



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

Case Reference : **LON/00AU/OLR/2014/1381**

Properties : **1 Berry Lodge, Crouch Hill, N4 4BA**

Applicant : **Simnat Plc**

Representative : **Mr A Fraser BSc (Hons) MRICS**

Respondent : **Croftbride Limited**

Representative : **Mr A Cohen MRICS**

Type of Application : **Grant of new lease (Section 48
Leasehold Reform, Housing and
Urban Development Act 1993)**

Tribunal Members : **Mr M Martynski (Tribunal Judge)
Mr D I Jagger MRICS**

**Date and venue of
Hearing** : **28 January 2015
10 Alfred Place, London WC1E 7LR**

Date of Decision : **30 January 2015**

DECISION

Decision summary

1. The premium to be paid for the extended leases of the subject flat and garage is £57,870. Our valuation is attached.

2. The leases are to be varied so that the clauses in those leases relating to Service Charges and Insurance mirror those of the other leases in the Block.

Background

3. Berry Lodge ('the Block') is a four-storey purpose built block containing 12 flats in total. The Applicant holds long leases ('the Leases') in respect of Flat 1, Berry Lodge ('the Flat') and Garage 4, Berry Lodge ('the Garage').
4. The Leases are dated 4 November 1958 and are for a term of 99 years from 24 June 1958.
5. The Applicant's Claim Notice (made in respect of both leases) is dated 16 April 2014 and proposes a premium of £42,309.
6. The Respondent's Counter-Notice is dated 18 April 2014 and proposes a premium of £70,000.

Issues agreed and to be decided

7. At the outset of the hearing, the various matters to be considered were:-

Issue	Applicant	Respondent
Extended Lease Value	£250,000	£265,000
Unimproved Existing Lease Value	£184,660	£177,530
Relativity	73.9%	67%
Capitalisation Rate	Agreed at 9%	Agreed at 9%
Deferment Rate	Agreed at 5%	Agreed at 5%
Premium Payable	£47,700	£59,733

Expert evidence

8. Mr Cohen (for the Respondent) and Mr Fraser (for the Applicant) are both Chartered Surveyors. Both of them compiled and submitted valuation reports setting out their views on valuation and the premium to be paid for the leases. Each represented their respective client at the hearing.
9. Mr Cohen challenged Mr Fraser's standing as an expert in the proceedings. Mr Fraser is properly qualified; however the question was whether he had sufficient independence in order for his valuation report and opinion in the hearing to be accepted as expert evidence.

10. The Leases were at one time held by a Mr Collins. Mr Collins died and his estate was, in the first instance, dealt with by the Treasury Solicitor as Mr Collins' family could not be found. The Treasury Solicitor then instructed a company of genealogists to find an appropriate relative to administer the estate. Mr Fraser is a partner in the firm of genealogists instructed by the Treasury Solicitor.
11. Mr Fraser's company duly found a relative who agreed to administer Mr Collin's estate. This relative, a Mr Medhurst, then served the original Notice claiming the right to enfranchise.
12. The Leases were then sold by the estate to the Applicant Company with the benefit of the Claim Notice. Mr Fraser said that this sale was not at arms length and so could not be considered in the valuation process.
13. Mr Fraser is a Director of the Applicant Company. He admitted that he had a clear financial interest in the outcome of the proceedings.
14. There was no dispute that the Flat was completely unmodernised and in an 'uninhabitable' condition on the date on which the Claim Notice was served. According to Mr Fraser, after the Claim Notice was served (and prior to the Flat being put into auction in July 2014) works by way of repair, maintenance and improvement ('the Works') were carried out to the Flat to bring it up to a high market condition. The works can be broadly summarised as:-
 - Refurbish completely the kitchen
 - Refurbish completely the Bathroom
 - Re-wiring
 - Install central heating and hot water system
 - Floor coverings
 - Decorations
15. The Flat was then 'sold' in auction on 31 July 2014 for £222,000. However, the purchaser that bid for and won the auction is a company associated with the Applicant. Completion of that 'sale' has never taken place leaving the Applicant the current owner and beneficiary of the Claim Notice.
16. In the circumstances, we cannot accept that Mr Fraser's evidence can be taken as independent expert evidence in this matter. He is plainly not independent. Where therefore an opinion as to valuation has been expressed in the reports or in the hearing and where there is a difference in opinion, we will accept Mr Cohen's opinion unless we consider that opinion to be flawed in some way or if we, as an expert tribunal, disagree with that opinion (having given Mr Cohen the chance to comment on our views).

The issues and our decisions

The extended lease value

17. Both valuers relied essentially upon one comparable, that of 9 Berry Court which sold (in apparently reasonable market condition - with garage) for £238,000 in April 2013. We take Mr Cohen's indexation of that price using the Land Registry Index for L.B. Islington (Mr Fraser preferred L.B. Haringey) to take the price to the valuation date up to £276,080.

The value to be attributed to the Works carried out to the Flat

18. The Applicant paid in excess of £30,000 for the Works after taking into account professional fees and VAT.
19. Mr Fraser wanted to include £25,000 of this sum in the valuation calculation. He reasoned that the Works had been carried out to a high standard, higher than one may expect in the market generally and accordingly the costs of the Works to feed into the valuation should be limited.
20. In his valuation report, Mr Fraser said '*The lease provides no requirement to keep in repair the internal demise*'. Unfortunately, this statement is entirely wrong; in fact the lease for the Flat requires the Lessee to '*Keep the demised premises.....and all walls party walls sewers drains pipes cables wires.....in good and tenantable repair and condition....*'
21. Accordingly therefore, most of the Works should be regarded as being no more than a compliance with the lease terms. The only parts of the Works that could be considered to go beyond the lease terms are the installation of a central heating and hot water system and the refurbishment of the bathroom and kitchen to bring them up to modern tastes and standards. We accept Mr Cohen's assessment of the value of these works at £10,000.

Adjusted Extended Lease Value

22. We therefore take the Extended Lease Value as offered by Mr Cohen and deduct from that the sum of £10,000 to arrive at £265,000 (this figure was rounded by Mr Cohen - we accept the rounding as we consider that attributing £10,000 to that part of the Works to be deducted was a little on the low side).

Relativity

23. Given that there was a difference between the valuers on the issue of Relativity, following on from what we have said above, we accept Mr Cohen's position on Relativity, which is that the figure is to be arrived at taking an average of the generally accepted graphs produced by

Beckett & Kay, South East Leasehold, Nesbit & Co and Andrew Pridell. Mr Cohen had included in his average, the graph from Austin Gray but we reject this on the grounds that the data in that graph is from Brighton and Hove, not London.

24. We consider that it is a reasonable approach to use these graphs and to reject (as Mr Cohen did) other graphs that are published research and which include previous tribunal decisions. We consider that the graphs chosen by Mr Cohen as reduced by ourselves show a good spread of values applicable to the Greater London area.

The auction 'sale' – market evidence

25. We reject Mr Fraser's alternative approach to Relativity, which was to base it in market figures for the short lease. He based his market figure on the sum of £222,000 achieved for the Flat in auction in July 2014.
26. We do not consider that this auction 'sale' was a true market sale in any sense. The lease was bid for by an associated company. That company would have bid up and up until it arrived at a price that no other party was prepared to match. Taking the next nearest bid to the final successful bid as the 'market price' doesn't work. The figure only got to that point because it was being driven by the associated company.

The Garage

27. Both valuers agreed that a figure for the Garage of £15,000 should be added to the valuation.

The lease terms

28. The Respondent freeholder is a company run and made up of the leaseholders for the other 11 flats in the Block. That company took the freehold in 1996. Since taking the freehold the company has modernised the other 11 leases so that they contain modern Service Charge provisions to provide for the employment and payment of managing agents and to provide for a sinking fund and payments on account. They have also updated the insurance provision so to change the obligation to insure the flats from the tenant's obligation to insure his or her individual flat to the freeholder's obligation to insure the Block.
29. The Respondent's solicitors argued, in a written submission, that the Leases should be amended so as to match the other leases in the Block in accordance with section 57(6)(b) Leasehold Reform, Housing and Urban Development Act 1993. They argued that the relevant change had been the acquiring of the freehold by the Respondent company and the changing of the all the other leases. Further, there were changes in modern accepted practice as to insurance and Service Charges.

30. Mr Fraser for the Applicant company opposed such changes to the extended lease on the grounds that these changes would mean that the Applicant company would have to pay increased insurance premiums (he thought about £100 per annum) and increased Service Charges by way of managing agent's fees (currently the Block is run by managing agents who are paid for by the other 11 leaseholders).
31. We consider that it would be unreasonable in the circumstances to include without modification the current terms in the Leases in view of the above-described changes occurring since the date of commencement of the Leases, which in our view affect the suitability on the relevant date of the provisions of those leases.
32. We understand at present that the amendments proposed by the Respondent's solicitors comprise one lease of both Garage and Flat. This is not acceptable. It is two leases that are being extended. We trust that the parties will be able to agree the terms of those two leases in accordance with our decision. If there is further dispute about the exact wording of the leases, then the parties have permission to apply to us to resolve that dispute.

Mark Martynski, Tribunal Judge
30 January 2015

Flat 1 and Garage 4, Berry Lodge, Crouch Hill London N4 4BA APPENDIX A
The Tribunal's Valuation
Assessment of premium for a new lease
In accordance with Schedule 13 of the Leasehold Reform, Housing and Urban
Development Act 1993
RC/LON/00AU/OLR/2014/1381

Components

Assumed Valuation date	16/04/2014
Yield for ground rent	9.0%
Deferment Rate	5.0%
Extended lease value	£265,000
Existing lease value	£181,658
Relativity	68.55%
Ground Rent	£16pa
Unexpired Term	43.19 years

Diminution in value of Freeholders Interest

1-Freeholder's Present Interest

£16 for 43.19 years @ 9%	
16 x 10.8423	£173

2- Valuation of Reversion:

£265,000 @ 5% def'd 43.19 years	
£265,000 x 0.1216	£32,224

£32,397

Marriage Value

Extended lease value		£265,000
Less		
Existing lease	£181,658	
Freehold interest	£32,397	<u>£214,055</u>
Marriage value		£50,945

50% of Marriage Value	£25,473
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LEASE EXTENSION PREMIUM £57,870