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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**SN/LON/00AW/ORL2015/1142**
Property	:	**4/5A Roxburghe Mansions, 32 Kensington Court, London W8 5QB**
Applicant	:	**Axel Otto Beck & Cecile Ivana Marie Belaman**
Representative	:	**Mr. M Pryor, counsel instructed by Bircham Dyson Bell LLP**
Respondent	:	**Moreland Majestic Limited S.A.**
Representative	:	**Mr. P Rainey QC, counsel instructed by Teachers Steen LLP**
Type of Application	:	**Extension of lease**
Tribunal Members	:	**Judge LM Tagliavini** **Mr D Jagger MRICS**
Date and venue of hearing:	:	**8th & 9th December 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**23 January 2016**

DECISION

A. The tribunal makes the following determinations as set out below.

The application

1. The Applicant tenants seek a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (the "1993 Act") of the premium payable for a lease extension of the property known as 4/5A Roxburghe Mansions the "Flat").

The hearing

2. Mr. Michael Pryor, counsel represented the Applicant at the hearing. Mr. Philip Rainey QC represented the Respondent landlord. Expert valuation evidence was given by Mr. Courtney L Manton FRICS, for the Applicants and Ms Jill Howells BA Hons MRICS, for the Respondent. The parties relied on documents contained within three lever arch folders marked A, B and C, which included the valuers' substantive and detailed valuation reports. The Tribunal was also provided with skeleton arguments and legal authorities from the parties' counsel.

The background

3. The properties, which are the subject of this application, comprise two flats on the first floor of a red brick mansion block managed by The Durward & Roxburghe RTM Company Ltd.

4. Flat 4 is held on a lease for a 125 years commencing on 17 December 1999 to 29 September 2124 at a peppercorn rent with 109.83 years unexpired.

5. Flat 5A is held on a lease for 66 years commencing 28 April 1972 and expiring 24 March 2034 with 19.39 years remaining. Deeds of Variation and Licences for alterations were subsequently granted between August 1987 and December 2008. Collectively, these permitted the Applicants to carry out alterations and co-join the two flats thereby forming one larger property, the subject of this application. The Applicants offered the sum of £514,000 in their Notice of Claim as the premium payable for the lease extension of the Flat. In the counter notice, which admitted the claim the Respondent sought the sum of £3,175,000.

6. The tribunal inspected the subject property after the hearing.

The issues

7. At the start of the hearing the parties submitted a signed Statement of Agreed Facts dated 9th October 2015. The remaining relevant issues for the tribunal's determination were identified by the parties as follows:

   (i) Freehold Vacant Possession Value of Flat 4.

   (ii) Freehold Vacant Possession Value of Flat 5A.

   (iii) Freehold Vacant Possession Value of Flat 4 & 5A combined.

   (iv) Relative value of the unexpired term of the existing leases as a percentage of the freehold vacant possession value "without Rights".

   (v) Capitalisation Rates.

The Applicants' argument and submissions – legal issues

8. It was submitted by the Applicants that due to the operation of the deeming provision in section 101(6) together with sections 7(6) and 561) of the 1993 Act, the New Lease of the Flat to be granted of the entire flat is for a term expiring 90 years after the expiry of the shorter of the two leases, i.e. Flat 5A. Consequently, the New Lease of the Flat will expire on 24 March 2124, and therefore just over 6 months earlier than the current expiry date of the longer lease of Flat 4. The legal issues arising as a consequence are:

   (i) Whether the Tribunal is required to required to treat the Flat as let on a composite lease expiring on 24 March 2134, thereby giving rise to the Respondent's higher valuation, or

   (ii) Whether the Tribunal should disregard the works of alteration and improvement carried out as a result of the variations and licences granted between 2000 and 2008, thereby giving rise to the lower premium payable put forward by the Applicants.

9. Mr. Pryor submitted that the deeming provision of section 101(6) of the 1993 Act providing that the existing leases should both be assumed to expire on the term date of the shorter lease did not apply. Mr. Pryor relied on the unfair price that would have to be paid by the Applicant tenants and the windfall premium obtained by the Respondent landlord that would otherwise result. Mr. Pryor submitted that the deeming provision was unnecessary as the relevant parts of Schedule 13

of the 1993 Act (the valuation provisions), operated satisfactorily in its absence, and its application to these circumstances are inconsistent with the operation of the relevant parts (2-4A) of Schedule 13. Mr. Pryor submitted that the application of the deeming provision would be contrary to the express statutory assumptions that Chapters I & II of the 1993 Act do not apply to the Flat in paragraphs 3(2)(b) and 4A(1)(b) and contrary to the clear policy of the 1993 Act. In brief, the Tenants would have to pay again for something they had already purchased. In support of this argument, Mr. Pryor sought to rely on the First-tier Tribunal (LVT) decision of *Voyvoda* (GM/LON/00BK/OLR/2011/0056) which, found that the 'deeming' provision of section 101(6) did not apply where a new lease of three co-joined flats was sought.

10. Mr. Pryor submitted that the basis of paragraphs 3(1)(c) and 4A(c) of the 1993 Act was to ensure that works of improvement carried out by the Tenants at their expense are to be disregarded. In this instance, it was submitted that all works, which included the integration of Flat 4 with Flat 5A, the formation of an access corridor, rearrangement of internal partitioning and renewal of upgrading services installations as well as works of general refurbishment to floors, internal decorations and the installation of a new kitchen and bathroom fixtures and fittings (except the knocking through of the party wall to create one flat in 2008) should be regarded as improvements and therefore disregarded for the purposes of the valuation. The works of amalgamation created the Flat and the demise came into existence in 2008 and is the starting point for the combined flat. Relying on commentary found in *Hague (6th Ed. 2014)* p248-249, Mr. Pryor emphasised that the tenants should not pay a price, which reflects a value in the property for which they have already paid.

The Applicants' argument and submissions – valuation issues

11. In his valuation report dated 24th November 2015 Mr. Manton submitted that the most appropriate method of calculation of the diminution in value of the freeholder's reversion and the statutory marriage value in accordance with paragraphs 3 and 4 of schedule 13 of the 1993 Act, is to assess the two leases separately on their respective terms and different expiry dates. Mr. Manton rejected a valuation based on a valuation of Flat 4/5A as a composite whole. He therefore carried out a valuation based on the assumption that there should be two distinct valuations, one for Flat 4 and another for Flat 5A. As set out in his valuation report this approach provided a premium of £584,048 on the basis that all improvements should be disregarded (except for the knocking through of the two flats).

12. In assessing the approach to 'relativity' Mr. Manton referred to the approach taken by the Upper Tribunal in *Kosta* (UKUT 0319 (LC) 2014. In this decision, the deficiencies of using graphs was considered with the Upper Tribunal taking the approach of averaging all the Prime Central London graphs referred to in the RICS research report on relativity. Mr. Manton asserted that in the instant application concerning the valuation of a flat or flats it was not appropriate to include 'house only' graphs when taking an average of the various professional graphs. Therefore, adopting this approach to the current valuation and excluding 'house only' graphs an average relativity of 46.758% was achieved.

The Respondent's argument and submissions – legal issues

13. Mr. Rainey QC for the landlord submitted that what is being valued for the purposes of this application is the Flat i.e. one single flat held on two leases. He submitted that as a matter of law, the existing lease should both be assumed to expire on the term date of the shorter of the two leases. Mr. Rainey submitted that s.101(6) is a comprehensive deeming provision which treats the deemed single lease under s.7(6) which provided that where a flat is held on more than one lease, the leases are treated as one lease for the purposes of the Act.

14. Mr. Rainey submitted that on the basis the remaining lease term was therefore less than 80 years, the marriage value could not be deemed to be nil as set out in para.4(2A) of Schedule 13 of the 1993 Act. Therefore, it is the calculation of marriage value of a single flat with a single before-and-after valuation and a single amount of marriage value that must be calculated and determined by the Tribunal.

15. Mr. Rainey submitted that the work of amalgamation from two separate flats into one larger flat did not constitute an improvement for the purposes of the Act as before that work the Flat did not exist at all and therefore could not have improved something that had not existed. Mr. Rainey also submitted works that pre-date this amalgamation (knock through works) creating the Flat cannot be regarded as works of improvement to the Flat*; Rosen v Trustees of Campden Charities* [2002] Ch 69 (CA); cf *Gardenblock Property Management v St John Lyon's Charity* (0/2/19997; LVT.

The Respondent's argument and submissions – valuation issues

16. A central submission for the Respondent landlord was the assertion that the tenant's valuer, having initially recognised that he was valuing

the Flat, rather than two separate Flats then proceeded to provide a valuation figure based on the valuation of Flat 4 and Flat 5A individually and separately to reach a premium. Mr. Rainey submitted, that as a consequence, Mr. Manton's valuation was carried out on an incorrect basis and the valuation approach taken by Ms Howells in her valuation of the Flat as a composite unit is to be preferred. Ms Howells' valuations gives rise to a premium of either £2,700,000 or £3,166,000 depending on whether all improvements are or are not to be disregarded respectively. In the event, that the valuation should be carried out on the basis that the leases end on their real dates, Ms Howells provided alternative valuations giving rise to a premium of £774,200 or £902,700 dependent on whether improvements are or are not disregarded respectively.

17. Ms Howells' asserted that where the lease is to be valued on the basis that the Flat was one composite unit with a single ease expiring in 19.39 years, the application of the Gerald Eve Graph of Relativity was appropriate, thereby giving rise to a relativity of 42.02%. Ms Howells asserted that it was not appropriate to conclude from the decision in *Kosta* that an average of graphs should be adopted in this valuation. In addition to this valuation, Ms Howells gave alternative valuations for the valuation of two separate flats with and without the disregard of improvements.

18. Ms Howells produced a calculation of the appropriate Capitalisation Rate of 5.5% based on two schedules of transactions documented over the period January 2014 to June 2015.

The Tribunal's decision and reason – legal issues

19. In reaching its decision, the Tribunal took into account all of the relevant oral and documentary evidence and submissions from the parties. The tribunal has made determinations on the various issues as follows.

20. It is the opinion of the Tribunal that what is effectively being sought by the Applicants is a lease extension of Flat 5A which brings with it the right to use this flat alongside Flat 4 thereby having the benefit of a larger flat until the expiry of the lease for Flat 5A. A lease extension of Flat 5A almost mirrors the term granted for Flat 4 (less 6 months and 6 days). In essence, the Applicants say, and the Tribunal agrees, that as they have already paid for Flat 4 with 109 years remaining, they should not be required to pay for it again by extending the lease to what both parties now refer to as Flat 4/5A ('the Flat"). The Respondent landlord asserts that the tenants should now pay for an extended lease for this larger Flat and it should be valued as one flat for the purposes of the premium payable. The Tribunal finds that this approach effectively

provides the landlord with a windfall that is grossly unfair as the Applicants are effectively being asked to pay twice for the same property and with a loss of 6 months of the term for which they have already paid. The tribunal disagrees with the Respondent's argument that it is this approach that should be adopted. The Tribunal is persuaded by the Applicants' argument that s.101(6) does not apply and accepts the approach taken by the Tribunal in *Voyvoda* as there is no direction in the Act to ignore the term date for the purposes of a valuation and that there was a presumption in favour of reality unless the Act expressly dictated that an artificial assumption should be made.

21. The Tribunal does not accept the Applicants' argument that there has been a surrender (whether express or implied) and re-grant of the leases of Flat 4 and Flat 5A to create a new a lease of Flat 4/5A at the time of the licence to make alterations in 2008. This would have required an alteration to the term of the lease by either by shortening the lease for Flat 4 to mirror that of Flat 5A, or by extending the lease of Flat 5A to mirror that of Flat 4.

The Tribunal's decision and reasons –valuation issues

22. The determination of the legal issues establishes the method of valuation, in so far as the Tribunal determines that the Flat should be valued on the basis of current reality of the two leases with the two different expiry dates and not as a composite unit. This was the approach adopted by Mr Manton.

23. Therefore, following this approach, the Tribunal determines that marriage value does not apply to Flat 4. The Tribunal also, rejects the assertions that there are no improvements to be disregarded and determines that all improvements are to be disregarded and the flats valued in an unmodernised state.

24. The relativity of the unexpired term of 19.39 years for flat 5A should be based upon the 'Kosta' approach. The Tribunal prefers Mr Manton's evidence to that of Ms. Howells on this issue and agrees that the average of graphs for central London should be applied excluding the Cluttons pure houses graph and the W.A.Ellis graph, which is out of step with the others in the time frame for reasons that are unclear. Therefore, a relativity of 46.758 as arrived at by Mr. Manton is considered appropriate.

25. In determining any further adjustments to the freehold value, the Tribunal accepts Mr. Manton's approach. The Tribunal determines that a 'package' discount of 3.5% is sufficient and reasonable to reflect

the unorthodox title arrangements and the requirements to reinstate at reversion.

26. In conclusion, the Tribunal determines:

(i) The flats are to be valued separately as Flat 4 and Flat 5A (s.101(6) of the 1993 disregarded).

(ii) All improvements are to be disregarded (except for the works of 'knocking through').

(iii) The relativity for Flat 5A is 46.758% (say 46.76%)

(iv) The capitalisation rate is 6% (as agreed and adopted by the parties in their revised valuations).

(v) An adjustment of 3.5% is to be made to the Freehold Vacant Possession Value to reflect the complexity of the lease lengths and the obligation to restore on reversion.

27. Having made its determinations as set out above, the Tribunal invites the parties to submit a revised and agreed valuation (without prejudice to any permission to appeal sought or granted) to the Tribunal within 21 days of the date of this decision.

Signed: Judge LM Tagliavini Dated: 28/01/2016