



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

Case Reference : CAM/IIUE/OLR/2014/0049

Property : 19 Sheepcote Gardens, Denham,
Bucks, UB9 5LJ

Applicant : Jennifer Jane Coleman
Represented by The Head
Partnership Solicitors LLP

Respondent : Manhill Co. Limited
Represented by Rice-Jones &
Smiths Solicitors

Date of Application : 25th February 2014

Type of Application : To determine the terms of acquisition
and costs of the lease extension of the
property pursuant to the Leasehold
Reform, Housing, and Urban
Development Act 1993 ("the 1993
Act")

Tribunal : Judge J. Oxlade
M. Henington BSc. MRICS
N. Malhoney FRICS FIRPM MEWI

Date and venue of : 3rd June 2014

Hearing : Darwin Suite, Brunel University

Attendees

Applicants

**N. Hall MRICS
of Kempton Carr Croft
Susan Robertson, Solicitor**

Respondents

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

DECISION

For the following reasons, the Tribunal finds that:

the premium payable for a new lease of the property is £39,175, the calculation for which is set out in Appendix A

REASONS FOR THE DECISION

Background

1. The Applicant is the lessee of the premises, namely 19 Sheepcote Gardens, Denham, Uxbridge, Bucks, UB9 5LJ pursuant to a lease made on 20th August 1959. The premises are a ground floor flat, with three rooms currently arranged as two bedrooms, a living room, a kitchen and a bathroom/w.c., a small rear garden and larger front garden. Demised with it is a garage located in a block some 100 feet from the premises.
2. On 30th August 2013 the Applicant served notice on the Respondent of an intention to extend the lease of the premises, which at that date had an unexpired term of 44.08 years. The right to extend was conceded by the Respondent and the issue between the parties was (and remains) the premium payable.
3. The parties have negotiated. and agreed the following matters relevant to the premium payable by the Applicant to the Respondent: (i) valuation date, 30th August 2013, (ii) unexpired term at valuation date, 44.08 years, (iii) description of accommodation (iv) capitalisation rate of 7%, (v) a 1% differential between the unimproved extended lease value and the unimproved freehold vacant possession value (vi) ground rent £10.50 p.a. (converted from £10 and 10 shillings).
4. There remains a dispute between the parties about the following, which the Tribunal must determine in order to calculate the premium payable by the Applicant to the Respondent: (i) unimproved extended lease value, (ii) unimproved freehold vacant possession value, (iii) relativity rate (iv) and deferment rate.
5. Accordingly, the Applicant issued an application for the Tribunal to determine the premium payable. At the hearing held on 3rd June 2014, the Applicant said that there was no issue as to the other terms of acquisition nor the statutory costs payable by the Applicant to the Respondent.

Remaining Issues

6. At the commencement of the hearing, the parties by their experts, confirmed that they would respectively argue for the following:

- (i) unimproved extended lease value (A £200,000, R £225,000),
- (ii) unimproved freehold vacant possession value (A £202,000, R £227,250),
- (iii) relativity rate (A 77.93 %, R 67.75 %),
- (iv) deferment rate (A 5.25%, R 5.00%), and
- (v) premium payable (A £32,625, R £48,650).

Hearing

7. In accordance with the Tribunal's Directions made on 27th February 2014, the parties filed a bundle of documents, which contained the reports of the experts instructed by the parties and who attended the hearing to give oral evidence: namely, Nathan Hall of Kempton Croft Carr, and John Naylor of May & Philpot.

Evidence

8. The Tribunal indicated that it would be assisted if each expert gave evidence on the unimproved extended lease value, before moving in turn to the other points in dispute. After giving evidence-in-chief, the experts answered questions asked of them by the Tribunal, and then in cross-examination of the other expert. The essence of the parties evidence is set out below, and for ease of reference the decision of the Tribunal on each component part.

Unimproved extended lease value

Applicant - £200,000

9. Mr. Hall's opinion was that the unimproved extended lease value was £200,000, based on comparable market evidence, adjusted to the valuation date using the Land Registry figures for Buckinghamshire. He principally relied on two completed transactions and one incomplete transaction:

- (a) 21 Sheepcote Gardens, was the most useful comparable as it is a flat located above the subject flat, of the same size, and sold proximate to the valuation date (November 2013 according to the land registry entry) for £207,000 with a long lease in excess of 100 years. He had assumed it was in the same condition, although he accepted that the property particulars suggested it had a more modern kitchen and bathroom than the subject flat – though he did not consider that this would affect its value greatly. This flat had the following features which he considered more attractive than the subject premises, and which justified a downward valuation of the subject flat: this was a first (top) floor flat, which would not suffer noise from above, and was more secure; it was generally accepted that flats at higher levels do better than those at lower levels; it had a garage next to the flat, a parking space behind the gate, and use of parking along the drive to the front. He did not accept that the subject flat's configuration (patio doors onto rear garden) would make it a more attractive feature over 21 Sheepcote, as the ability to

walk out into a garden was a feature "in the eye of the beholder". He had adjusted the sale price by 1.7% from the sale date to March 2014 down to £203,500 but accepted in answer to the Tribunal's question, that this was not in fact the relevant period for adjustment. He assumed that the offer had been made 2-4 months before the sale date in November 2013 - so July to September 2013 - and close to the valuation date. In effect he had not indexed this price to the date of the valuation.

- (b) 15 Green Tiles was a similar property, though more modern, had a better layout than the subject flat, on a better development, and was slightly larger (633 sq foot as opposed to 555 sq ft) which meant that based on square footage, the subject flat should be adjusted downwards to £175,000 - though he was not advocating that approach. It had communal gardens and parking, but no private garden or garage. It had been sold in May 2013 for £200,000. He had not applied an indexation.
- (c) 17 Sheepcote Gardens was a first floor flat, which had just gone under offer, at a price of £245,000 on a short lease of 44 years, conditional on a lease extension being granted. He was not saying that it was a reliable indicator of the value of the subject flat at the date of the valuation, as the market now is very different to the market in August 2013; he had no specific evidence on that last point other than he heard on the radio that the national press refer to an 11% increase in the past year.

10. In cross-examination he said that he had not been aware of a sale relied on as comparable by the Respondent, namely of 33 Sheepcote Gardens in 2011, sold for £225,000. In his view it was historic, he did not know if it had been improved, he had not inspected it, and he thought that it was a different market in 2011 - though he would not say that it was a "better" market than the current market.

Respondent - £225,000

11. Mr. Naylor's opinion was that the unimproved extended lease value was £225,000, based on comparable market evidence, making a standard £5,000 adjustment for assumed improvements (£2000 for installation of double glazing, £2000 for central heating, and £1000 for new kitchen and bathroom), adjusting the valuation date using the Land Registry figures for Buckinghamshire, and then taking an average of the five transactions. He principally relied on three completed transactions and two incomplete transactions:

(a) 33 Sheepcote Gardens was sold in October 2011 for £225,000. He had not inspected the premises. He could no better explain why it's price could be said to be too high when comparing with current values, than Mr. Hall could not say that the current market is too low in comparison to the market when this flat was sold. He did not accept that it could have achieved a better price because the particulars referred to there being loft space used as an office with light and power there, nor that it had a garden described in the particulars as "a phenomenal size", 135' x 55'. If one was aged 92 the large

garden would not add value; he thought that the market for these flats was first time buyers and retirees. He had experience of sales being difficult because a loft was converted without building regulation approval, and so in his opinion it added no value. He did not accept that first floor flats were more desirable than ground floor, as the subject flat allows direct access to the garden through patio doors. In cross-examination he said that he had not made adjustments for the loft and gardens, as he would only make adjustments in respect of matters in his knowledge; he would not put £2000 on the value of a large garden, but perhaps £2000 for the use of the loft.

(b) 17 Sheepcote Gardens was under offer for £245,000 which he had adjusted for a 3.2% movement in land registry figures from November 2013 to date; he had been to it, but not in it, and made standard deductions as described above,

(c) 21 Sheepcote Gardens was sold in November 2013 for £207,000, which he adjusted to £198,566 to take account of improvements and adjustment in land registry prices of 1.7%; he would not make adjustments against the subject flat because of the off road parking and garage,

(d) 9 Frampton Gardens was sold in December 2013 and aside from knowing that it was a 2 bedroom flat, he did not know on which floor it was located, he did not know the size, the condition, for how long it was marketed, nor did he have particulars in respect of it. He said he knew it was in a 1960's/70's block, with garages in a block. He had not inspected it. He did not know which agent had sold it. He could not say if it had been sold on the open market,

(e) 68 Green Tiles went under offer a couple of months ago for £245,000 and he had particulars for it. It was in good condition, with what appeared to be a spacious kitchen. He had not made an adjustment for the fact that this flat had a floor area 38% higher than the subject flat (at 766 sq ft, as opposed to 555 sq ft). He had not valued the flats on the basis of square feet and so would not say that this made a difference to value.

12. He made the point that reliance on one transaction, as he said Mr. Hall had done, did not provide reliable evidence, for "one swallow does not a summer make". He accepted that making an adjustment using the Land Registry data for the whole of Bucks may not be entirely accurate, but thought this was a nice location and had worked with what materials were available. He did not consider that the market in 2011 was an odd one - arising because of excess demand over supply and so few transactions to set a benchmark - so giving rise to odd sale prices.

Tribunal's Decision

13. The Tribunal has carefully considered the opinions offered by the experts and the comparable evidence on which they based their opinions.

14. For the following reasons the Tribunal finds that the unimproved extended lease value at the valuation date of 30th August 2013 was £200,000.

15. Of the comparable evidence to which we were referred the closest comparable sale was of 21 Sheepcote Gardens, described in 9(a) and 11(c) above: it is a flat immediately above the subject flat and so in the same

location, with the same size accommodation, and with a completed sale in November 2013. It was sold with an extended lease, and neither expert has suggested that there is anything about the transaction which makes it inherently unreliable, such as a forced sale. Both experts placed reliance on it which they adjusted downwards taking a variety of factors into account: both adjusted the value downwards to reflect the change in the price index by 1.7%; Mr. Naylor applied a deduction of £5,000 for condition, and Mr. Hall deducted £3,500 to reflect the fact that 21 Sheepcote was first floor and so would achieve a slightly better price. The experts opined that the adjusted values for this were respectively £200,000 and £198,500. The Tribunal considers that this provides the best comparable available. 15 Green Tiles provides some evidence of the tone of prices in the area, though it is not a direct comparable, as it is a different location, a first floor flat, without private garden or parking, more modern and slightly larger in size.

16. The Tribunal is not materially assisted by the references to the agreements to sell 15 and 17 Sheepcote Gardens and 68 Green Tiles: despite Mr. Hall's insistence that they show a market for making offers at that price at that time, he accepted that they were not as reliable as concluded transactions; the Tribunal does not consider that they are as reliable an indicator of the value of the premises as concluded transactions. Neither, in the absence of more information about the premises and the transaction is the Tribunal materially assisted by the reference to 9 Frampton Gardens. Mr. Naylor referred to 33 Sheepcote Gardens but the Tribunal does not consider that any or any sufficient consideration was given to the effect on value of the loft space and size of garden for this transaction to provide direct comparable evidence; the transaction is dated, and though the value had been updated to take account of the land registry data showing changes in Buckinghamshire in the intervening period, this is a fairly blunt tool.

17. Generally, the Tribunal favoured the approach to his aspect of the valuation taken by Mr. Hall, and the comparable evidence relied on by him, and so finds that the value of the subject premises on the valuation date with an extended lease was £200,000.

Relativity

Applicant

18. Mr. Hall's opinion was that the Tribunal should have regard to the unimproved unextended value, in two ways: to consider market evidence of sales of short leases and to consider the relativity graphs; consideration of the former would give a relativity of 81.6%, consideration of the latter would be 74.26%, and a combination of both would produce 77.93%. His position was that in the case of Coolrace [2012] UKUT 69 the Upper Tribunal held that market evidence of short lease sales was the best evidence.

19. He referred to the sale of 15 Sheepcote Gardens where an offer of £220,000 had just been accepted from a buyer for a short lease, and Solicitors had been instructed. An offer had been accepted in January 2014 for 17 Sheepcote Gardens for £245,000 on the grounds of a lease extension being

granted. He compared the two values and concluded that the short lease was 90.2 % of the long lease value, or 73.45 % if using the asking price of £179,950 for 15 Sheepcote Gardens. He said that a realistic mid-point of £200,000 should be assumed and so this would give relativity of 81.6%. Neither value had been adjusted back to the valuation date, but he said that this was not necessary as he was comparing like with like.

20. He considered the 8 available relativity graphs, referring to the various percentages for a lease of 44.08 years, but discounted reliance on (i) Beckett & Kay, in view of this being a mortgage dependant graph and in his opinion no lender would offer a mortgage on a lease of 44 years, (ii) Austin Gray as this was primarily concerned with Brighton and Hove, with differing markets and lower values, so leaving an average of the remaining graphs of 74.26%. He was not aware that two bedroom flats with a sea view in Brighton would achieve a value of £450,000. In cross-examination he accepted that the graph produced by the College of Estate Management was dependant on data from a short period of 1994 to 1999, but defended his use of it because the RICS had relied on, and made the point that Mr. Naylor had used it. In cross-examination he accepted that he has mis-read the Savills graph, assuming it was for England and Wales, whereas it was for Prime Central London ("PCL")

21. If reliance was placed on a combination of the market transaction (81.6%) and the graphs (74.26%) then an average relativity of 77.93% was produced.

Respondent

22. Mr. Naylor considered the dictum in Arrowdell LRA/72/2005 to the effect that a Tribunal could consider any evidence of transactions, if good quality evidence, even though they take place in the real world – rather than the “no act world” and also relativity graphs. The position was reinforced in Nailrile v Earl of Codogan & Hallman.

23. He did not consider that there was reliable transactional evidence available in this case; that which had been referred to had not completed, and so anything could happen to those sales. In other circumstances it could be of use but what Mr. Hall sought to rely on produced a result which was off the scale of any of the generally accepted graphs. They were for a different time period, and no adjustment had been made for them.

24. He relied on 5 graphs for 44.11 years which produced a relativity of 67.75%, omitting the following: College of Estates Management, which stopped in 1999 and was not relevant to the current market conditions; Savills, which was for PCL, and so not representative of the market in Denham, and Leasehold Advisory Service which was (in effect) the Tribunal giving evidence to itself. In answer to questions asked of him by the Tribunal, he accepted that Beckett and Kay may not be reliable, in view of it being a mortgage dependant graph and the subject lease being 44.08 years – such than no mortgage finance would be available in respect of such a purchase.

Tribunal's Decision

25. The Tribunal preferred the opinion evidence of Mr. Naylor on this issue as to the little use that transactional evidence could have in this case, being that transactions were not concluded, were completely out of kilter with any of the graphs, and that no attempt had been made to adjust them for the relevant time periods. They were not of a quality or reliability to assist the Tribunal.

26. The Tribunal places reliance on the published graphs, and in light of the well-founded observations and criticisms made by both experts of the various graphs, places reliance only on the following graphs: South East Leasehold (76.38%), Nesbit (71.29%), and Pridell (67.69%). The Tribunal finds that using the graphs the average relativity is 71.786 %, which we round up to 71.79%.

Deferment Rate

Applicant

27. Mr. Hall argued that the deferment rate should be 5.25 % in this case, on the basis that there should be a departure from Sportelli because the growth rate in Denham would be less than PCL because Denham is a lower value area. So 0.25% should be added.

28. In his report he adduced no evidence to support his assertion for a departure from Sportelli. He sought in submissions to adduce statistical evidence, but the Tribunal declined to admit any evidence or assertions based on undisclosed evidence, not been provided to the Tribunal or Respondent, and no reasonable explanation for this failure had been provided. The Respondent had no forewarning of the evidence on which the assertion was based, and so no opportunity to assess and challenge it.

29. The Tribunal referred to a case which had recently been decided by the Upper Tribunal, namely Sinclair Gardens [2014] UKUT 78. This referred to Tribunals considering PCL being mandated to accept the deferment set in Sportelli in light of the quantity and quality of evidence heard in that case. Further, that the same mandating had not occurred in the West Midlands as a result of the case of Zuckerman. So it remained for the First Tier Tribunals outside PCL to consider a departure from Sportelli, on the basis of evidence adduced, which need not fall within the definition of "compelling evidence". It re-established reliance on the dictum in Daejan Investments v Holt [2008] LRA/133/2006, which suggested that there be a "reliable indication of a long-term movement in residential values".

Respondent

30. Mr. Naylor argued for a deferment rate of 5%. His report set out the case law, and corrected Mr. Hall's incorrect assertion that in Coolrace 0.25% was added for absence of growth. He relied on the case law which required that evidence be produced to justify a departure from Sportelli. He relied on Land Registry data for Buckinghamshire as against PCL showing a 265.34 in

Bucks over 287.53 in PCL. Mr. Hall did not seek to cross-examine Mr. Naylor on these statistics.

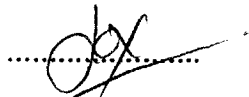
Tribunal's Decision

31. The Tribunal's starting point is to apply a deferment rate of 5%. The burden rests on the party seeking to deviate from it, to adduce evidence of sufficient quality and length to be able to reach a view about the future growth prospects based on past comparisons for Denham over PCL. The Applicant adduced no evidence at all, and took no active step to challenge the Respondent's reliance on the Land Registry figures. In the circumstances the Tribunal finds that the deferment rate is 5%.

Conclusion

32. In light of the above, the Tribunal applies the above findings to the points agreed between the parties, and concludes that the premium payable by the Applicant to the Respondent is £39,175.

33. For convenience the Tribunal encloses as Appendix A the calculations which show how the sum of £39,175 is calculated.



Joanne Oxlade

12th June 2014

Appendix A

Valuation Date	30/08/2013	Date of the Tenant's Notice	30/08/2013
19 Sheepcote Gardens, Danham, Bucks, UB9 5LJ			
Term YIELD	say	7.00%	
Reversionary YIELD		5.00%	Sportelli - Flats
RELATIVITY		71.79%	
Unimproved Extended Lease Value	£	200,000	
Freehold Vacant Possession Value	£	202,000	

Value of Income/Reversion

Ground Rent	£ 10.50	per annum	
No of flats	1		
Total Ground Rent			£ 10.50
Unexpired Years	44	years	
Unexpired Additional days	29	days	
Unexpired Term	44.08	years	
Interest Rate	7.00%		
PV £1 @	7.00%		
YP Single Rate	7.00% for	44.08 years	
			13.5618100
Flat No's:-			£ 142.40
Current term			£ 142.40

Reversion to Capital Value			£ 202,000.00
No of flats	1		
Total Capital Value			£ 202,000.00
PV £1 deferred	44.08 years @	5.00%	0.116409201
			£ 23,514.66
Reversion			£ 23,514.66

Value of Landlord's Current Interest therefore			£ 23,657.06
Extended Reversion			£ 202,000.00
No of flats	1		
Total Capital Value			£ 202,000.00
PV £1 deferred	134.08 years @	5%	0.001441951
			£ 291.27
Landlord's New Reversion			£ 291.27
Landlord's Current Reversion Value			£ 23,365.78

Marriage Value

Tenant Interest after Enfranchisement	£ 200,000.00	
Landlord's Interest after Enfranchisement	£ 291.27	
Proposed Interests	£ 200,291.27	
Less		
Reversion	£ 202,000.00	
Relativity	71.79%	
Tenant Current Interest	£ 145,015.80	
Landlord's Current Interest	£ 23,657.06	
	£ 168,672.86	
Marriage Value Total	£ 31,618.42	
Distributable Share	50%	
Value of Landlord's Share	£ 15,809.21	
TOTAL PAYABLE TO LANDLORD ON ENFRANCHISEMENT	£ 39,174.99	(or say £39,175)