FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AF/OLR/2018/1552**
Property	**:**	**36E Albermarle Road, Beckenham, Kent BR3 5HN ("the flat")**
Applicant	**:**	**Jeffrey Gordon Critchley**
Representative	**:**	**WT Law LLP**
Respondent:	**:**	**Alan Edward Short & Clive Paul Short ("the landlord")**
Representative	**:**	**Alan E Short**
Type of application	**:**	**A new lease claim**
Tribunal members	**:**	**Judge Angus Andrew** **Anthea Rawlence MRICS**
Date and venue of hearing	**:**	**14 May 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**29 May 2019**

DECISIONS

Decisions

1. The existing lease value of the flat without "Act rights" at the agreed valuation date was £311,016.

2. The price to be paid for the new extended lease is £23,186 in accordance with our attached valuation.

The application and the hearing

3. The tenant applied under section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for a determination of the price to be paid under section 56(1) of and schedule 13(2) to the Act for the grant of a new extended lease of the flat.

4. We heard the application on 14 May 2019. Mr Critchley was represented by Wilson Dunsin FRICS who also gave evidence on his behalf. The landlord was represented by Mathew Hearsum, a barrister. Michael Tibbatts MRICS MEWI gave evidence on the landlord's behalf. Neither party requested an inspection and with good quality photographs before us we did not consider that an inspection was necessary.

5. With the agreement of both Mr Dunsin and Mr Hearsum we allowed the late introduction of documents tendered by each party. They are at pages 166A-C and 236-266 of the hearing bundle.

Background

6. The flat is on the first floor of a two storey building built in about 1950. The flat is accessed from the rear by means of an external stair case. A garage is included in the demise. The flat does not have the benefit of any part of either the front or rear garden.

7. The existing lease is for a term of 99 years from 25 June 1985 and reserves an annual rent of £50 rising to £200. The flat was previously owned by Elizabeth Bryan. Ms Bryan made a will in 1991 that named three charities as the residual beneficiaries. Seven years later she met Mr Critchley: they became partners and lived together at Mr Critchley's home at 27 Grove Park Road, London SE9 4NP. Ms Bryan was diagnosed with terminal cancer and was receiving palliative care. She was brought to Mr Critchley's home on 18 October 2013 with the intention that they would be married on the following day under a special licence. The marriage would have invalidated the 1991 will. The wedding ceremony had to be postponed and sadly Ms Bryan died on 20 October 2013.

8. It seems that the executors received an offer of £300,000 from Ms Bryan's sister. Accordingly, the three charitable beneficiaries obtained a valuation of the flat from Berrys, Chartered Surveyors. The valuation was prepared under section 119

of the Charities Act 2011 and the flat was valued at £300,000 on 19 September 2014, being the date of the valuer's inspection. Both parties agreed that the valuation contained an error: the valuer assumed that the flat had the benefit of part of the rear garden.

9. The valuation report concludes that the offer of £300,000 *"appears reasonable based upon the comparable evidence"*. The report records that *"the property appears basically sound but is dated and we would expect that the buyer would wish to carry out further improvement and upgrading"*.

10. Mr Critchley lodged a claim against the estate, presumably under The Inheritance (Provisions for Family and Dependants) Act 1975. The claim was ultimately settled in July 2015 when the executors agreed to accept the sum of £257,500 for the flat. In their solicitor's letter of 10 July 2015, they acknowledge that they are accepting *"a reduced sum for the property from your client in order to settle the intimated claim brought by him"*.

11. On the basis of the official copy entries included in the hearing bundle it would seem that the sale to Mr Critchley has not completed until 4 April 2016. By a claim notice dated 14 May 2018 Mr Critchley claimed a new extended lease. By a counter notice dated 28 June 2018 the landlord admitted the claim.

Issues

12. The parties had agreed the following:

    a. The valuation of 15 May 2018
    b. An unexpired term of 66.11 years.
    c. A deferment rate of 5%
    d. A capitalisation rate of 6%
    e. A new extended lease value of £342,000
    f. A freehold vacant possession value of £345,420
    g. The terms of the new lease at pages 46 to 54 of the bundle

13. During the course of the hearing the valuers also agreed the following: -

    a. That a downward adjustment of £22,500 was required to reflect Berry's mistake in including part of the rear garden in their valuation
    b. A downward adjustment of 3.8% to the existing lease value to reflect the value of the "Act rights".

14. Only one issue remained in dispute:

    a. The existing lease value of the flat disregarding the "Act rights".

15. Mr Dunsin contended for an existing lease value of £311,016 whilst Mr Tibbatts contended for an existing lease value of £266,837. These different existing lease values resulted in Mr Dunsin contending for a premium of £23,186 and Mr Tibbatts for a premium of £45,276.

Mr Dunsin's approach

16. Mr Dunsin said that he had been unable to identify any market or comparable evidence that would assist in valuing the existing lease. Consequently, he sought to determine the existing lease value by reference to the relativity graphs in the RICS Research Report of October 2009. He acknowledged the shortcomings of the relativity graphs but nevertheless considered that it was the only evidence available. The five greater London and England graphs indicated a relativity of 90.04%. Applying that relativity to the agreed freehold vacant possession value of £345,420 produced an existing lease value without "Act rights" of £311,016.

Mr Tibbatts' approach

17. Mr Tibbatts starting point was Berrys' valuation of £300,000. After making a downward adjustment of £22,500 to reflect Berrys' mistake in including part of the rear garden in their valuation Mr Tibbatts made a further downward adjustment of £25,000 for *"poor condition"*. In making that adjustment Mr Tibbatts assumed that the lower price of £257,500 paid by Mr Critchley in April 2016 reflected this *"poor condition"*.

18. These adjustments gave Mr Tibbatts a base value of £252,500. He then adjusted for time using the Land Registry Index and for lease length using Saville's Enfranchisable Relativity graph. In adjusting for time Mr Tibbatts' starting point was not September 2014 (the date of Berrys' valuation) but April 2016, being the date of the sale to Mr Critchley. These adjustments resulted in a valuation of £259,300. He then made the downward adjustment of 3.8% to reflect his perception of the Act rights, resulting in a final existing lease value of £249,500.

19. This valuation indicates relativity of 72.28% that Mr Tibbatts considered was too low. As he put it: *"one swallow could not make a summer"*. Accordingly, Mr Tibbatts turned to the Saville's 2015 Unenfranchisable relativity graph that indicated relativity of 82.14%. The average of these two relativities is approximately 77.25% that Mr Tibbatts then adopted in valuing the existing lease at £266,837.

Reasons for our decision

20. Mr Dunsin accepted all of Mr Tibbatts' criticisms of the relativity graphs. He agreed that the graphs should only be relied on as a last resort in the absence of market evidence. However, Mr Tibbatts' reliance on and analysis of the Berrys 2014 valuation was equally not above criticism. Not only was the valuation made under the Charities Act 2011 but it predated the valuation date by 3 years and 8 months. Although Berrys apparently relied on the comparable evidence of 5 flats no analysis of those sales was provided and in particular we do not know the length of the relevant leases. Indeed, the inability of both valuers to find any current short lease evidence in the vicinity of the flat rather suggests that the sales relied on by Berrys may not have been truly comparable.

21. Furthermore, Mr Tibbatts' suggestion that the price of £257,500 paid by Mr Critchley reflected the *"poor condition"* of the flat is ill conceived. The sale to Mr Critchley was not an open market sale: it was a discounted sale price to settle a

claim against Ms Bryan's estate. Mr Tibbatts' repeated reference to that sale as *"the elephant in the room"* was unhelpful. The price paid by Mr Critchley is not relevant to the valuation that we must undertake.

22. We do not accept Mr Tibbatts' downward adjustment of £25,000 to reflect what he considered to be the poor condition of the flat. Berrys had already taken the condition of the flat into account in their valuation. A further downward adjustment was simply double counting. In any event, having considered the high-quality photographs supplied by Mr Dunsin we do not accept that a condition deduction would have been appropriate for a flat of this type in the Bromley area. The fittings are indeed a little dated but the flat appears to be in good decorative order.

23. In adjusting for time Mr Tibbatts should have taken the valuation date adopted by Berrys (September 2014) as his starting point rather than the date of the sale to Mr Critchley (April 2016), which is irrelevant.

24. Notwithstanding the accepted shortcomings of the relativity graphs Mr Dunsin was able to substantiate his valuation by an analysis of the Berrys valuation, provided at the hearing. Discounting the *"condition"* adjustment provides a base valuation of £277,500. Further adjustments for time (from the date of Berry's valuation) and lease length produces a valuation of £322,846. Finally, the agreed downward adjustment of 3.8% to reflect the "Act Rights" results in an existing lease valuation of £310,577.

25. This analysis clearly supports Mr Dunsin's valuation based on the relativity graphs and for each of the above reasons we therefore adopt his valuation of £311,016 and determine a premium of £23,186 in accordance with our valuation attached.

Name: Angus Andrew Date: 29 May 2019

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).