



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

Case Reference : LON/00AZ/OLR/2020/1232 V:CVP

Property : Flat 4, 257-259 Brownhill Road,
London SE6 1AE

Applicant : Jatinder Singh Johal and Manjeet
Johal

Representative : Edward Ross (counsel)

Respondent : Studio 11 Design Limited

Representative : Andrew Orme

Type of Application : 93 Act New Lease of Flat

Tribunal : Judge Sheftel
Mrs AJ Rawlence MRICS

Date of Decision : 12 July 2021

DECISION

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The parties have provided a Bundle of Documents for the hearing. The order made is described at the end of these reasons.

Background

1. This is an application made pursuant to Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”) for a determination of the premium to be paid and the terms for a new lease.
2. The hearing of this application took place on 16 June 2021. The Applicants, tenants, were represented by Mr Edward Ross (counsel) and

evidence was given by Mr Wilson Dunsin FRICS. The Respondent was represented by Mr Andrew Orme who had also provided a valuation report.

3. The application relates to Flat 4, 257-259 Brownhill Road, London SE6 1AE (the "Property"). The Property is a purpose built flat on the first floor of a three-storey block of six units. The block is located in Catford on the South Circular (A205).
4. The Property has been altered internally from a former one bedroom flat into its current configuration as a two-bedroom flat but with an open plan lounge/kitchen.
5. On 13 March 2020, a Section 42 Notice of Claim was served proposing a premium for a lease extension of £6,645. The benefit of the section 42 notice was assigned to the Applicants the same day. On 20 May 2020, the Respondent served a Counter-Notice proposing a premium of £16,000.
6. As set out in a statement of agreed facts, the following matters have been agreed between the parties:
 - (1) Property: First floor purpose built flat in three-storey block of six units.
 - (2) Lease date: 27th April 1978.
 - (3) Lease Term: 120 years from 29th September 1977 to 28th September 2097.
 - (4) Date of Valuation: 13th March 2020.
 - (5) Unexpired Term: 77.54 years.
 - (6) The respondent is the competent landlord.
 - (7) Ground Rent: £40 per annum.
 - (8) Marriage Value: 50%.
 - (9) Extended Lease Value is 99% of the Freehold Vacant Possession Value.
 - (10) Deferment Rate: 5%.
 - (11) Capitalisation Rate: 7%.

At the hearing, it was also confirmed that relativity had been agreed at 88.79%.

7. The sole issue in dispute was the notional freehold value / extended lease value and existing lease value: the Applicants contend for £155,655 in respect of the notional freehold value, whereas the Respondent contends for £250,000.
8. As a result, in their respective reports, Mr Dunsin had computed a premium of £9,979; Mr Orme one of £17,696.

Notional freehold value

9. The Property was sold in March 2020, with the benefit of the section 42 Notice, for £202,500. Both parties placed considerable weight on this and effectively used it as a starting point in their valuations. Indeed, as Mr Ross pointed out, in paragraph 168 of the Upper Tribunal's decision in *Mundy v Trustees of the Sloane Stanley Estate* [2016] UKUT 223 (LC), it was stated as follows:

"... in some (perhaps many) cases in the future, it is likely that there will have been a market transaction at around the valuation date in respect of the existing lease with rights under the 1993 Act. If the price paid for that market transaction was a true reflection of market value for that interest, then that market value will be a very useful starting point for determining the value of the existing lease without rights under the 1993 Act..."

The Applicants' valuation

10. Mr Dunsin carried out an inspection of the Property on 21 June 2019. According to his evidence, his understanding was that it remained vacant until the sale in March 2020. In contrast to Mr Orme, his opinion was that no adjustment should be made for alleged disrepair of the Property. He provided photographs and estate agent particulars to support the assertion that it was in a good condition.
11. He considered that improvements should be disregarded which should result in a deduction from the starting point of the sale price. These included the modernisation of the kitchen and bathroom, installation of central heating and double glazing and, most significantly, the conversion of the Property into a 2-bed flat. There was a reference in his report to the fact that such works might have cost in the region of £60,000, although in the tribunal's view, that would not necessarily equate to an increase in value.

12. Ultimately, Mr Dunsin applied a deduction of 30% in respect of improvements to the Property. This gave an adjusted short lease value of £141,750, adjusted to an existing lease value of £138,206 on the basis of a no-Act world. Mr Dunsin then, in effect, applied relativity in reverse to obtain the notional freehold value and extended lease value – the former being £155,655.
13. Although Mr Dunsin referred to two other properties, he accepted that they were not true comparables, but rather were used as a check against his calculations to confirm, in his view, that he was broadly correct. Mr Dunsin's evidence was that it was very difficult to find comparables in the present case.
14. The first was 14 Keswick Court, a 45m² one-bedroom purpose built flat on the second floor of a modern (1995 built) four storey block in a private development. It was sold for £168,500 on 20 January 2020 with a short 74.6 year lease. According to Mr Dunsin, 14 Keswick Court was in an average condition but in a better location compared to the Property and had an allocated car parking space. In Mr Dunsin's view, his adjusted short lease value of £141,750 for the Property is supported by the £168,500 for 14 Keswick Court once suitable adjustments have been made for the differences between the two properties.
15. The second property referred to was 3a Bargery Road, London, SE6 2LL, a 46m² one-bedroom purpose built flat with a private garden situated on the first floor of a three-storey ex local authority block. According to Mr Dunsin, 3a Bargery Road was in a good condition with uPVC double glazed windows and full gas central heating and had been improved and modernised – and was in a more desirable location than the Property. 3a Bargery Road was sold for £194,250 on 11th December 2020 with an 87.5-year lease. In Mr Dunsin's view, this property was able to support the extended lease value for the Property of £154,098 after suitable adjustments have been made for the differences between the two flats.

The Respondent's valuation

16. Mr Orme relied on two comparables; the Property itself and flat 6 in the same building.
17. Dealing first with flat 4, while Mr Orme agreed with Mr Dunsin that tenant's improvements should be disregarded such that the Property

should be valued as a 1-bedroom flat, he declined to apply a reduction to the 2020 sale price on this basis. Instead, he placed greater weight on the relatively large floor area of the Property and also the potential for conversion to a 2-bed flat. Further, his view was that an additional sum should be applied to take into account alleged disrepair. Photographs were included within the bundle which were said to show the alleged disrepair. This, together with adjustments for a 'no Act world' gave an adjusted price of £235,000.

18. Flat 6 was sold in March 2016 for £197,000 with 81.5 years still to run on the lease. Mr Orme applied adjustments to take into account (i) property inflation since the date of sale; (ii) the different floor area compared to the Property; and (iii) for a 'no Act world', to arrive at an adjusted price of £265,895.
19. Mr Orme's proposed notional freehold value for the Property of £250,000 was said to be based on aggregating the adjusted figures for each flat.
20. Mr Orme also made reference to the statutory premium paid to extend the lease in relation to another flat in the same building. However, no details are provided as to the condition of that flat and there is no information about what calculations were used or how the figure was arrived at. Accordingly, the tribunal concludes that this is of little evidential value. Finally, Mr Orme notes briefly that the Respondent obtained an opinion of value for marketing purposes for the Property from a local estate agent in May 2021, suggesting a marketing price of £280,000. However, in his report, Mr Orme concedes that "this is not evidence like the three" other transactions referred to and in the tribunal's view this does not assist in carrying out the valuation – particularly in light of the fact that we already have the actual sale price for the Property from March 2020.

Discussion and decision

21. Dealing first with Mr Orme's calculation, with regard to flat 4, the tribunal does not accept that it would be appropriate to add an additional sum to the starting point of the sale price to take account of alleged disrepair. In cross examination, Mr Orme accepted that he had never visited the Property and had not taken the photographs included

in the report. Further, he could not say when the photographs had been taken. This is to be contrasted with Mr Dunsin's express statement in his report that the "property was not suffering from any disrepair at the time of my inspection". In the circumstances, and having regard to the photographs and estate agent particulars contained in Mr Dunsin's report which do not show disrepair within the flat, the tribunal concludes that there is not sufficient evidence to make a finding that there was disrepair at the relevant date or that it should affect valuation.

22. With regard to flat 6 as a comparable, the tribunal considers that this can provide only limited assistance. We note the point raised on behalf of the Applicants that there is no evidence as to the condition of flat 6 at the date of sale. We are also conscious that the sale is somewhat historic, having taken place approximately 4 years prior to the valuation date in the present case.
23. Turning to Mr Dunsin's approach to the valuation exercise, we are satisfied that it would be appropriate to make a deduction from the March 2020 sale price to take account of improvements to the flat and, in particular, the fact that the Property had been converted from a 1-bed to a 2-bed flat. We note that there was no dispute between the parties that tenant improvements should be disregarded. The tribunal also accepts Mr Dunsin's evidence that the Property is in a less desirable location compared to the comparables. According to his report, Mr Dunsin has "considerable experience of surveying and valuing properties in the Catford area of South East London where the subject property is located". In contrast, Mr Orme accepted that he was not familiar with the particular area.
24. However, the tribunal does not go as far as Mr Dunsin in applying a 30% deduction in respect of improvements. In this regard, the tribunal also agrees with Mr Orme that greater weight should be applied to the size of the Property and the potential for conversion to a 2-bedroom flat (which has in fact taken place).
25. In tribunal's view, a more appropriate figure for the existing lease value would be £159,500 (as opposed to the figure of £138,206 proposed by Mr Dunsin as set out above). This gives a deduction for improvements but also allows for the size of the Property. In our determination, such a

figure is also broadly consistent with the sale price in 14 Keswick Court. When compared to the Property in the present case, we would make deductions of £45,000 to the sale price of £168,500 for that property to reflect the better area, the improvements (including central heating, double glazing, new bathroom and kitchen) and the car parking space. However, the Property (in the present case) has a larger floor area and thus the potential to create a second bedroom. The tribunal has made an addition of £40,000 to the adjusted sale price of 14 Keswick Court to reflect this. This would give an adjusted price of £163,500 which would be reduced to £159,412 with a 2.5% reduction for no-Act rights. This is consistent with our existing lease value of £159,500 for the Property.

26. With regard to the other comparable referred to Mr Dunsin, notwithstanding the qualification that it was merely being used as a check, the tribunal takes the view that only very limited assistance can be provided by 3a Bargery Road to support the extended lease value, particularly in light of the fact that it involved a sale with only 87.5 years still to run. Instead, and in the absence of a suitable comparable, the tribunal determines that in order to calculate the extended lease value, it is necessary to take the existing lease value and apply the agreed relativity rate of 88.79% to determine the notional freehold value and extended lease value.

Conclusions

27. For the reasons set out above, we make the following determinations on the issues in dispute:
- (1) Existing lease value - £159,500
 - (2) Long Leasehold Value – £177,841
 - (3) Notional Freehold Value - £179,637
28. We determine the premium payable to be £11,500. Our working calculation is set out in the Appendix.

Name: Judge Sheftel

Date: 12 July 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. 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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

Valuation of Flat 4, 257-259 Brownhill Road, London SE6 1AE					
Relevant Date 13 March 2020					
Unexpired Term 77.54 years					
Notional Freehold	£179,637				
Extended Lease	£177,841				
Relativity	88.79%				
Existing Lease	£159,500				
Term					
Initial ground rent		£40			
YP 77.54 years @7%		14.2105	£568.42		
Reversion					
Freehold VP	£179,637				
PV £1 in 77.54 years 5%		0.02275	£4086.742	£4655.1618	
Less Freeholder reversion on extension					
After extension	£179,637				
PV of £1 167.54 years at 5%		0.00028	£50.29836	£4604.8634	£4,604.86
Diminution					
Marriage Value					
Value after lease extension	£177,841				
Freeholder's extended lease value	£50				
Total			£177,891		
less					
existing freeholder's interest	£4,655				
existing leaseholder interest	£159,500		£164,155		
			£13,736		
landlord share 50%				£6,868.15	£6,868
Lease Extension Premium					<u>£11,473.01</u>
				say	<u>£11,500</u>