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

Case Reference : PJ/LON/00AK/OLR/2013/0494

Property : 12B Second Avenue, Bush Hill Park, Enfield,
EN1 1BY

Applicants : Mr Nicholas Davis MRICS and Mrs
Mrs Sandra Davis

Representative : In Person

Respondent : Lakesides Development Limited

Representative : Spalter Fisher LLP

Type of Application : Enfranchisement

Tribunal Members : Mr Robert Latham
Mr Patrick Casey MRICS

**Date and venue of
Hearing** : 30 July 2013
10 Alfred Place, London WC1E 7LR

**Appearance for
Applicants** : Mr Davis

**Appearance for
Respondent** : Mr Laurence Nesbitt FRICS

Date of Decision : 12 August 2013

DECISION

The Tribunal determines that premium Payable by the Applicants in respect of the extension of their lease at 12B Second Avenue is £26,980. Our calculation is set out in the Appendix.

Introduction

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993, as amended ("the Act") for a determination of the premium to be paid for a new lease.

Background

2. The relevant background facts are as follows:

(i) The flat: 12B Second Avenue, Bush Hill Park, Enfield, EN1 1BY.

(ii) Date of Tenant's Notice: 12 September 2012.

(iii) Valuation Date: 12 September 2012.

(iv) Date of Application to the Tribunal: 15 April 2013.

(v) Tenant's leasehold interest:

- Date of Lease: 22 July 1977
- Term of Lease: 99 years from 25 March 1977
- Ground Rent: £35pa, rising every 33 years of the term to £65 and £85.
- Unexpired Term at Valuation Date: 65.53 years.

(vi) Freeholder: Lakesides Development Limited.

(vii) Tenant's Proposed Premium: £12,168.

(viii) Landlord's Proposed Premium: £26,900.

Hearing and Inspection

3. The hearing of this application took place on 30 July 2013. Mr Davis, a chartered surveyor, appeared on behalf of himself and his wife. Mr Nesbitt, a chartered surveyor, appeared on behalf of the Respondent.
4. On 1 May 2013, the Tribunal gave Directions. On 23 May, the parties agreed the terms of the extended lease and these have not concerned the Tribunal. On 12 June, pursuant to the Directions, Mr Davis and Mr Nesbitt met. They agreed the relevant valuation date, the unexpired term and that the capitalisation rate for assessing the value of the freeholder's ground rent should be 7%.

5. The parties did not agree on the deferment rate, Mr Nesbitt contending for the *Sportelli* rate of 5% and Mr Davis contending for 5.75%. Mr Davis did not adduce any evidence for departing from the *Sportelli* rate and at the beginning of the hearing agreed that 5% was the figure that we should adopt.
6. The Parties disagreed on two issues and these are the issues which we are required to determine:
 - (i) The value of the flat as held on the existing 65.53 year lease ("the short lease value"): Mr Davis contended for a figure of £155,000, whilst Mr Nesbitt for £135,000.
 - (ii) The value of the flat as held on the new 153.33 year lease ("the extended lease value"): Mr Davis contended for a figure of £170,000, whilst Mr Nesbitt for £180,000.
7. The Applicants did not produce a Bundle of Documents as required by the Directions. We granted Mr Davis a short adjournment to produce such a bundle, attested by a statement of truth. We referred to a number of documents in this Bundle. We prefix any reference to this Bundle by "App. ___").
8. We heard evidence from Mr Davis on behalf of the Applicants. His valuation is at App.60. In assessing the vacant freehold possession value of the flat, Mr Davis relied on two comparables, namely 54 First Avenue and 17 St Marks Road. The Applicants had purchased the leasehold interest in the flat on 14 September 2012 for £145k. Mr Davis had initially been instructed by the then lessee, Peter Leys, to carry out a valuation for a lease extension in May 2012. On 1 May 2012, he had valued the extension at £10,700 (see App.18). Mr Leys had sought to sell his leasehold interest at an auction on 31 July 2012, at the height of the London Olympics. The property failed to attract the reserve price. The Applicants had subsequently purchased the leasehold interest by private treaty. Mr Leys had submitted his application for a new lease on 12 September 2012, two days before the sale was completed. Mr Leys signed a written statement, dated 8 April 2013, in which he described how he had installed double glazed windows and upgraded the bathroom in 2009.
9. We heard evidence from Mr Nesbitt on behalf of the Respondent. He produced a witness statement dated 29 July 2013. His initial valuation, dated 29 October 2012, is at p.7-8 of his statement. After his joint meeting, he revised his Valuation reducing the premium from £37,425 to £26,980. The significant change was that he reduced the freehold vacant possession value of the flat (excluding improvements) from £200k to £180k. Whilst he would have been willing to justify his initial assessment, he did not seek to resile from his revised valuation. He relied on two comparables, namely 14A Second Avenue and 32A St Mark's Road. He considered these to be the more relevant than those identified by the Applicants.
10. We completed the hearing by 13.00 and arranged to inspect the flat and the four comparables during the afternoon. Mr Davis was present to provide access to the flat. Mr Nesbitt did not consider it necessary to attend. We then inspected the four comparables from the outside.

12B Second Avenue – the Flat

11. The flat at 12B Second Avenue, is self-contained and on the first floor of a two storey building constructed in the late Nineteenth century. It seems that it was originally constructed as a separate flat. The extension seems to have been rebuilt at some stage. The flat consists of two good sized bedrooms, a living room, kitchen and bathroom. There is no central heating. We noted the double glazing and the basic upgrade to the bathroom which had been carried out in 2009. The tenant has the benefit of a garage and the rear section of the garden.

14A Second Avenue

12. 14A Second Avenue was the closest comparable. It was constructed at the same time as the flat, albeit that the extension seems to be original. The lay-out is very similar to that of the flat. It also has a garage and a garden. This flat was sold for £214,995 on 4 May 2007. Mr Nesbitt provided details of this property at LAN1. This property was sold more than 5 years before the valuation date. He produced the Land Registry Index which suggested that there had only been a modest movement in process over this period (from 313.43 to 320.16).

54 First Avenue

13. We then inspected 54 First Avenue, EN11 1BN. This was a ground floor flat. The design was quite different. There were currently two living rooms and a bedroom. The sale particulars suggested that the front reception room could be used as a second bedroom. There is a garage to the side of the property and a garden. The particulars are at App 21 and App.52-6. A sale at £195k was concluded in December 2012 which included £10k for a new 99 year lease.

32A St Marks Road

14. 32A St Marks Road is a two bedroom first floor flat. The second bedroom seems smaller. It has no garage or garden. Mr Nesbitt provided particulars at LAN1. It sold for £213,000 on 23 March 2012.

17 St Marks Road

15. We finally inspected 17 St Marks Road. Whilst this is also a two bedroom flat, it is one of four flats in a two storey semi-detached house with a roof space. It has a modern kitchen and bathroom, together with central heating and double glazing. Particulars are at App.50-51. The flat seems to be a loft conversion, the eaves restricting the useable space in the rooms. A 125 years lease of this flat sold for £160k in August 2012.

Issue 1: Short Lease Value

16. It is common ground that the Applicants purchased their 65.53 year leasehold interest in the flat for £145k, completing their purchase on 14 September 2012, namely two days after the Valuation Date.
17. Mr Davis has sought to persuade us that the price that he paid did not reflect the true market value which he rather assesses at £155k. He relies on a valuation provided by the Applicants' mortgage lender National Westminster, in the sum of £155k. He notes that Mr Leys had failed to achieve his reserve price at Auction on 31 July 2012. Mr Leys had been anxious for a speedy sale and had therefore been willing to accept an offer at below the market rate from the Applicants. Had the property been sold by private treaty with a typical transaction period of 6 to 9 months, a price of £153k to £160k would have been achieved.
18. Mr Davis has also sought to justify his figure by adopting the Beskett and Kay Graph for Greater London and England. For a 63.53 year lease, he takes a percentage of 88.11% of the value of the property with an extended lease. He computes this to be £170k. From this, he arrives at a figure of £151,487.
19. Mr Nesbitt, on the other hand, contends that the best evidence is the price paid by the Applicants on 14 September 2012. We agree with him. It is not appropriate to go behind the price agreed by Mr Leys and the Applicants. Given this evidence, we are reluctant to give any weight to extrapolating a figure from the Beskett and Kay graph. This is no more than their informed opinion.
20. From this purchase price of £145k, we must make adjustments to the modest improvements to the flat carried out in 2009 and for the "no Act world". We agree with Mr Nesbitt that a reduction of £10k in an appropriate one for these factors. We therefore adopt an existing short lease value of £135k.

Issue 2: Extended Lease value

21. The Applicants contend for an extended lease value of £170k. Their starting point for the value of the flat in good condition is the comparables at 54 First Avenue (£195k – December 2012) and 17 St Marks Road (£160k – August 2012). From this they extract a value of £195k. From this, they deduct £25k for improvements at the flat, reaching his figure of £170k for the extended lease value.
22. Mr Nesbitt rather contends for an extended lease value of £180k. He relies on his comparables of 14A Second Avenue (£215k – May 2007) and 32A St Marks Road (£213k – March 2012). In his initial valuation, he would have made a deduction for improvements to reach an extended lease value of £200k. After the joint meeting on 12 June, he revised his valuation on 26 June. In the hope of reaching a settlement, he reduced this figure to £180k. Mr Nesbitt signed the Statement of Agreed Matters and Facts in Dispute on 26 June. Mr Davis did not sign this until 23 July. Despite this delay, Mr Nesbitt does not resile from his concessionary figure of £180k.

23. The Tribunal prefer the evidence of Mr Nesbitt:

(i) Having viewed the properties, we prefer the comparables identified by Mr Nesbitt. 14A Second Avenue is the closest comparable. However, the relevant sale was in May 2007. We are satisfied that the second closest comparable is 32A St Marks Road. This was somewhat less desirable than the flat, the second bedroom being smaller and there being no garages or garden. However, it does support the market value of £215k.

(ii) the Applicants' comparables were less helpful. 54 First Avenue is a ground floor flat whose layout is quite different. 17 St Marks Road is a loft conversion.

(iii) If the tenant's improvements at the flat are discounted, we do not accept that the affect on the value of the flat would be anything like the figure of £25k for which Mr Davis contended.

(iv) We are satisfied that Mr Nesbitt has made more than adequate allowance for any of the improvements which fall to be disregarded in his figure of £180k. His initial assessment was a higher figure of £200k. He reduced this to £180k after the joint meeting. He does not resile from this lower figure. It is a figure which we accept without hesitation.

Conclusions

24. The parties are now agreed that the relevant rates for capitalisation (7%) and deferment (5%). We have determined the short lease value to be £135k and the extended lease value to be £180k. In these circumstances, we affirm the valuation by Mr Nesbitt for the premium payable for the extended lease in the sum of £26,980. We attach his computation as an Appendix.

Robert Latham
Tribunal Judge
12 August 2013

THE LEASEHOLD REFORM, HOUSING URBAN AND DEVELOPMENT ACT 1993

DATE: 26/06/2013

PROPERTY

12b Second Avenue, Bush Hill Park, Enfield EN1 1BT

Valuation Date

12/09/2012

LEASE DETAILS

Commencement

25/03/1977

5.00%

Reversionary rate %

Term

99

7.00%

Capitalisation rate %

Expiry date

24/03/2076

Unexpired term

63.53

Rent receivable by landlord

£65.00 £85.00

VALUES

FHVP

£180,000

Extended lease value

differential 100% £180,000

LHVP

£135,000

(Based on sale with improvements and rights at £145,000)

DIMINUTION IN VALUE OF FREEHOLDER'S INTEREST

<u>TERM 1</u>	LOSS OF RENT			£65.00	
	x YP	30.53 years @	7.00%	12.4750	
					£811
<u>TERM 2</u>	LOSS OF RENT			£85.00	
	x YP	33.00 years @	7.00%	12.7538	
	x PV	30.53 years @	7.00%	0.1267	
					£137
<u>REVERSION</u>	FHVP			£180,000	
	x PV	63.53 years @	5.00%	0.0451	
					£8,112
					£9,060
	Less Value of Freeholders proposed interest			£180,000	
	x PV	153.53 years @	5.00%	0.0006	
	(Existing term plus 90 years)				£100

Lessors' Interest £8,960

CALCULATION OF MARRIAGE VALUE

	Tenant's Extended Lease Value	£180,000
	Landlords' Extended Lease Value	£100
	Sum of Proposed Extended Lease Interests	£180,100
Less	Landlords' Present Interests	£9,060
	Lessee's Present Interest	£135,000
		£144,060
Marriage Value		£36,040
Take	50% Marriage Value	£18,020

PREMIUM PAYABLE TO FREEHOLDER

	Total of	
	Diminution in Freehold Interest	£8,960
Plus	Freeholders Share of Marriage Value	£18,020
		£26,980

Total Premium £26,980