



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AW/OLR/2013/1067

Property : Flat 1, 57 Oxford Gardens, W10 5UJ

Applicant : Jonathan Forbes Stoken

Representative : Hart Brown solicitors
Mr R E Barker FRICS

Respondent : Brinor Investments Limited

Representative : Miss J Maidman BSc (Hons)
MRICS

Type of Application : Grant of new lease (Section 48
Leasehold Reform, Housing and
Urban Development Act 1993)

Tribunal Members : Mr M Martynski (Tribunal Judge)
Mr W R Shaw FRICS

**Date and venue of
Hearing** : 17 December 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : 19 December 2013

DECISION

Decision summary

1. The Tribunal decides that the premium to be paid for a new lease is £61,650.00.

Background

2. The Applicant is the long leasehold owner of Flat 1, 57 Oxford Gardens ('the Subject Flat') which is a small¹ two-bedroomed basement flat with rear garden within a large Victorian house converted into eight flats over four floors. The flat forms one half of the basement area and has one half of the rear garden area. The parties agreed that the flat was not fitted out to a modern standard.
3. The Applicant's notice of claim requiring a new lease of the Subject Flat is dated 22 January 2013. The notice proposed a premium for the new lease of £42,500.
4. The landlord's counter-notice is dated 21 February 2013. That notice admitted the right to a new lease but gave the figure of £90,000 for the premium.
5. The Applicant's lease of the Subject Flat is dated 6 September 1977 and is for a period of 99 years from 25 December 1973. The parties agreed that at the date of the Applicant's notice, there were 60 years (rounded) left to run on the lease.
6. At the hearing of the application on 17 December 2013 the parties were represented by their respective Valuers.

Issues agreed

7. The following were agreed between the parties:-
 - (a) Valuation date – 22 January 2013
 - (b) Difference in value between long lease and freehold – 1%
 - (c) Yield Rate – ground rents 7%
 - (d) Yield Rate – reversion 5%

The issues between the parties and their positions at the hearing

8. The Applicant at the hearing argued for a premium of £44,683. The Respondent argued for £79,410.
9. The differences between the parties were on the issues of the long lease value and Relativity.

The long lease value

10. As to the long lease value, both Valuers relied on the same three core two-bedroomed basement flat with garden comparables (all of which had a share of freehold) which were as follows:-

¹ 617 sq ft

figure produced by the Cluttons graph is 79%. Accordingly, Miss Maidman settled on a final figure of 81%.

The Tribunal's conclusions

Long lease value

23. The Tribunal accepted the respective Valuers' three core comparables and considers that all three need to be taken into consideration.
24. We do not agree that number 55, that being the property with the highest value per square metre, should be excluded. It is at the top of the range but not so far from other range values as to be discounted completely. The Tribunal accepts Mr Barker's submission that the planning permission that this flat has (and even without that, the potential use of the side passage which the Subject Flat does not have⁶). The Tribunal also considers that there is potential added value in this property being unmodernised and so a 'blank canvas'. We have therefore adjusted the per square foot value by £100 to £944. We have then averaged this figure with the per square foot values of the other two comparables to produce a figure of £894 psf.
25. Applying the figure of £894 to the size of the Flat produces a figure of £551,598. Adjusting this figure by -1% to adjust from a freehold figure gives £546,082.
26. We did not consider it necessary to make any addition to the square foot value that we arrived at after averaging the comparables. Whilst we agree that in some cases the value produced by the pro-rating in this case could be artificially low in a prime area with high demand, we did not consider that in this case the figure produced was in fact too low. Further, there was no reasoning given as to how the figure of 7.5% for an uplift was arrived at.
27. We have adjusted the figures to account for internal condition. We consider that this is reflected in the averaging of the figures. In any event, we considered that Mr Barker's discounted figure of £50,000 was too high and was not broken down or otherwise justified.

Relativity

28. We have settled on a figure of 83%. We looked at Miss Maidman's averaging of the various graphs and corrected that with the figure of 85% for the Boston graph. That produces an average figure of 82.25%.
29. We do not consider that the Cluttons graph covers so similar an area as to necessarily be given more weight. Further we do not consider that restricting the data available to just two graphs (as per Mr Barker's approach) was useful as it is common practice to have regard to all or

⁶ The Applicant stated that right to use the side passage belongs to the neighbouring building

most of the graphs and the data contained therein except where there are special circumstances that dictate otherwise.

30. We took into account a previous tribunal decision⁷ of a collective enfranchisement in the same road as the Subject Flat in 2008. Using the evidence and figures settled upon by that tribunal would result in a figure of 82.9% in this case.
31. Finally, we rounded up the figure to 83% with a nod to Mr Barker's approach described above.

Valuation decision

32. Applying a Relativity of 83% produces a short lease value of £453,248.
33. The remainder of the Tribunal's valuation is set out in the Appendix attached to this decision.

Mark Martynski, Tribunal Judge

⁷ 42 Oxford Gardens – LON/00AW/OCE/2007/0349

Appendix 1

New Lease Claim

Agreed 60 years unexpired on the lease

Valuation date 22 January 2013

Long lease value £546,082 Freehold value £551,598

Short lease value (relativity 83%) £453,248

YP = 7%

PV = 5%

Diminution in value of Landlord's interest

Value before grant of new lease

Ground rent agreed at £1,325

Reversion

Flat value (F/H) 551,598

Deferred 60 years @ 5% 0.0535 29,510

30,835.00

LESS value after grant of new lease

Term

New Lease at a peppercorn rent 0

Reversion

Flat value (F/H) 551,598

Deferred 150 years @5% 0.0007 386

-386

Diminution in value of Landlord's interest

30,449.00

Marriage Value

Aggregate of values of interests after grant of new lease

Landlord's interest 386

Tenant's proposed interest 546,082

546,468.00

Less Aggregate of values prior to grant of new lease

Landlord's interest 30,835

Tenant's interest 453,248

484,083

Marriage value 62,385

50% **31,192**

61,641

Premium Say **61,650**