

2893



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

Case Reference : **BIR/00CT/OLR/2013/0041**

Property : **68 Mallaby Close Shirley Solihull West
Midlands B92 2PW**

Applicants : **Mr Neil Jeffries**

Representative : **Mr Anthony W. Brunt FRICS**

Respondent : **Midland Freeholds Limited**

Representative : **Mr Matthew Fell**

Type of Application : **An application to determine the
premium payable and the terms of a
new lease under section 48 of the
Leasehold Reform, Housing &
Urban Development Act 1993 and the
landlord's reasonable costs in respect of
the tenant's lease renewal under section
91(2)(d) of the said Act**

Tribunal Members : **Judge Roger Healey (Chairman) and
Mr Stephen Berg FRICS**

**Date and venue of
hearing** : **Temple Court 35 Bull Street Birmingham
on 1 October 2013**

Date of Order : **30 October 2013**

Date of Certificate : **21 NOV 2013**

CORRECTION CERTIFICATE

1. This Correction Certificate is issued in accordance with the provisions of Rule 50 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
2. In paragraph 25 of the determination the sum in respect of the Respondent's legal costs stated as £375 shall be deleted and the sum of £575 shall be substituted.
3. In all other respects the determination shall remain in full force and effect.

Roger Healey
Chairman

Roger Healey
Chairman



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

Case Reference : **BIR/00CT/OLR/2013/0041**

Property : **68 Mallaby Close Shirley Solihull West
Midlands B90 2PW**

Applicants : **Mr Neil Jeffries**

Representative : **Mr Anthony W. Brunt FRICS**

Respondent : **Midland Freeholds Limited**

Representative : **Mr Matthew Fell**

Type of Application : **An application to determine the
premium payable and the terms of a
new lease under section 48 of the
Leasehold Reform, Housing &
Urban Development Act 1993 and the
landlord's reasonable costs in respect of
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DECISION

Introduction

1. This is a decision on an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') made to the Tribunal for the determination of the premium payable under section 56 and Schedule 13 to the Act and for the determination of the landlord's costs under section 91 of the Act in respect of the grant of a 90 year lease extension of the lease of a maisonette known as 68 Mallaby Close Shirley Solihull West Midlands B90 2PW.

Background

2. **Neil Jeffries ('the Applicant')** holds the leasehold estate in the subject property by virtue of a lease dated 22 October 1975 made between Bryant Homes Limited of the one part and Terence Ainsley Keer of the other part ('the Lease') whereby the subject property was demised for a term of 99 years from 25 March 1974 subject to a yearly ground rent of £35 payable from 22 October 1975 to 25 March 2007, from 25 March 2007 until 25 March 2040 payable at £52 and thereafter for the remainder of the term at £70. **Midlands Freeholds Limited ('the Respondent')** are the freeholders.

3. On 25 March 2013 the Applicant served a Notice of Claim under section 42 of the Act claiming the right to a new lease. On 22 May 2013 the Respondent served a counter notice admitting the right of the Applicant to a new lease.

4. The Applicant subsequently made the present application to the Tribunal on 10 August 2013.

Inspection of the subject property

5. The Tribunal was able to gain access on the morning of 1 October 2013 and inspected the subject property in the presence of the Applicant and Mr Brunt. Mr Fell was not present.

6. The subject property is a first floor purpose built maisonette comprising hallway staircase to first floor, living room, kitchen two bedrooms and bathroom together with a garage.

7. The Tribunal observed the subject property has the benefit of double glazing.

Hearing

8. At the hearing on 1 October 2013 the Applicant was represented by Mr Anthony Brunt FRICS who appeared as an expert witness in accordance with the Royal Institution of Chartered Surveyors Practice Statement. Mr Fell on behalf of the Respondent provided written submissions.

9. Standard directions were issued by the Tribunal on 5 July 2013. The directions provided (inter alia) for the parties to exchange documents and in accordance therewith both parties exchanged skeleton arguments.

Agreed Matters

10. The following matters are agreed by the parties -
- The date of the valuation is 25 March 2013
 - The unexpired term at the date of valuation is 60 years
 - A capitalisation rate for the increasing ground rent of 6.00% producing an agreed figure of £900.
 - Extended lease value of £130,000 subject to argument on improvements and
 - A deferment rate of 5.75%.
11. The matters agreed by the parties as set out in the preceding paragraph are accepted by the Tribunal.

Disputed Matters

11. The matters requiring resolution are –
- The value of the tenants' improvements (if any)
 - Whether there should be an allowance in respect of the tenant's rights under Schedule 10 to the Local Government and Housing Act 1989 ("a Clarise deduction") following the Upper Chamber's determination in *Clarise Properties (2012) UKUT 4 (LC)* ("Clarise decision") and
 - The existing lease value.

Tenant's improvements

12. Mr Brunt for the Applicants submitted that the double glazing constituted a tenant's improvement and valued it at £1,500. Mr Fell's submission made no reference to improvements. The Tribunal determines the replacement of the windows to be by way of tenant's compliance with the repairing obligation set out in paragraph 5 of the Fourth Schedule to the Lease and therefore does not fall to be valued as an improvement.

The Clarise deduction

13. Mr Brunt submits for a "Clarise deduction". Mr Fell makes no comment. A Clarise deduction arises out of the Clarise decision where the Upper Tribunal in an enfranchisement case determined under the Leasehold Reform Act 1967 ("the 1967 Act") that 20% be deducted from the standing house value when calculating the value of the ultimate reversion to reflect the risk of an assured tenancy arising under Schedule 10 to the Local Government Act 1989 ("the 1989 Act") at the end of the 50 year notional lease extension contemplated by the 1967 Act which would deprive the freeholder of vacant possession.

14. Mr Brunt submits that the freeholder cannot be sure of gaining possession at the end of the hypothetical 50 year lease after the expiry of the original term. Security of tenure is granted to the tenant, not by virtue of the 1967 Act, the 1993 Act or any other leasehold reform legislation but by virtue of Schedule 10 to the Local Government and Housing Act 1989.

15. Mr Brunt submits that Schedule 10 applies equally to leases and flats as it does to houses. The deduction is applied at the end of the term date of the original lease and not 50 years later, or at the end of the extended lease.

16. Mr Brunt accordingly submits for a Clarise deduction and values it at £5,000.

17. The Tribunal accepts that the rationale for the deduction expounded in the Clarise decision should apply equally to new leases under the 1993 Act as it does to enfranchisements under the 1967 Act. The Tribunal determines that the discount for deduction needs to be decided on its own particular facts. The most significant factor is the length of the unexpired term; the shorter the term the greater the deduction. The Tribunal determines that any discount should be deducted at the end of the original term of the lease and not at the expiry of the extended lease.

18. The Tribunal determines a Clarise deduction of £ 5,200.

Existing lease value

19. Mr Brunt produces comparable evidence of relevant existing lease sales; 27 Mallaby Close at £109,995, 56 Mallaby Close at £112,000, 26 Mallaby Close at £118,000 and 74 Mallaby Close at £125,000 which gives an average £116,250. Mr Brunt submits in his report for relativity of 90%, taking into account his figure for improvements, with a figure of £115,650.

20. Mr Fell produces comparables and relies on the sale of 27 Mallaby Close at £109,995 and 56 Mallaby Close at £112,000 and submits for £111,000.

21. The Tribunal prefers the actual evidence of sales rather than relativity in this case, and determines an existing lease value at £113,000.

Costs

22. At the hearing Mr Brunt proposed the Respondent's legal costs be determined at £575 plus VAT and disbursements if applicable and Valuation fees of £375 plus VAT and disbursements if applicable. The Tribunal finds these figures to be reasonable.

Determination

23. The Tribunal's calculation of the premium payable based on the preceding determinations is as follows –

| | | |
|----|--------------------|------|
| 1. | Term agreed | £900 |
|----|--------------------|------|

2. **Reversion**

| | |
|----------------------|-----------------|
| Extended lease value | £130,000 |
| Value to Freeholder | |
| deduct 4% (Clarise) | £ 5,200 |
| | <u>£124,800</u> |

Deduct tenant's improvements £ Nil

P.V. of £1 in 60 years @ 5.75% 0.0349283 £4,359.00

FREEHOLDERS CURRENT INTEREST £5,259.00

3. **Marriage Value**

| | |
|-------------------------------------|-------------|
| Extended lease value | £130,000.00 |
| Deduct Freeholders current interest | £ 5,259.00 |
| Deduct existing lease value | £113,000.00 |
| Marriage value | £ 11,741.00 |
| Lessors share @ 50% | £ 5,870.50 |

4. **Premium Payable**

| | |
|------------------------------------|-------------|
| Marriage value (Freeholders share) | £ 5,870.50 |
| Plus Freeholders current interest | £ 5,259.00 |
| Premium Payable | £ 11,129.50 |

Say £11,130.00

24. In addition the Applicant shall pay the Respondent's legal fees of £375 plus VAT and disbursements (if applicable) and valuation fees of £375 plus VAT and disbursements (if applicable), although VAT will not be payable if the Respondent is registered for VAT purposes.

25. In reaching its determination the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert tribunal but not any special or secret knowledge.

Appeal

26. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Roger Healey
Chairman