

2866



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
EASTERN REGIONAL OFFICE**

Case Reference : CAM/26UD/OLR/2014/0035

Property : Flat 3, Peregrine House, The Blanes, Wadesmill Road,
Ware, Herts SG12 0XD

Applicant : Ms Nathalie Catherine Cordell

Represented by
Crane & Staples, Solicitors, Welwyn GC

Respondent : Beazer Investments Ltd

Solicitors : Brady Solicitors, Nottingham
Represented at hearing by Mr Paul Connolly

Date of Application : 2nd February 2014

Type of Application : Section 42 Leasehold Reform Housing & Urban
Development Act 1993
Determination of terms of acquisition, premium and
costs of lease extension

Tribunal : Tribunal Judge G M Jones
Miss M Krisko BSc (Est Man) FRICS
Mr R Thomas MRICS

**Date and venue of
Hearing** : Wednesday 14th May 2014
All Nations Christian College, Easeneye

DECISION

© CROWN COPYRIGHT 2013

ORDER

UPON HEARING Mr Iain Davies MRICS for the Applicant and Mr Paul Connolly (UK Representative) for the Respondent

IT IS ORDERED THAT –

1. The price the Applicant must pay the Respondent for the lease extension of 3 Peregrine House is £14,777.
2. The terms of the new lease are to be as proposed by the Respondent save that the provision for determination of the licence fees to be payable to the landlord on an assignment is to be omitted.
3. The Applicant must also pay the Respondent's reasonable costs assessed at £800.00 plus VAT (if applicable).

**Tribunal Judge G M Jones
Chairman
23rd June 2014**



REASONS

o. BACKGROUND

The Property

- o.1 The subject property is a two bedroom self-contained purpose built first floor flat with parking space in a block dating from 1976-77. The block is brick-built on four floors with a slated mansard roof in poor condition. Attached is a section with a more modern better quality mansard roof that replaced the original when a fourth storey was added to that section in 2008-9. All windows in the block appear to be uPVC double-glazed units. The subject flat comprises a modest living room from which a folding door leads to the kitchen. Kitchen fittings are not new but are in reasonable condition and appear unlikely to be original. Cooking is by an electric hob and oven. There is space for a washing machine and one has been installed by the leaseholder. The bathroom is fully tiled and fittings likewise do not appear to be original. A shower fitting has been added by the leaseholder. There is no ventilation in the bathroom apart from the window. The bedrooms are an adequate double, with fitted wardrobe and dressing table installed by the leaseholder, and a reasonable-sized single, used as a study. The hot water cylinder is in a cupboard in the bathroom. There is a modest storage cupboard in the hallway. The front door is a cheap flush door, probably original.
- o.2 Space heating is by electric storage/convactor heaters; water is heated by an electric immersion heater. The windows are not fitted with trickle vents; the seals are failing in the living room window. Generally the condition of the interior is fair to good. The entrance hall, stairs and landings of the block are plain and basic and are insecure. There is no entry phone system. It is a plain block in a modest residential area.

The Lease

- o.3 The lease is dated 24th February 1978 and is for a term of 99 years from 1st July 1977 at a fixed ground rent of £40.00 per annum. The valuation date is 9th September 2013, at which time there were 62.8 years to run. Under the terms of the lease, maintenance of the structure and exterior of the block, common service media and common parts is the responsibility of the landlord; the interior of the flat and the windows thereof are the responsibility of the leaseholder. The present windows are a tenant's improvement. The leaseholder has a mortgage with Santander UK Plc.

1. THE DISPUTE

- 1.1 The valuation date is agreed to be 9th September 2013. The Applicant's initial notice proposed a premium of £10,500 for the statutory lease extension. The Respondent's counter-notice proposed £35,000. The other terms of the extended lease appear (with one small exception, namely, the proposed inclusion of a 2% administrative charge on assignments) to have been agreed. The landlord's reasonable costs in connection with the lease extension are not agreed.
- 1.2 At the hearing the parties' respective positions had been modified in the light of expert evidence. The parties were agreed that the existing lease value was £125,000 but disagreed about the value of the extended lease and the yield to be applied when

calculating the capitalised value of the rent for the duration of the term.

- 1.3 The Applicant's expert Mr Iain Davies MRICS of Wisbey Goodall, Ware put forward in his written report a value of £140,000 for the extended lease and argued for a premium of £11,100. He adopted a yield of 6.5% p.a. in his calculations, giving a figure of £604 for the capitalised rent.
- 1.3 The Respondent instructed as its expert Mr Andrew Cohen of Talbot Survey, Mill Hill. However, his report (which the Tribunal has not seen) is not relied upon by the Respondent. The Respondent's witness, Mr Paul Connolly, submitted a valuation calculation of his own, following similar methodology to Mr Davies but using different figures; he argued for a premium of £29,416. He explained that he had adopted the approach of Talbots in relation to the lease extension at 8 Peregrine House and after discussion with Talbots. He adopted a yield of 5% p.a., which gives £763 for capitalised ground rent. The deferment rate was (in accordance with the controversial but almost universally followed *Sportelli* decision) agreed at 5% p.a.

2. THE ISSUES

- 2.1 As can be seen from the positions adopted by the parties as set out above, the difference in yield rate has only a minor impact upon the overall price for the lease extension. The main issue is the value of the extended lease. In this respect, the Respondent puts forward three fairly recent transactions relating to apartments 18-19-20 Peregrine House. These are all recently added apartments on the top floor of the extended and re-roofed section of Peregrine House, in each case sold for £175,000 in February or March 2009 with 125-year leases. In each case the buyer was Paul Bernard Connolly, who represents the Respondent. These transactions were relied upon at a previous hearing on 21st November 2012 before a Leasehold Valuation Tribunal (of which Mr Thomas was a member) under case reference CAM/26UD/OLR/2012/0073. In that case, the Tribunal proceeded on the basis that the value of the extended lease was £180,000.
- 2.2 The use of Nos. 18-19-20 Peregrine House as open market comparables and the validity of the Tribunal Decision in relation to 8 Peregrine House are challenged by the Applicant on the ground that the sales of Nos. 18-19-20 Peregrine House were patently not at arm's length and the decision in relation to 8 Peregrine House was based on those comparables.

3. THE EVIDENCE

- 3.1 We will deal first with the evidence in relation to Nos. 18-19-20 Peregrine House. On 21st February 2014 the Land Register entry under title number HD402964 showed that the freehold of Peregrine House was owned by Beazer Investments Limited of Belgravia House, 2-5 Halkin Place, London SW1X 8JF. Beazer is shown to have been registered as proprietor on 23rd November 2001, having purchased the freehold on 22nd January 2001 for £36,000. It is not disputed that this remains the current position.
- 3.2 The charges register showed that Paul Connolly holds a registered charge dated 1st October 2009 over the freehold title. It is not disputed that this remains the current

position.

- 3.3 On 17th March 2014 the Land Register entries for Nos. 18-19-20 Peregrine House under title numbers HD490608, HD490619 and HD490826 respectively showed that Paul Bernard Connolly was registered proprietor of each apartment under a lease granted by Beazer Investments Ltd. This also appears to remain the current position. The lease dates are 27th February, 2nd March and 6th March 2009 respectively. In each case the term was 125 years from premium for the lease was stated to be £175,000.
- 3.4 Title HD490608 (only) shows the grantor of the lease to be a UK-registered company under company registration number 4953755. It appears that there is indeed a company with that name and that registration number incorporated on 5th November 2003, the sole shareholder and sole director being John Harrington. However, Mr Connolly showed us the registration document for a company of the same name registered in the British Virgin Islands (BVI) on 19th October 1999. He told us that this was the company that owned the freehold. The UK company could not be the freeholder because it was not in existence on 22nd January 2001.
- 3.5 In response to questions from the Judge Mr Connolly told the Tribunal that he was the sole UK representative of the BVI company in the UK and had acted in that capacity throughout the period of the company's property dealings in the UK. He would not tell us who owned that company, as he said that information was confidential. He said he was not yet a shareholder of it. He also told us that the price stated in the Land Register for the purchase of No. 19 was incorrect; in fact it was £170,000 (being a slightly inferior flat because of its awkward layout). He also volunteered that the finish of the interior of Nos. 18-19-20 was to a high standard. Mr Connolly supported the value of No. 18 at £175,000 by producing a previously undisclosed mortgage valuation report prepared for Birmingham Midshires BS by Colleys of Hertford (David Veith).
- 3.6 The file showed that Mr Davies conducted some enquiries into the ownership of Beazer Investments Ltd (UK). He ascertained from a company search that John Harrington (the leaseholder Applicant in the case of 8 Peregrine House) was a director of that company. He put that fact to Mr Connolly in an exchange of e-mails and Mr Connolly replied that Mr Harrington was not a director of the freeholder Beazer Investments Ltd of Belgravia House. It should be noted that the e-mail address used by Beazer in that exchange was beazerbvi@gmail.com.
- 3.7 Mr Connolly does not dispute Mr Harrington's connection with Beazer Investments Ltd (UK). He told us that he knew Mr Harrington and that his Beazer UK company was the contractor that carried out the works at Peregrine House in 2008-9. Apart from that, he said he knew of no connection between the two Beazer companies, though he conceded that the identity of names was not a coincidence. He told us that Mr Harrington bought 8 Peregrine House as a personal investment.
- 3.8 By an e-mail of 20th March 2014 Mr Connolly informed Mr Davies that he was in the process of purchasing 15 Peregrine House for £112,000, the price being achieved because the short lease is unattractive to buyers and to mortgage lenders. We were not told that the transaction had been completed or contracts exchanged and we do

not know the condition of that property.

4. THE LAW

Claim for an Extended Lease

- 4.1 Under section 42 of the Leasehold Reform Housing & Urban Development Act 1993 a qualifying tenant of a flat may serve notice of his desire to acquire an extended lease of the flat. He must pay a premium in accordance with the provisions of Schedule 13 and the landlord's reasonable costs under section 60. This premium takes into account the loss of any ground rent payable under the lease; the diminution in the value of the landlord's interest; and the enhanced value of the new lease. The landlord is entitled to compensation for the diminution in value of his interest plus 50% of the "marriage value", i.e. the overall increase in the value of the freehold and leasehold interests created by the grant of the new lease. Tenants' improvements are to be disregarded. In case of dispute, the tenant can apply to the Tribunal under section 48. By section 56(1) the new lease will be for a term extending to 90 years from the term date of the existing lease at a peppercorn rent. The property comprised in the new lease will be the flat, together with any garage, gardens etc. as defined in section 62(2).
- 4.2 The terms will be the same as in the existing lease, save that under section 57 the Tribunal may order such modifications as may be required or appropriate to take account of the omission of property included in the existing lease but not comprised in the flat; of alterations made to the property demised since the grant of the existing lease; or in certain cases where the existing lease derives from more than one separate leases, of their combined effect and of the differences (if any) in their terms. Where, during the continuance of the new lease, the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance, the lease may also require due contribution to be made by the tenant and may provide for enforcement of such contributions as though they were rent.
- ##### **Costs under LRHUDA 1993**
- 4.3 The landlord's reasonable costs of any investigation, reasonably undertaken, of the tenant's right to a new lease; any valuation of the tenant's flat for the purpose of fixing the premium or sums payable under Schedule 13; and conveyancing costs associated with the grant of a new lease; are payable by the nominee purchaser (in the case of collective enfranchisement) under section 33 or the tenant (in the case of a lease extension) under section 60. The nominee purchaser is not liable under section 33 nor the tenant under section 60 to pay costs incurred by the landlord in connection with the application to the Tribunal, save to the extent that costs relating to valuation evidence may have been reasonably incurred for the purpose of fixing the premium, as provided by the relevant subsection. Costs are to be regarded as reasonable only if and to the extent that such costs might reasonably be expected to have been incurred by the landlord if the circumstances had been such that he was personally liable for all such costs.
- 4.4 The Tribunal has no general power to award costs of the Application. Under section 29(4) of the Tribunals, Courts & Enforcement Act 2007 and Rule 13 of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013 the Tribunal may award costs where, by reason of a party's conduct in relation to the application, costs

have been wasted or in the event of unreasonable conduct by a party.

5. DISCUSSION AND CONCLUSIONS

- 5.1 Insofar as it is necessary to decide this issue, the Tribunal is satisfied that the freeholder is indeed Beazer Investments Ltd (BVI) and not Beazer Investments Ltd (UK). A search on the legal website Westlaw reveals a Court of Appeal decision *Beazer Investments Ltd -v- Soares* [EWCA] Civ 482. The issues in the case are irrelevant; but the Judgment shows that Belgravia House is a block of 20 flats and that Beazer BVI owns the head lease. Presumably there is also an office in the block.
- 5.2 In deciding upon the value of the extended lease, the Tribunal must assess the value of the comparable evidence offered by the parties. We begin with the December 2012 decision of the LVT in relation to 8 Peregrine House. Unusually, the Applicant did not attend. Mr Connolly represented the Respondent. The LVT noted the sales of long leases of Nos. 18-19-20, heavily relied upon by the Respondent's surveyor (Talbots) and described those flats as about a third larger than the subject flat. The Decision does not indicate that the LVT was told the identity of the purchaser of those flats. The value of the extended lease was agreed at £180,000, a figure the Tribunal was obliged to accept, despite expressing some misgivings about the evidence. The value of the existing lease with 64.4 years to run was also agreed at £135,000, giving a relativity of 75%, which we consider surprising.
- 5.3 The LVT Decision is of interest because, arguably, it supports the contention that the Respondent, in collusion with Mr Harrington (sole shareholder and sole director of the UK company Beazer Investments Ltd, said to be the builder of Flats 18-19-20) was engaged in an attempt to inflate the value of extended leases at Peregrine House. We shall return to this issue in due course. For the present we note only that the Tribunal Decision is not evidence of the value of the existing or the extended lease, as the values were agreed between the parties, not decided by the Tribunal.
- 5.4 We turn to the sales of Nos. 18-9-20 Peregrine House to Mr Connolly. Firstly, we note that these were new flats and that, as Mr Connolly himself said, new flats generally attract a premium. Secondly, we note that the sales were early in 2009, when the market was very different from the current market. Thirdly, the new flats were, according to Mr Connolly, fitted out to a high standard, which is not the case with No. 3 and probably (before it was improved by the tenant) not the case with No. 8. And according to the 2012 Tribunal (of which Mr Thomas was a member) Nos. 18-19-20 are significantly larger than No. 3 (which is the same size as No. 8).
- 5.5 Mr Connolly told us that in 2008, when the new flats Nos. 18-19-20 were under construction, they were marketed at a figure above £175,000; but there were unexpected delays in construction and the market went flat. In the end, he bought all three flats. It is thus entirely unclear whether the prices, apparently decided upon by Mr Connolly as sole UK representative of the seller and as buyer, represented market value. Developers as sellers and their associates as buyers not infrequently agree prices above market value in order to ensure that the developer is in funds to pay the builder or simply to maintain price levels. This may be a perfectly lawful arrangement fulfilling legitimate business purposes; but it is not evidence of market value, even less evidence of market value nearly five years later. The relativity of 75% also seems wrong (as to which, see below). The Tribunal considers the evidence

- unreliable and disregards it.
- 5.6 That leaves us with the comparables relied upon by Mr Davies. 102 Trapstyle Road, sold at £165,000 on 9th July 2013 with a 94-year lease, is clearly a significantly better and larger maisonette; but it is a useful marker. 160 Trapstyle Road is close to the busy A10 road and is currently under offer at £141,000 with 152-year lease. It is a second-floor flat and there is no mention of a lift. It is in an unattractive block and a poorer location than Peregrine Court. 27 Kestrel Court, sold for £145,000 with completion on 25th September 2013 is a very similar flat in a similar location with 155-year term. In the judgment of the Tribunal, this is the closest comparable. Of course, it is not identical and one transaction does not make a market.
- 5.7 The standard price relativity graphs, compiled from many cases over a substantial period, suggest price relativity of 84-90% between existing lease and extended lease terms for a lease with 62.8 years to run. Using the knowledge and experience of its members, the Tribunal decided to apply relativity of 85%. The Tribunal thus assesses the value of the extended lease on the valuation date at £147,000. £140,000 would give 89%, which the Tribunal considers too high. The Tribunal considers that the works carried out by the tenant are works of maintenance and repair rather than improvements and makes no deduction for them. The Tribunal accepts Mr Davies' evidence in relation to the yield (capitalization rate) at 6.5%. The Tribunal's valuation is Scheduled hereto. The price to be paid by the Applicant is £14,777.
- 5.8 As regards the lease terms, these are to be as before but with an extended term at a peppercorn rent. The only proposal for change was a provision fixing the landlord's fee for dealing with lease assignments at 0.2% of the price. On an assignment at £150,000, the fee would be £300, which the Applicant does not wish to agree. The Tribunal cannot insert such a term without the Applicant's consent, so the draft lease is approved with that omission.

Costs

- 5.9 The Respondent says that in-house costs relating to the notice equal or exceed £250.00 + VAT, which the Tribunal accepts as reasonable. The valuer's fee amounted to £600.00 + VAT. This is stated to be in respect of providing advice, not a valuation report. It should not take an experienced surveyor long to advise on a figure to be inserted in the landlord's counter-notice, which can be and usually is on the high side, to allow room for manoeuvre. The Respondent's arguments before us did not rely upon any work carried out by the valuer. The Tribunal assesses the reasonable valuer's fee for the work actually required at £250.00 + VAT.
- 5.10 Mr Connolly told us he estimated the legal fees at £695.00 + VAT. He produced a print-out from a solicitors' time-cost management system showing a total of just over £1,500; but there is no indication what work was included and there is no bill from the solicitors. Solicitors' fees for the conveyancing aspects of the transaction (as opposed to the Application to the Tribunal) ought to be modest in this case; the Tribunal allows a figure of £300.00 + VAT.

Geraint M Jones
Chairman



23rd

June

2014

*

SCHEDULE

Valuation for Lease Extension
3 Peregrine House

| | | |
|---------------------|----------|-------|
| Remaining Term | 62.8 | Years |
| Ground Rent (G.R.) | £40 | p.a. |
| Current Value | £125,000 | |
| Improved Value | £147,000 | |
| Relativity | 85% | |
| Capitalisation Rate | 6.50% | |
| Deferment Rate | 5.00% | |

The Term (fixed rent only)

| | | | | | |
|--------------------------------------|------|--------|----|----------|-------------|
| Years Purchase of Term is therefore: | 62.8 | years | at | 6.50% is | 15,090 |
| | £40 | (G.R.) | x | 15.08981 | £604 |

The 1st Reversion

| | | | | | |
|------------------------------|----------|----------|----|------------|---------------|
| Current Value | £125,000 | | | | |
| Improved Value | £147,000 | | | | |
| Present Value of £1 deferred | 62.8 | years | at | 5.00% is | 0.0467 |
| | | £147,000 | x | 0.046699 = | £6,865 |

The 2nd Reversion

| | | | | | |
|------------------------------|-------|----------|----|------------|------------|
| Present Value of £1 deferred | 152.8 | years | at | 5.00% is | 0.00057 |
| | | £147,000 | x | 0.000578 = | £85 |

The diminution in Landlord's Interest is:

| | | |
|---------------|-----------|-------------|
| £604 | Term | |
| £6,865 | Reversion | at 62.8 yrs |
| £7,469 | | |

Marriage Value

| | |
|--------------------------------------|-----------------|
| Existing value of leasehold interest | £125,000 |
| Plus Landlord's existing interest of | £7,469 |
| | £132,469 |

| | |
|--------------------------------------|-----------------|
| Proposed value of leasehold interest | £147,000 |
| Plus Landlord's proposed interest | 85 |
| | £147,085 |

Marriage Value is therefore:

| | | | |
|-------------------------|-----------------------|---------|---------------|
| 50% share to freeholder | £147,085 - £132,469 = | £14,616 | £7,308 |
|-------------------------|-----------------------|---------|---------------|

The potential value of the new Lease, assuming no extra costs arising from intermediate interests, and assuming no further compensation, would be the sum of

| | | |
|----------------|----------------|-----------------------------------|
| | £7,308 | (Half the Marriage Value above) |
| | £7,469 | Diminution in Landlord's Interest |
| Premium | £14,777 | |