



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

Case Reference : **LON/00AE/OLR/2019/0366**

Property : **Flat 3, Barons Court, Church Lane, London
NW9 8AD**

Applicant : **Natalie Klier**

Representative : **Mr M Myers – Counsel together with Mr
Andrew Lester MRICS of AML Surveyors and
Valuation Limited**

Respondent : **Brickfield Properties Limited**

Representative : **Ms N Muir – Counsel and Mr R D Sharp BSc
FRICS**

Type of Application : **Application under section 48 of the Leasehold
Reform, Housing and Urban Development Act
1993**

Tribunal Members : **Tribunal Judge Dutton
Mrs E Flint DMS FRICS IRRV**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR on 30th
July 2019**

Date of Decision : **20th August 2019**

DECISION

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DECISION

1. **The Tribunal determines that the premium payable for the lease extension at the property Flat 3 Barons Court, Church Lane, London NW9 8AD (the Property) is £39,450 as set out on the attached valuation schedule.**
2. If the Applicant is intent on proceeding with an application under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, directions to enable this to be done have been included at the end of this decision.

BACKGROUND

1. On 12th March 2019 solicitors on behalf of the Applicant, Natalie Klier made application to the Tribunal for the determination of the premium payable in respect of the lease extension of the Property and in respect of the terms of the lease.
2. This application followed on from a notice served on behalf of the Applicant under section 42 of the Leasehold Reform, Housing and Development Act 1993 (the Act) dated 26th October 2018 which the proposed premium was shown as £27,000.
3. On 8th January 2018 the Respondent, Brickfield Properties Limited, through its solicitors Wallace LLP filed a counter notice under section 45 of the Act admitting the Applicant's right to acquire a new lease but putting forward a premium of £80,840.
4. Agreement could not be reached between the parties and the matter came before us for hearing on 30th July 2019.
5. Prior to the hearing we were in receipt of a bundle of papers which included copies of the register of title and directions as well as the draft lease. Importantly from our point of view it also included reports from Mr Lester dated 19th July 2019 and from Mr Sharp dated 15th July 2019.
6. Prior to the hearing we were also provided with a submission on outstanding issues prepared on behalf of the Applicant by Mr Myers. We noted all that was said therein and will comment on same as necessary during the course of this decision.

HEARING

7. At the commencement of the hearing Ms Muir informed us that she had only been instructed to attend on behalf of the Respondent because of the late filing of a witness statement by the Applicant. It appears that an application for costs under Rule 13 had also been floated somewhat late in the day and her view was that the costs application should not be dealt with today but instead directions given.

8. It appears that the reason for the inclusion of the statement by the Applicant was that there was some uncertainty as to the level of improvements made to the Property and how those impacted on the assessment of the premium. We agreed that it would be reasonable for Miss Klier's witness statement to be allowed but that the question of the Rule 13 claim for costs would have to be dealt with on another day. At this point Ms Muir's instructions seemed to have terminated and she left the hearing.
9. Mr Myers took us through his skeleton and having done so introduced Mr Lester to give evidence in respect of the valuation. A couple of questions were raised. The first was that the service charge contribution now appears to £3,500 instead of the £2,500 Mr Lester thought was the case. The difference appears to have been an additional sum of £1,000 in respect of reserve fund monies. Mr Lester's view was that the cost of living in the building may make the flat slightly less marketable but had no impact on the valuation so far as he was concerned. He was also asked to comment on the question of the improvements and his view was that they did not affect the value but did show the state of disrepair at the time of purchase.
10. Mr Lester's report provided details of his background, the documents that he had relied upon and the details of the Property in Barons Court. The flat was described as self-contained on the first floor at the western end of a three storey purpose built block of flats thought to have been constructed in the 1930s. Barons Court apparently consists of three blocks of flats each containing 30 flats. Photographs of the block were provided but not the flat itself. The accommodation comprises a reception room, kitchen, three bedrooms and a bathroom and has an agreed square footage of 665.
11. It appears that the block may be subject to extension works by creating an additional storey at third floor level which has not yet been implemented. In addition it seems that there had been works in the car parking area involving the demolition of garages and the creation of more parking space, although we were told that this was only available on a permit basis. Neither element appears to have impacted on the values suggested.
12. After general comments on the market and the background, which we noted Mr Lester moved on to deal with his assessment of the freehold vacant possession value for the flat. In his view the best evidence was the sale of a comparable flat in the block at around the valuation date which was 8th November 2018 and in this regard, he considered that 9 Barons Court was the best comparable but in a better location with a better internal layout and larger. The only adjustment that he would make was to reflect the fact that the lease for 9 Barons Court had 118 years remaining and allowing for that adjustment he considered would give a freehold vacant possession value (FHVP) for the Property of £275,000. To support his views, he relied on comparable properties at 22 Elthorne Court, 45 Campbell Court and 24 Lyne Court. All these comparable properties, making adjustments as he did for size, floor level and parking facilities, were supportive of his view as to the FHVP value. He had also included details of a property at 7 Barons Court which had apparently gone under offer in November of 2018 at £270,000 but appears still not to have exchanged contracts.

13. Considering the comparables he had put forward and adjusting same, giving greater weight to 9 Barons Court, he came to the conclusion that the sum of £280,000 would be a reasonable FHVP for the Property.
14. He then went on to consider the current lease value citing the case of the Trustees of Sloane Stanley Estate v Mundy [2016]UKUT0223(LC).
15. In this case the Applicant purchased the Property in September of 2016 for £251,000. It was said to be in a poor condition with damp issues having apparently been used as a brothel. Taking this into account and the fact that it appears that the Property may have been repossessed, it was in his view sold below the true market value and in a condition worse than unimproved. This was supported by the sales of two flats at 88 and 25 Barons Court in March and February of 2016 respectively. His view was taking these matters into account, that at the time of purchase by the Applicant the true value of the Property would have been £260,000.
16. In order to reflect Act rights, he considered the case of Sinclair Gardens Investments (Kensington) Limited [20178]UKUT4194, which provided a schedule of deductions to be made and which he had utilised assessing the reduction for no Act rights at 4.5% for a 62 year lease.
17. It should be noted that in questions from Mr Sharp he accepted that he should have adjusted the figure of £260,000 to reflect the fact that at the valuation date the unexpired term was some two years shorter than at the date of purchase by the Applicant. This he did after the luncheon adjournment giving us the figures of a value of £246,610 for the short lease for the Property at the valuation date which after deducting 4.5% for the no Act world gave a figure of £235,512.
18. To achieve a relativity percentage of 84.11% he had reflected the now reduced value for the short lease of £235,512 as against the FHVP of £280,000. However, that relativity needed to be further adjusted because he had concluded that relativity was not a definitive result and utilising the findings in the case of Reiss and Ironhawk [2018]UKUT311 and other earlier cases he had considered the Savills enfranchiseable graph of 2015 which gave a relativity of 79.98% when the Act rights of 4.5% were deducted. However, the Reiss and Ironhawk case did not relate to properties outside prime central London and to reflect that he took the view that greater weight should be placed on the market evidence than the graph. He gave 60% in respect of the sale price and the balance based on the graph. Taking this into account he concluded that the relativity in this case should be 82.46% giving an amended premium of £32,008.
19. Mr Lester was asked by Counsel to comment on the comparables used by Mr Sharp and we noted all that was said therein. Asked about Mr Sharp's assessment of relativity at 75.26% Mr Lester said that he had used the Beckett and Kay graph which he considered to be unreliable.
20. Some questions were asked by Mr Sharp of Mr Lester. It was agreed that the floor areas did not drive values in flats of this nature. He was also asked to comment whether or not the ground rent in respect of 9 Barons Court, which was geared to capital values would affect the value and Mr Lester's view was that it

would not. He did not consider that the fact that the flats at Elthorne and Campbell were local authority owned had any particular bearing nor the location of those properties. The question of service charges was discussed but there was no agreement reached as to the impact that they may have other than Mr Lester's view that they would not impact on the value of the subject Property.

21. We then heard from Mr Sharp who had provided a report containing photographs of the exterior of the building. It is noted that Mr Sharp valued flats in Barons Court for the Respondent in the period 1986 to 1987 but said that between 1997 and 2006 he had no connection with the freeholders or associated companies. It is we think not in dispute that Mr Sharp does act for the Freshwater Group in connection with applications of this nature. A challenge to his independence was made by Mr Myers and we will comment on that in due course.
22. He confirmed that an uplift of 1% from the extended lease value was agreed as was the valuation date and the remaining term of the lease of 60.89 years. The ground rent was agreed at £200 per annum and the calculation in respect thereof was not in dispute. It was also agreed that the capitalisation rate and the deferment rates were not in issue.
23. On the question of comparables he also cited 9 Barons Court, although was of the view that the layout was not as good. It is noted that neither valuer had made an internal inspection of this flat. He also suggested a comparable at 45 Campbell Court and then properties at 5 Campbell Court and Flat 36 at Mead Court. He was of the view that the price paid for Barons Court in November of 2018 of £293,000 if applied to the Property would be low. The other comparisons he thought suggested a figure somewhere in the region of £310,000 but he decided to give more weight to Barons Court and thus an extended lease value for the Property of £300,000 was the amount that he put forward. Uplifted for the freehold this gave a value of £303,030.
24. In respect of the existing lease value he also referred us to the Mundy case as well as *Mallory v Orchid Base Limited* [2016]UKUT468(LC) and a number of First Tier Tribunal cases that he appeared to have been involved with over the years. He was forthright enough to say that whilst generally assessing the value of the 1993 Acts at 10% not every Tribunal had agreed with that assessment. Nonetheless, he made a deduction of 10% when considering the existing lease value.
25. Making use of the sale of the Property in 2016 he adjusted that for the shorter lease term at the valuation date and after allowing for the lack of repair of the Property he considered that the short lease value for the Property would be £252,250 before any deduction was made in respect of the Act rights. He set out in some detail what he considered to be 14 benefits associated with the Act insofar as the Applicant was concerned. He also put forward certain suggestions that might impact on a lease of this length.
26. The relativity he considered indicated by the market was 74.92% being the assessed value for the short lease of the Property of £252,250 less 10% to reflect the Act rights and then divided by the FHVP figure of £303,030.

27. He then went on to consider graph evidence. This included the Savills 2015 enfranchiseable graph and the Gerald Eve 2016 graph but accepted that both related to PLC. In respect of the Beckett and Kay graph, which he considered to be the most reliable in this case, it showed a relativity of circa 72% in respect of the Property for the unexpired term. The Savills and Gerald Eve graphs gave a higher percentage. In his view taking into account, the market evidence and the graphs of Beckett and Kay, Savills and Gerald Eve he concluded that at the valuation date the relativity would be 75.26%. This in his view gave rise to a premium payable of £45,516.
28. He was asked whether he considered the improvements carried out by the Applicant needed to be factored in. His opinion was that they were not material improvements but merely obligations that the tenant had under the terms of the lease. They were not in his view statutory improvements to be taken into account. In fact he thought the refurbishments were excessive given the nature of the flat and its location. He was also questioned on his assessment of 10% for no Act rights which he thought was generally right in London and the South East.
29. He was asked why the figure in the counter notice was so much higher than his assessment of the valuation. His explanation was that he gave a range of values to his clients and left it to them to decide what figure went into the counter notice.
30. We then had submissions from Mr Myers on behalf of the Applicant. His view was that the amended figure from Mr Lester of £32,008 was the correct premium and closer to the actual value than the Respondent's figures. His view was that Mr Sharp had failed to take into account the extensive refurbishment works and the 10% allowance for no Act rights was too high. Counsel's view was that Mr Lester had undertaken an objective assessment of matters in particular, for example, the 60/40 split in relation to relativity.
31. There were also questions raised as to Mr Sharp's independence and his role both as advocate and witness. His concluding comment was that Mr Lester's report was objective throughout and we should therefore accept it.
32. Mr Sharp in response repeated the fact that the figure in the counter notice was not his but his client's. As far as the improvements were concerned he said that money spent was not equal to the value created and reference to an earlier assessment of relativity was in respect of without prejudice correspondence and was not a matter that should affect us.
33. He pointed out that Mr Lester's adjustment to the existing lease value meant that the parties were very close. Mr Sharp's figure allowing for a relativity at 75.26% gave a short lease value of £228,060. When one contrasted this with Mr Lester's assessment which was based on the FHVP of £280,000 with a relativity at 82.46%, that gave a short lease value of £230,088.
34. Mr Sharp briefly commented on his role of advocate and expert and we will make such comments as are necessary in the findings section.

FINDINGS

35. The interesting element of this case is the closeness of the various elements that have been put forward to us by both valuers. Mr Lester has assessed the FHVP for the Property at £280,000 and the short lease at £230,088. Mr Sharp has assessed the FHVP at £303,030 and the short lease value at £228,060. We have noted the arguments put to us in respect of relativity and no Act right deductions. These two elements are not a science. They have been grappled with by Tribunals both at First Tier level and the Upper Tribunal and there is no doubt that the starting point is to take the market evidence, if it is available. In this case, we have a sale of the Property in an unimproved condition in 2016. Both valuers have considered that and have factored it into their assessment of the short lease value. There are various adjustments made by both valuers but the biggest difference in assessing relativity is the amount to be deducted for no Act rights which Mr Lester concluded was 4.5% and Mr Sharp 10% although he did have the professional integrity to accept this was not a level that had been accepted by every Tribunal.
36. The assessment of the FHVP again is based upon comparables, the main one being Barons Court. Both parties have also used 45 Campbell Court, although that is a two bedroom flat. Deductions in respect of car parking have been made and to reflect improvements or otherwise to the comparables. As we have indicated, this led Mr Lester to conclude that £280,000 was a fair reflection of the value of the Property at the valuation date on a freehold basis.
37. Mr Sharp basing his view on the comparables that we have mentioned concluded that a figure of £300,000 would be appropriate for the extended lease. This also is subject to presumptions and assumptions. It is also based on Mr Sharp's assessment that 9 Barons Court was a low figure because of the geared ground rent.
38. The matters put to us are matters of opinion based on the evidence that the valuers have been able to glean and upon which they have made their assessment of various elements to achieve the final figure. The difference between them is really quite small when one considers the various adjustments that have been made.
39. We consider that the sale of the flat in 2016 is relevant evidence but we do also accept that it was in poor condition at the time and therefore a sum would have needed to be spent to bring it up to a tenable state. Our view is that although it may appear simplistic the way to do justice to both valuers' cases is to exercise the 'judgement of Solomon' in respect of the values that they have put to us. Mr Lester's long lease value is £277,200 and Mr Sharp's £300,000. The mean is something in the region of £290,000 which together with a 1% uplift would give an FHVP of £292,900 which we conclude is a reasonable value to place on that element when leading to the assessment of the premium. In respect of the short lease values, as we indicated earlier, the parties really are quite close. Mr Sharp has assessed that figure at £228,060 and Mr Lester at £230,888. Well within what we consider to be the valuation allowance that might apply in a matter of this nature. The average of those two figures gives a valuation of £229,474. That

in turn gives a relativity of 78.34% which in our findings sits well with the assessments made by Mr Lester and Mr Sharp in their evidence to us.

40. The percentages applied in connection with capitalisation and deferment rates are in agreement and accordingly we have assessed the premium payable in respect of the lease extension for the Property to be £39,450 as set out on the attached valuation sheet.
41. We should just say as a matter of comment that we did not consider that Mr Sharp was doing anything other than fulfilling his professional role to the Tribunal. It is not uncommon for valuers to appear as both advocates and experts and it is fair to say that sometimes that is a line that is difficult to discern. However, we are satisfied that Mr Sharp's evidence was given to us on an independent basis and we have accepted it as such. Accordingly any criticism of Mr Sharp is not accepted by us.
42. The next matter we should address is the claim for costs under Rule 13. Mr Myers had put forward this in the skeleton argument but had not recited the Willow Court case which is an Upper Tribunal authority intended to set out guidelines as to how unreasonable costs should be pursued in the Tribunal. We would ask that that is studied carefully before any application is pursued. At the moment albeit with limited evidence given to us, we do not consider that the figures inserted into the counter notice and the conduct on the part of the Respondent during the course of the negotiations would on the face of it amount to unreasonableness. It should also be pointed out that the unreasonableness relates to conduct in the course of the proceedings. Whether it is possible to argue that that would extend to the issue of the initial notice and counter notice and subsequent negotiations, is a matter that the Applicant will need to carefully consider.
43. We do not wish to prejudge the issue any further than that and have therefore included directions at the end of this decision and will leave it to the Applicant to decide whether this is a meritorious application to proceed with. The matter will then be returned to us to consider any claim for costs which will be dealt with as a paper determination.

DIRECTIONS IN CONNECTION WITH APPLICATION UNDER RULE 13

1. The tribunal considers that this application may be determined by summary assessment, pursuant to rule 13(7)(a). If the Applicant decides not to pursue the application she should notify the tribunal of her decision before the first step in the directions.
2. The application is to be determined without a hearing and on the basis of the written submissions from the parties. However, any party may make a request to the tribunal that a hearing should be held or the tribunal may decide that a hearing is necessary for a fair determination of the application. Any such request for a hearing should be made by **13th September 2019**, giving an indication of any dates to avoid. The tribunal will then notify the parties of the hearing date. The hearing will have a time estimate of two hours.

The applicant's case

3. By **6th September 2019** the applicant shall send to the respondent a statement of case setting out:

(a) The reasons why it is said that the respondent has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the rule, dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT (LC)*, with particular reference to the three stages that the tribunal will need to go through, before making an order under rule 13;

(b) Any further legal submissions;

(c) Full details of the costs being sought, including:

- A schedule of the work undertaken;
- The time spent;
- The grade of fee earner and his/her hourly rate;
- A copy of the terms of engagement with applicant;
- Supporting invoices for solicitor's fees and disbursements;
- Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate; and
- Expert witness's invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.

The respondent's case

4. By **20th September 2019** the respondent shall send to the applicant a statement in response setting out:

(a) The reasons for opposing the application, with any legal submissions;

(b) Any challenge to the amount of the costs being claimed, with full reasons for such challenge and any alternative costs;

(c) Details of any relevant documentation relied on with copies attached.

The applicant's reply

5. By **27th September 2019** the applicant shall send to the respondent a statement in reply to the points raised by the respondent.

Documents for the hearing/determination

6. The applicant shall be responsible for preparing the bundle of documents (in a file, with index and page numbers) and shall **by 7th October 2019** send one copy to the other party and send four [two if paper track] copies to the tribunal.

7. The bundle shall contain copies of:

- The tribunal's determination in the substantive case to which this application relates;
- These directions and any subsequent directions;
- The applicant's statements with all supporting documents;
- The respondent's statement with all supporting documents.

Determination/hearing arrangements

8. The tribunal will determine the matter on the basis of the written representations received in accordance with these directions in the week commencing **21st October 2019**.

9. If an oral hearing is requested, the tribunal will notify the parties of the details of the hearing.

10. Any letters or emails sent to the tribunal must be copied to the other party and the letter or email must be endorsed accordingly. Failure to comply with this direction may cause a delay in the determination of this case, as the letter may be returned without any action being taken.

Judge: *Andrew Dutton*

A A Dutton

Date: 20th August 2019

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.