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Residential
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LONDON RENT ASSESSMENT PANEL

THE LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993, PART I
(‘The Act’)**

CASE REFERENCE: LON/OOBA/OLR/2009/0452

Applicants: Mr M Delic and Mrs K Delic (Joint leaseholders)

Respondent: City & Country Properties Limited (Landlord)

Premises: Flat 5, Wimbledon Close, The Downs, LONDON SW20 8HW

Date of Application: 10 August 2009

Date of Tribunal’s Directions: 28 August 2009

Date of Hearing: 8 December 2009

Date of Inspection: 9 December 2009

Appearances: Mr M Egan (of counsel) instructed by Rose and Rose, solicitors appeared for the applicants. Expert evidence was given on behalf of the applicants by Mr M Tibbatts of Tibbatts & Co Limited; Mr R Sharp a valuer appeared as an advocate and as an expert witness on behalf of the respondent and he is instructed by Wallace LLP solicitors.

Date of Decision: 24 January 2010

Leasehold Valuation Tribunal: James Driscoll, solicitor (Lawyer Chair), and Derek Huckle FRICS

Summary of the Determination

The tribunal determines that the premium payable by the applicants to the respondents for the grant of a new lease of the subject premises is the sum of £32,460

The Application

- 1 This is an application under section 48 of the Act for a determination of the premium payable for the grant of a new lease. The new lease is to be granted under the provisions in Chapter 2, Part I of the Act. It is made by the joint owners of the lease of the subject premises which is a flat in a block owned by the respondent who is the landlord under the lease. As the terms of the new lease have been agreed, the sole issue for the tribunal is the premium payable by the applicants.
- 2 The relevant details of the lease are as follows. It is dated 22 October 1979 for a term of 99 years from 29 September 1978. The parties are named as the respondent and a company called Insworth Investments Limited and the original leaseholders. In letters sent by fax to the tribunal the solicitors for the respondent stated that they are instructed by that company as well as the applicant and that it "is not a third party to the lease, nor an intermediate landlord...and as such is not a party to the lease and has no involvement in the grant of the new lease...".
- 3 The details of the claim may be summarised as follows: a notice of claim was given under section 42 of the Act on 3 April 2009 to which a counter-notice admitting the claim, but disputing the proposed premium, was given under section 45 on 3 June 2009. As the parties were unable to agree the premium an application was made to the tribunal on 10 August 2009. Directions were given by the tribunal on 28 August 2009. The hearing took place on 8 December 2009.
- 4 We inspected the subject premises internally and we made an external inspection of the properties the sales of which are relied on by the respective parties as relevant market evidence of comparable sales. It is agreed by the parties that the valuation date is 3 April 2009 and that on that date the unexpired term of the current lease was 68.488 years. It is also common ground that the capitalisation rate for calculating the loss of ground rent for the remainder of the term of the current lease should be 7% and that the deferment rate for calculating the diminution of the landlord's interest should be 5% (applying the generic rate settled in the Sportelli litigation).

Valuation of the premium under the Act

- 5 Lease extension valuations must be carried out in accordance with Schedule 13 of the Act. In Part 2 paragraph of that Schedule it is provided that:

'the premium payable for the grant of a 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 parties agree that there is no compensation payable under paragraph 2(c) in this case so that the premium is to be assessed by reference to the valuation of the diminution of the applicant's estate or interest in the flat, and their share of the marriage value. These two elements of the valuation are now considered in turn.

Diminution of the landlord's interest in the tenant's flat

6 Paragraph 3 of Schedule 13 requires a valuation of the landlord's interest before and after the grant of the new lease. This has to be determined under paragraph 3(2) which reads as follows:

- (1) The diminution in value of the landlord's interest is the difference between--
 - (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
 - (b) the value of his interest in the flat once the new lease is granted.
- (2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at [the relevant date] that interest might be expected to realise if sold on the open market by a willing seller (with [neither the tenant nor any owner of an intermediate leasehold interest] buying or seeking to buy) on the following assumptions--
 - (a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;
 - (b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;
 - (c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and
 - (d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

7 One of the assumptions required by this is that the leaseholder has no right to acquire any interest in the premises. The purpose of this is to ensure that the existence of a statutory right to seek a new lease will not affect the valuation. This is sometimes referred to as approaching valuation in a 'no Act world' (see: *Hague Leasehold Enfranchisement*, 5th edition, 2009). The effect on the value of the flat from improvements carried out by the leaseholder or a predecessor in title (double glazing) must also be disregarded. In this matter, the value of

such works has been agreed at no more than £10,000. In addition, any rent payable is commuted to a peppercorn when the new lease is granted.

- 8 The landlord's interest consists in financial terms of the fixed rental income and the value of the freehold reversion. As the rental income is lost following the grant of a new lease at a nominal rent, the landlord's lost income for the remaining term of the lease is capitalised.
- 9 Turning to the other far more complex part of the valuation, the tribunal has to determine the present freehold value with the landlord having vacant possession and to then defer this for the remaining term of the lease. In *Cadogan v Sportelli* the Court of Appeal ((2007) EWCA Civ 1280)) upheld the Lands Tribunal decision ([2006] RVR 382) that (subject to certain qualifications) a generic deferment rate of 5% is to be used in this part of the valuation. Although those advising the landlord originally submitted that a lower deferment rate of 3.50% should be applied to reflect the shortness of the lease, the parties agreed shortly before the hearing that the generic 5% rate should be applied in this case.
- 10 There are various ways or different types of evidence in which the present freehold value can be estimated. A common source of evidence is the use of market evidence of sales of comparable properties. Other types of evidence are from settlements a valuer has been involved with professionally. Generally speaking, it is comparable market evidence that is the most useful.

Marriage value

- 11 In any claims where the current lease has less than 80 years unexpired, any marriage value must be shared 50:50 (Schedule 13 paragraph 1). In the case of a claim for the grant of new lease, marriage value is defined as:
- (2) [Subject to sub-paragraph (2A),] the marriage value is the difference between the following amounts, namely--
- (a) the aggregate of--
- (i) the value of the interest of the tenant under his existing lease,
 - (ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and
 - (iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and
- (b) the aggregate of--
- (i) the value of the interest to be held by the tenant under the new lease,
 - (ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and
 - (iii) the values of all intermediate leasehold interests (if any) once that lease is granted.

- 12 As has already been stated there is no subsisting intermediate lease in this claim. Accordingly, marriage value is to be assessed by reference to the difference between the value of the applicant's and the respondent's current interests in the flat and those values once the new lease has been granted.
- 13 In other words, marriage value that the additional value that is released on the grant of the new lease. To estimate marriage value two values for the subject property are required, both of which are on the assumptions that there are no statutory rights to enfranchise ('the no-Act world') and that any increase in value due to the tenant's (including predecessors') improvements is disregarded.
- 14 Although there may be market evidence available of enfranchiseable leases of similar properties, there is unlikely to be any evidence of sales of leases without rights under the Act, since there are few leases these days which would not qualify for a new lease or enfranchisement. This is why valuers assess 'relativity' that is to say 'the value of a dwelling held on an existing lease at any given unexpired term divided by the value of the same dwelling in possession to the freeholder expressed as a percentage' (RICS research report, at 2.1). In this application, the principal disagreements between the party's valuers lay in the calculation of the vacant freehold value and the appropriate relativity calculation.

The inspection

- 15 We inspected the subject property on 9 December 2009. It comprises a first floor flat in a brick purpose-built 4 storey block of similar units built in the late 1920's. It is located reasonably close to Wimbledon Village, the town centre and Wimbledon railway station. A similar block, part of the same development, is located on the opposite side of the road. There is entry phone access to the carpeted common parts, a lift and a well kept communal garden. The subject property, 5 Wimbledon Close, comprises a through living/dining room, 3 bedrooms (2 double, one single), a bathroom with a shower over the bath and a separate WC. The smallish kitchen is fully fitted and has a rear door leading to a fire escape and the communal gardens. The flat is generally in good condition but it is not luxurious.

The hearing

- 16 At the hearing Mr Tibbatts gave expert valuation evidence on behalf of the applicants. He referred the tribunal to open market sales at flats 17, 19, and 35 Wimbledon Close and also to negotiations he conducted with Chestertons in a lease extension at flat 21. (He also referred to a sale of flat 43 which he later withdrew during cross-examination). The details are as follows:

<u>Flat</u>	<u>Floor</u>	<u>Date of sale</u>	<u>Price</u>
17	Ground	October 2007	£460,000
19	Ground	September 2009	£430,000
35	Ground	October 2006	£387,500
21	First	November 2007 ^(negotiations)	£33,600 (lease extension)

- 17 Various adjustments were required to the sale prices to reflect the sale dates, size, location, condition, layout and length of term to bring them into full comparability with the subject property. Mr Tibbatts' adjustments resulted in values for extended leases at the valuation date of £415,000 for flat 17, £411,000 for flat 19 and £382,000 for flat 21. He concluded that the value of the existing lease of flat 5 at the valuation date was £342,000 and the freehold vacant possession value £380,000.
- 18 In respect of relativity, Mr Tibbatts referred the tribunal to the recently published RICS research report on the subject and in particular to the various graphs contained therein which he said averaged out between 91.81% and 91.43% for unexpired terms of 68/69 years. He also referred to 75 cases of settlements he had reached over the last 2 years which indicated a range of 90.1% to 90.4%. He concluded that the appropriate figure of relativity in this case should be no lower than 90% and that a premium of for the lease extension should be determined at £26,900.
- 19 Mr Sharp's report for the respondent was signed on 3 December 2009. He too relied on the sale of flat 19 for £430,000 in September 2009 but considered it to have an inferior layout compared to the subject property and of slightly smaller size. He also referred to the sale of the second floor flat at 14 Grosvenor Court, Wimbledon which sold in August 2009 for £511,500. This, he said, was in a marginally superior location, was held on a 999 year lease with a share of the freehold and has only a small lift. He considered the value of the existing lease of the subject property at the valuation date was £422,402 and that the freehold vacant possession value was £480,003.
- 20 In respect of relativity Mr Sharp also referred to the RICS report and the various graphs contained therein as well as various settlements he had recently negotiated. He concluded that an appropriate rate of relativity would be 88% and that a premium for the lease extension should be £36,050.

Conclusion

- 21 As well as inspecting internally the subject property on 9 December 2009 the tribunal also made external inspections of all comparables referred to during the hearing, including 14 Grosvenor Court. The sale prices were wide ranging and each one required adjustment for various factors including size, layout, location, date, condition, length of term and so on. The more adjustments that were required for any particular property, the less reliable the evidence became. A significant unknown factor for the comparables was the condition and standard of any refurbishment. It was however common ground between the parties that the best available evidence of sales in Wimbledon Close was for flat 19.
- 22 Having considered in some detail the available information relating to each comparable the tribunal concluded that value of an extended lease at a peppercorn rent of flat 5 is £425,000. We also considered that the freehold vacant possession would attract a premium of 1% to reflect the absence of any obligations which would otherwise apply under a lease giving a freehold value of £429,250.
- 23 The RICS report contains relativity graphs based on data from various established and respected sources and shows a range as a result of factors set out in the report. We have come to the conclusion that the correct relativity of the value of the existing lease to the freehold interest is 88%. In reaching this decision we have disregarded the graphs which relate solely to houses, the LEASE graph of LVT determinations and those relating to the central London area. This leaves the graphs which cover the middle range: Moss Kaye 2005 which shows a relativity of about 88% and the Charles Boston 2005 graph also at 88%. We attach little weight to settlements and decisions relied on by the parties. We therefore concluded the value of the current lease, applying a relativity of 88%, is £377,740. We therefore determine that the premium payable for a new extended lease is £32,460. A detailed valuation is appended to this decision.

SIGNED:

James Driscoll, (Lawyer Chair)

Dated: 24 January 2010

Reference:GM/LON/00BA/0LR/2009/0452

LEASEHOLD VALUATION TRIBUNAL DECISION

Valuation in accordance with s.56 & Schedule 13 of the
Leasehold Reform Housing & Urban Development Act, as amended

5 Wimbledon Close, The Downs, London, SW20 8HW

- Valuation date (date of Notice of Claim): 3 April 2009
- Lease term: 99 years from 25 September 1978. Ground rent £150 per annum rising.
- Unexpired term at valuation date: 68.488 years
- Capitalisation rate: 7% (agreed)
- Deferral rate: 5% (agreed)
- Value in unimproved state on 158.488 year lease at peppercorn rent: £425,000
- Freehold VP value in unimproved state (+1%): £429,250
- Value in unimproved state on 68.488 year lease at rent of £150 pa: £377,740 (relativity 88%)

Diminution in Value of Landlord's Interest

Value before extension of lease

Ground rent to September 2034	£ 150		
YP 25.88 years @ 7%	<u>11.739</u>	£	1761

Ground rent post Sept. 2034	£ 300		
YP 43 yrs @ 7%	13.507		
PV £1 in 25.88 yrs @ 7%	<u>0.1739</u>	<u>2.3489</u>	£ 705

Reversion to freehold VP value	£ 429250		
PV £1 in 68.488 years @ 5%	<u>0.354</u>	<u>£ 15195</u>	£ 17661

Value after extension of lease

Reversion to freehold VP value	£ 429250		
PV£1 in 158.488 years @ 5%	<u>0.004</u>	£ 171	- £ 171
			<u>£ 17490</u>

Marriage Value

Value of interests after extension of lease

Value of extended lease	£425000		
Value of freehold interest	<u>£ 171</u>	£425171	

Less

Value of interests before extension of lease

Value of existing lease	£377740		
Value of freehold interest	<u>£ 17490</u>	<u>£395230</u>	

Marriage Value	£ 29941		
50%	£ 14970		£ 14970
			<u>£ 32460</u>
Premium payable			£ 32,460