lease: 50 years from 5 January 1983
 - Ground Rent: £50 pa fixed for the term of the lease.
 - Unexpired Term at Valuation Date: 20 years and 9 days (20.02 years)
 - (vi) Freeholder: Dean Golding
 - (vii) Tenant's Proposed Premium: £51,122.
 - (viii) Landlord's Proposed Premium: £83,250.

The Hearing and Our Inspection

3. The hearing of this application took place on 9 October 2013. Mr Morgan, a chartered surveyor, appeared on behalf of Applicant tenant. He adduced evidence from Nigel Watson, a Chartered Surveyor. Mr Morgan relied on three comparables at Fajr House, 126 Eltham Road, 169 Kingsground and 228 Eltham Palace Road. His report does not address any of the recent sales of the refurbished flats at Mottingham Court. The reason for this is that he inspected in August 2012 whilst the refurbishment was still

underway and before the first flats had been marketed. It is a matter of regret that he did not update his report to address these sales.

4. Mr Thomson, a chartered surveyor, appeared on behalf of the Respondent landlord. He adduced evidence from Andrew Lally, the Respondent's project manager. Mr Thomson relied on five of the refurbished flats which had been sold between January and May 2013 as his comparables. Flats 16 and 18 were both sold on 31 January 2013 (date of exchange of contracts) and are on the first and second floors. This date is very close to the relevant valuation date, namely 14 January 2013. The other flats were No.1 (£205,000 – 24 May 2013); No.5 (£210,000 – 24 May 2013); and No.12 (£210,000 – 15 May 2013). -
5. On 1 May 2013, the Tribunal gave Directions. The parties are agreed that there are three issues for the Tribunal to determine:
 - (i) The Unimproved Vacant Possession Value of the subject flat;
 - (ii) The Deferment Rate; and
 - (iii) The Relativity Value.
6. After the hearing, we inspected the block at Mottingham Court. Mr Colin Denwood, the Respondent's main contractor, provided us with access to the subject flat, now renumbered Flat 7, and Flat 10 which is on the first floor. Mr Lally was also present.
7. We then inspected externally the three comparables upon which the Applicant relies at Fajr House, 126 Eltham Road, SE9 5LS; 169 Kingsground, SE9 5HD and Eltham Palace Road. The property to which Mr Morgan refers is not at SE9 5LU as he suggests in his report. The sale particulars rather seem to relate to 228 Eltham Palace Road, SE9 5LZ.

Background

8. Mottingham Court initially consisted of 12 flats. The block fronts the A20. It is located within a sloping plot comprising grassed areas and open car parking, overlooking the station building and car park to the rear. We were told that it was originally owned by the Crown Estate Commissioners. It was subsequently sold into private ownership. The building has been repaired, including underpinning, the existing flats have been remodelled, an additional floor has been built, the garden landscaped with a car parking area. The front garden is bounded by a wall and fencing with secure gated access to both the garden and driveway to the side of the block.

9. The Applicant derives her title in Flat 5 from a lease dated 6 April 1983 granted by Frank Green to David Collier and Jacqueline Martin. The Applicant acquired her leasehold interest on 8 August 1986. She has let out her flat.
10. Our inspection confirmed that the lay-out of the individual rooms, which has not changed since the leasehold interest was granted, bears little resemblance to the plan annexed to the lease (at p.38 of the Bundle). It is more accurately reflected in the lay-out plans for the other flats. It has two bedrooms, but just one bathroom.
11. There has been an unfortunate history to this block. It was permitted to fall into a state of substantial dilapidation and was squatted. The Respondent was able to acquire possession of a majority of the flats and has now added an additional floor with 6 flats.
12. Mr Morgan first inspected the block in August 2012, prior to the Applicant submitting her Notice of Claim on 14 January 2013. At the time of his inspection, the block was being refurbished. His photographs were taken at this time. These photographs do not represent the state of the block on 14 January 2013.
13. The Applicant contends that her flat was uninhabitable for a period of some two years because of a leak from the flat above. We are told that there is an outstanding claim. As part of a settlement, the Respondent started to refurbish the Applicant's flat. However, works ceased when the parties fell into dispute. This Tribunal is not concerned with this dispute.
14. We must determine the value of the flat at the relevant valuation date. By this date, the refurbishment works had been largely completed. Two of the refurbished flats, Nos. 16 and 18, were sold on 31 January 2013 for £200k. Mr Thompson relied on five flats sold between January and May 2013 as his comparables. Further flats have been sold subsequently.
15. We must value the subject property in its unimproved condition as at January 1983. The sale prices recently achieved for other flats in the block reflect their refurbished condition. The common parts of the block are now quite different from those in 1983.

Issue 1 – The Unimproved Vacant Possession Value

16. Mr Morgan, on behalf of the Applicant, argues for an unimproved vacant possession value of £135k based on his comparables Fajr House, 126 Eltham Road, SE9 5LS; 169 Kings Ground Road SE9 5HD; and Eltham Palace Road. These were sold in 2012 before the tenant applied to exercise her right to extend her lease. Eltham Palace Road was offered for sale but then withdrawn.

17. Mr Thompson, on behalf of the Respondent, argues for an unimproved vacant possession value of £180k based on the price obtained in respect of 5 converted units at Mottingham Court sold between January and May 2013. He makes a deduction of £20k in respect of the cost of refurbishing the subject flat.
18. Our inspection confirmed our preliminary view that the refurbished flats at Mottingham Court are the best comparables. The subject property (now renumbered 7) was vacant. The Respondent had started to replaster the flat on behalf of the Applicant, before leaving site. It has two bedrooms and one bathroom.
19. We also inspected Flat 10 which is on the first floor overlooking the rear garden and car parking area and facing the station. The living room and kitchen are open plan with doors to a balcony, the kitchen is fully fitted with an integrated oven and hob with hood over, dishwasher and fridge. There are two bathrooms. An en-suite bathroom has been installed in the larger bedroom. Floor coverings were provided throughout.
20. Mottingham Court fronts onto Sidcup Road, the A20. The flats at the rear of the building are quieter and more desirable than those at the front. The rear of the block overlooks Mottingham Station, trains reaching London Bridge in 15 minutes. We are satisfied that this is an important amenity. It would make flats extremely attractive to young professionals and put the property at the upper end of the buy-to-let market.
21. The three comparables upon which Mr Morgan relies are properties of a completely different character and location. Whilst they would be attractive to a buy-to-let landlord, the lettings would be at the lower end of the market.

(i) Fajr House, 126 Eltham Road is a flat in a block of 10 flats constructed in the 1970s. It is opposite Sutcliffe Park. Our view was that the block is less desirable than Mottingham Close.

(ii) 169 Kingsground is on a bus route but is more than half a mile from Eltham Station. Whilst there is a field to the rear, we considered that the property was considerably less desirable than the subject property.

(iii) The postcode for 228 Eltham Palace Road is SE9 5LZ, rather than SE9 5LU, as stated by Mr Morgan. The post code suggested by Mr Morgan is at the more desirable end of Eltham Palace Road where the properties look out onto a sports ground. 228 Eltham Palace Road is rather at the opposite end of Eltham Palace Road and is close to Kingsground. The property seemed run down. Whilst the property was advertised at £149,995, it was withdrawn from the market. The property is close to a bus stop.

22. The Tribunal is satisfied that the most relevant comparables are the refurbished flats at Mottingham Court which have been sold during the course of this year. We must therefore consider what deduction should be made for the unimproved condition of the subject flat.
23. Mr Morgan contended for a deduction of £50k. Mr Thompson rather contended for a deduction of £20k. This was the sum that the Respondent would have incurred had he carried out the works, as he offered to do. However, we note that the Applicant was to pay £4.4k for a boiler and kitchen units.
24. We are satisfied that the tenant's figure is too high, whilst the landlord's is too low. A prospective purchaser would not merely have factored in the cost of the works. He would also have had regard to the loss of rental income, expected some element of profit on the works and would have sought to avoid the hassle involved in improving a property. Why purchase an unimproved property when an improved property is readily available? The answer is that the purchaser would only opt for the unimproved property if it was in his financial interest to do so. The critical factor would be the profit that he could derive from refurbishing the flat. We therefore determine that the appropriate discount is £40k.
25. The Tribunal determines the unimproved vacant possession value of the subject flat is £160k. We are satisfied that the most relevant comparables are Flats 16 and 18 Mottingham Court both of which were sold on 31 January 2013 for £200k. We make a deduction of £40k in respect of the unimproved condition of the subject flat.

Issue 2 – The Deferment Rate

26. Mr Morgan argues for a deferment rate of 6%; whilst Mr Thompson argues for one of 5%.
27. Mr Thompson conceded that we were entitled to depart from the *Sportelli* rate of 5% if we are satisfied that there are cogent reasons justifying the departure (see *Zuckerman v Calthorpe Estates Trustees* [2009] UKUT 235 (LC); [2011] L&TR 12. The issue is whether the Applicant has established sufficient grounds.
28. The evidence which Mr Morgan has adduced relating to the comparison of increases in prices between Prime Central London and Greenwich is convincing. This is set out in Appendix PM2 to his report.
29. We have also had regard to the unfortunate history to the subject flat and its location on sloping ground. Very significant works have been required to the building at Mottingham Court. We cannot rule out the possibility that significant repairs may be required to the building in the future which may prove to be uneconomic. The value of these flats is far below that of similar sized properties in Prime Central London, where the property in the *Sportelli* decision was based. The cost of repairs may be a little less in

suburban London but nevertheless the economic justification for continuing to repair this building towards the end of the extended lease is unlikely to be as strong as in Prime Central London.

30. However, we are satisfied that the figure of 6% for which Mr Morgan contends is too high. We therefore adopt a figure of 5.5%

Issue 3 – Relativity Rate

31. Mr Morgan contends for a figure of 55%; whilst Mr Thompson contends for 45%. There are only 20 years remaining on the lease. This therefore gives a wider range as to the appropriate relativity rate.
32. Mr Morgan relies on the Beckett and Kay presentation of RICS data (at Appendix PM4 to his report. This has a range of five indices from 44% (Savills 1992) to 58% (Savills (“enfranchiseable”)). He prefers the CEM Report for the Rest of England and Wales (as opposed to that for Inner London which gives a figure of 50%) which shows a figure of 55%.
33. Mr Morgan seeks to support this by computing what amount of money a purchaser would have to put to one side to accumulator a compound rate of interest of 5% as to build up the total freehold value after 20 years. He computes this to be 62%.
34. Mr Thomson referred to a range of graphs from the RICS website (at Appendix JMT2 to his report). He stated that he had high regard for the data from Beckett and Kay. He relies most often on the Andrew Pridell graph. Their first table, giving a figure of 37.5% for Greater London and England, is mortgage dependent, and therefore not directly relevant. Their second table gives a figure of 43.4%. This is the figure which we find the more helpful. Finally, Andrew Pridell Associates give a figure of 52%.
35. Applying our expert knowledge as a Specialist Tribunal, we have decided to adopt a figure of 50%. The find the following evidence the most helpful:
- (i) The CEM Reports adduced by the Applicant which suggest a range to 50% (for inner London) and 55% for the rest of England and Wales); and
 - (ii) The Beckett and Kay figure of 43.4% upon which the Respondent relies. The data provided by Andrew Pridell and Associates suggests a figure somewhat higher than this (52%).

Other Issues

36. We are told that the parties are still negotiating the terms of the extended lease. Currently, the Applicant’s contribution to the service charge account is 1/12. This was based on the original configuration of the building which consisted of 12 flats. There are now 18 flats. All are two bedroom units, albeit that the new flats of the top floor may be more valuable, being more spacious. We indicated our view that a 1/12

contribution of the total cost of works to the block could not be justified and that a 1/18 contribution would be more equitable. We make this observation in the hope that the parties can resolve this issue without making a formal application to vary the terms of the lease.

Conclusions

37. We have determined (i) the unimproved vacant possession value of the subject flat to be £160k; (ii) the deferment rate to be 5.5%; and (iii) the relativity rate to be 50%. In these circumstances, we determine that the premium payable by the Applicant in respect of the extension of her lease at 5 Mottingham Court is £67,507. Our calculation is set out in the Appendix.

Robert Latham

Tribunal Judge

25 November 2013



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1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993, as amended (“the Act”) for a determination of the premium to be paid for a new lease.

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24. We are satisfied that the tenant's figure is too high, whilst the landlord's is too low. A prospective purchaser would not merely have factored in the cost of the works. He would also have had regard to the loss of rental income, expected some element of profit on the works and would have sought to avoid the hassle involved in improving a property. Why purchase an unimproved property when an improved property is readily available? The answer is that the purchaser would only opt for the unimproved property if it was in his financial interest to do so. The critical factor would be the profit that he could derive from refurbishing the flat. We therefore determine that the appropriate discount is £40k.
25. The Tribunal determines the unimproved vacant possession value of the subject flat is £160k. We are satisfied that the most relevant comparables are Flats 16 and 18 Mottingham Court both of which were sold on 31 January 2013 for £200k. We make a deduction of £40k in respect of the unimproved condition of the subject flat.

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26. Mr Morgan argues for a deferment rate of 6%; whilst Mr Thompson argues for one of 5%.
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29. We have also had regard to the unfortunate history to the subject flat and its location on sloping ground. Very significant works have been required to the building at Mottingham Court. We cannot rule out the possibility that significant repairs may be required to the building in the future which may prove to be uneconomic. The value of these flats is far below that of similar sized properties in Prime Central London, where the property in the *Sportelli* decision was based. The cost of repairs may be a little less in

suburban London but nevertheless the economic justification for continuing to repair this building towards the end of the extended lease is unlikely to be as strong as in Prime Central London.

30. However, we are satisfied that the figure of 6% for which Mr Morgan contends is too high. We therefore adopt a figure of 5.5%

Issue 3 – Relativity Rate

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35. Applying our expert knowledge as a Specialist Tribunal, we have decided to adopt a figure of 50%. We find the following evidence the most helpful:
- (i) The CEM Reports adduced by the Applicant which suggest a range to 50% (for inner London) and 55% for the rest of England and Wales); and
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contribution of the total cost of works to the block could not be justified and that a 1/18 contribution would be more equitable. We make this observation in the hope that the parties can resolve this issue without making a formal application to vary the terms of the lease.

Conclusions

37. We have determined (i) the unimproved vacant possession value of the subject flat to be £160k; (ii) the deferment rate to be 5.5%; and (iii) the relativity rate to be 50%. In these circumstances, we determine that the premium payable by the Applicant in respect of the extension of her lease at 5 Mottingham Court is £67,507. Our calculation is set out in the Appendix.

Robert Latham

Tribunal Judge

25 November 2013

Valuation of 5 Mottingham Court Sidcup Road London SE9 4ER

Appendix

Date of valuation	14-Jan-13
Agreed yield for term	7.0%
Appropriate yield for reversion	5.5%
Expiry of lease	4-Jan-33
Term unexpired at date of valuation	19.97
Multiplier for 19.97years (YP single rate)	10.5865
PV in 19.97 years	0.3433
Value of extended lease	£160,000
Relativity approx	50.0%

Calculation

Ground rent	£50		
YP 19.97	<u>10.587</u>		
		£529	
Value of term			£529
Freehold Reversions		£160,000	
PV in 19.97 years		<u>0.34330</u>	
Value of reversion			<u>£54,928</u>
Landlord's current interest			£55,457
Landlord's proposed interest			
Reversion to freehold	£160,000		
PV in 109.97 years	<u>0.002773</u>		
		£444	£444
Diminution in freeholder's interest			£55,014
Marriage Value			
Freeholder's proposed interest		£444	
Value of extended lease	£160,000	£160,444	
less			
existing freehold value	£55,457		
existing lease values	£80,000	£135,457	
Marriage Value			<u>£24,986</u>
Lessor's share			50% £12,493
		Total payable	£67,507