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

Case Reference : **RC/LON/00AM/OLR/2017/1713**

Property : **14 Lyndhurst Road, London N22
5AT**

Applicant : **Gluck Property Limited**

Representative : **Churchills Solicitors Limited**

Respondent : **Persons Unknown**

Representative : **N/A**

Type of Application : **S50/51 Leasehold Reform Housing
and Urban Development Act 1993,
Missing Landlord**

Tribunal Members : **P M J Casey MRICS**

**Date and venue of
Hearing** : **Paper hearing on 26 April 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15 June 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the premium payable on the grant of a new lease of the first floor flat at 14 Lyndhurst Road, London N22 5AT (“the property”) is the sum of £51,750.
- (2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination by the tribunal pursuant to an order made under the provisions of S50(1) of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) by District Judge Dias QC sitting at the County Court at Edmonton on 11 December 2017 of the premium to be paid into Court and other terms on the grant of a new lease of the property under the relevant provisions of the Act.
2. The order was made in response to a claim made to the Court on 23 February 2017 by Churchills Solicitors Limited on behalf of the applicant in which it was said that the applicant was entitled to acquire a new lease of the property under the provisions of the Act but had been unable to exercise the right by serving the requisite notice under S42 on the landlords because their whereabouts were unknown.

The hearing

3. In response to the tribunal’s directions which provided for a determination on the papers to be submitted, the applicant’s solicitors provided a bundle of documents including a valuation report dated 15 January 2018 for use in tribunal proceedings addressed to the tribunal and prepared by Andrew Cohen MRICS of Talbots Surveying Services Limited. The report contained the requisite declarations required of a Surveyor acting as an expert witness.
4. The Tribunal considered the hearing bundle on 26 April 2018. No inspection of the property was deemed necessary given the description, plans and photographs included in the report.

The evidence

5. From Mr Cohen’s description of the property and the photographs it is a self-contained purpose built flat on the first floor of a terraced building dating from circa 1900. It comprises five rooms, kitchen and bath/wc. There is a section of garden to the rear. No want of repair is noted in the report and whilst the division of one bedroom to form two

is said to be a tenant's improvement no additional value that falls to be disregarded is claimed. It has a gross internal area of 807 sq ft.

6. The property is held on a 99 year lease from 25 March 1976 subject, at the valuation date, to a ground rent payment of £40.00 per annum which rises to £60 per annum after the 66th year of the term has elapsed.
7. At the Valuation Date, 23 February 2017, the lease had 58.08 years unexpired.
8. Mr Cohen provides market evidence for the extended lease value of the property as at the Valuation Date by reference to five transactions involving similar properties at around that time the details of which are provided in the report. He makes adjustments to the sale prices achieved by these properties to reflect differences in size in two cases and in four instances to reflect superior condition to the subject property. However he says no adjustment need be made to reflect the time difference between sale dates and the valuation date as Land Registry data shows a fairly flat market over the period. From this evidence he forms the opinion that an extended leasehold interest in the subject property would be worth £440,000, equivalent to £547 per sq ft the average of his comparable transactions. He adds 1% to this figure for the benefit owning the freehold to give £444,400 as the freehold value.
9. To capitalise the ground rent income for the unexpired term of the existing lease in his valuation of the existing freehold interest in the property he adopts a rate of 7% and he defers the reversion on the expiration of the existing lease term at 5%.
10. To calculate the marriage value and the landlord's entitlement to 50% thereof he has assessed the value of the existing lease term in the property, disregarding the value of the rights conferred by the Act, by reference to what are generally referred to as graphs of relativity. He refers to the five graphs relating to outer London/England which were published in an RICS report into graphs of relativity. He has excluded the graph produced by South East Leasehold as showing a significant variation from the other four. Averaging these four suggests to him that in a "no Act world" the existing lease term would have a value of 81.4% of the freehold value for what he calculates as an unexpired term of 56.08 years.
11. His valuation attached to his report produces a premium of £53,659.

The decision

12. The tribunal is satisfied that Mr Cohen's valuation of the extended leasehold interest is supported by the evidence he provides in his report and by his acceptable adjustments to the sale prices of the comparable transactions. The uplift from leasehold value to the freehold Mr Cohen has made of 1% is a fairly normal addition in the outer London area for this length of lease and gives a freehold, VP value of £444,400 which the tribunal accepts.
13. Mr Cohen's use of a 7% rate to capitalize the passing ground rent and of 5% to defer the value of the reversion of the term date is also perfectly proper and accepted by the tribunal.
14. The only problem with Mr Cohen's valuation is that he has miscalculated the length of the unexpired term. The lease commencement date is in 1976 not 1974 and the unexpired term is thus 58.08 years.
15. In the absence of sales evidence the use of so called graphs of relativity is a common practice and the five graphs referred to by Mr Cohen are invariably used in any case outside the prime central London area because practitioners argue that the outer London market is less sophisticated and higher relativities result though none seem able to explain why lease length per se should affect values in different locations in this way. The graphs referred to all have their individual flaws and taking an average of the four that he prefers does not make them more reliable. In the tribunal's experience whenever market evidence is introduced lower relativities result. The only graph to have been given some credence by the Upper Chamber is the Gerald Eve – John D Wood (1996) graph. This shows a relativity of leasehold to freehold value with 58.08 years unexpired of some 80.0% against the lowest of the five outer London graphs of 81.8% and the average of the four preferred by Mr Cohen of 83%. Doing the best the tribunal can with this very limited evidence the relativity is determined at 82%. The tribunal's valuation is attached.
16. It is confirmed there are no outstanding demands for ground rent or service charges which have been lawfully demanded and have not been paid.
17. District Judge Dias's Order of 11 December 2017 required at 2 that the tribunal determines "the terms of the said new lease and the premium payable ...". The tribunal has been provided with a draft of the deed of surrender and re-grant in the bundle. However there are errors in the draft documents. At Clause 1 of the lease only limited title guarantee can be given and reference must be made, perhaps in a clause prior to covenants etc to the effect that the lease is made under S56 of the Act, that no long lease created immediately or derivatively by way of sub-demise under the new lease will confer on the sub-tenant any rights under Part II of the Act and that the landlord will have the rights

conferred by S61 of the Act Hague on Leasehold Enfranchisement has examples to assist with drafting. A revised draft should be submitted to the tribunal for approval within 21 days of receipt of this decision.

Name: Patrick M J Casey

Date: 15 June 2018

LON/00AM/OLR/2017/1713

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

S48 Leasehold Reform Housing and Urban Development Act 1993

**Determination of the premium payable for an extended lease of
First floor flat, 14 Lyndhurst Road, London N22 5AT**

Valuation date: 23 February 2017 – Unexpired term 58.08 years

Diminution in Value of Freehold Interest

Capitalization of ground rent pa YP for 25.08 years @ 7%	£40 <u>11.275</u>	451
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Capitalization of ground rent pa YP for 33 years deferred 25.08 years @ 7%	£60 2.68 <u> </u>	1,608
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Reversion to F/H value with VP Deferred 58.08 years @ 5%	£444,400 <u>0.059</u>	£26,220
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Less value of F/H after grant of new lease Deferred 148.08 years @5%	£444,40 <u>0.0008</u>	£355	£25,865
			<u>£27,924</u>

Marriage Value

After grant of new lease

Value of extended lease	£440,000	
Plus freehold value	<u>£355</u>	£440,355

Before grant of new lease

Value of existing lease @ 82% f/h	£364,408	
Plus freehold value	<u>£28,279</u>	£392,687
		<u>£47,668</u>
		£23,834

50% share to Freeholder and Intermediate Leaseholder		£51,758
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Premium Payable Say £51,750

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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. 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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).