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

Case Reference : CHI/43UD/OLR/2017/0165

Property : Flat 7, Springside Court, Josephs Road, Guildford, Surrey, GU1 1BT

Applicant : Mr A Bennewith

Representative : Downs Solicitors LLP

Respondent : Sarum Properties Limited

Representative : Bonallack & Bishop Solicitors

Type of Application : S42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)

Tribunal Members : Mrs H C Bowers – Valuer Chair
Mr K Ridgeway FRICS

Date and venue of Determination : 15 November 2017 at Staines Law Courts, Knowle Green, Staines, Middlesex, TW18 1XH

Date of Reasons : 4 January 2018

DECISION

- The Tribunal determines that the price payable for the lease extension of Flat 7, Springside Court, Josephs Road, Guildford, Surrey, GU1 1BT shall be £15,397.00.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

1. This is an application made by the Applicant leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") for a determination of the premium to be paid for the grant of a new lease for Flat 7, Springside Court, Josephs Road, Guildford, Surrey, GU1 1BT (the subject property).
2. By a notice of a claim dated 2 November 2016 served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease in respect of the subject property. The premium proposed in the notice of claim was £12,733.00. At the time, the Applicant held the existing lease for the subject Flat granted on 28 May 1985, for a term of 99 years from 25 March 1985 at an initial annual ground rent of £75.
3. The Respondent freeholder served a counter-notice, dated 10 January 2017 admitting the validity of the claim and counter-proposed a premium of £31,350.00.
4. On 6 July 2017, the Applicant applied to the Tribunal for a determination of the premium. The Tribunal issued Directions on 18 July 2017.

The Issues

Matters Agreed

5. The following matters were agreed prior to the hearing:
 - The subject property is described as a ground floor, two-bedroom flat with a GIA of 43.6 m² (469 sq ft).
 - The valuation date is 2 November 2016.
 - Unexpired term at the valuation date was 67.4 years.
 - The ground rent at the valuation date was £75.00 per annum, doubling every 33 years.
 - Deferment rate is 5%

Matters Not Agreed

6. The following matters were not agreed:
 - The capitalisation rate - Applicant 7%, Respondent 5%;
 - Freehold Vacant Possession Value – Applicant £229,775, Respondent £242,420;
 - Extended Lease Value - Applicant £227,500, Respondent £240,000;
 - Existing Lease Value - Applicant £206,733, Respondent £208,125;

- Deduction for No Act Rights - Applicant N/A Respondent 4.62%;
- Existing Lease Value without Act Rights - Applicant N/A, Respondent £198,510
- Relativity - Applicant 90.8718%, Respondent 81.89%.

7. However, following the inspection the parties requested a small period of time to discuss the remaining issues in dispute. At the commencement of the hearing and as a consequence of those discussions, it was explained that several issues had been agreed including the extended lease value at £236,000; the freehold vacant possession value at £238,380 and the capitalisation rate of 6%. The only element that remained in dispute was the existing lease value. Mr Wade for the Applicant was arguing for a figure of £206,733.00 based on a relativity of 90.872%, whilst Mr McKeown for the Respondent was arguing for a figure of £204,425.00 based on a deduction for 'no Act' rights of 4.62% and a relativity of 81.8%. These figures were subsequently revised and new valuations were supplied as described in paragraph 19 below.

Inspection

8. Prior to the hearing the Tribunal made an inspection of Flat 7. It is a ground floor flat in a purpose-built development of four blocks. The blocks are of brick construction, with part tile cladding, under concrete tiled roofs. There is ad hoc parking to the front of each block with an additional parking area to the rear of the development. The subject block has a lawn area to the rear with a cycle shelter to the rear left and a small parking area to the right.

9. The flat's accommodation comprises two small bedrooms, a good-sized living/dining room, a small kitchen and a bathroom/wc. There is an entry-phone system and the flat has the benefit of night storage heaters and double glazed window casements. Other than the kitchen and bathroom, all rooms have painted walls and ceilings with carpeted flooring. The flat and the development appear to be well maintained though the kitchen of the flat is beginning to look tired. The outlook from the living room is over the communal gardens and beyond that over commercial units including a garage/car dealership.

The Hearing and Evidence

10. The hearing in this matter took place on 15 November 2017 at the Staines Law Courts, Knowle Green, Staines, Middlesex, TW18 1XH. The Applicant was represented by Ms Petrenko of counsel, and the expert was Mr Wade BSc MRICS. Mr McKeown MRICS acted as advocate and expert for the Respondent.

11. At the start of the hearing Mr McKeown made an application for the hearing to be adjourned. He explained that he and his client had been unaware that the Applicant had counsel representing him at the hearing. Mr McKeown considered that there should be an adjournment so that the Respondent could also appoint counsel. Ms Petrenko opposed the application and explained that the valuation date was November 2016, that there had already been one adjournment, that every party was entitled to instruct counsel to represent them and that there would be cost implications on the Applicant if an adjournment was granted.

12. The parties withdrew whilst the Tribunal considered this preliminary application. The Tribunal refused the application as in its opinion an adjournment would not be proportionate in the consideration of the overriding objective. The Tribunal accepted that the Respondent had been fully entitled to seek assistance from counsel if they had chosen to do so. Mr McKeown is an expert well versed in tribunal procedure and has attended many tribunal hearings, as such we considered that he would be capable of adequately presenting the Respondent's case and able to cross-examine Mr Wade, therefore the Respondent would not suffer any prejudice if the hearing progressed.

Applicant's Case:

13. Mr Wade stated that as a consequence of the further agreements that had been reached, his revised premium was £16,480.00. He explained that in the absence of any market evidence of short lease values, the next best thing was to use the graphs of relativity taken from the RICS research paper and that the most appropriate graphs were the Greater London and England graphs. He acknowledged that they were not perfect but that they were the best alternative. Responding to the proposition that there had been a shift since 2007 due to changes such as interest rates and the RICS guidance relating to lease lengths and mortgage valuations, Mr Wade acknowledged these changes and commented that the market was dynamic but that the graphs remained constant. He stated that graphs could be wrong but that until there were revisions, these graphs were the best approach in the circumstances. Asked whether the Becket and Kay 2017 revised graph, which showed a relativity of 80% should be used, Mr Wade stated that he felt obliged to use the RICS published data until a revised set of data was released. The currently published graphs from the RICS research paper all produced a similar level of relativity and that if the highest and lowest relativity figures were stripped out, the average of the remaining three would be about the same.

14. Mr McKeown explained the approach he has hypothesised in his paper taking the principles from a 2009 Upper Tribunal decision in Sarum

Properties Limited v Webb [2009] UKUT 188 (the 20c Mountview case). The approach is to take the long lease value, deduct for the premium (calculated from his own graph), deduct costs and contingency and then make a 'No Act' rights deduction to arrive at the existing lease value. Mr Wade described the approach as "trail-blazing", but that in his experience no-one used this approach and that all valuers working in the field use the relativity graphs.

Respondent's Case:

15. At the commencement of the cross-examination Mr McKeown acknowledged that his original valuation had omitted an element of approximately £100.00 for the value of the landlord's interest after the grant of the new lease and his valuation should be adjusted accordingly.

16. As to the issue in dispute, Mr McKeown stated that he had two methods to identify the appropriate relativity rate to be adopted. His primary approach was to take the decisions from four 'non-PCL' Upper Tribunal decisions. These four decisions, Humphrey Middlemore Drive, Birmingham (LRA/123/2016) 80.7% for 68.62 years; Hitchman Court, Leamington Spa (LRA/102/2016) 85.4% for 67.49 years unexpired; Chenies Court, Hemel Hempstead (LRA/7/2016) 76.3% for 57.68 and Needham Road, London, W11 2RP (LRA/111/2015) 66.2% for 43.37 years unexpired, have relativities below the graphs of relativity. In his opinion these decisions demonstrate that relativity in the real world bears no relationship to the graphs and therefore these figures should provide guidance. The unexpired term for the Leamington Spa case was very similar to the unexpired term for the subject property. Responding to the point that use of Upper Tribunal decisions was contrary to the principles of Arrowdell Limited v Coniston Court (North) Hove Limited LRA/72/2005 (the Arrowdell case), Mr McKeown considered that Upper Tribunal decisions were binding on the First-tier Tribunal.

17. His secondary approach, which was a means of cross-checking his primary approach, was taken from a paper he has published and included a graph called the 'McKeown Graph'. This is a straight line graph initially derived from two Upper Tribunal decision, namely 20C Mountview at the higher end of the unexpired terms and a decision with an unexpired term of 40 years. The use of this graph would produce an existing lease value with rights, from which a deduction of 4.62% for 'no Act' rights should be made (extrapolated from 20C Mountview). However, later in his evidence Mr McKeown stated that the graph was a 'no Act' model. Mr McKeown acknowledged that one of the 'health warnings' in his paper was "*We believe that this method of computing relativity is only reliable down to 50 years unexpired, at that stage many other imponderables come into account*". Asked why his graph was not curved like the other industry wide graphs he stated that it was the best graph he could produce from the data available. He

acknowledged his graph was constructed by having two unknown variables and a re-working of the figures until the figures fitted into the graph, but subsequent decisions now supported the construction of the graph. His model had not been tested or peer reviewed. When asked about a 5% deduction for landlord's residual rights, he stated that he did not know where the figure came from and that maybe it shouldn't be there. Mr McKeown also suggested that he regretted adding his paper to his report and may remove it from future reports.

18. It was acknowledged that the Tribunal was required to determine the value of the existing lease at the valuation date but without the benefit of the 'Act' rights. He accepted that the use of the five 'non-PCL' graphs was widespread and in response to the advice given to hypothetical purchasers on the valuation date, Mr McKeown stated that he would provide a range and include a figure about 1-2% below the Gerald Eve graph. He also accepted that the approach is to examine what the market 'would' do rather than what the market 'should' do. His graph had not been published at the valuation date and the hypothetical purchaser would not have been influenced by his paper and graph. Mr McKeown also stated that the 2017 Becket and Kay graph was not available at the time of the valuation date and that it had been constructed from opinions rather than market evidence.

19. After the hearing it became apparent that the figures the parties had agreed and their own position on relativity and hence the short lease value did not fully tally. The Tribunal requested that the parties provide their revised valuations and these were provided to the Tribunal in mid-December. Mr Wade's revised valuation was £16,480.00 and Mr McKeown calculated the premium to be £26,003.00.

Tribunal's Consideration

20. It is unfortunate that in this case there is no market evidence of existing lease values, therefore an alternative approach is required. We accept Ms Petrenko's submission and to paraphrase the decision in Trustees of the Sloane Stanley Estate v Mundy [2016] UKUT 223 we are required to consider what the market would have done at the valuation date and not what the market should have done. The Tribunal agrees that there may be a fundamental shift in relativities and that the graphs in the RICS research paper do not adequately reflect what may/should be happening in the market place. However, we accept that at the valuation date neither the 2017 Becket and Kay graph proposed by Mr McKeown nor his own research paper was available. Therefore it seems that well-advised hypothetical purchasers would have sought advice from the information that was available at the valuation date and used by many practitioners, namely the graphs from the RICS research paper.

21. Whilst not published at the valuation date we did consider the paper produced by Mr McKeown in a bit more detail. We note his own reservations and his position about his future use of the paper and his graph. However, we have our own concerns. The graph seems to be initially derived from two pieces of evidence, one of which has a term of less than 50 years, a lease length that Mr McKeown has expressed concerns in respect of its reliability. This seems to be a statistically weak proposition. It is also a straight line graph and that does not seem logical and seems contrary to all the other graphs produced. Finally, there are some contradictions from Mr McKeown both in respect of deductions made and whether it is a graph producing existing lease values with or without the benefit of the Act rights. In conclusion we consider that Mr McKeown's paper and graph are of no assistance to this Tribunal in determining the existing lease value for the subject property.

22. In relation to Mr McKeown's primary approach, the Tribunal was referred to paragraph 37 of the Arrowdell case, namely "*In our judgment LVT decisions on relativity are not inadmissible, but the mere percentage figure adopted in a particular case is of no evidential value. The reason for this is that each tribunal decision is dependent on the evidence before it, and thus, in order to determine how much weight should be attached to the figure adopted in a decision, it would be necessary to investigate what evidence the LVT had before it and how it had treated it. Such a process of investigation is potentially lengthy, and it is inherently undesirable that LVT hearings should resolve themselves into rehearings of earlier determinations*".

23. The Tribunal considers that whilst Arrowdell related to First-tier Tribunal (LVT) decisions, the same must also apply to specific cases considered by the Upper Tribunal. Whilst the principles determined by the Upper Tribunal may be binding on this Tribunal, the figures of relativity stripped from a particular Upper Tribunal case without any of the details of the evidence produced is not desirable. None of the evidence considered by the Upper Tribunal was presented to this Tribunal. The only information produced from the four Upper Tribunal decisions was the relevant unexpired term and the relativity determined. We consider that this is an inadequate method to calculate what the relativity should be for this property.

24. The only remaining approach is the approach taken by Mr Wade, namely the average of the five Greater London and England graphs. We agree with Mr Wade that these graphs are not perfect and may not correlate with what should happen in the market place. But we do accept that these were the graphs commonly used at the valuation date for this type of property in this location and as such we adopt this approach and Mr Wade's relativity of 90.872%

25. The Tribunal adopted a relativity of 90.872% applied to the agreed freehold value of £238,380 produces an existing lease value of £216,620.00. Using this figure with the agreed figures the Tribunal calculates a premium of £15,397.00. The Tribunal's valuation is attached to these reasons.

26. The parties were not able to confirm whether agreement had been reached in respect of the statutory section 60 costs. In the circumstances if the costs are not agreed then the parties should advise the Tribunal within 28 days of this decision. At that point Further Directions will be issued to deal with that aspect.

Chairman: *Helen C Bowers*

Date: *4 January 2018*

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

**Flat 7, Springside Court, Josephs Road,
Guildford, Surrey, GU1 1BT**

Long Lease Value (Unimproved)	£236,000
Freehold Value (Unimproved)	£238,380
Existing Lease Value (Unimproved)	£216,620
Deferment Rate	5%
Capitalisation Rate	6%

Freeholder's Present Interest

Term

Term 1

Rent Reserved	£75
YP to 1 yr, 4 months, 3 weeks @ 6 %	<u>1.3033</u>

£98

Term 2

Rent Reserved	£150
YP 33 years at 6 %	14.2302
PV of £1 in 1 yr, 4 months, 3 weeks @ 6 %	<u>0.9218</u>

£1,968

Term 3

Rent Reserved	£300
YP 33 years at 6%	14.2302
PV of £1 in 34 yrs, 4 months, 3 weeks @ 6%	<u>0.1348</u>

£575

Reversion

FH reversion	£238,380
PV of £1 in 67 yrs 4 months, 3 weeks @ 5%	<u>0.0373</u>

£8,892

£11,533

less

Freeholder's Proposed Interest

FH reversion	£238,380
PV of £1 in 157 yrs 4 months, 3 weeks @ 5%	<u>0.0005</u>

£119

£11,414

Marriage value

Proposed

Extended lease value	£236,000
FH in reversion	£119

less

Existing

Freeholder's Interest	£11,533
Short lease value	<u>£216,620</u>

£7,966

Marriage Value

50:50 division

£3,983

Premium for lease extension

£15,397