



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

Case Reference : LON/00AZ/OLR/2018/0178

Property : Ground Floor Flat, 57 St Donatts Road
London SE14 6NU

Applicant : Ms M Baker

Representative : Bude Nathan Iwanier LLP
Mr B Maunder Taylor FRICS MAE

Respondent : Mr E A Gayle

Representative :
Mr W Dunsin FRICS

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

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

**Date and venue of
Hearing** : 5 September 2018.
10 Alfred Place, London WC1E 7LR

Date of Decision : 5 September 2018

DECISION

The Tribunal determines that the premium payable by the Applicant for an extended lease is £24,230.

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 5 September 2018 at which Mr B Maunder Taylor represented the Applicant tenant.
3. The Respondent landlord was represented at the hearing by Mr W Dunsin.
4. The sole issue which the Tribunal was asked to determine was the relativity figure in order to calculate the premium to be paid by the Applicant for a new lease. All other matters had been agreed by the parties' representatives prior to the hearing and these were accepted by the Tribunal.
5. In these circumstances the Tribunal decided that an inspection of the property was not needed. Photographs of the subject property contained within the hearing bundle show it to be a small self contained flat occupying the ground floor of a two storey terraced house probably built around the beginning of the twentieth century. The upper storey of the house comprises a further self contained flat of similar size. Both flats were sold on long leases created in the 1980's.
6. In relation to the subject property the lease was dated 21 September 1988 and at the time of the service of the tenant's notice on 14 July 2017 had 69.94 years unexpired. The valuation date is 14 July 2017.
7. The parties' respective valuers had taken different views as to the method by which relativity should be calculated in this case. Mr Maunder Taylor for the Applicant had relied on established graphs to make his calculations whereas Mr Dunsin for the Respondent had preferred to use as his only comparable evidence, the result of a sale by auction in 2017 of the upper flat in the same building.
8. Although the Tribunal agrees with Mr Dunsin that evidence deduced from recent comparable sales, adjusted as necessary to match the subject property, must in theory form the best evidence of existing lease value, in the circumstances of this particular property it prefers Mr Maunder Taylor's evidence for the following reasons.
9. Firstly, the sale of the upper flat was the only comparable relied on by Mr Dunsin. It is accepted that short lease property sales are not common, therefore comparable examples can be difficult to find, nevertheless the Tribunal does not consider that it is acceptable to base a calculation on the result of one sole sale.
10. Further, that sale was by auction which is not necessarily a true measure of market value. As pointed out by Mr Maunder Taylor and not questioned by Mr Dunsin, most residential properties are not sold by auction and those

which are may not be not truly representative of the market. Mr Dunsin had not inspected the interior of the upper flat until some time after the completion of the auction sale by which time it had undergone a refurbishment. It is therefore not possible to assess the condition of that property as at the date of the auction or whether its condition had an effect on its sale price. It is noted that the auction particulars stated that the flat needed refurbishment. Mr Maunder Taylor had spoken to the purchaser who had told him that he (the purchaser) had needed to repair a hole in the roof and a damaged kitchen ceiling as well as replacing kitchen and bathroom fittings and redecoration. That part of Mr Maunder Taylor's evidence was not challenged by Mr Dunsin.

11. Mr Dunsin had adjusted his figures for time and for the 'no Act world' but had not adjusted for condition as he had not considered it necessary to do so. He relied on the photographs prepared for the auction and mortgage valuer's report which he said showed that the kitchen and bathroom of the property were dated but usable. The Tribunal observed that the photographs referred to were not of good quality and considered that it would be difficult to draw any conclusions as to condition from them.
12. Mr Dunsin relied solely on the evidence of this one sale to produce a relativity figure of 68.08%. He had not contemplated using the graphs at all. Had he done so he would have noticed that a 24% difference between his calculation based on the sale evidence and that obtained from an average of the graphs was abnormally large and required further investigation. He said that the graphs were dated and flawed although he accepted in cross-examination that he had relied on them in other cases.
13. Mr Maunder Taylor accepted that evidence of recent live sales was the best possible evidence on which to base relativity but stressed that the evidence from one sale in isolation provided insufficient data from which a reliable conclusion could be drawn. He had been aware of the auction sale of the upper flat and as mentioned above, had made enquiries of the successful bidder about the flat and its condition from which he had determined that the upper flat had not been in a good condition at the time of the auction. He concluded that its sale price would therefore need to be adjusted to reflect that fact. He also rejected the auction evidence because he stated that it was not a true reflection of the market value of the property but merely a statement of what a purchaser was willing to pay on the day of the sale. In the absence of any reliable market evidence Mr Maunder Taylor relied on the Nesbitt graph as shown on page 106 of the hearing bundle to produce a relativity figure of 90.96%.
14. In the circumstances of this particular case the Tribunal agrees with Mr Maunder Taylor that the use of the graphs was a sensible and acceptable method of calculating relativity. Mr Dunsin accepted that if the Tribunal chose to prefer Mr Maunder Taylor's evidence to his own he agreed with Mr Maunder Taylor's figures. The Tribunal also agrees with Mr Maunder Taylor's figures which when inserted into his calculation on page 175 of the bundle produced a price payable by the Applicant for the extended lease of £24,230.

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

.....5 September 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.