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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAF/OLR/2013/1010**
Property	:	**70 ANDACE PARK GARDENS WIDMORE ROAD BROMLEY BR1 3DH**
Applicant	:	**MARIA MERCEDES FERNANDEZ**
Representatives	:	**Mr Peter Morgan of Morgans**
Respondent	:	**JONATHAN HOWARD ROBERTS & JANET ANN THAIN**
Representative	:	**Jonathan Roberts on behalf of the Respondents**
Type of Application	:	**Lease extension under Section 48 Leasehold Reform Housing and Urban Development Act 1993**
Tribunal Members	:	**JUDGE T I RABIN** **Ms MARINA KRISKO BSc (Est Man) BA FRICS**
Date and venue of Hearing	:	**19th November 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25th November 2013**

DECISION

INTRODUCTION

1. By a notice dated 8th April 2013 the Applicant is the long leaseholder of 70 Andace Park Gardens Widmore Park Bromley BR1 3DH ("the Flat") gave notice to the Respondents of her desire to exercise her right to acquire an extended lease of the Flat from the Applicants under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

2. The claim was admitted by counter notice from the Respondent dated 22nd April 2013 and the Applicant subsequently made an application to the First Tier Tribunal (Property Chamber) ("the Tribunal") for the determination of the price payable for the extended lease and the terms of the new lease pursuant to the Act. The only matter identified as not agreed in the counter notice was the price for the extended lease.

REPRESENTATIONS

3. At the hearing before the Tribunal on 19th November 2013 the Applicant was represented by Mr Peter Morgan, FRICS MCIArb of Morgans Chartered Surveyors. The Respondent was represented by Mr Jonathan Roberts on behalf of himself and the other Respondent. Mr Roberts is a qualified but non-practising lawyer with experience in the management of property. Both representatives appeared as advocates and Mr Morgan was also an expert witness.

4. The following matters were agreed between the Applicant and the Respondent in relation to the Flat:
   - The valuation date of 8th April 2013
   - Current ground rent of £358.68 per annum
   - Unexpired term of 71.764 (say 72) years
   - The gross internal floor area of 209 sq ft

5. The following matters remain in dispute between the Applicant and the Respondent in relation to the Flat:

   - Value of improvements
     Applicant contends £2,500
     Respondent contends £5,000
   - Value of existing leasehold interest
     Applicant contends for £145,328
     Respondent contends for £160,000
   - Relativity
     Applicant contends for 93.76%
     Respondent contends for 88%
   - Capitalisation rate
     Applicant contends 7%
     Respondent contends 5%

- Deferment rate
  Applicant contends 6%
  Respondent contends 5.25% (stated at the hearing)
- Value of extended lease
  Applicant contends £155,000
  Respondent contends £187,160

6. The valuation report by Mr Morgan on behalf of the Applicant and the statement and valuation by Mr Roberts on behalf of the Respondents were both before the Tribunal. Mr Roberts altered his view on the level of the deferment rate during the hearing and altered his valuation in manuscript. He was asked to send the Tribunal a clean copy within 7 days.

THE HEARING

7. The hearing was set down for 10 am on 24th April 2012. Mr Morgan did not submit a bundle until the afternoon prior to the hearing and Mr Roberts brought his bundle to the hearing. The Tribunal were obliged to delay the start of the hearing for half an hour in order to have time to read the written submissions. It would have assisted the Tribunal greatly had both of the parties adhered to the direction given by the Tribunal as these are to ensure smooth running of the hearing.

8. Mr Morgan described the Flat as being located in one of two blocks comprising 8- flats with a petrol garage between. The Flat in common with all the other flats in Andace Park Gardens aforesaid ("the Block") has the benefit of a private swimming pool and gymnasium held under the terms of an amenity lease where the landlord has the right to allow the residents to use the facilities upon payment of an amenity rent of £10,000 per annum divided between the long leaseholders. This rent increases annually in accordance with any increase in the Index of Retail Prices. The amenity lease expires at the same time as the existing lease of the Flat.

9. The Flat comprises one bedroom, kitchen bathroom and living room. Neither Mr Morgan nor Mr Roberts appeared to have inspected the interior and no description of the internal condition was provided.

10. Mr Morgan stated that he and Mr Roberts had agreed 29 sales of flats in the Block and that the price agreed was £18,510 for 2 bedroom flats including legal and valuation fees and £13,500, including fees for one bedroom flats. On the basis that the fees were £1,000, he would put the actual figure paid as £12,500.

11. Both representatives pointed out some unusual feature of the Flat lease:
    - The fact of the amenity lease and the liability to pay an annual sum which increases by the RPI
    - There is an obligation to pay a premium of 1% of the sale price plus VAT on the sale of the Flat
    - The fact that the ground rent increases every 21 years in accordance with any increase in the RPI

- The level of rent may exceed the prescribed sum as referred to in Section 167(1) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") restricting the landlord's right of re-entry.

12. Mr Morgan took the view that these matters referred to should only be taken into account on the sale of a freehold, as the landlord will continue to receive the 1% premiums when the flats are sold and that the loss to be considered is the annual income by way of ground rent. Mr Roberts said it was necessary to consider what an investor would pay for a bundle of rights and that at least 5% would be paid for the unusual issues which made the investment attractive.

13. The Tribunal will deal with each of the issues in dispute separately as follows:

Improvements

14. Mr Morgan said that in the past he had agreed a figure of £2,500 as a suitable adjustment for improvements. He was unable to specify in detail what improvements had been undertaken but said that there was a new kitchen and bathroom, central heating and double glazing. He also said that, since the Block was built in the 1980s, there would not have been central heating or double glazing and the kitchen and bathroom would have been very old-fashioned. Mr Roberts denied that he had agreed a global figure of £2,500 with Mr Roberts and considered that £2,500 would be appropriate for a one bedroom flat.

The Tribunal's decision

15. The Tribunal considers that it is essential that evidence of improvements and the cost incurred is provided but none was provided and the parties were unable to agree a figure for improvements. Both parties had provided a list of recent sales in the Block from which it can be noted that there has been no substantial increase in the price realised for a one bedroom flat in the Block since 2010. All the sales considered were of unextended leases and they sold between £158,000 and £165,000. Only one was at a higher price (Flat 55) and the Tribunal can assume that this was improved. Both Mr Morgan and Mr Roberts indicated that all the flats in the Block had been modernised but, in the absence of any evidence of improvements or any comparisons with other flats in the Block, the Tribunal will value the Flat as unimproved. Having said that, **the Tribunal agrees that a figure of £2,500 would be a more realistic reflection of the value of improvements in a one bedroom, one bathroom flat.**

Value of existing leasehold interest

16. Mr Morgan relied upon the sale of flats in the Block. The latest sale was of Flat 37 in June 2013, two months after the valuation date. This was for an extended lease and was sold for £162,500. Flat 55 was sold in December 2012 for £164,000 with an unextended lease. In Mr Morgan's opinion the prices had risen since the valuation date and that a figure £145,328 was the

value of the existing lease as at the valuation date, having allowed £5,000 for improvements.

17. Mr Roberts referred to a sale in 2011 for £175,000 for an unextended lease. He also made reference to sales in The Oasis, a similar block of flats right opposite the Block where a one bedroom flat sold for £166,000 in September 2013. On that basis Mr Roberts valued the existing leasehold interest in the Flat at £160,000 as at the valuation date, having allowed £2,500 for improvements.

The Tribunal's decision

18. The Tribunal were surprised that neither representative had provided any evidence regarding the value of improvements since there was no agreement. When question both admitted that they had not inspected the comparables and had no evidence as to their condition. In addition, they had failed to provide sales particulars which may have shed some light on the internal condition of the comparables. They were unable to say whether any of the comparables had been improved or modernised or, indeed, why the sales values differed between the various flat sales. This made it difficult for the Tribunal to make any decision regarding the effect of any improvements.

19. The Tribunal did not find the comparable in The Oasis helpful in the light of the numerous comparable in the Block. The Tribunal will always prefer comparables that are as similar to the subject as possible and sales in the Block over a reasonably short period are preferable. The most recent unextended lease sales varied between £158,000 and £164,000. Both representatives stated that the flats had all been improved and **the Tribunal will therefore adopt a figure of £159,000 as the existing lease value as at the valuation date.**

Relativity

20. Mr Morgan referred to a decision of the Tribunal in relation to 21 Andace Park Gardens in August 2011 where the Tribunal decided that the relativity should be 90% for an unexpired term of 74.39 years. This was as a result of using the Beckett & Kay mortgage dependent graph in the RICS graphs of relativity ("Relativity Graphs"). Mr Morgan used an average of the relevant Relativity Graphs he considered were applicable to the Flat and arrived at a figure of 93.76%.

21. Mr Roberts pointed out that the Tribunal had used a relativity rate of 95% for an unexpired term of a little over 8- years in a decision dealing with a number of flats in The Oasis in November 2008. Mr Roberts took the view that the mortgage dependent graph was appropriate, as purchasers would always need mortgages and were always interested in the cost of a lease extension. He produced an extract from the Council of Mortgage Lenders Handbook which showed that many lenders would seek a term of 70 years from the date of the mortgage. In his view, short leases are becoming less

valuable and that a relativity of 88% would be appropriate, using the Becket and Kay mortgage dependent graph as updated.

The Tribunal's decision

22. The Tribunal is not bound by earlier Tribunal decisions. The Tribunal prefers Mr Morgan's approach of using the average of all the relevant graphs but would exclude the graph prepared by LEASE as it uses Tribunal decision and these are not appropriate. **According the Tribunal will adopt a relativity percentage of 93.7%**

Capitalisation Rate

23. Mr Morgan suggested that a figure of 6% would be appropriate to compensate the Respondents for the loss of their ground rent income. They would continue to receive the premiums on any sales and would grant licences to assign at a cost. The amenity lease and the right to use the swimming pool and gymnasium were not to be considered.

24. Mr Roberts view is that the capitalisation rate should reflect what an investor would be prepared to pay for a bundle of rights. His opinion was that an investor would pay 5%. In his view the right to use the swimming pool and gymnasium was enshrined as a right in the lease. It was because of this that the amenity lease and the freehold have always been in common ownership. The form of lease agreed between the respective solicitors envisages that these amenities would be used beyond the expiry of the amenity lease.

The Tribunal's decision

25. The Tribunal does not place the same importance on the unusual provisions in the lease as Mr Roberts. The amenity lease is by way of a commercial lease and does not come under the jurisdiction of the Tribunal. As a commercial lease the annual increase in the rent by applying the RPI is to be expected. This is outside the jurisdiction of the Tribunal and no adjustment will be made. The Tribunal does not find it uncommon to find leases with ground rents that double at regular intervals and are to be found in the market. There is no market evidence before the Tribunal to show that Mr Roberts' suggestion that the rent provisions in the lease would affect the capitalisation rate.

26. The Tribunal considers that the point under Section 167(1) of the 2002 Act is too remote to affect the level of yield and the requirement for licence to assign the lease and to control management and insurance are normal and would not attract any further investment. The only issue that would be attractive to an investor would be the right to collect 1% premium on any sale.

27. Taking all these matters into account the Tribunal considers that the figure proposed by Mr Morgan is too generous and the figure proposed by Mr

Roberts is unrealistic. **The Tribunal adopts a capitalisation rate of 5.5%.**

Deferment Rate

28. Mr Morgan relied on the decision of the earlier Tribunal in 21 Andace Park Gardens where the Tribunal used the **Sportelli** rate of 5% as the starting point and making the adjustments described in **Zuckerman & Others v Trustees of the Calthorpe Estates [2009] UKUT 235 (LC),** arriving at a deferment rate of 5.75%. In his view the price of properties in Bromley had not increased at a substantial rate compared with PCL properties. He produced a schedule of sales in Bromley and Kensington and Chelsea for the period 1995 to 2013 from which it was apparent that the rate of growth in values was considerably higher in Kensington and Chelsea than in Bromley and that this justified the addition of .25% to the **Sportelli** rate and he proposed a deferment rate of 6%.

29. Mr Roberts stated that the situation had changed considerably following the case of **Daejan Investments Ltd v Benson & others (2013) UKSC 14** since this had eased the situation for landlords. Since land values in Bromley were high, it followed that the owners of flats in the Block would maintain the flats to preserve their investments and that this was no different from a PCL area. In his view the appropriate rate was .25% above **Sportelli** and he adopted 5.25%.

The Tribunal's decision

30. **Sportelli** fixed a deferment rate and **Zuckerman** subsequently identified factors that could lead to a higher deferment rate. The Tribunal has applied the principles laid out in **Zuckerman** and has come to the following conclusions

31. Firstly, where there is expert evidence of an increased risk of obsolescence not reflected in the market value of the Flat, there could be an adjustment. The case of **Sportelli** dealt with high value properties in Cadogan Square that had been standing for a considerable period of time. The Block was built 30 years ago and is of a very different type to the properties in Cadogan Square. This is a type of property that will be demolished and rebuilt in the fullness of time, as it will not be economically viable to continue to maintain it. The Tribunal considers that an addition of .25% to the **Sportelli** rate would be appropriate.

32. Secondly, there is the question of expert evidence of future long term growth. Mr Roberts has provided a schedule showing the comparable growth rates in Kensington and Chelsea that highlights the difference between the two areas. Mr Roberts has produced a schedule of sales in the Block since 2007 and this demonstrates that there has been little or no movement in the prices achieved. The Tribunal considers that an increase of .25% to the **Sportelli** rate would be appropriate to reflect the lack of substantial long term growth.

33. The last point considered was whether the provisions of the Service Charges (Consultation Requirements) Regulations 2003 would have an adverse effect on the landlord's ability to recover costs It was found to be "potentially extremely serious for landlords" and that an adjustment of .5% was appropriate.

34. The Regulations were imposed to protect tenants from unscrupulous landlord but the effect has been that tenants are readier to seek to avoid payment as a result of some technical breach of the regulations. This has been recognised by the Upper Tribunal and there are some safeguards for the landlord as a result of the case of **Daejan v Benson** where the landlord has acted reasonably. In the light of this recent decision, the Tribunal considers that an addition of .25 to the **Sportelli** rate was appropriate. **Accordingly the Tribunal finds that a deferment rate of 5.75% would be appropriate.**

Conclusion

35. Applying the above reasons the Tribunal determines that the premium payable for the lease extension is **£10,052** in accordance with the valuation in the Appendix.

Form of lease and Respondents' costs

36. The parties had agreed the form of the extended lease and a copy was in the bundle. The Respondents' legal and valuation costs were agreed at £1,250 inclusive of VAT.

Date: 25 November 2013

Tamara Rabin
Judge of the First Tier Tribunal

APPENDIX
The Tribunal's valuation

70 ANDACE PARK GARDENS 133-149 WIDMORE ROAD BROMLEY BR1 3DH

Matters Agreed

Valuation date: 8th April 2013
Current ground rent £358.68 per annum
Remaining term 71.964 years (72 years)

Matters determined

Existing unimproved leasehold value	£159,000
Extended unimproved leasehold value	£169,690
Relativity	93.7%
Capitalisation rate	5.5%
Deferment Rate	5.75%

Term

Ground rent £358.68 per annum,
72 years @ 5.5% x 17.7968 £6,383

Reversion

£169,690 in 72 years @ 5.75%x 0.0178572 £3,030

Landlord's interest
£9,413

Marriage Value

Extended leasehold value	£168,690	
Less existing leasehold value	£159,000	
Less landlord's interest	£ 9,413	
	£ 1,277	
50%		**£ 639**

Premium Payable **£10,052**