



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

Case Reference : AGR/LON/00AE/OLR/2013/1574

Property : 50A Cavendish Road, London NW6 7XP

Applicant : Property Sale Direct

Representative : Michael Simpkins LLP

Respondent : Mintcity Ltd

Representative : Freeman Box

Type of Application : Enfranchisement

Tribunal Members : Robert Latham
Richard Shaw FRICS

Date and venue of Hearing : 25 March 2014
10 Alfred Place, London WC1E 7LR

Appearance for : Applicant : Richard Galbraith MBA MRICS

Appearance for Respondent : Mike Stapleton FRICS

Date of Decision : 7 April 2014

DECISION

1. The Tribunal determines that the premium payable by the Applicant in respect of the extensions of its lease at Flat 50a Cavendish Road is £82,319. Our working calculation is set out in the Appendix.
2. The Tribunal record that the parties have agreed that £200 of the premium is payable to the Head Lessor, namely the London Borough of Brent.

Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993, as amended ("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: 50a Cavendish Road, London NW6 7XP.
 - (ii) Date of Tenant's Notice: 25 June 2013.
 - (iii) Valuation Date: 25 June 2013.
 - (iv) Date of Application to the Tribunal: 27 November 2013.
 - (v) Tenant's leasehold interest (at Tab 10 of the Bundle):
 - Date of Lease: 19 December 1963.
 - Term of Lease: 99 years from 29 September 1963.
 - Ground Rent: £30pa.
 - Unexpired Term at Valuation Date: 49.26 years.
 - (vi) Landlord: Mintcity Limited.
 - (vii) Tenant: Beacon Property Capital LLP (previously known as Property Sale Direct LLP - see certificate of change of name (19 November 2013) at Tab 6).
 - (viii) Tenant's Proposed Premium: £66,050.
 - (ix) Landlord's Proposed Premium: £106,500.
 - (x) There is a Head Lessor, namely Brent LBC which holds a lease of 59.526 years which expires on 25 September 2062. Brent LBC has played no part in these proceedings and it is agreed by all the parties that £200 of the premium is payable to it.

The Hearing

3. The hearing of this application took place on 25 March 2014. Both parties were represented by their Surveyors. Mr Richard Galbraith MBA MRICS gave evidence on behalf of the Applicant, tenant. He relied on his report dated 24 March 2014. He preferred to rely on Table at Appendix Two which he had updated to reflect the comparables provided by Mr Stapleton, rather than the Table at p.14 of his report. He stated that he had made a mistake in retaining this Table in his report. Mr Mike Stapleton FRICS gave evidence on behalf of the Respondent, landlord. He relied on his report dated 24 March 2014.
4. On 16 December 2013, the Tribunal gave Directions (at Tab 2). The parties have identified the following issues for us to determine:
 - (1) the unimproved freehold values of the flat; and
 - (2) the relativity rate.

These issues are interlinked. Mr Galbraith, for the tenant, argued that we should rely on the Graphs of Relativity issued by the RICS relying on the guidance offered by the Lands Tribunal in *Arrowdell Ltd v Coniston Court (North) Hove Ltd* LRA/72/2005 (“Arrowdell”). Mr Stapleton, for the landlord, argued that there was sufficient evidence of the local market which we should adopt in preference to these tables.

5. Before we started the hearing, the Tribunal gave the parties a short adjournment to agree a number of issues which we considered should have been capable of agreement prior to the hearing. The parties agreed the following:

- (i) Unexpired Term: 49.26 years;
- (ii) Capitalisation Rate: 8%;
- (iii) Deferment Rate: 5%;
- (iv) GIA of the subject flat: 680 sq ft.

Issue 1: The Extended Leasehold Value of the Subject Flat

6. The subject property at 50a Cavendish Road is a converted self-contained flat forming most of the raised ground floor of a three/four floor semi-detached house which was constructed in about 1890. The accommodation comprises two bedrooms, lounge, kitchen and a bathroom/wc. The property has gas central heating. The flat requires modernisation. The GIA floor area is now agreed to be 680 sq ft. It was sold for £305,000 on 28 June 2013, three days after the valuation date, with the benefit of the tenant’s notice.
7. Mr Galbraith argued for an extended lease value of £400,000; whilst Mr Stapleton argued for one of £475,000. Both experts agreed that 60B Cavendish Road is the best comparable. Mr Stapleton considered a smaller number of comparables than Mr Galbraith. He took the view that where there are a number of comparables, one should concentrate on those which are most relevant. The Tribunal endorse this approach. Basement flats or those on higher floors are less relevant. Mr Galbraith relied on No.22, The Avenue, the particulars for which were not available when he first prepared his report and a comparable which was not considered by Mr Stapleton. Mr Stapleton considered 69a Callcott Road and the Ground Floor Flat at 30 Callcott Road to be his next best comparators.
8. 60B Cavendish Road is a well modernised two bedroom ground floor garden flat. It has 704 sq ft. It was sold on 12 August 2013 for £499,555. It is subject to a 999 year lease from 15 November 2011. The parties agreed that a number of adjustments need to be made:

(i) Time: 25.6.13/12.8.13. Mr Galbraith suggested an adjustment to £486,244 (0.9726); whilst Mr Stapleton suggested one of 0.9854. We accept the Land Registry figures supplied to us by Mr Galbraith.

(ii) Garden: The subject property has no garden. Both Mr Galbraith (in Appendix Two) and Mr Stapleton made adjustments of £25,000. This reduces the value to £461,244.

(iii) Condition: Mr Galbraith suggested that we should make a further reduction to reflect the fact that the subject flat is unmodernised. We agree. He stated that his client had estimated the cost of modernising it at £30,000/£35,000. He suggested an adjustment of £30,000. Mr Stapleton made no such adjustment. The Tribunal must have regard to the increase in the value of the flat as a result of the improvements, rather than the cost of the modernisation. We conclude that an adjustment of £20,000 should be made for the unimproved value of the subject flat giving a figure of £441,244.

This gives an adjusted price psf of £626.77. Applying this to the subject flat, this gives a long leasehold value of £426,204.

9. The parties relied on a number of other comparables including:

(i) No.22 The Avenue: This is a three bedroom unmodernised flat on the raised ground floor with a garden. We were provided with the sale particulars. The Avenue is an extension of Cavendish Road. In October 2013, this sold for £551,000. It is 920 sq ft. This needed to be adjusted by (i) 96.6% for time (£532,266); and (ii) £25,000 for the garden (£507,266). This gave a psf of £551. Mr Galbraith argued that this was a good comparable, but agreed that he had not made an adjustment for it being a 74.5 year leasehold interest. It was sold at auction. Mr Stapleton suggested that the price might have been depressed because of the difficulty in obtaining a mortgage. Mr Galbraith accepted that it required complete modernisation which would suggest that it was in a worse condition than the subject flat.

(ii) 69a Callcott Road: This is a two bedroom ground floor flat of 652 sq ft with access to a garden. Mr Galbraith suggested that the Estate Agents particulars gave the size as 693 sq ft. It sold for £480,000 on 30 August 2013. This is subject to a 125 year lease from 1 October 2012. Adjusted for time and the garden, Mr Galbraith gives a psf of £640.91. No adjustment has been made for its condition.

(iii) Ground Floor Flat, 30 Callcott Road: This is a two bedroom ground floor flat of 665 sq ft with access to a small cellar (of an additional 104 sq ft) and a garden. It sold for £485,000 on 7 May 2013. This is subject to a 189 year lease from 25 December 1980. This gives an unadjusted psf of £729.32. Mr Galbraith did not consider this comparable.

(iv) Lower Ground Floor, 33 Cavendish Road. This is a two bedroom garden flat of 912 sq ft which sold for £550,000 on 9 May 2013. This is subject to a 999 year lease from 15 November 2011. Mr Galbraith accepted that he had made no adjustment for it being in the basement. The Tribunal is satisfied that a basement flat is not a good comparable given the other evidence that is available.

(v) 55a Cavendish Road. This is a two bedroom basement (lower ground floor) flat of 985 sq ft. The Tribunal is again satisfied that a basement flat is not a good comparable.

(vi) 33C Cavendish Road. This is on the second floor. Mr Galbraith accepted that he had made no adjustment for this. This was sold in December 2012, which is some distance from the valuation date. Mr Galbraith had initially considered it as a comparable, but did not take it into account in his Appendix Two.

(vii) 21 Chatsworth Road. There was a dispute about a number of details relating to this flat and it was agreed that we should ignore it.

(viii) 31 B Streatley Road. This was a two bedroom flat on the first and second floors with access to a terrace. We consider that the layout is substantially different for the subject property.

(ix) First and Second Floors, 74 Dyne Road. This is a two bedroom flat on the first and second floors with a floor area of 1,275 sq ft. Again, the layout is substantially different for the subject property.

(x) First Floor Flat, 17 Brondesbury Park. This is a three bedroom first floor flat of 1,115 sq ft. Again, the layout is substantially different for the subject property.

10. The Tribunal take 60B as the best comparable. We make the appropriate adjustments and assess the long leasehold value of the subject property to be £426,204. We increase this by 1% to give a virtual freehold value of £430,466. The Tribunal is satisfied that this assessment is supported by the two next best comparables, namely 69a Callcott Road and Ground Floor Flat, 30 Callcott Road after further adjustment for the garden and cellar..
11. The Tribunal have also had regard to No.22, The Avenue. However, we accepted that the price of this property is depressed as a result of the short leasehold interest of 74.5 years and the consequent difficulty in obtaining a mortgage. However, if the psf of £551 is applied to the subject property of 680 sq ft, this gives a valuation of £375,000. This should be compared with the price of £305,000 paid for the 49.26 year leasehold interest in the subject property on 28 June 2013.

Issue 2: Relativity

12. The following guidance on relativity is provided by the learned editors of “Hague on Leasehold Enfranchisement” (5th Ed) at [33.06]:

“The assessment of the value of the tenant’s existing lease is often problematic. Sales of flats in the locality on leases of a comparable unexpired term will invariably be “tainted” by being sold with 1993 Act rights, which have to be disregarded. If there is evidence of sales of flats in the locality on very long leases, valuers can assess the value of the flat on its existing lease by taking a proportion of the long lease value. The relative value of a lease when compared to one held on a very long term varies with the unexpired term. This “relativity” has not proved easy to establish. A number of organisations publish tables or graphs of relativity, representing their views, which views may be based on market transactions, settlements, expert opinion and/or tribunal decisions. This topic was recently considered in detail by the Lands Tribunal (in *Nailrite Ltd v Cadogan LRA/114/2006 [2009] 2 EGLR 151*). It held that relativity is best established by doing the best one can with such transaction evidence as may be available and graphs of relativity (see *Nailrite Ltd* at [228] applying the guidance of the Lands Tribunal in *Arrowdell*.)”

13. Mr Galbraith contends that we should rely on the Graphs of Relativity published by the RICS (October 2009). He argues for a relativity of 75.27% calculated on the basis of an unexpired lease term of 49.26 years. He has regard to the five graphs published in Section 2 covering Greater London and England.
14. Mr Stapleton contends that a market led approach is more appropriate where the virtual freehold value can be adduced from the comparable evidence in order to arrive at the relativity by reference to the sale price of the subject flat. He argues for a relativity of 64.2%. This figure is the existing lease value divided by the virtual freehold value. He takes the existing leasehold value to be £305,000, namely the price paid on 28 June 2013, three days after the valuation date, with the benefit of the tenant’s notice. This is to be divided by the virtual freehold value of £475,000 which is the figure which he derives from the comparables.
15. The Tribunal agrees with the approach adopted by Mr Stapleton. There is a local market. The short leasehold value paid in respect of the subject property is consistent with the comparable at No.22, The Avenue. Equally, we have had no difficulty in computing the virtual freehold value from the local comparables which are available.
16. Our starting point is the sum of £305,000 paid on 28 June 2013. We accept that this is the best evidence of the short leasehold value on that date. However, the leasehold interest was assigned with the benefit of the tenant’s notice. We must rather have regard to the hypothetical no Act world. We assess the value of the notice at £5,000 and therefore take the

short leasehold value to be £300,000. We have determined the virtual freehold value to be £430,466. We therefore assess the relativity at 69.7%.

Conclusions

17. The Tribunal have determined the two issues in dispute:

(i) The virtual freehold value of the subject property is £430,466;

(ii) Relativity is to be taken as 69.7%.

We therefore determine the premium payable to be £82,319. Our working calculation is set out in the Appendix.

Robert Latham
Tribunal Judge
7 April 2014