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FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BF/OLR/2016/1693**
Property	:	**Flats 1 & 13 Caversham House, 18 Kingston Gardens, Croydon, CR0 4TX**
Applicant	:	**Mr C Coelho**
Representative	:	**In Person**
Appearances	:	**Mr C Coelho**
Respondent	:	**Southern Land Securities Limited**
Representative	:	**In-house legal department**
Appearances	:	**Mr L Nesbitt, FRICS**
Type of Application	:	**Application under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal	:	**1. Judge Amran Vance** **2. Mr P Casey, MRICS**
Date of Hearing		**8 March 2017**
Date of Decision	:	**10 April 2017**

DECISION

Decisions of the tribunal

1. The tribunal determines that the premium payable by the Applicant under Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") on the grant of a new lease of the subject flats is **£9,160** for each flat.

2. The tribunal approves the terms of the draft lease included in the hearing bundle.

Background

3. These are two applications made under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the " 1993 Act").

4. The applicant is entitled to a new lease of Flats 1 and 13 Caversham House, 18 Kingston Gardens, Croydon, CR0 4TX ("the Flats") under Chapter II of the 1993 Act. The respondent is the freehold owner of 18 Kingston Gardens ("the Building").

5. The applicant served two notices of claim to take new leases of the Flats on 24 March 2016. In those notices, he proposed a 90-year extension of the terms of both leases at a peppercorn rent. The premium proposed was £4,500 for each flat.

6. On 18 May 2016, the respondent served a counter-notice admitting the applicant's entitlement but disputing the proposed terms of acquisition. The counter-proposal was a premium of £9,850 for each flat.

7. The applicant subsequently applied to this tribunal for the determination of the disputed terms.

8. The following are particulars of the applicant's leasehold interests:

(a) Date of leases:	20 October 1989 (Flat 1); and 30 November 1990 (flat 13).
(b) Term of leases:	99 years from 25 December 1988.

(c) Ground rent: £50 per annum for the first 33 years rising to £100 for the next 33 years and £150 for the final 33 years.

(d) The unexpired term of both leases at the valuation date of 24 March 2016 (the date of service of the applicant's notices) was therefore 71.75 years.

9. Before us, the respondent proposed a premium of £11,580 for each flat. The applicant's proposed premium was £5,079 for each flat.

10. The following matters were agreed between the parties in a statement of agreed facts:

(a) a valuation date of 24 March 2016;

(b) an unexpired term for the two leases at the valuation date of 71.75 years;

(c) a capitalisation rate of the ground rent of 7%;

(d) a deferment rate of 5%.

11. The following issues were said in the statement to be in dispute:

(a) the unimproved long lease/freehold value of each of the Flats;

(b) the existing lease values of the Flats; and

(c) the percentage relativity.

Inspection

12. We inspected the Flats on 8 March 2017. Kingston Gardens a residential cul-de-sac containing several purpose-built blocks of flats built in the 1980's around communal grounds and parking areas. The Flats are situated in a four-storey block the communal areas of which were in fair condition. Flat 1 is on the ground floor and consists of a studio room, shower room and kitchen. Flat 13 is on the second floor and is identical in size, room composition and layout.

The Law

13. Schedule 13 of the 1993 Act provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

14. The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

15. Paragraph 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage value shall be taken to be nil.

16. Paragraph 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

17. Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

The Hearing

18. The applicant sought permission to rely upon sales particulars for several properties that had not been included in the hearing bundle. This was not opposed by Mr Nesbitt and we allowed their inclusion in evidence, inserting them at pages 254-259 of the bundle. We also allowed Mr Nesbitt to rely on a summary table for his comparable evidence showing an adjustment for time based on the land registry index for flats in the London Borough of Sutton. His original table was based on the index for flats in the London Borough of Croydon.

The Respondent's Case

Mr Nesbitt's Evidence

19. Mr Nesbitt's report was contained in a witness statement dated 27 February 2017. He relied on comparable sales of three flats in 2016 that he considered were identical to the subject Flats as well as a sale of Flat 1 in January 2008:

(a) Flat 6 Caversham House which sold for £150,000 on 18 March 2016 with a remaining lease term of 150 years and with a premium paid of £9,850 Adjusting for time to the valuation date by using the land registry indices for flats in Croydon results in a figure of £164,100. The same adjusted figure arises if the Sutton index is used.

(b) Flat 10 Caversham House which sold for £153,000 on 28 August 2016 with a remaining lease term of 99 years and with a premium paid of £9,450 Adjusting for time to the valuation date by using the land registry indices for flats in Croydon results in a figure of £153,900. If the Sutton index is used the figure is £155,300.

(c) Flat 14 Caversham House which sold for £170,000 on 16 September 2016 with a remaining lease term of 161.26 years, with a lease extension having been granted on 9 August 2013. Adjusting for time to the valuation date by using the land registry indices for flats in Croydon results in a figure of £157,600. If the Sutton index is used the figure is £160,400.

(d) Flat 1 Caversham House (one of the subject Flats) which sold for £114,000 on 4 January 2008 with a remaining lease term of 79.97 years. Adjusting for time to the valuation date by using the land registry indices for flats in Croydon results in a figure of £145,125. The same adjusted figure arises if the Sutton index is used.

20. Mr Nesbitt took the average of the adjusted long lease prices for Flats 6, 10 and 14 to arrive at an average figure of £158,500. He then made an allowance of £8,500 for the improved condition of the properties when they were sold to arrive at a long lease/freehold unimproved value of £150,000 for the subject Flats.

21. He then addressed relativity. When providing the respondent with his valuation following service of the notices of claim, he used his own index of relativity which showed a 91.2% relativity for flats with a lease term of 71.75 years. Since then, the Upper Tribunal has issued its decision in the case of *Sloane Stanley Estate v Mundy* [2016] UKUT 0226 (LC). In light of the criticisms made of the existing graphs of relativity in that decision and in the absence of any useful transactional short lease evidence, he resorts to the Gerald Eve graph which he considers the Upper Tribunal regarded as the "industry standard". This produces a relativity of 88% for a 71.75 lease term and results in a premium payable of £11,850 for each of the Flats.

The Applicant's Case

22. In terms of comparable evidence, Mr Coelho, who is not a valuer, relies on historic transactional evidence, primarily:

(a) Flat 18 Caversham House, a studio flat, which he bought for £80,000 on 12 December 2014 and then subsequently paid £4,500 on 2 October 2015 to extend the lease. From that he assumes that the sale price with an extended lease as at 12 December 2014 would have been £84.500. Adjusting for time to the valuation date by using the land registry indices for flats in Sutton index results in an adjusted figure of £95,920.

(b) Flat 16 Caversham House, a studio flat, which sold for £100,000 on 28 January 2015 on a long lease. Adjusting for time to the valuation date by using the land registry indices for flats in Sutton index results in an adjusted figure of £115,150.

(c) 6 Kingston Gardens, a one-bedroom flat, which sold for £140,000 on 12 December 2013 with a long lease that was extended on 3 April 2013. Adjusting for time to the valuation date by using the land registry indices for flats in Sutton results in an adjusted figure of £186,931. He considers that a bedroom adds about 10% to the value of a flat and therefore adjusts this figure downwards by 10% to £168,238. He then adjusted for size because of the larger floor area when compared to the subject Flats and made an adjustment of £15,000 for the presence of a garage, arriving at a figure of £98,462.

23. Mr Coelho then adds the final adjusted figures for these transactions together, arriving at an average long lease value of £103,177.

24. In terms of relativity he conceded that the way he had calculated the figure of 94.67% in his statement of case was incorrect. He had based it on old evidence of sales, made adjustments on the wrong premises and did not include any analysis as to how to adjust to No Act world. Before us. he abandoned that analysis and instead relied upon the figure of 93.44% obtained by taking an average of the 2009 RICS Greater London and England Graphs of Relativity.

Decision and Reasons

Long Lease/freehold value

25. We prefer, and give greater weight to Mr Nesbitt's evidence on valuation. He is an expert valuer whose witness statement contains a signed statement of truth and a declaration that he understands that his duty as an expert witness is to help the tribunal and that this duty overrides any obligation to the person who instructed or paid him. We are satisfied that his evidence is impartial and objective, there being no suggestion by Mr Coelho that it was not. Mr Coelho, on the other hand, whilst clearly a person with experience in property acquisition is not qualified to give expert evidence, only opinion evidence.

26. Mr Nesbitt identified his comparable by conducting a search on the Rightmove website for sales with the CR0 4TX postcode which produced nine results for the period December 2015 to October 2016, three of which are studio flats in the Building. We consider his search parameters to be appropriate whereas the search parameters used by Mr Coelho are unidentifiable. We agree with Mr Nesbitt's approach and accept that the three sales of flats in the Building are the appropriate comparables to use when calculating the long lease/freehold value.

27. However, we do not accept that it was appropriate for him to include within the sale price realised amounts that were paid by purchasers of Flat 6 and 10 as premiums for lease extensions. These sums would have been paid to vendors who would in turn have passed them on to freeholders. We therefore exclude these sums from our valuation.

28. Mr Nesbitt also sought to adjust two of the comparables, Flat 6 and Flat 10, to reflect the value of the continued obligation to pay ground rent as these leases were extended outside of the provisions of the 1993 Act. In his view a long lease with no ground rent payable had an additional value to a long lease with an obligation to pay ground rent. In the case of Flats 6 and 10 there was a continuing obligation to pay a ground rent of £125, doubling every 25 years.

29. In *Roberts and another v Fernandez* [2015] UKUT 0106 (LC) when considering the question of onerous ground rent gave substantial evidential weight, in the absence of evidence to the contrary, to a RICS research paper, Leasehold Reform: Graphs of Relativity which suggested that the level of rent which has no effect on value is generally accepted to be in the range 0.05% to 0.25% of the freehold vacant possession. It considered this to be valid evidence of the opinion held by the experienced practitioners who compiled the document.

30. If we were to accept Mr Nesbitt's freehold valuation of £164,100 for Flat 6 and £153,900 for Flat 10 the ground rent of £125 represents 0.076 and 0.081 of those values. In our view, these ground rents are clearly not onerous and Mr Nesbitt agreed that this was the case. We consider that it is inappropriate to make an adjustment where there is a continuing obligation to pay a non-onerous ground rent unless there is persuasive evidence that this has the effect of depressing the value of the interest. There is no such evidence before us to support either of the proposed adjustments suggested by Mr Nesbitt, and we reject them.

31. It is also our view that when adjusting for time the land registry indices need to be regarded with caution because the Rightmove search results indicate much sharper growth in the sale of studio and small flats in in Kingston Gardens than identified in the Croydon and Sutton land registry indices. For example, as Mr Coelho identified, 6 Kingston Gardens, a one bed flat, sold for £140,000 on 12 December 2013 which, when adjusted for time to the valuation date by the Sutton index of 33.5% results in a figure of, say, £187,000. That contrasts markedly with the sale prices identified in Mr Nesbitt's Rightmove search, for example:

(a) 2 Marlow House which sold for £217,000 in October 2016;

(b) 13 Marlow House which sold for £239,000 in July 2016;

(c) 4 Marlow House which sold for £230,000 in June 16;

(d) 12 Kingston Gardens which sold for £210,000 in May 2016; and

(e) 5 Kingston Gardens which sold for £198,500 in December 2015.

32. We accept Mr Nesbitt's adjustment for the improved condition of the comparables, evidenced as it is by the sales particulars attached to his statement. Adjusting for time using the land registry index for the London Borough of Sutton, which we consider appropriate as the Flats are located within that area, results in the following figures: number 6 £150,000; number 10 £142,795; and number 14 £160,400, to give an average of £151,065 less imps of £8,500 = **£142,565** as the value of the extended lease. Neither side suggests any uplift for share of freehold and nor do we therefore.

Existing lease value

33. Mr Nesbitt decided not to rely on his own graph in light of the criticisms of existing graphs of relativity made by the Upper Tribunal in Sloane *Stanley Estate v Mundy* and instead opted for the Gerald Eve which he believed was regarded with approval by the Upper Tribunal. However, in that case, whilst the Upper Tribunal was satisfied that the Gerald Eve graph was the graph which was most commonly used for leases without rights under the 1993 Act at the valuation dates being considered, February to April 2014, they did not specifically reject the use of other graphs.

34. In their view, the best evidence was a 'real world' market transaction in respect of the existing lease, with rights under the 1993 Act, on or around the valuation date. Where there was no such reliable market transaction they considered that valuers would need to consider adopting more than one approach. One possible method was to use the most reliable graph for determining the relative value of an existing lease without rights under the 1993 Act. Another method was to use a graph to determine the relative value of an existing lease with rights under the 1993 Act and then to make a deduction from that value to reflect the absence of those rights on the statutory hypothesis. In its view, when those methods throw up different figures, it will then be for the good sense of the experienced valuer to determine what figure best reflects the strengths and weaknesses of the two methods which have been used.

35. We do not have the benefit of reliable market transactions in respect of the leases for the subject Flats at or around the valuation date, and have therefore considered whether there is a reliable graph for determining the relative value of the existing leases of the Flats without rights under the 1993 Act. We do not consider it is appropriate to have regard solely to the Gerald Eve graph because this is based on transactional data in prime central London and, in our view, is of limited use when considering suburban studio flats. On the other hand, we consider the outer London graphs to be of variable quality. Some are opinion based whilst others are based on settlements, including Mr Nesbitt's, which he now does not now wish to follow. The Gerald Eve graph shows a relativity of 88%. The outer London graphs, including Mr Nesbitt's average 93.44%. Doing the best we can, on the limited evidence available, and having regard to the results derived from both the Gerald Eve graph and the average of the outer London graphs we determine relativity at

91%. This gives a value for the existing lease for both of the subject Flats of **£127,342**.

36. The diminution in the value of the landlord's interest in the Property is represented first by the capitalised value of the grounds rent receivable under the lease which will be surrendered and replaced by a peppercorn rent under the terms of the 1993 Act. This was agreed by the parties at £1,233.

37. Next, the effect of the grant of the new lease will be to defer the landlord's freehold reversion for a further 90 years, thereby for practical purposes depriving the landlord of the current value of the freehold reversion indefinitely. The present value of the reversion is determined by applying a deferment rate to the freehold value with vacant possession of£142,565. In our view the appropriate deferment rate is 5% as authoritatively determined to be in the case of *Earl Cadogan v Sportelli* (2006) LRA/50/2005 and as agreed by the parties.

38. Marriage value is the difference between (on the one hand) the aggregate value of the interests of the leaseholder and the landlord before the new lease; and (on the other) the aggregate value after the grant of the new lease. It is to be shared equally between the parties, as required by the Act.

39. The premium payable by the applicant under Schedule 13 of the 1993 Act, on the grant of a new lease of for each of the Flats is therefore **£10,350**. A copy of the Tribunal's valuation is attached to this decision.

Lease terms

40. The respondent's solicitors have prepared a form of draft lease for both Flats which we are invited to approve. The terms are agreed between the parties. The draft lease provides for the surrender of the existing Lease and the grant of a new lease with a term of 189 years in accordance with section 56(1) of the Act. The terms of the new lease are the same as those of the Lease (with the addition of statutory rights of termination for redevelopment). The Tribunal is satisfied that the lease terms proposed are appropriate.

Name: **Amran Vance**

Date: **10.04.17**

Appendix 1 – The Tribunal's Valuation

LON/00BF/0LR/2016/1693

FIRST TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

S48 Leasehold Reform Housing and Urban Development Act 1993

Determination for the premiums payable for extended leases of

Flat 1 and Flat 13 Caversham House, 18 Kingston Gardens, Wandle Road, Croydon CR0 4TX

Valuation date: 24 March 2016 – Unexpired term 71.75 years

Diminution in Value of Freehold Interest

Capitalization of ground rents for term – Agreed at			£1,233
Reversion to F/H value with VP	£142,565		
Deferred 71.75 years @ 5%	0.0302	£4,305	
Less value of F/H after grant of new lease	£142,565		
Deferred 161.75 yrs @5%	0.0004	£57	£4,248
			£5,481

Marriage Value

After grant of new lease			
Value of extended lease	£142,565		
Plus freehold value	£57	£142,622	
Before grant of new lease			
Value of existing lease @ 91% f/h	£129,734		
Plus freehold value	£5,538	£135,272	
		£7,350	£3,675
50% share to Freeholder and Intermediate Leaseholder			£9,156

Premium Payable Say £9,160

Appendix 2 - Rights of Appeal

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.