



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

Case Reference : KA/LON/OOBJ/ORL/2020/0215

Property : 16A Eldon Road, Walthamstow, London, E17 7BZ

HMCTS Code : P: Paper

Applicant : Akis Martis Konstandi and Kate Konstandi

Representative : Notary Express

Respondent : Rifat Lodhi (missing landlord)

Representative : None

Type of Application : Enfranchisement

Tribunal Members: Judge Robert Latham
Kevin Ridgeway MRICS

Date and venue of Hearing : Paper determination on 2 July 2020
Alfred Place, London WC1E 7LR

Date of Decision : 2 July 2020

DECISION

Description of Hearing

This has been a hearing on the papers (“P”). The Directions provided for a paper determination and neither party has requested an oral hearing. This is a missing landlord case. There has therefore been no appearance by the Respondent. Pursuant to these Directions, the Applicant has provided the Tribunal a Bundle of Documents including a valuation report.

Decision of the Tribunal

(i) The Tribunal determines that the premium payable by the Applicant in respect of the extension of her lease in respect of 16A Eldon Road, Walthamstow, London, E17 7BZ is £42,120.

(ii) The Tribunal approves proposed draft of the deed of variation.

Background

1. The Applicants are claiming the right to acquire a new lease of her flat, namely 16A Eldon Road, Walthamstow, London, E17 7BZ (“the flat”) pursuant to the provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”). On 16 January 2020, District Judge Wahiwala, sitting at the Norwich County Court, made an order dispensing with the service of the tenants’ notice under Section 42 on the ground that the landlord could not be found. He transferred the matter to this Tribunal to determine the terms of the new lease and the premium payable.

Evidence

2. We have been provided with a valuation report by Timothy Henson, BSc MRICS, dated 2 March 2020. He inspected the premises on 25 February 2020. He proposes a premium of £38,500, based on a relativity of 83.48%. He also considers a higher premium of £41,300 if a relativity of 85.44% is adopted.
3. We have also been provided with a draft deed of variation.

Lease details

4. The Applicants currently hold the flat under a lease, dated 6 November 1984 for a term of 99 years from 24 June 1985. The relevant Valuation Date is 26 April 2019, namely the date on which this claim was issued in the County Court. On this date, the unexpired term was 65.17 years. For some unexplained reason, Mr Henson (at [6.2] of his report, has taken the valuation date of issue to be 21 August 2019, and has taken the unexpired term to be 64.84 years.
5. The flat consists of a front reception room (which has been used as a bedroom), a double bedroom, a living area/kitchen and a shower room/wc. The flat is on the ground floor. The floor area is 46.52 m². It has exclusive use of the rear garden.
6. The Applicants acquired their leasehold interest on 15 October 2003.

Extended Lease Value

7. Mr Henson has had regard to seven comparables, namely (i) 66A Palmerston Road, E17 6PG; (ii) 38 Pretoria Av, E17 7DE; (iii) 59b Cairo Road, E17 3BB; (iv) Ground Floor, 53 Glenthorne Road, E17 7AP; (v) 12 Callis Road, E17 8PN; (vi) 16 Callis Road, E17 8PN and (vii) 29 Cleveland Park Avenue, E17 7BP. These are a combination of one bedroom and two bedroom units. He notes that the subject flat is small for a two bedroom unit by virtue of the size of the living room/kitchen areas being below what would be expected. However, it is an improvement on a typical one bedroom flat as it can be

used as two bedrooms. He therefore suggests that the value lies between the range of these two types of property.

8. The particulars of the seven comparables are not as detailed as the Tribunal would normally expect. However, we have sufficient to make a fair valuation. Mr Henson's error on the valuation date does not have any significant impact on the comparables as no adjustment is made for time. Mr Henson first takes an average of the sale price of the seven comparables, which is £392,000. He then computes an average of the £/m² for the seven comparables. Applying the average of £7,599 per m², he computes a value of £370,000. He then gives some additional weighting to the small size and compromised layout of the subject flat and proposes an extended lease value of £380,000. We adopt this figure.

Relativity

9. Mr Henson has not adduced any evidence of local transactions of flats with short leases. He therefore considers three approaches:

(i) He has first considered the average of the five RICS graphs for outside prime central London area. These indicate that a 64.84 year lease would have an average relativity of 89.22%. There is a moderate spread within this sample from the five contributors from 87.84% to 90.97%. However, he does not adopt this figure, in the light of recent criticism from the Upper Tribunal decisions in *Sinclair Gardens Investments (Kensington) Ltd* [2017] UKUT 494 (LC), *Judith Reiss v Ironhawk Ltd* [2018] UKUT 311 (LC); *Oliyide v Elmbirch Properties plc* [2019] UKUT 190 (LC) and *Trustees of the Barry & Peggy High Foundation v Zucconi* [2019] UKUT 242 (LC).

(ii) Secondly, he relies upon the Savills 2015 Enfranchiseable graph, which indicates a figure of 85.44% for an unexpired term of 64.84 years. It is to be noted that he did not take the Unenfranchiseable figure from the Savills table which would have been 81.44%. He rather applied a further 4% reduction to reflect the No Act world, which would result in a relativity of 82.02%. From this he computes a premium of £41,400.

(iii) Thirdly, he purports to have regard to a First-tier Tribunal ("FTT") decision in *7 Outgate Road, NW10 9UG* (LON/00AE/OLR/2019/0896). Mr Henson takes an average of the Gerald Eve 2016 graph (81.59%); the Savills 2015 Enfranchiseable graph (85.44%) and the Savills 2015 Unenfranchiseable graph (81.44%). The average is 83.48% from which he computes his preferred premium of £38,500. It is to be noted that this is not the approach which Mr Ian Holdsworth FRICS had taken in his decision. He did not include the Savills Enfranchiseable figure. We do not consider it to be appropriate to mix "Enfranchiseable" and "Unenfranchiseable" figures. If Enfranchiseable figures are to be used, an adjustment needs to be made for the No Act world.

10. Mr Henson has taken the valuation date to be 21 August 2019, rather than 26 April 2019. The correct unexpired term is therefore 65.16 years. This Tribunal prefers the second approach adopted by Mr Henson. The use of the

Savills 2015 Enfranchiseable graph has been adopted by the Upper Tribunal in a number of recent cases. However, we prefer to take the Unenfranchiseable figure from the Savills graph as a result of which we do not need to make an adjustment for the No Act world. This gives 81.5% for an unexpired term of 65.00 years and 81.7% for 65.25 years. We therefore take the half way figure of 81.6%

Capitalisation Rate

11. Mr Henson takes a figure of 7%. We approve this.

Deferment Rate

12. We approve the “Sportelli” rate of 5% for deferment which Mr Henson has adopted.

Calculation of the Premium

13. We have adopted the long lease value of £380,000 which is proposed by Mr Henson. We have assessed relativity at 88.60% based on the Savills 2015 Unenfranchiseable graph for an unexpired term of 65.16 years. We therefore compute a premium of £42,120. The calculation is set out in the Appendix.

Judge Robert Latham
2 July 2020

Appendix - Valuation

Valuation for lease extension

16A Eldon Road, E17 7BZ

Valuation Date	26/04/2019		
Lease Commencement	24/06/1985		
Lease Term	99.00	Years	
Unexpired Term	65.16	Years	
Long Lease value	£380,000		
Freehold VP value	£383,800	+1% long lease value	
	Term 1	Term 2	Term 3
Ground rent	£100.00	£125.00	£0.00
Reversion years	32.16	33.00	0.00
Capitalisation rate	7%		
Deferment rate	5%		
Compensation	£0.00		
Relativity	81.60%		

Diminution of Landlord's interest

Ground rent				£100	
YP	32.16	yrs @	7.00%	<u>12.66420414</u>	£1,266
Rent Review 1				£125	
YP	33.00	yrs @	7.00%	12.75379002	
PV of £1	32.16	yrs @	7.00%	<u>0.11350571</u>	£181
Rent Review2				£0	
YP	0.00	yrs @	7.00%	0	
PV of £1	65.16	yrs @	7.00%	<u>0.012171751</u>	£0
Reversion to VP value				£383,800	
PV	65.16	yrs @	5.00%	<u>0.04162031</u>	£15,974
L/ord's interest on reversion of new lease					
FH VP				£383,800	
PV	155.16	yrs @	5.00%	<u>0.00051555</u>	-£198
					<u>£17,223</u>

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 **by e-mail** 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).