

		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/OOAT/OLR/2013/1677
Property	:	23 Arlington Gardens, London W4 4EZ
Applicant	:	Ms S. Iqbal (leaseholder)
Representative	:	Mr B. Sworn FRICS of Sworn & Company (chartered surveyors) instructed by AR Legal (solicitors)
Respondent	:	Mr T. Gallagher (landlord)
Representatives	:	In person
Type of Application	:	Applications for the determination of the premium payable in a claim made under section 48 Leasehold Reform, Housing and Urban Development Act 1993 (the 'Act') for the grant of a new lease.
Tribunal Members	:	Professor James Driscoll, solicitor (Tribunal Judge) and Mr Ian Holdsworth BSc MSc FRICS (Tribunal Member)
Date and venue of Hearing	:	8 May 2014
Date of Decision	:	8 June 2014
DECISION		

Summary of the decision

1. The premium payable for the grant of a new lease is the sum of £29,430 (Twenty -Nine Thousand four hundred and thirty pounds).

Introduction

2. This is an application under section 48 of the Act for the determination of the premium payable for the grant of a new lease. It is made by the leaseholder of the subject premises and the respondent is the landlord . We will refer to the parties as the 'leaseholder' and the 'landlord' respectively.
3. In a notice dated 26 April 2013 (given under section 42 of the Act) the applicant leaseholder's predecessor in title claimed the grant of a new lease. He proposed to pay a premium in the sum of £16,000. Later when that leaseholder sold the flat to the applicant leaseholder he also assigned the benefit of the section 42 notice. The date of the assignment was 30 April 2013.
4. In a counter-notice given under section 45 of the Act the landlord admitted the validity of the initial claim but it did not admit that the benefit of the claim had been validly assigned to the applicant leaseholders. The landlord proposed that the sum of £24,000 should be paid as a premium for the grant of the new lease. The counter-notice was given on 4 July 2013.
5. Although the parties agreed on the terms of the new lease they did not agree on the premium. As a result the applicant leaseholder applied to this tribunal on 12 December 2013 for a determination of the premium to be paid. This application was made under section 48 of the Act. Directions were given on 3 January 2014.

The hearing

6. The hearing of the application took place on 8 May 2014. At the hearing the leaseholder was represented by Mr Sworn FRICS who appeared in the dual role of advocate and expert witness. The landlord was not represented. He told us that he had received both legal and valuation advice but he had decided not to arrange representation for the hearing. Having studied valuation he prepared a valuation proposing a premium of £44,956.

The hearing: the leaseholder's evidence and submissions

7. Mr Sworn opened the leaseholder's case by outlining the matters in dispute. He spoke to his report dated 9 April 2014. The parties had agreed that the valuation date is 26 April 2013 (the date the section 42 notice was given); that the unexpired term of the lease at the valuation date was 73.24 years and the flat does not include a roof terrace. It was also agreed that the deferment rate is 5%.

8. The parties could not agree on the following issues: the capitalisation rate for the ground rent that is lost on the grant of the new lease under the Act; the value of the property on a long lease/freehold equivalent; relativity and the premium to be paid. Mr Sworn proposed a premium in the sum of £20,668 whilst Mr Gallagher proposed the sum of £44,956.
9. It is common ground that the valuation is to be made in accordance with the provisions in schedule 13 to the Act.
10. After giving his evidence he was cross-examined by the landlord and he answered questions from the tribunal.
11. Mr Sworn carried out an inspection of the flat on 4 March 2014. It is a first floor flat in a building containing three flats. The landlord owns the ground floor flat which has a rear garden.
12. Turning to the disputed items, first, on relativity, Mr Sworn relies on the established graphs of relativity citing the Beckett & Kaye, South Eastern Leasehold, Nesbit & Co, Austin Gray and Andrew Priddell. Using the information from these sources for leases with unexpired terms of 73.24 years gives an average, he contends, of 94.19%. He refers also to his own settlement experience negotiating new leases in three cases in London W4 for leases with unexpired terms of 73.88 years, 72.79 years and 72.82 years where relativities of 93.25%, 92% and 92% were agreed.
13. He concludes that the average relativity drawn from the graphs of relativity is 'slightly higher.. than I would expect within the Chiswick W4 area' (paragraph 10.4 of this report). He concludes that the correct relativity to be applied to a 73.24 lease is 92.5%.
14. Mr Sworn dealt next with the capitalisation rate to be applied to the ground rent that will be lost once the new lease has been granted. He would usually apply the rate of 7% but in this case where there are (in his view) significant rent increases during the term of the existing lease (£75 for the first 33 years, £150 for the next 33 years and £250 for the remainder of the term he concludes that the appropriate rate is 6.5%.
15. As to the long lease value of the subject flat, he refers first to the sale of the flat to the leaseholder. This was completed on 30 April 2013 at a price of £395,000. The other transactions he relies on are the sale of a flat in Grosvenor Road sold on 15 February 2013 for £465,000; the sale of a flat at 39 Arlington Gardens on 3 January 2013 for £485,000 and the sale of a flat at 8A Arlington Gardens on 26 June 2013 at a price of £415,000. All of these flats had long leases, that is in excess of 80 years. He concludes with this statement 'Doing the best I can I am of the view that the extended lease value of this flat as at the valuation date equated to £7,700 per square metres and therefore take the view that the value of the flat was £420,000' (paragraph 12.5 of the report). He and Mr Gallagher agree that 1% should be added to reflect the freehold value. On Mr Sworn's figures this produces the sum of £20,668.

The hearing: the landlord's evidence and submissions

16. Mr Gallagher spoke to his report which is undated. It was received by the tribunal on 22 April 2014. This report is relatively short and it occupies just 5 pages. It is supplemented by several appendices including extracts from a report from Michael Tibbatts MIRCS who advised him during the early stages of the claim, sales information and references to various graphs of relativity. However, he did not produce the whole of this report. **Mr Sworn told us that Mr Tibbatts advised that the premium could be £34,000 and Mr Gallagher did not confirm nor deny this was the advice he had received.** He was asked questions by Mr Sworn and by the tribunal.
17. Mr Gallagher first addresses what he calls the 'freehold valuation'. He cites the sales of first floor flats at 37 and 39 Arlington Gardens, London W4. Making adjustments for the differences between the properties and the subject flat and adjusting for dates of those sales by comparison to the valuation date he proposes that the subject flat has a freehold value of £467,424.
18. He then turns to relativity and he criticises many of the published graphs as they were compiled before what he calls the 'credit squeeze of 2008' (page R3 of his report). The 2013 Beckett graph is to be preferred, in his submission, as it takes the credit crunch and mortgage shortages, which the other graphs do not. Applying that graph to the subject property produces, he submits, a relativity of 83.2%. He also refers to the purchase of the subject flat which on his analysis produces a relativity of 80.2%. Considering these two items leads him to propose a relativity of 83%.
19. As to the capitalisation rate he notes the current low interest rates and poor returns on investments. Rather confusingly he refers in this context to the decision of the Upper Tribunal in *Cadogan v Sportelli* [2006] though he accepts that the Tribunal was dealing with the deferment rate, not capitalisation rates, in that case. He proposes that the appropriate capitalisation rate should be 6% in line with previous tribunal decisions.

The reasons for our decision

20. Towards the end of the hearing, and following a short adjournment, the parties told us that they now agreed that the internal floor space of the subject flat is 56.75 square metres. The following day the case officer received an email from him stating that he had made a mistake in the calculation of the internal floor area though he accepted that it was now too late to make these points. The case officer having referred this to the tribunal was directed to inform him that the tribunal would only take account of the evidence given at the hearing.
21. Under schedule 13 to the Act, the premium payable is made up of (a) the diminution of the value of the landlord's interest in the flat, (b) the landlord's share of the marriage value and (c) any compensation payable to the landlord. Factor (c) is not relevant to this application.

22. As to factor (a), this is defined as the difference in the value of the landlord's interest in the flat before the grant of the new lease compared with that value once the new lease has been granted. Putting it another way it is the drop in the value of the landlord's reversionary interest once this is postponed by another 90 years once the new lease is granted. We are required, therefore, to determine the value of the landlord's interests in the flat before and after the new lease is granted.
23. These values consist of the ground rent that is lost and the values of the landlord's interest in the flat before and after the new lease has been granted.
24. We can dispose of the capitalisation issue fairly shortly as the parties proposals were not radically different. On balance we prefer Mr Gallagher's analysis as it properly considers the effects of low interest rates on the market for ground rent income. We therefore conclude that the rate to be applied to the ground rent that will be lost once the new lease has been granted should be 6%.
25. The parties agree that the deferment rate is the generic rate of 5% as propounded in the Sportelli case (referred to above) should apply to this determination of the premium.
26. As to the long lease value, we have considered the sales evidence of the sales of 39 Arlington Gardens, 8A Arlington Gardens and 37 Arlington Gardens which we conclude produces an average rate of £7,737.30 which applied to the subject flat which has an agreed internal floor area of 56.75 square metres produces the figure of £439,093 which we have rounded up to £439,100.
27. We have considered the submissions on the correct relativity to be applied to this case. On balance we preferred the approach of Mr Sworn who relies on his own experience in negotiating premiums for new lease claims in the area in which the subject flat is situated. We have also considered the relativity graphs. These factors lead us to the conclusion that the correct relativity in this case is 89% This reflects all evidence but particularly the Tribunal's opinion of the relationship between the transacted leasehold sale price and notional freehold value as at the valuation date.
28. Taking all of these factors into account we determine that the premium to be paid by the leaseholder for the grant of a new lease is the sum of £29,430.
29. A copy of our valuation is attached to this decision.

**Professor James Driscoll, solicitor (Tribunal Judge) and
Mr Ian Holdsworth BSc MSc FRICS (Tribunal Member)**

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Lease and Valuation Data

Lease Term:	99 years from 24 July 1987		
Lease Expiry date:	24th July 2086		
Unexpired term as at valuation date:	73.244	years	
Date of Valuation	26th April 2013		
Rent receivable by landlord:			
Payable from 26/04/2013 for 7.244 years	£	75	
Payable from 24/07/2020 for 33 years	£	150	
Payable from 24/07/2053 for 33 years	£	250	
Values			
Long leasehold value	£	439,100	
Freehold Value	£	443,491	
LHVP	£	395,000	Relativity 89%

Capitalisation rate	6.00%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1			
Ground rent payable	£	75	
YP @ 7.244 yrs @ 6%		5.7389	£ 430
Term 2			
Ground rent payable		£150	
YP @ 33 yrs @ 6%		14.2302	
PV of £1 in 7.244 years @ 6%		0.6557	£ 1,400
Term 3			
Ground rent payable		£250	
YP @ 33 yrs @ 6%		14.2302	
PV of £1 in 40.244 years @ 6%		0.0958	£ 341
			£ 2,171
Reversion			
Freehold in vacant possession	£	443,491	
Deferred 73.244 years @ 5%		0.0281	£ 12,442
			£ 12,442
Total			£ 14,613

Reversion to Freehold in possession after extension			
Freehold in vacant possession	£	443,491	
Deferred 163.244 years after lease extension at 5%		0.00035	£ 154
			£ 154
Total			£ 14,459

Calculation of Marriage Value			
Value of flat with long lease	£	439,100	
Landlords proposed interest	£	154	£ 439,254
Less			
Value of Leaseholders existing interest	£	395,000	
Value of Freeholders current interest	£	14,613	£ 409,613
marriage value			£ 29,641

Division of Marriage Value equally between			
Freeholder			£ 14,821
Leaseholder	£	14,821	

Price payable to Freeholder			
Value of freeholders current interest			£ 14,613
Plus share of marriage value			£ 14,821

Total	£ 29,434
Say	£ 29,430

Notes:
 1. The price for Lease Extension is calculated in accordance with the Leasehold Reform, Housing Urban and Development Act 1993 as amended.
 2. Valuation based upon agreed facts except for freehold flat value, relativity, capitalisation and deferment rates which were determined by Tribunal after hearing held 8th May 2014.
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