

DECISION

Introduction

- 1 By an application dated 22nd August 2012 the applicant applied to the Tribunal for a determination of the premium payable for an extension to the lease of their property at 21 St Matthews Court 7B Coppets Lane London N10 pursuant to Section 48 of the Leasehold Reform (Housing and Urban Development) Act 1993 ("the Act").
- 2 Following directions given on 18th September 2012 the application came before the tribunal for hearing on 19th February 2013. Mr W Dunsin FRICS valuer of Dunsin Surveyors appeared for the Applicants and Mr N Leedham MRICS valuer of Drivers and Norris appeared on behalf of the Respondent.
- 3 Unfortunately reports were delivered late as the parties had not been able to reach agreement on an number of matters which were subsequently included in the memorandum of agreed Fact on 13th February 2013.

The Property

- 4 The property is a first-floor flat consisting of two bedrooms and bathroom/WC and kitchen in a modern purpose-built block of flats in the Bowels Green area of north London.
- 5 The applicants hold a lease dated 28 February 1983 for a term of 99 years from 24 June 1982. The ground rent was fixed at £ 60 per annum rising to £180 per annum at the end of the term. The gross internal area of flat is approximately 47.82 sq metres.

Agreed Items

- 6 The freehold value of the flat has been agreed in the sum of £245,000 and the extended lease value at £242,500 being a deduction of 1 percent. The capitalisation yield has been agreed at 7% and the deferment rate at 5%. No improvements are claimed and the valuation date is agreed as 31st January 2012 being the date when the notice of claim was served. It was agreed that at the valuation date there were 69.4 years unexpired on the lease.

Disputed items

- 7 The main item on which the valuers disagreed was the issue of relativity. Mr Dunsin and for the Applicants contended that the appropriate figure for relativity was 92.16% and Mr Leedham contended for a figure of 91 percent.

- 8 In addition Mr Leedham contended that the relativity should be applied against the extended lease value whereas Mr Dunsin argued that the correct methodology was to apply the relativity of the existing lease against the freehold value.
- 9 It also appeared to the tribunal that the valuers had calculated the marriage value differently in that Mr Leedham had not included the Freeholder's interest after the lease extension and had shown the Leaseholder's current interest at a relativity to the extended lease value.
- 10 As a result of the differences they arrived at different figures for the premium. The applicants contended for £13, 267 and the Respondent for £15,811 83

The Evidence.

- 11 The Applicants based their contention in relation to relativity by reference to the 5 graphs referred to in the report of the Royal Institute of Chartered Surveyors and took an average of the graphs produced
- 12 The graphs relied upon by Mr Dunsin were

South East Leaseholds	92.76
Beckett and Kay	92.38
Nesbitt	90.64
Austin Gray	92.96
Andrew Pridell :	92.08
Average of graphs	92.16%
- 13 He considered the LEASE Graph of tribunal decisions but decided to exclude it as it pushed the average higher and he was more comfortable with the figures which he had obtained and which was fairer to the Respondent
- 14 He did not produce any settlement or transaction evidence and claimed that settlement evidence may often be unreliable as being subject to the Delaforce effect. In using the graphs it was not necessary to make adjustments for the no Act world which further simplified the process.
- 15 In his report Mr Leedham relied principally on 6 lease extensions within the block concluded by Lamberts surveyors and Peter Brown solicitors . Flats 3, 5, 17, 18, 23 and 24 all of which had sold for the sum of £15,000 based on a valuation date of March 2010 with over 71 years unexpired on each of the leases. It appeared they had all been represented by the same valuer and the evidence suggested that only one of the flats had actually been inspected, presumably because they were all similar in design.. The lease terms were similar but there was no evidence of the dimensions of each of the flats.
- 16 The evidence produced did not include any details of the components agreed but in an email from Mr Roberts it was pointed out that according to the RICS the figures would vary between 91.6% and 94.2%. It was considered a relativity of 91 per cent would be reasonable

The Tribunal's Decision.

- 17 The tribunal is conscious that evidence of relativity is always difficult to assess. The Upper Tribunal in Arrowdell and the RICS report of the committee chaired by Jonathan Gaunt QC are useful starting points for the discussion
- 18 In the absence of good market evidence graphs are usually the most reliable source. Market evidence is often hard to come by and is influenced often by the Delaforce effect and is subject to adjustment for the no Act world.
- 19 The tribunal preferred the approach of Mr Dunsin and considered that he was correct in applying an average of the five graphs referred to in the Gaunt Report. The average of 92.16% at which he arrived is reasonable.
- 20 The tribunal has not discounted the evidence of the sales of other flats in the block but considers that it is impossible to place too much weight on them without much more information about the circumstances of the sale, the figures used on the valuations, the size of the flats and what materials the valuers used to arrive at any figure for relativity. The email e from Mr Chris Roberts states that a figure for relativity between 91.6% and 94.2% is shown on the graphs
- 21 Mr Leedham at the end of his evidence sought to contend that a figure of 91% could be justified from graphs which he had seen. Unfortunately no reference to graphs appears in his report and his evidence was not sufficiently specific either to allow Mr Dunsin to question him about it or for the tribunal to reach any reliable conclusions. Accordingly the tribunal concluded that the only reliable graph evidence was that from Mr Dunsin
- 22 The tribunal also considered that the correct approach is to consider relativity of the existing lease against the freehold value and not the extended lease value as contended by Mr Leedham
- 23 As this case has not been capable of compromise the tribunal has decided that taking an average in the way that Mr Dunsin has done is the correct approach and that the market evidence supplied by Mr Leedham is not sufficiently reliable

Conclusion

- 24 The tribunal therefore accepted Mr Dunsin's evidence on relativity and considered that his valuation was correctly formulated in the sum of £13,267. The tribunal therefore orders that the premium is to be £13,267 and it is not necessary to produce any separate valuation.

Chairman Peter Leighton

Date 20th February 2013

