



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESI-
DENTIAL PROPERTY)**

Case Reference : **LON/OOAC/OCE/2015/0129**

Property : **29 and 31 Kitchener Road, London
N2 8AS**

Applicants : **Ms E.Groves and Ms S. Eady (lease-
holders and nominee purchasers**

Representative : **Ms T. Cox of counsel instructed by
Hill Dickinson, solicitors with valua-
tion evidence from Mr T. Jackman
MIRCS of Aspect Surveyors Limited**

Respondent : **Mr K.Anand (freeholder)**

Representative : **Mr Kumar of Cheal Asset Manage-
ment Limited (managing agents)**

Type of Application : **Application under section 24 of the
Leasehold Reform, Housing and
Urban Development Act 1993 ('the
Act') to determine the premium to be
paid for the acquisition of the free-
hold to the subject premises.**

Tribunal Members : **Professor James Driscoll (Judge) and
Ms Marina Krisko BSc. FRICS**

Date of Hearing : **15 September, 2015**

Date of Decision : **23 October, 2015**

DECISION

Summary of the decision

1. The premium to be paid for the acquisition of the freehold under the Act is the sum of £50,253 (fifty thousand, two hundred and fifty-three pounds).

Introduction to the application

2. This is an application for the determination of the premium which is payable by the applicants to the respondent for the acquisition of the freehold under the provisions in the Act. It concerns a block of two flats both held on qualifying long leases where the landlord under those leases is the respondent and the owner of the freehold to the building.
3. A claim notice was given by the applicants to the respondent and it was dated 30 October 2014 which the parties have agreed is the valuation date for the purposes of ascertaining the premium to be paid. In this notice the applicants proposed to pay a premium of £44,444.
4. In a counter-notice dated 9 December 2014 signed on behalf of the respondent by Cheal Asset Management Limited (the landlord's managing agents) the claim was admitted but a counter-proposal was made for the premium seeking the sums of £67,200 for the freehold and £750 for the appurtenant property.
5. As the parties did not agree on the terms of the acquisition, an application was made to the tribunal on 1 May 2015. Directions were given on 20 May 2015. These included directions as to the exchange of valuation reports. They also included a direction that a bundle of documents should be prepared by those advising the applicant leaseholders.

The hearing

6. At the hearing on 15 September 2015 the applicants were represented by Ms Cox of counsel and Mr Jackman MRICS. Mr Kumar represented the landlord. A bundle of documents had been prepared which included a copy of the application, the directions, the claim and counter-claim notices, HM Land Registry entries, a copy of the two leases held by the applicants, a summary of the ground rents, a draft trans-

fer (as approved on behalf of the parties), reports for the applicants on the valuation of the premium, a report for the respondent on valuation, a memorandum of agreed facts and a summary of the issues in dispute.

7. Ms Cox told us that she was instructed on behalf of the applicants specifically to deal with any issues relating to the service of the bundle of documents and any other procedural issues relating to the application. Mr Jackman would give evidence on the valuation of the premium.

8. Mr Kumar told us that the author of a his valuation report was unable to attend the hearing to give evidence. He also complained of late service of the bundle of documents.

9. Ms Cox addressed us on the service of the bundles and we were handed a copy of email correspondence between her instructing solicitors and Cheal Asset Management Limited. Summarising this shows first, that the solicitors sent by post a copy of the bundle (which includes the applicant's valuation report) to the managing agents on three occasions. However, the managing agents stated that they did not receive these letters and the enclosed documents. The solicitors also sent a copy of the bundle as an attachment to an email but the managing agents stated that they were unable to open the attachments. The solicitors also arranged for a courier to deliver a copy of the bundle to the managing agents address but they were unable to elicit a reply when they attended their offices and they were unable to post a copy through the letter box as it was so small. In the event they delivered a copy direct to the landlord at his home address.

10. Mr Kumar had a copy of the bundle at the hearing and he told us that his client was unhappy at the bundle being served at his personal address. We pointed out to him that this address was the address given in the claim notice.

11. We are satisfied that Mr Kumar and his company have been served with a copy of the bundle as has the respondent landlord.

12. Mr Jackson spoke to his report which is dated 23 August 2015. He answered questions from the tribunal and from Mr Kumar. We noted that his report is mistakenly headed 'lease extension' and the same mistake was repeated in the report (at paragraph 2.03.03). He carried out an internal inspection of the two flats on 1 October, 2014.

13. Attached to his report are various appendices. One of these is a copy of the decision of the Upper Tribunal in *Nicholson v Goff* [2007] 1 EGLR 83, which Mr Jackson relies on in his submission that a capitalisation rate of 7% should be used as the ground rents are low rents. He also cites a previous decision of this tribunal to the same effect.

14. As to relativity, he again relies on previous decisions of this tribunal in support of his submission that for a lease with an unexpired term of 60.85 years carries a relativity of 86%. In the applicant's valuation the figures show a relativity of 92.555 with a long lease value of £460,000 as opposed to an existing lease value of £425,730. We have used the same relativity as the RICS graphs support.
15. Turning to the freehold vacant possession value he relies on the sales of flats in Kitchener Road though his report does not state the value he derives from this market evidence.
16. He does not directly address what he considers to be the appropriate deferment rate but it appears from his conclusions that what is known as the 'generic rate' of 5% was used.
17. Mr Kumar told us that he had no witnesses to call but he invited us to consider the report he has obtained a copy of which is in the bundle.
18. This is a report signed by a Praveen Kam (whose qualifications are given as B.A. (Hons), ICCA (Passed)) on behalf of a company by the name of PK & AK Associates and it is dated 5 December 2014. Mr Kumar told us that Mr Kam was unable to attend the hearing to speak to his report. In response to our questions, Mr Kumar confirmed that Mr Kam is not a qualified valuer and he does not have the a valuer's qualification. He did not disagree with us when we put it to him that the report is not signed by the usual expert's declaration as set out in the FRICS Practice Statement '*Surveyors Acting as Expert Witnesses*'
19. However, Mr Kumar stressed that there is nothing in the Act that requires evidence on the premium being provided by someone who is a qualified valuer. Mr Kumar added that he himself has very extensive evidence of managing property and that on the basis of his knowledge and experience he supports the conclusions in Mr Kam's report. Mr Kam recommends that the sum of £66,000 should be paid for the freehold. Mr Kam reaches this conclusion in a rather unusual way by separately valuing the two flats rather than the freehold of the building.
20. We also pointed out to Mr Kumar that in the penultimate paragraph of the report (at page 138 of the bundle) it is clearly stated that the report is confidential to the landlord and his professional advisors and that it cannot be revealed to anyone else without the consent of the author. Mr Kumar told us that he has received written confirmation that he is at liberty to use the report but that he did not have a copy of this with him in his file.

Reasons for our decision

21. The evidence on valuation provided by Mr Jackman is not entirely satisfactory for the reasons given above. It does provide, however, some independent evidence based on his inspection and his analysis of recent flat sales in the same street as the subject property. We accept that he has considerable experience in advising on leasehold claims for enfranchisement and new lease claims. We were able to supplement this on the basis of our own professional knowledge and experience.
22. However we are unable to give any weight to the report produced by Mr Kumar for several reasons. First, the author of the report did not appear at the hearing so we were unable to test his evidence by asking him questions on the report. Mr Jackman was unable to cross-examine him on the report. Second, the author of the report is not a qualified valuer. We accept the point that there is no statutory requirement for evidence to be given by a valuer qualified with one of the RICS qualifications. However, for valuation evidence to be credible the witness needs to demonstrate professional knowledge and experience if the evidence is to carry any weight. Third, the report contains a confidentiality clause. Unless the respondent landlord has agreed to the report being used in evidence at a hearing, we cannot consider it. (If Mr Kam had been present at the hearing he could have confirmed, or otherwise, if he had the consent of his client, the respondent landlord).
23. Although Mr Kumar sought to address us on the valuation, his submissions do not carry any more weight than those of Mr Kam. We accept Mr Kumar's claim that he and his company have considerable experience in property management but this is no substitute, in our view, for an expert valuation report prepared by a qualified valuer and signed by that valuer with the professional statement required by the RICS.
24. In approaching our conclusions on the premium to be paid we are left with the valuation report of Mr Jackson which we have supplemented with our own professional knowledge and experience.
25. We note that the valuation date is 30 October 2014. The ground rents (£75, then £100, then £125) are low and far from an attractive investment in monetary terms particularly given the steps that have to be taken to recover unpaid ground rent. On this issue we accept Mr Jackman's evidence that the applicable capitalisation rate for the ground rent that will be lost once the new lease is granted is 7%.
26. As to the deferment rate we can see no reason to depart from the generic rate of 5% promulgated in the *Cadogan v Sportelli* ([2007] 1 EGLR 153) litigation. We do not consider that there is any evidence that justifies a departure from this generic rate.
27. We turn to the freehold and current leasehold values and to the applicable 'relativity'. The respondent gave no evidence on how he had reached his figure of £470,000 for the extended lease value. The applicants provided 3 comparables in the same street which he adjusted for time using the Land Registry House price in-

dex. (see page 117 of the bundle). Again we agreed with his reasoning, the average value coming to £465,000, this he dropped slightly to £460,000 as to two higher comparables included improvements thus raising the average

28. Mr Jackman made another error in stating that the unexpired term of the applicants's leases is 60.17 years when it is in fact 70.16 years unexpired. In evidence at the hearing, he used the same 92.55% as he did in his valuation. He stated that although there was no discussion on relativity in his report he had used the RICS graphs (as required by previous LVT decisions) when doing his valuation. The respondent asked Mr Jackson why he had not included these graphs in his report, to which he replied that they were public knowledge and available to anyone who wanted a copy. (A comment which we did not altogether helpful). He also countered with the fact that the respondent had given no reason at all for his use of 90% relativity. We agreed that the average of the RICS graphs did come out at 92.55% for the remaining 70.16 years and therefore used that figure in our valuation. The Upper Tribunal decisions (including the *Nailrile v Cadogan* ([2009] PLSCS 31) on this issue remind us that we can analysis and apply the relativity graphs published by the RICS (*Leasehold Reform: Graphs of Relativity, October, 2019*). Having considered this research and applying it to unexpired terms of the two leases (70.16 years at the valuation date) we conclude that a rate of 92.55% should be applied.

Summary

29. Generally we agreed with all the applicants values and our valuation is virtually identical to his apart from a couple of corrections and the fact that both flats are included in the same valuation even though this is an enfranchisement claim.

30. Taking all of these points together, we determine (as summarised at the beginning of this decision) that the premium to be paid is the sum of £50,253.

31. The bundle included photographs of the subject property and of the properties which Mr Jackson relies on as relevant market evidence. Having regard to this and the submissions and the evidence, we did not consider that an inspection of the subject property (or the adjoining properties) would assist us in our decision.

32. We also note that after the hearing the managing agents sent additional documents to the tribunal. As we did not ask for any additional documentation and it was not tendered in evidence at the hearing we have not considered it.

33. Our valuation is appended to this decision

James Driscoll and Marina Krisko
23 October, 2015.

Appendix (valuation)

TRIBUNAL VALUATION – 29 and 31 KITCHENER ROAD, LONDON, N2 8AS

Agreed Matters

Valuation date 30th October, 2014.
Lease expiry date 24th December 2085
Remaining term 70.16 years
Ground rents £75 / £100 / £125 pa

Matters Determined

Capitalisation rate 7%
Deferment rate 5%
Relativity 92.55%
Freehold value £920,000
Existing lease value £851,460

Term

As calculated in applicants' valuations £ 2,708

Reversion

As calculated in applicants' valuations £30,002

Landlord's interest £32,710

Landlord's future reversion

PV 160.16 years 5% 0.000404 £ 372 £32,338

Marriage value

Freehold value £920,000
Less existing £851,460
Less landlord's
Interest £ 32,710 £35,830

50% £17,915

Premium £50,253