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

Case reference : **LON/00AQ/OLR/2013/1620**

Property : **24 Canons Court, Stonegrove,
Edgware, Middlesex HA8 7ST**

Applicant : **Mr Shimshon Shalom Cohen**

Representative : **Selwyn & Company, solicitors**

Respondent : **Mr Paul Karl**

Representative : **Beazer Investments Ltd, managing
agents**

Type of application : **Section 48 of the Leasehold
Reform, Housing and Urban
Development Act 1993**

Tribunal members : **Judge Timothy Powell
Mr Pat Casey MRICS**

**Date of determination
and venue** : **1 April 2014 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **30 April 2014**

DECISION

Summary of the Tribunal's decisions

- (1) The appropriate premium payable for the new lease is £15,175;
- (2) The tribunal declines to make an order for costs under rule 13 of the procedure rules; and
- (3) The tribunal would not expect to see a claim to be made for Talbots Surveying Services' invoice in a subsequent application for section 60 costs.

Background

1. This is an application made by the applicant leaseholder, Mr Cohen, pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid by him for the grant of a new lease of 24 Cannons Court, Stonegrove, Edware, Middlesex HA8 7ST (the "property").
2. By a notice of a claim dated 10 May 2013, served pursuant to section 42 of the Act, Mr Cohen exercised his right for the grant of a new lease in respect of the subject property. At the time, Mr Cohen held the existing lease granted on 27 June 1986 for a term of 99 years from 25 December 1984 at a ground rent of £75 for the first 33 years, £150 for the next 33 years and £300 per annum for the final 33 years. Mr Cohen proposed to pay a premium of £12,500 for the new lease.
3. On 28 June 2013, the respondent freeholders' then solicitors, Brady served a counter-notice admitting the validity of the claim and counter-proposed a premium of £35,000 for the grant of a new lease.
4. On 9 December 2013, the applicant applied to the Tribunal for a determination of the premium.

The issues

Matters agreed

5. The following matters were agreed:
 - (a) Valuation date: 10 May 2013;
 - (b) Unexpired term: 70.62 years;
 - (c) Capitalisation of ground rent: 7% per annum;

- (d) Capitalised ground rent value: £1,987;
- (e) Deferment rate (agreed in the hearing): 5%; and
- (f) There is no compensation payable under paragraphs 2(c) and 5 of Schedule 13 of the Act

Matters not agreed

- 6. The following matters were not agreed:
 - (a) The extended lease value: the applicant contending for £200,000 and the respondent contending for £225,000; and
 - (b) The value of the flat subject to the current lease: the applicant contending for £190,000 and the respondent contending for £170,000.
- 7. Each of these issues is considered in turn below and is followed by the Tribunal's decision.

Inspection

- 8. The Tribunal inspected the subject property after the hearing on 1 April 2014. The subject flat is on the second and top floor of a three-storey block of 30 self-contained flats. The flats are grouped into sets of 6 flats served by common entrance hall and staircase, there being external metal staircases at the rear providing bin access, served by a door in the kitchen of each flat. The block itself is considered to have been built in the 1930s.
- 9. The accommodation of the subject flat comprises two bedrooms, lounge, bathroom & WC and kitchen. One of the bedrooms and the lounge face the front of the building; the other bedroom, bathroom & WC and kitchen face the rear. The block is surrounded by grass verges and an access way which encircles it. At the rear, are a number of parking spaces along the rear boundary, though part of the rear land has been enclosed and fenced in with a high fence, in order to provide an enclosed place for builders' materials and equipment, understood to be in connection with the freeholder's plans for the construction of two extra floors on the block, for which planning permission has apparently been granted.
- 10. While the flat itself was in good condition, the building had an air of neglect, with the rear bin access stairs being very rusty and dilapidated-looking.

The hearing

11. The hearing in this matter took place on 1 April 2014. The applicant was represented by Mr Selwyn, solicitor, and by Mr Maunder Taylor FRICS, with Mr Cohen observing. The respondent was represented by Mr Paul Connolly of Beazer Investments Ltd, managing agents for the freeholder.
12. The applicant relied upon the expert report and valuation of Mr Maunder Taylor dated 22 January 2014 and a brief addendum report dated 25 March 2014 (which dealt with the further investigation of a transaction relating to one of the comparables put forward, namely in respect of flat 11, Canons Court). The respondent did not rely upon an expert valuer's report, but merely upon a two-page factual response and a valuation, both of which had been prepared by Mr Connolly himself.
13. At the outset of the hearing, the Tribunal expressed its concern that Mr Connolly's documentation was unsigned and undated, and did not contain an expert's statement of truth. Mr Connolly did not purport to be an expert but said that he could point to previous settlements in relation to lease extensions and to other Tribunal decisions. This was notwithstanding the inclusion amongst the documents he relied on of an invoice from Talbots Surveying Services Ltd for sum £600 plus VAT for "providing advice in respect of lease extension application" to 24 Canons Court.
14. Having expressed its concerns that the Tribunal only had expert evidence on one side, namely Mr Maunder-Taylor's evidence, and that Mr Connolly would not be in a position to give opinion evidence based on the factual matters that he raised, the Tribunal offered Mr Connolly the opportunity to consider whether he wished to postpone the hearing in order to call valuer evidence on behalf of the respondent, albeit on terms that the respondent would have to pay for the applicant's costs thrown away by such a postponement. After breaking for 10 minutes, Mr Connolly returned to the hearing, to say that he did not wish for there to be a postponement and that he was happy for the matter to proceed.

The extended lease value

15. Mr Connolly referred to the sale of flat 11 Canons Court, but dismissed it as having been "sold for less than the current market value at the time, due to the owner being desperate for quick sale". He relied on the intended sale of flat 16 Canons Court, which he said "is currently on the market with Grove Residential for £249,950 with a 92-year lease".
16. According to Mr Maunder Taylor, an offer in respect of flat 16 had been made at the asking price. However, he did not believe that the

proposed purchaser was fully aware of the freeholder's proposal to build two extra floors on the block. He came to this conclusion because there was no mention of it in the agent's particulars, nor when he spoke to Grove Residential did they seem to be aware of the proposal.

17. As this is not a completed transaction it is of no use to the Tribunal, particularly in the absence of any evidence of price movement since the valuation date on 10 May 2013.
18. Thus, the Tribunal had only one completed sale transaction, which related to flat 11 Canons Court. This flat sold in September 2013 for £200,000 with a lease for 189 years from 24 December 1984. There was some dispute between the parties as to the condition of the flat at the point of sale. Mr Connolly said that it was only single-glazed, whereas Mr Maunder Taylor said that that was the condition one has to assume anyway, i.e. unmodernised flat.
19. In our view, there was no evidence before us that would allow us to make any sensible adjustment of the sale price due to condition.
20. There was also a dispute between the parties as to whether the sale price was at an open market valuation. Mr Connolly said that it was a distress sale at a discounted price. However, Mr Maunder Taylor disputed this, saying that it had been marketed in the usual way and he produced particulars of sale and reproduced information from the selling agent in his addendum report, which it should be noted Mr Connolly initially objected to being used in as evidence but which the Tribunal decided should be admitted.
21. On that basis, we accept that the extended lease value for flat 24 Canons Court should also be £200,000.
22. Mr Maunder Taylor suggested a 1% uplift on that figure to give the freehold value of £202,000 and we accept that as well. We do not think we could do anything but that, on the evidence presented to us.

Existing leasehold value

23. Turning now to the existing leasehold value, the Tribunal was presented with four transactions, three of which were common to the parties, namely flats 2, 22 and 26 Canons Court.
24. Mr Connolly was not aware of the sale of flat 20 referred to in paragraph 3.2 of Mr Maunder Taylor's report, but the Tribunal considers that that is likely to have been a typographical error and should have been a reference to the sale of flat 29, which is dealt with below.

25. Flat 2 had sold in October 2013 for £172,500 subject to a lease of 99 years from 24 December 1984. Agents' details and Land Registry office copy entries were attached to Mr Maunder Taylor's report. He suggested that flat 2 had sold in poor and unmodernised condition, from what he had been told by one of the estate agents' negotiators on the telephone. The sale price reflected that poor condition but if an uplift for poor condition were made, that would leave the sale price not very far from his contention for £190,000, for the value of the flat subject to the current lease.
26. Against this, Mr Connolly said that flat 2 was not in a very bad condition at the point of sale. In the absence of direct, detailed and testable evidence as to the condition of flat 22, the Tribunal did not think it possible to make any adjustment to the sale price.
27. The two other common sale transactions of leases of 99 years were in respect of flat 22, which sold in July 2013 at £180,000, and flat 26 which sold in April 2012 for £173,000.
28. At paragraph 4.6.1(a) of his report, Mr Maunder Taylor also referred to the sale of flat 29 Canons Court. This flat also had a 99 year lease and was sold for £190,000 in about January 2014 when there were 71 years left on the lease. However, according to the office copy entries in the bundle, the completed transaction had not yet been registered at HM Land Registry, as a result of which the Tribunal was reluctant to give the same weight to the transaction as Mr Maunder Taylor did.
29. In Mr Maunder-Taylor's view, there had been very little market movement in this block over several years, which he sought to support by reference to the history of flat 22 at paragraph 4.6.1(c) of his report. Given that neither party produced evidence of price movement or the lack of it, the best that the Tribunal can do is to take an average of the four sale prices for flats 2, 22, 26 and 29, which produces an initial figure of £178,875 for the existing lease value.
30. However, these transactions took place in the real world, whereas valuation under the 1993 Act requires a disregard of any effects the Act may have had on values.
31. Mr Maunder Taylor thought that these effects were negligible in these outer-London environs with some 71 years unexpired, but we think purchasers would be encouraged in the price they pay for such interests by the certainty that they have a right to extend their leases and, indeed, the right to come before this Tribunal if they cannot agree with the landlord the price properly payable. However, in the absence of expert evidence, and contrary to Mr Maunder Taylor's view, doing the best we can we would round off the average figure £178,875 to give an existing lease value of £178,000.

The Tribunal's decision

32. With the concession made during the hearing as to the 5% deferment rate and with the agreement of the capitalised value of the passing ground rents, for the reasons given above the Tribunal determines the appropriate premium to be £15,175. A copy of our valuation calculation is annexed to this decision.

Costs

33. Mr Maunder Taylor made an application on behalf of the applicant for costs under rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Procedure) Rules 2013. He claimed that the landlord had not negotiated in good faith or at all. A case like this would not normally come to the Tribunal. The landlord had obtained a professional valuation from Talbots but had clearly ignored that and had refused to exchange valuations with him. The applicant had been put to unnecessary and unreasonable cost and had been forced to come to the Tribunal. In its counter-notice the landlord had put in a premium figure of £35,000 but had provided no supporting valuation for his figure. The landlord was an experienced property owner, who had been involved in previous lease extensions, and so he knew what he was doing. The landlord had showed no willingness to compromise and it was unreasonable to have put the applicant to the extra cost of the Tribunal hearing.
34. For the landlord, Mr Connolly said that he had been happy to discuss the premium but the applicant's solicitor had said that she would not talk to him. He did not have a valuation report, as such, but he had obtained a professional opinion from a surveyor. Mr Connolly thought he had good evidence in support of the premium put forward by the landlord, namely previous settlements reached with other leaseholders on lease extensions and a previous LVT decision from 2011 where the Tribunal determined a premium of more than £200,000. Although he was not a valuer, he was able to give evidence of these matters.

The Tribunal's decision

35. The Tribunal declines to make an order for costs under rule 13.

Reasons for the Tribunal's decision

36. As was made clear to Mr Connolly at the outset of the hearing, the Tribunal attaches very little weight to past settlement evidence in relation to other leaseholders' lease extensions, as there may be all sorts of influencing factors in the decisions to reach a settlement and the Tribunal can rarely get to the bottom of any compromise. Likewise, the Lands Tribunal (now Upper Tribunal) has disapproved of the use of

historic LVT decisions as evidence, for example see *Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39, [2006] EWLands LRA/72/2005, which applies not only to Mr Connolly's evidence, contained in his response, but also the reference to the 2011 LVT determination of a premium.

37. However, the Tribunal is conscious that the statutory right to a lease extension is a form of compulsory acquisition. The Tribunal is generally a no-cost jurisdiction and no application fee or hearing fee is paid by the applicant to bring his claim to the Tribunal.
38. Neither party produced evidence in support of their figures in the initial notice and counter-notice, though of course, the applicant eventually produced a valuation report from Mr Maunder Taylor which contended for a figure that was nearly £4,000 less than the amount stated in the initial notice.
39. Maybe the parties should have settled their differences, but, in the end, the Tribunal is there to resolve disputes where settlements cannot be reached. The cost a party is prepared to incur is a matter for them.
40. Rule 13 sets a high bar. The landlord's contentions for £35,000 as the appropriate premium may have been misguided, as was perhaps his decision not to produce expert evidence, but it could not be said to be "unreasonable" conduct within the meaning of rule 13.
41. Given that a claim for the landlord's section 60 costs will follow and that certain costs are recoverable from the leaseholder under the 1993 Act, the Tribunal notes that many of these costs would have been paid by the landlord anyway, regardless of the fact that the leaseholder would have to pay for them by virtue of the 1993 Act. However, it is very difficult to see why someone would pay for a valuation report that they did not use or why the applicant leaseholder should pay for the landlords' valuation report, when a copy was not put to his advisers or to the Tribunal.
42. The Tribunal would therefore not expect to see a claim to be made for the Talbots Surveying Services invoice in any future claim for section 60 costs.

Name: Judge Timothy Powell **Date:** 30 April 2014

Appendix: Valuation setting out the Tribunal's calculations

CASE REFERENCE LON/00AQ/OLR/2013/1620

First Tier Tribunal
Property Chamber (Residential Property)

Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993

Premium payable for an extended leasehold Interest in 24 Canons
Court, Stonegrove, Edgware, HA8 7ST

Valuation date: 10 May 2013

Value of Landlord's existing interest

Capitalised ground rent agreed at			£1,988
Reversion to			
Unencumbered virtual freehold value	£202,000		
Deferred for 70.62 years @ 5%	0.0319		£6,444
Total value of landlord's existing interest			£8,432
1. <u>Value of landlord's proposed interest</u>	£202,000		
Deferred 160.62 years @ 5%	0.0004		£81
2. <u>Loss to landlord in granting new lease</u>			£8,351
3. <u>Marriage value calculation</u>			
Landlord's proposed interest	£81		
Tenant's proposed interest	£200,000	£200,081	
Less			
Landlord's existing interest	£8,432		
Tenant's existing interest	£178,000	£186,432	
		£13,649	
Landlord's share of marriage value		50%	£6,824
			£15,175
4. <u>Premium payable</u>			£15,175