



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

Case Reference : LON/00BH/OLR/2017/0365

Property : 47 Borthwick Road, London E15 1UE

Applicants : Antanas Cicenas and Jelizaveta Orlova

Representative : Andrew Youens FRICS

Respondent : Stealth Developments Ltd

Representative : Laura Swaile (Counsel) instructed by
Hatten Asplin Glenny Solicitors

Type of Application : Enfranchisement

Tribunal Members : Robert Latham
Duncan Jagger MRICS

**Date and venue of
Hearing** : 4 July 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 4 July 2017

DECISION

The Tribunal determines that the premium payable by the Applicants in respect of the extension of its lease at 47 Borthwick Road, London, E15 1UE is £28,449. Our working calculation is set out in the Appendix.

Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms for a new lease.

Background

2. The background facts are as follows:
 - (i) The flat: 47 Borthwick Road, London E15 1UE;
 - (ii) Date of Tenant’s Notice: 19 July 2016;
 - (iii) Valuation Date: 19 July 2016;
 - (iv) Date of Application to the Tribunal: 7 March 2017;
 - (v) Tenant’s leasehold interest:
 - Date of Lease: 26 August 1983;
 - Term of Lease: 99 years from 25 June 1983;
 - Ground Rent: £50 pa;
 - (vi) Landlord: Stealth Developments Ltd
 - (vii) Tenant: Antanas Cienas and Jelizaveta Orlova
 - (viii) Tenant’s Proposed Premium: £24,146.44;
 - (ix) Landlord’s Proposed Premium: £30,321,96.

The Hearing

3. The hearing of this application took place on 4 July 2017. The Applicant, tenant, was represented by Mr Andrew Youens FRICS, their expert. The Respondent, landlord, was represented by Ms Laura Swaile (Counsel) instructed by Hatten Asplin Glenny Solicitors. She adduced evidence from Mr Warren Penfold MRICS.
4. We were not invited to inspect the subject flat or the comparables. We were told that the Applicants are currently in Lithuania.
5. The parties have agreed the following:
 - (i) The subject flat is a ground floor flat with a kitchen/diner and two additional rooms with a GIA of 56 sq metres;
 - (ii) Unexpired Term: 65.9 years;
 - (iii) Capitalisation Rate: 7%;
 - (iv) Deferment Rate: 5%;
 - (v) Relativity: 88%;
 - (vi) Uplift from long leasehold to virtual freehold: 1%.
6. There is one issue which we are required to determine, namely the long lease value of the subject flat. The Applicant contends for £320,000; the Respondent for £375,000.

Our Determination

7. The Tribunal heard evidence from Mr Youens on behalf of the tenant and Mr Penfold on behalf of the landlord.
8. Mr Youens relies on five comparables: 19 Hatfield Road, E15 1RA; 41a Ramsay Road, E7 9EN; 391 High Road Leytonstone, E11 4JT; 13 Cann Hall Road, E11 3HY and 383 High Road, E11 4JY. The sales occurred between January 2016 and June 2016. The valuation date is July 2016. He makes no adjustment for time.
9. Mr Penfold also relies on five comparables: Flat 1, 58 Borthwick Road, E15 1UE; 40a Idmiston Road, E15 1RG; 31 Dunmow Road, E15 1TZ; 13 Cann Hall Road, E11 3HY and 60 Steele Road, E11 3JA. The sales occurred between April 2015 and July 2016. Mr Penfold states that he has made an adjustment for time using data from the Land Registry. He has not provided the Tribunal with the table on which he has relied.
10. The evidence adduced by both parties is poor. They only use one comparable in common (Cann Hall Road). Two of the comparables used by Mr Youens (19 Hatfield Road and 383 High Road) suggest values much lower than this. Two of the comparables used by Mr Penfold (58 Borthwick Road and 31 Dunmow Road) suggest values much higher than this. The other four comparables are in a similar range.
11. The experts suggest that the design of the subject flat is unusual; however no plan of the layout is provided. The experts also suggested that location is relevant; no plan is provided indicating the location of the nine comparables. We were told that all the properties were close to each other. We suspect that location has not been a relevant factor. We do not accept Mr Penfold's evidence that the fact that a property was in E15 rather than E11 would of itself have an effect on value. Neither expert gave any adequate explanation in their reports as to how they had reached their respective values of £320,000 and £375,000. They rather seemed to suggest that this was their expert opinion based upon their selection of comparables. There was no methodology indicating the weighting that they had given to their selected comparables or the adjustments that they had made.
12. We can deal with their evidence briefly. Mr Youens stated that his preferred comparables were 41a Ramsay Road (£6,666 psm), 383 High Road Leytonstone (£6,629 psm) and 13 Cann Hall Road. He accepted that the size of Cann Hall Road was 59 sq m and that an adjustment of 10% needed to be made for the short lease length (66 years). He therefore agreed a psm of £6,645. The average of these three figures is £6,447 giving a long lease value of £372,232. Upon realising the consequence of this, Mr Youens sought to resile from his position. This approach did not impress us.

13. The Tribunal asked Mr Penfold to give a weighting to his comparables. He suggested that his best comparables were 58 Borthwick Road, 40a Idmiston Road and 31 Dunmow Road each to which he would give a 30% weighting. He would only give 5% to 13 Cann Hall Road and 60 Steele Road, E11 3JA. The sale of 58 Borthwick Road was in April 2015 and a 23% adjustment needed to be made for time. 31 Dunmow Road is 21% smaller than the subject flat. We note that the adjusted psm for 58 Borthwick Road is £7,308 and for 31 Dunmow Road is £8,378, values which are significantly higher than the other comparables. Given these factors, we treat these two comparables with caution. Were a lesser weighting to be given to these comparables, the suggested long lease value for the subject flat would be significantly below his suggested figure of £375,000.
14. Having regard to the evidence adduced before us, we determine the long lease value of the subject flat to be £372,250. This is very close to Mr Youens' suggested figure and only slightly below that suggested by Mr Penfold. We recognise that this is significantly higher than the figure of £320,000 for which Mr Youens had initially contended. However, we accept his evidence that Ramsay Road (£6,666 psm), 383 High Road Leytonstone (£6,629 psm) and 13 Cann Hall Road (£6,447 psm) are the best comparables. They are also very close to three comparables upon which Mr Penfold relies, namely 40a Idmiston Road (£6,769), 13 Cann Hall Road (£6,041) and 60 Steele Road (£6,827).

Conclusion

15. We determine the long lease value of the flat to be £372,250. We determine the premium payable to be £28,449. Our working calculation is set out in the Appendix.

Judge Robert Latham

4 July 2017

APPENDIX A

The Tribunal's Valuation

Assessment of premium for Lease Extension
In accordance with the Leasehold Reform, Housing and Urban Development Act 1993
RC/LON/00BH/0CR/2017/0365

Components

Valuation date:	19/07/2016	
Deferment rate:	5%	
Capitalisation rate:	7%	
Freehold value:	£376,010	
Long lease value	£372,250	
Existing leasehold value	£330,888	
Relativity	88%	
Unexpired Term	65.9 years	
Ground rent currently receivable	£50	
Capitalised @ 7.0% for 65.9 years	14.12	£706
Reversion to freehold value:	£376,010	
Deferred 65.9 years @ 5%	0.03994	<u>£15,018</u>
		£15,724
Reversion		
Freehold value	£376,010	
Deferred 155.9 years @ 5%	0.0005	<u>£188</u>
		£15,536
Marriage Value		
Value of Proposed Interests		
Value of long lease	£372,250	
Tenants interest in new lease	£ 188	£372,438
Value of Existing Interests		
Landlord's existing value	£15,724	
Existing leasehold value	<u>£330,888</u>	<u>£346,612</u>
		£25,826
Freeholders share @ 50%		£12,913
LEASE EXTENSION PREMIUM		£28,449

APPENDIX B - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.