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HM Courts & Tribunals Service

RESIDENTIAL PROPERTY TRIBUAL SERVICES

LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL

CASE NUMBER: CAM/26UC/OLR/2011/0073

IN THE MATTER OF LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 SECTIONS 48 AND 91(2)(d) ("the Act") as amended

PREMISES:	63, MORTIMER HILL, TRING, HERTFORDSHIRE, HP23 5JA.
PARTIES:	
Applicants:	TREVOR ALEXANDER SAWYER & MARIA ANGELES IBOS TUDELA
Appearances:	Mr G Loughran MRICS
Respondent:	E & S PROPERTY TRADING CO LTD
Appearances:	Mr J Naylor MRICS
Date of Application:	26th August 2011
Date of Hearing:	7th December 2011
Tribunal:	Mrs H C Bowers BSc(Econ) MRICS MSc(Chair) Miss M Krisko BSc(Est Man) BA FRICS Mr J J Sims LLM
Decision Date:	11th January 2012

DECISION

The premium payable for the lease extension of 63, Mortimer Hill is £22,727. The full explanation as to the various components that make up this figure are found in the reasons below.

REASONS

A. BACKGROUND

1. This is an application under s48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), seeking a determination of the terms for a lease extension of 63, Mortimer Hill, Tring, HP23 5JA (the subject property). The application was made to the Leasehold Valuation Tribunal on 26th August 2011.

2. T A Sawyer and M A I Tudela (the Applicants) served an initial notice under section 42 of the Act on E & S Property Trading Co Ltd (the Respondent) dated 5th January 2011. The Respondent served a counter notice upon the Applicants under section 45 of the Act dated 4th March 2011.

B. INSPECTION

3. The Tribunal carried out an inspection of the subject property on 7th December 2011, prior to the hearing, in the company of Mr Sawyer and Mr Loughran. The subject property is a ground floor maisonette situated in a purpose built block of four maisonettes. The block is located in a development of several similar properties and appears to date from the 1960's.

4. The accommodation of the subject property comprises a living room leading onto a kitchen, two bedrooms and a family bathroom. The property currently benefits from central heating. There is UPVc double glazing to the rear of the maisonette, but the front facade has the original glazing with the addition of secondary glazing. The kitchen and bathroom have been refurbished.

5. The maisonette has a rear garden adjoining the property. A pathway from the side of the block leads to a rear communal parking area with two blocks of garages. We made an external inspection of the garage for the subject property and noted it was in poor condition. The rear parking area and access road consist of an unattractive and very poorly maintained rough surface.

C. HEARING

6. A hearing was held on 7th December 2009 in Tring. The Applicants were represented at the hearing by Mr Loughran. The Respondent was represented at the hearing by Mr Naylor.

D MATTERS AGREED

7. The issue outstanding between the parties is in respect of the premium to be paid for the lease extension for the subject property. The following matters have been agreed between the parties:

- Valuation Date 5th January 2011
- Unexpired term 49.73 years
- Capitalisation rate 7%
- Respondent's section 60 costs of £2,340
- New lease terms

E MATTERS IN DISPUTE

8. The following matters are in dispute between the parties and required the determination of the Tribunal:

- Deferment rate. The Applicants originally contended 6.25% and this was altered in the hearing to 6.5% and the Respondent originally contended 5.25%, but at the hearing this position was changed to 5%
- Value of extended lease. The Applicants contend £145,000 and the Respondent contends £162,800
- Relativity. The Applicants contend 83% relativity and the Respondent contends an existing lease value of £115,500.

9. The position of both experts varied during the course of the hearing and as a consequence both experts submitted amended valuations. The total premium suggested by the Applicants was £14,912 and the total premium proposed by the Respondent was £30,900.

10. The Tribunal had received a bundle of papers which included the Application, relevant notices, the Directions, a copy of the original lease, the proposed lease and expert reports from Mr Loughran and Mr Naylor. This bundle had been read by us in advance. Both experts spoke to their reports. We have had full consideration to the evidence and submissions made by both parties and a brief summary of each case is presented below.

F APPLICANTS' CASE

11. Mr Loughran explained some background to this case and stated that there was another case that could have been heard with the present case, but the Respondent had objected to both cases being considered together. It was requested that the Tribunal make a decision on all relevant matters so as to avoid future cases on the estate coming to a LVT hearing.

12. Deferment Rate

Mr Loughran started at a deferment rate of 5% following from the Sportelli decision and acknowledged that any departure from that rate would require compelling evidence. He then considered the decision in Zuckerman v Trustees of the Calthorpe Estate [2009] which adopted a deferment rate of 6%. Following the issues that were raised in the Zuckerman case it was proposed that the additional factor for obsolescence should be 0.25% based on the opinion that in Prime Central London (PCL), in contrast with out of London areas, a building would have a longer economic life. Regarding growth rates an additional 0.75% should be added and it was stated that growth rates outside of PCL would be slower. There is no access to 50 years data, so Mr Loughran had considered the Land Registry indices covering a 16 year period. It was considered that the LB of Kensington and Chelsea should be considered in contrast to the Birmingham and Hertfordshire data. The data suggests an indices of 465.4 for LB Kensington and Chelsea, 233.8 for Birmingham and 303.5 for Hertfordshire. However he considered that the Hertfordshire data had flaws and some consideration should be given to the figures for Buckinghamshire and Central Bedfordshire. In respect of the management responsibility, this was a development that was particularly vague in respect of management responsibility and as such this would be reflected in the deferment increasing it by a further 0.5%. All these factors gave a total deferment rate of 6.5%.

13. Value of Extended Lease

There are four relevant transactions to assist in the determination of the extended lease value. In particular Mr Loughran had consideration of 59, Mortimer Hill that had sold for £154,000 in January 2010 for a 118 year lease. This maisonette had the benefit of a fitted kitchen, central heating and double glazing, although it had no garage but just a car space in the rear yard. The sale price had been adjusted to reflect the improvements and a figure of £9,000 was deducted. It was concluded that the value of an extended lease for the subject property would be £145,000. Mr Loughran suggested that the correct valuation approach was to make adjustments for non-physical factors first.

14. He suggested that a garage only has value if adjacent to a property. In this case the garage is in a block and due to security issues and lack of proximity it had limited value. The garage is in poor order, it has an asbestos cement roof and that the eventual refurbishment costs will be excessive. In his opinion the garage has little value and he considers the approach taken by Mr Naylor as being incorrect.

15. Mr Loughran also stated that in his opinion the data relating to increases in value between any transaction date and the valuation date should be treated with caution as there were some discrepancies in the statistics.

16. The other transaction that Mr Loughran considered included 14a Miswell Lane which sold in February 2011 for £152,000 – this had the benefit of a garage and was located above a retail unit; 1 The Orchards which sold for £166,500 in June 2010 – although the unexpired term was 79 years, he considered that the market made little difference in value, it was noted that this property had three bedrooms; 11 Verney Close which sold for £161,000 in January 2011 and 4 Verney Close which sold for £165,000 in January 2011. However, he then explained that he had placed little reliance upon the comparables in excess of £160,000 – in respect of the Verney Close properties, these were in a similar location, but it was suggested that these maybe better quality flats.

17. Mr Loughran explained that there had been a number of lease extensions granted, but only one had proceeded within the provisions of the Act. In most cases there had been no professional advisers and he was concerened that there was a Delaforce effect that was pushing the premiums up to a higher level.

18. Relativity

Mr Loughran stated that following the decision in Arrowdell, he had used the RICS research document "Leasehold Reform: Graphs of Relativity" to assist him in the appropriate relativity figure to adopt in this case. He considered that the five graphs for the companies for Greater London and England had several weaknesses. The Beckett and Kay graph was produced from mortgage dependent evidence; South East London only considered data from Beckenham and the London Borough of Bromley; Nesbitt and Co used data from transactions where they acted for the landlord in 80% of the cases; Austin Gray related to information in the Brighton and Hove area and Andrew Pridell's figures were produced from the South East and suburban London and in 90% of their cases, acted for the tenant. Accordingly, Mr Loughran was reluctant to use these graphs. His preference was for the CEM report that examined LVT decisions and the data produced by the Leasehold Advisory Service, again using LVT decisions. He stated that although the data was compiled in 2002, he still felt that it was relevant. From these two sources he considered that the relativity to be adopted in this case should be 83%.

19. Mr Loughran suggested that the approach taken by Mr Naylor in respect of relativity was wrong. The sale transaction of the subject property, upon which Mr Naylor had relied had to be considered with caution as it was a probate sale.

G RESPONDENT'S CASE

20. Deferment Rate

Mr Naylor's initial approach was to adopt the 5% from Sportelli and then to add a further 0.25% following the Zuckermann case for the more onerous management regime. However, upon reflection he considered that as the freeholder had no repairing obligations for the property that this uplift was not required and therefore a rate of 5% should be adopted in this case.

21. In response to Mr Loughran's approach to the growth element within the deferment rate, Mr Naylor suggested that the data adopted by Mr Naylor to support different growth rates, showed significant higher growth in the locality than in Birmingham. Regarding obsolescence, he considered that the property shows no sign of obsolescence and that there was sufficient, anticipated capital growth that the property would be physically maintained.

22. Value of Extended Lease

Mr Naylor considered four transactions in Mortimer Hill and Mortimer Rise, but acknowledged that three transactions occurred over three years prior to the valuation date. Reliance was placed on 59 Mortimer Hill that sold for £154,000 in January 2010. This figure was adjusted to reflect that the comparable had no garage, £6,000; the transaction occurred a year prior to the valuation date, £8,800 and that the comparable was in an improved condition, £6,000. This provided Mr Naylor with a long lease value of £162,800, which was then adjusted by 1% to reflect the difference between the long lease and freehold value, producing a freehold value of £164,428.

23. Relativity

Mr Naylor considered that it would only be appropriate to use the relevant graphs and supporting data when there is no transactional information available. In this case the evidence of the market is available with the sale of the subject property at the valuation date. The property was sold with the benefit of a notice. Accordingly, in a "No Act World" it would suggest that the sale price of £120,000 would have been further reduced. A deduction of £4,500 was made to reflect improvements, giving an unimproved short lease value of £115,500.

H DECISION

24. Deferment Rate

In respect of the deferment rate we noted the evidence supplied by Mr Loughran to demonstrate a lower growth rate in this particular area as in comparison to the PCL. However, the difference in growth rate was not as significant as demonstrated in the Zuckerman case and accordingly this Tribunal considers that a figure of 0.25% should be added to the base deferment rate to reflect differences in growth patterns. Although it could be argued that the management involvement in this development is not too onerous, the consequence of the inadequate lease structures means that there would be a higher degree of risk of obsolescence. The Tribunal consider that an investor would adjust their bid accordingly and we are of the opinion that the appropriate adjustment should be 0.5%. Accordingly, taking these issues into account we determine that on the facts of this case a deferment rate of 5.75% would be appropriate.

25. Value of Extended Lease

Both the experts have placed reliance on the transaction concerning 59 Mortimer Hill that occurred a year prior to the valuation date. We agree with Mr Loughran that in this particular case the garage of the subject property adds very little to the value of the subject property, taking into account its location from the flat and also the physical condition of the block and the access road. We do think that it is appropriate to adjust the transaction price for 59 Mortimer Hill to take account of the passage of time and the unimproved condition of the subject property. Taking these issues into account we consider that the extended lease value for the subject property is £152,000. As a further check we did consider the contemporaneous transactions at Verney Close. These properties are in a slightly newer development with garages in a well-kept block, are apparently in good condition and in a more attractive and quieter location, set in pleasant communal gardens with a fully made-up and maintained access road. It was noted the capital values for these two maisonettes averaged to £163,500 and adjusted for the above factors we consider that this supports a long lease value of £152,000 for the subject property.

26. Relativity

Whilst we did consider that the transactional information relating to the sale of the short lease value of the subject property on the valuation date was useful, we considered that it would be inappropriate to rely solely on this information. We do find the RICS research document of some assistance, but considered that Mr Loughran had been very selective in respect of the data he used. We do not feel it appropriate to use the CEM report and the Leasehold Advisory Service data as these databases are compiled using LVT decisions and without a thorough investigation of the information surrounding those decisions. The other five graphs relating to Greater London and outside of London are compiled using a number of sources of data and these differing sources help to balance out any particular bias. Using an average of the five Greater London and England graphs the relativity that the Tribunal consider appropriate is 76.4%.

17. If a various elements are applied to the valuation, then a total premium of £22,727 is calculated as the price payable for a lease extension. A copy of the Tribunal's valuation is attached to this decision.

Chairman .... Date ...16th.........January 2012

LVT VALUATION – 63 MORTIMER HILL, TRING, HP23 5JA

Matters Agreed

Lease terms
Valuation date 5th January 2011.
Unexpired term 49.73 years
Term yield 7%
Value of term £152.05

Matters Determined

Deferment yield 5.75%
Relativity 76.4%
Value of unimproved extended lease £152,000
Value of unimproved existing lease £116,128

Term

Value agreed	£152	

Reversion

£152,000 PV 5.75% 49.73 years 0.062042		£9430
Landlord's interest		£ 9,582

Marriage Value

Extended lease	£152,000	
Less existing lease	£116,128	
Less landlord's interest	£ 9,582	
	£26,290	
50%		£13,145
Premium		£22,727