



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

Case reference : **CHI/21UD/OLR/2020/0110**

Property : **Flat 21 The Promenade
17-18 Eversfield Place
St Leonards-on-Sea
TN37 6BZ**

Applicant : **Ms Louisa Harriet Tomlinson**

Representative : **CooleBevis LLP
Solicitors**

Respondent : **Dauber Homes Management Ltd**

Representative : **Bevirs Law
Solicitors**

Type of application : **Determination of premium section 48
of the Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal members : **Mr I Perry FRICS
Mrs J E Coupe FRICS**

**Date of determination
and venue** : **9th November 2020
Paper Determination**

Date of decision : **9th November 2020**

DECISION

Decision

The Tribunal determines a value of £14,100 (Fourteen Thousand One Hundred Pounds) for the extended lease of the subject property at a peppercorn rent.

Background

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 of Flat 21 The Promenade, 17-18 Eversfield Place, St Leonards-on-Sea, TN37 (“the property”).

1. By a notice of a claim dated 14th January 2020 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. At the time, the applicant held the existing lease granted on 5th May 1994 for a term of 99 years from 24th June 1993.
2. The initial ground rent was £100 per annum with reviews after the first 20 years and every subsequent 20 years to £200 per annum, £300 per annum, £400 per annum and £500 per annum. The applicant proposed to pay a total premium of £7,770 for the new lease of the flat.
3. On 10th March 2020 the respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £16,500 for the grant of a new lease.
4. On 12th June 2020 the applicant applied to the Tribunal for a determination of the premium.
5. On the 22nd June 2020 the Tribunal issued directions indicating that because of the Coronavirus outbreak the matter would be dealt with on the papers without an oral hearing. Subsequently a determination on the papers was arranged for Monday 9th November 2020.
6. The directions issued by the Tribunal were clear in saying that by 29th September 2020 the parties’ Valuers must have exchanged valuations and communicated with each other to seek to narrow the issues in dispute.
7. In its submission to the Tribunal the applicant included a valuation report dated 12th October 2020 prepared by Mr C Clarke AssocRICS, an RICS Registered Valuer, including an open email sent to the respondents representative on 14th July 2020 attaching his valuation of the property and requesting a copy of the valuation report prepared for the respondent. He states that the Freeholder responded on 1st August 2020 in a “Without Prejudice” email but did not include a valuation.

8. Regrettably this means that there are no matters agreed.
9. The papers submitted to the Tribunal included a valuation report dated 12th October 2020 prepared for the respondent by Mr Gavin John Lewis who is a Chartered Building Surveyor and an RICS Registered Valuer.
10. The first matter that the Tribunal needed to do was to consider whether it was fair and reasonable for this matter to be dealt with by reference to the papers and without an Oral hearing. Having considered the documents provided and the matters in dispute the Tribunal decided that it could reasonably and fairly proceed to a decision on the papers.

Late submission

11. On 30th October 2020 the Tribunal received an email from Bevirs solicitors seeking to introduce an updated valuation report from Mr Lewis on behalf of the Respondents. “The report is the same as that which is included in the bundle of documents delivered by the Applicant’s solicitor save that this contains a worked example.” By email on 3rd November 2020 the Applicants’ solicitor objected to this being included at such a late stage.
12. It is clear from the papers that Mr Clark had tried to engage with the Respondents’ representative as early as 14th July 2020 to discuss the valuation issues and agree what matters could be agreed. The Respondent had not engaged and had not adhered to the timetable set out in the original Directions.
13. The Respondents’ original valuation within the hearing bundle signed by Mr Lewis is dated 12th October 2020 and suggests a premium of £15,528 based on an unimproved long lease value of £152,000. The valuation included with the email of 30th October 2020 suggests a premium of £15,422 but based on an unimproved long lease value of £162,000. This second report is also signed and dated 12th October 2020. Patently the two valuations dated 12th October 2020 are not the same.
14. The Tribunal agreed with the Applicant that the Respondent had already had sufficient time to submit his papers and to have engaged with Mr Clark on behalf of the applicant. Accordingly the Tribunal did not accept the late document and decided to proceed to decide the case on the papers already submitted.

The Matters Agreed

15. From the papers submitted the Valuers agree that the original lease is for 99 years from 24th June 1993 and that the initial ground rent was £100 per annum with reviews after the first 20 years and every subsequent 20 years to £200 per annum, £300 per annum, £400 per annum and £500 per annum.

Both Valuers attest that the unexpired term is 72.44 years.

Both Valuers have adopted a Present Value rate of 5% for the reversion.

The Matters in Dispute

16. The following matters are in dispute.

The valuation date
Extended lease value
Freehold/Long lease value
Years Purchase capitalisation rate
Relativity
Premium

The Law

17. The statutory provisions dealing with the premium payable by the Applicants for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the 1993 Act. The premium is the aggregate of:

- i. The diminution in value of the landlord's interest in the tenant's flat
- ii. The landlord's share of the marriage value
- iii. Any amount of compensation payable to the landlord.

18. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:

- i) The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
- ii) The value of his interest in the flat once the new lease is granted.

19. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements.

20. The value of the landlord's interest comprises two elements:

- i) The right to receive rent under the existing lease for the remainder of the term (*The term*)
- ii) The right to vacant possession at the end of the term subject to the tenant's right to remain in occupation (*The reversion*).

21. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.

22. Paragraph 5 of the schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this Application.

The Evidence and consideration

Valuation Date

23. Mr Clark states that the valuation date should be 14th January 2020 being the date of the original notice. Mr Lewis states that the valuation date should be 15th January 2020 being the date the notice was received.
24. Though there is no material difference between the two dates suggested the Tribunal finds that the correct valuation date is 14th January 2020, this being the date of the original notice.

Extended lease value

25. In his report Mr Clarke contends that the extended lease value should be £165,000. He provided a schedule of 5 comparable property sales, 4 of which are in Eversfield Place, which he adjusts to the valuation date by use of a House Price Index for Hastings and then makes further adjustments to reflect size, lack of balcony, lack of lift, share of freehold, distance from the sea, desirability of the building.
26. Mr Lewis contends that the extended lease value should be £152,000. He provides a schedule of 5 comparable properties of which 3 are actual sales and 2 are presently being offered for sale. Mr Lewis does not analyse the sales in any great detail although he refers to condition, dated interior, presentation, heating and balconies.
27. Had the Respondent instructed his Valuer to engage with Mr Clarke as instructed by the Tribunal in its directions it would seem the Valuers would have been able to agree the lower figure suggested by the Respondent. Accordingly the Tribunal decides that the long lease value shall be taken as £152,000.

Freehold Value

28. Both Valuers contend that there is a 1% difference between the hypothetical freehold value and the long lease value. The Tribunal accepts this assertion and therefore finds the Freehold Value to be £153,520.

Capitalisation Rate

29. Mr Clarke asserts that a capitalisation rate of 7% should be adopted in this case, there being a general acceptance between lease extension and enfranchisement valuers in London and the South East that this rate should apply where there is

a ground rent with modest reviews at regular intervals, typically every 20 to 25 years.

30. He states that where a lease has more frequent reviews or are index linked in some way then a lower rate of 5.5% or 6% would be appropriate. He referred the Tribunal to *Nicholson v Goff (2007) 1 EGLR 83* in which the Lands Tribunal set out the factors which would influence the capitalisation rate.
31. He also referred the Tribunal to a First-Tier Tribunal Case decided last year *CHI/29UN/OLR/2019/0004 & others* relating to properties in Chertsey and Ramsgate where premium ground rents were capitalised at 6.15%.
32. Mr Lewis uses a rate of 5.75% on the basis that the values are relatively low and stepped increases are modest.
33. The Tribunal considered that the current ground rent passing of £200 pa was not so small as to be inconsequential and is not far below the level of £250 pa above which some lenders decline to provide a mortgage.
34. Having due regard to the evidence provided, the sustained period of low interest rates and also relying on its own experience of lease extensions the Tribunal decided that a rate of 6.5% should be applied in this case.

Relativity

35. For the Applicant, Mr Clarke referred the Tribunal to a number of cases including *Sloane Stanley Estate v Adrain Howard Mundy and others LRS 21,21 & 35/ 2015*. He suggests that as there are no suitable market transactions relevant to this case the Tribunal should therefore rely on graphs. He suggests that the Andrew Priddell graph for properties on or near the South Coast should be used which gives a relativity figure of 91.96% and that if this was not accepted then the Tribunal should rely on an average of the five RICS 2009 Greater London and South East graphs and the new Gerald eve and Savills unenfranchiseable graphs which gives a relativity percentage of 91.57%.
36. Mr Lewis also asserts that there is no market evidence to be found and that the use of graphs is the best way to calculate the relativity. He takes the Gerald Eve 2016 graph, 86.15% and the Savills unenfranchiseable graph from 2015, 85.5%. An average of these two figures being 85.83%.
37. With the lack of real time evidence for the sale of any other properties in the area with short or long leases leaves the parties and the Tribunal dependent on the use of suitable graphs.
38. The Tribunal was surprised that neither party referred to the recent Upper Tribunal case *Deritend Investments (Birkdale) Limited v Ms Kornelia Treskonova (2020) UKUT 0164 (LC) UTLC case Number LRA/123/2019 (Deritend)*. This decision dated 1st July 2020.
39. In *Deritend* the guidance given by the Upper Tribunal is “this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction

evidence, notwithstanding that the subject of the valuation is outside PCL. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PCL.”

40. The Tribunal has decided it should follow this guidance from the Upper Tribunal. For a lease with 72.44 years unexpired the Gerald Eve graph produces a figure of 86.41% and the Savills unenfranchiseable graph produces 85.78%. Accordingly, the relativity rate to be applied in this case is 86.10%.

Decision

39. The Tribunal decides that the disputed issues shall be.

The valuation date: 14th January 2020
Extended lease value: £152,000
Freehold value: £153,520
Years Purchase capitalisation rate: 6.5%
Relativity: 86.10%
Premium: £14,100

The tribunal determines a value of £14,100 (Fourteen Thousand One Hundred Pounds) for the extended lease of the subject property at a peppercorn rent.

Chairman:9th November 2020

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the First-tier Tribunal refuses permission to appeal in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may take a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for the permission.

Flat 21 The Promenade, 17-18 Eversfield Place, St Leonards-on-Sea, TN37 6BZ
Lease 99 years from 24th June 1993

1. Diminution in Value of Landlord's Interest per Schedule 13(3)

(a) Value before grant of new lease:

Term 1

| | | | |
|----------------------------------|--------|------------|--|
| Ground Rent | £ 200 | | |
| Years Purchase 13.44 yrs at 6.5% | 8.7852 | £ 1,757.04 | |

Term 2

| | | | |
|---------------------------------------|---------|------------|--|
| Ground Rent | £ 300 | | |
| Years Purchase 20 years at 6.5% | 11.0185 | | |
| Present Value £1 in 13.44 yrs at 6.5% | 0.4290 | £ 1,418.08 | |

Term 3

| | | | |
|---------------------------------------|---------|----------|--|
| Ground Rent | £ 400 | | |
| Years Purchase 20 years at 6.5% | 11.0185 | | |
| Present Value £1 in 33.44 yrs at 6.5% | 0.1217 | £ 536.38 | |

Term 4

| | | | |
|---------------------------------------|---------|----------|----------------|
| Ground Rent | £ 500 | | |
| Years Purchase 19 years at 6.5% | 10.7347 | | |
| Present Value £1 in 53.44 yrs at 6.5% | 0.03455 | £ 185.44 | |
| | | | <u>£ 3,897</u> |

Reversion

| | | | |
|-------------------------------------|----------|---------|--|
| Freehold value | £153,520 | | |
| Present Value £1 in 72.44 yrs at 5% | 0.02918 | £ 4,480 | |

Less

| | | | |
|--------------------------------------|----------|------|---------------|
| (b) Freehold value: | £153,520 | | |
| Present Value £1 in 162.44 yrs at 5% | 0.00036 | £ 55 | <u>£4,425</u> |

Present Value of landlord's interest £ 8,322

2. Landlord's Share of Marriage Value per Schedule 13(4)

(i) Value of Tenant's interest
with extended lease £152,000 £ 152,000

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| | | | |
|------|---|------|------------------|
| (ii) | Value of Landlord's interest after new lease | £ 55 | <u>£ 152,055</u> |
|------|---|------|------------------|

Less

| | | | |
|-----|---|-----------|--|
| (i) | Value of Tenant's interest Before new lease 86.10% of Freehold Value £153,520 | £ 132,181 | |
|-----|---|-----------|--|

| | | | |
|------|--|---------|--|
| (ii) | Value of Landlord's interest Before new lease | £ 8,322 | |
|------|--|---------|--|

£ 140,503

Total Marriage Value

£ 11,552

Landlord's share 50%

£ 5,776

Compensation Payable to Landlord

£ 14,098

Say £14,100