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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/OLR/2014/1299**
Property	:	**Flat 36 Park Mansions, South Lambeth Road, London SW8 1TW**
Applicant	:	**Mr Brian Ricky Rechere**
Representative	:	**Mr J Hayes MRICS**
Respondent	:	**Ground Rents (Regis) Limited**
Representatives	:	**Mr P Holford BSc (Hons) MRICS**
Type of Application	:	**For the determination of the premium payable for the grant of a new lease.**
Tribunal Members	:	**Ms N Hawkes Mr N Martindale FRICS**
Date and venue of Hearing	:	**13.1.15 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**18.1.15**

DECISION

Decisions of the Tribunal

The Tribunal determines that the total premium payable by the applicant for the grant of a new lease is £53,677.

Background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act") for the determination of the premium payable for the grant of a new lease.

2. By a notice dated 4th April 2014 pursuant to section 42 of the 1993 Act, the applicant claims to exercise the right to acquire a new lease of the property. The landlord has served a counter notice under section 45 of the 1993 Act dated 16th June 2014.

3. The only matters remaining in dispute are:
   (1) the capitalisation rate;
   (2) the discount, if any, to be applied to the valuation of the freehold with vacant possession in order to arrive at the value of the extended lease; and
   (3) relativity.

The hearing

4. The applicant was represented by Mr J Hayes MRICS at the hearing and the respondent was represented by Mr P Holford BSc (Hons) MRICS.

5. The Tribunal was provided with a copy of a report dated 9th January 2014 prepared by Mr Hayes on behalf of the applicant and with a copy of a report dated 5th January 2015 prepared by Mr Holford on behalf of the respondent.

6. The Tribunal heard oral evidence from both Mr Hayes and Mr Holford.

7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The law

8. Schedule 13 to the 1993 Act provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable to the landlord.

9. The diminution in value of the landlord's interest is the difference between (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease and (b) the value of his interest in the flat once the new lease is granted. The value of the landlord's interest is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) applying the assumptions and requirements set out in clause 3 of Schedule 13 to the 1993 Act.

10. Paragraph 4 of Schedule 13 to the 1993 Act provides that the landlord's share of the marriage value is to be 50%, but that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.

The Tribunal's determination

(1) The Capitalisation Rate

11. Mr Hayes submitted that the appropriate capitalisation rate is 7%, on account of (a) the relatively low level of the current ground rent which is £94.94 per year; and (b) the fact that next rent review will not take place for approximately 25 years. He argued that a capitalisation rate of 6% would only be appropriate in a case concerning higher ground rents or ground rents which rise rapidly.

12. Mr Hayes initially stated that the rent under the rent review clause might be subject to a maximum cap. However, he subsequently explained that, in light of new information which he had received after preparing his expert report but prior to the hearing, he did not intend to pursue this argument.

13. Mr Holford submitted that a capitalisation rate of 6% is appropriate in the present case. He placed reliance upon the rent review clause in the lease which provides for the possibility of a future rent review to market rent. He referred the Tribunal to a number of decisions and submitted that a rate of 6% is not unusual. He also submitted that, because interest rates are currently very low, ground rents are a particularly attractive investment.

14. The Tribunal determines, on the facts of this case, that a capitalisation rate of 6% should be applied having regard, in particular, to the possibility of a rent review to market rent. In reaching this determination, the Tribunal has taken account of the relatively low level of the current ground rent and the significant period of time which will elapse before the next rent review.

(2) The value of the extended lease

15. Mr Hayes argued that a 1% discount should be applied to the valuation of the freehold with vacant possession in order to arrive at the value of the extended lease. He stated that there is a widespread convention that a 1% discount should be applied and that a knowledgeable and prudent purchaser would pay 1% for a share of the freehold in order to avoid the complications of dealing with an "external landlord".

16. Mr Hayes argued that the interests of an external landlord will inevitably differ from the interests of lessees and that having a share of the freehold is likely to be advantageous both in relation to dealing with service charge issues and as regards the ease with which future lease extensions are likely to be obtained. He submitted that an external landlord would not have an incentive to keep service charge costs as low as possible.

17. Mr Holford stated that, in this particular case, he is not willing to accept that a 1 % discount should be applied. He argued that because the property is situated in a high maintenance block containing 50 flats with substantial communal areas, an external managing agent is always going to be required to manage the block.

18. He was of the opinion that, in a block of this size, it could be argued that the long leasehold interest in the flat is more valuable than the freehold interest because, in the case of a share of the freehold, every decision would have to be discussed with various other leaseholders rather than with just one landlord. He pointed to the potential for delays and to the possibility that disputes may arise. He stated that an external landlord would have the ability to make decisions quickly and he noted that the same statutory regime applies to service charges disputes regardless of the nature of the landlord.

19. The Tribunal determines that it is appropriate to apply a 1% discount on the facts of this particular case. The Tribunal accepts that professional managing agents are likely to be required to manage the block in which the property is situated. The Tribunal also accepts Mr Holford's comments regarding the practicalities of decision making in the case of a share of the freehold. However, on the facts of this case, the Tribunal considers that a hypothetical purchaser is nonetheless likely to find the freehold interest more attractive than the leasehold interest by virtue of the potential for greater control that having a share of the freehold brings.

(3) Relativity

20. Mr Hayes had no transaction evidence and he argued that the best approach is to take the average of seven relativity graphs, namely the graphs produced by Beckett & Kay, Nesbitt & Co, South East Leasehold, Austin Gray, Andrew Pridell, LEASE and CEM. He stated that as many

relevant graphs as possible should be used and he submitted that all of the graphs upon which he relied were relevant.

21. Mr Holford was also of the view that it is appropriate to rely upon relativity graphs and to take the average of the best data available. He sought to rely upon four relativity graphs namely those produced by Beckett & Kay (as updated), Nesbitt & Co, John D Wood and South East Leasehold.

22. He also sought to rely upon the evidence of one transaction concerning a flat in the same block as the subject property ("Flat 20"). He relied upon a signed memorandum showing that in the case of Flat 20 relativity had been agreed at 81% with a valuation date of 17th December 2013 and an unexpired term of 58.78 years.

23. The Tribunal determines that it is appropriate to rely upon three graphs, namely the graphs produced by Nesbitt & Co, John D Wood and the South East Leasehold graph.

24. The Beckett & Kay graph is based on opinion and the Tribunal found it difficult to reconcile the updated Beckett & Kay graph with the other relativity graphs. The only explanation given for the disparity was that the Beckett & Kay graph has been updated and, in the absence of a more detailed explanation, the Tribunal does not consider it appropriate to place weight on any versions of the Beckett & Kay graphs in the present case. The parties were given the opportunity to make submissions on this issue at the hearing.

25. The Tribunal was persuaded that it would be appropriate to place weight on the "Pure Tribunal Graph" prepared by J D Wood. This graph is based upon the findings of around numerous Tribunal determinations on relativity for leasehold properties situated throughout the London area.

26. The Tribunal has not placed any reliance upon the Austin Gray and Andrew Pridell graphs because a significant amount of the data in these graphs is drawn from the South Coast and Brighton areas. Further, the Tribunal has not placed any reliance upon the LEASE and CEM graphs because they are based on determinations throughout England and Wales.

27. The Tribunal considers that Mr Holford's transactional evidence is relevant and of equal weight to the graphs upon which it relies because Flat 20 is situated in the same black as the subject property; it is similar in nature to the subject property (although slightly larger); the lease is of an approximately similar length; and the valuation dates are less than four months apart.

28. The Tribunal has taken account of the fact that the transactional evidence relied upon by Mr Holford comprises part of an agreement for the sale of Flat 20 and that Mr Holford states at paragraph 38 of his

report that the sale has not yet been completed. Were it not for these factors, the Tribunal would have given the transactional evidence greater weight.

Valuation

29. The premium payable is £53,677. A copy of the Tribunal's valuation is attached to this decision.

Judge N Hawkes

18h January 2015

36 Park Mansions Lambeth SW8

FLAT - Lease Extension

Freehold	£500,000
Long Leasehold value 148.48 years (FH -1%)	£495,000
Valuation Date	08-Apr-14
Expiry of existing lease	28-Sep-72
Existing Term unexpired	58.48
Capitalisation rate	6.00%
Deferment rate	5.00%
Relativity	84.25%
Short Leasehold value (unimproved) before extension	£417,038

Dimimution of Landlords Interest				
Landlords Present Interest				
Term				
Fixed Present GR		£94.94		
YP for 58.48 years @ 6%	16.11		£1,529	
Reversion				
Long Leasehold value		£495,000		
PV £1 in 58.48 years @ 5%	0.0577		£28,562	
Total			**£30,091**	
Landlords Proposed Interest				
Reversion				
Freehold		£500,000		
PV £1 in 148.48 years @ 5%	0.0007		**£350**	
Landlords Present less the Proposed				**£29,741**
Marriage Value				
Tenants Proposed Interest			£495,000	
Less Tenants Present Interest		£417,038		
Less Landlords Present Interest		£30,091		
Total			£447,128	
Marriage Value			**£47,872**	
50% share of marriage value				**£23,936**

Lease Extension Premium

Landlords Present - Proposed + Marriage share **£53,677**