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

Case Reference : LON/00BB/OLR/2017/0284

Property : 36A Bignold Road, London E7 0EX

Applicant : Ms Evangelia Dimitriou

Representative : Mr A Youens FRICS

Respondent : Sarum Properties Limited

Representative : Kieron McKeown MRICS

Type of Application : S48 Leasehold Reform, Housing and
Urban Development Act 1993 –
determination of terms of acquisition in
dispute

Tribunal Members : Judge John Hewitt
Ms Marina Krisko BSc (EstMan) FRICS
Ms Helen Gyselynck MRICS

**Date and venue of
hearing** : 20 June 2017
10 Alfred Place, London WC1E 7LR

Date of Decision : 6 July 2017

DECISION

Decisions of the tribunal

1. The premium payable by the applicant to the respondent on the grant of a new lease is £32,974 made up as set out on the Tribunal Valuation annexed to this decision

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. On 25 August 1989 the respondent was registered at Land Registry as the proprietor of the freehold of the property [33] and is the reversioner for the purposes of section 9 of the Act. The property has been adapted to create two self-contained flats or maisonettes, both of which have been sold off on long leases.
4. By a lease dated 3 February 1983 the first floor maisonette was demised for a term of 99 years from 1 January 1983 [44]. On 7 May 2014 the applicant was registered at Land Registry as the proprietor of that lease [38].
5. By a notice of claim dated 21 June 2016 [15] the applicant sought to exercise the right to acquire a new lease pursuant to section 42 of the Act.
6. By a counter-notice dated 22 August 2016 [19] the respondent admitted that on the relevant date the applicant had the right to acquire a new lease.
7. The parties were not able to agree all of the terms of acquisition of the new lease. By an application dated 20 February 2017 and made pursuant to section 48(1) of the Act the applicant sought a determination of the terms of acquisition in dispute.
8. Directions were given.
9. The application came on for hearing before us on 20 June 2017.

The applicant was represented by Mr Andrew Youens who also gave evidence as an expert witness. His report is at [77].

The respondent was represented by Mr McKeown who also gave evidence as an expert witness. His report is at [93].

The matters in issue

10. All terms of acquisition had been agreed save for the premium to be paid for the new lease.

11. The parties had been able to agree several of the components of the valuation and these are noted on the Tribunal Valuation annexed to this decision.
12. The three matters we were required to determine were:

	Mr Youens	Mr McKeown
Freehold value VP;	£207,000	£323,230
Value of extended lease with Act rights; and	£204,930	£320,000
Value of existing lease without Act rights	£180,009	£266,537

Mr Youens

13. Mr Youens produced his report and answered questions on it. He observed that Newham LB was a poor borough but with property values at the extreme ends. He said that the subject property was in a square surrounded by four main roads, close to a conservation area near to Wanstead Flats where properties tend to be expensive, but also close to Stratford where properties are much less expensive.
14. Mr Youens said that the subject property was a good size one-bedroom flat in a Victorian terrace conversion. It is close to a railway line. It is also tenanted on AST terms, which he submitted justified a 10% deduction to reflect that the market does not have an appetite for properties which are so let.
15. Mr Youens had a list of 10 comparable properties, but did not provide any details of the transactions and scarcely any details of the properties. Mr Youens placed the first three on that list as his strongest comparables, all being one-bedroom flats. The valuation date was June 2016. Mr Youens comparables spanned November 2015 to October 2016. Mr Youens did not make any adjustments for time because he did not consider it appropriate to use the Land Registry data which covered the whole borough.
16. Mr Youens did not average his comparables but took them into account to arrive at a FHVP value of between £210,000 and £220,000. However, to err on the right side, he took a value of £230,000 from which he deducted 10% to reflect the property was tenanted, and thus arrived at £207,000 and then deducted 1% to arrive at a long lease value of £204,930
17. Mr Youens also said that he was not happy in using graphs of relativity, preferring to look at the market itself.
18. Mr Youens was also critical of an influx of purchasers from Waltham Forest, which was pricing itself out of the market and which he considered adversely affected values in Newham.

Mr McKeown

19. Mr McKeown produced his report and answered questions on it.
20. Mr McKeown said that he looked for evidence of transactions in the same postcode, found sufficient and so did not need to rely upon graphs of relativity. For his long lease value Mr McKeown took an average of three transactions, all in Bignold Road, to arrive at £321,942.
21. As to his short lease value Mr McKeown took the sale of the subject property in April 2014 at £190,000 which, adjusted for time increased to £280,565. Mr McKeown then made an adjustment of 5% to reflect no Act rights and thus he arrived at £266,537.
22. Mr McKeown was critical of several of Mr Youens comparables which he considered to inappropriate, dissimilar or otherwise incomparable. Mr McKeown was also critical of the 10% deduction for the property being tenanted and said that he had not previously come across such a deduction.

Discussion and reasons

23. In general terms we preferred the approach of Mr McKeown to that of Mr Youens because it tended to be the more orthodox and evidence based. Undoubtedly Mr Youens has considerable experience in the local market upon which he draws for his conclusions but it tends to be very much 'gut reaction' or 'a finger in the wind'.
24. We are also sceptical of Mr Youens 10% deduction to reflect that the property was tenanted at the valuation date. It is a point rarely argued these days. We can see that a hypothetical purchaser might adjust his bid to reflect that circumstance, but there are both advantages and disadvantages to take into account. Those also have to be reflected in both long and short lease values and to an extent one will cancel the other out, so that any difference is likely to be minimal. We find it would be inequitable to make such a deduction from the long lease value only, to the detriment of the landlord.
25. We also prefer and find the most helpful comparables to be those nearest in locality, style and layout and closest in time.
26. We find that the most useful comparables are the transactions concerning 34 and 38 Bignold Road, which lay either side of the subject property. With appropriate adjustments, we arrive at a long lease value of £317,500 which with the agreed 1% addition produces a FHVP value of £320,675.
27. As a check we note that the average of Mr Youens long lease values, as per the first 9 comparables on his list comes out at £5,677 psm. At our long lease value the £psm is £5,599.

Flat 4 at 47-49 Bignold Road is not so helpful because it is a flat in a superior building, but it is useful to bring it into account as a further check on our outcome. We find it fits well allowing for appropriate adjustments. It reinforces our conclusion.

28. We prefer Mr McKeon's valuation for the short lease value. It is of the subject property and the only adjustment is for time, and that was only just over two years. In our experience, a valuation is likely to be more accurate the fewer adjustments that have to be made to an actual transaction. Adjusting for time using Land Registry data is conventional, even if sometimes controversial. We adopt it, as did Mr McKeown for his short lease value. We also find an adjustment in the region of 5% to reflect no Act rights is appropriate to this property. Thus, we determine the short lease value without rights is £266,000.

29. Our valuations of £317,500 and £266,000 produce a relativity of 83.77%

Just to stand back and reflect and check we have had regard to relevant graphs and this figure fits well.

Using two different approaches we have arrived at a broadly similar end result.

30. For these reasons, we determine that the premium to be paid for the new lease is £32,974.

Judge John Hewitt
6 July 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 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.