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

Case Reference : LON/00AZ/OLR/2015/0711

Property : 36/37 Taymount Grange, Taymount Rise, London SE23 3UH

Applicant : Sophie Alison Russell

Representative : Mr M Stapleton FRICS

Respondent : Deritend Investments (Birkdale) Limited

Representative : Mr Sharp BSc FRICS instructed by Wallace LLP

Type of Application : For the determination of the premium payable for the grant of a new lease.

Tribunal Members : Ms N Hawkes
Mr C Norman BSc FRICS

Venue of Hearing : 10 Alfred Place, London WC1E 7LR
on 4 August 2015

Date of Decision : 3 September 2015

DECISION

Decision of the Tribunal

The Tribunal determines that the premium payable by the applicant for the grant of a new lease is £36,417.

Background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) for the determination of the premium payable for the grant of a new lease.
2. The property in question is described as a first floor, purpose-built flat in a large, “Art Deco” style building. The living accommodation comprises one bedroom, a kitchen/living room and a bathroom.
3. By a notice dated 15th November 2014 pursuant to section 42 of the 1993 Act, the applicant claimed to exercise the right to acquire a new lease of the property. The landlord has served a counter-notice pursuant to section 45 of the 1993 Act which is dated 20th January 2014.
4. The parties have submitted a joint statement of agreed facts which provides as follows:

Unexpired term	60.345 years
Original term	99 years from 25 th March 1976
Relevant date	18 th November 2014
Determent rate	5%
Ground rent capitalisation	6%
Ground rent	currently £90 per annum rising to £120 in March 2042
Accommodation	Ground floor, 1 bedroom, reception/kitchen, bathroom
Improvements	None
GIA	364 square feet
[Addition for]Notional freehold	1%

5. The only matters remaining in dispute are:
 - a. the extended lease value;
 - b. the existing lease value.
6. The applicant proposes a premium of £15,800 and the respondent proposes a premium of £36,800.

The hearing

7. The applicant was represented by Mr Mike Stapleton FRICS of Mike Stapleton and Company Chartered Surveyors and the respondent was represented by Mr Robin Delworth Sharp BSc FRICS of Morgan Sloane Limited at the hearing.

The evidence

8. The Tribunal has been provided with a copy of an expert report dated 30th July 2015 prepared by Mr Stapleton on behalf of the applicant and with a copy of an expert report dated 31st July 2015 (to which a supplemental page was added on 3rd August 2015) prepared by Mr Sharp on behalf of the respondent.
9. The Tribunal also heard oral opinion evidence from Mr Stapleton and Mr Sharp in their capacity as experts and submissions from Mr Stapleton and Mr Sharp in their capacity as advocates.
10. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
11. Photographs of Taymount Grange were provided in the hearing bundle.

The respondent's application for an adjournment

12. At approximately 2.20 pm on the afternoon of the hearing, Mr Sharp made an oral application for the proceedings to be adjourned in order to enable the respondent to adduce further documentary evidence regarding the sale of 70/71 Taymount Grange (with a view to establishing that the premium paid was for a long lease rather than for a short lease).
13. Mr Stapleton informed the Tribunal that he had asked to see any such documentary evidence prior to the hearing. Mr Sharp explained that the documents had not been provided when requested by Mr Stapleton because the person who ordinarily responds to such requests was on holiday. He had no instructions as to why another person could not have provided him with the documents in advance of the hearing and the documents in question were not available at the hearing itself.
14. Mr Stapleton gave evidence that the potential financial significance of the issue to which the proposed evidence relates is in the region of £6,000. He estimated that the cost of his attendance at the proposed adjourned hearing would be in the region of £2,200 and stated that his client may also incur the costs of additional reading time and of a supplemental report should the matter be adjourned. He argued that his client would be prejudiced by the proposed adjournment.

15. The Tribunal found that, having regard to the overriding objective under rule 3 of the Tribunal Rules, it would not be proportionate to adjourn the application in order to enable the respondent to adduce additional documentary evidence and that it was, in all the circumstances of these proceedings, too late for such additional evidence to be adduced.
16. The factors which were taken into account by the Tribunal in reaching this conclusion included the potential cost to the parties and to the Tribunal of adjourning the application; the probable value and significance the issue in question; the fact that the applicant's representative had requested sight of the evidence before the hearing; the late stage at which the application was made; and the fact that the Tribunal was not satisfied that there was any good reason for the respondent's failure to provide the evidence in question in advance of the hearing.
17. In reaching its conclusion the Tribunal made no criticism of Mr Sharp. The Tribunal is satisfied that Mr Sharp asked his client to provide the relevant documents well in advance of the hearing.
18. Notwithstanding the Tribunal's decision on this issue, the respondent attempted to submit further documentary evidence following the hearing. The applicant argues that, having declined the respondent's application at the hearing, it would be wrong for the Tribunal to consider any further evidence after the hearing, not least without giving the applicant the opportunity to respond.
19. The Tribunal's decision that the proposed late evidence will not be admitted stands. Accordingly, the Tribunal has not considered the further documentary evidence which the respondent has sought to adduce following the conclusion of the hearing.
20. Further, for the reasons set out below, the Tribunal has not found the evidence relating to the sale of 70/71 Taymount Grange to be of assistance, in any event.

The law

21. Schedule 13 to the 1993 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 to the landlord.
22. 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. The value of the landlord's interest 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) applying the assumptions and requirements set out in clause 3 of Schedule 13 to the 1993 Act.

23. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50% (but that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil).

The Tribunal's determination

General observations

24. The Tribunal is of the view that the purchasers of properties in the relevant market do not make offers based primarily on the price per square foot, by contrast with the position in prime central London. The Tribunal considers that such purchasers generally place greater weight on the number of bedrooms; on the general amenities and facilities; and on any improvements (no improvements are claimed in the present case).
25. The Tribunal also considers that the valuation in this case cannot be approached in a purely arithmetical manner and that it requires the exercise of a valuer's judgment.
26. The Tribunal does not accept Mr Sharp's evidence that it is appropriate to place reliance upon the dates on which prices were said to have been agreed because all offers to buy property are subject to contract and there is no evidence before the Tribunal demonstrating when the exchange of contracts took place.
27. Accordingly, the Tribunal has relied upon the completion dates which are evidenced by the Land Registry and which have also been relied upon by Mr Stapleton.
28. The Tribunal agrees that the Land Registry indexation approach, which both parties have followed, is appropriate.

The extended lease value

29. The Tribunal finds that the most relevant evidence of comparable sales is that relating to 76 Taymount Grange, 96 Taymount Grange and 92/3 Taymount Grange.
30. The Tribunal has not placed weight upon the evidence relating to the sale of 70/71 Taymount Grange because that flat is significantly smaller

than the subject property and the sales details to not demonstrate adequate exposure to the market. Accordingly, the Tribunal did not find this sales evidence to be of assistance.

31. The sale of 74/75 Taymount Grange took place approximately four months after the valuation date. The Tribunal has not placed weight upon the sales evidence relating to the sale of 74/75 Taymount Grange because materially post valuation date evidence is to be used only in the absence of better evidence.
32. The Tribunal broadly accepts Mr Sharp's evidence as to the extended lease value (subject to its observations above regarding its reliance upon the completion dates). However, the Tribunal considers that there should be a £5,000 reduction to better reflect the fact that the subject property is situated on the ground floor and is therefore less valuable than an upper floor flat.
33. Accordingly, the Tribunal determines that the extended lease value is £242,500 and that the notional freehold value is £247,500, the parties having agreed that 1% must be added. The Tribunal considers itself to be bound by the agreed 1% adjustment to arrive at the notional freehold value.

The existing lease value

34. There was an issue in dispute between the parties regarding the value, if any, of the rights under the 1993 Act.
35. The applicant argued, in reliance upon Mr Sharp's expert evidence, that the benefits to tenants conferred by the 1993 Act include the receipt of 50% of the marriage value where applicable; the potential recourse to Tribunal; the fact that a tenant can choose when to serve a section 42 notice; the ability of a tenant to compel a lease extension after two years; the fixed valuation date; and the ability of the tenant to withdraw their claim, subject to paying the relevant costs.
36. Mr Sharp gave evidence that he has had experience in practice both before and after the 1993 Act came into force. He stated that, in his opinion, the value of the 1993 Act rights is "circa 10%". He also gave evidence that, before the 1993 Act came into force, some landlords would simply refuse to grant a lease extension.
37. The respondent argued, in reliance upon Mr Stapleton's expert evidence, that the 1993 legislation has been in force for so long that it is now impossible to estimate a purchase price in the absence of 1993 Act rights.
38. Mr Stapleton gave evidence that only a small number of landlords refused to grant lease extensions before the 1993 Act came into force and he stated that the fact that all aspects of a lease extension were then

open to negotiation conferred a potential advantage upon tenants. He also considered that judicial decisions resulting from the legislation, especially Earl Cadogan v Sportelli [2008] UKHL 71, were favourable to landlords.

39. The Tribunal prefers the evidence of Mr Sharp and finds that it is appropriate to make a 10% deduction in respect of the 1993 Act rights. Accordingly, the Tribunal is in a position to rely upon the evidence relating to recent sales of short leasehold interests in the open market, the values of which can then be adjusted downwards by 10% to provide unextended lease values which accord with the statutory assumption.
40. The Tribunal has not placed weight upon the sales evidence relating to 68 Taymount Grange because the sale took place materially after the valuation date and this flat is significantly larger than the subject property.
41. The Tribunal considers that the evidence relating to the sale of 94 /95 Taymount Grange provides by far the best evidence of the existing lease value. 94/95 Taymount Grange is almost identical to the subject property; the unexpired term is the same; and the tenant of 94/95 Taymount Grange was represented. Flat 94/95 was purchased for £214,950 on 8 December 2014, very close to the valuation date of 18 November 2014. However, this flat is located on the top floor of the block which will make it slightly more valuable than the subject property and the Tribunal has adjusted the figure of £214,950 down to £210,000 in order to reflect this difference.
42. The Tribunal has then made a 10% deduction in respect of the 1993 Act rights giving an existing lease value of £189,000
43. The Tribunal has had regard to the Lands Tribunal's guidance in Nailrile Limited v Earl Cadogan [2009] 2 EGLR 151 (following Arrowdell Ltd v Coniston Court (North) Hove Ltd [2007] RVR 39) "Relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity" (see paragraphs 228 and 229 of the judgment).
44. Accordingly, the Tribunal has not placed any weight upon the previous Tribunal decisions to which it has been referred. Further, in the circumstances of this case, the Tribunal does not place reliance upon the Beckett and Kay graph or the John D Wood graph upon which Mr Sharp relies. The Tribunal notes that the Beckett and Kay graph is based upon opinion evidence and that the John D Wood graph is based on previous Tribunal decisions.
45. In the circumstances of this case, the Tribunal finds that the short leasehold transaction evidence provides sufficient evidence of unextended lease value.

Conclusion

46. The adjusted calculation has resulted in premium of £36,417. A copy of the Tribunal's valuation is attached to this decision.

Judge N Hawkes

3rd September 2015

36-37 Taymount Rise SE23 2
VALUATION BY THE FIRST-TIER TRIBUNAL 3 September 2015

Date of Valuation	(agreed)	18-Nov-2014
Leases expiry Date	(agreed)	24-Mar-1975
Unexpired Term	(agreed)	60.345
Virtual Freehold Value of Flat	(LVT Decision , except 1% increment)	£ 247,450
Value of 60.345 year lease	(LVT Decision)	£ 189,000
Ground rent capitalisation rate	(agreed)	6.00%
Reversionary deferment Rate	(agreed)	5.00%
Premium Payable		£ 36,417

Diminution in Freehold

Value of Freeholder's Present Interest

Term 1

Ground rent	£	90	per annum	
27.346 Years' Purchase @ 6.00%		13.28		
				£ 1,195

Term 2

Ground rent	£	120	per annum	
33.00 Years' Purchase @ 6.00%		14.23		
PV £1 in 27.35 years @ 6.00%		0.20		
		2.89		£ 347

Reversion

Value of virtual freehold	£	247,450		
Present Value of £1 in 60.35 years time @ 5%		0.0526		
			£	13,016
				£ 14,558

Less value of virtual freehold in 150.35 years' time	£	247,450		
PV 150.35 years @ 5%		0.0007		
			£	173

Diminution in Freehold			£	14,385
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Calculation of Marriage Value

Value of Proposed Interests

Leaseholder				
Unimproved value of virtual freehold flat	£	247,450		
Freeholder (see above)	£	173		
Total Value of Proposed Interests			£	247,623

Value of Present Interests

Leaseholders				
Unimproved value of the existing lease	£	189,000		
Freeholder (see above)	£	14,558		
Total Value of Present Interests			£	203,558

Hence Marriage Value, Difference Between Proposed and Present Interests			£	44,065
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Divide Marriage Value equally between the Parties			£	22,033
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Hence Premium Payable for lease extension is			£	36,417
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