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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BH/OLR/2017/0011**
Address	:	**Flat 47, Hainault Court, E17 3NW**
Applicants	:	**Brett Larkin** **Devitt Larkin** **Stuart Larkin**
Representative	:	**Mr P Harrison (Counsel) instructed by Moore Blatch (Solicitors)**
Respondents	:	**Brickfield Properties Limited**
Representative	:	**Mr C Fain (Counsel) instructed by Wallace LLP (Solicitors)**
Type of Application	:	**Grant of new lease (Section 48 Leasehold Reform, Housing and Urban Development Act 1993)**
Tribunal Members	:	**Mr M Martyński (Tribunal Judge)** **Mrs S Redmond BSc (Econ) MRICS** **Professor R Abbey**
Date and venue of Hearing	:	**13 June 2017** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17 July 2017**

DECISION

Decision summary

1. The premium to be paid for the new lease is £48,150.

2. The valuation is attached.

Background

3. The subject three-roomed flat (with kitchen and bathroom) ('the subject Flat') is on the first floor of Hainault Court ('the Block') which is purpose-built 1930's block of flats.

4. The freehold interest in the Block is held by the Respondent.

5. The Applicant's lease is dated 25 October 1989 and is for the term of 99 years from 25 March 1976.

6. The Claim Notice is dated 15 June 2016 and the Counter-Notice is dated 20 July 2016 – the proposed premium and counter-proposed premiums were as follows:-

Proposed	*Counter-proposed*
£29,000	£60,000

The issues

7. The issues agreed by the parties were:-
Date of valuation: 16 June 2016
Unexpired term: 58.8 years[1]
Ground rent: £75 p.a. first 33 years; £150 p.a. or 1/500th of capital value whichever is higher for next 33 years; £300 p.a. or 1/500th of capital value whichever is higher for the remainder of the term[2]
Deferment Rate: 5%
Relativity long lease to reversion: 99%

8. As to the disputes between the parties, these were as follows:-
   (a) The ground rent properly payable (currently being paid at £150 p.a.)
   (b) The Capitalisation Rate to be used
   (c) The long lease value
   (d) The short lease value

The valuations and evidence - Applicants

9. A Valuation report was produced for the Applicant by Mr Richard Murphy MRICS.

10. Mr Murphy contended for a premium of £42,400.

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[1] Which the tribunal has used, neither expert having used it in their valuation
[2] Both experts used 1/500th of their assessed CV for the final review

Captialisation of ground rents

11. Mr Murphy took the view that the ground rent is currently fixed for the next 25.8 years at £150.00 p.a. He noted that the amount is reasonable but is payable bi-annually - so there are increased costs of collection. As to the future increase of the ground rent in the last 33 years of the term, Mr Murphy assumed an increase of 1/500th of the capital value (£350,000/500) to £700 p.a.

12. The current rent, argued Mr Murphy, would be losing value as against inflation. The future rent would probably out-pace inflation as it was linked to property value. Factoring in the advantages and disadvantages of this situation, Mr Murphy concluded that a rate of 6.5% would be appropriate.

Freehold vacant possession value

13. Mr Murphy relied on two long-lease comparables within Hainault Court;

(a) Flat 42, sold on 25 November 2016 for £380,000; adjusted for time and then for a new kitchen, bathroom and central heating (£10,000) – adjusted value £355,156

(b) Flat 40, sold on 20 November 2015 for £307,000; adjusted for time only as the interior appeared to be unimproved – adjusted value £334,939

14. The average of these adjusted figures was then taken as £345,000 to produce a long lease value.

Short lease value

15. Three comparables were relied upon[3] as follows:-

(a) Flat 67, sold on a remaining term of 59.75 years on 24 June 2015 for £255,000 (which he adjusted for time); adjusted for central heating (£3,000); Mr Murphy then made an adjustment for differing unexpired lease lengths using the Savills 2015 Enfranchiseable Graph; he then made 'No Act World' adjustment using the Savills 2002 Enfranchiseable schedule and the John D Wood/Gerald Eve (1996) graph; the result of these adjustments was produce a value of £284,184 giving a Relativity of 81.55%.

(b) Flat 57, sold on a remaining term of 60.39 years on 4 November 2014 for £250,000 (which he adjusted for time); adjusted for new

[3] There was a fourth which was the sale of flat 66 which Mr Murphy rejected as it was a sale to the freeholder and he was uncertain that it was an open market sale

kitchen, bathroom and central heating (£10,000); he then made an adjustment for differing unexpired lease lengths using the Savills 2015 Enfranchiseable Graph; he then made 'No Act World' adjustment using the Savills 2002 Enfranchiseable schedule and the John D Wood/Gerald Eve (1996) graph; the result of these adjustments was to produce a value of £277,790 giving a Relativity of 79.71%.

(c) Flat 56, sold on a remaining term of 60.58 years on 27 November 2014 for £250,000 (which he adjusted for time); adjusted for new kitchen, bathroom and central heating (£10,000); he then made an adjustment for differing unexpired lease lengths using the Savills 2015 Enfranchiseable Graph; he then made 'No Act World' adjustment using the Savills 2002 Enfranchiseable schedule and the John D Wood/Gerald Eve (1996) graph; the result of these adjustments was to produce a value of £289,051 giving a Relativity of 82.94%.

16. Taking an average of these Relativity figures, Mr Murphy arrives at a final Relativity of 81.4%

17. In cross-examination it was put to Mr Murphy that, although the lease term starts in 1976, the lease was granted in 1989, it is therefore likely that the subject Flat would have had central heating at that time and that in fact the lease terms appear to refer to a centralised central heating and hot water system being present in the Block. Mr Murphy accepted that the flat would probably have had a centrally supplied heating and hot water system when the lease was granted. Mr Murphy agreed that the Flat appeared now to have an independent boiler providing heating and hot water. He considered that this would be an improvement over a centrally provided system and that such an improvement would add £1,500 to value. He conceded that a value of £7,000 should be attributed to a new kitchen and bathroom. So far as the subject Flat was concerned, he could not be sure that it had a new kitchen or bathroom.

18. Mr Murphy agreed that if the current rent had been reviewed, the rent could be £358 p.a. If that were the case he would allow for a Capitalisation Rate of 6% on the grounds that the current rent would still not keep pace with inflation.

19. As to long lease values, Mr Murphy considered that he had no need to go further than his two comparables as they sat within a reasonable time either side of the valuation date. Taking into account comparables further from the time of the valuation date would require the introduction of too many adjustments. So far as flat 42 was concerned, Mr Murphy accepted that the adjustment for condition should only be £8,500 taking into account his concession regarding the central heating point. As for the actual amount of the adjustment, Mr Murphy said that this was based on his experience and common approach of allowing around £10,000 for such improvements. He considered that the common view was that modern kitchen and bathrooms were an

improvement and not just a compliance with lease terms to repair and maintain.

20. For flat 40, Mr Murphy accepted that, as he had overlooked the fact that the lease of the subject Flat was not granted until 1989, he should adjust the value of this comparable by £3,500 in respect of a dated kitchen.

21. Mr Murphy conceded then that his average long lease value should be adjusted to £347,778 with an uplift to FHVP value to £351,255.

22. As to existing lease value, Mr Murphy was asked why he used the Savills 2015 data to adjust for lease length but not for the benefit of Act rights, using the 2002 data instead – he replied that it would not have made much difference and that he did not use the 2015 data in assessing the 'Act world' effect as it had received some criticism and needed further work.

23. Going back over his comparables for short leases, Mr Murphy agreed in further cross-examination that the values in his report should be adjusted as follows:-

- The adjustment to flat 67 should now only be £1,500 taking into account that the improvement may have only been from a centralised heating and hot water system to an individual one
- The adjustment to flat 57 should be ignored
- The adjustment to flat 56 should be £8,500 taking into account the central heating point

The valuations and evidence - Respondent

24. A Valuation report was produced for the Applicant by Mr Robin Sharp BSc FRICS.

25. Mr Sharp contended for a premium of £67,885.

Captialisation of ground rents

26. Mr Sharp argued for a Capitalisation Rate of 5%. It was his view that, although the ground rent had not been increased in 2009 under the terms of the rent review clause in the lease, it still could be and it could be backdated. He estimated therefore that the ground rent as increased could currently be £358 per annum. He settled on the figure of 5% because; the risk of non-collection was small; the ground rent gearing was attractive with real growth; he had agreed 5% in similar cases.

Freehold vacant possession

27. In common with Mr Murphy, Mr Sharp used the sales of flats 40 & 42 as comparables. In addition, he relied upon two other sales in the block; flat 37, sold for £310,000 in October 2014 (adjusted for time to £379,416, and; flat 61 which sold for £335,000 in July 2014 (adjusted

for time to £435,495. Mr Sharp did not make any adjustments for improvements, he considered that the updating of bathrooms and kitchens was no more than compliance with the lease terms obliging leaseholders to maintain the flats.

28. Considering flat 40's value to be low and flat 61's to be high, Mr Sharp took an average of flats 42 and 37 to arrive at £375,447 which he then rounded down to £375,000 to allow for any shortcomings in condition and differences in floor level.

Short lease value

29. Mr Sharp relied on the sale of the subject Flat in October 2013 for £195,000 (adjusted for time to £300,160). As to an adjustment for 'no-Act rights' Mr Sharp applied his usual approach which was to take 10% (across the board). This produced a further adjusted figure of £270,144 – giving a Relativity figure of 71.31%.

30. Mr Sharp then went on to consider flats 56 & 57. Flat 56 was sold for the same price as 57 a few months before flat 57 in 2014 for £250,000. He only takes flat 56 as it was the most similar in condition to the subject Flat. An adjustment for time and lease length is made to produce a value of £314,454 inclusive of Act rights. 10% is then taken for Act rights to produce £283,009 – this gives a Relativity figure of 74.71%.

31. The average Relativity produced so far therefore is 73%.

32. However, Mr Sharp then considered the sale of flat 66 in December 2016 at a price of £275,000. Adjusted for time the figure becomes £263,514. This sale was to the competent landlord which did not have to consider a lease extension price to its bid. He said this sale points to a lower Relativity and therefore Mr Sharp considered it necessary to go to, what he considered to be, the most relevant 'suburban' graph – Becket & Kay – which shows a Relativity of 69%. Mr Sharp then takes an average of 69% and 73% to arrive at a final Relativity of 71%.

Decision

Captialisation Rate

33. We have had to decide the question of Captialisation Rate on the basis of an interpretation of the lease term regarding rent review. We have to make that determination in spite of the fact that we heard virtually no evidence on the question.

34. The relevant parts of the lease term (1.) in question read as follows:

> (a) The rent payable hereunder in respect of each of the next thirty-three year periods of the said term commencing on the 25th day of March 2009 and in respect of the remaining thirty-three year period of the

term commencing on the 25th day of March 2042 shall be reviewed and calculated as hereinafter set forth

(b) The rent payable for the period from the day of 25th day of March 2009 to the 24th day of March 2042 shall be either a yearly sum equal to one five hundredth of the capital value of the Flat at the date of review (being the date on which the said period commences) or the yearly rent of £150 whichever is the greater and thereafter and for the residue of the said term the rent payable shall be either a yearly sum equal to one five hundredth of the capital value of the flat at the date of review or the yearly rent of £300 whichever is the greater

35. We were told by the Valuers that a current ground rent of £150 was being paid by some leaseholders at present. There was no other evidence on the question of the rent review.

36. For the Applicant it was argued that the evidence was that, £150 ground rent was being paid and accepted. The only proper inference therefore was that there had been accord and satisfaction. The rent review has, as a matter of law, taken place and the rent until the next review is £150 per annum.

37. For the Respondent it was argued that the current rent being paid is an interim rent. Time is not of the essence, the rent can be reviewed for the current 33-year period and it can be backdated.

38. Given that the only evidence that we have is the payment and acceptance of a ground rent of £150 over a period of some eight years, it seems to us that the inference to be drawn is that the rent review has taken place and that there has been accord and satisfaction and the landlord has accepted that the rent for the current period is £150 per annum.

39. Following this conclusion, we agree with Mr Murphy that 6.5% is appropriate for the relatively unattractive current situation. However, for the much more promising final period for the rent review, we consider that 6% is the appropriate rate. Although Mr Sharp included some details of a collective enfranchisement case of 20 flats in NW3 which included one flat with a similar gearing clause where a Capitalisation Rate of 5% compared to 6% for the remainder had been agreed, we consider that Mr Sharp is over-optimistic in adopting 5% for a fairly modestly geared ground rent, particularly as the first review had not been engaged. We determine therefore 6% for the final review.

Freehold Vacant Possession value

40. We prefer to take Mr Murphy's comparables, those being the nearest in date which avoid the more unreliable adjustments for time.

41. We accept Mr Murphy's adjustments (as modified in cross-examination). Neither Valuer had seen any of the comparables internally, having to rely on an interpretation of photographs and verbal description. We do not accept Mr Sharp's view that there should

never (or hardly ever) be adjustments for the modernisation of kitchen and bathrooms. The contrary view, in our experience, is the one adopted by most Valuers. We consider that it is necessary to distinguish between what might be expected of a kitchen and bathroom at the time of the lease presently in repair compared to a contemporary refurbishment. We consider that having regard to the date that the lease was granted and the wording of the lease as to heating and hot water that, as at the date of the grant of the lease, the subject property would have had a centralised heating and hot water system and that situation has been improved upon by the installation of a private system.

42. As to the comparables, we have taken flat 40 with an adjusted value for time of £334,939 and added £3,500 for an improved kitchen in the subject Flat to give a value of £338,439; we have taken flat 42 with an adjusted value of time to £365,156 and deducted £8,500 in respect of the kitchen and bathroom to arrive at £356,656. We have then taken an average of these figures to arrive at £347,548 for the long lease value – adding 1% to arrive at a final virtual freehold value unimproved of £351,058.

Short lease value

43. We have accepted Mr Murphy's basket of comparables, those being flats 56, 57 & 67 (excluding, as he did, flat 66). We did not consider Mr Sharp's comparables of the subject Flat (too far away in time) or flat 66 (purchased by landlord).

44. We altered Mr Murphy's table in line with his concessions regarding improvements. Taking flat 67, we added £1,500 for the issue of central heating to arrive at a value of £302,811 after adjusting for time; flat 57 without adjustment for condition has a value of £305,806; to flat 56, we deducted £8,500 for condition to arrive at a time adjusted figure of £309,555. Following through his table produced a final Relativity of 81.96%.

45. Both experts used open market evidence of short lease sales to inform their view of Relativity. In both cases they used Savills indices to adjust for equivalent lease length at the valuation date. Mr Sharp used the 2002 table as published in the RICS research document. Mr Murphy used the 2015 index, and said that using the 2002 data would have little effect on his overall analysis.

46. The valuers had different approaches to adjust for a no-Act world. We reject Mr Sharp's arguments in favour of his standard adjustment of 10% for leases of this unexpired term. He did not produce any details to support his opinion other than to say some tribunals had agreed this deduction (two specific recent decisions). His open market derived Relativity, excluding the sale of the subject was 74.71%.

47. On the other hand, Mr Murphy had attempted to take account of the effect of the Act by comparing the Savills 2002 graph (Act world) and the Gerald Eve no-Act world graph to produce a differential of 5.2412% or Relativity of 81.40%.

48. Neither method was substantiated or explored in any depth and Mr Sharp reached his end figure by reference to what he said was the 'most reliable graph', namely Beckett & Kay suburban, to reach his final Relativity of 71%. His averaging process of selected comparables and then further averaging with a particular graph was not compelling.

49. We agree that the best source for assessing Relativity is open market evidence. In this case there are three sales in the same development within a reasonably close time span. Mr Murphy's method of analysis of these comparables, adjusted for his concessions on adjustments for improvements, produces 81.96%. Mr Sharp assessed 74.71% from flats 56 & 57. Doing the best that we can, we take the average of these to produce a Relativity of 78.3%. This gives a short lease value of £275,001.

50. Applying these determinations to the calculation (attached), produces a premium payable of £48,150.

Mark Martyński, Tribunal Judge
17 July 2017

VALUATION FOR PREMIUM FOR A NEW LEASE
Leasehold Reform & Urban Development Act 1993
47 Hainault Road, Walthamstow, London E17 3NW

Facts and matters agreed			
Lease 99 years commences 25/3/1976			
Ground rent rising every 33 years		geared with minimum of £150/£300	
Valuation date	16th June 2016		
Unexpired term	58.8 years		
Deferment rate	5%		
Relativity of Freehold value to long leasehold		99%	
Future GR at review is 1/500th of Freehold value			
Matters determined			
Current GR			£150
GR at review			£702
Capitalisation rate	current GR		6.50%
capitalisation rate	future GR		6%
Long lease value unimproved			£347,548
Freehold value			£351,058
Existing lease (unimproved)			£275,001
Relativity			78.34%
Improvements: independent heating system			

Diminution in Value of Freeholder's interest	£	£	£
Present value of Freeholder's interest			
Ground rent		150	
YP 25.8 years @ 6.5%		12.3545	1,853
Ground rent		702	
YP 33 years @ 6%	14.2302		
deferred 25.8 Years @	0.22239	3.1646	2,222

6%			
Value of term			
Reversion			
Virtual freehold market value unimproved		351,058	
Deferred 58.8 years @ 5%		0.056760	19,926
Freeholder's present interest			24,001
less Value of Reversion after extension		351,058	
deferred 148.8 years @ 5%		0.000703	247
			23,754

Calculation of Marriage Value

Value of proposed interests:			
Landlords'	247		
Tenant's new 148.8 year lease at a peppercorn	347,548	347,795	
Less value of existing interests:			
Landlords'	24,001		
Tenant's existing lease	275,001	299,002	
Marriage Value		48,793	
50% marriage value attributed to landlord		say	24,397
TOTAL PREMIUM PAYABLE		**say**	**£48,150**