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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAG/OLR/2013/0640**
Property	:	**Flat 104 Regency Lodge, Adelaide Road, London NW3 5EB**
Applicant	:	**Henock Fekade Zewde**
Representative	:	**Compton Solicitors** **Mr Barry Passmore BSc Est Man, MRICS, ACIArb**
Respondents	:	**The Trustees of the Eyre Estate (1)** **Daejan Properties Limited (2)**
Representatives	:	**For the first Respondent:** **Pemberton Greenish LLP** **Mr Michael Buckpitt Counsel** **Mr J A Martin BSc, MRICS of Cluttons** **For the second Respondent:** **Wallace LLP**
Type of Application	:	**Application under Sections 48 and 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**
Tribunal Members	:	**Mr A A Dutton (Judge)** **Mr N Martindale FRICS**
Date and venue of Hearing	:	**1st October 2013**
Date of Decision	:	**18th October 2013**

DECISION

DECISION

The Tribunal determines that the price payable for the lease extension pursuant to Section 48 of the Act is £30,350.

The Tribunal further determines that the costs payable by the Application pursuant to Section 60 of the Act are in the amounts shown under the findings section set out later in this decision.

BACKGROUND

1. This application was brought by Mr Zewde, the leaseholder of Flat 104 Regency Lodge, Adelaide Road, London NW3 5EB (the property). The application is dated 14th May 2013 and came before us for hearing on 1st October 2013 with the Tribunal meeting to consider its decision the following day.

2. On or about 9th January 2013 the Applicant issued the notice of claim and on 11th March 2013 the first Respondent served a counter notice admitting the Applicant's entitlement and initially indicating that they also represented the second Respondent Daejan. In fact the second Respondent, on or about 14th March 2013, served its own notice indicating that it was being separately represented by Wallace LLP.

3. The issues in dispute were the premium payable for the lease extension and the costs payable by the Applicant pursuant to Section 60 of the Act.

4. Prior to the Hearing a number of matters, if not in fact the vast bulk of issues, had been agreed by Mr Passmore on behalf of the Applicant and Mr Martin on behalf of the Trustees of the Eyre Estate and in agreement with Mrs Jennifer Ellis acting on behalf of Daejan. In a statement of agreed facts, dated 18th September 2013, the following matters were expressed as having been agreed between the parties.

   - The evaluation date of 10th January 2013.
   - The unexpired term of the head lease and the under lease of 73.95 years.
   - The diminution in value of the second Respondent's interest £3,063.
   - The flat located on the second floor of the building has a gross internal area of 730 square feet.
   - The unimproved freehold capital value is £455,000.
   - The unimproved extended lease value is £450,450 being 99% of the unimproved freehold capital.
   - The freehold deferment rate is 5%.

5. Mr Passmore on behalf of the Applicant argued for a total premium payable of £17,404 apportioned as to £13,907 to the first Respondent and £3,497 to the second Respondent. Mr Martin argued for a total premium payable of £30,350 which was apportioned as to £24,250 for the first Respondent and £6,100 for the second Respondent.

6. The sole issue with regard to the premium related to the value attributable to the unimproved existing leasehold interest in the property.

7. In addition to our requirement to determine the premium payable for the lease extension, we were also asked to consider the costs that should be paid by the Applicant to the Respondents pursuant to Section 60 of the Act. In that regard we had a small bundle submitted by Pemberton Greenish which contained a breakdown of the freeholder's costs, details of the costs claimed by the second Respondent with some supporting fee notes in relation to land registry fees, a letter from the Applicant's solicitors Compton Solicitors LLP dated 20th September 2013 challenging the costs sought with their view as to the time that should be spent and a copy of the fee note for Mr Martin's company Cluttons. Wallace LLP had also supplied their own bundle in relation to the costs issue running to some 55 pages including some authorities, copies of the notices and draft lease. We will address the question of costs separately from the issues relating to the premium payable for the lease extension.

8. In addition to the documents relating to costs we also had provided a copy of Mr Passmore's report dated 13th September 2013, with exhibits and Mr Martin's report likewise with a number of exhibits dated 26th September 2013. On the morning of the Hearing Mr Passmore handed in some copies of property literature from Cluttons and Savills and Mr Buckpitt, on behalf of the Respondents, gave a schedule of Leasehold Valuation Tribunal decisions and copies of those decisions intended to assist with regard to the question of establishing the unimproved existing lease value.

HEARING

9. Mr Passmore read a short synopsis telling us that there were some 109 flats in the Regency block, the block lying close to the NW6 and NW8 boundary. He told us that the only issue was the relativity to the virtual freehold. He said that he had only recently received Mr Martin's report which contained some transaction evidence by way of comparable properties, which he had not had the chance to look at. For his part, in any event, he had relied on the RICS requested graphs in 2009 and concluded that the property did not fall within the prime central London (PCL) area but rather within the Greater London and England area and accordingly graphs relating to relativity in this later area were appropriate, not PCL. He referred us to the cases in the then Land Tribunal of *Arrowdell Limited vs Coniston Court (North) Hove Limited reference LRA/72/2005*, a further Land Tribunal case of *Hildren Finance Limited vs Greenhill Hampstead Limited reference LRA/120/2006* and a combined appeal from the Midlands panel in respect of claims by Coolrace Limited, Midlands Freehold Limited and Feller States Limited carrying various references but under the Upper Tribunal citation [2012] UKUT 69(LC). He also referred to the Leasehold Valuation Tribunal case relating to the property 12 Oakwood Court, London NW14 under reference LON/OOAW/LLR/2007/1082, intended to show that a property could be in a prime position but not necessarily be in prime central London area. He accepted that St Johns Wood is generally considered within the PCL area but that one could consider that within the PCL area there are different values for properties. His view was that the subject property being in Swiss Cottage was neither central nor prime. He considered that the prices that were being discussed for the

subject property and generally within this block did not reflect a prime central London property, hence his disregard of the PCL graphs but instead reliance on the Greater London and England graph (GLE).

10. He took us to the RICS research document which was contained at appendix 2 of his bundle and the GLE graphs, which had been prepared from data provided by Beckett and Kay, South East Leasehold, Nesbitt and Co, Austin Gray and Andrew Pridell Associates Limited. His preferred graph within this group was the South East Leasehold graph as he said it reflected transactions. Relying on the Arrowdell and Coolrace case his argument was that outside the PCL area it was the length of the lease not the location that mattered and taking this graphical data has settled the relativity of 94.4%. He repeated that the settlement evidence appearing in Mr Martin's statement had only arrived the day before the Hearing but his view was settlement evidence was flawed, inconsistent and unreliable. Insofar as the transaction evidence Mr Martin had produced, this he said had neither been mentioned nor discussed and he struggled to make constructive comments on same. He asked us to take his statement as read and confirmed that he believed the appropriate premium to be paid for a lease extension was £17,404.

11. He was then subject to cross examination by Mr Buckpitt and confirmed he was relying entirely on the GLE graphs and that as far as he was concerned settlement evidence was unreliable and that there were no comparables. He was asked to explain why he considered that the value he attributed to the existing lease in an unimproved state as shown on his valuation, should be £430,885 when the agreed value for the extended lease term was £450,450. He asked why a purchaser would pay £430,885 for a lease of only some 74 years when they could get a lease for 164 years for the price of £450,450. He maintained that it would be his advice to a purchase that he would only pay £20,000 less for a 74 year lease as opposed to a 164 year lease, particularly in the 'no act world'. He did not consider that there would be a difficulty in obtaining mortgage finance for a transaction of this nature in 2013 perhaps coupled with family finance and this did not impact on relativity. He was not aware that Beckett and Kay had produced a new graph and confirmed that he considered the GLE graphs applied for everything beyond the PCL area. He did not accept that the graph prepared by Cluttons showing settlement evidence as produced by Mr Martin was powerful considering it to be unreliable.

12. He was then asked about an exhibit contained in Mr Martin's report at appendix 3 which was a schedule showing settlements within Regency Lodge over an unconfirmed period of time. He questioned the percentage differentials recorded on that schedule on the basis that he was of the view that Jennifer Ellis had been reluctant to enter negotiations with him in respect of this property and had not been willing to speak to him, Simon Redfern, another valuer involved, was constantly in negotiations with Mr Martin and had "bigger fish to fry" than relativity, Mr Lester appeared to base his values and views on shifting ground, that is to say changed from one case to another. He was of the view that geography was not relevant when considering properties out of the PCL area. He did accept, however, that if there was reliable comparable evidence it could be used to determine relativity. He, however, did not consider that the comparable evidence put forward late in the day by Mr Martin was helpful. The flats were of

different sizes, needed refurbishment and there were too many adjustments for it to be useful evidence.

13. As with Mr Passmore, Mr Martin presented his report and in questioning from Mr Buckpitt accepted that the transaction evidence had been somewhat 'last minute'. However, the settlement evidence had been provided to Mr Passmore some four weeks ago. Insofar as the Cluttons graph which was contained at appendix 6 of his report, he told us that he had been involved with the Eyre Estate since 2002 and that the graph was updated when each new transaction was completed. He said he had been involved in all settlements in the Eyre Estate since that time. He had also produced a schedule of settlements agreed at appendix 7, which he told us had taken place within the last five to six years. All the matters had proceeded on the basis of initial notice under Section 42 of the Act and all had resulted in at lease extensions within the terms of the Act. He confirmed that much of the settlement details in his report, particularly at appendix 7, were his analysis of settlements reached but some were evidenced by statements of fact, also contained within his report, showing where relativity percentages had been expressly agreed. Insofar as the comparable evidence was concerned, he told us that they provided back up to his view and were the best evidence of transactions he could find in the locality. However, he felt that the best evidence was the Cluttons graph which he confirmed in his evidence covered a period from 1996 to 2013. He considered that the subject premises, from a relativity point of view, were sited in the PCL area and that it was a prime location. He accepted that the building was not perhaps prime but the market for flats in the building fitted the location and that most flats were not held on an owner occupier basis.

14. In submissions Mr Buckpitt asked us to bear in mind the settlements reached within the building, the Cluttons graph encompassing those settlements, the Gerald Eave graph backing up the Cluttons graph, the transactions which were a secondary check and common sense. He submitted that Mr Passmore's case was just a mathematical process. He had, he said, failed to stand back and look at the end results. Both valuers had agreed the value for the freehold and extended lease but Mr Passmore was arguing that the same flat with act rights on a short lease would only have a reduction of some £20,000 from the extended lease value. He asked whether this was realistic. If you could acquire a lease for 164 years for nearly half a million pounds would you, in reality, accept a lease of only 74 years for only some £20,000 less. He said that the authorities did not require us to make a distinction between the PCL and other areas. They are, he said, valuation tools. Mr Passmore had elevated it to a formula but it was nothing more than a tool. The graphs that he relied upon were "shoddy" graphs but the South East Leaseholds', one preferred by Mr Passmore, confirmed that it was principally based upon "open market research including analysis of sales and questionnaires completed by estate agents undertaken in 1997" (taken from the introduction to the graph in the RICS document) and concentrated on purpose built flats in the Beckenham area of the south London borough of Bromley. In his view Mr Buckpitt could see no difference between a property in Swiss Cottage and another which was 100 yards down the road in St Johns Wood which Mr Passmore accepted was prime central London area. The capital values reflected the position and certainly the subject property was more similar to the PCL area than a shop flat in, for example, Toxteth. The Upper Tribunal he said did not

consider a strict dividing line between PCL and the area beyond and the settlement evidence contained in the Cluttons graph prepared by Mr Martin is good quality settlement evidence. His submission was that we should accept Mr Martin's evidence. He said that Mr Passmore had accepted that he had no evidence if we do not proceed with the GLE graphs and had approached his evidence as an advocate not an expert. He had not he said stood back and looked at the evidence, in particular why somebody on his case would pay £430,000 for a 74 year lease not capable of extension rather than £450,450 for an extended lease.

15. In his submissions, Mr Passmore submitted that he was acting as expert and whilst accepting the idea that a common sense approach should be adopted his view was that the subject property was not prime, as evidenced by the price, nor central as evidenced by its location. Graphs he said had generally been accepted and used as a tool by valuers and using such evidence the most relevant graphs were those for GLE.

16. We should just record that on the question of the cost issue, Mr Passmore had not instructions and Mr Buckpitt confirming that the lease terms had now been agreed, asked us to consider the submissions made by both Pemberton and Greenish LLP and Wallace LLP and to disregard the challenges raised by Comptons and to allow the costs as claimed. Mr Martin in reference to his company's fees told us that it was usual practice for two valuers to deal with the inspection and with the measurements.

THE LAW

17. We have considered the provisions of the Act and in particular Schedule 13 and Section 60.

FINDINGS

18. We propose firstly to deal with the determination of the premium payable for the lease extension.

19. Having heard the evidence from Mr Passmore and Mr Martin and considered their respective reports, we find that Mr Martin's submissions and evidence more compelling. We were uncomfortable with Mr Passmore's approach of adopting the GLE graphs in respect of a property which, as he himself has put it, was no more than a golf shot away from what he accepted was the PCL area. To suggest that the relativity for a property in Swiss Cottage could be the same, for example, as a property in Toxteth or Solihull seems to us to be wrong. We have borne in mind the various authorities referred to us and in particular in the Arrowdell case. We bear in mind the words used by the Tribunal at paragraph 57 thereof which states as follows: *"Whilst it may be that relativities will vary between one type of property and another and from area to area, we think there is little doubt that the predominant factor is the length of term."* This then led the Tribunal to suggest that there should be some form of survey carried out by the RICS which was undertaken in 2009 leading to the Leasehold Reform Graphs of Relativity Research document upon which such reliance is placed by Mr Passmore.

20. His attack on the motives of other valuers with regard to their presentation of evidence in one case as against another did not help us. Putting questions of that nature to Mr Martin seemed misplaced as one could not expect Mr Martin to answer for other valuers' views. Mr Passmore's evidence and reliance on these graphs just did not feel correct. This is the more so when one considers the background to the various graphs which formed his assessment of relativity. He had dismissed the Beckett and Kay graph as it was based on opinion only. The South East Leasehold graph found favour but that was also limited in that it referred to the Beckenham area of the London Borough of Bromley and as the information says it thus limited the variables. The Nesbitt and Co graph was based upon settlements mainly acting for the landlord and the Austin Gray graph contained transactional data pre the Act and settlement and LVT data from 1995. The final graph from Andrew Pridell was based upon opinion, settlement, transactions and also LVT and Lands Tribunal decisions.

21. Whilst we of course accept the Upper Tribunal's views that have been expressed on the question of settlement evidence, it does seems to us that we are in a somewhat favoured position in this matter in that we have fairly detailed settlement evidence from Mr Martin relating to properties on the estate and John Lyons Charity Estate. The graph which was to be found at appendix 6 of his report contained numerous examples of settlements and in his report he had been able to provide some back up evidence of the basis upon which settlements in the building had been achieved with other valuers. The comparable evidence that he had introduced very late in the day did not really assist us in that the information provided was somewhat lacking. No real explanation was given to the adjustments made and he himself concluded that the analysis was "very much a secondary check."

22. Doing the best we can, therefore, we find in this case that the settlement evidence, as shown by the Cluttons graph for the Eyre Estate and John Lyons Charity Estate, is helpful. It avoids the PCL/GLE contrast and instead is specific to the settlements achieved for flats on its estates, of which there are a good number over a period of years. Accordingly we find that the relativity of the existing lease on an unimproved basis to the freehold vacant possession value of 89% as argued for by Mr Martin is appropriate for this transaction.

23. Accordingly inserting that percentage into the other agreed figures results in the sum payable for the lease extension as requested by Mr Martin on £30,350 which is the amount that we determined is the price payable.

COSTS

24. We then turned to the question of costs. The submission by Messrs Comptons indicated that the competent landlord's disbursements and the intermediate landlord's valuation fees were agreed. A challenge was made to the costs both as to the charge out rates by the lawyers involved and a suggestion that the question of proportionality applied. They also considered that the work should have been undertaken within 5 hours at an hourly rate of £250, an approach adopted by an Eastern panel, the details of which were supplied. Messrs Comptons view was that an hourly rate of £300 plus VAT for five hours would be sufficient, giving the competent landlord's costs of £1,500 plus VAT. They sought to and limit the

intermediate landlord's costs to £400 plus VAT on the basis of a decision in the Kings Road, London SW2 which was not initially provided buy subsequently handed in by Mr Buckpitt. In that case it appears that the Tribunal had no submissions from the intermediate landlord which was not the case here. Comptons also attacked the surveyor's fees which they indicated they typically agreed at around £950 plus VAT. Accordingly on a schedule attached, they considered that under the provisions of Section 60(1)(a) the time spent should be no more than two hours and under Section 60(1)(c) no more than three hours.

25. Wallace LLP had provided a lengthy submission which we noted and also noted the breakdown of the freeholder's costs provided by Pemberton Greenish LLP.

26. We believe we can take the matter quite shortly. We bear in mind the provisions of Section 60 and in particular the provisions of Section 60(2) which states as follows: *(2) For the purposes of sub-section (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if into the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*

27. We accept that the Respondents are entitled to instruct the solicitors who they usually use in respect of works of this nature. Both Pemberton Greenish and Wallace LLP are highly experienced solicitors in this form of legal work. The use of partners to deal with the appropriate stages is reasonable and we accept the hourly rates that both solicitors have sought to recover. The only issue that we would take up with Messrs Pemberton Greenish's fees is the anticipated time of two hours, which is allowed for in their assessment of completing the transaction. It is difficult to see how two hours could be spent bearing in the mind that the terms of the lease have been agreed. The application to the Tribunal dated 14th May 2013 indicates that the matters in dispute were the premium payable and the costs.

28. Accordingly insofar as the anticipated costs of **Pemberton Greenish** are concerned, we would have thought that those should be more accurately reflected at say 30 minutes. In additional also, it would perhaps be appropriate to use a lower fee earner to deal with completion matters. However, taking the matter in the round, we see that from the breakdown of the costs some six hours and 42 minutes are claimed. **We reduce that to 5¼ hours which gives profit costs of £1,968.75 with VAT of £393.75 and the disbursements as claimed, inclusive of VAT, of £9.16.**

29. Insofar as the costs of **Wallace LLP** are concerned, we bear in the mind the Upper Tribunal decision which is exhibited to their statement in the case of *Dashwood Properties Limited vs Beril Prema Christon-Gouch [2012] UKUT 2215(LC)* where it was clearly accepted that the costs of the intermediate landlord would be recoverable, except insofar as there was duplication. The hourly rates for Wallace LLP are in line with those charged by Pemberton Greenish LLP and therefore are allowed. They have made use of lower fee earners which is appropriate, although as with Pemberton Greenish, we do think the anticipated costs of just under an hour seem excessive for dealing with the completion. Accordingly adopting the broad brush approach, which found favour by the

Upper Tribunal, we conclude that we will allow the Wallace LLP fees but disregard 0.6 of an hour at the assistant rate for the anticipated costs. That is a reduction of £170 from the total fees of £1,269 **leaving a fee of £1,099 plus VAT of £219.80.** The intermediate landlord's valuers fee is not in dispute. The land registry fees seem somewhat excessive bearing in mind that Pemberton Greenish appear to have limited theirs to £4. As solicitors acting on behalf of Daejan on a regular basis we would have thought that the type of documentation should be readily available. However, the land registry fee notes support the figure as having been incurred and in those circumstances but with some reluctance **we therefore allow the £52.**

30. The only other fee we need to address is that of **Cluttons**. We find it surprising that there is the need for two valuers to attend to provide a valuation on what is in effect a fairly simple property on an estate that should be well known to Cluttons. We, therefore, disallow the attendance by Sarah Harlow and also the liaison with Jennifer Ellis acting on behalf of the immediate landlords as we are not satisfied that would fall within the valuation requirements of the Act. In addition also, it seems to us that five hours to inspect and provide a report in what was in truth a relatively standard property, which as we have indicated should have been well known to the valuers, somewhat on the high side. Accordingly for the work carried out on 6th March we find that 3½ hours would be sufficient which added to the hour allowed for the inspection gives 4½ hours at £300 per hour and £75 in respect of the downloading of photographs. **This gives a total bill of £1,425 plus VAT of £285.**

Judge: *Andrew Dutton*

A A Dutton

Date: 18th October 2013