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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LO/LON/OOBA/OLR/2013/0386**
Property	:	**9 Wimbledon Close, The Downs, London SW20 8HW**
Applicants	:	**Mr V. and Mrs A. Thirugnanendran (leaseholders)**
Representative	:	**Mr M. Hearsum, solicitor of Morris LLP solicitors with Mr M. Tibbats MRICS of Tibbats & Co Limited, chartered surveyors.**
Respondent	:	**Brickfield Properties Limited (competent landlords)**
Representative	:	**Mr R. Sharp BSc, FRICS who appeared as both an advocate and an expert witness at the hearing. He was instructed by Wallace & Co LLP, solicitors**
Type of Application	:	**Application for the determination of the premium payable made under section 48 Leasehold Reform, Housing and Urban Development Act 1993 (the 'Act')**
Tribunal Members	:	**Professor James Driscoll, solicitor (Tribunal Judge) and Mr John Barlow JP, FRICS**
Date and venue of Hearing	:	**6 August 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 September 2013**

DECISION

Summary of the decision

1. The premium payable for the acquisition of a new lease of the subject premises is the sum of £47,850 (Forty seven thousand, eight hundred and fifty pounds).

Background

2. This is an application for the determination of the price payable for the grant of a new lease of the premises (a flat) at 9 Wimbledon Close, The Downs, London SW20 8HW. The applicants, Mr and Mrs Thirugnanendran (the 'leaseholders'), made the application under section 48 of the Act on 21 March 2013. Standard directions were given by the tribunal on 10 April 2013.

3. The respondents to the application, Brickfield Properties Limited (the 'landlord'), hold a long intermediate lease of the premises (granted in 2010 for 999 years) containing the leaseholder's flat and they are the 'competent landlord' for the purposes of the claim (see: section 40 of the Act).

The claim for a new lease

4. A claim seeking the new lease was given under section 42 of the Act on or about 31 July 2012 and it proposed a premium of £37,811.00. It was given by the leaseholder's predecessors in title as part of the arrangements for the leaseholder's purchase of the flat in or about 31 July 2012. In response the landlords gave a counter-notice (under section 45 of the Act) dated 5 October 2012 admitting the claim. The counter-notice proposed a premium of £132,424 and attached to the notice was a draft of the proposed new lease.

5. As the parties could not agree on the price to be paid for the new lease an application was made as described above in paragraph 2 of this decision.

The hearing

6. At the hearing held on 6 August 2013 the leaseholders were represented by their solicitor Mr Hearsum. Their valuer Mr Tibbatts was also present to give his expert evidence. Both the leaseholders were present. The landlords were represented by Mr Sharp, a valuer, who told us that he was appearing in the dual capacity of advocate and as an expert witness. He was instructed by Wallace LLP the solicitors who act for the landlords. Each valuer had prepared valuation reports. On 5 August 2013 Mr Tibbatts sent a supplement to his report. One of the reasons he did this is that he decided to revise the proposed deferment rate to 5% following the decision of the

Upper Tribunal in the case of *Voyvoda v Grosvenor West End Properties and 32 Grosvenor Square Limited* [2013] UKHT 0334.

7. The subject flat (number 9, Wimbledon Close) is part of a purpose built development of 48 flats arranged as three blocks each on four floors. Flat 9 is on the second floor of one of the blocks. The lease was granted for a term of 99 years as from 29 September 1978. At the valuation date the unexpired term was 65.16 years. The current ground rent is £1,030 per annum following a rent review on 28 September 2011. The next review takes place on 28 September 2044 and it will be based on the yearly sum equivalent to a yearly sum representing 1/500th of the capital value of the flat at that date (or the yearly rent of £250 whichever is the greater sum).

Mr Tibbatt's evidence

8. After a brief opening statement Mr Hearsum called Mr Tibbatts to give his evidence. Mr Tibbatts gave his evidence on which he was cross-examined and on which he was asked questions by the tribunal. He was also re-examined by Mr Hearsum.

9. He told us that he now agreed that the valuation date is 2 August 2012 (the date on which the landlords received a copy of the section 42 notice). Mr Tibbatts also agrees that the appropriate deferment rate is 5% for valuing the freehold vacant possession value of the subject premises. These are the matters he raised in his supplemental report. In that report he also addressed the 'long lease value'. He relies on the sale of flat 11 in premises which sold on 23 July 2012 for £590,000 with the benefit of a new lease granted under the Act. In addition he referred us to the sale of Flat 27 where a sale at a price of £540,000 had recently been agreed in July 2013. This flat also has the benefit of a long lease. Mr Tibbatts added that applying a deferment rate of 5% produced the proposed premium of £37,500.

10. In his original report (dated 23 July 2013) he addressed the appropriate capitalisation rate for valuing the ground rent that the landlord will lose once the new lease is granted (as the new lease is at a nominal rent under section 56(1) of the Act).

11. He relies on an analysis of ground rent auction sales and he refers to analysis of flat sales in south west London. He concludes that the appropriate capitalisation rate is 7%.

12. Turning to the long lease values, he values the subject flat at £495,000 at the valuation date net of leaseholder's improvements and he applies an uplift of 1% to arrive at the freehold vacant possession value. In comparison to this he deals with the existing short lease value of the subject flat, noting that it sold in August 2012 to the leaseholders for the price of £485,000. They also paid the sum of £9,800 for a variation of the lease so as to include a 'mutual enforceability clause' (presumably a reference to a clause requiring the landlord to enforce covenants against all the leaseholders).

13. Following the Upper Tribunal decision in *Cadogan v Cadogan Square Limited* [2011] UKUT 154 he applies a discount to reflect the statutory rights under the Act and proposes an adjustment of 3.5%. Mr Tibbatts adopts a number of ways of assessing the effects of the Act and 'relativity'. He had regard to the average of LVT decisions (following the decision of the UT in the *Coolrace* decision [2012] UKHT 69; the fact that the leaseholders offered the sum of £460,000 to buy the flat in 2011 and he examines three previous decisions of this tribunal for Flats numbered 5, 30 and 47 Wimbledon Close where relativities of 88% were decided. He decides that a relativity of 87% should be adopted in this case. Mr Tibbatts also told us that he has advised on new lease claims for eleven flats in Wimbledon Close. In one of the appendices to his report he has a schedule with his analysis of the transactions he relies on.

14. Mr Tibbatts proposed a premium of £37,500. In his report and his oral evidence he refers to various opinions from Mr J. Keeble of Hamptons International. However, Mr Keeble was not, in the event, available to give evidence so we are unable to take his written statements into account.

15. Mr Hearsum then called Mr Thirugnanendran to give evidence as to the circumstances of the purchase of the flat. Mr Thirugnanendran told us that he and his wife decided to sell their house and buy a flat. They offered the sum of £460,000 in October 2011 but this was rejected. The following year though their revised offer of £485,000 was accepted. He was advised by the agents that this was a realistic price for the flat.

Mr Sharp's evidence

16. Mr Sharp gave evidence based on his report dated 28 July 2013. As to the value of the existing lease he applies an adjustment of 10% to reflect the existence of statutory rights under the Act. Applied to this case produces the figure of £435,585 at the valuation date.

17. On the issue of relativity he relies on a decision of this tribunal in previous case concerning different premises and on other LVT decisions on flats in other locations. He told us that there is no need to look at relativity graphs when there is compelling market evidence available. However, in the absence of such evidence he has decided that the graph used by LEASE (the leasehold advisory service) should be used in this case.

18. Mr Sharp concludes that the long lease value is £560,000 and that the appropriate relativity is 77%. He agrees that the deferment rate should be 5% but he argues that the capitalisation rate should be 5.5% to reflect the fact that ground rent reviews are linked to capital values.

19. Mr Sharp proposes that the premium to be paid should be the sum of £83,022. Like Mr Tibbatts he includes as an appendix to his written report showing the transaction evidence he relies on and how he has analysed it.

20. As both parties had provided very full sales literature (with photographs) of the properties referred to in their evidence we did not think

freehold reversion, one has to determine this value at the valuation date and then to defer it for the remaining term of the lease as this when the landlord would have vacant possession. On this issue the valuers agree that the deferment rate should be 5%.

26. We deal first with the capitalisation rate. On the basis of our own knowledge and experience we accept that it is usual to apply a rate of 7%. However, Mr Sharp makes a convincing point that the ground rent reviews in this case, related as they are to capital values, are more attractive to investors that the standard ground rent reviews which are usually fixed amounts in the lease. Accordingly we determine that the appropriate rate to be applied in this case if 6%.

27. Turning to the freehold vacant possession value of the subject property, we are to determine the diminution in value of the landlord's interest in the flat before and after the new lease is granted and the amount of the marriage value to be paid. One of the assumptions is that the value of any improvements carried out by the leaseholders is to be disregarded (in other words, the landlord should not benefit from any increase in the value of the property caused by it having been improved by the leaseholder, or a predecessor in title). We were not impressed by the leaseholder's evidence on this point. We agree with Mr Sharp that any works they have carried out are in accordance with their obligations in the lease. There was some information in a written statement made by Mr Keeble but he was not called to give evidence. We determine that there are no relevant improvements to be considered in this case.

28. As to values, we consider that the best evidence is that provided by the sales of flats in Wimbledon Close as this is market evidence. Suitably adjusted this is the best evidence on the market values at the valuation date. This is why we found the examples used by Mr Tibbatts the most compelling. We did not find Mr Sharp's evidence from other properties in a different location to the subject property helpful. As a result our decision on this aspect of the valuation, it is based on market evidence of transactions in this development.

29. It is noteworthy that the subject flat sold just before the valuation date with an unexpired term of 65.17 years for £485,000. We do not think that the additional premium payable of £9,000 for the lease variation is relevant to the valuation.

30. As noted above, number 11 Wimbledon Close (which is a 2/3 bed second floor flat) was recently sold for £590,000 with the benefit of a long lease and this was referred to in both sides' submissions. Mr Sharp also refers to numbers 19 and 35 (both ground floor flats) which were also sold on long leases in September 2009 and October 2011 respectively. In his view, the adjusted values as at August 2012 range between £481,000 and £540,000 as shown in his schedule. In his later submission, Mr Tibbatts refers to flats 21 and 27 which are currently under offer at £542,000 and £540,000 respectively as at June/July this year. Whilst these are not actual sales - which is obviously the best form of evidence - they do provide an

indication of the prices such flats with long leases are currently achieving in the market. Adjusting these figures back to August 2012 gives long lease values of around £490,000 (as set out in Mr Tibbatts' schedule).

31. Whilst acknowledging that there are differences in size and floor levels of these flats when compared to the subject property, it seems reasonable to the tribunal to use them as a basis for calculating a long lease figure as at the valuation date of August last year. We have, therefore, reached the conclusion that a figure of £515,000 is reasonable in the circumstances and have prepared my valuation using this approach. This is also the figure that was used in assessing the revised ground rent payable at the last review date in September 2011.

32. Having considered the expert's evidence on this point, on the whole we found Mr Tibbatts the more convincing an analysis. We have adopted a relativity figure of 88% (similar to the findings of previous determinations of this tribunal on flat claims in this development and consistent also with the sales evidence of the subject property) and on this basis the value of the leaseholder's existing lease comes out at £457,732. This figure is fairly close to the purchase price of £485,000 paid by the leaseholder last September adjusted by 5% to reflect the "no Act world". Mr Tibbatts in his submission believes a 3.5% allowance should be made against purchase price to reflect these rights whereas Mr Sharp in his report states that he usually values these at 10%. On the basis of our professional experience and knowledge we consider that, in principle, a 5% is reasonable deduction to take account of the existence of statutory rights.

33. To conclude the premium to be paid for the grant of a new lease is the sum of £47,850 (Forty seven thousand, eight hundred and fifty pounds).

34. A copy of our valuation is appended to this decision.

Judge James Driscoll and Mr John Barlow JP, FRICS
2 September 2013.

Flat 9 Wimbledon Close The Downs London SW20 8HW
Statutory Lease Extension
Valuation date 2nd August 2012

Gross internal floor area		1140 sq ft		
Existing lease value	£ 457,732.00			
Extended lease value	£ 515,000.00			
Notional freehold value	£ 520,150.00			
Unexpired term		65.16 yrs		
Relativity		88%		
Deferment Rate		5%		
Capitalisation Rate		6%		

Diminution in value of competent landlord's interest

Loss of rental income		£ 1,030.00	
YP 32.16 yrs @ 6%		14.107	
			£ 14,530.21
Loss of rental income		£ 1,030.00	
YP 33 yrs @ 6%	14.23		
PV £1 in 32.16 yrs @ 6%	0.15408		
		2.19	£ 2,258.34
Reversion to notional freehold		£ 520,150.00	
PV £1 in 65.16 yrs @ 5%		0.0416	
			£ 21,638.24
Less value of Landlord's proposed interest			
		£ 520,150.00	
PV£1 155.56 yrs @5%		0.0005	

		£ 260.08	
			£ 38,166.71

Marriage Value

Tenant's proposed interest	£ 515,000.00		
Landlord's proposed interest	£ 260.00		
		£ 515,260.00	
Landlord's present interest	£ 38,166.71		
Tenant's present interest	£ 457,732.00		
		£ 495,898.71	
		£ 19,361.29	
50% division of marriage value			**£ 9,680.64**
Lease Extension Premium			**£ 47,847.36**
			(say £47,850)