



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : LON/00AY/OLR/2016/0663

Property : First floor flat 2, 2 Northlands Road,
London SE5 9PL

Applicant : Willis Estates Limited

Representative : Mr E Willis, director of Applicant
company.

Respondent : Mr R S Clarke

Representative : Mr S Birks of Counsel

Type of application : Application to determine the premium
payable on a flat lease renewal under
section 48(1) of the Leasehold Reform
Housing and Urban Development Act
1993

Tribunal member(s) : Judge Pittaway
Mr D Jagger MRICS

Date and venue of hearing : 23 November 2016 at 10 Alfred Place,
London WC1E 7LR

Date of decision : 8 December 2016

DECISION

Decisions of the tribunal

Extended lease value **£315,000.00**

Premium for extended lease **£ 38,291.00**

The tribunal's valuation is attached as the Appendix to this decision.

1. **The Application**

By an application dated 19 April 2016 the applicant sought a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "Act") as to the premium payable for the extension of the lease of the Property

2. **The Property**

The Property the subject of the application is a first floor flat , one of three converted flats in a three story Victorian house. The house is one house away from Coldharbour Lane. It abuts onto a business park at the rear. It consists of 1 bedroom, reception room, kitchen and bathroom. The windows are double-glazed and it has gas central heating.

The gross internal area is not agreed.

3. **Background**

- | | | |
|-----|---|------------------|
| 3.1 | Date of tenant's notice: | 17 November 2015 |
| 3.2 | Date of landlord's counter-notice: | 26 January 2016 |
| 3.3 | Date of (unsigned) application to Tribunal: | 19 April 2016 |

4. **Details of tenant's leasehold interest**

- | | | |
|-----|----------------|--|
| 4.1 | Term of lease: | 99 years from 24 June 1973 |
| 4.2 | Ground rent: | £25 p.a. rising to £50 on 24 June 2006 and £100 pa on 24 June 2039 |

5. **Matters agreed**

- 5.1 From the bundles provided and by reason of agreement at the hearing the following matters are agreed between the parties

- | | | |
|-----|--------------------------|-------------------------|
| (a) | Valuation date | 17 November 2015 |
| (b) | Unexpired term | 56.6 years |
| (c) | The Capitalisation rate: | 5.5% |

- (d) The Deferment rate: 5%
- (e) Relativity percentage 83.33%

6. Matters in Dispute

- 6.1 The extended lease value. The parties' respective positions were
 - (a) The applicant valuing this at £240,000; and
 - (b) The respondent valuing this at £385,000.
- 6.2 The floor area of the flat.
 - (a) Mr Willis relied upon his own measurement of 555 square feet; and
 - (b) Mr Martin (the respondent's valuer) relied on measurements scaled off the lease plan which he calculated to be 590 square feet.

7. Evidence

- 7.1 The tribunal had before it a valuation prepared by Mr Willis MRICS, who is a chartered surveyor, but who confirmed to the tribunal at the hearing that he was appearing on behalf of the applicant and not as an expert witness. The Tribunal also had before it the valuation report of Mr C R Martin FRICS of Michael Rogers LLP, appearing as an expert witness on behalf of the respondent, dated 7 January 2016.
- 7.2 During the hearing the tribunal noted that the valuation prepared by Mr Willis showed a deferment rate of 5.5% when 5% had been agreed. They requested that Mr Willis provided them with a corrected valuation after the hearing. Mr Martin had not included his valuation with his report and the tribunal also requested that this be provided to them.
- 7.3 Both Mr Willis and Mr Martin gave evidence at the hearing and were each cross-examined.
- 7.4 The tribunal inspected the Property and the comparables on 23 November.
- 7.5 The tribunal have had regard to
 - (a) the valuers' evidence, the cross examination and the other papers before them;
 - (b) their inspection of the Property and external inspection of the comparables; and
 - (c) the decision in *Sloane Stanley v Mundy* to which both valuers referred in their evidence in reaching their determination and comment on specific aspects of these in their reasons below.
- 7.6 The tribunal requested that both surveyors provide it with their respective valuations showing the premium payable for the extended lease, as neither had included such a valuation in their evidence but neither surveyor did so before the tribunal issued its decision.

Reasons for the tribunal's decision

8. Comparables

8.1 Mr Willis provided four comparables to the tribunal

- (a) Second floor flat at 25 Northlands Street, described as a two bedroom flat in a better condition than the property, on the opposite side of the road, which sold on 3 September 2015 for £380,000;
- (b) Flat 2, 14 Northlands Street, described as a newly refurbished 2 bedroom, 2 bathroom flat, on the same side of the road as the property, which sold in April 2005, for £350,000;
- (c) A first floor flat, 23b Northlands Street, described as a two bedroom flat in good condition with period features on the opposite side of the road, which sold on 26 June 2015 for £358,000; and
- (d) 143a Coldharbour Lane, described as a newly refurbished one bedroom flat in a “comparable, or marginally inferior” location, which sold for £280,000 in December 2015.

The tribunal’s inspection of 143a Coldharbour Lane showed it to be in a property that was of sufficiently different appearance and on a significantly busier road than either Northlands Road or Eastlake Road and therefore not to be a useful comparable

8.2 Mr Martin referred the tribunal to two of the comparables referred to by Mr Willis, namely Flat 2, 14 Northlands Street and 25 Northlands Street. He then referred to the following

- (a) 163 Coldharbour Lane; a one bedroom flat which he stated in his report was “under offer” at £415,000, and which at the hearing he confirmed had not been sold;

The tribunal did not consider this a useful comparable as it had not sold.

- (b) A one bedroom ground floor flat (stated to be smaller than the subject flat) at 9 Eastlake Road sold for £385,000 at an unspecified date after the date of his valuation; and
- (c) A one bedroom flat at 29b Eastlake Road sold for £355,000.

Mr Willis drew the tribunal’s attention to the fact that both the flats in Eastlake Road are smaller than the subject flat.

The tribunal do however note that their expressed square footage was approximately similar to the square footage he was inviting the tribunal to adopt.

- 8.3 It was Mr Martin's submission that he preferred the comparables in Eastlake Road as he had personally inspected one of them. He did not agree with Mr Willis' view that Eastlake Road was a superior road to Northland Street.

From its inspection of the comparables the tribunal agrees with Mr Willis that Eastlake Road is superior to Northland Street. This does not make the comparables useless but does necessitate an allowance being made to reflect the difference.

9. Assumptions and adjustments in respect of the comparables

- 9.1 Mr Willis assumed that all of his comparables had sold with leases in excess of 99 years. He made no time adjustment for when his comparables were sold, as against the valuation date of 17 November 2015.
- 9.2 Mr Martin did not consider that there had been any significant movement in prices in the area during the period in which the comparables sold, compared to the valuation date. Mr Willis agreed.
- 9.3 Mr Willis submitted that it was necessary to make adjustments to the comparables to reflect, as appropriate, improvements and the location (the Property being on the inferior side of Northlands Street by reason of it backing onto an industrial estate) and whether they had a garden. Mr Willis however did not provide the tribunal with any adjustments to the comparables nor any methodology for the adjustments he made to his comparables.
- 9.4 Mr Willis invited the tribunal to take into account the following tenant's improvements at the Property.

- (a) Installation of central heating.

From their inspection the tribunal note the age of the radiators at the flat and consider there must have been some form of heating at the flat when the lease was originally granted.

- (b) Rewiring

The tribunal do not consider this to be an improvement but rather compliance with the covenant by the tenant to keep the property in repair.

- (c) Double glazing.

Although Mr Willis referred to this as an improvement he did not attribute any value to it.

The tribunal have used their own knowledge and experience to make adjustments to the five comparables they have considered

the most appropriate to use in determining the extended lease value.

10. Likely purchaser and state of repair

- 10.1 It was Mr Willis' submission that it was unlikely that the flat would sell to an owner occupier; that it was a flat for an investor/developer to buy, who would look to reconfigure it and make a profit on the sale. He suggested (without any supporting evidence) that such a prospective purchaser would not factor less than £50,000 into their assessment of the value of the flat and would look to achieve a profit in the region of 20%. He therefore invited the tribunal to accept that if sold through an estate agent in its present condition it would sell for a price in the order of 230,000 to 250,000 and that an appropriate reserve should the flat be sold at auction would be £230,000; but without providing them with any evidence to substantiate this opinion.
- 10.2 Mr Willis further submitted that outstanding repair to the external fabric and common parts would have the effect of devaluing the flat by £20,000, and that the condition of the flat itself would have a negative effect on value; stating that it is in poor condition and needed full refurbishment.
- 10.3 In his closing submissions Mr Birks, for the respondent, put to the tribunal that it was necessary to assume that both the landlord and tenant had complied with their respective repairing obligations and that no adjustment should be made for the poor state of repair of the fabric, the common parts or the flat itself.
- 10.4 Mr Martin made no adjustment to reflect a superior specification in the comparable properties that had been sold refurbished.
- 10.5 The tribunal note that Mr Willis was giving evidence as the applicant not as an expert and are unable to accept his unsubstantiated evidence. The tribunal has to assume that the property is in the good state of repair required by the lease; but has taken into account the likelihood of the comparables being in an improved state/ refurbished to a specification above that contemplated by a lease granted in the 1970s.

11. Alternative method of valuation

- 11.1 As an alternative method of valuation Mr Willis invited the tribunal to look at the indexation of the purchase price of £78,000 which the applicant had paid for the flat in March 2003. Based on the current estimate of Zoopla he proposed an extended lease value of £194,000. Mr Willis states that he understands that the Zoopla estimate is calculated using algorithms applied to the historic purchase price based on the average growth indices for the type of property in the specific postcode.

11.2 The tribunal does not consider this approach to be appropriate both because of the length of time over which he is seeking to index the price and because Mr Willis had not considered or addressed that the index derives from sale information that may be weighted by reason of factors such as lease length.

12. **Freehold value**

12.1 Mr Martin considered that the difference between a freehold interest and a leasehold interest in excess of 99 years to be in the region of 1 to 2%. Mr Willis did not address the tribunal on this point.

12.2 The tribunal have added 1% to the extended lease value to produce the freehold value used in its valuation.

13. **Square footage**

13.1 There was a difference of opinion between Mr Willis and Mr Martin as to the square footage of the flat. Mr Willis did not challenge the individual floor areas of room that Mr Martin had taken from a scale plan to reach a GIA of 599.05 square feet but while Mr Martin considered that the square footage of the flat corridor (calculated by Mr Martin from a lease plan in his possession to be 32.4 square feet) and the bathroom (calculated by Mr Martin from the same lease plan to be 71 square feet) and the area occupied by chimney breasts should be included in GIA Mr Willis considered appropriate to look at a net effective area, which he put at 455 square feet. As the scale plan in question was not in the tribunal bundles the tribunal requested an official copy of the same to be obtained from the land registry and sent to it and the applicant. The plan received was of such poor quality that it was impossible to determine whether it could usefully provide accurate measurements of the rooms.

13.2 The tribunal do not consider that it needs to consider this point in detail as neither valuation relied on a price per square foot. From its inspection of the properties in Northland Street it is inclined to agree with Mr Martin's view that it is likely that the flats at 14 and 25 Northland Street are of a similar square footage, even though they were described in their sale particulars as being two bedroom properties. The tribunal's inspection of the subject flat did not persuade them that there should be a reduction in the square footage of the flat down to net effective area as proposed by Mr Willis.

14. **The Law**

14.1 Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The 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 for other loss.

- 14.2 The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation 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) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.
- 14.3 Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.
- 14.4 Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.
- 14.5 Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

Name: Judge Pittaway

Date: 8 December 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case

number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

APPENDIX
First floor flat 2, 2 Northlands Road, London SE5 9PL
The Tribunal's Valuation
Assessment of the premium for a lease extension
In accordance with Leasehold Reform, Housing and Urban
Development Act 1993
LON/00AY/OLR/2016/0063

Components

Valuation date:	17 th November 2015	
Yield for ground rent:	5.5%	
Deferment rate:	5.0%	
Long lease value	£315,000	
Freehold value	£318,150	
Existing leasehold value	£262,490	
Relativity	83.33 %	
Unexpired Term	56.6 years	
Ground rent currently receivable	£50	
Capitalised @ 5.5% for 23.6 years	13.043	£652
Rising to:	£100	
Capitalised @ 6.0% for 33 years	15.075	
Deferred 23.96 years @ 5.5%	0.316	£476
		£1,128
Reversion to:	£318,150	
Deferred 56.6 years @5%	0.0617	<u>£19,630</u>
Freeholder's Present Interest		£20,758
Landlords interest after grant of new lease	£318,150	
PV of £1 after reversion @ 5% 0.00053	£168	£20,590
Marriage Value		
Freehold value	£318,150	
Plus freehold reversion	<u>168</u>	
	£318,316	
Landlord's existing value	£20,758	
Existing leasehold value	<u>£262,490</u>	
	£283,246	

Marriage Value
Freeholders share @ 50%

£35,066

£17,533

LEASE EXTENSION PREMIUM

£38,291

Chinegadoo, Ruvini

From: Pittaway, Jill [Jill.Pittaway@hoganlovells.com]
Sent: 08 December 2016 13:45
To: Chinegadoo, Ruvini; London RAP
Cc: Duncan Jagger (duncanjagger@gmail.com); Pittaway, Jill
Subject: LWDLIB03-#5934196-v3-2016-11-23_s48LRHUDA_2__2_Northlands_St_SE5_9PL
Attachments: LWDLIB03-#5934196-v3-2016-11-23_s48LRHUDA_2__2_Northlands_St_SE5_9PL.pdf

Ruvini

I attach our decision in the above case

Regards

Jill Pittaway

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