

2684



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

Case Reference : CAM/26UC/OLR/2013/0047

Property : Flats 13, 17, and 20 Mortimer Rise,
Tring, Hertfordshire, HP23 5NE

Applicants : Beth Rowe (Flat 13),
Edna May Banister (Flat 17),
Helena Cook (Flat 20)
Represented by Pictons Solicitors

Respondent : E and S Property Trading Co. Ltd.
Represented by Rice-Jones &
Smiths Solicitors

Date of Application : 20th May 2013

Type of Application : To determine the terms of acquisition
and costs of the new lease of the
properties pursuant to sections 51(3)
and 60 Leasehold Reform, Housing,
and Urban Development Act 1993
("the 1993 Act")

Tribunal : Judge J. Oxlade
R. Brown FRICS
M. Krisko BSc (EST MAN) FRICS

Date and venue of : 25th June 2013

Hearing : Pendley Manor, Tring, Herts

Attendees

Applicants

**G. Loughran MRICS
of Allied Surveyors and Valuers**

Respondents

**J. Naylor MRICS
of May & Philpot**

DECISION

For the following reasons, the Tribunal finds that:

- (i) **the premium payable for each new lease of the property is £25,268.83, the calculation for which is set out in Appendix A,**
- (ii) **the Surveyor's costs payable by the Applicants to the Respondent shall be a total of £700 plus VAT (if applicable).**

REASONS FOR THE DECISION

Background

1. On 23rd August 2012 the Applicants served on the Respondent notices exercising the right to new leases of their respective leases of flats 13, 17, and 20 Mortimer Rise, Tring, pursuant to section 42 of the 1993 Act. The Respondent served counter notices on each Applicant on 10th October 2012, accepting the proposal for a new lease, but disputing the premium which the Applicant said was payable.
2. The parties entered into negotiations on the premium payable and statutory costs to which the Respondent was entitled, and in so doing narrowed the issues between them, but were unable to resolve all issues. Accordingly, on 20th March 2013 an application was issued to the Leasehold Valuation Tribunal¹ ("LVT"), and on 7th April 2013 Directions were made for the filing of evidence.

Inspection

3. On 25th June 2013 the application was listed for hearing, prior to which the Tribunal inspected the three premises internally and externally, along with the access road leading to the maisonettes and garages, in the presence of the Applicant's expert Mr. Loughran.
4. At the hearing, the parties agreed a generic description for each of the premises, as follows: each was a two-bedroom purpose-build 1960's maisonette, demised with the benefit of a garden and parking space. For the purpose of this valuation as to condition, the parties agreed that each maisonette was without central heating or double-glazing, and was fitted with a kitchen and a bathroom appropriate to the time of construction.

¹ The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).

Points of Agreement

5. Prior to the hearing and filed within the bundle was a document which recorded the Applicant's understanding of the points of agreement with the Respondent, albeit that this was not signed until just before the hearing commenced. At the request of the Tribunal the parties added points of agreement on non-contentious matters agreed upon at the hearing.

6. The parties agreed the following:

- (a) a valuation dated of 23rd August 2012
- (b) an unexpired term of 48.10 years
- (c) capitalisation of the ground rent (value of the term) £158
- (d) capitalisation rate of 7%
- (e) Respondent's statutory legal costs of £850 plus vat per case, totalling £2550 plus vat
- (f) New terms of the lease
- (g) a 1% differential between the extended unimproved lease value and the value on the assumption of a share of the freehold.

7. It is implicit from the above and the way the parties presented their respective cases, that each premises would be valued on an identical basis and each component part which make up the premium payable identical.

Points of Disagreement

8. The following points remained in dispute,

- (a) deferment rate: Applicant said 5.75%; Respondent said 5.5%,
- (b) unimproved value with extended lease: Applicant said £152,000; Respondent said £175,000,
- (c) relativity/unimproved unextended lease value: Applicant said 78%; Respondent said 70.5%,
- (d) valuer's fees: Applicant said £200 plus vat per case (totalling £600 plus vat); Respondent said £650 per case plus vat (totalling £1950 plus vat).

Hearing

9. In accordance with Directions, the Applicant filed a bundle of documents in preparation for the hearing, and which contained the reports of the two experts, which were read and considered by the Tribunal prior to the inspection and hearing.

10. The experts gave oral evidence, adopting and expanding on their respective reports, answering questions in cross-examination and questions asked by the Tribunal, and making closing submissions. The parties respective cases are set out below on each point in dispute.

Applicant's Case

11. Mr. Loughran's primary position was that the LVT had heard and determined an application in respect of 63 Mortimer Hill on 11th January 2012, finding the premium payable to be £22,727 ("the earlier decision"), which decision had not been subject to onward appeal. Subsequent to that, the lessee of 9 Mortimer Rise negotiated with the Respondent later in January 2013, and agreed a lease extension with a premium payable of £22,850. He had anticipated that the subject lease extensions would follow the line set, and so was disappointed that this application had to be issued. Whilst accepting that the decision of one LVT does not bind another, he sought to apply the component parts of the LVT's decision to the current case - save in respect of one aspect, over which the parties were not in dispute - making any adjustment for changes which had occurred in the interim.

Deferment rate - 5.75%

12. Mr. Loughran relied on the finding in the earlier decision that the deferment rate was 5.75%. This was on the basis that the Tribunal departed from the generic rate set in Sportelli, for two reasons. Firstly, the growth patterns for Tring were not as strong as Prime Central London, and so - whilst the evidence was not as compelling as provided in the case of Zuckerman to justify as large a deviation from Sportelli - the Tribunal assessed that 0.25% should be added to the base deferment rate to reflect the differences in growth patterns. Secondly, the inadequate lease structures in these leases meant that there would be a higher risk of obsolescence.

13. In his opinion, the decision was justified on the basis of decisions of the Upper Tribunal made subsequent to Sportelli, of which he referred to two. He referred to the case of Zuckerman, and the justification therein from the departure from Sportelli in respect of obsolescence, growth rates, and management problems. In the current case he considered the following variations from Sportelli:

- (a) that a maisonette in Tring was at greater risk of obsolescence than in PCL, particularly the subject maisonettes which were of basic construction, and showing signs of general wear and tear common to brickwork, pointing, garages, and common roads. It was comparable to the flats in the Kelton Court, the subject premises in Zuckerman. Accordingly, there should be a 0.25% increase for obsolescence,
- (b) The variations in growth rates between PCL and Tring for a 17 year period showed a marked difference, as they had in Zuckerman between PCL and the Midlands. Though ideally there would be evidence over a longer period, it just does not exist, and it is unnecessary to rely on such a lengthy period. The evidence is that at the moment 60% of transaction in PCL involve an overseas buyer, which is not the case in Tring. Accordingly, there should be a 0.25% increase for growth rates,
- (c) As to management problems, though the lease seeks to devolve powers to the tenants, the default position is that the landlord would have to manage; the act of devolving powers to the tenant's usually left the landlord to manage. There would be significant management problems as

the premises age and the communal road deteriorates. There should be an uplift to reflect the 2003 legislation imposing consultation requirements, and the terms of the leases. Accordingly, there should be a 0.25% increase for management problems.

Unimproved Value of Extended Leases - £152,000

14. Mr. Loughran relied on the finding in the earlier decision that the value of the extended lease was £152,000. He did not consider that the prices had changed from that valuation date (5th January 2011) and the valuation date in this case (23rd August 2012). He referred to the earlier decision in which the Tribunal drew on transactions from a nearby estate, and so he referred to 18 Carrington Place sold at £145,000 on 23rd July 2012, which had the benefit of a lease of 85 years and was improved (double glazing and central heating). He also referred to two other transactions on Mortimer Hill: 59 Mortimer Hill, with an 118 year lease on 15th January 2011 sold for £154,000; 18 Mortimer Hill, sold in November 2011 in an improved condition for £168,000 with an extended lease. He provided a schedule of comparables at Appendix C of his report. In answer to the Tribunal's questions he said that he arrived at £152,000 as follows: started with a value of £168,000 deducting £5,000 for the garage, £10,000 for the improvements (£3000 kitchen, £4000 central heating, £3000 double glazing).

15. He discounted the sale of 63 Mortimer Hill for £182,500, being out of line with all other evidence, and on which the Respondent heavily relied. It was fully refurbished to an "as new" condition by a property developer, with full replacement double-glazing, with a refitted bathroom and kitchen, central heating and rewired, new skirting boards and doors. In cross-examination he had not seen it prior to the sale, but only on the inspection when the application was listed and could not recall the condition of the kitchen. He accepted as accurate the Tribunal note from its inspection on 7th December 2011, which recorded as follows: the kitchen was completely new; new central heating throughout and wiring; the bathroom was a white suite which had been retiled; new upvc windows and rear door but with secondary double glazing over Crittall-type windows in the bedrooms.

16. From his valuation of £152,000 he considered that there should be deductions for improvements of £10,000 to reflect £4,000 for central heating, £3000 for kitchen, and £3000 for double glazing.

Relativity -78%

17. Mr. Loughran referred to the earlier decision, where the Tribunal held that the relativity was 76.4%, taking into account the RICS document "Leasehold Reform: Graphs of Relativity" published in 2009. However, he noted that the Tribunal in Coolrace Limited [2012] UKUT 69 the Tribunal preferred the LEASE graph, after analysing the weaknesses of the other graphs. This approach was also taken in another Upper Tribunal case of 28 Maltby Close [2012] UKUT 296. Mr. Loughran therefore applied the LEASE graph in the current case, to support his argument that the appropriate relativity figure in this case is 77.47%, which he had rounded up to 78%.

Valuer's fees

18. Mr Loughran said that he was loathe to make submissions which amounted to an implicit criticism of a fellow valuer, but he considered the breakdown of costs provided in section 9 of the bundle, and pointed to work done on each of the premises which was identical and so would only need to be done once. For example, the time spent on obtaining and analysing comparable information would be spent on one of the maisonettes, and would not be done a second and a third time. The same observation applied to considering development potential, considering evidence on relativity, considering evidence on recent capitalisation rates and evidence and case law on deferment rates.

Respondent's Case

Deferment rate – 5.5%

19. Mr. Naylor had regard to the earlier decision when the deferment rate was found to be 5.75%. Since then the Upper Tribunal has considered the matter in City & Country Properties Limited v Alexander Christopher Charles Yeats [2012] UKUT 227. It was held that the ownership of a block of flats was more burdensome than recognised in Sportelli because of the consultation requirements and so investors would require an addition of 0.5% above the rate of houses, as opposed to the 0.25% allowed in Sportelli. There need be no adjustment to reflect growth rates in Horsham over PCL, and he considered that Horsham and Tring were similar in terms of distance from London.

Unimproved Value of Extended Leases - £175,000

20. Mr. Naylor relied on a recently completed transaction, namely 63 Mortimer Hill, which sold on the open market for £182,500 on 17th May 2012, with a lease of 189 years. He provided the estate agents particulars. As it took place within a few months of the valuation date of these properties and the other evidence was historic, he relied solely on this comparable. He made no downward adjustment for 63 Mortimer being demised with a garage, which the subject premises do not have, as the Tribunal in the earlier decision remarked that a garage would add very little. However, he allowed for the following deductions, as 63 Mortimer was in an improved state: £3,000 for central heating, £1,500 for part double glazed windows, and £3,000 for a modern bathroom and kitchen. Accordingly, the unimproved value of the premises with extended leases was £175,000.

Relativity -70.5%

21. Mr. Naylor accepted that the task of assessing relativity in a “no act world” was difficult and quoted paragraph 39 of the decision in Arrowdell, to the effect that a Tribunal just has to do the best it can. He noted the Tribunal did in the earlier decision make use of relativity graphs. Though the sale of 63 Mortimer Hill with a short lease of 49.73 years was £120,000 in January 2011 which compared with the sale of the premises with an extended lease in 2012 was £182,500, this was too historic to be given evidential weight.

22. Looking at graphs he considered the RICS Research Report published in 2009 and the 5 graphs at Appendix E: Beckett & Kay, South East Leasehold, Nesbitt & Co., Austin Gray, Andrew Pridell which ranged from 68.5% to 80%. However, he also referred the Beckett & Kay graph which had been compiled since the 2008 World financial crisis, and which gave a relativity rate of 56% for an unexpired lease term of 48.10 years. His expert opinion was that the current inability to raise funding for short lease properties reduced market demand. He did not favour the LEASE graphs as they are compiled using LVT decisions, on which the Tribunal in Arrowdell declined to place weight. The Coolrace case did itself say that it should not be treated as a precedent. Accordingly, he added the 2011 Beckett & Kay graph to the RICS research report which gave an average of 70.5%

Valuer's fees

23. He wished to add nothing in respect of his fees.

Decision

24. The Tribunal has carefully considered the evidence provided by both parties, the questions asked and answers given, and points made in submission. For the following reasons the Tribunal finds that the disputed component parts of the premium are as follows;

- (a) Deferment rate: 5.75%
- (b) Value of Extended Leases: £159,000
- (c) Value with share of freehold: £157,400
- (d) Relativity 74.11%, so short lease value: £117,835
- (e) Valuer's fees: total £700 plus vat.

Deferment rate

25. The case of Sportelli set a deferment rate of 5% for flats, which was fairly quickly followed by the case of Zuckerman, which identified circumstances where a variation from 5% might be appropriate.

26. Though not bound by the deferment rate of 5.75% found in the earlier decision this Tribunal is mindful of it, though independent of it is satisfied that a departure from Sportelli is appropriate, as follows.

27. The terms of the leases are by no means straightforward, because whilst the Lessee has an obligation to maintain and repair, the Lessor can do so in default. The percentage of recoverable costs is not defined. The Lessor is obliged to maintain the road in commune usage, and to recover the costs from the Lessee, and yet recovery of the percentage of costs is not defined. The case made out for additional practical problems with management are well made out and justify 0.25%. The risk of obsolescence justifies an additional 0.25%, in view of the period and method of construction which impact on the anticipated life of these buildings, which are of basic construction. As to lower growth rates in Tring as opposed to PCL, the previous Tribunal considered this in some considerable

depth, having been presented with a quantity of data; this has been summarised in these proceedings. Whilst Mr. Naylor draws parallels with the findings in the Yeats case concerning Hove, this Tribunal considers that there is sufficient data to establish that growth rates in Tring are likely to be less than PCL, and so reflect this in an additional 0.25%. Accordingly, the Tribunal finds that the deferment rate is 5.75%.

Unimproved Value of Extended Leases

28. Mr. Loughran's position was that the market had not moved on since the valuation date in the earlier decision of the Tribunal and so this Tribunal should find that the value was £152,000. Mr. Naylor relied on one transaction, namely the sale of 63 Mortimer Hill. Though the Tribunal was referred to 7 sales transactions at Appendix C of Mr. Loughran's report, which helpfully provides a summary of the essential details in tabular form, the Tribunal was not assisted by the experts, neither of whom analysed the information to assist nor did they make suitable adjustments for time.

29. Accordingly, doing the best that can be done on the basis of the limited information provided, the Tribunal finds that the comparable data shows that there has been upward movement in the market: 59 Mortimer Hill was sold in January 2010 for £154,000, 18 Mortimer Hill was sold for £168,000 in November 2011, and 63 Mortimer Hill was sold for £182,000 in May 2012. So, the Tribunal rejects the simplistic approach advocated by Mr. Loughran, that there was no change in the market.

30. Mr. Naylor relied exclusively on the sale on 17th May 2012 of 63 Mortimer Hill, being reasonably proximate to the valuation date. We note the points made by Mr. Loughran about condition, but our assessment was that his evidence about this property was on the basis of assumption, rather than knowledge of condition. That said, the Tribunal finds that this sale price is out of kilter with the vast majority of the other market evidence, such that it should be discounted as unreliable evidence of price. The comparable in 18 Carrington also appears out of kilter with the market, and so that is discounted.

31. The best comparables are the sales of 59 and 18 Mortimer, respectively £154,000 in 2010 and £168,000 in 2011. The latter transaction appears to be the most direct comparable though it was demised with a garage, and so we deduct £4,000 for this difference, so giving £163,000. The Tribunal further makes a global deduction of £4,500 for the improved bathrooms and kitchens, so leaving £158,500. We acknowledge that there is an element of time, and that the parties have agreed a 1% uplift for the value of a share of the freehold over a lease. This is partially supported by the sale of 11 Verney Close in January 2011 at £161,000 with appropriate adjustments for condition and time. Accordingly, the Tribunal finds that the unimproved value of an extended lease of the premises is £159,000.

Relativity

32. There is insufficient transactional evidence, which would in any event be open to the obvious criticism that the transactions take place against a background of the 1993 Act, so that the statutory assumption of a “no Act” world cannot apply.

33. The graphs are therefore of assistance and on which we place weight. At 13.6 of the report of Mr. Naylor, there is set out a summary of the graphs used in the 2009 RICS report, which figures were not challenged as inaccurate by Mr. Loughran. Mr. Naylor relied on the additional Beckett & Kay mortgage dependant graph, but this data is limited to the mortgage market, and so not itself a reflection of the whole width of the buyers profiles. Therefore the Tribunal discounts the Beckett & Kay mortgage dependant graph from the calculations.

34. Mr. Loughran relied exclusively on LEASE in view of the case of Coolrace, though the reasons for the decision in that case do not encourage the reader to treat it as a precedent. The Tribunal notes the criticism made in Arrowdell – that the LEASE graph is (in effect) the LVT giving evidence to itself – and the point remains well made, such that whilst the graph has a value, we do not consider that reliance should be solely placed on it.

35. The Tribunal places reliance on all of the 5 graphs at 13.6 of Mr. Naylor's report which together with the LEASE graph of 77.48%, give an average relativity of 74.11%, that the Tribunal adopts. Applying that to the unimproved long lease, the Tribunal finds that the unimproved short lease value of the premises is £117,835.

Valuer's fees

36. The Tribunal has carefully considered the breakdown of Valuer's fees set out at tab 9, and finds that there is billing for identical tasks performed on each valuation, but which would not have been repeated twice or three times. The Tribunal finds that the observations made by Mr. Loughran are well made. The valuation of the first premises would include the work of checking development value, comparables etc. but this would not be repeated for the second and third valuations. As the Tribunal does not know which valuation was undertaken first in time, the better approach is to calculate a total sum and divide by three.

37. The Tribunal finds that a reasonable total sum of £700 plus vat is payable for all three valuations, so in effect £233.33 per flat plus vat. If the Respondent is registered for VAT purposes, it will be able to recover the VAT on those fees

because those services will have been supplied to the Respondent (not the Applicants).

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15th July 2013

Joanne Oxlade

Judge of the First Tier Tribunal

Appendix

Term			
Agreed			£158.00
Reversion			
Extended Lease Value (unimproved)	£157,400.00		
PV of £1 in 48.10 years at 5.75%	<u>0.0679</u>	£10,687.46	
Plus Freeholder's interest after new lease	159,000.00		
PV £1 in 138.10 years @ 5.75%	<u>0.0004</u>	<u>£63.60</u>	
		£10,751.06	£10,751.06
Freeholders Present Interest			£10,909.06
Marriage Value			
Extended Lease Value (unimproved)	£157,400.00		
Plus Freeholder's interest after new lease	£63.60		
	<u>£157,463.60</u>	£157,463.60	
Existing Lease Value (74.11% relativity)	£117,835.00		
Freeholders Present Interest	<u>£10,909.06</u>	<u>£128,744.06</u>	
Marriage Value		£28,719.54	
50% to each party		2	<u>£14,359.77</u>
Premium payable			£25,268.83

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