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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/OLR/2015/0315**
Property	:	**16A East India Dock Road, London E14 6JJ**
Applicant	:	**Mr Vivien Blossier**
Representative	:	**Stephensons, solicitors**
Respondent	:	**Dr Patrick Enechukwu**
Type of application	:	**Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	:	**Judge Timothy Powell** **Mr Duncan Jugger MRICS**
Date of determination and venue	:	**16 June 2015 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**13 July 2015**

DECISION

Summary of the tribunal's decisions

(1) The tribunal determines that the applicant is entitled to a lease extension of a further 90 years from the expiry of the current term of his lease, at a peppercorn rent and in the terms of the deed of variation at pages 88 to 95 of the applicant's bundle, at a premium of **£11,755**; and

(2) The tribunal declines to make an order for costs under rule 13 of the Tribunal Procedure Rules.

Background

1. This is an application made by the applicant leaseholder, Mr Blossier, pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the grant of a new lease of 16A East India Dock Road, London E14 6JJ (the "property").

2. By a notice of a claim dated 10 November 2014, served pursuant to section 42 of the Act, the applicant exercised the right for the grant of a new lease in respect of the subject property. At the time, the applicant held the existing lease granted on 1 December 1995 for a term of 99 years from 1 April 1995 at an annual ground rent of £100 per annum for the first 33 years, £200 per annum for next 33 years and £300 per annum for the remaining years of the term. The applicant proposed to pay a premium of £10,300 for the new lease.

3. By letter dated 29 November 2014, the respondent freeholder, Dr Enechukwu, served a counter-notice admitting the validity of the claim and counter-proposing a premium of £57,000 for the grant of a new lease.

4. On 9 February 2015, the applicant applied to the tribunal for a determination of the premium and the terms of acquisition of the extended lease.

5. In his counter-notice, the respondent gave an address in Düsseldorf, Germany, where he was living and an e-mail address. The tribunal sent a copy of the application to the respondent in Germany by letter dated 10 February 2015. In the absence of a request for a deferment by both parties, the tribunal issued directions for the conduct of the case on 25 February 2015, which directions were sent to the respondent by post in Germany and by e-mail.

6. The respondent failed to comply with directions despite reminders, so that, on 10 April 2015, notice was given pursuant to section 9(3) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, giving the respondent formal warning that he will be barred from taking any further steps in the proceedings if he failed to respond to the tribunal and to the applicant by 30 April 2015. The notice was again sent to the respondent both by post and e-mail.

7. In the absence of any reply, an order was made by the tribunal on 1 May 2015, barring the respondent from taking any further part in the proceedings.

The hearing

8. The hearing took place on 16 June 2015. The applicant was represented by Mr Chris Green, as agent for the applicant's solicitors, and Mr Jatinder Dhanoa, MRICS. There was no appearance by the respondent.

9. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination. The applicant's surveyors report contained eight clear photographs of the property and a floor plan.

10. The applicant relied upon the expert report and valuation of Mr Jatinder Dhanoa dated 15 May 2015.

11. In addition to seeking a determination of the premium and terms of the new lease, the applicant sought an order for costs under rule 13 of the Tribunal Procedure Rules in the sum £8,403.36 inclusive of VAT and disbursements, on the basis that the respondent had acted unreasonably in defending or conducting the proceedings.

The tribunal's determinations

12. The tribunal determines that the applicant is entitled to a lease extension of a further 90 years from the expiry of the current term of his lease, at a peppercorn rent and in the terms of the deed of variation at pages 88 to 95 of the applicant's bundle, at a premium of £11,755.

13. The tribunal declines to make an order for costs under rule 13 of the Tribunal Procedure Rules.

Reasons for the tribunal's determinations

14. The property is a two bedroom flat spread over raised ground and lower floors, located within four storey, mid-terrace 19th century building, housing three flats in total. The flat has sole access to and use of a very small courtyard at the rear, which is surrounded by a six foot brick wall and a door which leads to a rear public footpath. The flat is 65.6 square metres (706 square feet) in size. Access to the flat can be gained by the communal entrance to the building, directly from a narrow hallway which leads to a common staircase accessing the upper flats.

15. The property is located on the very busy arterial East India Dock Road, also known as the A13. It is close to the junction with West India Dock Road which leads into Canary Wharf, approximately three quarters of a mile away. The nearest public transport station is Westferry, which is

on the DLR line and provides very quick journey times into central London.

16. Mr Dhanoa utilised a capitalisation rate of 6% and a deferment rate of 5%, both of which are standard and both of which were accepted by the tribunal.

17. When considering the current long lease value of the flat, Mr Dhanoa explained that it has been very difficult to find suitable comparables. The area contains a lot of ex-council properties and lot of new, purpose-built flats in the area but not a sufficient number of similar properties to the subject flat. Mr Dhanoa had therefore approached the issue by considering four different methods, none of which, he said, was definitive of value. The first was a comparison method with other flats sold in the vicinity over the past 12 months. One of these had secure car parking and was in better condition, another was in a very modern purpose-built block of flats and a third was basement flat, with no information about lease length or condition. Mr Dhanoa agreed with the tribunal that these comparables were not really very good; and yet they were the best available.

18. The second method was to consider flats that were for sale both at the valuation date and also at the time of writing a report but, once again, one was in a purpose-built council block and the other was in a modern purpose-built block with over a 100 years remaining on the lease. His third approach was to index the actual purchase price of the subject flat, which the applicant had purchased in September 2012, utilising the Land Registry house price index for flats in Tower Hamlets. However, Mr Dhanoa accepted that the indexation figure is based on all types of flats in all locations within the borough, and so is not totally accurate. Lastly, he included within his report two valuations recently obtained from two local estate agents, who had both inspected the subject property.

19. Having considered all of these parameters, Mr Dhanoa valued the flat with a long lease at £317,500 and the tribunal, doing the best it can on the information that was provided and also relying upon its own general knowledge and experience of property prices in the area (but having no specific knowledge of any other potentially comparable property), accepted Mr Dhanoa's assessment.

20. With regard to relativity, Mr Dhanoa relied upon the graphs of relativity published by the Royal Institution of Chartered Surveyors (RICS) in October 2009, taking an average of the Knight Frank, John D Wood and Co and Charles Boston graphs (from the Prime Central London (PCL) relativities) and the Southeast Leasehold, Nesbitt and Co and Andrew Pridell Associates graphs (from the Greater London and England relativities).

21. When asked by the tribunal why he had included any PCL relativities at all, Mr Dhanoa answered that the area was not PCL, but it was walking distance to Canary Wharf and an investor would take that into account when valuing the property. In his view, the property should be treated as being somewhere between PCL and non-PCL and, therefore, he had given an extra percentage weighting to the non-PCL graphs. He had excluded graphs that related predominantly to properties on the south coast and he had also excluded the Beckett and Kay graph, because it contained mostly opinion evidence.

22. Taking the average of just the relevant Greater London and England graphs provides a relativity of 96.55%. The average of the relevant PCL graphs equates to 92.99%, so Mr Dhanoa reduced the relativity to 95.55%, to allow for the fact the location is not quite prime London, but is close to Canary Wharf and has good transport links.

23. The tribunal was satisfied that Mr Dhanoa had prepared a thorough report on the basis of the material before him and that he had dealt with all of the issues in a transparent and measured way. Accordingly, the tribunal was willing to accept and endorse his assumptions and findings and to approve his valuation for the premium in the sum of **£11,755**.

24. The terms of the lease extension, namely 90 additional years at a peppercorn rent on the same terms save as to rent as the existing lease, are specified by statute and are uncontroversial. The terms of the draft deed of variation at pages 88 to 95 of the applicant's bundle reflect the statutory provisions and, for this reason, were approved by the tribunal.

Rule 13 costs application

25. The complaints made by the applicant were that: the respondent had not engaged with the proceedings; he had failed to comply with any directions; he had failed to provide a proper valuation and/or enter into any meaningful negotiations; and, as a result, the applicant had incurred significant costs, not only of a hearing but also in requiring Mr Dhanoa to attend the hearing. All of those costs could have been avoided if the respondent had taken his own advice, participated and/or negotiated.

26. The relevant parts of rule 13 of the Tribunal Procedure Rules are as follows:

> **13.**—(1) The Tribunal may make an order in respect of costs only— [...] (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—[...](iii) a leasehold case; [...]

27. While the tribunal is satisfied on the balance of probabilities that the application and the tribunal's directions must have come to the attention of the respondent, and while it deprecates the failure of the respondent to engage with the proceedings, the tribunal declines to make a rule 13 cost application for four reasons:

(i) The tribunal is first and foremost a no-cost jurisdiction;

(ii) In the circumstances of this case, the respondent does not fall within the definition rule 13(1)(b), because he cannot be said to have "acted", whether unreasonably or otherwise, in "defending or conducting proceedings" - because he took no part in them whatsoever;

(iii) If the respondent had engaged with the proceedings to a full extent and had fought the matter through to a hearing, but lost because he had a weak case, that would have been his right under 1993 Act; and the failure of the weak case, in itself, would not have amounted to acting unreasonably in defending or conducting proceedings; and

(iv) The sanction applied for the respondent's non-cooperation was being barred from taking any further part in the proceedings with effect from 1 May 2015, at which point a determination of the tribunal became inevitable; and it is not appropriate to visit a further sanction on the respondent in the form of a costs order after the barring order had been made.

The premium

28. The tribunal determines the appropriate premium to be **£11,755**. A copy of the approved valuation calculation is annexed to this decision.

Name: Judge Timothy Powell **Date:** 13 July 2015

Appendix: Valuation setting out the tribunal's calculations

16A East India Dock Rd, E14 6JJ

VALUATION UNDER THE 1993 ACT (as amended)

Valuation Date:	20 November 2014	2014	Capitalisation Rate	6.00%	Unexpired term on leases	79.36 years	169.36 years		
No.Flats in Building	3 Flats		Deferment Rate	5.00%	Schedule of Flat Values	Short Lease Values	Extended lease values (+ 90 years)	Freehold VP values assuming share of freehold	Relativity
No. Flats participating	1				Flat 1	£303,213	£317,500	£320,875	94.50%

Note: affects the marriage value calculation as the value of the property will be improved by the assumed increase in market value of the flats of the participating leaseholders only.

INPUT FIELDS | CALCULATED CHECK FIELDS

Lease Type A	Lease start date	01/04/1995	1995	Start year
	Term (in years)		99	Term
	Lease expiry date	31/03/2094	2094	Expiry Year
	Review pattern (frequency in years)		33	(if fixed ground rent ENTER length of lease)
	No. years unexpired at valuation date	79.36 years		

		Total pattern of rent reviews	Year of Rent Review falls due	No. years rent at this level
Initial ground rent	£100.00 pa	1995	1995	14
Ground rent 2nd period	£200.00 pa	2028	2028	33
Ground rent on 3rd period	£300.00 pa	2061	2061	33
Ground rent on 4th period	£0.00 pa	2094	2094	0
Ground rent on 5th period	£0.00 pa	No further revw	2127	0
Ground rent on 6th period	£0.00 pa	No further revw	2160	0
		No further reviews		
		Test cell No. years unexpired at valuation date		80 Years

FREEHOLDERS INTEREST IN THE PREMISES AS DETERMINED IN ACCORDANCE WITH PARA 3

TERM

Ground rent for underlease		14 years		£100 pa			
Years purchase	on PASSING GROUND RENT	14 years	6.00%	x	9.294983927	£929	
Ground rent for underlease				£200 pa			
Years purchase	RENT 2ND PERIOD	33 years	6.00%	x	14.23022961		
PV £1 deferred		14 years	6.00%	x	0.442301	£1,259	
Ground rent for underlease				£300 pa			
Years purchase	RENT 3RD PERIOD	33 years	6.00%	x	14.23022961		
PV £1 deferred		47 years	6.00%	x	0.064636	£276	
Ground rent for underlease				£0 pa			
Years purchase	RENT 4TH PERIOD	0 years	6.00%	x	0		
PV £1 deferred		80 years	6.00%	x	0.009452	£0	
Ground rent for underlease				£0 pa			
Years purchase	RENT 5TH PERIOD	0 years	6.00%	x	0		
PV £1 deferred		0 years	6.00%	x	1.000000	£0	
Ground rent for underlease				£0 pa			
Years purchase	RENT 6TH PERIOD	0 years	6.00%	x	0		
PV £1 deferred		0 years	6.00%	x	1.000000	£0	
							£2,464

REVERSION

DIMINUTION IN THE VALUE OF THE FREEHOLDERS INTEREST

LOSS OF CURRENT REVERSION TO CAPITAL VALUE

Reversion to Capital Value (Sum of values assuming Freehold shareholders)				£320,875	
PV £1 in	0 at	79.36 years 5.00%	x	0.020803	
TOTAL REVERSIONARY LOSS TO FREEHOLDER				PRESENT REVERSION	£6,675

TOTAL DIMINUTION IN VALUE

TERM	Loss of ground rental income	£2,464
REVERSION	Present reversion	£6,675
	DIMINUTION IN VALUE TO FREEHOLD INTEREST	£9,139

LANDLORD'S SHARE OF MARRIAGE VALUE AS DETERMINED IN ACCORDANCE WITH PARA 4

New 999 year lease at a peppercorn rent with vacant possession — NB: Do not enter values where leases are over 80 years

SUM OF VALUES OF PROPOSED INTERESTS

Present Value of Future Reversion to future Capital Value to Freeholder					
PV £1 in	0 at	169.36 years 5.00%	x	£320,875 0.000258	
					£82.88
Improved value of Notional 999 year lease Extended Lease type A value		£317,500			£317,500.00
					£317,583

LESS EXISTING INTERESTS

Value of Freeholder's interest	£9,139	
Existing lease value Short lease value	£303,213	
		£312,352

MARRIAGE VALUE (Difference between sum of values of the proposed interests & sum of values of existing interests)

NOTES: for leases > 80 years unexpired marriage value is set in statute at NIL POUNDS

Marriage Value	£5,231
Freeholder's Share of Marriage Value — 50% of marriage value	£2,616

PREMIUM DUE — Premium due to Freeholder

Diminution in value of freehold interest	£9,139	
Proportion of Landlord's share of Marriage Value	£2,616	£11,755
		£11,755

We are therefore of the opinion that the premium payable in accordance with the requirements of the Leasehold Reform, Housing and Urban Development Act 1993 at the valuation date is

£11,755	Eleven thousand seven hundred and fifty five pounds