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		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	:	LON/00AC/OLR/2017/0445
Property	:	Lower Maisonette, 5 Westmere Drive, London NW7 3HG
Applicant	:	Mr Samuel John Benjamin Stock
Respondent	:	Shulem B. Association Limited
Type of Application	:	Lease extension s.24 Leasehold Reform, Housing and Urban Development Act 1993
Tribunal Members	:	Judge Dickie Mrs S. Redmond MRICS
Date and Venue of	:	1 August 2017, 10 Alfred Place, London WC1E 7LR

DECISION

Decision of the tribunal

The tribunal determines that the premium payable for the lease extension is £76,251 according to the attached calculation.

The application

1. Application has been made under s.48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid and the terms on which an extended lease of the subject premises ("the premises") is to be granted. The premises in question are the Lower Maisonette, 5 Westmere Drive, London NW7 3HG, registered under title number NGL23660. The respondent is the freeholder and the applicant is the current holder of the leasehold interest.
2. A Notice of Claim under section 42 of the Act was served by the applicant's predecessor in title on 26 July 2016 (the valuation date) proposing a premium of £40,000 in respect of the grant of the new lease pursuant to the provisions of Part II Schedule 13 of the Act. The landlord's counter notice is dated 29 September 2016 and proposed a premium of £123,000. The applicant purchased the existing leasehold interest on 17 August 2016 for a price of £240,000, taking an assignment of the Notice of Claim.
3. The subject premises are a self contained purpose-built maisonette on the ground floor of an inter-War two storey semi-detached building comprising two maisonettes of a similar kind, one on each floor. The accommodation comprises hall, two bedrooms, living room, extended kitchen and bathroom. The tribunal was provided with internal and external photographs of the property and did not consider it necessary to carry out an inspection. Both valuers concurred that there was nothing to be gained from an inspection by the tribunal.

The Hearing

4. At the hearing the applicant was represented by Mr A. Cohen FRICS of Talbots Surveying Services Limited and the respondent by Mr F. Shapiro FRICS of Chestertons. By the commencement of the hearing the only issue in dispute between the parties was the existing lease value, and the experts had agreed the following facts:

The deferment rate is 5%.

The unexpired term is 47.91 years.

The capitalisation rate is 7%.

The long lease value is £348,500.

The freehold value is 1% more than the extended leasehold value.

There was a slight difference between the experts as to the gross internal area, but nothing turned on it as neither considered that a valuation could be arrived at on a per square metre basis in the area in question.

5. The only issue in dispute therefore was the short lease value. The experts did not agree as to the appropriate rate of relativity to be applied. Applying their different approaches, Mr Cohen arrived at a premium of £56,169 and Mr Shapiro was at £92,682.

6. Statutory provisions setting out the premium payable by a lessee in respect of the grant of a lease extension are contained within Part II of Schedule 13 to the Act. By virtue of Paragraph 3(2)(b) the valuation of the landlord's interest must be carried out in what is known as a "No Act world".
7. The approach to relativity was considered by the Upper Tribunal in *The Trustees of the Sloane Stanley Estate -v- Mundy* [2016] UKUT 0223 (LC). At the end of its decision, in discussing a series of issues under the heading "Future Cases", the Upper Tribunal said:

- "166 Secondly, the valuations required under schedule 13 to the 1993 Act relate to market value on the statutory hypotheses. When the parties attempt to negotiate the amount of a premium in accordance with schedule 13 and when the tribunal comes to determine a dispute as to the amount of such a premium, the relevant valuation date will generally be a date in the past. The parties and the tribunal must focus on the state of the market at that date. What matters is how the market performed at that date. If the market, for example, for leases with rights under the 1993 Act at that date was influenced by certain matters, then that influence must be taken into account. For example, if the market at a date in the past was influenced by a particular graph of relativity then that influence is a market circumstance which is to be taken into account. It is not open to a party when discussing the market at a date in the past to suggest that the market was badly informed or operating illogically or inappropriately in order to invite the tribunal to replace actual market forces with what are suggested to have been more logical or appropriate considerations.
167. Thirdly, it is possible that the market might perform differently in the future from the way it has performed in the past. It is possible that in the future less weight will be given in the market to a particular graph or a new graph might emerge. If those new developments affect market behaviour then they must be taken into account when assessing market forces. It is conceivable that decisions of the tribunals might also influence valuers and in turn influence parties in the market. If that were to occur, then the changed market circumstances before a relevant valuation date must be taken into account when considering market value at that date.
168. Fourthly, in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act. It will normally be possible for an experienced valuer to express an independent opinion as to the amount of the deduction which would be appropriate to reflect the statutory hypothesis that the existing lease does not have rights under the 1993 Act.
169. Fifthly, the more difficult cases in the future are likely to be those where there was no reliable market transaction concerning the existing lease with rights under the 1993 Act, at or near the valuation date. In such a case, valuers will need to consider adopting more than one approach. One possible method is to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method is to use a graph to determine the relative value of an

existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. When those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.”

Evidence, Decision and Reasons

8. Both experts agreed that market transactions, where available, are the best evidence, and both analysed the sale of subject property. The decision in *Mundy* requires the tribunal (at paragraph 168) to consider whether the sale price of the subject property is reliable evidence of the market value of the property. Mr Shapiro was insistent that the tribunal must accept that sale price as the market value unless there were special circumstances, whereas Mr Cohen argued that the purchase was at an undervalue, because it was made by a property investor who was purchasing for resale and profit.

Value of Act Rights

1. Mr Shapiro considered that he was guided by *Mundy* in the present case, and that where there is a recent real-world sale of a lease for the subject premises he should take that price and deduct for 1993 Act rights based on his professional experience. He therefore based his view on the appropriate rate of relativity derived from the sale of the subject property for £240,000 on 17 August 2016. He adjusted this by 9.79% to represent the value of Act rights. He arrived at this percentage in the manner given approval by the Upper Tribunal in *Earl Cadogan (and others) v Cadogan Square Limited* [2001] UKUT (LC), which was by adjusting the sale price by the relativity derived from Savills 2015 Enfranchiseable relativity and then multiplying the result by the Savills Unenfranchiseable graph to give the value in the no Act world. The difference between this and the actual sale price is divided by that sale price to give the relevant percentage. Mr Cohen valued these rights at £10,000, a figure which he based only on his experience.
2. The tribunal notes that in *Mundy* these rights were described as “substantial” and 10% was decided for a lease with 41.32 years unexpired. Compared with this Mr Shapiro's adjustment appears slightly high. This unexpired lease term is significantly longer than that in *Mundy*. The tribunal was referred by Mr Shapiro to the approach of the Upper Tribunal in *Re: 38 Cadogan Square* [2011] UKUT 154 (LC). At paragraph 79 of that decision, it formed the view that to a limited degree the difference between the Savills (2002) enfranchiseable table, which represents relativities for leases with Act rights, and the Gerald Eve graph 1996, which excludes any rights, assists in deciding the order of magnitude of a deduction for Act rights, as that difference in relativities for equal unexpired terms should (theoretically) represent the value of Act rights. The deduction derived in this way for the current unexpired lease term would be close to 9%. The tribunal prefers to adopt this, albeit imperfect, market based approach in the present case and adopts an adjustment of 9%. Furthermore in the decision in *Mundy* the Upper Tribunal set out a number of its previous decisions on deductions for Act rights, which also suggest that 9% is about right. The tribunal was not persuaded by Mr Cohen's unsupported opinion.

Adjustments to Sale of Subject Property

3. Mr Shapiro adjusted by £20,000 for the kitchen extension and including the modernised kitchen. He offset a notional adjustment for tenant's improvements of £10,000 for the new bathroom, kitchen double glazing and gas central heating against one in the same amount for the outstanding repairs required at the property. Mr Shapiro's resulting figure for the existing lease value was £196,504. Given that the guidance in paragraph 168 of *Mundy* had been satisfied, Mr Shapiro considered no reference to the graphs of relativity was required.
4. Mr Cohen preferred to start his analysis with a sale price for the subject property of £265,000. He relied on solicitor's correspondence to show that the subject property had been under offer to the applicant for that price some weeks prior to the Brexit referendum. Taking advantage of market uncertainty after the result, the applicant renegotiated the purchase price to £240,000.
5. Mr Cohen produced photographs of the condition of the property on purchase and adjusted by £15,000 for the notional cost of works (though as a developer the applicant had in fact carried out these works at lower cost). Mr Cohen assessed the increase in value for the extension at £15,000, and did not make any adjustment for tenant's improvements. He also adjusted by £20,000 for what he called "investor's profit", to arrive at an existing lease value of £275,000, but the tribunal rejects this as a valid element, as well as the suggestion that it should adopt price 50% higher than that actually paid by the purchaser to carry out the work. The repairs cannot in the view of the tribunal have been very substantial as they were completed very shortly after purchase. Mr Cohen acknowledged his client's confirmation that a week or two after purchase the property was let.
6. The kitchen extension is likely to make the property more saleable. It added about 15% to the gross internal area, but the tribunal did not consider a per square foot valuation for it is to be the correct approach. The tribunal puts the value of the kitchen extension at £17,500, being the mid point of the judgment of both professionals, and a figure Mr Shapiro agreed was not unreasonable. Taking into account the likely build cost, which a purchaser would take into account, Mr Cohen's figure was a little too low.
7. The tribunal observed from the photographs and particulars of sale that the bathroom was new. Double glazing of some age is often not reflected in an increase in the value of the property, and the kitchen was of average quality and not apparently new. Overall, the tribunal considers that an adjustment of £5,000 for tenant's improvements (bathroom and central heating) is appropriate. The tribunal adds £10,000 for the cost of repairs.

Market Value for the unimproved short leasehold

8. An important question for the tribunal, however, is the appropriate starting point for the short lease value from which to make the deductions it has determined.
9. Mr Shapiro considered his existing lease value was supported by the sale of 69 Westmere Drive in April 2017. Using the *Earl Cadogan* approach, his discount for

Act rights was 11.31% and he adjusted for time by 2.06% using the Land Registry Index for the London Borough of Barnet. Though Mr Shapiro had not inspected this comparable flat, he relied on the improvements observed by his colleague Mr Kotak who had done so, and adjusted by £12,500 for a modernised bathroom, kitchen, double glazing and central heating. He also adjusted for lease length using the Nesbitt graph of relativity and arrived at an existing lease value of £192,244. Using this figure gives a relativity of 54.62%.

10. Mr Cohen sought to rely on a sale of 69 Westmere Drive to show that the applicant had indeed purchased the subject property at an undervalue. This comparable is nearly identical to the subject property, save for that the kitchen has not been extended. It was sold prior to auction on 4 April 2017 on a lease of 43.22 years for £228,000, and the Land Registry title entry was produced in evidence. Mr Cohen however said there had been a further sale at auction completing in May 2017 for £240,000 and he analysed that purported sale in his evidence. He produced the auction website entry showing "£240,000 result".
11. The parties were given permission to produce further evidence as to the supposed second sale of 69 Westmere Drive. Further information was subsequently received from Mr Cohen in the form of a Land Registry record as to an official search dated 14 July 2017 to protect an intended purchase of the registered title. Mr Shapiro provided no comment on this document and though the evidence might have been better addressed by both parties, on balance the tribunal accepts Mr Cohen's evidence of a second sale by auction. On Mr Cohen's analysis this produced a time and lease length adjusted figure of £271,739 comparable for the subject sale with the extended kitchen.
12. The tribunal did not agree with all Mr Cohen's adjustments to the second sale of 69 Westmere Drive, but considered that this threw doubt on the starting point for the analysis of the subject. The tribunal is valuing the property in an unusual and briefly unstable market shortly after the referendum result when there was a window of opportunity for a purchaser to achieve good value for money. The sale price of the subject property does indeed look too low, and unsafe to rely on without adjustment to reach a correct figure for relativity. The tribunal concluded that the correct figure to analyse was £265,000 which had been agreed prior to the temporary disturbances in the market. Thus, applying the deductions it has determined, the tribunal arrives at a market value of £252,500 unimproved, from which Act rights must be deducted. *Relativity*
13. Mr Cohen had used the auction sale figure of £240,000 adjusted by adding £15,000 for works required to the comparable property and by deducting £15,000 for the value of Act rights. He applied the average of relativities for the non PCL graphs (66.21% and 73.21%) to adjust for lease length and by 3% for time to the valuation date to give an existing lease value of £271,739 which is 77.97% relativity. However, the tribunal noted this calculation included adjustments to compare with the sale of the subject in its present condition and with the kitchen extension.
14. The tribunal had concern as to the effect of the adjustment for shorter lease length to the comparable sales evidence. Both experts had chosen different graphs from the RICS Research Report which led Mr Shapiro, using only the Nesbitt graph to adjust by 3.17% (£7,228 on a starting point of £228,000 which would have been

£7,608 on the revised sales figure of £240,000), whilst Mr Cohen's use of the graphs resulted in an adjustment of 9.97% (£23,939). Whilst *Mundy* has directed that open market evidence be preferred, analysis cannot be carried out without reference to some form of graphs in respect of lease length (to say nothing of the basis for adjustment for the "No Act World"). On balance the tribunal preferred for this element of the calculation to take the full basket of opinion and apply an uplift of around 10%. This was verified by the tribunal using the Myleasehold calculator employed by Mr Shapiro but adopting the revised unexpired lease length for 69 of 43.1 years (assuming sale on or about 16th May 2017). The tribunal also revised the time adjustment to reflect movement in values between July 2016 and May 2017 and used 2.59%. Applied to Mr Shapiro's method calculation this results in a revised figure of £218,039, a relativity of 61.96%. Applying Mr Shapiro's method of calculation to the revised sale figure and adjusting by 2.59% for time of £240,000 produces a revised figure of £201,748 which represents 57.32% relativity.

Conclusion

15. The resulting short lease value is £229,775, which represents a relativity of 65.28% to the freehold value.
16. Having endeavoured to show that the evidence of the sale of the subject property was affected by a below market purchase, Mr Cohen said that in the final analysis and standing back that the graphs of relativity provided a more sensible approach in this case and provide consistency. With some reluctance, the tribunal prefers to use the market evidence, adjusted to make it reliable. Accordingly, the tribunal determines the Premium payable at £76,251 as shown on the valuation.

F. DICKIE

6 October 2017