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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBH/OLR/2016/1089**
Property	:	**70 Seymour Road, London E10 7LY**
Applicant	:	**Questor Properties Limited**
Representative	:	**Nelsons Solicitors** **Mr Mark Taylor, Surveyor**
Respondent	:	**Daejan Estates Limited**
Representative	:	**Mr K Lee of Counsel, instructed by Wallace LLP** **Mr R D Sharp BSc FRICS**
Type of Application	:	**Application under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs E Flint DMS FRICS IRRV**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on28th March 2017**
Date of Decision	:	**18th April 2017**

DECISION

DECISION

The Tribunal determines that the premium payable for the lease extension in respect of the property at the ground floor flat at 70 Seymour Road, Leyton, London E10 7LY is £73,368 as set out on the valuation prepared by Mr R D Sharp BSc FRICS, Valuer for the Respondent.

BACKGROUND

1. On 29th March 2016, the then tenant of the property, being the ground floor flat at 70 Seymour Road, London E10 7LY (the Property) gave notice under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) to the Respondent Daejan Estates Limited seeking a lease extension at a proposed premium of £35,000.

2. By a counter notice under Section 45 of the Act dated 2nd June 2016, the Respondent whilst accepting the Applicant's right to seek a lease extension, suggested that the premium should be £115,241.

3. On 31st March 2016 the original tenant, Andrew Pierson, sold his interest in the flat to Questmarc Limited who in turn assigned the rights under the notice on 21st October 2016 to the present Applicants, Questor Properties Limited. There is no issue taken on these various assignments or that Questor Properties Limited is the correct Applicant in this matter.

4. On 17th November 2016, the Applicant made application to this Tribunal for the purposes of determining the premium payable for the lease. It appears that there were no other matters before this Tribunal to consider.

5. The matter came before us for hearing on 28th March 2017. We had before us a bundle containing what we may call the technical documentation being the claim notice and counter notice, copies of the assignment deeds, copies of registers, the existing lease and the agreed draft lease. By a separate bundle, we had the report of Mr R D Sharp BSc FRICS bearing his signature and dated 19th March 2017. Annexed to this report were a number of appendices and at tab 1 the valuation indicating that the premium sought was £73,368.

6. Although there had been attempts made by the Respondent to exchange valuation reports with the Applicants, no such valuation report on behalf of the Applicant was produced. On the morning of the hearing, Mr Mark Taylor, attended on behalf of the Applicant for the purposes only of cross examining Mr Sharp and acting as advocate. There was no positive case that he could put as he had no report upon which he could rely. We were also provided by Mr Lee, Counsel for the Respondent, with a skeleton argument which initially sought to address whether or not the late delivery of a report would be allowed, but given that Mr Taylor did not seek to rely on any such document that element was not proceeded with. The skeleton argument is, however, helpful in setting out certain factual background matters.

7. In Mr Sharp's report there was a draft joint statement of agreed facts which of course had not been completed by the Applicant. This did, however, confirm the following from the Respondent's point of view:-

- The valuation date was 1st April 2016 being the date upon which the claim form was received by the Respondent.
- The deferment rate sought was 5%.
- The capitalisation rate sought was 6.5%.
- The accommodation was confirmed and the years unexpired on the existing lease confirmed at 54.73.
- The ground rent is £100 per annum rising to £125 per annum in December of 2037.

8. Mr Sharp's report gave details as to the subject property, in particular its location, the accommodation and whether or not there had been improvements. The Property itself is a pre-First World War purpose-built self-contained ground floor flat in a two storey mid-terraced property. It has one bedroom and an area of 598 square feet. At the time of the valuation date the Property would have been in a poor state of repair. When Mr Sharp inspected it was undergoing extensive improvement works. It is considered, however, by Mr Sharp that at the relevant date the flat was below the required repair standard.

9. The report went on to deal with the long leasehold value and freehold. In this regard he relied on comparable properties in the immediate vicinity at Nos 12 and 46 Morieux Road, as well as a property 8 Kettlebaston Road and a recent Tribunal decision of 84 Morieux Road. Taking these properties together, he concluded that there was an extended lease value of £342,000 to which he applied an uplift of 1% for the freehold giving a freehold vacant possession value of £345,454.

10. On the question of the existing leasehold value, he reminded us of the Upper Tribunal decision of Sloane Stanley v Mundy [2016]UKUT223(LC) and another Upper Tribunal case of Mallory v Orchidbase Limited [2016]UKUT468(LC). The cases supported the view that market evidence was the best way of assessing the short lease value. In this case, the subject Property had sold in March of 2016 for £215,000. He adjusted the price for poor condition by 10% concluding that an allowance of £21,500 would be sufficient for a developer/investor to undertake the remedial work. The value was then discounted by 10% to represent the adjustments required for the 1993 Act rights. In support of such an adjustment he relied on a number of Tribunal cases which were set out at paragraph 7.5 and at paragraph 7.6 of his report. He pointed out that the lease was below 70 years, which could cause problems with mortgages and was of the view, supported he said by the Mundy decision, that relativity produced in the market was usually below the graph lines produced for the RICS research document published in October 2009.

11. Having regard to local decisions on a number of properties he cited at paragraph 7.14 onwards, he concluded that as well as taking the market evidence in respect of the sale of the subject Property, he would also consider the relativity graphs and by factoring in the latest Beckett and Kay graph of 2014, gave a relativity of around 66% as opposed to the market evidence relativity for the subject Property of

61.61%. Standing back, he concluded that it would be reasonable to take the average of these two figures, which gives a relativity of 63.81% in this case. Applying that to the freehold value of £345,454 gave an unextended lease value of £220,434.

12. As to deferment and capitalisation rates, he relied on the Sportelli guidance giving 5% for deferment rate and thought 6.5% would be a reasonable ground rent capitalisation rate given the rent passing, it was also consistent with a rate that had been agreed on another valuation. All these matters he said in his report gave rise to the value of £73,368.

13. Mr Lee asked for clarification of certain matters. Mr Sharp confirmed that he mostly undertook enfranchisement work and confirmed that he had restricted his comparables to the location in the centre of the estate adjacent to the subject Property. He explained also his reasoning behind the relativity figures that he had put forward.

14. Mr Taylor for the Applicant then asked questions. It should be noted that Mr Taylor was a former member of this Tribunal although had not sat since 2008. He asked how often Mr Sharp acted for Daejan and his response was that he probably acted about 26 times in the last 12 months. On only one occasion could he recall acting against Daejan or its associated companies. He confirmed that he had inspected the Property close to the valuation date and that the 10% figure for the condition he thought was a reasonable amount and one that developers would be happy to rely upon. He considered that anything more than that could affect the ability of the investor/developer to acquire the Property as of course they would be bidding in the market. He was handed a copy of a decision of this Tribunal reference LON/OOAZ/LOR/2015/0711 in respect of the property 36/37 Taymount Grange, London SE23. Mr Sharp had acted as Valuer for the Respondent and we were referred to paragraph 44 in which the Tribunal recorded that they had not placed weight upon previous Tribunal decisions, nor did they place weight on certain graphs, in particular the Beckett and Kay and John D Wood graph. Mr Sharp had nothing really to add. He did, however, confirm in answer to a question as to the purchase of the Property by mortgage, that he was aware the Applicants had a large portfolio so would be able to get bank finance to fund the purchase of the subject Property and other similar properties.

15. Although the Beckett and Kay graphs was mortgage-dependent, he did not think that a first-time buyer would be able to get a mortgage on this property. However, the Beckett and Kay 2014 graph was still the most appropriate one to utilise as it was in a non-PCL area and now included transactions as well as opinions. He denied the suggestion that he had chosen the Beckett and Kay graph because it suited his argument. He referred to his report indicating that it was only the Beckett and Kay, Savills and Gerald Eve graphs that had been reviewed to reflect what appeared to be the accepted view that relativity had changed. He was then taken through some of the graphs used for the RICS research all of which Mr Taylor submitted contained higher relativity percentages. In response Mr Sharp confirmed that the Beckett and Kay 2014 graph was also of benefit because it excluded the impact of the Act. Asked why he considered the relativity to be so low when the graphs indicated a relativity of around 80%, he said that they were now considered out of date with market evidence and that again he thought that the

Beckett and Kay graph was the most appropriate as it related to properties outside prime Central London.

16. Asked by the Tribunal whether there have been any sales in Seymour Road, he confirmed that he was not aware of any involving ground floor flats. He also in response to a question by Mr Taylor drew our attention to the RICS document in which it does indicate that there should be a regard to location when considering scarcity.

17. Asked further questions by Mr Lee, he confirmed he had concentrated on comparables of one bedroom ground floor flats but of course had used the sale of the subject Property as evidence. However, he had tempered this figure by utilising the Becket and Kay graph.

18. In closing submissions Mr Taylor confirmed that the Applicant had no expert's report upon which to rely. He, however, felt he had drawn to the Tribunal's attention areas where he thought Mr Sharp had not explained his calculations correctly and questioned the use of the Becket and Kay graph to the exclusion of others. He was of the view that the graphs prepared in 2009 are still be used and should be in this case. He also suggested that Mr Sharp represented this client on a number occasions and was not truly independent. He said the adjustments made suited the argument and that in fact the price payable should be as set out on the original notice.

19. In response Mr Lee first questioned the allegation of the independence of Mr Sharp. He reminded us that this had not been put to him during questions by Mr Taylor and it was an inference without basis. The report contained full analysis and indeed had included counter balances to the market evidence for the short lease. It was, he suggested, inappropriate for the Applicants to be criticising Mr Sharp when they had not themselves produced a report.

20. He reminded us that there appeared to be no challenge to the extended lease value and the use of the Land Registry is well regarded for dealing with passage of time adjustments. There was, he said, no real criticism of the long lease value of £342,000 and the agreed freehold value followed on automatically.

21. With regard to the existing lease, he submitted that suitable market evidence was the best. The fact that the Mundy case had not been promulgated at the time of the notice in this case did not mean it was not appropriate as the Mundy case was dealing with a valuation date prior to the subject Property. We were also referred to the Mallory and Orchidbase case. In this case he told us Mr Sharp had looked at the market evidence in respect of the Property, taken this transaction and made reasonable adjustments for the costs of refurbishment and for the Act. The further cross checking by use of graphs was perfectly reasonable and the more so as the Beckett and Kay 2014 graph was now updated and involved transactions and excluded the 1993 Act. As to the capitalisation rate he thought Mr Sharp's view that 6.5% was reasonable and had been considered in the case of 101 Seymour Road. There was a low risk and low interest rates gave rise to the 6.5% sought. It was suggested that we should accept the valuation.

22. Mr Lee also went on to raise the possibility of an application for costs under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. We indicated that we would set out directions at the end of this decision should such an application be made.

THE LAW

23. We have applied the provisions of the 1993 Act in considering the valuation to be attributed to the subject Property.

FINDINGS

24. This case is somewhat unusual in that the Applicant decided not to produce any expert evidence to assist us in connection with the assessment of the premium payable. The best that they could do was to rely on questions raised by Mr Taylor seeking to attack the views of Mr Sharp.

25. No challenge was made to Mr Sharp's assessment of the long lease value and the uplift for freehold. We are satisfied that the use of the comparables that Mr Sharp put to us were reasonable and are comfortable in accepting the assessment of the freehold vacant possession value at £345,454.

26. We must then turn to the assessment of the existing lease value. We have no doubt, as has been said in a number of authorities, even those before the Mundy case, that market evidence is the best evidence available. The Mundy case reaffirms this. The only issue is that the Mundy case post-dates the valuation date. Nonetheless, it seems to us that the correct method of assessing the short lease value is to utilise comparable market evidence, the more so if it is the existing property. In this case, the subject Property sold for £215,000 not long before the valuation date. The adjustments made by Mr Sharp to this figure seem to us to be perfectly reasonable. The Property was in a poor state of repair and is now undergoing substantial refurbishment works as would appear from photographs produced at the hearing. It may well be that there is an existing heating system that can be utilised but we think that a 10% allowance in respect of condition is perfectly reasonable. This would give a developer in excess of £20,000 as a working budget to carry out works to the subject Property which is not extensive in size.

27. Insofar as the deduction for a no Act world issues are concerned, Mr Taylor was not able to challenge in any meaningful way Mr Sharp's assessment of a deduction of 10% for this element and we are prepared to accept in this case that a no Act world deduction of 10% is reasonable. This would, therefore, give an initial short lease value of £212,850. However, Mr Sharp did not stop there and did review this relativity by reference to the RICS graphs and others now available. It appears to be accepted wisdom these days that relativity has changed. The graphs that form the RICS documents are from 2009. It was said by Mr Sharp that the Beckett and Kay graph produced in 2014 is now more up to date, reflects the market more appropriately and includes the allowance in respect of no Act world deductions. That in his assessment gave rise to a relativity of 66% relying on the Beckett and Kay graph which was included in the bundle before us. He explained why he had not taken the more up to date graphs of Gerald Eve and Savills but these related to

less mortgage-dependent locations than Leyton and in his view the Beckett and Kay graph was the one to consider. However, having taken this step and standing back he took the average of the market evidence which gave a relativity of 61.61% and the Beckett and Kay assessment of 66% giving an average of 63.81% which he applied in this case.

28. For the reasons stated by Mr Sharp and as set out in his report, in this case we are prepared to accept a relativity of 63.81% as being appropriate. This reflects, most importantly it seems to us, the market evidence but also has been ameliorated to an extent by consideration of the Beckett and Kay graph which we are prepared to accept in this case is the appropriate graph to consider. This gives rise to an existing lease value of £220,434. This figure is factored into the valuation prepared by Mr Sharp. There appears to be no disagreement that a deferment rate of 5% is appropriate and of course marriage value on a 50:50 division is applicable. The only other area which was challenged by Mr Taylor, although without any real alternative being put forward, was the capitalisation rate which Mr Sharp had concluded should be 6.5%. This does not seem unreasonable. There is a small ground rent and although it rises that is only to £125 per annum. Not a terribly attractive investment but in the absence of any compelling evidence to the contrary, we are prepared to accept in this case that 6.5% is a reasonable capitalisation rate. Applying these various figures and percentages supports Mr Sharp's assessment of the premium payable at £73,368 which we find is the amount payable for the extension to the lease in this case.

- We then turn to the question of directions for any claim for costs under Rule 13 of the Tribunal Procedures (First Tier Tribunal) (Property Chamber) Rules 2013, which was raised as a possibility by Mr Lee for the Respondent. A clear demarcation must be drawn between costs recoverable under s60 of the Act and under the Rules. Attention is drawn to the Upper Tribunal authority of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC). The directions are as follows:

    1. Within 28 days of this decision having been issued, the Respondent will provide a written statement to the Applicant setting out why it considers that the Applicant has acted unreasonably within the meaning of the rule and setting out in full detail the costs the Respondent says it has incurred as a result of the alleged unreasonable conduct. Those costs must include full details of the fee earners, their hourly rates, the time spent and the tasks undertaken. The statement of costs must be signed by a Partner of the firm confirming that the costs claimed do not exceed the amount payable by the Respondent. If Counsel's fees are sought to be recovered, details of Counsel's hourly rates and the brief fee must be provided.

    2. Within 28 days of receipt of the document from the Respondent under direction 1 above, the Applicants must reply thereto setting out such grounds to support their contention that they have not acted unreasonably in connection with the conduct of the case and also indicating what level of costs if any they would approve with reasons for any challenge.

    3. Fourteen days after receipt of the Applicant's response at 2 above, the Respondent shall send to the Applicant and file with the Tribunal a final reply

to the Applicant's response and lodge with the Tribunal the documents they served under direction 1 and the documents sent to them under direction 2.

4. Within 28 days of the receipt of the papers under paragraph 3 above the Tribunal will consider the application and issue a decision shortly thereafter. The matter will be dealt with by way of paper determination but if any further directions or alterations to timescales are sought those must be requested of the Tribunal as quickly as possible.

Judge: Andrew Dutton

A A Dutton

Date: 18th April 2017

ANNEX – 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 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 to 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 (ie 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.