

4017



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

Case Reference : LON/00BA/OLR/2014/1971

Properties : 39 Clarendon Road, SW19 2DX

Applicants : Syed Arif Abbas Bokhari & Hugh Declan Diver

Representative : Mrs A Bokhari and Setford Solicitors

Respondent : Gwyneth Hilda Davey, Jill Elizabeth Stockton and Graham Alan Barford

Representative : Mr A Sheriff instructed by Kiteleys Solicitors

Type of Application : Grant of new lease (Section 48 Leasehold Reform, Housing and Urban Development Act 1993)

Tribunal Members : Mr M Martynski (Tribunal Judge)
Mr L Jarero BSc FRICS

Date and venue of Hearing : 29 June 2015
10 Alfred Place, London WC1E 7LR

Date of Decision : 30 June 2015

DECISION

Decision summary

1. The premium to be paid for the extended leases of the subject flat is £34,536.00. Our valuation is attached.

2. No order is made in respect of costs.

Background

3. The Applicants are the owners of the long leasehold interest in the subject flat. The lease is dated 22 April 1969 and is for a period of 99 years from 25 March 1969.
4. The subject flat is a two-bedroomed maisonette with one flat above.
5. The Applicant's Claim Notice is dated 21 December 2013 and was sent to Godfrey James Davey and Leonard Godfrey Davey.
6. No Counter-Notice was served in respect of the Claim Notice.
7. In response to an advertisement placed in the London Gazette by the Applicants, by letter dated 21 July 2014, a Mr Packman wrote to the Applicants' solicitors stating that he represented the beneficiaries/successors in title to Mr Godfrey James Davey and asked the solicitors to contact him.
8. For reasons that we need not go into, the contact with Mr Packman was not pursued and by a Claim Form dated 23 July 2014, the Applicants made an application to the County Court pursuant to section 50 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act'). That claim sought orders 'dispensing with the need to give notice to the Landlord' and for the vesting in the Claimants of a new lease¹.
9. An order was made by the County Court dated 26 November 2014 for the vesting of a new lease as requested. The order also provided that the Defendants pay the costs of the claim subject to assessment.
10. On 3 December 2014, a separate application was then made to this tribunal for a determination of the premium for the new lease. That application named the Freeholder as Richard Godfrey Davey and Leonard Gofrey (sic) Davey. The current Respondents (being the representatives or the beneficiaries to the estates of one or both of the original Respondents) were added at a later stage.
11. Directions were given by this tribunal on 9 March 2015.

Issues agreed and to be decided

12. At the hearing, the various valuation issues between the parties stood as follows:-

Issue	Applicant	Respondent
Extended Lease	Agreed at £276,000	

¹ The Claim Form named the Defendants as Richard Godfrey Davey and Leonard Godfrey Davey

Value		
Relativity	83%	80.61%
Capitalisation Rate	Agreed at 7%	
Deferment Rate	6%	5%
Date of Valuation	Agreed as 21 December 2013	
Unexpired term	Agreed at 54.25 years	

Expert evidence - Applicant

13. Valuation evidence for the Applicant was given by Mr Morris MSc Proplnv. Mr Morris had produced a written report and valuation and gave evidence directly to the tribunal on the points at issue between the parties.

Deferment Rate

14. Mr Morris argued for a Deferment Rate of 6% and therefore argued that the tribunal should depart from the guideline *Sportelli*² Rate of 5%.
15. He argued that in this case a departure from *Sportelli* was justified as follows:-
- (a) That case relates to Prime Central London
 - (b) The subject building in this case was in a poor state of repair and subject to obsolescence/deterioration
 - (c) There had been poor management of the building over the years.

Relativity

16. Mr Morris arrived at a Relativity Rate of 83% by taking two graphs; the South East Leasehold graph and the 2009 Published Research Graph. He took the figure for the unexpired term from the South East Leasehold graph of 84.55% and averaged this with the averaged figure from the 2009 Published Research (81.27%).

Expert evidence - Respondent

17. Valuation evidence for the Respondent was given by Mr T Firrell FRICS MEWI MAE. Mr Firrell had also produced a written report and valuation and gave evidence directly to the tribunal on the points at issue between the parties.

²*Cadogan v Sportelli*, Court of Appeal [2007] EWCA Civ 1042

Deferment Rate

18. Mr Firrell argued for a Deferment Rate of 5% and saw no reason to depart from *Sportelli*.

Relativity

19. Mr Firrell arrived at a Relativity Rate of 80.61% by simply taking the average figure from the 2009 RICS Greater London and England graph. On being questioned by the tribunal, Mr Firrell accepted that the Beckett and Kay figures could be taken from that graph given that the Beckett and Kay figures were opinion based. Taking this figure out would give an average of 81.27%.

Decision – valuation

Deferment

20. We do not consider that there should be any departure from the accepted rate of 5%. *Sportelli* applies (in the absence of special circumstances) nationwide. We do not accept that the subject building is in any way unusual in terms of management or condition. The building is a typically constructed London house. The fact that it may require modest repair and decoration is not to the point and certainly would not be a special circumstance such as to depart from 5%.

Relativity

21. We reject Mr Morris's methodology on Relativity. We do not consider that taking the average of averages from the 2009 Published Research is the proper way to arrive at a Relativity figure in this case where some of the graphs in that research are not the most suitable for the subject building.
22. We consider the better approach is to select individual graphs suitable to the property in question and to base the rate on those.
23. Accordingly we take the 2009 RICS Greater London & England Graph and from that we have taken South East Leasehold, Nesbitt & Co, Austin Gray and Andrew Pridell as being graphs appropriate to the subject building in the Greater London area which we average to arrive at the figure of 81.27%.

Costs

24. The Applicants made an application for costs pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) Property Chamber Rules 2013.
25. The application was confused and confusing. In the hearing, Mrs Bokhari, Solicitor for the Applicants, was unable to say with any

conviction whether the application was made against the Respondents' solicitor pursuant to Rule 13(1)(a) or against the Respondent under Rule 13(1)(b).

26. The costs claimed amounted to £8,604.00. These costs were, according to Mrs Bokhari, her costs of the entire matter; that is the initial instructions, investigations, Claim Notice, application to the court and the proceedings before the tribunal. There was no breakdown of those costs as to which costs related to the various pieces of work done. There was no attempt made to explain which costs were wasted or were incurred as a result of unreasonable behaviour and which were costs that would have been incurred in any event. Mrs Bokhari did not appear to appreciate that costs incurred in the County Court proceedings were covered by the costs order made by that court in any event and so could form no part of any application for costs to this tribunal.
27. In the circumstances we are not prepared to consider the costs application.
28. We should add that, even if we were prepared to consider the application, we are far from sure that there has been any unreasonable behaviour on the part of the Respondents or their solicitors such as has resulted in the incurring of unnecessary costs. The Respondents accepted that they had been late in complying with directions, however that is in part explained by the history of this matter whereby Mrs Bokhari appears to have delayed in informing the Respondents' solicitors about the proceedings before the tribunal.

Mark Martynski, Tribunal Judge
30 June 2015

First-tier Tribunal

Ref

LON/00BA/OLR/2014/1971

Ground Floor Flat, 39 Clarendon Road, London SW19 2EX

Valuation Date	21 December 2013		
Lease	99 years from 25 March 1969		
Unexpired term	54.26 years		
Ground rent	£10 for the term		
Deferment rate	5%		
Capitalisation rate	7%		
Relativity (freehold to existing lease)	81.27%		
Long lease value	£276,000		
Notional freehold value	£278,788		
Existing lease value @ 81.27 relativity	£226,571		
Freehold interest			
Existing			
Ground rent receivable	£10		
YP 54.26 yrs @ 7%	13.9221	£139	
Reversion to freehold value	£278,788		
PV of £1 in 54.26 years @ 5%	0.070838	<u>£19,749</u>	
		£19,888	
Proposed			
Reversion to freehold value	£278,788		
PV of £1 in 144.26 years @ 5%	0.00087747	<u>£245</u>	
Diminution to freehold interest			£19,643
Marriage Value			
Proposed interest			
Freeholder	£245		
Tenant	£276,000	£276,245	
Existing interest			
Freeholder	£19,888		
Tenant	£226,571	£246,459	
Marriage value		£29,786	
Marriage value @ 50%			£14,893
Premium payable			£34,536