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

Case Reference : **LON/00AM/OLR/2013/0968**

Properties : **137 and 139 Haberdasher Street
London N1 6EH (respectively “137”
and “139”)**

Applicants : **Mr C Abrahamsen (137); and
Mr D Heckner (139)**

Representative : **Solicitors SLC
Valuer Mr W Dunsin**

Respondent : **Mr P Feldman**

Representative : **Solicitors Carpenters Rose
Valuer Mr T Jackman**

Type of Application : **For the determination of the
premium on a lease renewal under
section 48(1) Leasehold Reform,
Housing and Urban Development
Act 1993 (the “Act”)**

Tribunal Members : **Judge J Pittaway
Mr P Casey**

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

Date of Decision : **17 December 2013**

DECISION

Decisions of the Tribunal

1. The Premium

The Tribunal **determines** in accordance with section 48 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 that the **premium for the extended lease for each Property is £12,350.00.**

A copy of the Tribunal's calculation of the premium is attached as Appendix 2.

2. Costs

The Application to determine the Respondent's reasonable costs under section 60(1) of the Act was not before the Tribunal and should therefore be dealt with as a stand-alone application.

Background

1. This is an application to the Tribunal by the Applicants for a lease extensions of the leases of 137 and 139 Haberdasher Street London N1 6EH respectively. The Notices of Claim to Exercise this Right are dated 24 January 2013 and 31 January 2013, and admitted by the Respondent by way of Counter Notices both dated 9 April 2013. The Applicants applied to the Tribunal on 16 July 2013 for the determination of the premium payable for a 90 year lease extension of each lease.
2. The Tribunal issued Directions on 9 August 2013 for 137 and 14 August 2013 for 139.
3. The Applications were heard on 3 December 2013. Mr Dunsin represented the Applicants and Mr Jackman represented the Respondent.

Matters in Dispute

1. By the date of the Hearing the issues that remained in dispute were
 - a. Relativity; and
 - b. Unimproved freehold vacant possession value.
2. During the Hearing Mr Jackman agreed that he was prepared to accept a modernised condition freehold value could be the average of the £/square foot of Mr Dunsin's comparables.

Evidence

1. The Tribunal had before it a Bundle containing the valuation reports and valuations of both surveyors.

2. Insofar as relativity is concerned Mr Dunsin had adopted the average of the relativities of five non Prime Central London graphs submitting that it was appropriate to adopt these as they had been adopted in previous Tribunal decisions. He did however accept that such previous decisions were not evidence for the purposes of the present Tribunal and that the graphs used themselves had peculiarities that impacted on their usefulness.

Mr Jackman considered that the graphs were only a “microcosm” of deals that had been done, submitting that settlement evidence in Haberdasher Street pointed to relativity in the region of 93% rather than the 93.76% adopted by Mr Dunsin.

Neither surveyor felt able to accept the invitation made by the Tribunal, given how close their respective relativities were to adopt a relativity of 93.4%.

3. At the Hearing Mr Dunsin accepted that he had not valued the Properties as they now are, but without the extension that had been added to each (and which increased their respective floor areas by 95 square feet each).
4. At the Hearing Mr Jackman explained the difference between his price for 126 Haberdasher Street and that given by Mr Dunsin. Having acted on the lease extension he knew that it had sold with a shorter lease, that had subsequently been extended. He further confirmed, as indicated in his valuation, that Flat 73 Finn House was in an inferior development.
5. Mr Dunsin considered that the value of the improvements to each flat to be worth £65,000,000 per flat. He based this figure on the BCIS Housing Repair Cost Guide, including party wall costs of £15,000 and planning considerations of £5,000 by reason of the flats being locally listed.

Mr Dunsin accepted the proposition put to him by the Tribunal that the cost of improvements was not the same as the increase in value achieved by reason of such improvements.

6. Although not referred to in Mr Jackman’s valuation report, when pressed by the Tribunal to explain how he had reached an unimproved freehold vacant possession value of £275,000 from a modernised condition freehold value in the region of £330,000, Mr Jackman pointed to the value of the roof terrace, the site value of which needed to be taken into account. He considered that of the value of the extension, which both parties accepted added in the region of £70,000 to the value of the flat, the site value must constitute at least 15-20% of that value.

When pressed Mr Dunsin submitted that he considered the site value of the extension to be worth in the region of 10 to 15% of the value of the

additional space, arguing that the need for party wall awards and the local listing of the flats would depress this value.

Inspection

Because the parties were agreed that Mr Dunsin's value per square foot of the modernised condition freehold value could be accepted the Tribunal did not consider an inspection to be necessary, and the parties agreed that no inspection was necessary.

Reasons for the Tribunal's determination

1. In the absence of compelling evidence from either party, and given that the valuers had reached a very close position on relativity, the Tribunal, doing its best with the evidence in front of it considered an appropriate relativity in the circumstances to be 93.4%.
2. Of Mr Dunsin's comparables the Tribunal discounted 151 Haberdasher Court, because the basis for Mr Dunsin's discount of 5% and the average relativity added were relatively unsubstantiated. They also discounted 126 Haberdasher Street as it appeared that the value set out by Mr Dunsin was not for the extended lease. The Tribunal then adopted an average value per square foot of Mr Dunsin's remaining five comparables.
3. The Tribunal then deducted the value of the extension, adding back a site value of 20% of the value deducted. They considered that Mr Dunstin's value of improvements involved an element of double counting, in that the site value should contemplate the necessity for party wall and planning costs, and further that it included an element of repair that would be an obligation on the tenant under the lease.

The Law

The relevant statutory provisions are set out in Appendix 1 to this decision.

Name: J Pittaway

Date: 17 December 2013

APPENDIX 1

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

s 48 Applications where terms in dispute or failure to enter into new lease.

- (1) Where the landlord has given the tenant—
- (a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or
- (b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

(7) In this Chapter “the terms of acquisition”, in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

s 56 Obligation to grant new lease.

(1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept—

- (a) in substitution for the existing lease, and
- (b) on payment of the premium payable under Schedule 13 in respect of the grant,

a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

S 60 Costs incurred in connection with new lease to be paid by tenant.

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (a) any investigation reasonably undertaken of the tenant’s right to a new lease;
- (b) any valuation of the tenant’s flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;
- (c) the grant of a new lease under that section;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

SCHEDULE 13 PART II PREMIUM PAYABLE IN RESPECT OF GRANT OF NEW LEASE

Premium payable by tenant

2 The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of—

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

Diminution in value of landlord’s interest

- 3(1) The diminution in value of the landlord's interest is the difference between—
- (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
 - (b) the value of his interest in the flat once the new lease is granted.
- 3(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant 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 following assumptions—
- (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
 - (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
 - (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
 - (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.
- 3(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).
- 3(4) It is hereby declared that the fact that sub-paragraph (2) requires assumptions to be made as to the matters specified in paragraphs (a) to (d) of that sub-paragraph does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) might be expected to realise if sold as mentioned in sub-paragraph (2).
- 3(5) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.
- (6) The value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) shall not be increased by reason of—
- (a) any transaction which—
 - (i) is entered into on or after the date of the passing of this Act (otherwise than in pursuance of a contract entered into before that date), and
 - (ii) involves the creation or transfer of an interest superior to (whether or not preceding) any interest held by the tenant; or
 - (b) any alteration on or after that date of the terms on which any such superior interest is held.

Landlord's share of marriage value

- 4(1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent. of that amount.
- 4(2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely—
- (a) the aggregate of—
 - (i) the value of the interest of the tenant under his existing lease,
 - (ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and
 - (iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and
 - (b) the aggregate of—
 - (i) the value of the interest to be held by the tenant under the new lease,
 - (ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and
 - (iii) the values of all intermediate leasehold interests (if any) once that lease is granted.
- 4(2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.
- 4(3) For the purposes of sub-paragraph (2)—

(a) the value of the interest of the tenant under his existing lease shall be determined in accordance with paragraph 4A;

(aa) the value of the interest to be held by the tenant under the new lease shall be determined in accordance with paragraph 4B;

(b) the value of any such interest of the landlord as is mentioned in paragraph (a) or paragraph (b) of sub-paragraph (2) is the amount determined for the purposes of paragraph 3(1)(a) or paragraph 3(1)(b) (as the case may be); and

(c) the value of any intermediate leasehold interest shall be determined in accordance with paragraph 8, and shall be so determined as at the relevant date .

4A(1) Subject to the provisions of this paragraph, the value of the interest of the tenant under the existing lease is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the landlord nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is held by the tenant subject to any interest inferior to the interest of the tenant;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the existing lease of the tenant has effect.

4A(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest of the tenant under his existing lease might be expected to realise if sold as mentioned in that sub-paragraph.

4A(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4A(4) Subject to sub-paragraph (5), the value of the interest of the tenant under his existing lease shall not be increased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4A(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.]

4B(1) Subject to the provisions of this paragraph, the value of the interest to be held by the tenant under the new lease is the amount which at the relevant date that interest (assuming it to have been granted to him at that date) might be expected to realise if sold on the open market by a willing seller (with the owner of any interest superior to the interest of the tenant not buying or seeking to buy) on the following assumptions—

(a) on the assumption that the vendor is selling such interest as is to be held by the tenant under the new lease subject to the inferior interests to which the tenant's existing lease is subject at the relevant date ;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that there is to be disregarded any increase in the value of the flat which would fall to be disregarded under paragraph (c) of sub-paragraph (1) of paragraph 4A in valuing in accordance with that sub-paragraph the interest of the tenant under his existing lease; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which any interest inferior to the tenant's existing lease at the relevant date then has effect.

4B(2) It is hereby declared that the fact that sub-paragraph (1) requires assumptions to be made in relation to particular matters does not preclude the making of assumptions as to other matters where those assumptions are appropriate for determining the amount which at the relevant date the interest to be held by the tenant under the new lease might be expected to realise if sold as mentioned in that sub-paragraph.

4B(3) In determining any such amount there shall be made such deduction (if any) in respect of any defect in title as on a sale of that interest on the open market might be expected to be allowed between a willing seller and a willing buyer.

4B(4) Subject to sub-paragraph (5), the value of the interest to be held by the tenant under the new lease shall not be decreased by reason of—

(a) any transaction which—

(i) is entered into after 19th January 1996, and

(ii) involves the creation or transfer of an interest inferior to the tenant's existing lease; or

(b) any alteration after that date of the terms on which any such inferior interest is held.

4B(5) Sub-paragraph (4) shall not apply to any transaction which falls within paragraph (a) of that sub-paragraph if—

(a) the transaction is entered into in pursuance of a contract entered into on or before the date mentioned in that paragraph; and

(b) the amount of the premium payable by the tenant in respect of the grant of the new lease was determined on or before that date either by agreement or by a leasehold valuation tribunal under this Chapter.

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.5(2) This paragraph applies to—

(a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

5(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that it is referable as mentioned in that paragraph.

5(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).

APPENDIX 2

FIRST TIER TRIBUNAL'S VALUATION IN ACCORDANCE WITH THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 AS AMENDED

CASE REFERENCE LON/OOAH/OCE/2013/0162

Premiums payable for extended leasehold Interests in 137 and 139 Haberdasher Street, N1 6EH

Valuation date: 24 and 30 January 2013

1. Landlord's existing interest

Capitalised ground rent agreed at		£4,327
Reversion to		
Unencumbered virtual freehold value	£240,000	
Deferred for 72.39 years @ 5%	0.02925	£7,020
Total value of landlord's existing interest		£11,347

2. <u>Value of landlord's proposed interest</u>	£240,000	
Deferred 162.39 years @ 5%	0.00036	£86

3. <u>Loss to landlord in granting new lease</u>		£11,261
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4. Marriage value calculation

Landlord's proposed interest	£86	
Tenant's proposed interest	£237,600	£237,686
Less		
Landlord's existing interest	£11,347	
Tenant's existing interest at a relativity of 93.4%	£224,160	£235,507
		£2,179
Landlord's share of marriage value	50%	£1,089

5. Premium payable

For each property £12,350