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Case Reference : **CAM/26UK/OLR/2013/0050**

Property : **48c Whippendell Road, Watford WD18 7LU**

Applicants : **Mr James Christopher Butler
Mrs Chunyang Butler**

Applicant's Surveyor : **Mr David Field FRICS of
Ringley Chartered Surveyors**

Respondents : **Mr Muhammad Aslam**

Date of Application : **8th March 2013**

Type of Application : **To determine the premium and other sums payable to the Respondent Landlord to be paid in to court and the terms of the lease on the grant of an extension to the lease (Sections 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended by the Commonhold and Leasehold Reform Act 2002)**

Date of Hearing : **12th August 2013**

Tribunal : **Judge John R Morris
Mr David S Brown FRICS, MCI Arb
Mrs Sarah Redmond BSc (Econ) MRICS**

Attendance : **Mr David Field FRICS
Mrs Chunyang Butler**

DECISION

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Decision

The Tribunal determined the Premium for the lease extension as **£7,110.00**

Reasons

Application

1. The Applicants made an Application to the Tribunal on the 8th March 2013 under Section 50 and 51 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended by the Commonhold and Leasehold Reform Act 2002 (the 1993 Act) to determine the premium and other sums payable to the Respondent Landlord to be paid in to court and the terms of the lease on the grant of an extension to the lease of the Property

Documents Received

1. Documents received are:
 - a) A Notice of Claim under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 dated 12th June 2012 to the Respondent from the Applicants claiming a new lease under Chapter II of Part 1 of the 1993 Act in respect of the Property setting out the particulars of the lease, stating that the Applicants are the qualifying tenants within the meaning of section 5 having owned the flat for at least two years from 23rd February 2001 and proposing a premium of £5,185 and on terms set out in the schedule to the Notice.
 - b) Notice of Claim was issued on the 9th November 2012. The claim was sent to the Respondent on 19th November 2012 and was deemed to be served on 21 November 2012 to reply by 5th December 2012.
 - c) A Court Order in respect of Claim Number 2WLO0877 dated 7th January 2013 by District Judge Nicholson sitting at West London County Court ordering that:
 - The hearing listed on 22nd January 2013 is vacated and removed from the list
 - Upon no Acknowledgement of Service being received from the Defendant, that pursuant to section 51(1) of the Leasehold Reform Housing and Urban Development Act 1993 that the proceedings be transferred to the Leasehold Valuation Tribunal for the purpose of determination of a price and terms of the new Lease.
 - d) An application form dated 8th March 2013 and Directions Order issued 7th April 2013
 - e) An Official Copy of the Register of Title number HD156363 of the Absolute Freehold title of 48 Whippendell Road
 - f) An Official Copy of the Register of Title number HD217967 of the Absolute Leasehold title of 48c Whippendell Road

- g) A Lease of the Property dated 31st October 1986 between Safdar Khan and Ghulam Fatima and Terence Leonard Bannister and Michelle Yvonne Read (2)
- h) A Draft Supplemental Lease and Deed of Variation of the Property
- i) Report and Valuation in respect of the Property by the Applicant's Surveyor dated 27th July 2005

The Property and Inspection

- 2. The Property is a first floor one bedroom flat in a detached house converted into 4 self contained flats. The house was constructed circa 1910 and has painted rendered side, rear and ground floor elevations with the front first floor elevation hung with clay tiles. It has a pitched tile roof. The windows are wooden single glazed except for a uPVC double glazed window to the rear bedroom of the Property. There is a two storey rear extension.
- 3. There is a concrete driveway to the side of the house to a parking area off which are three garages, the middle of which is demised to the Property. The driveway also gives access to a small garden plot demised to the Property.
- 4. The exterior of the house, garages and courtyard are in need of repair. The boundary wall with number 50 has partially collapsed and the remainder is in a poor state of repair. These matters are the Respondent's responsibility under the Lease.
- 5. There is a narrow carpeted communal lobby with steep stairs to the upper flats. Internally the Property has an entrance hall, living room, kitchen bathroom and bedroom and additional storage in the roof void access to which is via steep ladder style stairs from the living room. The Property is in a satisfactory state of repair. The kitchen and bathroom appeared to be the original installation as when the house was converted into flats circa 1985. There is a gas central heating system.
- 6. The Property is located in a residential area about 10 minutes walk from the town centre. The house is situated on a busy road with a residents parking permit scheme in operation.

The Lease

- 7. The Property is registered at the Land Registry with Absolute Leasehold Title Number HD217967. The Property Register states that the Lease dated 31st October 1986 between Safdar Khan and Ghulam Fatima and Terence Leonard Bannister and Michelle Yvonne Read (2) is for a term of 99 years from 25th December 1985 at a ground rent of £50.00 per annum for 33 years reviewable to £100 per annum for a further 33 years and fixed at £150.00 per annum for the remainder of the term. The Proprietorship Register names Applicants as the leasehold proprietors.

8. 48 Whippendell Road is registered at the Land Registry with Absolute Freehold title under Number HD156363. The Proprietorship Register names Respondent as the freehold proprietor.
9. The Respondent as Landlord is responsible under Part IV of the Schedule to the Lease to:

Maintain repair redecorate and renew:-

- (a) *the external walls and structure and in particular the main load bearing walls and foundations roof storage tanks gutters rainwater pipes of the property and any party walls and the boundary fences...*
- (b) *The gas and water pipes drains and electric cables and wires in under and upon the Property or used by the Lessee in common with the Lessees of other parts of the Property*
- (c) *The main entrances common passages landings and staircases and all other parts of the Property so enjoyed or used by the lessees in common*
- (d) *All such dustbin areas paths and forecourts as are included in the Property*

To insure and keep insured the Property in the names of the Lessor Lessee and his mortgagees

“Property” here means the whole of 48 Whippendale Road

The Law

10. The method of calculation of the premium for an extended lease is by virtue of section 42(3)(c) and Schedule 13 Part II of the 1993 Act.

The Hearing

11. The Tribunal noted that the Applicant’s Surveyor was acting as an expert.
12. The Tribunal noted that the Date of Valuation was 9th November 2012 being the date of issue of the Claim for the dispensing with Notice to the Respondent under Part 8 of the Civil Procedure Rules.
13. The Tribunal found that under the Lease the improved loft space was not included in the demise. The tribunal asked the Applicant whether permission had been obtained from the Landlord to develop this area. The Applicant said that permission had not been obtained because the landlord could not be found.
14. The Tribunal had noted on its inspection that there had been a hatch in the entrance hall of the Property giving access to the loft and that access to the loft could only be obtained from the Property. It also appeared that the loft only

went over the Property. However, as it was not in the demise the Tribunal expressed the view that it should not be included in the valuation. In any event as a tenant's improvement it would be excluded.

15. The Applicant's Surveyor presented his report as follows;

Capitalisation of Ground Rent

16. The Applicant's Surveyor stated that the capitalisation rate is the investment yield applied to the income stream to derive the capital value of the right to receive this income. He referred to *Nicholson v Goff* in which the Lands Tribunal identified the following factors as relevant to assessing the rate;
- The length of the lease term
 - The security of recovery
 - The size of the ground rent (a larger ground rent being more attractive)
 - Whether there was a provision for review of the ground rent, and if so
 - The nature of it
17. The Lands Tribunal has said that there is no rationale for the capitalisation rate and deferment rate to be the same. The deferment rate is customarily lower than the capitalisation rate as there are associated costs and perceived hassle of collecting the investment income as opposed to the reversionary value of the vacant flat at the end of the lease, which is a future right.
18. It was said that residential auction evidence of ground rental investments gave a yield of 3 – 8%. It was said that the lower the ground rent the more difficult and uneconomic it is to collect. It was submitted that a modern ground rent would be about £250.00 plus and rising. This ground rent in comparison is on the mid to high and that an appropriate capitalisation rate in this case would be about 7% to which the Tribunal agreed.

Value of the Lease

19. The Applicant's Surveyors said that the Applicant's improvements of a tread ladder to access to the storage roof space was not an improvement that should be considered as the area could not be used as a second bedroom as it did not comply with Building Regulations.
20. The Applicant's Surveyor submitted the following comparable market evidence:
- 77 Cassio Road - 1 bedroom first floor flat of 706 sq ft in a conversion for sale at £155,000 in poor condition. Agents report offers in the region of £140,000 to £150,000 but none have been accepted.
- 3a Durban Road – 1 bedroom first floor flat of 439 sq ft with parking space, loft room of 131 sq ft for sale at £149,950. Lease of 75 years unexpired. No offers

48b Whippendell Road – two room flat with garden sold at auction in July 2011 for 89,000. Assumed to be a short lease.

48d Whippendell Road – first floor studio flat with 78 years remaining at auction on 31st October 2006 and again in May 2007 for 125,000 where lease assumed to have been extended.

21. The Applicant's Surveyor said that there was a lack of comparables in the street but the most useful was 48b Whippendell Road and was the most recent. He said that the Land Registry House Price Index indicates that flat levels for Hertfordshire have increased between July 2011 and November 2012 by only 1% suggesting that the short Lease flat's market value would be approximately £91,000. He said that contributing to this low value would be the general condition of the property and the surrounding land. In addition although 48b has a garden it has no parking space.
22. Since the Property has a garage, a small garden and the roof void it was submitted that the long lease value would be £130,000. Applying a relativity of 93% this gave a short lease value of £120,900 which the Applicant's Surveyor considered was in keeping with the £91,000 for 48b.
23. Details of the comparables referred to by the Applicant's Surveyor had not been included in the bundle but were provided to the Tribunal at the Hearing together with a copy of the Nethouseprices.com pages relating to sold house prices for Whippendell Road for postcode WD18 7LT and relativity graphs and table of Tribunal determinations.
24. The Tribunal questioned the Applicant's Surveyor on his assessment. In response to questions he said that he did not know how much a garage would be worth but that parking spaces in Watford were valuable and that a garage would be worth more.
25. In response to how he had gone about searching for comparables he said that he had searched on Rightmove within a quarter mile radius and although he extended it he found that those he had selected were the closest to the Property. He did not recall how many properties overall he had found in his search.
26. In reply to questions relating to how he had calculated the value of the Property the Applicant's Surveyor said he had taken into account the condition of the Property including its external appearance with a missing landlord.

Deferment Rate

27. In dealing with the deferment rate the Applicant's Surveyor acknowledged that in the *Sportelli Cases* [2008] UKHL 71 a 5% deferment rate had been calculated by a formula similar to that used by financial analysts. A risk free rate of 2.25% was used as a starting point which was reduced by 2% to take account of real growth. To this was added a 4.75% risk premium giving the 5% rate.

28. The Applicant's Surveyor referred the tribunal to the case of *Zuckerman Zuckerman & Others v Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC) LRA/97/ 2008 in which the Tribunal had added a further 1% as follows:
0.25% to the risk premium for obsolescence on the basis that it is unlikely to remain viable to repair the property in question in that case compared with properties in central London to which the *Sportelli* case referred.

0.5% for the risk growth based in house price information related to the area in which the property in that case was situated.

0.25% to the increased management risk for flats.
29. The Applicant's Surveyor submitted that a similar addition might be made in the present case, although he produced no evidence of price growth rates.
30. The Tribunal referred the Applicant's Surveyor to the case of *Alexander Voyvoda v (1) Grosvenor West End Properties, (2) 32 Grosvenor Square Limited* [2013] UKUT 0334 (LC), in which the Upper Tribunal concluded that in the light of the Supreme Court's judgement in *Daejan v Benson* (relating to s20ZA dispensation) the risk profile that had formed the basis of the Tribunal's decisions in *Zuckerman* has been changed to such an extent that, although there is still an element of risk associated with the s.20 consultation requirements, the level of risk is adequately covered by the uplift of 0.25% in the deferment rate for flats which was established in *Sportelli* and therefore there is no longer any basis for making a *Zuckerman* addition.
31. The Applicant's Surveyor agreed that the *Voyvoda Case* did appear to make the *Zuckerman Case* inapplicable in the present circumstances and therefore he conceded the 5% deferment rate of the *Sportelli Case* applied.

Relativity

32. The Applicant Surveyor referred the Tribunal to a number of LVT Decisions and to the RICS Graphs of Relativity and submitted that a relativity of 93% should be adopted which would give the current lease value as £120,900. The Tribunal considered the table and graphs provided at the hearing and agreed with the Applicant's Surveyor's conclusion.

Summary

33. In summary the Applicant Surveyor submitted the following to be applicable:
7% Capitalisation Rate
5% Deferment Rate (agreed at the hearing reduced from 6% submitted in the Report)
£130,000 long lease value of the Property
93% Relativity giving £120,000 current lease value
The Applicant surveyor had submitted a calculation which gave a value of £5,945. However, this value would need to be revised as the deferment rate was accepted as being 5% as opposed to the 6% upon which the original calculation had been based.

Decision

34. The Tribunal considered the Applicant's Surveyor's Report and the evidence adduced. The Capitalisation Rate of 7% was agreed. The deferment rate of 5% agreed by the Applicant's Surveyor at the hearing was confirmed. The relativity of 93% was also agreed on the basis of the tables and graphs provided at the hearing.
35. The Tribunal gave careful consideration to the evidence adduced by the Applicant's Surveyor, particularly the details provided at the hearing of the properties referred in the Report. Whereas it was surprised a wider range of sales had not been referred to nevertheless following its inspection of the Property the Tribunal agreed with the Applicant's Surveyor that a long lease value of £130,000 for the unimproved Property giving a current lease value of £120,900 at 93% relativity was a fair assessment.
36. In making its assessment the Tribunal did not include the improved loft area. The Tribunal read the Lease and found that this was not included in the demise and that it had been conceded by the Applicant that, the landlord being absent, no permission had been given to develop the area.
37. The Tribunal determined the Premium for the lease extension as **£7,110.00**. Its calculations are set out in the schedule and are a part of this Decision.

Judge JR Morris

Date: 23rd August 2013

Schedule

VALUATION FOR PREMIUM FOR NEW LEASE

Leasehold Reform & Urban Development Act 1993

Flat 48C Whippendell Road, WATFORD, WD18 7LU

Agreed facts and matters

Lease 99 years from 25th December 1985	64 years remaining
Ground rent	£50 p.a. rising to £150 p.a.
Valuation date	9th November 2012 Date of issue of Claim
Years unexpired	72.13
Capitalisation rate	7%
Marriage value	50%
Relativity	93%

Determined by tribunal

Market value (unimproved)	£130,000
Existing lease (unimproved)	£120,900
Deferment rate	5%

Diminution in Value of Freeholder's interest

	£	£	£
Term			
Ground rent		50	
YP @ 7% for 6.13 years		<u>4.84990</u>	242
Ground Rent		100	
YP for 33 years	12.75380		
deferred 6.13 years	<u>0.660507</u>	<u>8.42397</u>	842
Ground rent		150	
YP for 33 years	12.75380		
deferred 39.13 years	<u>0.070847</u>	<u>0.90357</u>	<u>136</u>
Value of ground rent income			1,220
Reversion			
Extended lease value		130,000	
Deferred 72.13 years @ 5%		<u>0.029622</u>	3,851
Diminution in Freeholder's interest			5,071

Calculation of Marriage Value

Value of proposed interests:

Landlords' reversion after 162.13 years	48
Tenant's	<u>130,000</u>
	130,048

Less value of existing interests:

Landlords'	5,071	
Tenant's existing lease	<u>120,900</u>	<u>125,971</u>

Marriage Value 4,077

50% marriage value attributed to landlord say 2,039

TOTAL PREMIUM PAYABLE

£7,110