



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

Case Reference : LON/OOAN/OCE/2014/0281

Property : 6 Paddenswick Road, London W6

Applicant : 6 Paddenswick Road Limited

Representative : Mr C G G Briggs MRICS IRRV of Siton Andrews Chartered Surveyors

Respondent : Mr P K A Harper

Representative : Mr Harper in person

Type of Application : Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993

Tribunal Members : Tribunal Judge Dutton
Mr P Tobin FRICS MCI Arb

Date and venue of Hearing : 3rd March 2015 at 10 Albert Place, London WC1E 7LR

Date of Decision : 12th March 2015

DECISION

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The Tribunal determines that the price payable for the freehold of the property 6 Paddenswick Road, London W6 0UB (the Property) is £32,443 as set out in the valuation attached to the expert's report of Mr Briggs dated 28th January 2015.

BACKGROUND

1. This was an application made by Paddenswick Road Limited, the nominee purchaser in respect of the acquisition of the freehold of the Property which comprises three flats. The Property itself is a four storey end of terrace late Victorian building in Hammersmith.
2. Prior to the Hearing we were provided with a somewhat jumbled bundle which included the application, copies of the notices served by the nominee purchaser and the reversioner, copy land registry documents and leases. In addition we were provided with the expert report of Mr Briggs acting on behalf of the applicant with a number of exhibits and a valuation arguing for a price of £32,443 for the freehold.
3. As well as those documents Mr Harper, the Respondent, had provided us with a substantial report with a number of exhibits to which we will refer as required.
4. We are pleased to say that Mr Briggs and Mr Harper have been able to agree a number of matters leaving only the question of relativity for us to determine. We record those matters that are agreed:-
 - The valuation date is 22nd April 2014.
 - The capitalisation rate for the ground rent is 6%.
 - The deferment rate is 5%.
 - The value of the long leases at a peppercorn ground rent with a share of the freehold after any tenants' improvements have been taken into account are as follows:
 - 6a £867,500; 6b £452,500 and 6c £472,500, giving a total for the three flats of £1,792,500.
 - The marriage value is to be shared on a 50/50 basis.
 - The commencement date for the leases for flats 6b and c is 7th December 1990 leaving an unexpired term of 75.67 years.
 - The commencement for the lease of 6a is 7th December 1990 but extended for 90 years having therefore an unexpired term of 165.67 years.

THE HEARING

5. The Hearing was attended by both Mr Harper and Mr Briggs. We raised with Mr Harper our concerns at his impartiality. In the report which he had submitted, he confirms that it contains information which may be regarded as opinion and hearsay. It goes on to say that he confirms his duty to the Tribunal as an expert witness. Unfortunately, Mr Harper is also the freeholder and we made it known to him at the commencement of the Hearing that we would not be able to view his

evidence as that of an independent expert. He has no surveying qualifications, but legal ones only.

6. We confined the evidence that we received to question of relativity. Mr Briggs' evidence on this point was succinct. He said that he had considered the graphs prepared following the request of the Tribunal in the Arrowdale case and which were result of research carried out under the RICS banner in 2009. He listed the graphs with Beckitt and Kay, South East Leasehold, Nesbitt and Co, Austin Gray, Andrew Pridell and Moss Kay. This gave an average of 95.15% which he applied to achieve the shorter lease length. In his report he said he had no reason to disagree with the average for Greater London and England bearing in mind the leases in question are over 75 years unexpired and readily mortgageable as they stand. In evidence at the Hearing, he confirmed that the relativity related only to the upper flats and was not in favour of the latest Beckitt and Kay graph which was opinion-based. He did not think that the property was in the prime central London (PCL) area and that a review of the Greater London and beyond graphs for the purposes of relativity was appropriate.
7. Under cross examination from Mr Harper he remained of the view that his position on relativity was appropriate.
8. Mr Harper had produced a substantial report which included a valuation, an area map, sales particulars of property, sold prices, Savills published reports, Land Registry indices and the Beckitt and Kay mortgage dependent graph of relativity. A number of cases were also considered by him and were included in the bundle. On the question of relativity, he had applied a rate of 91.9275% and set out his reasoning in his report starting by reference to the Upper Tribunal case of Arrowdale. He then referred to a number of other decisions of the Tribunal where graph evidence had been accepted. We noted all that was said in the report. In his evidence to us he found assistance in a Tribunal case of 17 Ormiston Grove where that Tribunal had been prepared to accept relativity based partly on a Cluttons graph dealing with prime central London flats, which they had used as a balancing point when considering it against, in that particular case, the graphs prepared by Andrew Pridell and Nesbitts. He sought to argue before us that the Property situated in Hammersmith was so close to what most people considered to be prime central London that it would inevitably have an impact on the relativity in respect of this case. He sought to persuade us that the rising prices of property in Hammersmith meant that it was becoming nearer and nearer to PCL. He relied on the latest Beckitt and Kay graph, which he told us were being revised on an almost annual basis. This was a mortgage dependent graph which he thought was appropriate for the locality. However, he was not able to tell us what area had been used to compile the data, nor what the data was that had been used as a basis for the opinions expressed by the authors.
9. At the end of his report he confirmed how he had calculated the average of the graphs he used to be 91.9275%. This was by using the graphs for a 75.67 year remaining term which in respect of the Nesbitt and Co graph gave a percentage he said of 93.83, for Andrew Pridell Associates 95.77, for Cluttons flats 90.11 and for the Beckitt and Kay 2014 mortgage dependent graph a figure of 88%. Applying that relativity to the agreed values gave a premium of £54,355.

FINDINGS

10. We are very grateful to Mr Briggs and Mr Harper for narrowing the issues, leaving only the question of relativity for us to consider. We heard all that was said by both Mr Briggs and Mr Harper on this point. As we indicated earlier we are concerned that Mr Harper, although providing a statement as to his independence was anything but given that he is the owner of the Property, the subject of the enfranchisement. We have no doubt that he has experience in property matters and in enfranchisement cases. However, we did not consider the evidence he gave to be independent. Although in his assessment of the relativity he made use of the Nesbitt and Pridell graphs as had Mr Briggs, by utilising the Cluttons PCL flats and the Beckitt and Kay graph this substantially widened the relativity gap between himself and Mr Briggs. The Beckitt and Kay graph is opinion-based only. Mr Harper was not able to say what data had been provided to enable the opinion to be given on the relativity which gave rise to 88%, far below any other graph, even the Cluttons PCL Flats graph. It is not, in our finding a reliable assessment of relativity. We bear in mind the finding of the Upper Tribunal in Arrowdale who whilst indicating that relativities may vary between one type of property and another and from area to area, there was in their words "little doubt that the predominant factor is the length of the term."
11. Mr Briggs was satisfied that the Property was not situated in prime central London. Although Mr Harper conceded that was the case, by utilising the Cluttons graph he certainly appeared to be giving credence to the fact that it was heavily influenced the PCL area, which of course, enabled him to argue that the relativity should be lower. His arguments as to the capital value of the properties reflecting whether or not they should be PCL were noted. However, it seems to us that capital values are just that and have only a small influence if any on the relativity that might be applied. We were not satisfied as to the comparability of the subject property with prime central London. Notwithstanding its geographical proximity, Hammersmith is not regarded as PCL by any expert in the field. The Savills report which Mr Harper had produced suggested that it might become so at some stage in the future. Mr Harper, however, conceded that this was dependent on the market continuing to improve at the same rate as it had for the last few years. The property itself, of course, does not have what one might expect to find in PCL flats, namely lifts and other amenities.
12. Unfortunately, we find that Mr Harper's personal involvement in this transaction has influenced his view on the evidence he gave to us. The use of the Cluttons graph, which is based on flats in the PCL area and the Beckitt and Kay graph, which has a relativity level well below any other comparable graphs, was designed in our view, to do nothing other than to manoeuvre the relativity to a rate which would result in a higher price being paid for the Property. As these transactions are in effect compulsory purchase, that is understandable. However, it does remove his impartiality and accordingly where there is conflict of evidence we feel that it is appropriate to make use of Mr Briggs' evidence as being presented to us by a surveyor on an independent expert basis.
13. In those circumstances, therefore, we are persuaded that the evidence given by Mr Briggs on relativity is to be preferred and applying his relativity gives the price

payable for the freehold of £32,443 rounded down to £32,440 as set out on the valuation he produced to his report.

Judge: *Andrew Dutton*

A A Dutton

Date: 12th March 2015