

4207



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case reference : LON/00AS/OLR/2016/0279

Property : Flats 22, 23, 24,27,27A,44,67,75,78A and
128 Ryeland Close West Drayton
Middlesex UB7 8AT

Applicant : Monique Maria Bradley and others

Representative : Mr Carl Fain of counsel

Respondent : Sarum Properties Limited

Representative : Mr Castle FCA

Type of application : Applications to determine the premium
payable on a flat lease renewal under
section 48(1) of the Leasehold Reform
Housing and Urban Development Act
1993

Tribunal member(s) : Judge Pittaway
Mr P Casey MRICS

Date and venue of hearing : 21 June 2016 at 10 Alfred Place, London
WC1E 7LR

Date of decision : 18 July 2016

DECISION

Decisions of the tribunal

Existing lease value

The existing lease value of the one bedroomed flats is £153,205 and of the studio is £131,215.

Accordingly the premiums payable determined by the tribunal are £16,250 for the one bed flats; and £12,270 for the studio flat.

The tribunal's valuations are attached as appendices 1 and 2.

Lease terms

The tribunal agree to the deletion of the words "*such registration fee to be £25 (plus value Added Tax) for the first five years of the term hereby granted*" to be deleted from clause 3 (15) (b) of the Lease. Otherwise the variations proposed by the applicants and the respondent and set out in paragraphs 1, 3, 4, 5 and 6 of the Schedule to the draft lease in the bundle provided to the tribunal are not agreed. (The respondent agreed to the deletion of the proposed wording in LR13 of the draft lease at the hearing).

The applications

By an application dated 15 February 2016 the applicants sought a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "**Act**") as to the premium payable for the extension of the lease of each of the Flats

Background

1. The Property

The subject properties comprise nine one bedroomed flats and one studio flat on an estate in West Drayton built in the mid to late 1980s. The properties are in two and three storied blocks with brick/tile hung faced walls and tiled roofs with car parking and limited grounds. Photographs were provided in the experts' reports. Given the matters agreed between them and the issues in dispute all parties agreed there was no requirement for the tribunal to inspect.

2. Background

- | | | |
|-----|--|---------------------|
| 2.1 | Date of tenant's notice: | 16 June 2015 |
| 2.2 | Date of landlord's counter-notice: | 20 August 2015 |
| 2.3 | Date of application to Leasehold Valuation Tribunal: | 15 February
2016 |

2.4 Valuation date: 16 June 2015

3. Details of each tenant's leasehold interest

3.1 Term of lease: 99 years from 1 January 1986

3.2 Ground rent: £75 p.a. rising to £150 after 33 years and £300 pa after 66 years

4. Matters agreed

4.1 There was a statement of facts agreed which identified that the following were agreed

- (a) The valuation date: 16 June 2015
- (b) Term unexpired at valuation date: 69.46
- (c) The Capitalisation rate: 6 %
- (d) The Deferment rate: 5%
- (e) The leasehold/freehold differential in value: 1%
- (f) That all the flats were one bedroom flats (435 sq ft) with the exception of Flat 22 which is a studio flat (307 sq ft)
- (g) No deduction was required for improvements
- (h) No adjustment required between ground floor and first floor flats
- (i) All were in a similar condition; fair to good.

4.2 The valuations prepared by the valuers showed that they had agreed the FHVP value and the long leasehold value of each Flat as follows;

- (a) For the studio flat at £131,215 and £129,450.00 respectively;
- (b) For the one bed flats £179,070 and £177,280.00.

4.3 The respondent agreed to the deletion of the wording proposed by it to be included in LR13 of the draft lease at the hearing

5. Matters in Dispute

5.1 The Matters were

- (a) The existing lease value; and
- (b) The addition of certain new clauses into the new leases.

5.2 The applicants' valuer valued the existing leases without 1993 Act rights at

- (a) £119,747 for Flat 22;
- (b) £163,419 for the other Flats.

5.3 The respondent's valuer valued the existing leases without 1993 Act rights at

- (a) £110,562 for Flat 22; and
- (b) £144,165 for the other Flats.

5.4 The applicants' valuer adopted a relativity of 91.26% between the value of the FHVP value and the value of the existing leases without 1993 Act rights for all Flats. The respondent's valuer adopted a relativity of 84% between the FHVP value and the value of the existing leases with 1993 Act rights for the one bed flats. He valued the existing lease of the studio flat at £115,410 with 1993 Act rights. He then made an adjustment of 4.2% from the existing lease value with 1993 Act rights to adjust for the "No 1993 Act Rights"

6. Evidence

6.1 The Tribunal had before it the valuation report of Mr Stephen Jones MRICS (acting for the applicants) dated 7 June 2016. The Tribunal also had the undated valuation report of Mr Kieron McKeown for the respondent.

6.2 On the day of the hearing Mr Carl Fain, counsel to the applicants provided the tribunal with a skeleton argument, which went to both relativity and the lease terms, and Mr Castle of the respondent provided the tribunal with a note of explanation as to the requested lease amendments.

6.3 Both expert valuers gave evidence at the hearing and were each cross-examined.

6.4 The tribunal have had regard to the valuers' evidence, the cross examination and the other papers before them in reaching their determination and comment on specific aspects of them in their reasons below.

6.5 The tribunal also had regard to the following cases referred to them by Mr Fain

- (a) *Arrowdell Ltd v Coniston Court Hove Limited*;
- (b) *Nailrile Ltd v Earl Cadogan*;
- (c) *Kosta v Trustees of the Phillimore Estate*; and
- (d) *Sloan Stanley v Mundy*.

6.6 Both parties agreed that it was not necessary for the tribunal to inspect the Flats.

7. The Law

7.1 Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) provides that the premium to be paid by the tenant for the grant of a new lease shall be the aggregate of the diminution in the value of the landlord's interest in the tenant's flat, the landlord's share of the marriage value, and the amount of any compensation payable for other loss.

The value of the landlord's interests before and after the grant of the new lease is the amount which at the valuation date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the assumption that the tenant has no rights under the Act to acquire any interest in any premises containing the tenant's flat or to acquire any new lease.

Para 4 of the Schedule, as amended, provides that the landlord's share of the marriage value is to be 50%, and that where the unexpired term of the lease exceeds eighty years at the valuation date the marriage shall be taken to be nil.

Para 5 provides for the payment of compensation for loss arising out of the grant of a new lease.

Schedule 13 also provides for the valuation of any intermediate leasehold interests, and for the apportionment of the marriage value.

- 7.2 Section 57 of the 1993 Act sets out the terms on which a new lease is to be granted. Section 57(6) provides that any term of an existing lease may be excluded or modified in so far as
- (a) *"It is necessary to do so in order to remedy a defect in the existing lease; or*
 - (b) *It would be unreasonable in the circumstances to include, or include without modification, the term in view of changes occurring since the date of commencement of the existing lease which affect the suitability on the relevant date of the provisions of that lease."*

Reasons for the Tribunal's decisions.

- 8.
- Existing lease value**
- 8.1 Having regard to the decision in *Mundy* the tribunal should base their *"findings as to market value at past valuation dates on the then current market behaviour."*
- 8.2 Mr Jones' approach to the value of the existing leases is entirely based on four graphs of relativity of variable reliability; the majority of which are graphs of settlement, including his own graph which followed the analysis of some 402 settlements by his firm, of which some 70 represented unexpired terms of between 68 and 71 years. The Upper Tribunal has commented in numerous decisions about the unreliability of settlement evidence given the impact of the *DeLaforce effect* and the fact that it is rare for both parties to such a negotiated agreement to have agreed every aspect of it. Thus one side might say they have analysed an agreement to show a relativity of X% the other might equally be of the view it was Y %. He did look at sales of flats on the existing lease term but thought them unreliable as in many instances

they were worth more than the long lease flats once adjusted. The trouble is he looked so far back in time (to 2005) at such sales that the adjustment for the passage of time becomes unreliable. Had he confined himself to sales in the year or so before the valuation date and shortly thereafter he would have had some evidence of what in the real world the existing lease terms were selling for and when pressed by Mr Church he conceded as a guess that Act rights were probably worth 2.5-3%.

- 8.3 For his part Mr McKeown disregarded published graphs of relativity as he thought there was very good evidence provided by both sales of extended and unextended leases within the development in the period of no more than a year covering the valuation date. The tribunal prefer Mr McKeown's approach, as it more closely follows Upper Tribunal guidance that where there is market evidence it should be used.
- 8.4 Mr McKeown arrived at his real world relativity for the one bedroomed flats by comparing his adjusted sale price of No 65 (long lease) with that of No 46 (existing lease) to give a relativity of 84.25%. For the studio flat he relied on similarly adjusted sales of Nos 82 and 88 (long) and No 18 (existing) for an 88% relativity. However this reflects his adjustment of the sale price of No 18 by £8000 to reflect "excellent" condition including gas fired CHTG and a slightly larger size. He accepted when cross examined that the particulars he relied on for this information dated back to 2010 so that the "recently refitted bathroom and kitchen" were some years old at the date of the sale. The adjustment looks excessive to us given that the value agreed for the long leases of the subject properties reflect fair to good condition, they have heating systems and double glazing and kitchen and bathroom fittings are largely a matter of personal choice. Halving the adjustment to £4,000, a more realistic sum, given it is a small but quite modern built studio flat produces a real world relativity of 91.25%.
- 8.5 Mr McKeown keeps the evidence for flats and studios separate and arrives at different relativities for each. We can see no logic in this given the unexpired lease terms are the same and, given that the evidence is quite sparse, this approach dilutes the reliability of the conclusions drawn. For the one bed flats there is only one long lease sale and one existing lease sale, not exactly an overwhelming body of evidence. If the relativity evidence is taken together a somewhat stronger picture emerges to suggest Mr Jones' graph based approach shows too high a relativity. Accordingly and "doing the best we can with the market evidence" we adopt an average of the two relativity figures of 84.25% and 91.25% to give a "real world" relativity for both the flats and the studio of 87.75%. We have not included Mr McKeown's evidence from Waterside and Robins Close as it is insufficiently supported by documentary evidence to be regarded as reliable.
- 8.6 This relativity reflects the fact that a lessee has a right to extend his/her existing lease under the Act. The statute however required the

valuation of the existing lease to be made on the basis that no such right exists and it is therefore necessary to consider what if any value such Act rights have. Mr Jones did not approach his valuation in this way but when pressed under cross examination said that at a guess he would put the value at between 2½% and 3%. Mr McKeown put the figure at 4.2% based on Upper Chamber (Lands Tribunal) decisions. In a case where the unexpired term was 78 years 2½% had been allowed whilst in another 10% had been given with 44 years remaining. He had drawn a straight line between the two points to arrive at 4.2% for 69.5 years. Whilst such decisions provide much useful guidance for valuers they do not carry any evidential weight in other tribunal proceedings though they may help indicate the “right sort of ballpark”. The evidence we heard showed that properties do sell on the existing lease terms albeit with Act rights, which suggests no great difficulty securing purchase funds and no desperate need to secure a lease extension in order to sell. We also had evidence that the landlord is quite prepared to extend existing leases outside the provisions of the Act though not quite on the statutory terms. All this suggests to the tribunal that the value of Act rights in this case is towards the lower end of the range and the tribunal therefore adopted 2 ½ %. The existing lease value of the one bed roomed flats is thus £179,070 x 87.75% x 97.5% = £153,205 whilst for the studio it is £131,215 x 87.75% x 97.5% = £112,267 say £112,265.

- 8.7 Whilst the two experts agreed all the constituents needed to value the freeholder’s existing interest, Mr McKeown had slightly rounded the unexpired term in his calculation which differs by a few pounds from that of Mr Jones’. We adopt the latter’s figures as “agreed” by the parties, and also his valuation of the freeholder’s interest after the grant of the new lease, a matter Mr McKeown omitted from his valuation, presumably in error.

Lease terms

- 8.8 Unless both parties agree the tribunal has limited scope to modify the terms of the existing lease.
- 8.9 The tribunal may exclude or modify terms of the leases as permitted by section 57 of the 1993 Act but not further or otherwise. (This does not of course preclude the parties from agreeing between themselves the inclusion of new or modified clauses in the extended lease.)
- 8.10 Of the lease amendments sought by the respondent, and not agreed by the applicants, the tribunal agree with Mr Fain that, save with the exception mentioned below, the amendments do not address defects in the lease, nor has there been a change in circumstances since 1988 when the leases were granted to make the changes necessary or reasonable.

Clause 3 (15) of the leases, which provides for the payment of registration fees to the landlord to register notices of assignment, etc.,

sets out an actual amount for the fee payable during the first five years of the term granted by the existing lease; i.e for the period 1988 to 1993. Reference to this can be omitted from the extended lease.

8.11 The tribunal also adopt Mr Fain's submission with regard to the amendment to the alterations clause sought by the applicants. The clause currently prohibits structural amendments. The clause as drafted is not defective. They do not agree with Mr Fain that the age of the building in which the flats are situated is a change affecting the suitability of the clause and they therefore are not prepared to modify the clause for this reason.

Name: Judge Pittaway

Date: 18 July 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix 1

First Tier Tribunal
Property Chamber (Residential Property)

Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993

Premium payable for an extended leasehold Interest in each of
Flats 23, 24, 27, 27A, 44, 67, 75, 78A and 128 Ryeland Close, West
Drayton, UB7 8AT

Valuation date: 16 June 2015

1. <u>Value of Freeholder's existing interest</u>			
Agreed at			£8,525
2. <u>Value of Freeholder's proposed interest</u>			
Agreed at			£75
3. <u>Diminution in value of Freehold interest on grant of new lease</u>			£8450
4. <u>Marriage value calculation</u>			
Landlord's proposed interest	£75		
Tenant's proposed interest	£177,280	£177,355	
Less			
Landlord's existing interest	£8,525		
Tenant's existing interest	£153,205	£161,730	
		£15,625	
Landlord's share of marriage value		50%	£7,812
5. <u>Premium payable</u>			£16,262
		Say	£16,250

CASE REFERENCE LON/00AS/OLR/2016/0279

Appendix 2

**First Tier Tribunal
Property Chamber (Residential Property)**

**Valuation under Schedule 13 of the Leasehold Reform Housing and
Urban Development Act 1993**

**Premium payable for an extended leasehold Interest in Flat 22
Ryeland Close, West Drayton, UB7 8AT**

Valuation date: 16 June 2015

1. <u>Value of Freeholder's existing interest</u>			
Agreed at			£6,911
2. <u>Value of Freeholder's proposed interest</u>			
Agreed at			<u>£55</u>
3. <u>Diminution in value of Freehold interest on grant of new lease</u>			£6,856
4. <u>Marriage value calculation</u>			
Landlord's proposed interest	£55		
Tenant's proposed interest	<u>£129,950</u>	£130,005	
Less			
Landlord's existing interest	£6,911		
Tenant's existing interest	<u>£112,265</u>	£119,177	
		£10,828	
Landlord's share of marriage value		50%	<u>£5,414</u>
5. <u>Premium payable</u>			£12,270