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

Case Reference : **MAN/00CJ/OLR/2015/0055**

Property : **24 The Ropery, St. Peter's Basin, Newcastle upon Tyne NE6 1TY**

Applicants : **Christopher Langshaw and Paul David Rogers**

Representative : **Woodruff & Co Property Consultants**

Respondent : **Gala Unity**

Representative : **Foster Maddison Property Consultants Ltd**

Type of Application : **Determination of premium payable pursuant to Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993**

Tribunal Members : **Mr S Moorhouse LLB
Mr I.D. Jefferson FRICS**

Date of Interim Decisions : **14 March 2016**

INTERIM DECISIONS

OVERVIEW

1. By an application dated 7 September 2015 ('the Application') made under Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') in respect of 24 The Ropery, St. Peter's Basin, Newcastle upon Tyne NE6 1TY ('the Property') the Applicants seek a determination by the Tribunal of the premium payable upon the granting of a new lease.
2. On 24 February 2016 the Tribunal conducted an inspection of the Property and convened a hearing attended on behalf of the Applicants by Mr Alistair Woodruff FRICS of Woodruff and Co Property Consultants and on behalf of the Respondent by Mr Neil S Foster BSc (Hons) MRICS of Foster Maddison Property Consultants Ltd.
3. Within the hearing the Tribunal clarified or determined several preliminary matters and went on to hear presentations on behalf of the parties of their statements of case. The Tribunal was satisfied that these presentations, the written documents and responses to a number of questions raised by the Tribunal enabled the Tribunal to determine the premium payable.
4. However a reference within the Applicants' statement of case to there being no counter-notice and responses to the Tribunal's consequential questions raised some doubt as to whether the circumstances set out in Section 48(1) of the Act giving rise to the Tribunal's jurisdiction in this case had arisen. It was apparent that the issue of jurisdiction could not be determined unless the parties' representatives were given the opportunity to take instructions and investigate the history of the case.
5. The Tribunal therefore adjourned the hearing, determined the premium that would be payable in the event that jurisdiction is established and issued directions on the issue of jurisdiction.
6. The present document has been issued alongside the Tribunal's directions to record the Tribunal's interim decisions, recognising that the Tribunal's determination of the premium payable will be academic unless the Tribunal determines that jurisdiction is established and issues a decision to this effect. The interim decisions may nonetheless be useful to the parties given that they are involved in similar applications and negotiations regarding other properties on the estate.

INTERIM DECISIONS

Preliminary Matters

7. At the hearing it was confirmed by the Applicants' representative in response to questions by the Tribunal that Christopher Langshaw and Paul David Rogers are joint leaseholders and Applicants and that they have chosen not to submit a reply to the Respondent's statement of case.
8. Representatives for both parties clarified that they appear as advocates and not in an expert capacity. The statements of case (one for each party) are not put forward as 'expert reports' complying with RICS Codes of Practice and the Tribunal's procedure rules, rather they reflect their clients' representations on the valuation of the premium. Neither representative wished to submit an 'expert' report and in these circumstances the Tribunal determined that it would admit the representations as to

value within the statements of case but not attribute to them the weight of 'expert opinion'.

9. The Applicants wished to submit on the day of the hearing a list of sale prices relating to other properties to support a contention that the market value (with new lease) of the Property was less than the figure previously put forward by the Applicants, a figure that had not been disputed within the Respondent's statement of case. Neither the Respondent nor the Tribunal had seen these details previously and the Respondent submitted that time would be needed in order to properly investigate the new evidence and, to produce their own evidence in respect of a matter previously considered agreed.
10. The Tribunal determined that the details were not admissible for the following reasons: the Applicants had had many months in which to put forward valuation evidence; if values had changed in the opinion of the Applicants since they prepared their statement of case (dated 26 November 2015), they could have exercised their right to submit a response to the Respondent's statement of case (dated 6 January 2016) as per Directions; it would be unfair to the Respondent to admit new evidence on the day of the hearing without adjourning the hearing to allow the Respondent to investigate and evaluate the new evidence; and it would be disproportionate to adjourn the hearing in these circumstances given the relatively small sums involved.

Premium payable

The law

11. The premium is required to be calculated in accordance with Part II of Schedule 13 to the Act. This provides as follows (from paragraph 2):

'2. The premium payable to the tenant in respect of the grant of a new lease shall be the aggregate of -

(a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,

(b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and

(c) any amount of compensation payable to the landlord under paragraph 5.

3. (1) The diminution in value of the landlord's interest is the difference between -

(a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and

(b) the value of his interest in the flat once the new lease is granted.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant 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 following assumptions -

(a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

[(4), (5), (6); 4, 4A, 4B]

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.....'

Submissions

12. The Applicants statement of case proposed a premium of £5,098 and the Respondent's statement of case supported a premium of £7,696, in each case exclusive of costs. The Tribunal noted that the calculations within each statement of case contained significant errors. Re-working of the Applicants' calculations at the hearing gave rise to a premium (proposed by the Applicants) of £6,173 and re-working of the Respondent's calculations gave rise to a premium (proposed by the Respondent) of £7,152.
13. It was common ground within the written submissions and at the hearing that the term of the existing lease is 99 years from 1 September 1990, that the ground rent is £30 per annum, that a relativity percentage of 95% should be adopted in calculating the value of the unexpired term and that the current value of the Property (assuming the grant of the new lease) is £155,000. With regard to this latter figure, having had late evidence ruled inadmissible the Applicants did not pursue an amendment to their valuation of the Property.
14. The Applicants proposed that the appropriate yield rate to be adopted in capitalising ground rent is 6.5% whereas the Respondent proposed a rate of 4.5%. The Applicants proposed a deferment rate for the valuation of the reversionary interest of 6% (revised to 5 % before the Tribunal) and the Respondent proposed 4.5%. Neither party substantiated their contentions with case law nor did either party present expert evidence - the valuations of both parties were submitted under the cloak of advocacy, not as expert opinion.

15. The Applicants referred to an earlier case at 9 Rowes Mews, also at St. Peter's Basin in which Mr Woodruff had acted and in which agreement had been reached with the Respondent on a premium of £5,000 in August 2014. The Applicants had adopted the same formula in the present case as had been agreed by the Respondent in that previous case. The Respondent submitted that there had been a shift in the market since that time on evidence of yields and freehold sales.
16. The Respondent referred to cases it considered to be comparable to the present case at 14 The Ropery and at 37 The Ropery.
17. In relation to 14 The Ropery it was common ground between the parties that the property was a first floor flat, that a new lease had recently been negotiated for a term of 90 years at a premium of £6250 (exclusive of costs). Solicitors had been involved but the leaseholder had not appointed a surveyor in that case.
18. In relation to 37 The Ropery, the Respondent submitted that a new lease for a term of 90 years had been negotiated (completing on 2 July 2015) at a premium (excluding costs) of £7177. In that case also the leaseholder had not appointed a surveyor. The Applicants submitted that this particular unit had been sold for £120,000 in December 2015 and that this sale suggested the negotiation for a new lease had been time critical.
19. The Tribunal raised the matter of *Cadogen -v- Sportelli* and read out to the parties that in that celebrated litigation, a generic deferment rate was propounded of 4.75% for house claims and 5% for flat claims. It is commonly known as the generic rate since the Upper Tribunal stated that these rates should apply whatever the location of the property. It stated that these rates should be used unless compelling evidence to the contrary is adduced. The Tribunal further referred to the appeal to the Court of Appeal, and that the High Court accepted that such guidance was a function of the Upper Tribunal.
20. The Tribunal invited the parties to comment upon *Sportelli* and invited the Respondent to put forward expert evidence to support the deferment rate set out in its valuation but the Respondent declined to put forward such evidence and both parties recognised the standing of *Sportelli*.

Determination

21. The parties' statements of case agreed an unexpired term of 74 years, fixed ground rent of £30 per annum, a long lease valuation of £155,000 and relativity of 95%.
22. In respect of the capitalisation rate the Tribunal prefers a rate of 6.5% adopted by the Applicants which concurs with the Tribunal's own knowledge and experience.
23. Given the lack of any expert evidence by the parties and their recognition of the pre-eminence of *Sportelli* the Tribunal determines that the correct deferment rate in this particular case is 5%.
24. These findings are applied within the Tribunal's valuation set out in the Schedule.

25. In accordance with its valuation the Tribunal determines that the premium that would be payable, in the event that the Tribunal determines that jurisdiction has been established and issues a decision to that effect, would be £6,200.

Schedule

Leasehold Reform, Housing and Urban Development Act 1993

24 The Ropery, St Peter's Basin Newcastle upon Tyne NE3 1TY

Agreed by Parties

Unexpired Term	74 years	
Ground Rent per annum (Fixed)	£30.00	
Long Lease Property Value	£155,000	
Relativity	95%	

Diminution in Value of Landlords Interest

Term

Current Ground Rent	£30.00	
YP for 74 years @ 6.5%	15.239	
		£457

Reversion

Reversion to Market Value (164.00 year lease)	£155,000	
PV £1 def 74 years @ 5.00%	0.02704	
		£4,191

Marriage Value

Value of Lessee's Interest, with extended lease	£155,000	
Freeholders Reversionary Interest	£1	
Value of Landlord's Interest, with extended lease	Nil	
	£155,001	

Less:

Value of Lessee's Present Interest, (95% Relativity)	£147,250-	
Value of Freeholder's Present Interest	£4,648-	

Marriage Value	£3,103	
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50% share of Marriage Value		£1,552
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Total Premium Payable (excluding costs)		£6,200
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