3002

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	BIR/OOCN/OLR/2014/0111
Property	:	Flat 4, 304 Jiggins Lane, Bartley Green, Birmingham, B32 3HJ
Applicant	:	Jacqueline Ann Malin
Representative	:	Mr J. Moore
Respondent	:	Kathleen Hartin (Missing)
Representative	:	None
Type of Application	:	An Application to determine the premium payable into Court by the lessees to extend a lease under section 48 of the Leasehold Reform Housing & Urban Development Act 1993 pursuant to an Order of Birmingham County Court re: Claim No.A02BM063
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS P.J. Ellis (Lawyer) N. Wint FRICS
Date and Venue of Hearing	:	19th November 2014 at the offices of the First-tier Tribunal (Property Chamber), Priory Courts, 35 Bull St.,Birmingham
Date of Decision	:	4 FEB 2015

DECISION

Introduction

1 This is an application to determine the premium payable into Court by the Tenants to extend a lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act').

2 The Tenants had been unable to locate the Landlord to serve a s.42 notice under the Act and applied to Birmingham County Court for a vesting order on 21st August 2014 by Claim No. A02BM063. This was granted on 3rd September 2014 subject to assessment of the premium and other terms by the leasehold valuation tribunal. The jurisdiction of that former tribunal was transferred to the First-tier Tribunal (Property Chamber) on 1st July 2013 and the determination is set out below.

The Law

3 The tenants hold a 99 year lease from 25th December 1968 at a ground rent of £25 p.a. fixed for the duration of the term.

4 On 21st August 2014 ('the Valuation Date') they applied to Birmingham County Court for a vesting order for a new lease to be granted to add 90 years to the existing unexpired term.

5 The Court granted the order on 3rd September 2014 subject to the terms of the new lease being determined by the First-tier Tribunal (Property Chamber).

6 Section 48 of the Act prescribes that the Tribunal has jurisdiction to assess the premium in accordance with a formula in Schedule 13. It sets out the basis of calculation and requires the premium to be based on the landlord's loss of ground rent for the term and compensation for the landlord's deferred right to possession of the flat together with a share of any marriage value arising from the lease extension. The share is defined at 50% in the Commonhold and Leasehold Reform Act 2002. It also allows the landlord to claim for any diminution in the value of land retained in its estate due to the grant of the lease extension if such loss can be justified, generally known as paragraph 5 compensation, but as the landlord could not be found and the Tribunal is unaware that any other estate has been retained by the landlord there is no such claim in this case.

7 Following the Hearing the Tribunal wrote to the Applicant's representative Mr Moore inviting him to consider the decision in 7 Grange Crescent Halesowen [*Sinclair Gardens Investments (Kensington) Ltd.* LRA/48/2013] and reply to the Tribunal by 16th January 2015 but received no further representations.

Facts Found

8 The Tribunal inspected the property on 19th November 2014 with the Tenants' agent Mr Moore.

9 It is a first floor maisonette with a ground floor lobby, landing, lounge, kitchen, two bedrooms and bathroom in a two storey block forming part of a 1960s development. It is located in Bartley Green, a residential suburb about 6 miles to the south west of Birmingham city centre.

10 The property is of two storey brick and tile construction surrounded by communal open plan gardens with a garage in a separate block at the rear.

Issues

11 1 The value of the premium payable under Schedule 13 to the Act;

2 The other terms of the lease.

Applicants' Submission

12 1 **The value of the premium**

Mr Moore for the Applicants valued the premium based on several inputs:

13 Unexpired Term

Calculated at 53.33 years at the valuation date which was the date of the application to the County Court, 21st August 2014.

14 Capitalisation Rate

6.75% to reflect the nominal fixed income for the duration of the term.

15 Value of extended Lease

Mr Moore submitted for a value of £55,000 based on a full capital value of £59,000 less £4,000 to reflect the value of the tenants' improvements to be disregarded under the Act.

16 This was based on the sale of a flat nearby, 19 Bigwood Drive, where the lease had been extended to 105 years and sold for £59,500 in October 2013. Taking account of the general rise in property prices from October 2013 to August 2014 and deducting to reflect the poorer location of the subject property which is on a main road near a busy junction, produced an adjusted value of £59,000 on a like-for-like comparison. Further evidence was provided by the sale of another two bedroom maisonette in the area, 31 Grazebrook Croft, in August 2011 for £58,000 with 95 years unexpired, although the evidence was historic and that property was in a better location.

17 Value of present Lease

Taken as 83% of the value of an extended lease in the subject property, based on a relativity graph published by the LEASE organisation. This produced a present value of £45,650.

18 Value of Tenants' Improvements

The Tenants had installed double glazing together with new kitchen and bathroom suites which Mr Moore considered to be worth £4,000.

19 Schedule 10 Rights

Mr Moore reduced the value of the present lease by 5% to reflect the risk of the tenant remaining in occupation at lease expiry pursuant to Schedule 10 of the Local Government & Housing Act 1989. He referred to the case of *68 Mallaby Close* [2014] UKUT 0304 (LC) where the Upper Tribunal upheld a decision of the First-tier Tribunal to deduct 4% for a lease with 60 years unexpired, but he increased this to 5% to reflect the shorter term of 53 years for the subject property.

20 Deferment Rate

The rate adopted was 5.75%, based on *Cadogan and Another v Sportelli and Another* [2006] EW Lands LRA 50 2005 and Re Kelton Court: *Zuckerman v Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC).

21 This comprised a risk free rate of 2.25%, less a 'real growth rate' of 2.00%, plus a risk premium of 4.50%, plus 0.25% for the extra risk of managing flats, plus 0.5% representing lower price growth in the West Midlands compared to prime central London and 0.25% for

the greater risk of deterioration and obsolescence in West Midlands property compared to property in prime central London.

22 Premium
Combining these elements, Mr Moore valued the premium at £6,183.

23 **2 The other terms**
The Court Order directed the Tribunal to determine any other terms of the new lease but no further submissions were made by Mr Moore.

Tribunal Decision

24 **1 The Premium**

The Tribunal has considered Mr Moore's written and oral submissions and finds as follows:

25 Unexpired Term
Although the Tribunal agrees that the strict calculation of the unexpired term is 53.33 years it values the interest at 53 years unexpired as the effect is minimal in valuation terms and the published tables are calculated to whole years.

26 Capitalisation Rate
The Tribunal agrees the appropriate rate for this minimal rent fixed for 53 years to be 6.75%.

27 Value of extended Lease
The Tribunal has considered the comparable evidence and agrees that the value of a hypothetically extended lease in the subject property, excluding the value of the tenants' improvements, would have been £55,000 at the valuation date.

28 Value of present Lease
The Tribunal agrees with the approach taken by Mr Moore and finds it would be reasonable to apply the relativity graph produced by LEASE to compare the value of the present lease with the extended lease. The ratio at 53 years is 83% which values the present lease net of improvements at £45,650.

29 Value of Tenants' Improvements
The Tribunal finds that the tenants' improvements added £4,000 to the value of the lease.

30 Schedule 10 Rights
The Tribunal finds 5% to be a reasonable deduction to reflect the risk of the tenant remaining in occupation at the expiry of the present lease under Schedule 10 of the Local Government & Housing Act 1989.

31 Deferment Rate
The Tribunal determines the appropriate deferment rate in the present case to be 5.75%.

32 Following the Hearing the Tribunal wrote to Mr Moore inviting him to comment on the Upper Tribunal decision in 7 Grange Crescent Halesowen [*Sinclair Gardens Investments (Kensington) Ltd.* LRA/48/2013], where the deferment rate had been assessed at 5.5%. The Upper Tribunal had considered the decision in Re Kelton Court: *Zuckerman v Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC) but held that the 0.25% addition for 'age and obsolescence' should not be applied at Grange Crescent as there was no evidence that the building had been a poorer structure.

33 In the Appeal of Grange Crescent, The Upper Tribunal held at paragraph 88:

'The LVT did not identify anything about the appeal property in particular which would cause an investor to perceive a greater risk of deterioration and obsolescence than was already accommodated in the 4.75% risk premium applied by the Lands Tribunal in Sportelli or reflected in the freehold vacant possession value. It appears to have based its decision to make the addition on Zuckerman, but it is a misreading of Zuckerman to assume that the same 0.25% allowance is appropriate to all property outside PCL or all properties in the West Midlands. On the contrary, whether such an allowance is justified must be considered in each case by reference to the characteristics of the property in question.'

34 Mr Moore sent no further representations on Grange Crescent but the Tribunal nevertheless considered the Grange Crescent decision and found that the relatively low standard of construction of 304 Jiggins Lane incorporating low building specification and flat roofed garages as highlighted by Mr Moore at the site inspection, justified an additional 0.25% in the deferment rate. Accordingly, the Tribunal finds the appropriate deferment rate to be 5.75%.

35 This is based on a risk free rate of 2.25%, less a 'real growth rate' of 2.00%, plus a risk premium of 4.50%, plus 0.25% for the extra risk of managing flats, plus 0.5% representing lower price growth in the West Midlands compared to prime central London and 0.25% for the greater risk of deterioration and obsolescence in West Midlands property compared to property in prime central London.

36 Premium

The Tribunal values the premium as follows:

Diminution in value of the landlord's interest per Sch.13 para.3(1)

Term			
Ground Rent	£ 25.00		
Years Purchase 53 years 6.75%	14.3500		
			£ 359
Reversion			
Extended lease value	£ 59,000		
Less value of tenants' improvements	£ 4,000		
	£ 55,000		
Less 5% for Sch.10 rights	£ 2,750		
	£ 52,250		
Present Value £1 53 years 5.75%	0.0516583		
			£ 2,699
Landlord's present interest			£ 3,058
Less value of Landlord's interest after lease extension	£ 52,250		
Present Value £1 143 years at 5.75%	0.000337		
			£ 18
			£ 3,040
Landlord's Share of Marriage Value per Sch.13 para.4(2)			
i value of Tenants' interest after extension	£ 55,000		
ii value of Landlord's interest after extension	£ 18		
		£55,018	
c/f		£55,018	£ 3,040

b/f			£55,018	£ 3,040
Less				
i	value of Tenants' interest before extension	£ 45,650		
ii	value of Landlord's interest before extension	£ 3,040		
			£48,690	
Marriage Value			£ 6,328	
Landlord's share 50%				£ 3,164
Premium				£ 6,204

37 Accordingly, the Tribunal determines the premium payable into Court by the Applicants at£6,204 (Six Thousand Two Hundred and Four Pounds).

38 **2 The other terms**

In the absence of any other submission by the Applicants the Tribunal determines the terms of the lease in accordance with the Act, for a term expiring 90 years after the existing lease at a peppercorn ground rent but otherwise the same terms as the existing lease.

Appeal to the Upper Tribunal

39 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date - 4 FEB 2015