



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

Case Reference : BIR/47UG/OLR/2015/0059

Property : 23 Lodge Close, Bewdley,
Worcestershire, DY12 1DN

Applicant : Philip Edward Carter and Leila Mary
Carter

Representative : Mr J Moore of Midland Valuations

Respondent : Morgoed Estates Ltd

Representative : Mr J Roberts

Type of Application : Determination of Premium and terms
of acquisition; Section 48 Leasehold
Reform and Urban Development Act
1993 ("the 1993 Act")

Tribunal Members : Robert Brown FRICS (Chairman)
Paul Hawksworth

**Date and venue of
Hearing** : 26th August 2015
Tribunal Hearing Rooms, City Centre
Tower, 5-7 Hill Street, Birmingham B5
4UU

Date of Decision : 24th September 2015

DECISION

DECISION

1. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as 23 Lodge Close Bewdley Worcestershire DY12 1DN ("the subject property") under the terms of the Leasehold Reform and Urban Development Act 1993 is **£6302.17**.
2. The Tribunal determines the Respondent's valuation fees at £250.00 plus VAT (if applicable).

REASONS FOR DECISION

The Application and Introduction

3. This determination follows two Applications both dated 2nd June 2015 for the determination of the premium to be paid for a 90 year lease extension, of the subject property, under the terms of the 1993 Act and for the determination of costs.
4. The Tribunal is not asked to consider the terms of the new Lease under the provisions of sections 56 and 57 of the Act.

Matters agreed between the parties before and during the hearing

5. The parties representatives had helpfully managed to agree certain matters and these are listed below:
 - 1) Valuation Date: 4th February 2015.
 - 2) Valuation of the Ground Rent: £1,397.14.
 - 3) Length of term unexpired: 63.38 years.
 - 4) Deferment Rate 5.50%.
 - 5) Legal costs: £575.00 No VAT chargeable.

Matters in dispute between the parties

6. The Tribunal was told that the following matters were still at issue:
 7. Existing Lease Value: Applicant: £78,045.00 Respondent: £76,000.00.
 8. Extended Lease Value: Applicant £86,000.00 Respondent: £96,000.00.
 9. Relativity approach: Applicant relies on the graphs. Respondent relies on market evidence.
 10. Whether or not the principles referred to in *Clarise Properties Ltd Re 167 Kingshurst Road* [2012] UKUT 4(LC) and *68 Mallaby Close* [2014] UKUT 304 (LC) apply to this case. The Applicant applies the deduction for the possibility of a tenancy arising under Schedule 10 to the Local Government Act 1989. The Respondent contends that a "*Clarise*" or "*68 Mallaby Close*"

deduction is not appropriate and that *68 Mallaby Close* should not be followed by the Tribunal in this respect. The Parties are, however, agreed that if such deduction is made then it should be 4.00%.

11. Valuation Fees: Applicant £125.00 plus VAT if applicable. Respondent £600.00.

The Law

12. The relevant law is Chapter II sections 39 to 62 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act").
13. Chapter II of the 1993 Act relates to the individual right of a tenant of a flat to acquire a new Lease of that flat. The law is contained in Sections 39 to 61B of the 1993 Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
14. Section 42 sets out what must be contained in the tenant's notice. Section 45 sets out what must be contained in any counter-notice given in response by the Landlord.
15. Section 48 deals with applications where the terms of the new lease are in dispute or where there is a failure to enter into a new lease.
16. Section 56 deals with the obligation to grant a new lease and section 57 sets out the terms on which a new lease is to be granted.

Inspection

17. The Tribunal inspected the property on 26th August 2015 in the presence of Mrs Carter and her sub-tenant.
18. The property comprises a first floor two bedroom maisonette with direct access from the ground floor by way of an open staircase. The accommodation comprises: Hall, Kitchen (fitted), 1 double and 1 single Bedroom, Living Room and Bathroom (fitted). Externally there is an allocated parking space, visitors spaces and communal grounds.
19. The Applicant (or predecessor in title) had carried out the following works: Installed upvc double glazing (2012); Fitted the kitchen; Installed gas fired central heating (new boiler 2014).

The Hearing

20. Mr J Moore appeared on behalf of the Applicants as representative and expert.
21. Mr J Roberts, a director of the Respondent company appeared on behalf of the Respondent.

The Applicant's submissions

Extended lease values

22. Mr Moore submits that the open market value of the property assuming the lease has been extended is £92,500.00. From this he deducts the sum of £6,500.00 to reflect 'tenant's improvements broken down as follows: boiler £1,000.00, new windows £1,000.00, new kitchen £2,000.00 and gas central heating £2,500.00 to arrive at £86,000.00.
23. He submits that there is little evidence of sales on the development of properties with extended leases. Research on Nethouseprices and Rightmove support the contention that properties on the development do not change hands very often.
24. Mr Moore tells the Tribunal that the one property currently on the market, No 24, has been on the market since May 2015 with an asking price of £104,000.00 and should be ignored as it has the original lease.
25. Mr Moore further stated that the Respondent's valuation of £96,000.00, from which £1,000.00 has been deducted for improvements, compares with Mr Moore's figure of £92,500.00 before improvements are deducted. The Parties are, therefore, not that far apart. In support of £92,500.00 Mr Moore refers to the sales of three two -bedroom flats nearby in Kidderminster which benefit from leases of over 140 years, gas central heating and double glazing: 18 Lower Parkland £90,000.00 (February 2015), 2 Quayle Court £92,000.00 (May 2015) and 6 Chaddesley Gardens £85,000.00 (April 2015).

Existing lease values

26. To arrive at the exiting lease value, Mr Moore relies on the decision in *Coolrace* [2012] UKUT 69(LC) and adopts the LEASE graph which he submits, is totally independent and not skewed by the *DeLaforce* effect. He also considers the graph produced by the College of Estate Management which excludes inner London.
27. For a lease of 63.38 years unexpired, according to Mr Moore, the LEASE graph suggests a relativity of 89.70% and the CEM (2000)(Rest of England) Report gives a relativity of 92.11%. The average rounded down to 90.75% gives an Existing Lease Value of £78,045.00.
28. As a check, Mr Moore says that he has taken the price paid for the property in November 2012 (£71,000.00) and applying the Nationwide House Price Index to February 2014 results in a figure of £79,334.00 a variance of less than 2.00%.

Clarise or 68 Mallaby Close deduction

29. Mr Moore's position is that a deduction should be made because the effect of Schedule 10 of the Local Government Act 1989 is to deny the Freeholder (Respondent) from obtaining possession at the end of the Lease and is entirely consistent with both *Clarise* and *68 Mallaby Close* decisions of the Upper Tribunal (Lands Chamber).

Valuation Fees

30. Mr Moore states that there is no evidence that any physical inspection of the property has been made by or on behalf of the Respondent and accordingly, the valuation is 'desktop' and thus, the sum of £125.00 is appropriate.

Applicant's Valuation

31. Applying those conclusions to the agreed matters Mr Moore calculates the premium at **£6,037.00**.

The Respondent's submissions

Extended Lease Values

32. Mr Roberts acknowledges that there is little market- based evidence on the development at the date of valuation but there is an abundance of other local evidence to assist the Tribunal.
33. Mr Roberts highlights the possible mortgage difficulties that might be experienced by a potential purchaser of a Lease with less than 70 to 75 years unexpired.
34. Mr Roberts refers to sales activity before and after the difficulties experienced in the market post -September 2008. Updating these figures by reference to the Land Registry Index and Halifax Index for the West Midlands he says that it follows that these ought to be the current leasehold values and in the knowledge that today the Lease will be some 6 or 7 years shorter, leads to the conclusion that £96,000.00 for the extended lease value, net of improvements is very realistic. As to improvements (which he values at £1,000.00) carried out by or on behalf of the tenant and referred to by Mr Moore, Mr Roberts states that many of those improvements are in fact works of repair carried out in compliance with the relevant repairing obligations imposed on the tenant by the Lease. As such, Mr Roberts says, they should be largely ignored.
35. In support of his position Mr Roberts refers to a transaction undertaken by himself where 3 Beauchamp Close, Kidderminster (one- bedroom flat) was purchased by himself and his wife with the original Lease in January 2015 for the sum of £62,500.00. Minimal refurbishment work was undertaken and the flat was reoffered with an extended lease (subject to an initial ground rent of £20.00 pa) and sold within a fortnight for £74,000.00. (The Tribunal was not told whether or not the extension was purchased or whether the Freehold already belonged to the Respondent).
36. Mr Roberts does not draw much support from Mr Moore's comparables but mentions that the Lease of 18 Parklands was extended for the sum of £9,000.00. The length of the Lease prior to extension was some 6.5 years longer than the subject property.

Existing Lease Values

37. Mr Roberts applies the Land Registry Price Index for the West Midlands to the purchase price in 2012 (£71,000.00) and arrives at a figure of £76,784.00 assuming all things are equal term –wise, however; in the case of the subject property, the Lease is now 2.5 years shorter.
38. On the figures adopted, Mr Roberts says, this is a relativity of around 79.00%. He goes on, however, to contend that the Beckett and Kaye graphs and the graphs used by the FTT do not reflect the reality in the case of mortgage dependent properties. The data behind the graphs pre-dates the post-September 2008 turmoil which has resulted in considerable difficulties being experienced in practice now in obtaining mortgages on leasehold properties and thus the data can, therefore, be said to be suspect.
39. Mr Roberts concludes by stating that his figure of £76,000.00 is realistic, if not generous, in a true 'No Act' world.

Clarise or 68 Mallaby Close deduction

40. Mr Roberts states that there should be no deduction for the possible effect of Schedule 10 to the Local Government Act 1989 because *68 Mallaby Close* was determined on the basis of written submissions only provided by a valuer without legal assistance.
41. No deduction is appropriate, according to Mr Roberts, for the following reasons:
 - 1) Paragraph 3(2) of Schedule 13 to the Act does not warrant such deduction.
 - 2) There is no evidence put forward in this case that the value of the Freehold would be affected by the Schedule 10 rights.
 - 3) There is no evidence that Schedule 10 rights would apply in this case in any event as the Applicants are not resident in the Property.
42. Mr Roberts invited the Tribunal to have no regard to *68 Mallaby Close* as far as a "*Clarise*" deduction is concerned.

Valuation Fees

43. Mr Robert's position, acknowledging that the subject property has not been inspected, is that he considers that £600.00 plus VAT is a realistic reflection of the time spent (and a figure agreed in other settlements) in valuing the property for the purposes of lease extension.

Respondents' Valuation

44. Applying those conclusions to the agreed matters Mr Roberts calculates the premium at **£12,194.27**.

The Tribunal's Deliberations

45. The Tribunal considered all of the evidence submitted by the Parties both oral and written and summarised above.

Extended lease values

46. The Tribunal found Mr Moore's evidence relying on actual sales evidence within the broader locality to be more persuasive than the approach of Mr Roberts applying indices which analyse sales over the whole West Midlands. Mr Robert's evidence of the acquisition and sale (with the benefit of an extended Lease) of a one- bedroom flat in the broader locality was considered by the Tribunal to be of limited assistance as the full circumstances of the sale were not reviewed nor was any attempt made to explain the difference in value between a one- bedroom and a two- bedroom flat. The Tribunal was not advised as the nature of the extension; whether or not the Freehold was already owned by the Respondent or whether the lease extended was purchased from a third party.
47. The Tribunal concluded that there was insufficient evidence adduced by either Party to consider making a specific adjustment to reflect the 'No Act' world.
48. Doing the best it can with the evidence before it, the Tribunal concluded that the appropriate market value for the extended lease was £92,500.00. However, it further concluded Mr Moore's deduction of £6,500.00 for tenant's improvements was too generous and largely unsupported. Similarly, Mr Robert's deduction of £1000.00 again unsupported by evidence was less than generous. Without further evidence, the Tribunal concluded that an appropriate deduction would be £2,500.00 (being made up of £500.00 each for the kitchen and bathroom and £1,500.00 for the benefit of full gas central heating) for improvements, making the Extended Lease Value for the purposes of Lease Extension £90,000.00.

Existing Lease Values- Relativity

49. Mr Moore's approach had been to acknowledge that there was little current evidence of existing leasehold sales and adopting the approach in *Cooltrace* had averaged the difference between the LEASE Graph and the graph in the CEM (2000)(Rest of England) report and had arrived at 90.75%.
50. Mr Robert's approach had been to consider that there was sufficient evidence if one considered the sales evidence of transactions around the time the Applicants purchased in 2012 at £71,000.00 and applied the appropriate Land Registry indices to arrive at £76,000.00. His view was that evidence of market transactions, where appropriate should hold sway over graphs especially as the latter had been based on data accumulated before the property market difficulties of post-September 2008.
51. In view of the limited transaction evidence around the valuation date and the unreliability of attempting to project values, albeit from a known starting point, but using very broad based indices, the Tribunal concluded that it preferred Mr Moore's approach and accordingly, determined the relativity at 90.75%.

Clarise or 68 Mallaby Close deduction

52. The Parties are agreed that if a deduction is to be made it is 4.00%.
53. Mr Moore's position is that there is an identified risk and as such it should be taken into account following the decision in *68 Mallaby Close*.
54. Mr Robert's position is that *68 Mallaby Close* is an unreliable decision because only one party was represented by a valuer and there was no legal representation.
55. The Tribunal concluded that the Upper Tribunal, which is also an expert Tribunal, had established a precedent in *68 Mallaby Close* which should be followed unless there were particular reasons to distinguish it from the present case.
56. The Tribunal had not been provided with any such reasons and accordingly follows the Upper Tribunal in making a deduction but at the agreed rate of 4.00%. The deduction is made from the Extended Lease Value (both before and after extension) to the Freeholder (Respondent) before the deferment is applied (i.e. £86,400.00).

Valuation Fees

57. 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. In such circumstances VAT will not be payable by the Applicants.
58. Mr Roberts said he had undertaken the valuation himself but is not a qualified valuer. His justification for the level of fee charged without inspection was simply that as owner of the Freehold he knew the property well and an inspection was not necessary and such a fee was appropriate to his level of income. He gave no estimation of the time spent or the actual rate he applied save that £600.00 plus VAT was a figure he had agreed in settlements.
59. Mr Moore considered an inspection to be essential and that an appropriate fee for a 'desktop' valuation was £125.00 plus VAT.
60. On the evidence before it Tribunal concluded that Mr Roberts had failed to justify the fee he proposed to charge and that level proposed by Mr Moore was within the band of reasonableness for a valuation without inspection.
61. The Tribunal considered that given the complexity of this type of valuation even a desktop valuation justifies a fee of £250.00 and accordingly determines a fee of £250.00 plus VATY (if applicable).

The Tribunal's valuation

62. Applying those determinations to the matters agreed by the parties the Tribunal's valuation is as follows:

Diminution in Freehold

Term Agreed			£1,397.14
Reversion to Vacant Possession Value	£86,400.00		
PV £1 63.38 years @ 5.5%	<u>0.0335</u>		<u>2894.4</u>
			£4,291.54
Intended Reversion in 158.4 years	£86,400.00		
PV £1 in 153.38 years @ 5.5%	<u>0.0002</u>		<u>£17.28</u>
Diminution in Freeholder's interest			£4,274.26

Freehold share of Marriage Value

After Marriage			
Freehold Interest	£17.86		
Leasehold Interest	<u>£90,000.00</u>	£90,017.86	
Before Marriage			
Freehold	£4,291.54		
Leasehold (Relativity 90.75%)	<u>£81,670.50</u>	<u>£85,962.04</u>	
Gain on marriage of Interests		£4,055.82	
Freehold Share 50%			<u>£2,027.91</u>
			£6,302.17

Appeal provisions

63. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Robert T Brown
Chairman