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

Case Reference : **LON/00AZ/OLR/2016/0113**

Property : **FFF, 1 Medusa Road, Catford,
London, SE6 4JW**

Applicant : **Victor Robert Batorijs**

Representative : **Withy King LLP, Solicitors**

Respondent : **Ajay Kumar Anand**

Representative : **Cheal Assets Management Ltd**

Type of Application : **Section 48(1) of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal Members : **Judge Ian Mohabir
Mr Richard Shaw FRICS**

**Date and venue of
Determination** : **14 June 2016
10 Alfred Place, London WC1E 7LR**

Date of Decision : **14 June 2016**

DECISION

Introduction

1. This is an application made by the Applicant under section 48(1) of the Leasehold Reform, Housing and Urban and Development Act 1993 (as amended) ("the Act") for a determination of the premium to be paid for the grant of a new lease for the property known as First Floor Flat, 1 Medusa Road, Catford, London, SE6 4JW ("the property").
2. The Applicant is the lessee of the subject property pursuant to a lease dated 6 May 1987 made between (1) James Francis McDonnell and (2) Martin Phillip Newton and Hilary Ann Birch for a term of 99 years from 29 March 1987 ("the lease"). The lease is subject to a fixed ground rent of £75 per annum for the entire term. As at the valuation date, there were 71 years unexpired on the lease.
3. The Respondent is the landlord and freeholder.
4. By a Notice of Claim served pursuant to section 42 of the Act dated 8 June 2015 ("the valuation date"), the Applicant exercised his entitlement to the grant of a new lease and proposed a premium of £14,500.
5. By a Counter Notice served pursuant to section 45 of the Act dated 21 July 2015, the Respondent admitted the Applicant's right to a new lease and counter proposed a premium of £25,600.
6. The parties were unable to agree the premium to be paid for the new lease and on 15 January 2016, the Applicant made this application to the Tribunal for that determination to be made.
7. The valuation evidence relied on by the Applicant and Respondent is set out in the reports prepared by Ms J Freeborn, MRICS dated 31 May 2016 and Mr K Kumar dated 1 June 2016 respectively.

Matters Agreed & Not Agreed

8. Both parties had, helpfully, agreed the following matters:
 - (a) the description of the property.
 - (b) the valuation date as being 8 June 2015.
 - (c) the tenure of the existing lease and unexpired term of 71.5 years as at the valuation date.
 - (d) the fixed ground rent of £75 per annum for the entire term of the lease.

- (e) the capitalisation rate of 6.25%.
 - (f) the deferment rate of 5%.
 - (g) relativity at 90%.
 - (h) the new lease terms.
9. The only matters not agreed were:
- (a) that there should be a deduction of £3,500, being the value of the tenant's improvements by installing UPVC double glazed windows and a white bathroom suite.
 - (b) the value of the unimproved long leasehold value of the property.

The Law

10. 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.
11. 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.
12. Paragraph 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.
13. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
14. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Decision

15. The hearing in this matter took place on 14 June 2016. Ms Freeborn appeared for the Applicant. The Respondent was represented by Mr Kumar. The Tribunal did not carry out an inspection of the property.
16. Both Ms Freeborn and Mr Kumar spoke to their respective report and were cross-examined on their evidence.
17. Miss Freeborn referred to five comparable flat sales to support her opinion as to long lease value. These were:
 - 18A Honley Road. Sold on 23 October 2015 for £310,000 with 103 years unexpired on the lease. Her analysis of this equated to £387 per sq ft.
 - 132A Brownwell Road. Sold on 2 September 2015 for £275,000 with a share of the freehold. Her analysis of this equated to £376 per sq ft.
 - Flat C, 39 George Lane. Sold on 29 July 2015 for £300,000 with 90 years remaining on the lease. Her analysis of this equated to £382 per sq ft.
 - 112 Brownhill Road. Sold on 17 August 2015 for £295,000 with an extended lease of 162 years remaining. Her analysis of this equated to £421 per sq ft.
 - 19B Farley Road. Sold on 6 February 2015 for £250,000 for a new lease of 99 years. Her analysis of this equated to £387 per sq ft.
18. Miss Freeborn analysed the average of these sales was £391 per sq ft. As she found that the subject flat was smaller she increased the rate by 2.5% which produced a long lease value of £254,492. She rounded this to £254,500.
19. She next made an adjustment for the tenant's improvements of UPVC replacement windows and a modern bathroom. She calculated the value of the unimproved long lease value to be £249,500.
20. She contended that the long lease value and freehold value would be the same and applied the agreed 90% relativity to result in an unimproved existing lease value of £224,500.
21. Incorporating these values and the other agreed inputs into her valuation produced a Premium of £16,925 for a 90-year extension to the lease.
22. Mr Kumar produced three comparables. 44a Sandrock Road and 61b Sandrock Road. Both of these he said were not actual sales but professional valuations.

23. He next referred to 20 Medusa Road. Once again this was not a sale. He put forward the marketing details from the Zoopla website. This was a two bed-roomed flat that went on the market on 15 July 2015 for £339,995.
24. Mr Kumar variously contended for unimproved long leasehold values of £345,000 and £340,000 in his valuation shown at Appendix 1 of his report but gave no explanation as to how he had arrived at these valuations. They appear to be based on no more than his opinion again.
25. The Tribunal placed no weight on the valuation evidence given by Mr Kumar for the following reasons. Despite his apparent experience in property matters, he does not appear to have any professional valuation qualifications and he did not give credible valuation evidence on the issues before the Tribunal. These included:
 - (a) his opinion of the existing lease value of £340,000 was based on no more than an average of sales of houses (which had no application in this case) and flats in Medusa Road based on data provided by the Zoopla website. Using the same database, he then averaged sales of 8 unspecified properties in the same road over the last 5 years at an average price of £324,500, which bore no relationship to the valuation date. He went on to state that the average price for 149 houses and flats in SE6 was £423,035. In the Tribunal's judgement, none of these comparables were relevant because they included houses, were not evidence of actual sales nor did they amount to proper valuation evidence, as Mr Kumar had not sought to analyse them in any way in relation to the subject property.
 - (b) in relation to Mr Kumar's comparable properties, 44a and 61b Sandrock were not evidence of sales. In addition, 20 Medusa Road was simply based on the asking price stated on the Zoopla website and was, again, not evidence of value but of the sale price.
26. Therefore, the only credible valuation evidence before the Tribunal on the issues to be determined was that of Ms Freeborn, which the Tribunal accepted without qualification.
27. Accordingly, the Tribunal found that the value of the tenant's improvements was £3,500 and the unimproved long leasehold value was £249,500 and that the premium to be paid for the new lease is £16,925 as set out in Ms Freeborn's valuation appended to her report.

Judge I Mohabir

14 June 2016