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

Case Reference : **LO/LON/00AG/OLR/2013/0339**

Property : **FLAT 120, CLARE COURT
JUDD STREET
ST PANCRAS
LONDON WC1H 9QR**

Applicant : **STUART JAMES KEYTE**

Representative : **RAE NEMAZEE LLP (Solicitors)
ANTHONY SEYMOUR (Solicitor)
IAN DAVIDSON MRICS (Davidson
Aquila Limited) Chartered Surveyor**

Respondent : **DERITEND INVESTMENTS
(BIRKDALE) LIMITED**

Representative : **WALLACE LLP (Solicitors)
ROBIN D SHARP BSC FRICS,
Chartered Surveyor**

Type of Application : **An Application for determination
of the premium to be paid upon the
grant of a new lease pursuant to the
Leasehold Reform Housing &
Urban Development Act 1993**

Tribunal Members : **TRIBUNAL JUDGE S SHAW
MR J BARLOW FRICS**

**Date and venue of
Hearing** : **3rd July 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **6th August 2013**

DECISION

Introduction

1. This case involves an Application made by Stuart Keyte (“the Applicant”) for the determination by the Tribunal of the appropriate premium to be paid upon the grant of a new lease pursuant to the provisions of the Leasehold Reform Housing & Urban Development Act 1993 (“the Act”). The Applicant is a long leasehold owner of the property known as Flat 120, Clare Court, Judd Street, London WC1H 9QR (“the Property”). The property in question is one of a number of flats at Clare Court. The competent landlord for the purposes of the Application and determination is Deritend Investments (Birkdale Limited) which company is the owner of a superior leasehold interest in the property for a term of 999 years from 28th April 2010.

2. The Application to the Tribunal was made on 11th March 2013. Directions were given on 28th March 2013 and a hearing of the matter took place on 3rd July 2013. Present at the hearing on behalf of the Applicant were Mr Anthony Seymour, a Solicitor with the firm Rae Nemazee. Expert witness evidence was given by Mr Ian Davidson MRICS, Mr Davidson being a director of the company Davidson Aqila Limited, Chartered Surveyors and Valuers. Mr Davidson had prepared a report for the use of the Tribunal dated 28th June 2013.

3. The Respondent was represented at the hearing by Mr Robin Sharp BSC FRICS. Mr Sharp holds a Bachelors Degree in Estate Management and is a Fellow of the Royal Institution of Chartered Surveyors. He practices on his own behalf, having previously been a director of the firm Keith Cardell Groves, and based in their Mayfair offices.

4. A Statement of Agreed Facts was signed by the experts on behalf of both parties on 28th June 2013 and reference will be made insofar as is necessary to the various agreed matters in the context of this Decision. It was agreed that the appropriate deferment rate should be 5%, that the unexpired term of the lease of the property is 62.79 years and that the valuation date for the purposes of the calculation of the premium to be

paid is 7th September 2012. The ground rent was agreed to be £150 per annum rising to £300 in June 2042. The gross internal floor area was agreed at 656 square feet.

5. The matters in contention, upon which the Tribunal was requested to make findings, were as follows:-
 - (i) Improvements – the Applicant argued that improvements to the total value of £30,000 should be taken into account in respect of the premium to be paid and appropriate deduction made. The Respondent landlord contended that there was no deduction to be made for improvements.
 - (ii) Capitalisation rate - the Applicant argued for a capitalisation rate of 7% whereas the Respondent landlord contended that 6% was the appropriate rate.
 - (iii) Long lease value – the Applicant argued for £504,900 whereas the Respondent contended the appropriate figure was £575,000.
 - (iv) Short lease value – the Applicant tenant argued that the existing value of the property was £443,700 whereas the Respondent argued for £391,500.
 - (v) Relativity – the Applicant tenant argued for 87% whereas the Respondent landlord said that 67.41% was the right figure for relativity.

6. As will have been observed there was some disparity between the parties resulting in similar disparity in respect of the asserted level of premium to be paid. The above data resulted in, on the Applicant's case, payment of a premium of £44,333. So far as the Respondent was concerned, the appropriate premium was, again on the basis of the above data, £106,542.

7. It is proposed to examine the respective contentions of the parties in relation to each of these heads of disputed areas and to give the Tribunal's finding in respect of the disputed issues in each case.

Improvements

8. The Applicant argued that it was appropriate to make deductions totalling £30,000 in respect of improvements carried out by the Applicant and accordingly requiring deduction within the provisions of the Act. The Respondent, through Mr Sharp, argued that the flat had not been materially improved. This was subject to the one qualification that the installation of a new cloakroom (or WC) had made the property more marketable, but had not had a significant impact on the value of the property.

9. It seemed to the Tribunal that it was for the Applicant to make the case in respect of these alleged improvements. When asked by the Tribunal how the expenditure and improvements were established, Mr Davidson referred the Tribunal to Appendix G1-3 of his report. Those Appendices show an email exchange between the Applicant and Mr Davidson in which the Applicant has put together a list of alleged expenditure from 2005 until presumably the valuation date. Apart from listing bills to various contractors, the list of alleged expenditure is unspecific as to precisely what these improvements amounted to save that £8,000 is suggested to have been expended in the installation of a new granite worktop in the kitchen. The list is unsupported by any primary documentation in the form of invoices or receipts from contractors. When Mr Davidson was asked to expand upon what the list of numbers was supposed to relate to, he was unable to assist the Tribunal and simply told the Tribunal “this is what I have been supplied with”.

10. The Tribunal was not satisfied that the evidence produced was sufficient to justify a deduction in respect of improvements at all. As indicated there was no explanation of what these improvements amounted to nor was there any kind of proof or narrative from the Applicant or supporting documentation. Also, as observed by Mr Sharp, it does not follow that £30,000 worth of expenditure amounts to a pound for pound reflection in terms of uplift in the value of the property. If an argument were to be made in respect of improvements, the Tribunal would have

expected a far more sophisticated and developed argument and supporting documentation on behalf of the Applicant. None was forthcoming and accordingly no deduction is made for alleged improvements.

Capitalisation Rate

11. The Applicant through Mr Davidson argued that the appropriate capitalisation rate should be 7%. His reason for arguing for this rate, at the upper end of the scale, was that he described the property as having the feel of affordable housing. He felt that the metal window frames and unappealing outlook onto a car park supported his suggestion of the need for a greater rate of return from a potential investor. He rejected the contention on behalf of the Respondent that the matters he had raised the “feel of the building” and metal window frames and/or poor outlook were a matter for valuation rather than capitalisation rate. He insisted that 7% “feels right”.
12. Mr Sharp on the other hand on behalf of the Respondent said that in the West End (as is the case with this property) he would typically be dealing with capitalisation rates of anything between 5-6%. The property is a well managed and maintained block, there have been no challenges made to the service charges despite major works over the past 5 or 6 years and low interest rates are continuing outside the property market. He referred to some other Tribunal decisions as identified in his report and said that they showed a typical range for properties of this kind in the order of 5.5% to 6.5%.
13. The contention of Mr Sharp on behalf of the Respondent is consistent with the Tribunal’s experience and the other decisions referred to in his report. The Tribunal agreed with Mr Sharp that the matters raised by Mr Davidson were nothing whatever to do with the appropriate capitalisation rate but went, if anything, to valuation issues. The rate of 6% as advocated by Mr Sharp was underpinned by the reasons given referred to above. Notwithstanding the fact that Mr Davidson

considered that 7% “feels right” the Tribunal was more persuaded by Mr Sharp for the reasons indicated and determines that the appropriate capitalisation rate is indeed 6%.

Valuation of the long and short leases

14. Mr Davidson on behalf of the Applicant referred the Tribunal to some specific evidence from local agents. At Appendix E of his report there is a letter from the well known agents Chesterton Humberts in the form of a letter dated 4th December 2012 to the Applicant. The agents in that letter (shortly after the valuation date) indicate that they recommend quoting an asking price in the region of £485,000 for the existing leasehold interest. If the lease were extended, that will justify an asking price in the order of £525,000.
15. There is further evidence from the agents Barnard Marcus in the form of a marketing report at Appendix F of Mr Davidson’s evidence. In that report it is stated that the agents would expect the property to sell with the current lease at a price around £475,000. If the lease were extended they would expect the property to sell in excess of £535,000.
16. It is right to say, as was commented upon by Mr Sharp for the Respondent, that this is opinion rather than transactional evidence. However, there is other evidence in the form of the email from Messrs. Foxtons dated 27th June 2013 at Appendix C2 of Mr Davidson’s report. This email refers to offers which were made for the purchase of the subject property but, for some reason, not accepted. That email records that an offer was received on 10th October 2012 for the purchase of the subject property without a lease extension in the sum of £523,000. A further offer was made again without the lease extension of £495,000 in December 2012. A yet further offer was made on the 21st December for purchase of the property without the lease extension for a sum of £500,000. A final offer is recorded of £545,000 on 2nd January 2013 for the purchase of the property with the extended lease. The agents were dealing with the floor plan which they at that time had which was

indicative of a gross internal area of 577 square feet, which is of course less than the floor area agreed between the parties in this case of 656 square feet.

17. It seems to the Tribunal that the upshot of this evidence would support the valuation of £550,000 for the extended lease and £500,000 for the short lease subject to any allowance that is necessary to reflect a “no Act” world.
18. On the other hand Mr Sharp for the Respondent argued that the Tribunal should focus on the actual transactional evidence afforded by Flats number 106 and 103 within the same block as the subject property. Flat 106 is referred to in Mr Sharp’s Schedule at Appendix 1 to his report and it sold in September 2012 for £490,000. That property had an extended lease but was a much smaller property having a gross internal area of 546 square feet. The sale price would suggest a figure of £897 per square foot. The other property referred to by Mr Sharp is 103 Clare Court which sold in January 2013 for £495,000. That too had an extended lease and this sale price would suggest a price per square foot of £924. Both these sales were however in respect of significantly smaller flats than the subject property and it was agreed between the parties that a smaller flat would necessarily have a higher valuation figure per square foot than a larger property. This was the fairly limited transactional evidence in respect of extended leases.
19. There was some other evidence referred to by Mr Sharp in respect of short leases. One was a sale of the property at 138 Clare Court in March 2011 thus significantly before the valuation date in the sum of £333,393. That property as indicated was again much smaller than the subject property (485 square feet) and the sale was more than a year prior to the valuation date and thus of limited assistance. The other sale referred to by Mr Sharp was at 117 Clare Court, again an unextended lease, but this property was just a studio or one bedroom flat which sold for £245,000 in April 2012 producing a price per square foot in the sum of £742 which

Mr Sharp candidly accepted “seems high” if used to extrapolate for the present property. This again is explained as understood by the Tribunal by the fact that a smaller size attracts a higher figure per square foot.

20. The Tribunal therefore had to put this various evidence in respect of value in the balance. There was the limited transactional evidence referred to by Mr Sharp which was subject to the valid comment that these were not similarly sized properties and were producing prices per square foot that were not of immediate application to the subject property. The evidence from Mr Davidson albeit opinion evidence from local agents was in respect of more similar properties and was bolstered by the actual offers to purchase referred to in the email mentioned above at Appendix C2 to Mr Davidson’s report.

21. Doing the best it can on the basis of the existing evidence the Tribunal preferred the transactional evidence put forward by Mr Sharp for the extended leases at 103 and 106 Clare Court. However, whilst the valuation dates for these properties were close to those of the subject property they were both smaller units which resulted in a higher rate per square foot. Taking the average of these two transactions at £910 psf the Tribunal felt it appropriate to reduce this by 7.5% in order to reflect the larger area of the subject property thereby arriving at a rate of £841.75 psf. Applying this to the agreed area of Clare Court of 656 square feet gives a figure of £552,188 for the extended lease value. Adding a further 1% to this gives a notional freehold value of £557,709. This figure for the extended lease produces a similar amount to that offered by a prospective purchaser for the property with the benefit of an extended lease at the beginning of the year and also the opinion put forward by Bernard Marcus in December 2012. However, so far as the unextended lease value is concerned, the Tribunal did not feel it appropriate to use the sale figures put forward by Mr Sharp in relation to numbers 117 and 138 Clare Court. Whilst accepting that these were in the same building as the subject property, they were both significantly smaller units (one being a bedsit/studio) and thus the overall value per square foot from

which a value for the subject property would have to be extrapolated produced, in the view of the Tribunal, a somewhat distorted and less accurate value. Additionally, it was felt that these sales dates were not up to date, one being some 18 months prior to the valuation date of the subject property. The Tribunal was of the view that the specific offers put forward for the existing lease by various prospective purchasers at the end of 2012/beginning of 2013 should be taken into account as this was a persuasive indication as to what purchasers in the market would be prepared to pay for the subject property without the extended lease. The Tribunal does, however, accept the figures submitted would need to be adjusted in order to reflect a “no Act” world situation.

22. Accordingly, the Tribunal’s finding is that the unextended lease would have a value in the order of £500,000 (see paragraph 17 above) but that this would have to be adjusted downwards to reflect the “No Act World”. This would all but marry up with the value of £451,774, which is shown in respect of the present interest in the attached valuation, calculated by reference to the notional freehold value of £557,709, adjusted using the relativity of 81% as referred to in paragraph 23 below.

Relativity

23. The various graphs produced show that for a remaining 63 year lease term, relativity ranges between 80% and 88%. Whilst the Tribunal accepts that the property can be classified as prime central London (pcl), following its inspection, it does not feel that the accommodation layout and specification is of a particularly high standard and the immediate surrounding area gives the property a poor aspect. For these reasons, the Tribunal has adopted a figure of 81% being at the lower end of the range.

Conclusion

24. Upon the findings made in respect of the issue as referred to above the premium to be paid for the extension of this lease as found by the

Tribunal is £64,650. The calculation in this regard is set out in the valuation attached to the Decision.

Tribunal Judge: S Shaw

Dated: 6th August 2013

Flat 120 at Clare Court Judd Street London WC1H 9QR
Statutory Lease Extension
Valuation date 7th September 2012

Gross internal floor area 656 sq.ft

Existing lease value £ 451,744.00
 Extended lease value £ 552,188.00
 Notional freehold value £ 557,709.00
 Unexpired term 62.79 yrs

Diminution in value of competent landlord's interest

Loss of rental income £ 150.00
 YP 29.79 yrs @ 6% 13.729
 £ 2,059.00

Loss of reviewed income £ 300.00
 YP 33 yrs def 29.79 yrs @ 6% 2.508
 £ 752.00

Reversion to notional freehold £ 557,709.00
 PV £1 in 62.79 yrs @ 5% 0.0467
 £ 26,045.00

Less value of Landlord's proposed interest
 £ 557,709.00
 PV£1 152.79 yrs @5% 0.0006
 £ 334.00

£ 28,522.00

Marriage Value

Tenant's proposed interest	£ 552,188.00	
Landlord's proposed interest	£ 334.00	
		£ 552,522.00
Landlord's present interest	£ 28,522.00	
Tenant's present interest	£ 451,744.00	
		£ 480,266.00
		£ 72,256.00
50% division of marriage value		£ 36,128.00
Lease Extension Premium		£ 64,650.00