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

Case Reference : **CAM/26UG/OLR/2014/0140**

Property : **64b Stanhope Road, St Albans AL1 5BL**

Applicant : **Mr Terenzio Enzo Di Francesco**

Representative : **Mr Di Francesco In Person**

Respondent : **Salem (UK) Limited**

Representative : **Mr Tim J Palmer BSc (Hons) MRICS**

Type of Application : **Section 48 Leasehold Reform,
Housing and Urban Development Act
1993 – determination of terms of
acquisition in dispute**

Tribunal Members : **Judge John Hewitt Chairman
Ms Michele Henington BSc MRICS
Mr Derek Barnden MRICS**

**Date and venue of
Hearing** : **28 January 2015
Thistle St Albans, Watford Road, St
Albans AL2 3DS**

Date of Decision : **24 February 2015**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that the premium payable by the applicant to the respondent for the new lease is the sum of £9,164 calculated as set out in the valuation appended to this decision.
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The applicant long lessee gave to the respondent reversioner a notice claiming to exercise the right to a new lease. The notice is dated 23 January 2014 [12].
4. The respondent gave a counter-notice. It is dated 31 March 2014 [16]. In that counter-notice the respondent admitted that on the relevant date the applicant had the right to a new lease.
5. The parties were unable to agree all of the terms of acquisition of the new lease. On 10 September 2014 the applicant made an application to the tribunal pursuant to section 48 of the Act [1]. Directions were given [9] but were not followed entirely. At a subsequent hearing further directions were given for the terms of acquisition in dispute to be determined at an oral hearing.
6. The applicant's solicitors provided us with a hearing file which contained most of the material papers, which had been page numbered 1- 63. Included was a report by a valuer, Mr Alan Cohen BSc FRICS IRRV Hons, of Talbot Surveying Services 53-63] instructed by or on behalf of the applicant. Unfortunately the hearing file did not include the respondent's expert valuer's report. That report, prepared by Mr T J Palmer BSc (Hons) MRICS, has been sent separately to the tribunal and thus it is not in the page numbered file.
7. On the morning of 28 January 2015 we had the benefit of an internal inspection of the subject property. Present were the applicant and Mr T J Palmer, the respondent's valuer. A number of physical features of the property were drawn to our attention.
8. During the course of the inspection it became evident that neither the applicant nor his solicitors had made arrangements for Mr Cohen to attend the inspection and/or the hearing. It was explained to the applicant that where there was contested valuation evidence it was usual for both valuers to attend the hearing to give oral evidence and to be cross-examined on matters which were in dispute. The applicant was urged to try and make contact with his solicitors and/or Mr Cohen prior to the commencement of the hearing because it would be necessary to consider how the hearing was to proceed.

9. On leaving the property we took opportunity to make a brief external inspection of the immediate area and the commercial premises adjacent to and beneath the subject property.

The hearing

10. At the hearing the applicant said that he wished to represent himself. The respondent was represented by Mr T J Palmer who proposed to take the roles of both advocate and expert witness. Mr Palmer was accompanied by a director of the respondent.
11. The applicant explained that he had been unable to speak with his solicitor or Mr Cohen. He explained that on a previous occasion his solicitor had informed him that it was not necessary for Mr Cohen to attend the hearing and that his report would be before the tribunal.
12. There was a discussion about the possible ways forward and the time delay and costs consequences that might be attached to them. In the event the applicant said he was keen that the hearing should proceed and that the tribunal determine the amount of the premium payable. The applicant understood that Mr Cohen's report was admitted in evidence as hearsay but that in the circumstances of the absence of Mr Cohen little weight might be attached to those aspects of his report that Mr Palmer did not agree with.
13. In the event and with the agreement of the parties it was determined that the hearing would proceed. The applicant would be entitled to give oral evidence and to highlight aspects of Mr Cohen's report he wished to emphasise and that Mr Palmer should have the opportunity to cross-examine him. Mr Palmer would then give oral evidence along the lines of his report and that the applicant would have the opportunity to cross-examine him. Both parties would then have the opportunity to make oral final submissions to us.
14. We were told that the terms of the new lease had been agreed and that only the premium payable was in dispute.

Valuation issues

15. From the two reports we could see that the rival positions on key valuation factors were as follows:

	Applicant	Respondent
Valuation date	24.01.2014	26.03.2014
Unexpired term	74.93 years	75 years
Capitalisation rate	7%	7%
Deferment rate	5%	5%
Relativity	95%	94%

Existing lease value	£215,888	£225,000
Extended lease value	£225,000	£239,362
Freehold value	£227,250	£241,755
Premium payable	£7,810	£10,618

Both valuers agreed that there were no material tenant's improvements to be taken into account.

16. During the course of the hearing Mr Palmer accepted that the valuation date was 24.01.2014 being the date on which the notice was given. Further he did not oppose Mr Cohen's approach of adding 1% to the extended lease value to arrive at the freehold value; we have therefore made the calculation and inserted the figure of £241,755.

The subject property

17. The subject property is a three bedroomed duplex flat comprising the upper floors of a mid-terraced shop and upper parts, on two storeys with a loft-conversion. The property is likely to have been built around 1900, constructed of brick and part slate, part flat roof. The external joinery is part timber part UPVC.

The property benefits from a garage included in the demise, and gas central heating.

Independent access to the residential part has been provided via a metal staircase and external landing. The main front door leads to a large kitchen/breakfast room, leading to a small living room with limited natural light, and separately to an internal hallway. The hallway leads to two double bedrooms, a bathroom, and stairs to the loft conversion, which consists of a landing area with storage space, a small study, and a double bedroom with an incomplete conversion of part to an en-suite bathroom.

Externally the property is in a reasonably good state of repair for age and type. Internally, it fair to good decorative order, the kitchen fittings are functional but dated. Some mould growth is evident in the first floor bathroom, which would benefit from refurbishment.

Part of the flat is above restaurant premises, and flat 62B next door is above a café.

The gist of the case for the applicant

18. The gist of the case for the applicant was that the value of the flat was affected by the A3 use of the ground floor premises on either side as at the valuation date. He said that in 2012 he had tried to market the flat and he had been approached by an agent, Connells, who suggested a value of £220,000. He also complained that recently the access to the

64b Stanhope Road St Albans							
Calculations							
Valuation assumptions							
Lease expiry date		31/12/2088					
Valuation date		24/01/2014					
Unexpired term		74.93					
Capitalisation rate		7.0%					
Deferment rate		5.0%					
Freehold value	£	234,825					
Extended lease value	£	232,500					
Existing lease value	£	220,875					
Relativity		95.0%					
A Value of Landlord's existing interest							
Loss of ground rent				£	50		
Years Purchase	74.93	years @	7.0%	14.195935	£	710	
						0.006284541	
Loss of reversion to Freehold value				£	234,825		
Present Value of £1	74.93	years	5.0%	0.0258396	£	6,068	
					£	6,778	
Sub-total							
B Value of landlord's proposed interest							
New reversion				£	234,825		
Present value of £1 in	164.93		5.0%	0.0003201			
					£	75	
C Marriage value calculation							
Value of Landlord's proposed interest					£	75	
Value of Tenant's proposed interest					£	232,500	
Sub-total						£	232,575
Value of landlords existing interest					£	6,778	
Value of tenants existing lease					£	220,875	
						£	227,653
Marriage gain						£	4,923
Landlords 50% share						£	2,461
Plus	Loss to landlord in granting new lease					£	6,703
Premium payable						£	9,164

27. Mr Palmer said that he was aware the adjacent flat was on the market but it was complicated because the preferred deal also involved the ground floor commercial premises. Further if the flat were to sell on its own now it would not really reflect the value as at the valuation date because, in his view, the market in St Albans had moved significantly over the past 15 months.
28. As to relativity Mr Palmer did not wish to say much. He did not really think that the subject property fitted with the graphs. He focussed more on the investor buyer and adjusted his initial view of 92% to 94% to reflect that.
29. The chairman invited Mr Palmer to comment on Mr Cohen's report. He said there was little he would be critical of. He said both he and Mr Cohen accepted that there was little helpful comparable evidence. He did however consider that he, Mr Palmer, had better local knowledge of the market compared with Mr Cohen whose office is based in Mill Hill, London NW7.

Conclusions

30. We conclude that the comparable properties relied upon were of little assistance to us because none of them reflected the key characteristics of the subject property.
31. In broad terms we accept the evidence of Mr Palmer and that if on the market the subject property was likely to be more attractive to the investor buyer and we accept Mr Palmer's evidence of the approach of such an investor because it strikes a chord with the experience of members of the tribunal. However, we find that the investor buyer would have regard to net income and would allow for voids and cost of management.
32. Doing the best we can with the evidence before us we adjust Mr Palmer's extended lease figure to reflect the factors just mentioned which Mr Palmer had not taken into account and we find that the extended lease value is £232,500.

Having checked carefully we find that term unexpired is 74.93 years and we have adopted this. The tribunal considered the relativity graphs set out in the RICS report and we adopt a relativity of 95%.

We also adopt a 1% adjustment from long-leasehold to freehold value which, in the end, was not controversial.

33. On the basis of these findings we conclude that the premium payable by the applicant to the respondent for the new lease is £9,164 calculated as set out in the attached valuation.

Judge John Hewitt
24 February 2015

flat had changed and that access was now to four flats and not just one but he accepted this change came about post the valuation date.

19. The applicant was also aggrieved that the ground floor premises were being used for A3 restaurant use and in breach of the terms of the lease and in breach of planning and that the respondent had failed to take any effective steps to remedy those breaches.
20. In cross-examination the applicant was critical of the local planning authority allowing temporary A3 use of empty properties for a period of two years and he was also critical of the authority's failure to control and enforce planning.
21. The applicant also confirmed that in 2012 he had the flat on the market with Connells who had all the information about the flat and indeed the whole development because at that time there was a proposal for the redevelopment of the block but the freeholder went into administration and the project was abandoned.
22. The applicant commended Mr Cohen's report to us.

The gist of the case for the respondent

23. Mr Palmer took us through his report. As mentioned he now accepts a valuation date of 24 January 2014.
24. In cross-examination Mr Palmer accepted that his comparables were all smaller than the subject property, were not above shops and were located in residential situations. He also accepted that of those comparables only 6 Kenton had the benefit of a garden and parking space. Mr Palmer said that he did not carry out any detailed analysis of the comparables but took a broad view of them to arrive at his long lease value of £239,362.
25. Mr Palmer was of the opinion that if the subject property was on the market it would be unattractive to an owner-occupier and that most interest would come from investors in the buy-to-let market. The price payable by such investors would be directly related to the potential letting income and they would be looking to achieve a yield of around 5.5%.
26. Mr Palmer said that he gave a significant view to the A3 use of the ground floor premises and he fully recognised that the location was not good. However he focussed on the investor buyer who would be less concerned about such A3 use and/or location. Mr Palmer said that he was aware the adjacent flat was achieving a rental income of £1,150 pcm and that he made his calculations on the basis of an income for the subject flat of £1,100 pcm, assuming a letting of each of the three bedrooms at between £350 -£375 pcm. In arriving at his figures he said that he did not allow for cost of management and voids.