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		FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)
Case Reference	**:**	**LON/OOBK/OLR/2014/0546**
Property	**:**	**64A Fermoy Road, London, W9 3NJ**
Applicant	**:**	**Mr G. Madani (leaseholder)**
Representative	**:**	**Mr J. Taylor BSc MIRCS of Wenlock Taylor (chartered surveyors) instructed by SD Rosser & Co (solicitors)**
Respondent	**:**	**Prelanglen Limited (landlords)**
Representatives	**:**	**Mr S. Brook MSc, MRICS (chartered surveyor) of South East Leasehold instructed by Ms R. McKendrick of TWM LLP solicitors.**
Type of Application	**:**	**An application for the determination of the premium to be paid for the grant of a new lease under Part I of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**
Tribunal Members	**:**	**Professor James Driscoll, solicitor (Tribunal Judge) and Mr Ian Holdsworth BSc MSc FRICS (Tribunal Member)**
Date and venue of Hearing	**:**	**2 September 2014**
Date of Decision	**:**	**29 September 2014**

DECISION

Summary of the decision

1. The premium payable for the grant of a new lease granted under the Act is the sum of £67,460 (sixty-seven thousand, four hundred and sixty pounds).

Introduction

2. This is an application seeking the determination of the premium to be paid for the grant of a new lease. It is made by the leaseholder of the subject premises which is a flat on the ground floor of a building which we were told was originally constructed as house and later converted into three flats. The owner of the freehold and the landlord under the lease is a company called Prelanglen Limited.

The hearing

3. A hearing of the application took place on 3 September 2014 when the leaseholder was represented by Mr Taylor (a chartered surveyor) who appeared in the joint capacities of an advocate and an expert witness. Mr Brook (also a chartered surveyor) appeared on behalf of the landlord and he also appeared in the dual capacity of advocate and expert witness. Later during the hearing his instructing solicitor Ms McKendrick attended to address us on issues relating to costs.

4. We were told that the parties have agreed the terms of the new lease.

5. They told us that the sole issue for our consideration was the premium to be paid for the grant of a new lease. The leaseholder proposes the sum of £42,948 whilst the landlord seeks the sum of £83,000. In making these proposals they rely on the advice of their respective valuers.

Evidence for the leaseholder

6. Mr Taylor spoke to his valuation report which was dated 20 August 2014. He was cross examined by Mr Brooks and he also answered questions from the tribunal.

7. He told us that the leaseholder purchased the flat for the sum of £350,000 in 2013 and he was assigned the benefit of a notice given by the previous leaseholder to the landlord under section 42 of the Act seeking the grant of a new lease. A copy of this notice was given to the landlord on 29 October 2013 which the parties agree is the valuation date. At that date the unexpired term of the lease was 58.9 years. It has been agreed that with an adjustment to take account of certain leaseholder improvements that the value of the lease at that date was £320,000.

8. He and Mr Brooks agree that the applicable deferment rate is 5% and that the appropriate rate for capitalising the ground rent (that will be lost to the landlord once the new lease has been granted) is 6%. They agree that the sum that represents the capitalised sum for the lost ground rent is £264.

9. Where he and Mr Brooks differ is in their approach to valuing the long lease value, that is the value of the new lease. His approach was to use some of the relativity graphs and to analyse market evidence drawn from sales of flats in the locality which he submits are comparable to the subject flat.

10. We were referred to the research report published by the RICS ('*Leasehold Reform: Graphs of Relativity*', October 2009) and Mr Taylor told us that he relied on the graphs produced by Beckett & Kay which suggests an appropriate relativity of 85.05% for an unexpired term of 58.90 years, the graph produced by Nesbitt & Co (82.94%) and Andrew Pridell (85.93%). He considers it reasonable to take an average of these three sources which produces a relativity of 84.64%. Applied to the adjusted sale price of the subject flat produces a figure of £389,886.

11. Turning to the comparable sales evidence he relies first on the sale of 21A Fermoy Road, London W9 which has a long lease and which sold in January 2013 for £305,000 which adjusted the sale price to the valuation date is the sum of £325,739. The second sale is of 43A Fermoy Road, London W9 which also sold with a long lease in September 2012 for £310,000 which adjusted to the valuation date is the sum of £325,739.

12. His third piece of evidence is the sale of a ground floor flat at 37 Fermoy Road London W9 sold with a short lease in May 2013 for £425,000 which adjusted to the valuation date is the sum of £445,229. As this sold with an unexpired lease of 67.9 years, applying the relativity graphs suggests a premium of £468,062. He told us that he although he considers that this evidence is out of line with the other two transactions he has taken an average price for the three sales which produces the sum of £376,442.

13. Mr Taylor is of the view that this analysis produces a similar figure to that he arrived at by using the relativity graphs and he uses it as part of his valuation to arrive at a figure for the premium of £42,948.

Evidence for the landlord

14. Mr Brooks gave his evidence and he was cross-examined by Mr Taylor and he also answered questions we asked him. He spoke to his valuation report which is dated 18 August 2014. Mr Brooks is of the view that the relativity graphs are not a reliable source of evidence and that relevant market evidence should be used instead. (However, he told us that applying the three graphs relied on by Mr Taylor to the sale of 37 Fermoy Road with an unexpired term of 67.9 years produces an average relativity of 90.7).

15. He refers first to the sale of 21A Fermoy Road, which sold with a 120 year lease for the sum of £499,950 in December 2013, not long after the valuation date. To this figure he makes various adjustments to arrive at a figure of £473,191.

16. His second item is the sale of 9 Hormead Road which adjoins Fermoy Road. This sale with a share of the freehold was agreed in the sum of £525,000 in November 2014. Making various adjustments he concludes that the adjusted figure is the sum of £473,532.

17. He states that his third item of evidence is the sale of a flat in 14 Fermoy Road where a price of £425,000 was agreed in January 2014. This is a flat on the second and third floor of the building and it had a lease of 122 years. Making various adjustments he arrives at a figure of £449,505.

18. Considering this evidence he concludes that the unimproved long lease value is the sum of £465,409. This informs his valuation in the sum of £83,000.

Our decision and the reasons for it

19. The valuers did not agree on the usefulness or otherwise of the published relativity graphs. Mr Taylor uses the graphs as part of his valuation but Mr Brooks is sceptical and he considers that using the available market evidence is the best approach.

20. 'Leasehold Relativity' may be defined as the value of a dwelling held on an existing lease at any given unexpired term divided by the value of that dwelling in possession to the freeholder which is expressed as a percentage. In other words one applies the relevant relativity rate to the current market price to produce the estimated value of the dwelling if it were sold on a long lease.

21. As the Upper Tribunal has stated on a number of occasions, tribunals must do the best they can with any available market evidence (recognising that such evidence is in a sense tainted by the fact that parties negotiate with the knowledge of the existence of statutory rights although the Act requires that the landlord's interest is valued on the assumption that the leaseholder has no statutory rights to a new lease (see: 1993 Act, schedule 13, paragraph 3(2)(b))) and by using the relativity graphs (see e.g. *Arrowdell v Consiston Court* [2007] RVR 39).

22. We consider next the evidence of Mr Taylor. As to the market evidence he relies on we were puzzled at the sale prices for 21A and 43A Fermoy Road where the adjusted sale prices exceed the adjusted sale price for the subject flat even though they (unlike the subject flat) were sold with long leases. His third example, the sale of number 37 Fermoy Road, this was a transaction with a short lease (67.9 years unexpired) which nevertheless sold for an adjusted price of £445,229. We agree with him that this is out of line with the other two sales but we consider that this is probably the most relevant comparable as, like the subject flat, it has a short lease. This factor alone causes us to approach the other two sales of flats with long leases with considerable caution. Why would a prospective purchaser pay more for a comparable flat which has a short lease (for which the purchaser might have to consider seeking a new lease paying a premium and the landlord's costs in dealing with grant of the new lease would be payable). Mr Brooks suggested that the relatively low price for those two sales could be the poor quality of the accommodation and we suspect that there may be some force in that observation.

reflect this was a share of freehold and not a long leasehold; A £20,000 reduction in value to each comparable sale price to reflect the installation of double glazing and central heating; A 5% reduction was made to reflect the inappropriate layout of the subject with toilet lobby off kitchen at unimproved subject; A 5% reduction to reflect overall improvements to the comparable properties when compared to the unimproved subject; A 5% addition to sale price of Flat 6 14 Fermoy Road to reflect that this dwelling unlike the subject has no garden. A further 2.5% reduction is also made to value to reflect the two floor accommodation and second/third floor position; and, appropriate indexation to reflect the passage of time between the agreed sale date and valuation date. The adjustment percentages for each property are shown in the comparable table.

31. As to Mr Taylor's evidence we did not find it useful in the determination of the long leasehold value. The sale prices of the long leasehold interests submitted by him after indexation suggested relativities with the sale price of the subject in the range 98-100%. Mr Taylor was unable to explain these results when questioned by the tribunal.

32. The other comparable submitted by Mr Taylor was for the ground floor 37 Fermoy Road. This was sold as a 67.9 year interest and not as long leasehold. For this reason the tribunal considered the transaction evidence unhelpful in determination of a long leasehold value without adjustment for lease length.

33. Taking all of these factors together we determine the long leasehold value at the sum of £435,500. In accordance with the UT guidance the tribunal has relied upon market evidence to determine long leasehold value. This determined value has resulted in a relativity between the value of the short term leasehold and notional freehold of 75%.

34. The tribunal determines the premium payable for the grant of the new lease as the sum of £67,460.

35. A copy of our valuation is appended to this decision along with a summary of our analysis of the comparable evidence.

Property:	64 A Fermoy Road London W9 3NJ

Reference: LON/OOBK/OLR/2014/0016

Lease and Valuation Data

Lease Term:	99 years from 4th September 1973				
Lease Expiry date:	3rd September 2072				
Unexpired term as at valuation date:	58.9 years				
Date of Valuation	29th October 2013				
Agreed rent receivable by landlord:					
Payable from 29/10/2013 for 58.9 years	£	264			
Values					
Long leasehold value	£	435,500			
Freehold Value	£	439,855			
LHVP	£	330,000	Relativity		75%

Capitalisation rate	6.00%
Deferment rate	5.00%

Value of Freeholders present interest						
Term						
Agreed present interest of landord					£	4,263
Reversion						
Freehold in vacant possession	£	439,855				
Deferred 58.9 years @ 5%		0.0565	£	24,849	£	24,849
	Total				£	29,112
Reversion to Freehold in possession after extension						
Freehold in vacant possession	£	439,855				
Deferred 148.9 years after lease extension at 5%		0.00070	£	308	£	308
Residual value after reversion	Total				£	28,804
Calculation of Marriage Value						
Value of flat with long lease	£	435,500				
Landlords proposed interest	£	308			£	435,808
Less						
Value of Leaseholders existing interest	£	330,000				
Value of Freeholders current interest	£	29,112			£	359,112
Marriage value	Total				£	76,696
Division of Marriage Value equally between						
Freeholder					£	38,348
Leaseholder			£	38,348		
Price payable to Freeholder						
Value of freeholders current interest					£	29,112
Plus share of marriage value					£	38,348
					Total £	67,460
					Say £	67,460

Notes:

1. The price for Lease Extension is calculated in accordance with the Leasehold Reform, Housing Urban and Development Act 1993 as amended.
2. Valuation based upon agreed facts except for notional freehold flat value and relativity which were determined by Tribunal after hearing held 2nd September 2014.

Checked : IBH HS 10.09.14

64A Fermoy Road London W9 3NJ
Comparable analysis
Long Leasehold

Address of property	Type of property	Interest	m2	Date sale agreed	Sale price	Adjustments Improvement	Internal layou	Condition	Garden	Adjusted Sale price	Price adjustment from valuation date to sale agreed	After indexation Sale price	Value per m2
21 A Fermoy Road	A two bedroomed ground Floor Flat with garden	120 year leasehold	54.83	15/12/2013	£499,950	-£20,000	-5.00%	-5.00%	nil				
							-£24,998	-£24,998		£429,955	-2.500%	£419,206	£7,646
9 Hormead Road	A two bedroomed Flat with garden	Share of freehold	58.36	31/11/2013	£519,750	-£20,000	-5.00%	-5.00%	nil				
							-£25,988	-£25,988		£447,775	-1.00%	£443,297	£7,596
Flat 6 14 Fermoy Road	A two bedroomed second and third floor flat without garden	122 year lease	53.71	31/01/2014	£425,000	-£20,000	-7.50%	-5.00%	5.00%				
							-£31,875	-£21,250	£21,250	£373,125	-3.20%	£361,185	£6,725
												Average £ per metre	£7,322
												Long leasehold value	£435,500