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

Case Reference : LON/00AJ/OLR/2013/1540

Property : Flat 4, 38 The Mall, London W5 3TJ

Applicant : Mr K Bobinski

Representative : SLS Solicitors

Respondent : Perpetuity Properties Ltd

Representative : Thomson Snell & Passmore

Type of Application : Enfranchisement

Tribunal Members : Robert Latham
Richard Shaw FRICS

Date and venue of Hearing : 26 March 2014
10 Alfred Place, London WC1E 7LR

Appearance for : Applicant : Mr J Crosbie FRICS

Appearance for Respondent : Mr A Bassi MSc MRICS

Date of Decision : 11 April 2014

DECISION

1. The Tribunal determines that the premium payable by the Applicant in respect of the extension of its lease at Flat 4, 38 The Mall is £25,451. Our working calculation is set out in the Appendix.
2. The Tribunal makes no order for costs under Rule 13(1)(b) of the Tribunal Procedure Rules.

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: Flat 4, 38 The Mall, Ealing, London W5 3TJ.

(ii) Date of Tenant’s Notice: 11 July 2013.

(iii) Valuation Date: 11 July 2013.

(iv) Date of Application to the Tribunal: 12 November 2013.

(v) Tenant’s leasehold interest:

- Date of Lease: 10 June 1983.
- Term of Lease: 99 years from 25 March 1983.
- Ground Rent: £50 for the first 33 years, rising to £100 for the next 33 years, then £150 for the final 33 years of the lease.
- Unexpired Term at Valuation Date: 68.7 years.

(vi) Landlord: Perpetuity Properties Ltd.

(vii) Tenant: Mr Krzysztof Bobinski.

(viii) Tenant’s Proposed Premium: £19,500.

(ix) Landlord’s Proposed Premium: £32,000.

The Hearing

3. The hearing of this application took place on 26 March 2014. The hearing was initially listed for 25 March. The Tribunal was concerned that the parties had failed to adequately address the Statement of Agreed Facts and Issues Outstanding. We were unable to start the case as a second matter was listed. We therefore adjourned the case to the next day and directed the parties to agree such a statement in accordance with their duties under the Overriding Objectives. We are grateful for the Statement which was produced when we reconvened.
4. Both parties were represented by their Surveyors. Mr John Crosbie FRICS (Brendons) gave evidence on behalf of the Applicant, tenant. He relied on his report dated 4 March 2014. Mr Adam Bassi MSc MRICS (Edifice Surveyors) gave evidence of behalf of the Respondent, landlord. He relied on his report dated 1 March 2014. Mr Bassi’s report did not include the required Statement of Truth or Declaration that he understood his duties to the Tribunal as an independent expert. He confirmed that he understood these obligations and provided the Tribunal with a signed declaration to this effect.

5. Throughout the hearing, there was apparent tension between the experts which had a negative impact on our assessment of their evidence as independent experts. It was apparent that relations between them got off to a bad start. Mr Bassi questioned Mr Crosbie's decision to accept instruction on behalf of the tenant as he had acted for the landlord some years previously. Mr Crosbie questioned Mr Bassi's role as an independent expert as he is also a director of the Respondent Company. The parties were unable to agree a Bundle of Documents and we were provided with two separate Bundles. In this decision, we prefix any reference to the Applicant's Bundle by "App" and to the respondent's Bundle by "Resp".

6. In a statement dated 20 March 2014 (at Resp.1), Mr Bassi makes applications for costs under both Section 91 of the Act and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "Tribunal Procedure Rules") on grounds of the unreasonable conduct of both SLC Solicitors and Mr Crosbie. We indicated to the parties that we have no jurisdiction to deal with the Section 91 Application. This must be subject to a separate application if the parties are unable to agree to the costs payable under the Act. Mr Crosbie confirmed that he was in a position to determine application for costs under Rule 13(1)(b) and we deal with this as Issue 3.

7. On 6 December 2013, the Tribunal gave Directions (at App.9). The parties have identified the following issues for us to determine:
 - (1) the unimproved freehold values of the flat: The Applicant argued for a value of £315,000; whilst the Respondent argues for £336,357; and
 - (2) the relativity rate: The Applicant argued 91.6%; whilst the Respondent argues for 82.63%;

These issues are interlinked. The significant factor on the size of the premium payable is the relativity rate. Mr Crosbie, 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. Mr Bassi, for the landlord, argued that there is evidence of the local market to which we should have regard.

8. On 26 March, the parties agreed the following:
 - (i) Unexpired Term: 68.7 years;
 - (ii) Capitalisation Rate: 6.0%;
 - (iii) Deferment Rate: 5%;
 - (iv) GIA of the subject flat: 570 sq ft;

evidence. He told us that it was based on his comparables at Florence Road and Woodville Gardens. It is apparent to the Tribunal that it is Mr Bassi who has set the agenda on the issue of comparables, whilst the Applicant has largely been content to respond to these. Mr Crosbie's Final Report (4 March 2014) did not include any comparables. He suggest that the reason for this was that value of the subject flat had been agreed ([1.3] at App.86). It is apparent from Mr Bassi's e-mail of 6 February 2014 (at Resp.39) that there was no such agreement. Mr Bassi objected to the fact that Mr Crosbie had felt it necessary to file a supplementary report dated 10 March dealing with his comparables. We suggested that it was rather to the landlord's advantage that Mr Crosbie had adopted this approach.

14. The parties are agreed on the two most relevant comparables:

(i) Flat 1, 37/38 The Mall: This is a one bedroom flat (534 sq ft) which was sold for £300,000 on 23 August 2013 when there was 95 years outstanding. It is on the raised ground floor. This is a psf of £561.80. It has its own entrance door. However, the flat is directly above the Language School which is attended by a significant number of students as was illustrated in a photograph with which we were provided. It is apparent that the flat is in a good condition (see App.115).

(a) Mr Crosbie made two adjustments: He reduced the value by £10,000 in respect of its improvements. He then made an adjustment of £25,000 for the subject property having two bedrooms. This supported a value of £310,000 for the subject flat, no adjustment being made for the respective size of the two flats.

(b) Mr Bassi accepted that there should be a 5% (£15,000) uplift for this being a one bedroom flat. He denied that any further adjustments should be made, considering that the subject property was otherwise the more desirable. Adjusting for the smaller size of this flat (534 as opposed to 570 sq ft), He suggested a figure of £336,357 for the subject property).

(ii) Flat 5, 37/38 The Mall: This is a one bedroom flat (450 sq ft) was sold for £230,000 on 6 December 2013 when there was 68 years and 3 months unexpired. This is a psf of £511.11 time, adjusted to £481.77. Mr Crosbie suggested that the fact that the flat was sold by a Magdalena Lipinska to Catherine Bobinski was evidence that this was not an open sale. The suggestion was that this was a sale within the Polish community. We reject that suggestion. Mr Crosbie did not address this comparable in his analysis at App.87.

15. Mr Crosbie relied on the following additional comparable:

(i) Flat 5, 16 Florence Road, W5: This is a converted two bedroom flat (575 sq ft) on the second floor with a modernised bathroom and kitchen. A long lease was sold for £310,000 in February 2013. Mr Crosbie suggested an adjusted figure of £295,000 having regard to its preferred location and condition. This is an attic flat and therefore a poor comparable for the subject flat.

(ii) Inglis Road: This is a converted split level two bedroom flat (520 sq ft) with a share in the freehold. It had a shared garden and off street parking. It was sold for £295,000 in June 2013. Mr Crosbie suggested adjustments, firstly for it being in a less desirable location and a smaller flat. However, this is offset by the advantages of a shared garden and off street parking. His adjusted figure is also £295,000.

(iii) 31c Woodville Gardens: This is a two bedroom flat (825 sq ft) in a second floor converted attic. Mr Crosbie had no regard to the fact that it was in an attic, a factor which in our view renders this comparable unreliable.

Mr Crosbie had not given Mr Bassi notice that he was relying on these comparables, and Mr Bassi was unable to deal with them in his report.

16. Mr Bassi relied on the following additional comparable:

(i) Flat 3, 45 Grange Road: This is a two bedroom flat which was sold for £347,000 on 22 August 2013. We were provided with no details of the psf.

(ii) 2 Grange Park, a two bedroom flat which was sold for £370,000 on 12 September 2013. Again, we were not provided with details of psf. This is a two bedroom garden flat in a "fabulous" new development (see App.128). It is quite different from the subject flat.

(iii) 10 Sutton Close, Grange Road: A two bedroom flat which was sold for £330,000 on 17 September 2013. Again, we were not provided with details of psf. This is also described as a "fabulous flat" in a purpose built block (App.132). This is not a good comparable.

17. The Tribunal is concerned of the lack of good comparable evidence submitted by both valuers. We have been provided with no evidence of how sale prices might be adjusted, month to month, to the valuation date and we have not been supplied with the areas of some of the comparable flat sales which makes comparison difficult.

18. However, there seem to be two sales that do provide some guidance. Flat 1, 37/38 The Mall was sold on 23 August 2013 for £300,000 on a 95 year lease. It has one bedroom and is of 534 sq ft. It is just over a month from

the valuation date and the Tribunal makes the following adjustments: (i) minus £10,000 for condition and (ii) plus £5,000 because of its location above the language school and (iii) plus £10,000 because the subject property has two bedrooms. The adjusted sale price is £305,000 or £571.16 psf.

19. The Inglis Road flat was sold in June 2013 for £295,000. It has the use of a shared garden and off street parking. However, this is offset by its less desirable location and is a smaller flat. The adjusted figure is therefore also £295,000. The sale is close to the valuation date. The area is 520 sq ft which results in a price of £567.30psf
20. On the basis of these two comparables the Tribunal adopts a price of £569 psf which gives the long leasehold value of the subject at £324,330. We increase this by 1% to give a virtual freehold figure of £327,500.

Issue 2: Relativity

21. 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*)."

22. Mr Crosbie argues that we should rely on the Graphs of Relativity in the RICS Research published in October 2009. He argues for a relativity of 91.7% calculated on the basis of an unexpired lease term of 68.7 years. He has regard to the four graphs published in Section 2 covering Greater London and England. These are Andrew Priddel (92.25%); Austin Grey (93.2%); Nesbitt & Co (90.7%) and South East Leasehold (92.75%). He also includes the Moss Kaye graph (89.7%). He does not include the Beckett & Kay (mortgage dependent) graph (91.90%) which would have raised the average. He gave no reason for this. However, we note that Beckett & Kay have revised this down in 2013 to 79.5% (see Mr Bassi's Report at p.123).

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23. Mr Bassi argues for a figure of 82.63%. He contends that a market led approach is more appropriate where there is local evidence of:

(i) A short lease value: The sale of Flat 5, 37/38 The Mall with 68 years and 3 months unexpired. This one bedroom flat (450 sq ft) was sold for £230,000 on 6 December 2013. This is a psf of £511.11 time, adjusted to £481.77. We note that the leasehold interest was served with the benefits of a Section 42 Notice of Claim (see App.116).

(ii) A long lease value: The sale of Flat 1, 37/38 The Mall with 95 years unexpired. This one bedroom flat (534 sq ft) was sold for £300,000 in August 2013. This is a psf of £561.80.

Mr Bassi computes a relativity figure of 85.75% ($481.77/561.80$). He is willing to adjust this having regard to the revised Beckett & Kay mortgage dependent graph for Greater London and England (at App.123) which gives the figure of 79.5%. 82.63 is an average of these two figures.

24. The Tribunal is satisfied that there is insufficient evidence of a local market. We must therefore have regard to the RICS graphs. Applying our knowledge as an expert tribunal, we ignore the South East London Leasehold graph (92.75%) as this is mainly based on purpose built flats in Bromley (see p.29 of the RICS Research). We also ignore the Austin Grey graph as this primarily covers Brighton and Hove (see p.32 of the RICS Research). We consider the following to be relevant:

(i) Beckett & Kay (2nd Revision, 2013) (79.5%). We are satisfied that short term mortgages would be available for a 68 year lease. This graph is attached to Mr Bassi's report at p.123 of the Bundle;

(ii) Nesbitt & Co (90.7%); and

(iii) Andrew Pridell (92.25%).

We therefore take an average of 87.48%. We note that this is not dissimilar from the figure of 85.75% which Mr Bassi sought to rely from the limited evidence relating to the local market.

Issue 3: Costs for Unreasonable Behaviour

25. Mr Bassi, on behalf of the Respondent applies for costs of £3,745.20 (at Resp.20) pursuant to Rule 13(1) (b) of the Procedural Rules based on the "unreasonable" conduct of the Applicant in these proceedings. The Respondent has not explained how the costs are broken down.

26. The Procedural Rules have applied since 1 July 2013. They make two significant changes to the those previously to be found in Paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002:
- (i) The 2002 Act referred to the conduct of a party who had “acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably” in connection with the proceedings. We are satisfied that the abbreviated language in the new Rules, now restricted to the single term of “unreasonable”, does not make any significant change to the circumstances in which we should make such an order. The four additional terms were merely examples of unreasonable behaviour. This is normally a “no costs” jurisdiction. A party must satisfy a high threshold before a Tribunal should make a costs order based on the unreasonable conduct of a party. The basic principle is that this is a “no costs” jurisdiction.
- (ii) The limit of £500 has been removed. This gives effect to the recommendation made in the report “Costs in Tribunals” by the Costs Review Group chaired by Sir Nicholas Warren.
27. Mr Bassi complained that Mr Crosbie did not supply his comparables in response to his e-mails of February 6 (Resp.39); 12 (Resp.73); 14 (Resp.42) and 26 (Resp.43). He also complained about the difficulties in agreeing a Statement of Facts and Issues and the manner in which the final reports of the two experts were exchanged.
28. The Directions (at App.10) provided that “the parties’ valuers must by 17 January 2014 have exchanged valuations and met to narrow the issues in dispute”. Mr Bassi stated that he took no steps to arrange a meeting because he had received no response to his e-mails. Mr Crosbie asserted that he had served his valuation report on 17 January. Mr Bassi responded that this had not been served until 12 March. Mr Crosbie was able to produce an e-mail dated 17 January confirming that valuations had been exchanged between solicitors at 15.59 on 17 January. Mr Bassi accepts that neither he nor his solicitor took any step to arrange the meeting to narrow the issues in dispute.
29. Mr Crosbie complained of the antagonistic approach adopted by Mr Bassi. On 29 October 2013 (at App.53), Mr Bassi had written that any communication would be conducted on a “strictly without prejudice basis as it is deemed to be a Conflict of Interest due to your previous appointment to advise the landlord”. If there was such a conflict of interest, it is a matter which should have been resolved through the solicitors. An e-mail of 12 December (at Resp.73) from Mr Bassi started “can you please stop insulting my intelligence with your ludicrous excuses”. This is not the language which one would expect from an independent expert. On 17 January (at Resp 50), Mr Bassi sent a copy of this e-mail to the Applicant’s daughter complaining of the conduct of her

father's expert. Again, this is not the behaviour that one would expect from an independent expert.

30. We accept that it is an applicant who has the primary responsibility to ensure that their litigation is conducted in accordance with the Directions given by the Tribunal. We also accept that Mr Crosbie was not proactive in identifying and sharing his comparables. We have suggested that the Respondent has probably been the beneficiary of this approach. However, we are satisfied that neither expert acted in accordance with their responsibilities as independent witnesses to the Tribunal. They should have carried out their duties objectively and dispassionately. Neither did so. In such circumstances, it was for the solicitors to be more proactive in the conduct of the proceedings. Again, both failed to do so. In the circumstances, we are satisfied that this is not a case to make any order for costs under Regulation 13(1)(b).

Conclusions

31. The Tribunal have determined the two issues in dispute:
- (i) The virtual freehold value of the subject property is £327,500;
 - (ii) Relativity is to be taken as 87.48%.
 - (iii) We determine the premium payable to be £25,451. Our working calculation is set out in the Appendix.
 - (iv) We make no order for costs under Rule 13(1)(b) of the Tribunal Procedure Rules.

Robert Latham
Tribunal Judge
11 April 2014

Appendix 1

New Lease Claim

Present lease	99 years from 25 March 1983		
Valuation Date	11/07/2013	68.7 years unexpired	
Long lease value	£324,330	Virtual freehold	(+1%) £327,500
Existing lease value	87.48%	£286,497	
YP = 6%	PV = 5%		

Diminution in value of Landlord's interest

Value before grant of new lease			
Term			
Rent	£50 pa		
YP 2.7 yrs @ 6%	2.426243	121	
Rent	£100 pa		
YP 33 yrs @ 6%	14.23		
Deferred 2.7 yrs @ 5%	0.876575	1247	
Rent	£150 pa		
YP 33 yrs @ 6%	14.23		
Deferred 35.7 yrs @ 5%	0.175203	374	
Reversion			
Flat value	327,500		
Deferred 68.7 yrs @ 5%	0.035018	11,468	
			13,210.00
LESS value after grant of new lease			
Term			
New Lease at a peppercorn rent		0	
Reversion			
Flat value	327,500		
Deferred 158.7 yrs @ 5%	0.000434	142	-142
			13,068.00

Marriage Value

Aggregate of values of interests after grant of new lease			
Landlord's interest	142		
Tenant's proposed interest	324,330	324,472	
Less Aggregate of values prior to grant of new lease			
Landlord's interest	13,210		
Tenant's interest	286,497	299,707	
	Marriage value	24,765	
	50%		12,383
	Premium		25,451