



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference	:	CAM/22UF/OLR/2016/0155
Properties	:	9 & 11 George Court, 37 George Street, Chelmsford, CM2 0JU
Applicants	:	Christopher & Stella Regine Willey (9) Joseph Patrick McCann (11)
Represented by	:	Katie Gray of counsel (The Beavis Partnership LLP)
Respondent	:	Sinclair Gardens Investments (Kensington) Ltd.
Represented by	:	Geoff Holden FRICS
Date of Applications	:	21st October 2016
Type of Application	:	To determine the terms of acquisition and costs of the lease extensions of the properties
Tribunal	:	Bruce Edgington (lawyer chair) Stephen Moll FRICS Gerard Smith MRICS FAAV
Date and venue of Hearing	:	11th January 2017 at Marygreen Manor Hotel, London Road, Brentwood CM14 4NR

DECISION

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1. The form of Deeds of Surrender and New Leases having been agreed save for the premiums payable, it is the Tribunal's decision that the premiums payable are £12,485.11 for each property as set out in the Schedule.
2. The legal fees and valuation fees were said to have been agreed.

Reasons

3. This is an application for the Tribunal to determine the terms of lease extensions for the properties and the amount payable by the Applicants for the Respondent's legal and valuation costs. The Tribunal issued its usual

directions order on the 31st October 2016 timetabling the case to a final hearing.

4. Bundles were delivered in accordance with the Tribunal's order and the valuers for each side completed a statement of agreed and disputed matters from which it became clear that the only parts of the statutory 'equation' to be used for the calculation of the premium which were not agreed were relativity and the freehold vacant possession value excluding tenant's improvements. All other matters were agreed and those agreed matters have been adopted for the Tribunal's calculations. They will not be repeated here as all parties are represented although it should be said that it was agreed that no compensation is payable in accordance with paragraph 2 of Schedule 13 of the 1993 Act.

The Inspection

5. The valuer members of the Tribunal inspected the building in which the properties are situated together with the insides of the properties in the presence of Mr. Willey, Mrs. McCann, the Applicants' 2 valuers and Ms. Gray of counsel. The Tribunal chair had been delayed in traffic. The valuers also walked to see the exterior of the comparable property at 108 Bradford Street.
6. The building appears to have been erected in the early 1980's of cavity block/brick under a fibre cement slate roof and is on a site behind commercial accommodation on the New London Road in Chelmsford which is the county city of Essex. The properties are within easy walking distance of the city centre and rather a long walk to the railway station which has trains to central London.
7. Flat 9 is on the first floor. It has 2 bedrooms, a kitchen, a living room and a bathroom/WC all of which are unimproved. The heating is by electric storage heaters. Flat 11 is on the 2nd floor with the same basic facilities. However, it has double glazing and modernised kitchen and bathroom. There were also more modern electric heaters and fittings.
8. There are two buildings in the development with parking spaces for residents. The common parts were in need of decoration and repair. The walls were plastered and painted with emulsion but needed repainting. The floors were tiled and many were breaking up. One of the front retaining walls was partially collapsed. The site is accessed from George Street which is a fairly narrow one way 'street' which is the only access to, and forms part of, a large public 'pay and display' car park. All of these issues would undoubtedly, in the Tribunal's view, act as deterrents to prospective purchasers, at least those who would want to live in the flats themselves. Surveyors and lawyers employed by lenders would also be concerned about the terms of the leases and the lack of maintenance.

The Leases

9. The existing terms for each lease are 99 years from the 1st January 1984 with an increasing ground rent as reflected in the calculations in the Schedule to this decision.
10. The regime for the maintenance of the building and the payment of service charges is not particularly helpful in the sense that much of the burden for

arranging these things is placed on the shoulders of the lessees. It is clear that the original landlord and developer did not really want to be involved in the management of the building.

The Law

11. The valuation of a premium payable in respect of a new lease in these circumstances is governed by Schedule 13 of the 1993 Act. Paragraph 2 says that:-

“The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of-

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,*
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and*
- (c) any amount of compensation payable to the landlord under paragraph 5*

The Hearing

12. The hearing was attended by Mr. Willey, Mrs. McCann, Stephen Watson BSc MRICS and Mark Klesel FRICS (both for the Applicants) and Geoff Holden FRICS for the Respondent. Katie Gray of counsel was there to represent the Applicants.
13. Mr. Holden was there to represent the Respondent both as advocate and expert witness. This is an unfortunate and ill advised position to be in, particularly as he had provided a skeleton argument dealing with certain aspects of the law he considered were helpful to his client’s case. He should understand and appreciate that the two functions he was trying to perform at the same time can contradict each other and it is easy for a Tribunal to be misled. An advocate has a duty to put his or her client’s case i.e. to argue in an adversarial sense and an expert witness has a duty to the Tribunal which may involve acting in a different way.
14. The 3 surveyors gave their evidence. It became clear that all 3 relied mainly on the comparables at 42 George Court and 108 Bradford Street which were built at about the same time by the same builder and with leases containing the same repairing and maintenance regime as the subject flats. It was agreed that the improvements to flat 11 would be worth about 2½ % of the value and, excluding such improvements, the values were the same.
15. Thus, the issues remained as being (a) the unimproved value of the flats and (b) the extent of any relativity calculation.
16. In respect of the value, both sales of both of the significant comparables were completed after the valuation date of the 10th March 2016. The evidence from Mr. Klesel was that 42 George Court was marketed with a guide price of £165,000. It was empty. On the 26th July 2016 an offer of £157,000 from a ‘cash buyer’ was accepted. Mr. Holden’s evidence was that this transaction completed on the 15th November 2016. A sale of 108 Bradford Street was completed on the 18th August 2016 with a sale price of £195,000. None of these ‘facts’ were contested.

17. All 3 valuers agreed that the completion date did not necessarily reflect the valuation date as comparables. An indicative valuation date for a comparable was the date when contracts were exchanged i.e. the date when there was an offer, an acceptance and a contractual commitment. However, even then, the offer and acceptance may have been some time beforehand. Some more relevant information about these dates was available about 42 George Court but none about 108 Bradford Street.
18. There was also evidence about the market at the time. It seemed to be agreed that in March 2016 i.e. the month of the valuation date, there were 2 important events on people's minds i.e. the referendum vote and the Chancellor of the Exchequer's intention to impose a 5% increase in stamp duty for 'buy to let' investors. Either or both had the potential to distort the market particularly in the short term. It also seemed to be agreed that in March 2016 sales of flats in the property market slowed dramatically – no doubt affected by the new stamp duty provisions. Prices did not go up although they did not seem to fall to any appreciable extent.
19. The Tribunal noted with interest that the comparable of 42 George Court was on the market for £165,000 and sold for £157,000 to a cash buyer. A 5% reduction in the offer price from an investor who did not want to pay the extra stamp duty would have been £156,750.
20. As far as the law was concerned, Mr. Holden argued that the case of **The Trustees of the Sloane Stanley Estate v Mundy** [2016] UKUT 223 (LC) created a change in the way that relativity was to be considered with the Upper Tribunal giving guidance. The view of Ms. Gray, which was accepted by the Tribunal, was that the Upper Tribunal was saying, in effect, that market evidence should be looked at first but that the various graphs and indices referred to before should be considered to provide some sort of counterbalance or check.
21. In summary, the Applicants' experts say that relativity should be calculated by looking at the graphs supplied by the College of Estate Management (93.13%) and the Leasehold Advisory Service (92.99%) and a midpoint of 93.06% has been applied. Mr. Holden, on behalf of the Respondent argues that the 'differential' is capable of calculation from the evidence of the comparables which in fact produces a relativity figure of 78.8% which he has rounded up to 79%. Graphs, in his view, should be ignored.

Conclusions

22. Based entirely on the evidence, the inspection and collective experience of the Tribunal members and the submissions of the parties, it is the Tribunal's decision that as it agrees the 2 comparables, Mr. Holden's approach should be looked at first. The end result should then be compared with the several graphs considered by the Royal Institution of Chartered Surveyors to reflect a broad brush overview of the relativity evidence. It should be emphasised that these are not, as has been suggested, figures 'produced by' the RICS. They are produced by others and collated by the RICS.

23. Taking the comparable of 108 Bradford Street, this appears to have been sold on the open market for £195,000. The Tribunal considered that a buyer, particularly a potential owner occupier, would be far more likely to be attracted by that property than the subject properties. It is in a much more attractive ambience, access and location with well kept gardens and what appeared to be a proper maintenance and repair arrangement which had presumably been set up by the lessees. The sales particulars indicated that it had been improved.
24. As to proper maintenance and repairs, Mr. Holden suggested that as the terms of the leases for the subject properties and the comparables were the same, the freeholder should not be 'punished' by having to accept less just because the lessees of George Court had not complied with their maintenance obligations. The answer is quite simple. Firstly, the landlord made a positive commercial decision to own this block when it knew or ought to have known that the management arrangements were far from ideal. Secondly, it presumably made the further commercial decision not go to the expense of enforcing the terms of the leases. There was no evidence that the landlord of Bradford Street has put a management regime into operation which means that the lessees have presumably decided to do this themselves. The Respondent should not therefore benefit from this.
25. The Tribunal's view is that 10% should be deducted from the sale price of 108 Bradford Street to reflect both the difference in real world value between that property and the subject properties and also the improvements. As valuation cannot be an exact science, this will be rounded down slightly to £175,000. If one then looks at the RICS graph analysis, it is noted that the Beckett & Kay graph is the most recent (2014) which takes account of the changes in the policies of lenders following the financial crisis. The relativity for a lease of 66.81 years unexpired would be around 90%. Applying this to the sale price of 42 George Court, one reaches a figure of £157,500. It seems to this Tribunal that this analysis and comparison confirms the view that these figures are correct.
26. The unimproved value has therefore been calculated in the Schedule using those figures and the remaining agreed matters set down by the experts.

The Schedule

Lease-Original Term	99	
From	01-01-84	
Date of Valuation	10-03-16	
Capitalisation Rate	7.00%	
Deferment Rate	5.00%	
Relativity	90%	
Ground Rent		
1st Period	0.81	£50
2nd Period	33	£70
3rd Period	33	£100
Unimproved existing value	£157,500	

Unimproved Long lease Value £175,000

DIMINUATION IN VALUE OF LANDLORD'S INTEREST

Ground Rent Revived

1st Period		£50					
	YP	0.81	7.00%	0.7618		£38.09	
2nd Period		£70					
	YP	33	7.00%	12.7538			
	PV £1 def.	0.81		<u>0.9467</u>			
				12.07402		£845.18	
3rd Period		£100					
	YP	33	7.00%	12.7538			
	PV £1 def.	33.81		<u>0.1015</u>			
				1.294511		<u>£129.45</u>	
						£1,012.72	(a)
Reversion to Freehold Interest							
Unimproved Long lease Value		£175,000					
	PV £1 def.	66.81	5.00%	0.0384		£6,720	(b)
Freeholder's Present Interest						£7,732.72	(a+b)
Freeholder's Interest after grant of New Lease							
Unimproved Long lease Value		£175,000					
	PV £1 def.	156.81	5.00%	0.0005		<u>£87.50</u>	(c)
						£7,645.22	(d)=(a+b-c)

CACULATION OF MARRIGE VALUE

Value of FH interest after grant of New Lease:

Freeholder's Interest	£87.50	
Leaseholder's Interest	<u>£175,000</u>	
	£174,912.50	(e)

Value of Existing Interests:

Freeholder's Interest	£7,732.72	
Leaseholder's Interest	<u>£157,500</u>	
	£165,232.72	(f)
	Marriage Value	£9,679.78 (e-f)
	50%	£4,839.89 (g)

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Bruce Edgington
Regional Judge
18th January 2017

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.