



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

Case Reference : **LON/00AL/OLR/2019/0059**

Property : **208A Herbert Road, London SE18
3QD**

Applicants : **Mr. Ieuan S E Albury & Ms Hannah
V Carr**

Representative : **Mr. Scott of Legal Resolutions Ltd.
& Mr. D Nesbitt. MSc MRICS
MFPWS (valuer)**

Respondent : **Mr. Michael O Obahor**

Representative : **Shoosmiths LLP & Mr. W Dunsin
FRICS (valuer)**

Types of Application : **Lease extension**

Tribunal Members : **Judge Tagliavini
Mr. Ian Holdsworth FRICS**

**Date and venue of
Hearing** : **21 May 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **22 May 2019**

DECISION

SUMMARY DECISION OF THE TRIBUNAL

- I. The premium to be paid by the Applicants to the Respondent for a 90 year lease extension of the property situate 208A Herbert Road, London SE18 3QD is £33,500.
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The application

1. This is an application made under the provisions of section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) seeking a lease extension of the subject property at 208A Herbert Road, London SE18 3QD (“the premises”).

The premises

2. In March 2016 the Applicants purchased their interest in the subject premises for £293,500 and held pursuant to a lease dated 1 March 1991 granting a term of 99 years from 1 January 1990 at a fixed annual ground rent of £75.00. The subject premises comprise a two bedroom flat split level flat on the lower ground and part raised ground floor to the rear addition, with a demised rear garden, and situate in a semi-detached Victorian property converted into two flats. The Respondent is the registered freeholder of the property at 208 Herbert Road.

The Background

3. By a Claim Notice dated 18 July 2018, the Applicants sought a lease extension proposing a premium payable of £12,500 and that the terms of the new lease should be in accordance with section 57(3) of the Leasehold Reform and Urban Development Act 1993, Schedule 13. In a Counter Notice dated 19 September 2018, the Respondent accepted the Applicants’ right to seek an extension of the lease but proposed that the premium payable is £39,054.00 and that the new lease should be on the same terms of the existing lease, subject to any permitted or agreed modifications or amendments. Subsequently, the parties agreed the terms of the new lease and the only remaining issue requiring the tribunal’s determination was the premium payable for the grant of a new lease. In a Statement of Agreed Facts dated March 2019 the parties identified the remaining issue for the tribunal as the determination of the share of freehold value.

The hearing

4. At the oral hearing of the application, Mr. Scott for the Applicants made a preliminary application for the ‘strike out’ of the Respondent’s case under rules 8 and 9 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 or alternatively, disallow Mr. Dunsin from relying upon the new evidence he had brought with him to

the hearing. Mr. Scott submitted that the Respondent had not complied with the tribunal's directions dated 31 January 2019, in so far as the Respondent's valuer had not exchanged his valuation report with the Applicants' valuer on 7 May 2019, this being the last date provided by the tribunal. Mr. Scott accepted that Mr. Dunsin's valuation report had been provided to him on 20 May 2019 but submitted that no reason had been given for this late service of the report. Mr. Scott submitted that the Applicants had been prejudiced by this late service, as Mr. Dunsin's report contained a significantly revised valuation of the premium payable of £65,893. Mr. Scott asserted that had the Applicants been aware of this increase at an earlier date, there would have been time for Mr. Nesbitt to discuss with Mr. Dunsin the basis of this proposed increase with a view to reaching some agreement.

5. Mr. Dunsin opposed this application to 'strike out' the Respondents case and drew the tribunal's attention to the fact that three valuers had been involved on behalf of the Applicants. However, as Mr. Dunsin was not notified promptly of these changes, emails sent to the Applicants' valuer seeking the timely exchange of their reports went unanswered and consequently, both parties were in breach of the tribunal's direction. Mr. Dunsin stated he had been unaware until recently, that Mr. Nesbitt had assumed the valuer's role for the purposes of this application. Mr. Dunsin also submitted that as Mr. Nesbitt is an experienced valuer, he would already have had sufficient time to read and digest the Respondent's report and would be able to deal with any issues raised by the report or other late served evidence in his oral evidence to the tribunal.

The tribunal's determination on the preliminary issue

6. The tribunal finds that there has been a regrettable delay by both parties in exchanging their valuer's report. However, the tribunal does not consider that either this delay or the reliance by the Respondent on additional evidence, is sufficiently prejudicial to the Applicant as to require the tribunal to take the draconian step of striking out the Respondent's case or limiting the evidence he may choose to rely upon. Therefore, the Applicant's application is refused.

The Applicant's evidence

7. In support of the application, the Applicant relied upon the oral evidence of Mr. David Nesbitt dated May 2019. Mr. Nesbitt told the tribunal that the parties had signed an Agreed Statement of Facts which included agreement on the following issues:

Unexpired term of the lease:	70.45 years
Value of existing lease:	£304,437
Deferent rate:	5%
Capitalisation rate:	6.5%

However, Mr. Nesbitt told the tribunal that this Statement of Agreed Facts had been signed on behalf of the Applicant by Mr. Mathew Price, BSc(Hons) MRICS FFPWS and that he believed he was obliged to accept the facts agreed, although he personally, did not agree with the existing lease value of £304,437 that had been agreed between the parties. At the invitation of the tribunal, Mr. Nesbitt produced his revised valuation in which the existing lease value was said to be £268,258 and therefore lower than that previously agreed. Consequently, Mr. Nesbitt's revised valuation produced a premium payable of £25,834.

8. In his oral evidence to the tribunal, Mr. Nesbitt spoke to his report and accepted that there were no comparable short lease sales on which, he could rely. Consequently, Mr. Nesbitt relied upon evidence of long lease sales which included the sale of the long lease of 152c Herbert Road in May 2016 for £260,000. Mr. Nesbitt told the tribunal that this property was a two bedroom flat in good condition on the first and second floor and of a similar size to the subject premises but with no outside space or garden. Therefore, having made adjustments for the lack of a garden, time (using the Land Registry figures), Mr. Nesbitt arrived at an adjusted sale price of the long lease for 152C Herbert Road of £293,293. Mr. Nesbitt also relied on two other transactions of sales of long leases in Herbert Road, namely 156A and 180A, which had taken place in July 2018 for £255,000 and November 2017 for £260,000, respectively. These figures were adjusted for condition, size, outside space and time produced adjusted long lease figures of £310,000 (No. 156A) and £323,624 (No. 180A). Mr. Nesbitt also relied upon a final long lease sales comparable of 48 Eglinton Hill which was said to be in a superior condition and located on the ground floor. This flat had sold in June 2018 for £353,000 which when adjusted for size and location offset by a positive adjustment for condition), provided an adjusted sale price of £318,000. In further support of his evidence of long lease sales, Mr. Nesbitt provided the tribunal with a list of house prices from Rightmove print sheets, showing the sales of properties in Herbert Road generally.
9. Mr. Nesbitt stated in his summary that he believes that the previous surveyors had made an error in agreeing the short lease value of the subject premises at £304,437. He stated that he believed that this had been done in response to the subject sale in March 2016. In reliance on other comparable sales, albeit of long leases (appropriately adjusted) and more general sales evidence, Mr. Nesbitt asserted that in his opinion, the Applicants who had purchased the short lease for £293,500 had overpaid, effectively paying the price for a long lease but acquiring a lease of less than 80 years. Subsequently, Mr. Nesbitt submitted that the appropriate premium to be paid is £25,834 as set out on his revised valuation.

The Respondent's case

10. Mr. Dunsin also gave oral evidence to the tribunal and spoke to his report dated 7 May 2019. Mr. Dunsin provided the tribunal with a 'basket' of 5 long lease sales in or about the valuation date, in Herbert Road and the nearby vicinity of Eglinton Hill and Whitworth Road of two bedroom converted flats, on the lower ground, ground or first floor at their particular address. Mr. Dunsin explained to the tribunal that he had reached his calculation of the price per square foot by making adjustments to the sales price for time and location but had not made adjustments for size or floor level. Consequently, Mr. Dunsin stated he had calculated the average square footage of these 5 properties as £471 per square foot. In multiplying this average per square feet figure the 903 sq. ft. of the subject premises, this provided a Freehold Vacant Possession Value of £425,818. Mr. Dunsin went on to explain that he had applied the agreed 1% uplift value arriving at an Extended Lease Value of £421,561. Consequently, by utilising these figures in his (revised) valuation he had arrived at a premium payable of £65,893.
11. On questioning by the Tribunal Mr. Dunsin was unable to explain why he had utilised the figure of 2.2% to make an adjustment for the 1993 Act. He accepted that he had not used any figure for relativity and asserted that it was not necessary to do so as Existing Lease Value had been agreed by the parties. Mr. Dunsin accepted he had made no adjustments to his comparable long lease 'basket' of sales for size but asserted that the adjustments he had made for time and location were sufficient, as he had made adjustments for size by using the (average) rate per square feet.
12. Mr. Dunsin told the tribunal that the best market evidence of the Existing Lease Value was that provided by the subject property in March 2016 at £293,500 and relied on the decision of the Court of Appeal in *Munday v the Sloane Stanley Estate* [2018] EWCA Civ 35, Having applied the Land Registry Index for flats in the London Borough of Greenwich this equated to £311,285 for a 70.45 year lease as at the date of valuation of 18 July 2018. Mr. Dunsin stated that by applying a benefit of the 1993 Act deduction at 2.2%, this resulted in an Existing Lease Value of £304,437 which had been agreed with the Applicant's previous valuer, Mr. Price.

The tribunal's decisions and reasons

13. The tribunal finds that the evidence of both Mr. Nesbitt and Mr. Dunsin to have been lacking in clarity. The tribunal accepted that the parties had agreed a signed Statement of Facts, and in the absence of Mr. Price to explain whether he had mistakenly signed this Statement or had somehow been misled, the tribunal were of the opinion that it was appropriate in these circumstances, to accept the figures agreed by the expert valuers.

14. The tribunal preferred Mr. Dunsin's evidence of long lease sales to those of Mr. Nesbitt as the dates of the transactions were closer to the valuation date, the properties were located close to subject property and the information he provided to the tribunal was comprehensive and provided gross internal areas for the various comparable properties. The tribunal accepted Mr. Dunsin's analysis of the comparable sales on which he relied except for his failure to adjust for size, particularly as it was evident to the tribunal that the subject property was particularly large for this type of two bedroom property at approximately 904 square feet.
15. The tribunal determined that Mr. Nesbitt failed to provide gross internal areas of two out of four of the comparable sales transactions on which, he relied and therefore were left with only two transactions which the tribunal were able to review. On the tribunal's analysis these sales provided a greater value per square feet than that offered by Mr. Dunsin. Therefore, the tribunal determined that it was unable to rely upon this evidence for the purposes of this application.
16. Therefore, having regard to Mr. Dunsin's failure to adjust the comparable sales on which he relied, for size the tribunal, having regard to its experience and expertise determined that it was appropriate to make a 15% deduction against his average rate of £471 per square foot, which provided a revised value of £400 per square foot. Having accepted Mr. Dunsin's evidence of comparable sales and the agreed short lease value of £304,437 the tribunal calculated a relativity of 84% from the short leasehold value and notional freehold of the subject property. The tribunal notes that the outcome of 84% closely matches that found in the Savills 2015 Graph and Gerald Eve for a property with a lease of 70.45 years. The tribunal, therefore went on to multiply its per square foot figure of £400 by the GIA of 904 sq.ft to provide a Freehold Value of £362,000 (rounded). This provided a premium payable of £33,500 (rounded) as per the valuation attached.

Signed: Judge Tagliavini

Dated: 21 May 2019

Property: 208a Herbert Road London SE18 3QD			
Reference: LON/00AL/OLR/2019/0059			
Lease and Valuation Data			
Lease Term:		01/01/1990	
Lease Expiry date:		31/12/2088	
Unexpired term as at valuation date:		70.45 years	
Date of Valuation		18/07/2018	
Rent receivable by landlord:			
Payable from valuation date for 70.45 years	£	75	
Values			
Extended lease value on statutory terms	£	358,801	
Notional Freehold	£	362,425	
LHVP with current term unexpired	£	304,437	Relativity 84.0%
Capitalisation rate (%)		6.50	
Deferment rate (%)		5.00	
Value of Freeholders present interest			
Term 1			
Ground rent payable	£	75	
YP @ 70.45 years @ 6.5%		15.20252	£ 1,140
Reversion			
Freehold in vacant possession	£	362,425	
Deferred @ 70.45 years @ 5%		0.03215	£ 11,653
Current value of the freeholders interest			£ 12,793
Less			
Freehold value after leasehold extension	£	362,425	
PV of £1 in 160.45 years at 5%		0.00040	£ 144
Freeholders interest value			£ 12,649
Marriage value			
Value of flat with long lease on statutory terms	£	358,801	
Landlords proposed interest	£	144	£ 358,945
Less			
Value of Leaseholders existing interest	£	304,437	
Value of Freeholders current interest	£	12,793	£ 317,230
Marriage value	Total		£ 41,715
Division of Marriage Value equally between			
Freeholder			£ 20,858
Leaseholder			£ 20,858
Price payable to Freeholder			
Value of freeholders current interest			£ 12,649
Plus share of marriage value			£ 20,858
		Total	£ 33,506
		Say	£ 33,500

