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

Case reference : LON/00AU/OLR/2017/1145

Property : Flat 4, 75 Caledonian Road, London
N1 9BT

Applicant : Orit Sharon (1)
Moshe Rafiah (2)

Representative : Mr Gary French BSc DIP BLDG
CONS FRICS

Respondent : 75 Caledonian Road Management
Limited

Representative : Ms Katie Meltzer BSc (Hons)
MRICS

Type of application : Application under section 48 of the
Leasehold Reform Housing and
Urban Development Act 1993

Tribunal members : Judge N Hawkes
Mr Kevin Ridgeway MRICS

Date and venue : 9 January 2018 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 12 February 2018

DECISION

Decision of the Tribunal

The premium payable in respect of Flat 4, 75 Caledonian Road, London N1 9BT is £22,822.

The background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) for the determination of the premium payable for the grant of a new lease of Flat 4, 75 Caledonian Road, London N1 9BT (“Flat 4”).
2. The respondent is the freehold owner of 75 Caledonian Road, London N1 9BT (“the Building”). The Tribunal has been informed that the Building comprises a mid-terrace house, constructed in about 1845, which has been converted into four flats. Flat 4 is a studio/bedsit on the second floor of the Building.
3. The Building is located on the southern end of the Caledonian Road, towards the Junction with Pentonville Road and within walking distance of Kings Cross and St Pancras International stations.
4. By a notice dated 24 March 2017 pursuant to section 42 of the 1993 Act, the applicant tenants claimed to exercise the right to acquire a new lease of Flat 4. The respondent landlord has served a counter-notice pursuant to section 45 of the 1993 Act dated 12 May 2017.
5. An application for the determination of the premium payable was made to this Tribunal by an application notice dated 25 August 2017.

The issues

6. The experts prepared a joint statement in advance of the hearing confirming the areas of agreement and disagreement. The following matters were agreed prior to the hearing:
 - (i) The valuation is to be carried out in accordance with Schedule 13 of the 1993 Act.
 - (ii) The valuation date is 1 April 2017.
 - (iii) The unexpired term as at the valuation date is 65.73 years.
 - (iv) The capitalisation rate is 7 %.

- (v) The deferment rate is 5%.
 - (vi) There are no improvements to be disregarded.
 - (vii) The relativity of the extended leasehold interest to the freehold interest is 99%.
 - (viii) The GIA of Flat 4 is 31 square metres (333 square feet).
7. The following matters remain to be determined by the Tribunal in order to arrive at the premium:
- (i) the freehold value of Flat 4 with vacant possession; and
 - (ii) the relativity of the existing leasehold interest to the freehold interest.

The hearing and inspection

8. The applicants were represented by their expert, Mr Gary French BSc DIP BLDG CONS FRICS, and the respondent was represented by its expert, Ms Katie Meltzer BSc (Hons) MRICS, at the hearing. The first applicant was present during the hearing.
9. The Tribunal has been provided with a copy of an expert report dated 13 December 2017 prepared by Mr French on behalf of the applicants and with a copy of an expert report, dated 6 December 2017, prepared by Ms Meltzer on behalf of the respondent. The Tribunal also heard oral expert evidence from both Mr French and Ms Meltzer.
10. The Tribunal inspected Flat 4 and the common parts of the Building on the afternoon of 9 January 2017 in the presence of the first applicant, and also in the presence of a sub-tenant whilst the Tribunal was inside Flat 4. The parties' representatives were not expected to be present and did not attend the inspection.
11. The Tribunal also inspected the exterior of the properties situated on the Caledonian Road which were relied upon by the experts as being comparable to Flat 4, as well as the general locality which was referred to by the experts during the course of the hearing.
12. The flats at 284 and 286 Caledonian Road are above shop units, 237 Caledonian Road is an end of terrace property with its entrance on a side road, and 159B Caledonian Road is a more modern property with access from side foot passage.

13. The Building is a four storey (including the lower ground floor) Victorian terrace house converted into four flats in a terrace of similar properties. It is situated on a busy one way road with no road or off road parking, adjacent to commercial premises, namely a vegan food shop/café.
14. The Building is of traditional brick construction under what appeared to be a shallow pitched slate roof. The front elevation is stucco rendered and painted at the lower ground and ground floor levels. The rendering is cracked in several places with areas where it has fallen away. The windows are timber sash and generally in poor order.
15. The entrance to Flat 4 is at first floor level with a further flight of stairs inside the flat leading to the second floor. The living accommodation comprises a lobby/landing, a studio room, a kitchen and a WC/shower room. The studio room has laminated flooring and the walls and ceiling are painted. The kitchen has old kitchen units with a small breakfast bar.
16. The remainder of the Tribunal's findings during the inspection, where relevant to this decision, will be set out below.

The law

17. Schedule 13 to 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 to the landlord.
18. The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and (b) the value of his interest in the flat once the new lease is granted.
19. The value of the landlord's interest is the amount which at the relevant 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) applying the assumptions and requirements set out in paragraph 3 of Schedule 13 to the 1993 Act.
20. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50% (but that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage value shall be taken to be nil).

The Tribunal's determinations

The freehold value of Flat 4 with vacant possession

21. Mr French has considered a number of sales of flats in the locality of Flat 4 which he has adjusted for lease length to freehold, condition and location. He has also adjusted for time to the valuation date using the Land Registry Indices for flats in the London Borough of Islington.
22. Mr French is of the view that Flat 4, which lacks central heating, is quite a basic, second floor, studio flat. Of the various flats which he has considered, Mr French has relied upon the sales evidence relating to three studio flats, namely, Flats 159b, 237c and Flat 2, 284 Caledonian Road. In his opinion, this represents the best comparable evidence. Mr French has considered sales evidence relating to other flats which are not studios as a check.
23. Ms Melzer is of the opinion that the sales evidence relating to Flat 1, 85 Caledonian Road ("Flat 1") is the best comparable evidence. Although a one bedroom flat, Flat 1 is slightly smaller than Flat 4 and it is very close in terms of location. Ms Melzer has also taken into account the sales evidence relating to three other one bedroom flats which are further north and considerably further away from Flat 4.
24. Ms Melzer has made various adjustments to the comparable sales evidence. In particular, in respect of Flat 1, she has made an adjustment of - 2.5% to reflect the fact that Flat 1 is a garden flat. She points out that there is no mention of any private outside space; that the communal garden is accessed via the bathroom; and she states that, as a consequence of the communal garden, Flat 1 lacks security.
25. Ms Melzer has made no adjustment to reflect the fact that Flat 1 is a one bedroom flat rather than a studio due to its small size and due to the fact that the kitchen and living room are open plan. She is of the view that some occupants may prefer accommodation in which the kitchen is separate from the living space to a bed/sitting room.
26. In considering Flat 1 as a check, Mr French has made an adjustment of -10% for features, to reflect the fact that Flat 1 is a one bedroom garden flat. He has also made an adjustment of -5% on account of the fact that Flat 1 is on the lower ground floor.
27. The Tribunal is of the view that the most relevant comparable sales evidence is that relating to Flat 1, 85 Caledonian Road and to the three studio flats which are relied upon by Mr French.
28. Although Flat 1 is a one bedroom flat rather than a studio, the Tribunal considers that it is relevant because it both extremely close to Flat 4 and

slightly smaller. The Tribunal is of the view that the sales evidence relating to the other properties which were referred to at the hearing requires too much adjustment to be of assistance.

29. As regards Flat 1, 85 Caledonian Road, the Tribunal considers that an adjustment of -8% rather than -10% is appropriate for features having regard to the fact that the garden is communal and accessible via a bathroom. Applying this finding, the adjusted rate per square foot for Flat 1 is £964. The Tribunal otherwise adopts Mr French's approach to the adjustments.
30. The adjusted comparable sales evidence relied upon by the Tribunal produces an overall average of £892 per square foot and a freehold value with vacant possession for Flat 4 of £297,036.

Relativity

31. The valuers are agreed that there is no available relevant market evidence and that it is therefore necessary to have regard to relativity graphs.
32. Mr French is of the view that, whilst Flat 4 is not in prime central London ("PCL"), it is located in an improving area in a central location and that account should be taken of the proximity of the location to PCL. In oral evidence, he stated that the quality of property in the London Borough of Islington varies substantially and that the squares in central Islington are not comparable with the Caledonian Road.
33. Mr French has considered a number of Upper Tribunal decisions including Hong Xue v Mr Francis W R Cherry, Mrs Janet R Cherry [2015] UKUT 0651 (LC), a case concerning 17 Ormiston Grove, London SW12 0JR. In this case, the parties acknowledged that the appeal property was not in, but was close to, PCL and the Upper Tribunal used three non-PCL graphs and one PCL graph in order to arrive at a weighted average.
34. At paragraph 67 of the decision, the Upper Tribunal stated:

"The average value of the Nesbitt & Co, Andrew Pridell Associates and South East Leasehold graphs for an unexpired term of 72.167 years is 93.25%. The relativity derived from the Cluttons PCL graph is 87.70%. Given that the appeal property is outside prime central London we consider it reasonable to produce a weighted average of these figures in the ratio of two (outer London) to one (PCL). This gives a weighted average relativity of 91.4% which is the same figure as that determined by the F-tT."

35. Mr French has adopted the same approach, save that he has relied upon the Gerald Eve graph rather than the Cluttons graph (in reliance upon The Trustees of the Sloane Stanley Estate v Munday [2016] UKUT 223 (LC)). He has thereby arrived at a relativity of 88.18%.
36. Ms Melzer states that Flat 4 is situated within the London Borough of Islington, on the fringes of PCL, in an area that would be considered by many to be “prime north London”. She did not make the distinction which was made by Mr French between the Caledonian Road and other parts of Islington which are close to PCL. She stated that it is necessary to consider this area of North London as a whole.
37. Ms Melzer had considered a number of relativity graphs and also personal settlements of lease extensions. However, she confirmed in oral evidence that she had arrived at a relativity of 83.5% by relying upon the Gerald Eve graph, deducting 1%, and then rounding the resulting relativity of 83.44 up to 83.5. The other evidence was simply used as a check.
38. Ms Melzer’s proposed deduction of 1% from the relativity obtained from the Gerald Eve graph was not related to her view that Flat 4 is “on the fringes of” rather than within PCL. The proposed deduction was put forward on an entirely different basis which she did not ultimately seek to pursue. Accordingly, Ms Melzer made no adjustment to reflect the fact that Flat 4 is not located within PCL.
39. In the course of its inspection, the Tribunal viewed the Caledonian Road and briefly drove through the area of central Islington which was relied upon by Mr French in oral evidence as being different in character, including Cloudesley Square.
40. Having seen the areas in question, the Tribunal accepts Mr French’s opinion that, whilst the area in which Flat 4 is located has improved, there remains a significant difference in character between the Caledonian Road and other parts of Islington which are themselves outside PCL.
41. The Tribunal is satisfied that it is necessary to take account of the fact that Flat 4 is situated close to but not within PCL. It prefers Mr French’s approach to relativity and accepts his proposed relativity of 88.18%.

Conclusion

42. Applying the above determinations, the Tribunal finds that the premium payable by the applicants for the grant of a new lease of Flat 4 is £22,822.

43. A copy of the Tribunal's valuation is attached to this decision.

Judge Hawkes

12 February 2018

Flat 4, 75 Caledonian Road, N1

Leasehold Reform Housing and Development Act 1993

Valuation Date	01/04/2017		
Unexpired Term	65.73	years	
Freehold Value	£297,036		
Long L/H Value	£294,066	(less 1% for long leasehold)	
Relativity	88.18%	to existing lease	
Relativity	99.00%	to proposed lease	
Capitalisation Rate	7.00%		
Deferment Rate	5.00%		

Freeholder's Interest

	Income				
Term 1	Ground Rent			£100	
	YP	32.73	7.00%	<u>12.72555</u>	
				£1,272.55	£1,273
Term 2	Ground Rent			£150	
	YP	33.00	7.00%	12.7537	
	PV£1	32.73	7.00%	<u>0.10921</u>	
				£208.92	£209

Reversion

	Freehold Value			£297,036	
	PV£1	65.73	5.00%	<u>0.040478776</u>	
				£12,023.65	<u>£12,024</u>
					13,505
Less	Proposed F/Hold Value			£289,000	
		155.73	5.00%	<u>0.000501407</u>	
				£145	<u>145</u>
					£13,360

Marriage Value

	Value of T's interest new lease			£294,066	
	Value of LL's interest new lease			<u>£145</u>	
					£294,211
Less	Value of T's interest existing lease			£13,360	
	Value of LL's interest existing lease			<u>£261,926</u>	@ 88.18% Relativity
					<u>£275,287</u>
					18,924
	Marriage Value		@ 50.00%		£9,462
	Compensation				<u>£0</u>
					PREMIUM £22,822