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

Case Reference : BG/LON/OOAZ/OLR/2016/1964

Property : 7 Barrow Court, Cumberland Place, London
: SE6 1LD

Applicant : Oliver Richard Marsden (tenant)

Representative : Mr Robinson Assoc RICS

Respondent : Tulsense Limited (landlord)

Representative: : Mr Sheridan MRICS

Type of Application: : **For the determination of the premium payable under section 48**

Tribunal Members : Judge S O'Sullivan
: Mr W.R. Shaw FRICS
: Judge N Haria

Date and Venue of Hearing : 6 June 2017 at 10 Alfred Place, London
: WC1E 7LR

Date of Decision : 5 September 2017

The hearing

- 1) Both parties were represented. The Applicant relied upon a report dated 23 May 2017 of Mr Robinson Assoc RICS of NJ Lewis & Associates Ltd. The Respondent relied on a report dated 24 May 2017 of Mr Sheridan MRICS of Sheridan Estates Ltd. Both representatives appeared to give evidence.
- 2) The parties had prepared a statement of agreed facts. The parties had agreed the valuation date of 16th May 20165. The unimproved extended lease value was agreed at £236,124. The deferment rate was agreed at 5% and the difference between the freehold vacant possession value ("FHVP") and the extended lease value were agreed at 1%. The discount rate for the ground rent income was agreed at 7%. The only issues remaining in dispute were relativity and the existing lease value.
- 3) Both parties had prepared valuations.
- 4) The subject property is a two double bedroom flat on the first floor of a purpose built block constructed in the 1990s with an allocated car parking space. It is situated on a large estate of similar type properties all accessed from Cumberland Place. It is located within a predominantly residential area with a retail parade half a mile away. It is within one and a half miles of Hither Green mainline railway station and is within the London Borough of Lewisham.
- 5) The evidence heard and the Tribunal's decision is set out below. What follows is necessarily a summary of the evidence, the majority being in any event contained in the bundles before the tribunal.
- 6) At the commencement of the hearing we noted that the experts had agreed certain matters since the preparation of their reports and that Mr Sheridan's valuation had not been amended to reflect those changes. He was therefore given a short adjournment to prepare a revised valuation.

- 7) We would also mention that Mr Robinson made criticisms of Mr Sheridan's report in that it did not contain the various requirements of an experts report. We agreed that the report did not contain the declarations recommended by RICS, in particular the declaration that it is recognised that the expert is impartial with a duty to the tribunal. Mr Sheridan was given an adjournment to consider his report and the required declaration. He then confirmed that he was satisfied he was able to make the proper declaration and his report was amended in manuscript.

Existing lease value

- 8) Both experts relied on comparable evidence.
- 9) Mr Robinson considered that market evidence was a useful starting point. The subject property was sold and that sale completed in the same month as the section 42 notice was given. Mr Robinson submitted that the subject flat sold at a phenomenally low price. He had inspected it and found it in a very poor condition and lacked appeal compared to others on the market.
- 10) Mr Robinson also relied on the Upper tribunal authority of *The trustees of the Sloane Stanley Estate v Adrian Howard Mundy [2016] UKUT 0223 (LC)* which he says makes clear that the focus should be on comparable evidence where available. He submitted that on the market evidence the property obviously sold at a low price. He submitted that it made no sense to simply rely on the sale price of the subject property when a lot of other comparable evidence was available. He relied on the following comparables which were all sales within a year of the valuation date;

- i) A - Flat 7 Barrow Court (subject property)

The subject property sold on 20 May 2016 for £207,000. He allowed £10,000 to reflect the basic condition and adjusted to £217,000.

ii) B - Flat 3 Barrow Court

This is a two double bedroom ground floor flat in the same block and said to be the same size and style. It sold for £257,500 on 16 December 2016. Mr Robinson deducted £1500 to reflect the fact it had upvc windows and for time to reach an adjusted value of £251,187.

iii) C - Flat 16 Keswick Court

This is a large two double bedroom ground floor flat which sold for £208,000 on 22 December 2016. An adjustment of £10,000 was made to reflect the fact it was made available only to cash buyers and subject to an assured shorthold tenancy and for time to reach an adjusted value of £233,426.

iv) D - Flat 15 Keswick Court

This two double bedroom ground floor flat sold for £220,000 pm 8 October 2015. Adjusted only for time the adjusted figure was £241,811.

v) E - Flat 10, Rothesay Court

This two bedroom ground floor flat sold for £230,000 on 6 February 2017. Again it was adjusted for time only to £222,603.

11) Mr Robinson then took an average of his adjusted figures to reach a figure for the existing lease value of £231,205. He reduced this by 1% for no Act world value to £228,893.

12) Mr Sheridan relied on the sale of the subject property which he considered was the strongest evidence. The fact that the vendor assigned the section 42 notice to the purchaser suggested in his view that this was in

accordance with market value. Both parties to the sale had in his view acted with full knowledge of the market.

13) Mr Sheridan did not agree that we should rely on the large number of comparables and submitted that taking an average would provide a misleading figure. He submitted that the sale of the subject property provided the strongest evidence. As far as the condition of the subject property was concerned Mr Sheridan submitted that he had not inspected it but that it was in its original condition.

14) As far as the No Act Rights were concerned he submitted that a deduction of 1.4% would be appropriate as this was in line with Savills Enfranchiseable and Unenfranchiseable graphs published in 2015. This provided a short leasehold unenfranchiseable figure of £204,102.

Existing lease value – the tribunal’s decision

15) We agreed with Mr Robinson that following the decision in *Mundy* we should have regard to market evidence. We did not consider that we could place total reliance on one sale alone; the sale of the subject property given the availability of other comparable flat sales. We therefore agreed that we should look at the comparable evidence available making adjustments where appropriate and taking a view on that evidence. Unlike Mr Robinson we saw no reason to adjust the value of the subject flat as it was only 20-years old and unimproved.

16) In relation to comparable B relied on by Mr Robinson we considered that an adjustment would have to be made to reflect the modern kitchen and bathroom. We considered this would require an adjustment of £5,000. However along with the adjustment for the upvc windows we would be making adjustment deductions in the sum of £7500 to reach an adjusted value of £246,187.

17) As far as C was concerned we assumed this tenanted property let on a standard assured shorthold tenancy had an average but improved

standard of bathroom/kitchen. This was sold subject subject to the AST but have been presented with no evidence to show that this had an effect on the sale price or that a £10,000 adjustment needs to be made for this. However, we consider a deduction of £5,000 should be made to reflect the modern kitchen/bathroom to reach an adjusted figure of £208,426.

18) As far as D was concerned we considered a deduction of £5000 should be made to reflect the fact that this had a modern kitchen and bathroom making an adjusted figure of £236, 811.

19) As far as E was concerned likewise we considered a deduction of £5000 should be made to reflect the fact that this had a modern kitchen and bathroom making an adjusted figure of £217,603.

20) The adjusted figures gave us a range of £207,000 to £246,187. We took an average of those figures to reach a value of £223,205.

Relativity

21) Mr Robinson contended for a relativity of 96.93% whilst Mr Sheridan contended for 90.02%.

22) Mr Robinson based his figure on market evidence. He said that he had considered many UT decisions for guidance on deductions for the no Act world hypothesis. In his view and following *Mundy* he considered that a nominal no Acts World Rights deduction is appropriate but there is no guidance for such a long remaining lease term as this. He therefore applied a 1% allowance for No Acts rights to reduce his existing lease value to £228,893. He said this was 96.93% relative to the extended lease value.

23) Mr Sheridan in his analysis of short and long leasehold transactions made a deduction of 1.4% for the no Act world hypothesis. He based this on the Enfranchiseable and Unenfranchiseable Graphs published by Savills in 2015. He said relativity points towards 85%. However, in earlier

negotiations his client had argued for 90.02% which he considered realistic. In support of this he referred to the Savills 2002 graph at 91.79%, the Savills 2015 Enfranchisable graph at 90.0 and the Savills 2015 Unenfranchisable graph at 88.62% and the Gerald Eve graph at 91.65% and adopted 90.02%.

Relativity – the tribunal’s decision

24) As far as the adjustment of the existing (short) lease value to the no Act world is concerned we consider that a deduction of 1% should be made as contended for by Mr Robinson. We found his evidence on short lease value credible, although subject to amendment, as it was based on market evidence with which we were confident. Mr Sheridan suggested 1.4% but we were less persuaded by this as it based on Savills enfranchisable and unenfranchisable graphs published in 2015.

25) Based on our revised adjustments to the five comparable sales we therefore reduced the short lease value of £223,205 by 1% to reach an adjusted £220,973 for existing (short) lease value in the no Act world. The relativity, to the freehold value (£238,485), is 92.66%.

Summary of the Tribunal's Decision

We therefore determined that the premium to be paid by the tenant on the grant of a new lease, in accordance with section 56 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 is £11,050 as shown on the attached valuation.

Name: Sonya O'Sullivan

Date: 5 September 2017

Appendix 1

New Lease Claim

Present lease	78.29 years unexpired		
Valuation date	16-May-16		
Long lease value	£236,124	Freehold value	£238,485
Existing lease value	£220,973		
YP = 7%	PV = 5%		

Diminution in value of Landlord's interest

Value before grant of new lease

<u>Term</u>			
Rent	£85		
YP 12.29 yrs @ 7%	8.06593	686	
Rent	£170		
YP 33 yrs @ 7%	12.75379		
Deferred 12.29 yrs @ 7%	0.435385	944	
Rent	£255		
YP 33 yrs @ 7%	12.75379		
Deferred 45.29 yrs @ 7%	0.046688	152	
<u>Reversion</u>			
Flat Value (F/H)	238,485		
Deferred 78.29 yrs @ 5%	0.021933	5,231	7,013
LESS value after grant of new lease			
<u>Reversion</u>			
Flat value (F/H)	238,485		
Deferred 168.29 yrs @ 5%	0.000272	65	-65
Diminution in value of Landlord's interest			6,948

Marriage Value

Aggregate of values of interests after grant of new lease

Landlord's interest	65		
Tenant's proposed interest	236,124		
		236,189	
LESS aggregate of values prior to grant of new lease			
Landlord's interest	7,013		
Tenant's interest	220,973		
		227,986	
Marriage value		8,203	
			50%
			4,102
		Premium	11,050