



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

Case reference : **LON/00AJ/OLR/2015/0296**

Properties : **37a Myrtle Road, London W3 6DY.**

Applicant : **Ms. C. L. H. Comer**

Representative : **Mr. Wilson Dunsin FRICS**

Respondents : **Pimass Limited**

Representatives : **Mr. Pat Mullane**

Type of application : **Application under S.48 Leasehold Reform Housing & Urban Development Act 1993.**

Tribunal members : **Ms. A. Hamilton-Farey
Mr. A. Andrew**

Date and venue of hearing : **27 May 2015.
10 Alfred Place, London WC1E 7LR**

Date of decision : **June 2015**

REVIEWED DECISION

Following the issue of the decision of this matter on 29 June 2015, the tribunal received a request for leave to appeal on behalf of the applicant, Ms. Comer.

Having read the grounds of appeal, the tribunal has determined that it should not give leave, but has reviewed its decision. The tribunal considers that a

correction certificate would not be appropriate and has re-made the decision under Rule 55 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 as follows:-

Reviewed Decision of the Tribunal:

The tribunal determines the capitalisation rate at 7%;

- (1) The tribunal determines the relativity between the freehold and short lease at 90.65%
- (2) The tribunal determines the premium payable by the applicant for the lease extension at £25,729.00.

The application

1. On 3 June 2014 the applicant served a Notice under S.42 of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”) for an extension to her lease, at a premium of £11,000.00.
2. On 1 August 2014 the respondents served a Counter-Notice accepting that the applicant had the right to an extension, proposing a premium of £33,000 plus costs and disbursements.
3. Application was made to this tribunal on 28 January 2015, and Directions issued that required the exchange of valuation evidence.
4. The application was heard on 27 May 2015 at which the applicant Ms. Comer and Mr. Dunsin appeared. Mr. Mullane appeared on behalf of the respondents.
5. Mr. Dunsin presented his expert valuation evidence and responded to examination by the tribunal and Mr. Mullane. Mr. Mullane had confirmed to the tribunal that he was not a qualified RICS member and accordingly was unable to present expert evidence, and as the respondent his evidence would not be independent. He relied on a report prepared by his valuer, Mr. B. C. Sworn FRICS, in which a premium of £27,728.30 had been proposed.
6. References to page numbers in this decision refer to the pages in the bundle.

Agreed matters:

7. The parties agree that the lease term was 99 years from 24 June 1982, with an unexpired term at the date of valuation of 67.05 years. There were no improvements to be disregarded.

8. The differential between freehold and long lease value was agreed at 1%.

The matters before the tribunal:

9. Three issues required determination by the tribunal. They were capitalisation rate to be applied; relativity between the freehold and short lease values; and the premium to be payable for the new lease.

Submissions:

10. Mr. Dunsin provided his evidence of comparables and valuation of the property. In his view the capitalisation rate should be 7%, the relativity 90.65%, and the premium £19,464. He applied a 1% differential between the freehold vacant possession and long leasehold valuations.
11. Mr. Mullane relied on the report of his expert Mr. B. Sworn FRICS of Sworn & Co, Chiswick. A copy of the report was provided in the bundle and is dated 28 July 2014. Following some amendments to the original valuation, Mr. Sworn proposed a premium of £27,728.20, using 89% relativity, 6% capitalisation rate and 5% reversion and an agreed differential between freehold and long lease value at 1%. Mr. Sworn was not available at the hearing, but a copy of his evidence was available.

Capitalisation Rate:

12. Mr. Dunsin said that the five factors to be taken into consideration when determining the capitalisation rate and which were set out in the case of *Nicholson v Goff (2007)*, unfortunately the bundle did not contain a copy of that decision.
13. He suggested that the capitalisation rate should be 7% because this was not a traditionally rising ground rent; in that it did not double at each review, and was not index-linked, but increased by £50 after 23 years and a further £50 for the remaining 52 years of the term. He considered that this was less attractive to an investor than a traditional pattern.
14. He referred on pages 66 and 67 of the bundle to other tribunal proceedings where 7% had been accepted. On the same pages he produced details of transactions where this rate had been agreed between the parties.
15. He therefore used a capitalisation rate of 7% in his valuation.

16. Mr Mullane's view was that the investment was no less attractive than a lease with a usual rent review pattern and that we should adopt 6% in our valuation.

Decision on capitalisation rate:

17. We are more persuaded by Mr. Dunsin's evidence that a ground rent income of this type, whilst relatively secure, shows little prospect for growth over a long period. In this instance the ground rent rises by £100.00 over 76 years in two reviews. The income generated is not substantial and in our view is less attractive than either an index-linked or more traditional pattern. We also must take into consideration that Mr. Mullane, is not an expert valuer and not independent in his views. In these circumstances, having preferred the evidence of Mr. Dunsin we consider that 7% should be the appropriate rate.

Relativity:

18. Mr. Dunsin's opinion was that relativity should be 90.65%. He calculated this figure on the basis that this property was not in Prime Central London (PCL), and using the various graphs available, excluding that area, concluded the average for leases of this length came to this figure. Unfortunately no copies of the relevant graphs were provided in the bundles, and the tribunal had to use their own.
19. He said that there was no evidence that this length of lease would not attract mortgage lending and was of the opinion that mortgage lenders would lend provided there was at least 25 years remaining after the mortgage had ended. On the basis that an average mortgage term was 25 years, he could see no difficulty in a purchaser obtaining a mortgage for this property with the 67.05 years lease remaining.
20. He also referred to a previous decision of this tribunal (page 180) where an average of relativities between 87.96 and 93.63 achieving a rate of 90% had been used. The decision referred to was for a property in Maida Vale, which he said was outside PCL.
21. Mr. Mullane's view was that Acton was becoming a much more sought-after area, and in its own way was 'prime'. He maintained that the relativity should be significantly less to reflect the popularity of the area and considered 89% to be appropriate.

Decision on Relativity:

22. The evidence before the tribunal relied on the various graphs provided by agents and surveyors involved in leasehold enfranchisement work. The graphs are well known and used throughout the industry. We consider like other tribunals before us that the most accurate method of

determining relativity would be an average of those graphs; accordingly we accept the evidence of Mr. Dunsin that relativity should be 90.65%, and we have used that figure in our valuation.

Valuation:

23. Mr. Dunsin produced a schedule of comparable properties (page 119) that he had analysed and applied that analysis to the subject property. He made adjustments to the sales prices to reflect amenities in each comparable to arrive at an average price psf of £664.62, which when applied to the 463 sq. ft. of the subject property produced a freehold vacant possession value of £308,000.
24. In his comparables, Mr. Dunsin said that he had adjusted figures for lapse of time by using the Land Registry index, which he considered to be the most reliable. He said that Zoopla was unreliable and as it was based on asking prices, was not a respected index, and that the Nationwide House Prices Index was based on mortgage lending data and did not include cash transactions and therefore again unreliable.
25. Mr. Mullane had used the Zoopla Sold House Prices Index and also obtained advice from three local agents as to the value of the property. He also applied the Nationwide House Prices Index to arrive at his estimate of value.
26. Mr. Sworn had valued the freehold at £388,850. It was not clear from his report which comparables he had used in arriving at that figure, and the tribunal was unable to test his evidence.
27. Mr. Mullane also provided written evidence from three local firms of estate agents regarding the value of the property. On page 122 of the bundle he identified the following:
 - Messrs Bushells recommended an asking price of £425,000
 - Ludlow Thompson an asking price of £465,00 with a view to accepting £450,00 to £460,000.
 - Rolf East recommended a guide price of £399,950, having valued the flat between £350,000 and £400,000.

A list of the various properties and agents' particulars was attached, and included details of property sold during the relevant period with values between £499,950 and £549,950.

28. Mr. Mullane also enclosed an e-mail from Messrs Ludlow Thompson, confirming that the property at 34 Cowper Road, with an asking price

of £450,000 had sold at £460,000, and another in Berrymead Gardens that had had three offers on it on the first viewing.

29. He considered that the current market value figures should be adjusted upwards to take account of a 2% drop in value since the valuation date; and based on his research, he considered the present value of the subject property would be between £417,467 and £429,983, which he arrived at by applying the Nationwide Index to the 2002 value of the flat.
30. He also referred to the 48 Berrymead Gardens property, which had been originally sold on 7 August 2002 for £172,500, (within a month of the subject flat last being sold for £185,000) and which showed a difference of 8% between the two. Given that Berrymead was then sold again in 2014 at a price of £440,000, his logic was that, if an 8% increase were applied to that figure, it would give an approximate value of the subject flat in 2014. Based on this uplift he considered that the flat was worth £475,000, and which in his view was confirmed by the opinion of the estate agents.
31. He also referred to the advice he had received (page 122) concerning the property next door to the subject, No. 35a Myrtle Road which he owned and let out on an assured shorthold tenancy. The advice from three agents achieved an average price in March 2015 of £429,983. He said that as No. 35A was identical to the subject property the values would be similar.
32. He did not believe that the House Price Index was a true reflection of values as it covered such a large area. He preferred Zoopla.
33. With respect to the deductions made by Mr. Dunsin, he said that it was difficult to say whether these were correct as the methodology was not scientific. He accepted that there might be some additional value attributed for any development potential identified in some of the comparables, but in his view the 15% deduction suggested for a garden and/or planning permission/development potential was too high. He, as a developer, believed that the maximum deduction for a garden and/or planning permission would be £25,000 - £35,000, taking into consideration development costs. In his view in any case, a small garden such as in the subject property, would have no great value.
34. For the Cowper Road comparable he valued the garden at £10,000 against Mr. Dunsins' £63,657.
35. He also said that between January and June 2014 Act 'went crazy', that this particular area of Acton, known as 'Poets Corner' was more aligned to Chiswick than Acton, and had corresponding values.

Decision on Comparables:

36. We have considered all of the comparables suggested by Mr. Dunsin and Mr. Mullane and find those relied on by Mr. Dunsin are too low, and like Mr. Mullane we find the adjustments made to be too broad brush and without any supporting evidence that a purchaser would pay less or more for certain facilities.
37. We accept that the Land Registry indices provide a good indicator of the movement in property values, but also caution that those used by Mr. Dunsin relate to the whole of the London Borough of Ealing, which has a very diverse range of property types and values, and cannot therefore be an exact indicator. Whilst Zoopla is not a recognised index, it appeared to reflect the Nationwide Index, and appears to show a more accurate reflection of property price movement in the area concerned. We consider that the Nationwide Index is more reliable and have therefore adopted it.
38. The independent agents' opinion on value are, we consider, also compelling, and confirm both Zoopla and Nationwide, and therefore taking that evidence into consideration, we find that, the value of the subject at the valuation date would have been £410,000.
39. We also rely on the joint evidence of the comparable property at 48 Berrymead Gardens, which showed an increase in value over virtually the same period as the subject of approximately 8%. Adjusting for valuation date, and with the uplift for freehold vacant possession value, Mr. Dunsin came to a figure of £422,446, which we consider to be reasonable.
40. Given the similarities between the two properties we find that 37a Myrtle would have a similar freehold vacant possession value in June 2014, and have adjusted that value downwards using Mr. Mullane's opinion of the garden value, to arrive at a freehold vacant possession value of the subject property at £410,000.
41. The parties have agreed that the difference between a long lease and the freehold is 1%, leading us to a long leasehold value of £405,900.
42. Using the relativity between freehold and short lease at 90.65%, we determine the current leasehold value at £371,665.00

Valuation:

43. Using the above figures, we determine that the premium to be paid for a new lease under the Act is **£25,729.00**, as set out on the attached valuation.

APPENDIX

**IN THE MATTER OF THE LEASE EXTENSION OF 37a MYRTLE ROAD, LONDON W3 6DY
VALUATION BY THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)**

Date of Valuation	03-Jun-2014
Lease expiry date.	23-Jun-2081
Unexpired term:	67.05 years
Freehold vacant possession value:	£410,000
Long leasehold value:	£405,900
Value of existing lease at 90.65% of long lease value:	£ 371,665
Ground rent capitalisation rate	7.00%
Reversionary deferment Rate	5.00%
Premium Payable	

Value of Freeholder's Present Interest

Term 1

Ground rent		£	100.00	per annum	
15.05 yrs	@	7.00%	9.1254	9.1254	£ 912.54

Term 2

Ground rent			£150.00	per annum	
YP 52 years	@	7.00%	13.862		
PV £1.00 15.05 years	@	7.00%	<u>0.3612</u>		
			5.0069	5.0069	£751.00

Reversion to Freehold

Reversion to freehold value.		£	410,000		
PV £1 def 67.05 years @ 5%			0.03795		£15,559
					<u>£17,223</u>

Value of Freeholders Interest after Lease Extension:

Ground rent:			£0		
Reversion to Freehold:			£410,000		
PV £1 157.05 years @ 5%		0.00047			£193.00

Diminution in Value:

£17,030

Calculation of Marriage Value

Value of Proposed Interests

Landlords:		£193.00	
Leasehold Interest:		£405,900.00	
Total Proposed Value:			£406,093.00

Value of Present Interests

Leaseholders		£371,665.00	
Landlords:		£17,030.00	£388,695.00

Marriage Value:

£17,398.00

50% Marriage Value to Landlord:

£8,699.00

Premium for the new lease: (say)

£25,729.00