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

Case Reference : BIR/OOCT/OLR/2015/0023

Property : 219 Rowood Drive, Solihull, West Midlands, B92 9LG

Applicants : Gary Pascal Feeney and Amanda Jane Feeney

Representative : Mr M.D.Cannon FRICS

Respondent : Sidewalk Properties Limited

Representative : Mr G.Evans FRICS

Type of Application : An Application to determine the premium payable by tenants to a landlord to surrender and renew a lease under Section 48 of the Leasehold Reform Housing & Urban Development Act 1993.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
P.J. Hawksworth (Lawyer)
N.R. Thompson FRICS

Date and Venue of Hearing : 13th October 2015 at the First-tier Tribunal (Property Chamber), Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU

Date of Decision : **27 October 2015**

DECISION

Introduction

- 1 This is an application to determine the premium payable to a landlord by tenants to surrender and renew the lease of a residential flat under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act').

The Law

- 2 The tenants hold a 99 year lease granted from 29th September 1964 at a ground rent of £28 p.a. fixed for the term.
- 3 On 29th July 2014 ("the Valuation Date") the previous lessee, Richard Card, served Notice on the landlord to request a new lease under section 42 of the Act for an additional term of 90 years and otherwise the same terms as the existing lease. Mr Card subsequently sold the lease to the Applicants with the benefit of the Notice. At the valuation date there were 49 years unexpired.
- 4 The landlord admitted the claim on 20th May 2014, accepting the tenant's right to an extension but disputing the premium.
- 5 Section 48 of the Act prescribes that if a premium is not agreed it can be referred to the First-tier Tribunal (Property Chamber) where it can be assessed in accordance with the formula in Schedule 13. This sets out the basis of calculation and requires the premium to be based on the landlord's loss of ground rent for the term together with a sum of compensation for the landlord's deferred right to possession of the flat and a share of any marriage value arising from the grant of a new extended lease. 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, although no such claim has been made in this case.
- 6 In addition, the tenant is required to pay the landlord's reasonable legal costs and surveyor's fees incurred in the transaction under section 60 of the Act although they are not part of this application.

Facts Found

- 7 The Tribunal inspected the property on 13th October 2015 with the sub-tenant in occupation, Mr Frith. Neither party nor their representatives attended.
- 8 It is a first floor maisonette with an outside bin store, ground floor entrance lobby and stairs to a first floor hall, lounge, two bedrooms, kitchen and bathroom. It is in a two storey block forming part of a 1960s housing estate located in a residential area in Solihull, about 2 miles from the central shopping area and within walking distance of local amenities.
- 9 The flat has been completely refurbished by the installation of double glazing, central heating, laminate flooring, new doors, recessed lighting, built-in wardrobes and window blinds. The kitchen and bathroom have been completely refitted with new suites and fitted units.
- 10 The property is typical 1960s terraced construction with brick elevations and a pitched concrete tile roof. There is a small flat roofed section at the front for the bin store. It is accessed from a path over the front garden which is not part of the demise. There is no garage within the demise although there are garages on the estate held on separate leases and street parking is available in the area.

Issue in Dispute

- 11 The value of the premium payable under Schedule 13 of the Act.

Premium

- 12 The value of the premium depends on various inputs, some of which are agreed and others disputed:

13 Agreed inputs:

Ground Rent	£28 p.a.
The value of the Term	£411
Valuation date	29th July 2014
Unexpired term at date of notice	49 years

14 <u>Disputed inputs</u>	<u>Landlord</u>	<u>Tenant</u>
Value of extended lease	£125,000	£117,250
Value of present lease	£ 93,938	£ 97,250
Deferment rate	5.5%	5.75%
Premium	£20,240	£13,993

The parties submissions and the Tribunal's decision on each disputed point are set out below.

Value of extended Lease

15 Applicants' Submission (Tenants)

Mr Cannon referred to the sales of seven flats in Rowood Drive between 6th June 2014 and 18th June 2015. He said the market had improved over the period with an increase in prices and that the 2014 sales better reflected market conditions at the valuation date on 29th July 2014. Although some of the 2014 sales post-dated the valuation date, the latest being 29th September 2014, he did not disregard them completely and took an average of the four 2014 sales which was £117,250 as his value of a hypothetically extended lease in the subject flat at the valuation date.

- 16 He was unable to advise whether or not the comparables had been improved at the dates of sale. He assumed that some would have been improved and drew attention to one of the ground floor flats that had been extended by adding a conservatory. He made no specific reduction to reflect the value of improvements in the extended lease of No.219, but made allowance in the value of the existing lease as seen below.

17 Respondent's Submission (Landlord)

Mr Evans for the landlord produced a schedule of eleven sales between 6th August 2014 and 24th July 2015. Six were in Rowood Drive and five in surrounding roads with values ranging from £110,000 to £137,500. Three had been extended and were subject to new ground rents of between £100 and £200 per annum with rent reviews every 20 years, to be increased in line with the Retail Price Index over the period (i.e. extended outside the Act), but the other eight were subject to peppercorn ground rents as envisaged by the Act.

- 18 He agreed that market prices had increased from 2014 to 2015.
- 19 Taking a balanced view rather than arithmetic average, Mr Evans considered the value of an extended lease in the subject property to have been £125,000 at the valuation date without deducting anything for improvements.

20 For the marriage value element, he added 1% to the value of the extended lease to reflect the notional benefit of owning a freehold rather than long leasehold interest.

21 Tribunal Decision

As both Surveyors had agreed that market prices had been rising from 2014 to 2015, the Tribunal considers that sales of flats in Rowood Drive itself, rather than the side roads, provide the better evidence of value for the extended lease. The Tribunal does not disregard the later sales but apply less weight to them as they would not have been known to potential purchasers in July 2014. The Tribunal accepts the average of Mr Cannon's 2014 sales of £117,250 as the value of an extended lease for a flat in fair, modern condition. The Tribunal considers it likely that some of the flats would have been improved at some point over the previous 50 years and the flat with the extension referred to by Mr Cannon is a prime example.

22 However, the subject flat has been not only improved but comprehensively refurbished as found by the Tribunal's inspection. Schedule 13 Part II.4B(1)(c) of the Act requires the value of tenant's improvements to be disregarded and for consistency, the Tribunal deducts the same value agreed by the parties when valuing the present lease, £5,000 as set out below, from the extended lease value to leave a net value of £112,250.

23 The Tribunal is not persuaded by Mr Evans point that it should be increased by 1% to reflect a notional freehold, compared to a long leasehold.

24 Accordingly, the Tribunal assesses the value of an extended lease in the subject property at £112,250 at the valuation date.

Value of present Lease

25 Applicants' Submission (Tenants)

Mr Cannon relied entirely on the sale of the subject property that had been sold on 4th August 2014 with an unextended lease for £102,250, with the benefit of a s.42 Notice served on the landlord giving the right to require a new lease.

26 From this, he deducted £5,000 for the value of the tenant's improvements to leave a net value of £97,250.

Respondent's Submission (Landlord)

27 Mr Evans said there was no evidence of flats being sold in the area in July 2014 that had been neither extended nor sold without a s.42 notice which is the valuation basis required by the Act. This hypothetical assumption is commonly referred to by Valuers as the 'no Act world.'

28 In view of this, he said Mr Cannon's valuation was flawed as it relied on a sale where notice had been served that did not comply with the 'no Act world' assumption required by the Act.

29 He preferred to rely on the now established principles of relativity graphs referred to in *Arrowdell Ltd. v Coniston Court (North) Hove Ltd.* [2007] and *Cooltrace Ltd. and Others Appeal* [2012] UKUT69(LC) to establish the value of a 'short' lease relative to a 'long' or extended lease. He said that while the Court in *Arrowdell* had optimistically hoped the RICS would produce a composite graph to apply in lease extension valuations, it had not been possible because of the number of graphs in existence. Nevertheless, he had calculated an average of five graphs for Greater London and England that showed a relativity of 75.15% which was the figure for which he contended. Applying this to his extended value of £125,000 produced a short lease value of £93,938.

30 In answer to questions from Mr Cannon, he said he had been unable to inspect the interior of the flat but accepted that it had been improved and in which case, Mr Cannon's assessment of £5,000 for improvements would have been in line with expectations.

31 Tribunal Decision

The Act requires the valuation to disregard any effect caused by the tenant seeking to acquire a new lease [Schedule 13.Part II.4A(1)(b)]. As the previous lessee, Mr Card, had served notice to acquire a new lease and the benefit of the notice had been assigned to the purchaser, the subsequent sale price must be excluded. Accordingly, the Tribunal is unable to apply any weight to the August 2014 sale price.

32 The Tribunal appreciates the problems of relativity graphs which were discussed by the parties at the Hearing but in the absence of a single definitive graph, applies the LEASE graph approved (although in the circumstances of the case) in Coolrace showing a relativity of 78.2% at the valuation date with 49 years unexpired. This gives a value for the (unexpired) existing lease of £87,750 being 78.2% of £112,250.

Deferment Rate

33 Applicants' Submission (Tenants)

Mr Cannon referred to *Cadogan and Another v Sportelli and Another* [2006] EW Lands LRA 50 and *Zuckerman v Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC) ('Zuckerman') where in the latter case the Lands Tribunal found for 6% in the West Midlands. This included 0.5% to reflect the additional return required in the West Midlands compared to prime central London ('PCL') to reflect the reduced growth potential of the West Midlands market, and 0.25% for the additional risk of obsolescence in the West Midlands. However, following *7 Grange Crescent, Halesowen, [2014] UKUT0079(LC)*, the 0.25% for obsolescence could only be applied when appropriate evidence to support its inclusion could be shown.

34 Mr Cannon submitted evidence from the Building Cost Information Service to demonstrate that 219 Rowood Drive would have been subject to obsolescence and should have been valued at the additional 0.25%. He therefore applied the higher rate of 5.75%.

Respondent's Submission (Landlord)

35 Mr Evans agreed with the general approach put forward and also referred to *Voyvoda v Grosvenor West End Properties* [2014] L&TR 10 ('Voyvoda').

36 He said it seemed to be accepted practice in the West Midlands that where there was no intermediate landlord and the property was not a maisonette, the deferment rate should be 5.75% but where there was an intermediate landlord and it was a maisonette, it should be reduced to 5.5% because the landlord would have less liability to maintain the structure or common parts. As the property was a maisonette he applied 5.5%.

37 Tribunal Decision

The key variance in approach between the parties is the 0.25% addition applicable if the landlord is liable for any repairs or maintenance of the estate. In this case, there are common areas of amenity land that would need maintenance and there is a residuary maintenance liability. All the other constituents are agreed, including the age and obsolescence allowance confirmed by Mr Evans at the Hearing.

38 The Tribunal therefore assesses the deferment rate at 5.75%. 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 cost 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.

Schedule 10 Rights

- 39 The Tribunal invited the parties to consider whether there should be an allowance to reflect the possibility of the tenant remaining in occupation at the end of the lease under Schedule 10 of the Local Government & Housing Act 1989, but they advised that they did not consider it relevant to the circumstances of this particular case. The Tribunal did not therefore consider this any further.

The Tribunal's Valuation

- 40 Applying the inputs above:

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

<u>Term</u>			
Agreed			£ 411
<u>Reversion</u>			
Value of extended lease	£ 117,250		
Less value of improvements	<u>£ 5,000</u>		
	£ 112,250		
Present Value £1 49 years 5.75%	<u>0.064604</u>		
			<u>£ 7,251</u>
Landlord's present interest			£ 7,662
<u>Landlord's Share of Marriage Value</u>			
per Sch.13 para.4(2)			
i	value of Tenants' interest after extension	£ 112,250	
ii	value of Landlord's interest after extension	<u>£ 0</u>	
			£112,250
<u>Less</u>			
i	value of Tenants' interest before extension	£ 87,780	
ii	value of Landlord's interest before extension	<u>£ 7,662</u>	
			<u>£95,442</u>
Marriage Value			£16,808
Landlord's share 50%			<u>£ 8,404</u>
<u>Premium</u>			<u>£ 16,066</u>

Summary

- 41 The Tribunal determines the premium payable by the Applicants to the Respondents to be £16,066 (Sixteen Thousand and Sixty Six Pounds) in accordance with the terms of the Leasehold Reform Housing & Urban Development Act 1993.

.../cont.

Appeal to the Upper Tribunal

- 42 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 ground on which that party intends to rely and the result sought by the party making the application.

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

Date 27 October 2015