



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

Case Reference : **LON/00BH/OLR/2019/0135**

Property : **Flat 12 Fernhill Court, Forest Road,
Walthamstow, London E17 3RP**

Applicant : **Linda June Serpell**

Representative : **Mr James Castle, Counsel instructed by
Fairweather Law together with Mr Andrew
Cohen MRICS of Talbots Surveying Services
Limited**

Respondent : **Saint Ermins Property Company Limited**

Representative : **Mr Andrew Balcombe BSc FRICS MCI Arb of
Hargreaves Newberry Geyngell Chartered
Surveyors**

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

Tribunal Members : **Tribunal Judge Dutton
Mr K Ridgeway MRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR on 11th
June 2019**

Date of Decision : **19th August 2019**

DECISION

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DECISION

The Tribunal determines that the premium payable in respect of the lease extension of the property at 12 Fernhill Court, Forest Road, Walthamstow, London E17 3RP is £236,988 this being the value argued for by Mr Cohen. Our reasons are set out below.

BACKGROUND

1. On 24th January 2019 solicitors on behalf of the Applicant, Linda June Serpell, made application to the Tribunal under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) for a determination of the premium payable in respect of the lease extension. This related to her property at Flat 12 Fernhill Court, Forest Road, Walthamstow, London E17 3RP (the Property). The application followed a notice of claim under section 42 of the Act dated 30th April 2018 in which a premium of £225,000 was proposed with the lease extension being on the same terms as the existing lease, subject to any modification by section 57 of the Act.
2. In a counter notice dated 1st August 2018 on behalf of Saint Ermins Property Company Limited (the Respondent) the right for the Applicant to extend the lease was accepted but a premium of £296,267 was proposed. The counter notice accepts the terms of the new lease that the tenant had proposed in her initial notice.
3. On that point we should say that there had been some issues between the parties as to the inclusion within the new lease of the Respondent's right to redevelop under section 61. This did not, however, figure in the proceedings before us. We should also say that an adjustment that was proposed in respect of the state of repair of the roof also did not feature of the assessment of the premium to be paid.
4. Before the hearing we were provided with a bundle of papers which included the application and the notices, copies of the land registry registers of title and the existing lease. The proposed draft lease was also included.
5. Within the bundle were reports by Mr Andrew Cohen MRICS on his opinion of the premium to be paid. The report is dated 8th June 2019, this date reflecting the addendum that had been included in respect of the now non-existent issues concerning the roof and the break clause at section 61 of the Act. There were a number of appendices.
6. On 4th June 2019 Mr Balcombe had prepared his report and that also was included within the bundle. Both valuers had produced valuations which were attached. It should be noted, however, that Mr Balcombe during the course of the hearing amended his reaching a final assessment of £280,592 as the premium payable. Mr Cohen's valuation after the changes we referred to above argued for a total premium payable of £236,988.
7. We had the opportunity of reading both Mr Cohen and Mr Balcombe's reports. There were a number of matters that were agreed as follows:

- The valuation date is 1st May 2018.
 - The unexpired term is 4.88 years.
 - The uplift from long lease value to freehold is 2.5%.
 - The deferment rates for the short term is 5.5% and for the long term 5%.
 - The sum of £40 payable in respect of compensation for loss of the ground rent.
8. Those matters therefore that we needed to consider were as follows:
- The long lease value.
 - The freehold vacant possession value.
 - Relativity.
9. We should say that prior to the hearing we had been provided with a skeleton argument on behalf of the Applicants which highlighted the matters that we dealt with during the hearing and had been noted by us.
10. On behalf of the Applicant we heard firstly from Mr Cohen, who in his report put forward four comparable properties all in blocks and within 250m of the Property. They were as follows:
- a. 42 Fernhill Court sold in January of 2019 at £265,000. This was a one bedroom flat with a square footage of 516 compared to the subject flat having 663 square feet. He made adjustments for the presence gas central heating, double glazing and its superior condition and also adjusted for time giving an adjusted value of £250,350 or £485 per square foot.
 - b. 1 Dennis Court, 53 Fernhill Court sold in February of 2018 at £294,500. This was a similar sized two bedroom ground floor flat which he adjusted for £3,000 for double glazing and an adjustment for the passage of time giving an adjusted figure of £276,364 and on Mr Cohen's calculation a square footage rate of £460.
 - c. 7 Hempstead Road sold in September of 2018 at £355,000. This property was significantly larger being four bed roomed and two bathrooms with a square footage of some 871. After making adjustments for superior condition, time and double glazing, the adjusted figure was £333,865 or £407 per square foot.
 - d. The final property Mr Cohen relied upon was 30 Winsbeach, a two bedroom ground floor flat sold in November 2018 at £320,000. After adjustment for gas central heating, passage of time and double glazing the adjusted price was £307,560 or £406 per square foot. Applying the average to the square footage gave a value for the subject property of £290,000. Applying the agreed 2.5% uplift for freehold from the long lease value gave a value of £297,436.
11. Mr Cohen then commented on Mr Balcombe's short lease comparable at 23 Fernhill, more details of which appear under the evidence from Mr Balcombe. He told us that this had been sold in August 2018 with a five year lease remaining, at £37,500. A further £250,000 had been paid for a lease extension

and the property having been refurbished was, we were told, currently being let at £1,250 per month. He did, however, point out that the property at 23 Fernhill did not suffer the problems that the Property had with the roof and cracks, although these did not feature in the assessment. Accordingly, his view that this property would give a value on an extended lease of £270,000 but this reflected the roof problems which, of course, no longer apply, so a truer value would be £290,000.

12. He then went on to indicate how he would consider the assessment of the relativity. The existing lease at 23 Fernhill Court had he said too many unknown variables which would require subjective adjustments and he did not believe that it was helpful. In any event he thought it was bad valuation practice to make an assessment on the existing lease value on just one sale.
13. He had undertaken an assessment of the existing lease value by reference to the rental income achieved at Fernhill Court but although a calculation was set out in the report we were told to disregard same.
14. He then went on to consider relativity by reference to various graphs. The three graphs that he had chosen to use were Andrew Pridell at 11.71%, Beckett and Kay at 16.19% and Gerald Eve at 14.66%. He indicated in his report why he had made various disregards in respect of the five graphs that formed the RICS document from 2009. He thought that the Gerald Eve graph would apply notwithstanding it was prime central London because relativity in an unexpired term of less than five years would not be greatly affected by whether the Property was in PCL or non-PCL areas as it was not mortgageable.
15. He took the average of the three graphs resulting in a relativity of 14.19% which he considered was appropriate.
16. This resulted in his valuation of £236,988, increased by some £18,570 from the valuation originally included in his report.
17. He was taken through his report by Mr Castle. He confirmed that all the properties he had put forward as comparables were ex-local authority flats but he did not consider that that would have an impact on the value and on his understanding the service charges were often lower in these properties. He considered that some of Mr Balcombe's comparables were unhelpful as they were too old. He did, however, confirm that he would have included 35 Winsbeach in his comparable list.
18. He was then taken through the four comparable properties that we have referred to which confirmed his view standing back that £290,000 felt right for the long lease value.
19. He was dismissive of Mr Balcombe's comparable for the short lease considering it not appropriate to rely on just one comparable. He was aware of the findings of the Tribunal on Mundy and thought that if there were no reliable market data then graphs had to be used.

20. In questioning from Mr Balcombe, he was asked whether the windows were the tenant's improvements. There was no evidence to this effect although the tenant, Miss Serpell, was at the Tribunal and confirmed albeit in a somewhat unprompted response that she had indeed effected the replacement of the windows.
21. We were provided with photographs that the communal area had been decorated prior to the valuation date and we were told that matters were to be resolved in respect of the roofing issues. Mr Cohen did also confirm in questioning from Mr Balcombe that it was unlikely that purchasers would use the square footage assessment to reach a value.
22. Mr Balcombe then gave his evidence relying on his report and put forward a number of properties in a schedule within the report. These were as follows:
 - 33 Fernhill Court, ground floor flat sold in October of 2015 for £300,000.
 - 6 Winsbeach, again a ground floor flat, slightly larger sold for £273,000 in September of 2015.
 - He then relied on the property at 1 Dennis Court which was the comparable that Mr Cohen had used and also at 30 Winsbeach Court.
 - He also introduced 35 Winsbeach Court which Mr Cohen indicated he would have used had he known about it.
 - Two other comparables were 7 Dennis Court and 12 Winsbeach both in 2017, Dennis Court being August and 12 Winsbeach being March 2017.
23. He, like Mr Cohen, had used the house price index for Waltham Forest but thought that he had spotted an anomaly whereby the figure for May 2018, being the valuation date, was below the figures for both the month before and the month after which may, in his view, suggest a false reading. He therefore considered it appropriate to utilise the average of the HPIs for April, May and June giving a figure of 127.12 as opposed to a figure of 126.86 if this were limited to April and May.
24. He explained the details in respect of the sale of 33 Fernhill Court as this was the latest sale on the estate. He then explained the other comparators that he had put forward and that overall, he came to the conclusion that the long lease value for the Property on 1st May 2018 was £325,000 in his report but in fact £330,000. He had initially adopted a 1% uplift from leasehold to freehold but he agreed that 2.5% was appropriate.
25. To assess the value of the short lease he relied on one sale of 23 Fernhill in August of 2017 having a lease term of 5.61 years unexpired and achieving a sale price of £37,500. He had apparently inspected the property prior to sale. He thought it was near identical second floor flat but in a tired state. With adjustments for standard of accommodation he felt that a further £5,000 should be added giving a sale price in August of 2017 of £42,500. He then had to make adjustments utilising his average of the three months of April, May and June 2018 which with a discount in respect of the lease length gave a short lease value of £26,167 equating to 7.9% of the freehold value.

26. He dismissed the relativity tables for this length of lease. He did consider the findings of the Upper Tribunal in *Sloane Stanley Estate Trustees v Carey Morgan* [2011]UKUT415(lc) where on a lease as short as 4.75 years it would be appropriate to calculate the short term interest based on capitalised rental income. In that case a relativity of 6.5% was produced which the Upper Tribunal increased to 8% because of special factors. This he felt supported his figure using real world evidence of 7.9%. At the end of his report he explained how he had reached the premium of £271,300 set out in his report subsequently amended in the final valuation produced to us at the hearing to £280,592. This was in part the result of differing short term reversion rates, an increase in the long lease and subsequently freehold value.
27. In oral evidence to us he confirmed that the uplift of 2.5% had been agreed and explained his thinking behind the use of the various comparables. He did not consider that Mr Cohen's comparable at 42 Fernhill or at 7 Hempstead were of help as they had a different number of bedrooms. Asked about the adjustments for time, he indicated that he thought it took two to three months for the data to get to the house price index but accepted that the market was fairly flat over the period around the valuation date. It was pointed out to him that by taking June this increased the HPI uplift.
28. Asked why it was reasonable to use properties that had sold in 2015 he responded that whilst accepting they were older they were on the same estate. He had no particular view of whether there was any stigma attached former local authority housing.
29. He was asked about various adjustments that needed to be made to windows and central heating which resulted in some changes to his long lease value which we have referred to above. His comparable at 33 Fernhill was attacked as perhaps being over-priced when one considered other comparable properties on the list.
30. In respect of the short lease comparable, his view was that where a short lease comparable was available this was preferable to using the graphs.
31. Submissions were made by Mr Castle suggesting that Mr Cohen's evidence was logical and transparent which could not be said for Mr Balcombe's. It was suggested that Mr Cohen had been impartial and had dealt with the house price index appropriately. In contrast Mr Balcombe's evidence was nebulous with no method shown to explain the figures used.
32. The reliance on one short lease comparable was not appropriate. The graphs were helpful and should be accepted by us.
33. Mr Balcombe responded briefly indicating that no evidence had been put up by the Applicant to show that she had in fact changed the double glazing. Mr Cohen had included comparables that were either smaller or substantially larger than the subject Property but that generally he considered that his assessment of the value for the lease extension was appropriate.

FINDINGS

34. In assessing the value to be attributed to the premium payable for the else extension of the Property we have considered the long lease comparables and in our view those at 30 and 35 Winsbeach and 1 Dennis Court are the most helpful. They are common to the parties, Mr Cohen accepting that 35 Winsbeach would have been included. The properties at 33 Fernhill Court and 6 Winsbeach are too dated for us to take into account. Sales in 2015 with a valuation date in 2018 seems to us to be too far in the past. Mr Cohen's suggested comparables at 42 Fernhill Court and 7 Hempstead Road are a different size and require further adjustments. We find that three comparables that we have utilised give sufficient spread to achieve an appropriate value for the long lease of the Property.
35. The adjustments to be made of £4,000 for gas central heating and £3,000 for double glazing in our finding are reasonable. We accept that the Applicant did install the double glazing even though there may have been little evidence actually produced in that regard. The fact is that the windows have been changed and would have required the consent of the Respondent. There was no evidence produced by the Respondent to suggest that that had not been given and in those circumstances, we are prepared to accept that the Property was improved and that this needs to be reflected in any valuation.
36. We prefer Mr Cohen's assessment using the HPI figures, using just April and May. The inclusion by Mr Balcombe of June's assessment as there is an apparent anomaly in the May figure, is not sustainable.
37. To assess the evidence of both valuers we undertook our own assessment of the long lease value, which is shown on the attached schedule. This gives a slightly lower long lease value for the Property than that argued for by Mr Cohen. We accept the uplift of 2.5% for long lease to freehold value. Although we suspect that the market would not consider values by reference to the square footage of the property in this case we are prepared to do so.
38. We consider the value attributed to the long lease and thus freehold value by Mr Balcombe to be too high. His report does not, in truth, set out the basis upon which he reached these values. He appears to base the value on the suggestion that 33 Fernhill Court achieved £300,000 in 2015 and thus must have increased, after making further adjustments, to £325,000, but it is not possible to discern the basis upon which such an assessment is made. At least with Mr Cohen's assessment we have some solid basis for the figures he achieved.
39. We then turn to the short lease value and relativity. We accept that if market evidence was available to us then that should be used. In this case, however, the only market evidence is that produced by Mr Balcombe relating to 23 Fernhill sold some nine months before the subject Property with a lease length of 5.61 years. Mr Balcombe said that he had inspected the property prior to sale and could confirm its condition. He then makes adjustments, which are not supported by any evidence, that the refurbishment would be not more than £5,000. This appears to be based on photographs of before and after showing

that there has been improvement works undertaken to the Property. Whether £5,000 is a reasonable amount is open to conjecture. Certainly the property would have been decorated, there may well have been works done to the flooring and there is clearly some work to the kitchen.

40. Of more concern to us is the basing of relativity on one short lease comparable. The relativity figure of 7.9% is a world away from the figures indicated on the graphs that have been cited by Mr Cohen. He has sought to edit those graphs to remove those that do not provide data in respect of leases of this length and in the case of Austin Gray where they have little experience in the market. It seems to us also that the point is well made that in prime central London, and outside, a lease of this length is likely to have a similar relativity, particularly as it would not be mortgageable. We are therefore content to accept the inclusion of the Gerald Eve graph at 14.64% in the assessment of the relevant relativity in this case. We are therefore happy to accept Mr Cohen's assessment of relativity at 14.19% as opposed to the substantially lower indication put forward by Mr Balcombe based that it is on one market "transaction." On our assessment this gave us a short lease value of £40,078 and a premium of £232,667.
41. However, this is outside either values given to us by Mr Cohen and Mr Balcombe. The difference between the valuation we have assessed and that put forward by Mr Cohen is small. We preferred the evidence of Mr Cohen, he showing a flexibility in reaching his assessment of the premium payable, which indicated more transparency in how he had achieved his figures and percentages. As was suggested by Mr Castle for the Applicant, Mr Balcombe's evidence was somewhat nebulous. In those circumstances we are content to accept the value for the lease extension of the Property was that assessed by Mr Cohen of £236,988

Andrew Dutton

Judge:

 A A Dutton

Date:

19th 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.

Agreed and Tribunal Facts

| | | | |
|-----------------------|------------|------------|---------------------|
| Valuation Date | 01/05/2018 | | Agreed |
| Lease Commencement | 20/04/1975 | | Agreed |
| Lease Term | 48.00 | years | Agreed |
| Unexpired Term | 4.88 | years | Agreed |
| Long Lease value | £282,438 | | Tribunal assessment |
| +2.5% to F/H VP value | | | Agreed |
| Freehold VP value | £289,499 | | Tribunal assessment |
| Deferment rate | 5.50% | Short Term | Agreed |
| | | Long Term | Agreed |
| Compensation | £40.00 | 5.00% Term | Agreed |
| Relativity | 14.19% | | Tribunal assessment |

Long Leasehold Value

| Property | Sold | Date | HPI Adj. as per Mr Cohen | Other Adjustments | Adj. Value | £ psf |
|----------------|----------|----------|--------------------------|------------------------------------|------------|-------|
| 30 Winsbeach | £320,000 | Nov 2018 | -1.7% £5,440 | Gas CH £4,000 D. Glazing £3,000 | £307,560 | 406 |
| 1 Dennis Court | £294,500 | Feb 2018 | -4.8% £14,136 | No CH £0 D. Glazing £3,000 | £277,364 | 462 |
| 35 Winsbeach | £325,000 | Dec 2018 | -1.7% £5,525 | Gas CH £4,000 D. Glazing £3,000 | £312,475 | 411 |

Average £426 psf x 663 sf =£282,438