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

Case Reference : **LON/00AN/OLR/2016/1728**

Property : **70 Bush Court, London W12 8PL**

Applicant : **Gration Limited**

Representative : **Mr Colin Hurst MRICS**

Respondent : **Tops Shop Centres Limited**

Representative : **Ms Ellodie Gibbons Counsel**

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
Ms Marina Krisko BSc (EstMan) FRICS**

**Date and venue of
hearing** : **15 March 2017
Alfred Place, London WC1E 7LR**

Date of Decision : **7 April 2017**

DECISION

Decisions of the tribunal

1. The premium payable by the applicant to the respondent for the grant of a new lease is £56,534.00 made up as shown on the valuation annexed to this decision; and
2. Of the said £56,534.00, the amount of £377.00 shall be apportioned to the headlessee, the London Borough of Hammersmith and Fulham.

Procedural background

3. The respondent is registered at Land Registry as the proprietor of the freehold interest in a number of properties, including Bush Court which is a mixed-use development comprising basement and ground floor to nineteenth floor. Parts of the basement, ground and first floors are let for commercial or retail purposes with the upper floors laid out as self-contained flats for residential use.
4. By a lease dated 18 December 1970, granted by Parway Estates Developments Limited to the London Borough of Hammersmith and Fulham (the Council), part of the lower floors and the whole of the upper floors comprising the residential accommodation were demised to the Council for a term of 107 years (less 10 days) from 25 March 1961 at a rent of £8,000 pa.
5. From time to time secure tenants of the Council have exercised the right to buy conferred by the Housing Act 1986 and a number of long leases of individual flats have been granted at ground rents of £10 pa.
6. As regards these proceedings the lease of flat 70 was granted by the Council to Noel Ivan Papi and Lorraine Papi on 27 September 1999 for a term of 107 years (less 15 days) from 25 March 1961 at a ground rent of £10 pa. That lease is registered at Land Registry with title number BGL31520. On 7 April 2016, the applicant was registered at Land Registry as the proprietor of that lease. The proprietorship register records that the price stated to have been paid on 30 March 2016 was £351,000.
7. By a notice given on 24 March 2016 by Lisa Abdul Rahman and Sara Al-Sheikhly as executors of Lorraine Papi, pursuant to section 42 of the Act, those giving the notice sought the right to a new lease of flat 70. The benefit of that notice was assigned to the applicant together with the remainder of the term granted by the lease. By a counter-notice given on 24 May 2016 the respondent admitted that on the relevant date the persons giving the notice were entitled to the right to acquire a new lease of the flat
8. It was not in dispute that the applicant is a qualifying tenant, the respondent is the competent landlord and the Council holds a (short) intermediate interest of just five days which is defined in paragraph 7(3) of Schedule 6 to the Act as being a 'minor intermediate lease'.

9. Following the applicant's acquisition of the lease of flat 70 the parties entered into negotiations for the grant of a new lease but were unable to agree all of the terms of acquisition. An application was made to this tribunal for the determination of those terms of acquisition which were in dispute. Directions were duly given and the hearing of the application came on before us on 15 March 2017.

The hearing

10. At the hearing the applicant was represented by Mr Colin Hurst MIRCS who proposed to take the role of both advocate and expert valuation witness. Mr Hurst gave oral evidence and produced his report dated 28 February 2017. Mr Hurst was cross-examined on his report and he answered questions put to him by members of the tribunal
11. The respondent was represented by Ms Ellodie Gibbons of counsel. We were told that the Council had not given any notices pursuant to paragraph 7 of Schedule 11 to the Act as regards separate representation or the payment of sums due by virtue of Schedule 13.
12. Ms Gibbons called Mr Andrew Channer BSc (Hons) MRICS to give oral evidence as an expert valuation witness. Mr Channer produced his report which is also dated 28 February 2017. Mr Channer was cross-examined on his report and answered questions put to him by members of the tribunal.

General background and matters not in dispute

13. On 17 January 2017 Mr Hurst and Mr Channer had signed a 'Statement of Agreed Facts and Disputed Issues' (the Agreed Statement). A copy was appended to both expert reports.
14. Flat 70 Bush Court, the subject flat, is on the 14th floor of Bush Court and has a floor area of 69.0 sq.m (743 sq.ft). The accommodation is laid out to provide an entrance hallway, a good-sized kitchen, a bathroom/wc, a reception room and two double bedrooms. A sketch of the floor layout is at p5 of the Agreed Statement.
15. Bush Court is an 'ex-local authority mid-1970's block constructed of steel and concrete over 19 floors and is one of four almost identical blocks on the south side of Shepherds Bush Green. The other blocks are: Shepherd's Court, Roseford Court, and Woodford Court. Bush Court and Shepherd's Court are both incorporated into the Shepherds Bush Green Shopping Centre. Both of those blocks are conveniently located to a range of good public transport links, shops, cafes, bars and restaurants and the Westfield Shopping Centre (White City) is a short walk north.
16. The valuation date is 24 March 2016. At that date, the term unexpired as regards the respondent was 52.49 years and as regards the Council was 52.47 years.

17. The valuation was to be carried out pursuant to Schedule 13 of the Act. The respondent makes no claim for compensation under paragraph 5 of that Schedule and the Council makes no claim for compensation under paragraph 9 of that Schedule.
18. There were no improvements to be taken into account.
19. The capitalisation rate to apply is 4.07%; the deferment rate to apply is 5.00% and the value of Council's ground rent interest was £215.00.

The matters in dispute for the tribunal to determine

20. The matters in dispute, the rival positions and the tribunal's determination may be summarised as follows:

Interest	Mr Hurst	Mr Channer	Tribunal
Existing lease value	£326,752, or £348,348	£296,746	£324,675
Extended lease value	£405,140	£424,413	£405,140
FHVP value	£406,155	£428,700	£409,191
Relativity	80.651%, or 85.982%	69.220%	79.346%

Mr Hurst's approach

21. Mr Hurst relied on the March 2016 sale of Flat 70 at £351,000. He was supported in that selection by the sale of 52 Shepherd's Court, a two-bedroom flat on the 11th floor with a similar floor area which sold for £240,000 on 15 November 2013 with 54.83 years unexpired. It was re-sold on 30 March 2016 for £405,140 with 142.47 years unexpired.
22. Mr Hurst acknowledged that this approach was not statistically robust but he considered it to an accurate image. He was satisfied he was not looking at something in error to market value
23. Mr Hurst made an adjustment for time in respect of 52 Shepherd's Court. He did not do so in the conventional way and he has strong views on the aptness of Land Registry data, which he considers is manipulated, is subject to seasonal variations, incorporates a wide range of properties across the whole of the borough and is produced by means of a computer programme which is questionable. Instead, Mr Hurst adopted an approach based on sales of flats in the W12 postal area from which he calculated averages, standard deviations and medians, as set out in paragraph 2 of the appendix to his report. By averaging he came to an adjusted value of 52 Shepherd's Court at 26 March 2016 with 52.47 years unexpired of £339,900. This is 3.27% less than the sale of the subject flat at £351,000 at that date.

24. Mr Hurst noted that the Gerald Eve Relativity Graph (which excludes 1993 Act rights) shows a term of 52.47 years has a relativity of 75.976%. by contrast the Savills (2002) Graph (which includes 1993 Act rights) shows a relativity of 81.8856%; the difference being 5.9096%. If that were applied to the sale at £351,000 that would amount to £24,000 (his figure) making the value of the lease without Act rights £327,000. However, those graphs are for Prime Central London (PCL) and not applicable to the subject flat in a high-rise block originally constructed for social housing.
25. Mr Hurst concluded that the range of graphs included in the RICS Research report of October 2009 suggested that in general terms the graphs for PCL show a lower relativity for 50-55 years unexpired than graphs for non-PCL areas. That leads him to conclude that the relativities mentioned in paragraph 21 above are too high for the subject flat.
26. Mr Hurst appended to his report two valuations. He said the first was calculated 'basically' in accordance with the decision of the Upper Tribunal (Lands Chamber) in *Hong Xue v Cherry & Cherry* [2015] UKUT 0651 (LC). Adopting three graphs, South East Leasehold, Nesbitt & Company and Andrew Pridell Associates, the average was 80.42% and Mr Hurst adopted 80.651%. That lead him to arrive at a premium of £54,653 (Appendix para 10). It may be noted here that Mr Hurst appeared for the appellant, Hong Xue, in the case referred to above.
27. Mr Hurst said that the second valuation was based on the guidance given in the decision of the Upper Tribunal (Lands Chamber) in *The Trustees of the Sloane Stanley Estate v Mundy & others* [2016] UKUT 0223 (LC). It produces a premium of £44,061. However, there are a number of components of the valuation which are unconventional and questionable.
28. In cross-examination Mr Hurst conceded that he was not a RICS registered valuer and that he was a general practice surveyor who does not regularly appear before tribunals. He said that he put forward two valuation figures on an impartial basis, as was his duty to the tribunal, and that it was for the tribunal to select one if they considered it appropriate to do so. Mr Hurst also said that he had not consulted his client or his client's solicitor on the content of his report or his approach to valuation.
29. Mr Hurst also conceded that contrary to the assertion in his report that the flats within the four blocks are un-mortgageable some mortgages had in fact been granted, although quite a few transactions were evidently cash transactions by investor purchasers.
30. Mr Hurst also explained in cross-examination that he arrived at a long lease value of £405,140 being the sale price of flat 52 Shepherd's Court on 24 March 2016 and adjusted by 0.25% to arrive at a FHVP value of £406,155. He did so because he did not believe that a conventional 1%

adjustment did justice to the valuations. Mr Hurst considered that the larger the number of flats in a block the less an individual lessee will have in a practical sense on day to day management of the block and hence the modest difference between long lease value and FHVP value.

31. Mr Hurst said that he has tested his approach by reference to rental income and what investors might be willing to pay. He accepted that this approach was also unconventional and has no relevance to the Act but he used it merely as a check. He also accepted that his approach does not follow the Upper Tribunal guidance set out in *Sloane Estate v Munday*, but he considered his approach was rational in terms of the market. Mr Hurst also explained that he tends to be a free spirit with a dislike for the graphs. Given that Shepherds Bush is not PCL he considered it is unrealistic to adopt graphs appropriate to PCL.

Mr Channer's approach

32. In broad terms, to derive the long lease value Mr Channer has taken two short leases sales of three bedroom flats, three short lease sales of two-bedroom flats and then compared with three long lease comparables.

Three bed-room flats were: 26 Shepherd's Court (7th floor) and 53 Bush Court (11th floor); and

Two bed-room flats were: 70 Bush Court (14th floor), 52 Shepherd's Court (11th floor), 97 Shepherd's Court (19th floor), 4 Bush Court (3rd floor) and 67 Bush Court (14th floor).

33. Having identified these comparables Mr Channer has then made quite a few adjustments to reflect time, lease length, condition, location/position, floor level and floor area (GIA). The final end adjustment to that is an adjustment for 'no Act world'. Averages were then ascertained.
34. In consequence, a good deal of adjustments were made, some subjective, e.g. condition and floor level and some are based on data, e.g. for time using Land Registry published data, to arrive at conclusions.
35. Mr Channer concluded there was enough comparable evidence to support relativity being based on graphs along the lines indicated in the *Sloane Estate v Stanley* decision. The detail is set out in paragraph 9.9 of his report.
36. In the event Mr Channer arrived at an existing lease value of £296,746, a long lease value of £424,413, and FHVP value of £428,700 and thus a relativity of 69.22%.
37. In cross-examination Mr Channer accepted that ideally recent comparable are preferable but where are few it is appropriate to go

back to earlier transactions and adjust for time. Mr Channer also accepted that the table of adjustments for floor level set out in paragraph 8.5 of his report is wrong and that apart from the three or four lower floors and the top floor only relatively minor adjustments are justified. For example, he accepted that there is probably no realistic adjustment to make in respect of flats on the 11th floor and the 13th floors. Mr Channer thought that if his adjustments were wrong they would make very little difference to the final outcome. Similarly, with his 3% adjustments for condition. He also said that he had not inspected 52 Shepherd's Court and was not now sure why he deducted 3% in respect of that transaction.

38. Mr Channer considered it reasonable to rely on the Land Registry data for adjustments for time. He accepted that whilst not perfect that data was the best that was available.
39. Mr Channer emphasised his preference for relying on a range of transactions, even if several adjustments are then required.
40. Mr Channer supported his adjustment of 1% to extended lease value to arrive at the FHVP value because that was the conventional approach adopted by most valuers over a good number of years. In his experience that approach is rarely challenged when he is negotiating terms of acquisition.

Discussion

41. We find that we have to bear in mind that Mr Hurst is a general practice surveyor, is not an RICS registered valuer and he has limited experience of expert valuation in enfranchisement work before tribunals. We accept that he has an interest in statistics. He has adopted some novel approaches to his valuations, some of which were expressly rejected by the Upper Tribunal in *Hong Xue v Cherry*. All of these aspects have some bearing on the weight which we can properly give to some aspects of his evidence.
42. We also find that Mr Channer's approach to introduce as comparables transactions concerning three-bedroomed flats, not to be helpful to us. Whilst the number of bedrooms is of some relevance it is our experience that an arithmetical approach based on floor area is not how the market operates. We also have concerns that distortions can arise where numerous adjustments are made to comparables.
43. In broad terms, we found that both valuers sought to over complicate the approach to valuation. We bear in mind that both valuers were presented as expert witnesses whose duty is to comply with rule 19. The clear duty in rule 19(1) is to assist the tribunal. That must be read in conjunction with the overriding objective set out in rule 3 with particular reference to rule 3(4). We were not persuaded that over complicating matters and/or pursuing unconventional approaches previously rejected by the Upper Tribunal and which are not supported

with compelling evidence is compliance with the duties owed to the tribunal.

44. We prefer Mr Hurst's opening approach that the starting point is the sale of the subject flat on 30 March 2016 for £351,000 as this value is also generally in line with other comparables provided. There is no suggestion that was not a bona fide market transaction.

We considered that the approach adopted by Mr Channer introduced too many comparables to which several adjustments were required and then averaged, such that the resulting figures were not reliable.

We also preferred Mr Hurst's starting point of long lease value at £405,140 being the long lease sale of 52 Shepherd's Court on 24 March 2016 was compelling market evidence.

45. The subject flat was sold with the benefit of the notice. In an 'Act world' it provides good and reliable evidence of valuation. But, of course an adjustment is required to try and reflect the 'No Act world'.
46. Looking at the two transactions concerning 52 Shepherd's Court, we can see a relativity of 86.67% in an 'Act world'. An adjustment must be made to reflect the 'No Act world'. There is no clear and reliable guidance available as to what the precise adjustment should be. We note that a range of FTT(LVT) and Upper Tribunal decisions in respect of lease with years unexpired of between 38 and 53 years puts the range between 7.5% and 11.5%.
47. There are a number of graphs available which give some guidance but all of them are subject to some level of criticism. The Savills 2015 graph was included in the materials provided to us. We note that the range between 38 and 53 years unexpired is 9% and 6.6%, with years unexpired of 52.50 being 6.7%.
48. Taking a broad brush, approach to the rival and competing data we find that for the subject flat a deduction of 7.5% from £351,000 is appropriate. This produces a value of the flat in the 'No Act world' of £324,675 as at the valuation date. We prefer Mr Hurst's extended lease value of £405,140 (as this based on market evidence) to which we find 1% should added to arrive at a FHVP value of £409,191. This produces a relativity of 79.346%.
49. Having arrived at this result we have stood back and reflected and considered the graphs. We find that the PCL graphs are not appropriate for the subject property because it is atypical of what is generally to be found in PCL. The non-PCL graphs broadly show a relativity of 79.35% to existing FHVP. The graphs reinforce and support the approach we have adopted and thus it informs our determination.
50. We observe here that the relativity of 69.22% adopted by Mr Channer based on the arithmetic arising from his comparables, as adjusted, is so

out of kilter with the graphs that it reinforces our conclusion that, on this occasion, the methodology adopted by Mr Channer has not produced a realistic outcome.

51. For the reasons set out above, we make the determinations set out in paragraphs 1 and 2 above.

Judge John Hewitt
7 April 2017

