



4208
First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference : CAM/22UH/OLR/2016/0100

Property : 12 Algiers Close with garage and garden,
Loughton,
IG10 4HN

Applicant : Josephine Bowles (in her own right and as
Executrix of the late Michael John Bowles)

Represented by : Derek Rona FRICS

Respondents : Brickfield Properties Ltd.
Represented by : Nicola Muir of counsel (Wallace LLP)

Date of Application : 14th July 2016

Type of Application : To determine of the terms of acquisition and
costs of the lease extension of the property

Tribunal : Judge Edgington
Gerard Smith MRICS FAAV
Roland Thomas MRICS

**Date and venue of
Hearing** : 14th October 2016 at Romford
Magistrates' Court, Main Road, Romford
RM1 3BH

DECISION

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UPON the terms of the Deed of Surrender and New Lease, save as to the premium payable, having been agreed between the parties,

AND UPON the parties asking the Tribunal to assess the legal costs payable by the Applicant to the Respondent in accordance with section 60(1)(a) and (c) of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act") upon a consideration of the papers, including the written representations, filed,

AND UPON the parties having agreed the valuation fee payable by the Applicant to the Respondent pursuant to section 60(1)(b) of the 1993 Act,

IT IS DETERMINED that:

1. The premium payable for the property is £102,586.00 as set out in the Schedule to this decision.
2. The legal costs of the Respondent, payable by the Applicant are £1,785.90.

tier Tribunal) (Property Chamber) Rules 2013 (“rule 13”) in favour of the Applicant.

Reasons

4. This is an application for the Tribunal to determine the terms of a lease extension for the property and the amount payable by the Applicant for the Respondent’s legal and valuation costs. Bundles were delivered, as ordered by the Tribunal. They were particularly cumbersome, being well over 400 pages long. At page 379, the pagination started again at page 340. The Applicant’s solicitors should know that the High Court has said for many years that bundles should be no longer than 300 pages so that they are manageable. In this case, for example, the valuers’ reports could well have been in a separate bundle or, with copying on both sides of paper, everything could easily have been within one manageable bundle.
5. The Respondent’s valuer filed a second report which was simply to answer the information given by the Applicant’s valuer relating to the sale of number 10 Algers Close which had the benefit of a section 42 notice and there was a subsequent lease extension. He increased his assessment of the premium from £115,971 to £121,577. It transpired during the hearing that the landlord in that case was the Respondent and so this information had been available all along including the information that a lease extension had been agreed in 2014 of just under £70,000. It appears that the Respondent had not bothered to tell Mr. Sharp.
6. The Initial Notice suggested a premium of £68,000 and the Counter-Notice £120,676. It became clear that there was basic agreement between the valuers of several components of the valuation formula to be used i.e. the valuation date at the beginning of November 2015; the floor area, uplift for virtual freehold (1%); unexpired term (38.62 years); ground rent (£12.60 per annum); capitalisation rate (6%) and deferment rate (5%). These will be assumed and adopted in the Tribunal’s calculations, leaving long leasehold value and relativity to be determined. There was no suggestion of extra compensation being payable under paragraph 2(c) of Schedule 13 of the 1993 Act (see below).

The Inspection

7. The Tribunal inspected the property in the presence of the Applicant and Mr. Derek Rona FRICS who represented her at the hearing. Algers Close is a fairly narrow straight cul-de-sac with pleasant looking purpose built 1930’s ‘Tudor’ style 2 storey blocks of 4 flats each along either side. As one drives down the road a block of 4 flats built in the 1960’s of brick and rendered block construction under an interlocking concrete tiled pitched roof is built across the end of the road. Blocks of garages are either side. These are flats numbered 9, 10, 11 and 12.
8. The 2 forms of architecture are incongruous. The flat in question is in the newer block and is, in effect, a maisonette as it has its own ground floor entrance door to a staircase leading to the first floor. There is a small hall/landing leading to a reasonably sized lounge/diner, 2 double bedrooms, a bathroom/WC, a kitchen and utility room. There is gas fired central heating by radiators.
9. The property has the benefit of one of the garages. It has its own large garden although the access is limited and the aspect to the front is not particularly attractive consisting, as it does, of the rears of some of the garages with boarded up windows.

10. There are uPVC windows and the condition of the building to the front is not too bad. However, from the side, it is clearly in need of considerable decoration and possibly more. Further, there is concrete sectional guttering which is not the best material to use as it is prone to cracking in the long term and this may need considerable expense in years to come.

The Law

11. The valuation of a premium payable in respect of a new lease in these circumstances is governed by Schedule 13 of the 1993 Act. Paragraph 2 says that:-

“The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of-

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,*
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and*
- (c) any amount of compensation payable to the landlord under paragraph 5*

12. It is accepted by the parties that an Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. The Applicant therefore has to pay the Respondent’s reasonable costs of and incidental to:-

- (a) any investigation reasonably undertaken of the tenant’s right to a new Lease;*
- (b) any valuation of the tenant’s flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;*
- (c) the grant of a new lease under that section;*
(Section 60(1) of the 1993 Act)

13. Rule 13 says *“The Tribunal may make an order in respect of costs....if a person has acted unreasonably in bring, defending or conducting proceedings in...a residential property case”*.

The Hearing

14. The hearing was attended by Mr. Rona together with Nicola Muir, counsel for the Respondent and Robin Sharp BSc FRICS, the Respondent’s valuer. Ms. Muir had filed a short but extremely helpful skeleton argument.
15. Each of the valuation experts gave evidence and was questioned by the advocates and the Tribunal. Ms. Muir produced the 80 page decision of the Upper Tribunal in respect of 3 properties starting with **The Trustees of the Sloane Stanley Estate v Adrian Howard Mundy** [2016] UKUT 0223 (LC). Obviously the members of the Tribunal knew of the case as it concerned the potentially revolutionary method of valuating the unexpired length of a lease known as ‘hedonic regression’ and, in particular, the Parthenia model.
16. Such model was not accepted by the Upper Tribunal but the judgement of Mr. Justice Morgan and Mr. Andrew Trott FRICS does go on to discuss other elements of the valuation exercise. Having said that, there is a discussion in paragraphs 163 to 170 as to whether some general ‘rules’ or ‘guidance’ could be set down as in the well known **Sportelli** case to avoid arguments about, in particular, relativity, in the future. The decision made it clear that its decision

paragraph 169, that where market evidence was available, this should be used. If not, then 'the most reliable (relativity) graph' should be used.

17. The Tribunal was referred to paragraphs 127, 128, 144 and 152 of the decision, the last of which gave a percentage reduction of 10% to reflect the value of the existing leases without rights under the 1993 Act. One of those leases had an unexpired term of 37.71 years which is remarkably similar to the lease in this case.
18. Much of the hearing consisted of discussions about the various different graphs of relativity used by various valuers and then the various issues for assessing the long lease value. In view of the method of valuation adopted by the Tribunal, no detailed note of this evidence is necessary although it was considered by the Tribunal in depth.
19. At the end of the hearing, Mr. Rona said that he wanted to apply for an order that the Respondent pay his client the sum of £1,000 being his fees for attending the hearing. He alleged that Mr. Sharp had been particularly unhelpful and had failed to enter into any kind of negotiation. Mr. Rona referred to a number of e-mails to Mr. Sharp to which he had not responded. He had even made a further offer on the 7th October which had not even been acknowledged. In short, he should have entered into negotiations to try to prevent the hearing.
20. Ms. Muir said that she had not been warned of this application and it should be refused. Mr. Sharp simply said that there had been no offer which was acceptable to his client.

Discussion

21. The most frequent method of valuation, absent market evidence, is to look at what market evidence there is of flats sold with the protection of the 1993 Act and then apply a relativity deduction using one of the graphs referred to by the valuers in this case.
22. However, the Tribunal does have the benefit in this case of a sale of flat 10 a year and 4 months prior to the valuation date during which period, the market was reasonably stable because the usual upward pressure on prices was tempered by the difficulty in obtaining mortgages generally. This was a sale of the other first floor flat in this block with very similar floor area and the same date for the end of the lease making it slightly longer at the time of sale. The garden was slightly smaller and it had no garage. The valuers had agreed that a garage is worth £10,000.
23. It had the benefit of a section 42 notice and a subsequent price was paid of just under £70,000 for an extended lease which was presumably in similar terms to the subject property. Accordingly, rather than try to determine a long lease value and work backwards, the Tribunal started with 10 Algiers Close and worked forwards. It adopted the £150,000 as the open market sale price and added £10,000 because it was considered that any purchaser would have taken into account the poor external condition of the building and the liability in service charges which would arise.
24. Using the Land Registry index provided by Mr. Rona the net figure of £160,000 is indexed up 108.69%, divided by the sale date and multiplied by 160,000 which comes to £184,475. Adding the garage would make this £194,475. Deducting 10% in accordance with **Sloane v Mundy** would make £175,027.

25. Taking the comparables into account and, in particular, 6, 9 and 14 Algiers Close, the Tribunal's view is that the long lease value of this property is £330,000 which, applying the 1% makes a freehold value of £333,300. Applying relativity of 52.5% leaves a premium of £102,586.

Legal costs

26. The Respondent's solicitors are Wallace LLP, a W1 firm of solicitors, who claim £450 per hour for a partner and £330 per hour for an assistant. The Respondent is in WC2 and, in the Tribunal's view, would be perfectly at liberty to use a W1 firm. The objections relate to the hourly rate and some specific items of time spent in respect of (a) whether they come within section 60 and (b) whether the time spent was reasonable.
27. The representations of the parties are not helpful on the question of the hourly rate. The Respondent's solicitors simply say that they charge the rates claimed and those rates have been upheld in other Tribunal cases which are not binding on this Tribunal. It should be said from the outset that this Tribunal does consider that this sort of work is highly specialised and that Grade A rates are applicable to the work relating to section 60(1)(a) of the 1993 Act. However, as the 1993 Act dictates what should go into the lease save for any necessary updates, the completion of the lease should be undertaken by a Grade B or C fee earner.
28. The question, therefore, is whether the rates claimed are reasonable. Up to 2010, the rates acting as the starting points for the courts were published annually. W1 came within the London 2 band and, in 2010, the recommended starting rate for Grade A fee earners was £317 per hour and for Grade B, it was £242 per hour.
29. Clearly these rates must now be increased to cover inflation. In the circumstances, the Tribunal considers that the starting points should be £350 per hour and £275 per hour respectively. It determines those as being the appropriate and reasonable charging rates given that this was not a particularly difficult case and/or with a particularly high value.
30. As to the letter of instruction to the valuer, the case of **Sidewalk Properties Ltd. v Twinn** [2015] UKUT 0122 LC) assists the Tribunal. The Deputy President of the Upper Tribunal considered the question of whether costs recoverable pursuant to provisions of the 1993 Act could include work undertaken by the solicitor in respect of the valuation. He said:-
- “36. I agree with the appellant that the task of instructing a surveyor is incidental to a valuation. Nevertheless in a case such as this it is an administrative rather than a professional task which no doubt relies on the use of standard instructions given to a surveyor who is very familiar with the requirements of statutory valuations under the 1993 Act. Where those administrative tasks are entrusted to a solicitor the client would not expect to be charged an additional fee, but would expect the expense to be subsumed instead in the fee payable to the solicitor for his or her own work.”*
31. Thus, the Tribunal rules in favour of the Respondent as only administration charges i.e. the mere writing of letters and e-mails has been claimed rather than specific additional time spent. Similarly for letters to the Respondent.

32. The time spent for drafting the lease at 54 minutes is reasonable as it has to include the preparatory work and a detailed consideration of the old lease to see whether any updating is required.
33. Finally, the work to complete the new lease of 3 hours is excessive. The terms of the lease having been agreed, the Tribunal cannot see why it should take more than 15 letters and 30 minutes time spend for a Grade B fee earner.
34. In summary, therefore, the time of the Grade A fee earner up to 13/11/15 is reduced to £280, the time for the same person up to 06/01/16 is reduced to £420; the drafting of the lease is reduced to £247.50 and the completion of the lease is reduced to £412.50. With the additional time for the paralegal and the Grade A fee earner e-mailing the valuer on the 18/01/16, the total profit costs are assessed at £1,431 plus VAT of £286.20 and the disbursements stated at £68.70.

Rule 13 Costs

35. Mr. Rona complains that the Respondent's valuer has not co-operated in the negation process. Mr. Sharp, the Respondent's valuer, says that he did not have instructions to make any counter offers. The problem with Mr. Rona's application is that he must prove unreasonable conduct in 'bringing, defending or conducting proceedings'. What he is saying is that if the Respondent had behaved properly outside the conduct of the proceedings (our underlining), then the proceedings would have cost less. He is probably right but that is not what rule 13 says and, in view of Mr. Sharp's comments, there is no question of a wasted costs order.
36. There has to be specific and identifiable behaviour in the conduct of the proceedings themselves which triggers the test in the rule. Simple failure to negotiate would not come within that definition. On the other hand, if there had been a specific and identified Alternative Dispute Resolution process which was offered and refused, matters may have been different. There are costs decisions in the courts which would support such a position.

Conclusions

37. The premium is assessed at £102,586 and the legal costs are assessed at £1,785.90 including VAT and disbursements. There is no order for the payment of rule 13 costs.

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Bruce Edgington
Regional Judge
18th October 2015

THE SCHEDULE

12 Algiers Close, Loughton .
 Valuation Date 9/11/2015
 Unexpired term 38.62 years
 Ground rent £12.60
 Capitalisation rate 6%

Statutory lease extension, 14th October 2016.

Matters Determined

Unimproved extended lease value £330,000			
1% uplift for virtual freehold £333,300			
Existing lease value £175,027			
Relativity 52.5%			
Freeholders present interest			
Ground rent £12.60			
YP @ 38.62 years 14.91			
		£188	
Freehold reversion			
£333,300			
PV £1 in 38.62 yrs 0.15199			
		£50,632	
Value of present interest			£50,826
Less Freeholders Proposed interest			
£333,300			
PV 128.62 yrs 0.00188			
		£626	£626
			£50,200
Marriage Value			
Lessee's proposed interest	£330,000		
Freeholds proposed interest	<u>£626</u>		
		£330,626	
Less:			
Lessee's present interest	£175,027		
Landlords present interest	<u>£50,826</u>		
		<u>£225,853</u>	
Marriage Value		<u>£104,773</u>	
50% of marriage Value			£52,386
Premium for lease extension			£102,586

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.