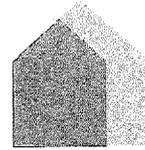


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HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993
section 48 ("the Act")

LON/00BK/OLR/2011/1007

Property: Flat 2 , 197 Ashmore Road, London W9 3DB

Applicant: Austin Clayton Love and Karen Elizabeth Benn

Respondent: Jonathan Howard Roberts and Janet Ann Thain

Attendances: For the Applicants: Mr M S Tibbatts MRICS
For the Respondents: Mr J H Roberts

Date of Application: 13th September 2011

Date of Hearing: 24th January 2012

Tribunal Members: Mr AA Dutton - Chair
Mr PMJ Casey MRICS

Date of decision: 1st February 2012

DECISION

The tribunal determines that pursuant to section 48 of the Act the price to be paid for the lease extension is £30,150 as set out on the attached valuation. The tribunal also determines pursuant to section 60 of the Act that the costs payable by the Applicants are, in respect of the valuation of the flat £1000 plus VAT and in respect of the legal costs £600 plus VAT.

BACKGROUND

1. On the 3rd February 2011 the Applicants served on the Respondents a notice under section 42 of the Act seeking an extension to their lease of the flat on the first and second floors of the property 197, Ashmore Road, London W9 3DB. The lease is for a term of 99 years from 25th March 1984 therefore having an unexpired term of 72.14 years. The Respondents served a counter notice dated 5th April 2011 admitting the Applicants right to a new lease but declining the Applicants proposals, which had been £18,900 for the new lease, and instead requesting a premium of £38,100. Agreement could not be reached between the parties and the application was made to us dated 13th September 2011. The matter came before us on 24th January 2012.
2. A number of matters had been agreed between Mr Tibbatts, for the Applicant and Mr Roberts, who was representing himself and Ms Thain. They are as follows:
 - (a) the valuation date is 3rd February 2011
 - (b) the unexpired term is 72.14 years
 - (c) the deferment rate is 5%
 - (d) the capitalisation rate is 6½ %
 - (e) the long lease value, that is to say the value of the lease after it has been extended, is £490,000 (excluding tenant's improvements)
 - (f) tenant's improvements are valued at £5000
 - (g) there is a rising ground rent
 - (h) the lease terms, save for the premium.
3. The issues that required determination were relativity and value to be attributed, if any, to the share of the freehold, together with the costs payable under section 60 of the Act.

EVIDENCE

4. Mr Tibbatts and Mr Roberts had produced documentary evidence to support their arguments. Mr Tibbatts' was in the form of an independent experts report without obvious date to which, on the morning of the hearing he added submissions and a summary of the report. During the course of the hearing he also provided us with updated graphs of relativity, a map showing the location of the property

and a one page extract from Savills which purported to show the Prime areas of London. We were also provided with a copy of the LVT decision in 30 and 47 Wimbledon Close (LON/OOBA/OLR/2011/005 & 5).

5. Mr Roberts submitted a witness statement, which in the letter to the Tribunal he also described as expert evidence. At the hearing he confirmed that he was not an expert witness, but relied on his experience in property matters. He added to the statement by producing a copy of an LVT decision (LON/OOAF/OLR/2011/0482) relating to a property at 21 Andace Park in Bromley.
6. Mr Tibbats told us he had no changes to make to his report and that the evidence therein was based upon his own knowledge, RICS research and Upper Tribunal decisions and offered himself for questioning. As both parties have these reports it is unnecessary to recount the details. Mr Tibbatts' submissions were that the relativity of 91.75% was based upon detailed settlement evidence which was set out in his report, RICS research published in October 2009 and other graphs of relativity and Upper Tribunal decisions in *Arrowdell v Coniston Court (North) Hove Limited* [LRA/72/2005] and *Nailrile Limited v Earl Cadogan and Hallman & Hallman and others* [LRA/114/2006]
7. On the question of the value to be attributed to the share of the freehold his opinion was that this should be 1%. His view was that almost every surveyor and valuer he had dealt with over the past two years had accepted that some uplift was appropriate. In particular he thought that in a property of this nature, containing two flats, the ability to control insurance and the repair of the property was valuable.
8. In answer to questions put by Mr Roberts and us he denied that relativity was, in this case affected by the ability to secure mortgage finance with a lease of this length. He thought that relativities were constantly changing. On the settlement evidence he confirmed that he tried, "at all costs" to avoid litigation and thought that his reputation would be "sullied" if his cases came before a tribunal too often. When asked why he thought people sought lease extensions he told us that it could be because the leaseholder wished to sell but also perhaps following a death of a co-owner and to facilitate onwards transmission on their own death. He told us that the Applicants lived in Italy and wished to extend the lease, having no present wish to sell. When asked about the value of the existing lease he said it was £455,000, a figure he would be confident of standing by, for example in respect of a value for inheritance tax purposes. He was asked why, in report given in April 2010, he had valued the lease extension at £23,287 but in the section 42 notice, at £18,900. He explained the difference as being the change in relativity to the valuation date. He did not think that the property was in a Prime area and was, he said, outside the area known as Maida Vale. When asked about the Mortgage Dependant graph he

was of the view that it was theoretical and not appropriate, applying, he felt, to low value properties only. In respect of his settlement evidence he accepted that relativity was "agreed" as part of the final figure and accepted that the Upper Tribunal disliked settlement evidence to establish relativity. He told us that relativity was not fixed and accepted that in the settlement evidence produced in his report the percentage figure for the period varied from 91 to 94%. It was, he said, his honestly held view that relativity was in the region of 91.75%

9. Mr Roberts, as had Mr Tibbatts stood by his statement. He introduced the case before the LVT in August 2011 involving a property he owned with Ms Thain at 21 Andace Park in Bromley where that tribunal had accepted the evidence from the mortgage dependant graph produced by Beckett and Kay and applied a relativity of 90% to a lease having an unexpired term of 74.39 years. To support his view on the existing lease value he relied upon a report from Marsh and Parsons dated 28th March 2011 which had valued the long lease at between £480,000 and £500,000 and the existing lease at something in the order of £440,000, before the tenants improvements of £5000 were taken into account. As to the relativity graphs he referred to the Beckett and Kay graph for 2011 showing relativity for Maida Vale flats at around 87%. He also considered the mortgage dependant figures which indicated a percentage of around 85. He produced a copy of an extract from the CML Lenders' handbook, showing the differing requirements of the lenders in respect to lease terms. He thought the relativity figure was 86%.
10. In answer to questions posed by Mr Tibbatts and us he confirmed that the Andace Park property was low value, under the stamp duty threshold and subject to heavy service charge demands. He thought the subject property was on the periphery of the Prime Central London area. On the question of the uplift to freehold value, whilst not thinking there was any such value, if pushed he would have thought it would be no more than £3,000 in total, therefore £1500 for this property. He had nothing to add in closing submissions but asked for costs. He told us that he had sought 3 quotes for the valuation report and had gone with the least expensive, Marsh and Parsons, who charged him £1000 plus VAT, a copy of the fee note being attached to his statement. He had not used them before. The legal costs of £600 plus VAT he thought had been agreed.
11. Mr Tibbatts asked us to prefer his evidence as he was an independent expert and his opinion should carry more weight. He had provided written submissions. He thought the question of mortgage finance was irrelevant and that his settlement evidence should be considered. He reminded us that Mr Roberts, who was seeking a premium of £42,120.50, was asking for a figure higher than that contained in the counter-notice. He sought a premium of £25,845.

12. As the capital value of the property on a long lease basis was agreed, as was a figure attributable to tenants improvements, we did not think it necessary to inspect. The description of the property is to be found in the valuations conducted by Mr Tibbatts in 2010 and by Marsh and Parsons in 2011, and is not in dispute.

THE LAW

13. We have applied the provisions of the Act and schedule 13 when considering the premium and considered section 60 of the Act when reviewing the costs. The wording of section 60 is attached.

FINDINGS

14. Before we make any findings we should address the weight that is to be given to the evidence, opinions and submissions made by Mr Tibbatts and Mr Roberts. We accept that Mr Roberts is an experienced property owner as set out in his introduction. We accept also that his statement was made honestly and based upon his knowledge and experience. However, he is one of the Respondents and therefore his evidence must be looked at in that light. In contrast Mr Tibbatt has presented himself as an independent expert and we accept that is the case. Accordingly where there is a conflict we have given greater weight to the views of Mr Tibbatts, although have judged those against all that has been said by Mr Roberts and our own knowledge and experience.
15. We will deal firstly with the question of uplift to reflect long lease to freehold value. Mr Roberts put little value to this element. In his valuation he had allowed £100 but did concede that it could be something in the region of £3,000 for the total value, that is to say £1500 for these Applicants. We heard all that was said by Mr Tibbatts. In our finding there is value in the freehold. The benefit of being able to manage a property of this nature is undoubtedly of value, including as it would, the control of maintenance and insurance. In our experience the usual uplift is 1% and we see no reason to depart from that percentage increase.
16. On the question of relativity we find that it is inappropriate to rely on the Beckett and Kay mortgage dependant graph which is based on opinion only and not evidence. Mr Roberts puts great store by the mortgage dependency impact and referred to the CML guidelines. In our knowledge and experience there would be little difficulty in obtaining finance to purchase the existing lease, if lease length were the only issue. Indeed it was not possible to see amongst the major lenders that a lease length in excess of 70 years would cause a problem, save perhaps in the case of equity release schemes, which is a confined market. The Woolwich, for example has a lending requirement which is the mortgage term plus 25 years and the likes of Mortgage Express, National Westminster Home Loans would all lend against this term.

17. Although it is said that the property does not lie in a Prime area it is nonetheless close to fairly fashionable Maida Vale, some way from the world of Bromley. In this market we suspect that the purchaser is reasonably sophisticated and not so concerned about the lease length. This is an expensive flat, with an existing lease length value in excess of £430,000, on either case, and therefore of a considerably higher value than the flat in Bromley to which Mr Roberts referred and relied upon. The settlement evidence put forward by Mr Tibbatts was not appealing. As he said the relativity was, in many cases, discovered by taking the final agreed figure and working backwards from there. In the absence of any market evidence we are driven to rely on graph evidence and our own knowledge and experience. Considering the latest graphs showing figures at April 2011 and reviewing the RICS data there appears to be average percentages for relativity of between 87.96 and 93.63. Doing the best we can we conclude that the appropriate relativity for the subject premises on the evidence before us should be 90%.
18. The premium payable is therefore £30,150 as is set out on the attached valuation.
19. On the question of costs the legal fees are agreed at £600 plus VAT, which we consider to be reasonable. We find that the valuation fee of £1200 (inclusive of VAT) is also reasonable. The evidence received from Mr Roberts was that he had made enquiries of local surveyors, three in fact, and had chosen the lowest quote. Although Mr Tibbatts sought to challenge the worth of the report in that it did not contain a valuation under schedule 13 it seems to us that is irrelevant. The basis upon which the valuation is sought is as set out at section 60(1)(b) and was used by Mr Roberts, an experienced property owner, to calculate the premium he sought. He is entitled to obtain a valuation, which is what he did and the worth to him is for him to decide, not the Applicant.
18. We would like to thank Mr Tippatt and Mr Roberts for their assistance in this case and for narrowing the issues.

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Andrew Dutton - chair

1st February 2012

Flat 2, 197 Ashmore Road, London W9 3DB

Premium payable on grant of extended lease

Valuation date 3.2.2011

Unexpired term 72.14 years

A Diminution in value of freehold interest

Existing Interest

1)	Loss of rent pa	£50		
	YP @ 6½% for 16.14years	4.94	£247	
	Reversion to	£100		
	YP @ 6½% for 33 years			
	Deferred 6.14 years	9.12	£912	
	Reversion to pa	£150		
	YP @ 6½% for 33years			
	Deferred 39.14 years	1.14	£171	
2)	Reversion to F/H with VP	£494,950		
	Deferred 5% for 72.14 years	0.0296	£14,650	£15,980
3)	Proposed interest			
	Reversion to F/H with VP	£494,950		
	Deferred @ 5% for 160.14 years	0.0004		£198
				£15,782

B Landlord's Share of marriage value

1)	Total Value of proposed interests			
	Freehold	£198		
	Leasehold (@ 99% of F/H)	£490,000	£490,198	
	Less			
2)	Total value of existing interests			
	Freehold	£15,980		
	Leasehold (@ 90% of F/H)	£445,455	£461,436	
			Marriage Value	£28,762

Landlord's Share at 50%

£14,381

£30,163

Premium payable say

£30,150