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

Case Reference : MAN/00EJ/OLR/2018/0022

Property : 67 Prebends Field Durham DH1 1HJ

Applicant : Derryland Limited

Respondent : Bushcharm Limited

Type of Application : Leasehold Reform, Housing & Urban
Development Act 1993 (the "Act") – Section
48(1)

Tribunal Members : Judge WL Brown
Mr ID Jefferson TD BA BSc FRICS

Date of Decision : 2 July 2018

DECISION

Order

- (1) The premium payable by the Applicant to the Respondent in respect of the Property is £14,100.
- (2) The new lease shall be in the form of the draft attached to the Respondent's statement of case with the following amendments:
 - The insertion of the premium of £14,100 determined by the Tribunal
 - The insertion of a clause providing for interest to be paid on any rent or other monies due under the Lease if not paid within 14 days of demand
 - The inclusion of Prescribed clauses in accordance with Land Registry requirements.

Background

1. The Applicant is the leasehold owner of the Property. It is applying for the determination of the appropriate premium on the grant of a new lease extending its lease of the Property and other terms on the grant of the new lease pursuant to section 48(1) of the Act. Section 48 of the Act is the appropriate statutory provision under which the Application should be made, there having been a counter notice served by the Respondent following the Applicant's request for a new lease. The Application dated 30 January 2018 will extend the leasehold interest by 90 years at a peppercorn rent.
2. The request dated 2 June 2017 for a new lease served by the Applicant's predecessor in title proposed a premium of £11,500. The Respondent's counter notice of 3 August 2017 proposed a premium of £20,430.
3. The Tribunal issued Directions on 6 February 2018 with the matter to proceed by a paper determination with an inspection.
4. The Applicant provided a statement of case from its director, Andrew Francis Craig FRICS, dated 6 March 2018. It does not purport to be "expert evidence". A premium of £8,000 was proposed revised to £9,500 if unexpired term less than originally put forward.
5. The Respondent's Statement of Case was made by John Geraint Evans FRICS of eBureau Limited and is dated 26 March 2018. Mr Evans' evidence is considered by the Tribunal to be "expert" as prescribed by Rule 19 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Mr Evans' valuation produces a premium of £24,570. The Applicant provided written comments on the Respondent's statement of case as permitted by the Tribunal's directions.

6. In determining the premium payable for the new lease both parties have sought to first assess diminution in value of the lessor's interest in the Property caused by the grant of a new lease and then determined the share of the of the marriage value created by that grant. No question of compensation pursuant to paragraph 5 Part II of Schedule 13 to the Act arises in this case.
7. The parties have agreed certain matters, a capitalisation rate of 7%, deferment rate 5%, marriage value to be shared equally and the basis for allowance for a "no Act world" but not the quantum.
8. The Tribunal is to determine the premium for the new lease and certain other terms referred to below.
9. On 25 May 2018 the Tribunal inspected the Property internally and externally. The Tribunal also inspected externally all of the comparables put forward by the parties. Neither party having requested a hearing, the Tribunal proceeded to make a paper determination. The Property is a ground floor terraced flat accessed from the front street by a pathway to the front garden (in the demise of the upper flat). The property is of brick construction under a pitched tiled roof with UPVC front and rear doors and windows. The Property has exclusive possession of the rear garden, lawned with borders, enclosed by timber fencing, through which there is a gate to a rear access walkway. It has a single garage in a nearby block.
10. The accommodation comprises a small porch area, living room with electric fire and surround, fitted kitchen at rear, inner bedroom lobby, 2 double bedrooms, modern bathroom including bath with shower over. There are gas fired central heating radiators throughout.

The Law

11. Section 48 of the Act, together with Schedule 13 thereof, provide the statutory regime within which the Tribunal should assess the premium that is to be payable for the new lease. The relevant extracts from the Act appear at Annex B.

The Evidence, Discussion and Determination of Premium

12. The Respondent's expert appears to have picked up an error in the Land Registry Title of the Property which mistakenly led the Applicant to believe that there was 47.58 years unexpired whereas, if the Respondent and the Tribunal interpret the original lease as being both correct and paramount, there is a lesser unexpired term namely 41.74 years as at the date of notice. The Tribunal has proceeded on the basis of the term recorded in the lease.

The value of the existing leasehold interest

13. The Applicant contends that there is:
“.....no relevant comparable evidence in the immediate vicinity of the subject flat.” He therefore looked to an estate of similar age, again on the fringe of the City of Durham called Newton Hall Estate to support his valuation.
14. Firstly, 35 Brancepeth Close Newton Hall which is a ground floor flat stated to be sold in May 2017 for £76,000. It is however an extended lease and appears to have the benefit of tenants improvements. The Applicant adjusts for improvements giving a figure of £70,000 for a long lease ground floor flat but at Newton Hall.
15. The Applicant then refers the Tribunal to a semi-detached house on Newton Hall Estate namely 57 Raby Road, which in turn is compared to two other semi-detached houses on Prebends Field namely 43 and 25. 43 is a completely different design to the other two semi-detached properties and has a fourth bedroom and en-suite. The other houses are broadly similar. The Tribunal does not intend to go into the detail set out in the Applicant’s submission but in short the Applicant recognises that Newton Hall is a better estate, and property values are higher, and by comparing broadly similar houses, and the various sale prices, and adjusting for slight differences in accommodation and dates deduces that Newton Hall is better by some 9.5%.
21. The Applicant then adjusts 35 Brancepeth Close by deducting 9.5% to give an adjusted, by location, figure of £63,350 long leasehold.
22. The Respondent’s expert in his evidence states that he acted for the Freeholder, Chime Properties, at 35 Brancepeth Close, one of the comparables cited by the Applicant, and that that property is well known to him. He states that he does not feel he has any conflict of interest but then goes on to state: “and further contend that it provides nothing to the arguments you are asked to consider here”
23. The Respondent whilst stating that he knows 35 Brancepeth Close very well states that it is in a very different area to the subject flat and he does not understand why the Applicant has produced this property when there appear to be better comparables literally across the road.
24. The Respondent then criticises in some detail the Applicant’s analysis of 35 Brancepeth Close. The Respondent also states that the Applicant neither follows the workings of the Act: “.....not (presumably nor) provides any consideration of valuation evidence readily available on Prebends Field”. The Tribunal notes that Mr Evans does not present an analysis on the basis that the property is on a different estate.
25. Also Mr Evans states that the Applicant’s director omitted to state that he was the owner of 71 Prebends Field which was purchased by him in March 2015 and that the Applicant: “.....has attempted to use the Act to extend the Lease on that property (No. 71) in addition to the subject property”.

26. The Respondent's second comparable is 71 Prebends Field and a Land Registry OCE copy title is enclosed confirming that the property was purchased in March 2015 at £42,000. The Respondent presumably maintains this as the best evidence of short leasehold value but the submission is light on any analysis of the purchase price.
27. The Tribunal notes that the Applicant's director did not initially reveal that he was the owner of No. 71 and it was only after the Respondents brought this fact to the Tribunal's attention that the Applicant sought to argue that it was not good evidence.
28. The Respondent's expert then cites 74 Prebends Field, sold for £86,000 in July 2017, again a series of adjustments are made, without the benefit of an internal inspection, to arrive at an adjusted value of £88,000.
29. The Respondent's expert does analyse 78 Prebends Field which he states is a two bedroom first floor flat which he understands is under offer at £70,000. The Respondent has not, despite knowing the property extremely well, undertaken an internal inspection of it. Various adjustments are made for both time, tenant's improvements, and difference, between ground and first floor. The Applicant determines a long lease value of £74,500.
30. The Respondent is correct in identifying that it is somewhat unusual to take as the main comparable a similar flat but on a different estate, and then analyse the sales of various houses to try and quantify the difference in value between the two estates. If there is sufficient good comparable evidence much closer to the subject property then that is to be far preferred by the Tribunal. Thus in principle the Tribunal follow the logic of the Respondent and prefer it to that of the Applicant.
31. However when the Tribunal comes to analyse the Respondent's comparables and despite the Respondent claiming that there was ample evidence close to the subject property, the Respondent in reality offered little. Furthermore when looked at in detail the Respondent's comparable evidence was not persuasive. The Tribunal notes that on the Prebends Field estate there appears to be only 5 flats similar to the Property, but details of only 1 of those 5 were submitted.
32. The Tribunal has considered the evidence put forward concerning tenants' improvements at the Property which are referenced in Mr Evans' submission as comprising the upgrading of a kitchen and bathroom, the upgrading of the heating and hot water system and addition of double glazing. Mr Craig's view is that double glazing, gas fired radiator central heating and a fitted kitchen would cost approximately £10,000, but he recognises that value will be less and assesses this on both his comparables and the Property value at £6,000. Mr Evans agrees that the value created by tenant's improvements must lie with the tenant (his paragraph 6.2) but states that £6,000 is excessive but puts forward no figure. He refers to the First-tier Tribunal decision of 47 Edgmond Court MAN/00CM/OLR/2017/0016 approving a £500 value adjustment, but does not appear to adopt that sum. Here, the Tribunal notes that the tenant's improvements are much more extensive in nature than a comparable in the 47 Edgmond Court case cited.

33. The Tribunal has considered the evidence put forward concerning tenant's improvements which are referenced in Mr Evans' submission of £6,000 and that of Mr Evans', by implication £500. The Tribunal does not consider either of the adjustments appropriate and assesses the value attributable to the tenant's improvements to be a figure in the region of £4,000.
33. No. 71 Prebends Field was purchased at auction and for various reasons as set out by the Applicant the Tribunal consider that it was purchased at a low figure. Auction evidence does have to be treated with caution. That is not to say that on occasions it is not good evidence. However analysis of the sale and purchase of essentially low value flats, in the regions, particularly of flats where the leases have an unexpired term of under 80 years, produces wildly conflicting evidence. The market is far from perfect and on occasions it seems a bargain can be obtained.
34. 78 Prebends Field is, according to the Respondent, not a completed legal transaction. It appears that the unexpired term is just under 71 years. The Tribunal note that it is not beyond the bounds of possibility that prior to completion the purchaser's solicitor might warn the purchaser that it may be difficult to obtain a mortgage. From the Respondent's submission, this transaction had not completed at this figure.
35. Lastly 74 Prebends Field is a ground floor flat in a nearby block with 71.5 years unexpired from July 2017 when it was sold for £86,000. The issues with this comparable are firstly it appears to be in "superb condition"; second from the Land Registry Title OCE which offers only short particulars of the lease it is stated to be a term of 99 years from 1 December 1989 but the rent is shown as £50 rising to £200. No copy of the full lease has been provided to the Tribunal. Clearly however the terms of the lease would seem to be quite different from that of the subject property.
36. Thus all three comparables have significant differences and are not good clear solid evidence. The Tribunal understands that adjustments can be made to try and bring say 74 Prebends Field back to a similar term to the subject property but there is significant subjectivity in so doing, particularly when the lease terms are unknown.
37. The Tribunal considers that this type of Property attracts diverse buyers with different objectives on purchasing. The Tribunal has considered all of the comparables cited by both parties in some detail and has used its own expertise, but without relying upon any secret knowledge and determines a long lease value of the subject flat excluding tenants improvements of £65,000 and a short lease value of £50,000.

Adjustment for Act Rights

38. Both parties rely principally upon *Elmbirch Properties Plc re 51 & 85 Humphrey Middleton Drive* [2017] UKUT 0314 (LC) on the issue of adjustment for a “no Act world” by reference to a straight line graph supplemented with a formula. Mr Evans contends that the adjustment is 10.42% while Mr Craig argues for 8.8%
39. The Tribunal notes that approaching the matter using a graphical or formulaic approach is criticised in *Elmbirch* where the Upper Tribunal noted that such a methodology ‘suggests an unrealistic degree of precision in what ought to be approached as an exercise of judgment’. Noting what the parties submitted, but as a matter of expert judgement, in this particular case, the Tribunal makes an allowance to reflect the ‘no Act world’ of 9%.
40. Mr Evans makes no adjustment for rights arising under Schedule 10 Local Government and Housing Act 1989 (tenant right to an assured tenancy at the end of the lease) on the basis that a purchaser of a lease in excess of 50 years would not make such an allowance. Mr Craig does not comment on this point. The Tribunal does not intend to impose any different interpretation upon the Parties in this respect.

The Tribunal’s Valuation

41. The Tribunal’s valuation is set out in Annex A. It determines a premium for the extended lease of £14,100.

Other Lease Terms

42. The Statement of Case of the Respondent includes a draft lease and a request that the Tribunal determines that the new lease should be in that form. The Applicant refers to the Respondent’s counter-notice of 3 August 2017, paragraph 4 of which proposed some variations to the current lease terms by adding certain clauses to the lease. The Applicant opposes all save for those at 4(i), (f) and (g), stating that none of those additions are requirements of a new lease under the Act. The Respondent makes no representations on the point.
43. The Tribunal understands that the new lease is required to be in the same form as the current lease, allowing for certain modifications. The Respondent has not made any submission as to why it may be necessary to include in the new lease the provisions to which the Applicant objects and the Tribunal finds that none of the disputed modifications are needed for the new lease.

44. The Applicant does not object to modifications to the new lease as set out in 4(i) – recording of the premium – and (f) which provides: “A clause providing for interest to be paid on any rent or other monies due under the Lease if not paid within 14 days of demand” and (g) which provides: “Prescribed clauses in accordance with Land Registry requirements”.

The Tribunal finds that these are appropriate modifications of the current lease for the new lease and approves them.

Annex B

Leasehold Reform, Housing and Urban Development Act 1993

Section 48 Applications where terms in dispute or failure to enter into new lease

(1) Where the landlord has given the tenant--

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, [the appropriate tribunal] may, on the application of either the tenant or the landlord, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.

(3) Where--

(a) the landlord has given the tenant such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b) all the terms of acquisition have been either agreed between those persons or determined by [the appropriate tribunal] under subsection (1),

but a new lease has not been entered into in pursuance of the tenant's notice by the end of the appropriate period specified in subsection (6), the court may, on the application of either the tenant or the landlord, make such order as it thinks fit with respect to the performance or discharge of any obligations arising out of that notice.

(4) Any such order may provide for the tenant's notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6).

(5) Any application for an order under subsection (3) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6) For the purposes of this section the appropriate period is--

(a) where all of the terms of acquisition have been agreed between the tenant and the landlord, the period of two months beginning with the date when those terms were finally so agreed; or

(b) where all or any of those terms have been determined by [the appropriate tribunal] under subsection (1)--

(i) the period of two months beginning with the date when the decision of the tribunal under subsection (1) becomes final, or

(ii) such other period as may have been fixed by the tribunal when making its determination.

(7) In this Chapter "the terms of acquisition", in relation to a claim by a tenant under this Chapter, means the terms on which the tenant is to acquire a new lease of his flat, whether they relate to the terms to be contained in the lease or to the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of the lease, or otherwise.

Leasehold Reform, Housing and Urban Development Act 1993

57 Prebends Field Durham DH1 1HJ
Tribunal Decision

Valuation Date			2 June 2017	
Lease Details				
Commencement Date			1 March 1966	
Term			99 years	
Unexpired Term			41.74 years	
Ground Rent per annum (Fixed)			£15	
Diminution in the Value of Landlords Interest				
Term				
Current Ground Rent			£15	
YP for 41.74 years @ 7.00%			13.44	£202
Reversion				
Leasehold Vacant Possession Value exc Tenants Improvements (131.74 year lease)		£65,000		
Adjustment to Freehold + 1%		£650		
			£65,650	
Present Value 41.74 years @ 5%		0.130	£8,535	
Less				
Value of retained interest		£65,000		
Present Value 131.74 years @ 5.00%		0.002	£130	£8,405
Marriage Value				
Value of Proposed Interests				
Value of Lessee's Interest, with extended lease		£65,000		
Value of Freeholders Reversionary Interest		£130		
Value of Landlord's Interest, with extended lease		Nil		
			£65,130	
Less:				
Value of Lessee's Present Interest		£50,000		
Less 9.00% For benefit of the Act		£4,500		
			£45,500	
Value of Freeholder's Present Interest			£8,535	
			£54,035	
Marriage Value			£10,965	
50% share of Marriage Value				£5,482
Total Premium Payable (excluding costs)				£11,059
Day				£11,100