



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

**Case Reference** : **CHI/24UP/OLR/2014/0103**

**Property** : **15 Southbrook Mews, Bishops Waltham,  
Hampshire, SO32 1RZ**

**Applicant** : **Mr Brian Acton**

**Representative** : **Mike Stapleton & Co**

**Respondent** : **Oakleaf Property Company**

**Representative** : **Driver Belcher LLP &  
Mr Gerald Thomas (Director of  
Respondent)**

**Type of Application** : **Determination of premium or other  
terms of acquisition remaining in  
dispute. Section 48 of the Leasehold  
Reform, Housing and Urban  
Development Act 1993**

**Tribunal Members** : **Mr A J Mellery-Pratt FRICS  
Mr P D Turner-Powell FRICS**

**Date and venue of  
Hearing** : **23<sup>rd</sup> September 2014  
Hearing Room 2, Barrack Block, 83-85  
London Rd, Southampton**

**Date of Decision** : **6<sup>th</sup> October 2014**

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**DECISION**

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## **Preliminary**

1. This matter arises from a notice of claim served under section 42 of the Act, dated 1st October 2013, which becomes the valuation date.
2. Subsequently, the respondent served a counter notice dated 2nd December, 2013.
3. The parties were unable to reach agreement on the premium to be paid and an application under section 48 of the act was made to the tribunal dated May 2014.
4. The tribunal issued directions for the conduct of the matter, dated 22<sup>nd</sup> May 2014.
5. The tribunal inspected the subject flat, together with an adjoining flat, flat 16, on the morning of 23 September, 2014 prior to the hearing

## **Documents**

6. The tribunal had the benefit of a bundle of documents which included the applicants expert witness report and the respondents statement of case, together with a copy of the lease and copies of the title documents for the freehold of the development, the leasehold of the subject flat and of 3 other flats quoted as comparables, together with property details of 3 further flats. There was also a copy of the RICS graph of relativity.
7. At the inspection the respondent, very helpfully provided plans of the development showing the layout of each flat

## **Inspection.**

8. The tribunal carried out its inspection at 10.00 am on 23rd of September 2014, accompanied by Mr Acton and Mr Thomas. The development comprises a 3 storey scheme of flats designed for the elderly and with an age restriction limiting occupation to those of 55 years or older.
9. The development comprises 13 flats on the ground floor with a further 12 flats on the first floor. On the 2nd floor, in the eaves, there is a further flat, comprising 2 bedrooms, a caretaker's flat, an ensuite guest bedroom, laundry, and a communal lounge with kitchen and toilet off. All floors are serviced by a passenger lift
10. Externally, there is a gravelled car parking area with non-allocated parking spaces, and surrounding the building are pleasant grounds laid to lawns and flower beds.
11. The building is constructed of brick walls under a tiled roof with concrete floors and staircases.
12. The subject flat which faces north but overlooks the communal gardens, comprises a reasonable sized lounge with a small but well fitted kitchen off. The bedroom is a small double bedroom and there is a bathroom with wash basin and WC. In the hall there is a small store cupboard and a

- heated linen cupboard with electric immersion heater.
13. Heating is by way of night store heaters in the lounge and hall, with an electric panel radiator in the bedroom. The windows are double glazed in timber frames. It was noted that the double glazing seal had broken down on one of the kitchen windows.
  14. Whilst the flat is now carpeted, it was clear that the original floor finish was the concrete screed.
  15. Flat 16, which adjoins flat 15, is south facing but does not have such a pleasant outlook. It is very similar in terms of accommodation but has a slightly larger bedroom.

## **The Law**

### **16. Leasehold Reform Housing and Urban Development Act 1993**

#### ***48 Applications where terms in dispute or failure to enter into new lease.***

*(1) Where the landlord has given the tenant—*

*(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or*

*(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5), but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.*

*(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the tenant.*

*(3) .....*

## **The Lease**

17. The lease is for a term of 99 years from 1st January 1987. The initial rent was £190 per annum but that was reviewed with effect from 1st January, 2009, to £525 per annum. There are subsequent rent reviews every 22 years.
18. The lease is on an internal repairing basis with a service charge to cover all the landlords expenditure 'in the repair, maintenance renewal and management of the development .....

## **The hearing**

19. The hearing was held at 11.15 following the inspection in hearing room 2, Barrack block, 83-85 London Road, Southampton.

20. In attendance were Mr Thomas, representing the respondent, and Mr Ashton, together with his representative, Mr M Stapleton FRICS of Mike Stapleton & Company, Chartered Surveyors
21. During the inspection, the tribunal had requested that the applicant reconsider the valuation of Mr Stapleton as there appeared to be a number of anomalies. As a result, at the opening of the hearing Mr Stapleton confirmed that, following discussions with Mr Thomas, the parties have now agreed that the value of the freeholder's interest in the current term of the lease is £8715, as set out in Mr Thomas' statement of case at page 12 of the bundle.
22. As a result, the only matters outstanding were the value of the subject flat at the valuation date, and on the basis, as set out under the act, that there is an extended lease.

### **The applicant/tenant's case**

23. Mr Stapleton pointed to the details of the sale of flat number 9, which completed on the valuation date of the 1 October 2013 at £80,000, having been generally marketed.
24. He was aware of the sale of 3 flats which had all changed hands in recent years at £50,000, 2 having been bought by the landlord and one other privately. However, it appeared that these had not been fully exposed to the market and could not be relied upon as good comparable evidence.
25. Flat 23 is currently on the market with local agents at £82,500. This is also a first floor flat
26. Neither party had been able to produce any evidence of the value of flats on extended leases and, as a result, he had used the relativity tables in reverse to go from the current market value on the shortened lease to the possible value on an extended lease. Using a current market value of £80,000 and a relativity figure of 94.36%, this would result in a value on an extended lease of £84,786. He had therefore used these figures in his valuation.
27. The relativity figure of 94.36 had been arrived at by using the 2 tables as published by the RICS, which were most relevant to properties on the South Coast
28. Under questioning from the respondent and the tribunal, Mr Stapleton confirmed his views that:-
  - a. The remaining length of lease is not so critical in retirement properties as it would be in normal flats.
  - b. The requirements of mortgage companies are less important in retirement flats as many purchases are funded entirely from the sale of an existing property.
  - c. Whilst flat 9 may have direct access to the garden, it was generally perceived that ground floor flats were less secure and that this would have a limiting effect on value

### **The respondent/landlord's case.**

29. Mr Thomas was of the view that, prior to the recession, flats at Southbrook Mews had changed hands at figures of over £125,000, but that it was when the unexpired term dropped to below 80 years that values also dropped substantially resulting in the 3 sales at £50,000.
30. Now that the market had recovered to pre-recession levels, he is of the view that the only difference is the lease length and that with an extended lease the flats would again be worth at least £110,000.
31. His valuation was therefore that the minimum uplift in extending the lease would increase the value from £60,000 to at least £100,000 – a £40,000 uplift of which the freeholder was entitled to 50%, £20,000.
32. When this amount was added to the value of the existing ground rent income, £8 715, he arrived at his total value of £28,715.
33. He had a valuation prepared by Chartered Surveyors which showed a total premium payable of £36,011.25.
34. Under questioning from the applicant and the tribunal, Mr Thomas confirmed that:-
  - a. The rent review effective on 1 January, 2009 had been resolved by arbitration with both parties making their representations. The result was a value of the flat at that date of £105,000, resulting in the reviewed ground rent of £525 per annum
  - b. The sale price for flat 9, at £80,000, was explained by the fact that the main entrance door to the flat was directly from the exterior rather than a communal hallway and additionally the flat had a patio door to the garden as it was situated on the ground floor. These advantages made the flat considerably more attractive.
  - c. The service charge was at a high figure of £206 per month (£2472 per annum), in addition to the ground rent of £525 per annum. In part, this deterred potential purchasers during the time of the recession.

### **Consideration**

35. The tribunal considered all the points raised by the parties in their written evidence and at the hearing, and considered that:-
  - a) Whilst the flats did vary in size, aspect, floor and facilities, these were items that affected the personal choice of potential purchasers and had only a minimal effect on the basic value of a one bedroomed retirement property in this town.
  - b) The sales of the 3 flats at £50,000 were so far out of line with what might be expected, and bearing in mind the lack of general marketing, that these should be ignored as comparable market transactions.

- c) Whilst the service charge might be higher at the subject property than in a normal block of flats, the amount being paid was not excessive, particularly bearing in mind the presence of a caretaker/manager.
- d) Good evidence existed of sales prior to 2008, at figures well in excess of £100,000. Subsequently, Flat 9 had sold twice in 2013, once in May for £72,500 and again on October 1 at £80,000. Flat 3, had sold more recently in April 2014 at £95,000, having been sold earlier in October 2010 at £103,000. This wide discrepancy in the prices achieved over the period of the recession seemed to support Mr Stapleton's views concerning the length of leases and building society requirements
- e) The use by Mr Stapleton of the relativity tables is an accepted basis of valuation and therefore his use of these tables in reverse and his selection of the most relevant tables are also accepted. Therefore his value of the extended lease at £84,786 is agreed
- f) The very different approaches of the parties and the wide range of prices achieved for essentially similar flats showed no pattern of values. The tribunal preferred the approach of Mr Stapleton and therefore considered that the value of the subject property on the existing lease as at 1 October, 2013 was £80,000.
- g) It is accepted that the agreement between the parties of the various items is as follows:-
 

Valuation date	1 <sup>st</sup> October 2013
Capitalisation rate	6%.
Deferment rate	5%.
Freeholders value of existing lease	£8715

### **The determination**

- 36. The tribunal determines that the premium to be paid for the extended lease at a peppercorn rent shall be £11,208 as set out in the attached valuation appendix

### **Appeals**

- 37. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 38. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 39. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying

with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

40. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Signed

A J Mellery-Pratt. FRICS. Chairman

A member of the Tribunal  
appointed by the Lord Chancellor

## 15 Southbrook Mews, Bishops Waltham

### Appendix

#### Valuation

The tribunal's valuation at 1st October 2013

Existing lease value	80,000	
Relativity %	94.36	
Extended lease	84786	
<b>Value of freeholder's interest</b>		
Ground rent receivable	525	
YP in Perpetuity @ 6%	16.6	
		8715 (as agreed)
Extended lease value	84786	
PV £1 in 72.25 yrs @ 5%	0.0294	
Freehold reversion value		<u>2493</u>
Value of freeholder's interest		11208
<b>Marriage value</b>		
Value with extended lease	84786	
Less		
Freeholder's present interest	11208	
Leaseholder's present interest	<u>80000</u>	
		<u>91208</u>
		-6422
Marriage value		<u>0</u>
	Premium payable	<u>11208</u>