First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/22UH/OLR/2018/0163**
Property	**:**	**Flat 15 Avenue Road, Chadwell Heath, RM6 4JF**
Applicants	**:**	**Roland Des Voeux & Diana PELLY Self representing (Mr. Pelly)**
Respondent Represented by	**:**	**Tulsesense Ltd. Ms. Eleanor Grindley of SA Law**
Date of Application	**:**	**19th September 2018**
Type of Application	**:**	**To determine the terms of acquisition and costs of the lease extension of the property**
Tribunal	**:**	**Bruce Edgington (lawyer chair) Evelyn Flint DMS FRICS IRRV Derek Barnden MRICS**
Date and venue of Hearing	**:**	**7th December 2018 at Romford County Court, 2A Oaklands Avenue, Romford, RM1 4DP**

DECISION

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1. The form of Deed of Surrender and New Lease having been agreed save for the premium payable and it is the Tribunal's decision that the premium payable is £20,459.00 as set out in the attached breakdown.

2. The legal fees and any valuation fees not agreed are assessed at 'nil'.

Reasons

3. This is an application for the Tribunal to determine the terms of a lease extension for the property. The Tribunal issued its usual directions order on the 28th September 2018 timetabling the case to a final hearing.

4. Bundles were delivered in accordance with the Tribunal's order and the valuers for each side completed a statement of agreed and disputed matters from which it became clear that the only parts of the statutory 'equation' to be

used for the calculation of the premium which were not agreed were the capitalisation rate for ground rent and the long leasehold value excluding tenant's improvements.

5. All other matters were agreed and those agreed matters have been adopted for the Tribunal's calculations save for the unexpired term. That was said to be agreed at 68.71 years but different rates were then applied in the premium calculations. The Tribunal calculated that 68.68 years are unexpired. The other agreed matters will not be repeated here as all parties are represented by surveyors although it should be said that no compensation is mentioned and the Tribunal therefore infers that it has been agreed that none is payable in accordance with paragraph 2 of Schedule 13 of the 1993 Act. The Tribunal would agree that in any event.

The Inspection

6. The members of the Tribunal inspected the property in the presence of Mr. Pelly and the Respondent's valuer, Tim Sheridan MRICS. It was as described by Stephen Watson BSc MRICS in his report filed on behalf of the Applicants.

7. The development appeared to the Tribunal to be somewhat cramped with some parking spaces but no garden for recreational use, as such. It is approached via a rather narrow road with on street parking which made access not too easy. The property is within easy walking distance of some shops and a reasonably short walk to the railway station which has trains to central London.

8. Properties in Burns Avenue which are relied upon particularly by Mr. Sheridan were seen from the outside. Whilst Mr. Sheridan said that 102 Burns Road in particular had a similar layout to the subject property, it appeared to the Tribunal that the properties in Burns Avenue were more modern and more attractive which is bound to be reflected in value even if they have similar internal space.

The Leases

9. The existing term for the lease is 99 years from the 29th September 1987 with an increasing ground rent as reflected in the calculations in the Schedule to this decision.

10. There is nothing else in the lease terms which would affect the level of the premium.

The Law

11. The valuation of a premium payable in respect of a new lease in these circumstances is governed by Schedule 13 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act"). Paragraph 2 says that:-

> "*The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of-*
> *(a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,*

(b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and
(c) any amount of compensation payable to the landlord under paragraph 5

The Hearing

12. The hearing was attended by Messrs. Watson and Sheridan together with Mr. Pelly and Ms. Eleanor Grindley from SA Law for the Respondent.

13. The parties confirmed that the terms of the lease extension had been agreed save for the amount of the premium. The problem with the capitalisation rate for ground rent was not really understood because the effect on the premium is relatively small between the rate of 7% argued by Mr. Watson on behalf of the Applicants and 6% argued by Mr. Sheridan.

14. As far as the long leasehold values were concerned, each surveyor gave evidence and explained their thought processes in the conclusions reached in their respective reports. They were cross questioned by each other and the Tribunal members.

15. In summary, Mr. Watson tended to place great reliance on a price per square metre in comparables. His comparables were reasonably close and included properties in Overton Drive, Millhaven Close and Crucible Close as well as 29 and 36 Avenue Road. As far as 36 Avenue Road is concerned, he explained that it was larger and the price obtained (£251,000 in November 2017) was, in his view, rather out of line with other properties. He was looking at a figure of £226,000.

16. Mr. Sheridan concentrated on 5 comparables i.e. 36 Avenue Road, 3 properties in Burns Avenue and 1 in Overton Drive. He said that these properties were all about the same distance from the railway station and he thought that this was a crucial issue and gave them a higher value than some of Mr. Watson's comparables for that very reason. He adjusted the sale prices for his comparables in line with the Land Registry figures and then averaged them out to £253,000. This was a little odd because 4 out of the 5 comparables had adjusted values within £2,000 of £250,000 and the last comparable had an adjusted value of £264,745.

17. At the end of the hearing, Ms. Grindley from SA Law was asked about the schedule of costs and why it was not in the hearing bundle. This issue is dealt with below.

Conclusions

18. Based entirely on the evidence, the inspection and collective experience of the Tribunal members and the submissions of the parties, it is the Tribunal's decision that Mr. Sheridan's approach is more realistic and acceptable. However, his 'average' is rather distorted by one property out of the 5 comparables. Mr. Watson's reliance on price per square metre area is perhaps misguided because it is not always easy to see how the area of a flat has been calculated or who has made the calculation. It also ignores basic things such as how attractive a block of flats is or how close a flat is to a main line railway station.

19. It was considered that the best comparable by far was 36 Avenue Road. A copy of the brief on line sales particulars and a plan were produced. The larger area seemed to be made up of a fairly long hallway. Having said that, the bathroom appeared larger than the subject property and had a window. Mr. Sheridan's figures showed a November 2017 sale price of £251,000, adjusted up to £252,160 by the Land Registry figures to reflect the change in value to the valuation date in January 2018. He then deducted £4,000 for tenant's improvements to the kitchen and bathroom which the Tribunal felt was unreasonably high. The correct overall figure was closer to £250,000. However, when the Tribunal then took into account the larger floor area and better layout of 36 Avenue as compared with the subject property, it came to a figure of £245,000 as the long leasehold value.

20. As far as the capitalisation of ground rent is concerned, the Tribunal acknowledged that the property is in an area, on the edge of greater London, where some valuers prefer 6% and some 7%. As has been said, the difference in this case is not very much in terms of the overall premium level. The Tribunal considered that the overall appearance of the development was dated and unattractive and would be considered less attractive as an investment than the many more modern local developments. It therefore considered that 7% was more in line with the marketplace.

Costs

21. The directions order referred to above and dated 28th September 2018 stated in bold letters at the start of the order:

> - "**These directions are formal orders and must be complied with**
> - **Parties should also know that the determination will be final. Thus all disputes <u>or potential disputes</u> are catered for in directions**"

22. The first order said:-

> "(1) The Respondent must, by 4.00 pm on 19th October 2018, serve on the Applicant a statement of costs claimed, certified by the solicitor to say that these are the costs contractually payable by the client, setting out (a) the qualification and experience of the fee earner, (b) a breakdown of the number of hours spent or estimated to be spent, (c) details of letters sent, telephone calls and those anticipated and (d) details of disbursements to include similar facts as in (a) and (b) above in respect of any valuer's fee claimed"

23. The following directions then dealt with how objections were to be raised and replied to and the direction relating to what was to go into the bundle for the hearing set out that the schedule of costs claimed together with the objections and replies must be in the bundle.

24. When the hearing bundle arrived, the Tribunal chair noted that there was no costs schedule and, thus, no objections or replies. A statement by one of the Applicants exhibited a copy of an e-mail from the Respondent's solicitors

dated 17th October 2018 which simply said that the anticipated legal fees were £1,600 plus VAT plus a land registry fee of £9, valuation fees of £775 plus VAT and 'Landlord's lender fee: £150.00 plus VAT'. It was said that "*…these are anticipated costs and made on the basis that matters are yet to be completed.*"

25. The Tribunal chair therefore caused a letter to be written to the parties days before the hearing pointing out that there was no schedule and it was possible that the costs would have to be assessed at 'nil'. The purpose of this was to find out if there had been an error and therefore try to prompt a correction.

26. When Ms. Grindley was asked about this at the end of the hearing, she said clearly that the failure to comply with the directions order had been a deliberate action taken by her firm. The reason, she said, was that the Applicants had not made an application for costs to be assessed. She referred to the Tribunal's overriding objective as set out in rule 3 of **The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.**

27. This rule sets out the objective which is to enable the Tribunal to deal with cases fairly and justly to include dealing with cases in ways that are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.

28. Rule 6 of these rules states that the Tribunal may regulate its own procedure and may give a direction in relation to the conduct or disposal of proceedings at any time. It is clear that this power is unlimited but includes the power to require a party to provide or produce documents, information or submissions.

29. Failure to comply with a direction enables the Tribunal to strike out a party's case or bar or restrict a party's participation in the proceedings. Further, a Tribunal may strike out the whole or a part of a case if a Respondent has failed to co-operate with the Tribunal such that the Tribunal cannot deal with the proceedings fairly or justly. The overriding objective also requires parties to co-operate with the Tribunal.

30. Any tenant who applies to a Tribunal to determine the terms of a lease extension is also entitled to a determination of the landlord's costs incurred under section 60 of the 1993 Act. In many cases the tenant applies for both at the same time with separate application forms but incurs just one fee. The costs can be dealt with at the same time because the costs of assessing the entitlement to a lease extension will have already been incurred and the costs of completing the new lease can be estimated and, in fact, almost always are estimated as they have to be paid on completion of the transaction before the solicitor incurs the cost of finalising everything. In fact, in the market place, solicitors dealing with the public are required to quote the exact figures for costs in advance in conveyancing cases including leases before work has commenced. Clearly those quoted amounts will be estimates.

31. However, this Tribunal noted some time ago that some landlords were delaying their submission of costs until just before the completion of a transaction and then insisting on payment on completion. If the tenant considered that the costs were excessive, he or she was in the invidious

position of having to agree and pay the potentially excessive amount or apply separately to this Tribunal for a determination as to the reasonableness and payability of the costs being claimed. A new application would inevitably cost the tenant more in fees (up to £300) and delay matters for weeks, if not months.

32. It was considered that this behaviour was disproportionate and unfair. As a result, in each application for a determination of the terms of a lease extension, a landlord who wants to pursue costs is now required to produce a costs schedule and the tenant is require to raise such objections as he or she wants to, so that when the terms of the lease extension are determined by the Tribunal, the parties can proceed to an immediate completion as the reasonability and payability of costs will also have been determined as well.

33. The important point is that no-one is being put to any expense they would not have to incur and the tenant is potentially saving quite a large amount in fees. In the vast majority of cases, the costs are agreed between the parties without formality. In this case, they have not been. The Tribunal has no idea how the figure of £1,600 is made up for the legal costs or the figure of £775 is made up for the valuer's fee. It does not know why the landlord's lender is charging a fee and, in any event, such a fee may not be payable under section 60 of the 1993 Act. In other words, there is no information provided which enables the Tribunal to assess payability or reasonableness.

34. Using its knowledge and experience, £1,600 would appear to be a very high amount for a straightforward lease extension where the terms of the new lease (save for the premium) are largely dictated by statute.

35. The Respondent's solicitors say that they have deliberately chosen to ignore the order made by the Tribunal chair over 2 months before the hearing. The order made was proportionate, potentially saved costs and expense for the Tribunal and the Applicants without incurring extra expense, and was reasonable. The parties were ordered "*to provide or produce documents, information or submissions*" and the Respondent made a very positive decision to refuse to do so. The consequence is that the costs and valuation fees are assessed at nil.

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Bruce Edgington
Regional Judge
10th December 2018

ANNEX - RIGHTS OF APPEAL

i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.