



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

Case Reference : **CHI/43UD/OLR/2014/0207**

Property : **11 Swan Court, Mangles Road,
Guildford, Surrey, GU1 1PY**

Applicant : **Dr Quentin Shaw**

Representative : **In person**

Respondent : **Freehold Managers Plc**

Representative : **Mr Mason FRICS (surveyor)**

Type of Application : **s48 LRHUDA '93**

Tribunal Members : **Judge D Dovar
Mr Neil Maloney FRICS
Mr Derek Lintott FRICS**

**Date and venue of
Hearing** : **12th November 2014, Staines**

Date of Decision : **8th December 2014**

DECISION

1. This is an application under s48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the 1993 Act') for the determination of the premium payable for a new lease of the Property. All the other terms of acquisition have been agreed.
2. The Tribunal inspected the property and the block, known as Swan Court, and the surrounding area with the parties on the morning of the hearing. The Applicant pointed out a number of items of disrepair, including the condition of some of the windows, missing tiles and subsidising pavement.
3. At the hearing the parties agreed the figure for compensation in respect of the ground rent at **£1,027.70**. Prior to that they had already agreed:
 - a. Valuation Date of 13th December 2013;
 - b. Term 99 years from 1st January 1989, leaving an unexpired term of 74 years;
 - c. Capitalisation rate of 7%
4. That left four remaining items for determination in order to arrive at the premium, being:
 - a. Value of existing lease;
 - b. Relativity;
 - c. Value of extended lease;
 - d. Deferment rate.
5. The Tribunal will deal with these issues in turn.

Existing Leasehold Value

6. The Applicant contended a figure of £142,500. He had arrived at this by drawing a list from Land Registry information of sales of other similar properties in the area in the last quarter of 2013. He then whittled the

list down further to match properties that corresponded to age and type and locality of Swan Court (in particular in relation to road noise and other issues) which resulted in a short list which was provided to the Tribunal.

7. He then took an average of all those properties which was £144,900 and then discounted, for improvements he had made to his property; being a kitchen, bathroom and double glazing (and allowing for depreciation from time installed) he arrived at a final leasehold value £142,500.
8. Included in the Applicant's short list was the sale of Flat 5 Swan Court which took place September 2013 for £152,000. This was in most material respects identical to the Property including term. This was the sole property relied upon by the Respondent and after allowing for an increase in value between that date and the Valuation Date and a further allowance for improvements, the Respondent contended £152,000. The Respondent provided the sales particulars for Flat 5, which indicated that it included some attic space, which the Property did not.
9. The Respondent relied on this sale only as it was an identical flat, sold so close to the valuation date, on exactly the same lease terms. In the Respondent's view, that was about as good evidence as could come by as comparable, and necessitated few adjustment. Further, when reference was had to the Applicant's schedule, it did not seem out of kilter with those prices so as to cause any concern that it was somehow atypical of the market.
10. The Respondent also took issue with the Applicant's figures in that it had not made any adjustment to bring the sale prices up to the valuation date; particularly when some sales had been a year before.
11. The Applicant contended that Flat 5 was not an ideal comparable as it included loft space which was absent from his flat. The Respondent considered that the particulars were misleading as the loft space had not been demised, but they were aware that some tenants had used them and

permission had been given by the Respondent; on some occasions after payment of £5,000.

12. The Applicant also considered that the price for no5 was out of kilter with his figures on other sales. He considered someone has been desperate to buy having been shown fresh white goods and that the price did not reflect other properties in the area.
13. The Tribunal preferred the Respondent's approach. Flat 5 was a very good comparable and was not so out of kilter with other sales in the area for it to be considered unreliable. However, the Tribunal did consider that it needed some adjustment, not least for the use or potential use of the loft space. The Respondent had said that tenants were prepared to pay around £5,000 to use this space. The Property did not have this feature and so that amount should be deducted. Further it appeared that improvements had been made and goods provided so a further £2,400 should be deducted. Finally, the Respondent had adjusted this up £2,000 to bring the sale up to the Valuation Date. Therefore the Tribunal considers that the existing lease price is **£146,600**.

Relativity

14. The Applicant arrived at a relativity of 95% using the commonly utilised RICS graphs, but excluding the Nesbit & Co graph as that was all central London properties.
15. The Respondent did not agree with these graphs and contended they were out of date and that particularly post 2008, buyers and financial institutions were more sensitive to lease term. The Respondent did not provide any evidence to support that contention. The Respondent contended the Becket & Kay graph 2013 of mortgage dependent purchases was more accurate as it contained more recent data. However, that suggested a relativity of 85%, which the Respondent felt was too low. The Respondent therefore settled for the John D Wood graph of previous LVT decisions in the London region, although it was

accepted that previous tribunal decisions were not binding, it was contended that this was a good reflection of the market.

16. The Tribunal prefers the Applicant's approach to the graphs, not least because the John D Wood graph is London based and relies on tribunal decisions. Accepting some criticism of the historical nature of the graphs, it determines a relativity of **94%**

Long Leasehold Value

17. The Applicant adopted a similar approach to long leasehold value as he had to existing lease value. He looked at which comparable properties had sold with the benefit of an extended lease and looked at the difference in those prices with those without.
18. His main focus was on 32 and 33 Swan Court, one sold with the original term and one an extended term. They sold for the same price 6 months apart, which the Applicant relied upon as evidence of a slow market for sales as well as there not being much difference between the price for an extended lease or one on the original term. He also relied on sales at Ellingham road which he considered were properties of a similar type in age and design, one of which was subject to a tribunal determination. The Tribunal had determined £147,000 for a one bedroom flat, which when adjusted to the Valuation Date provided a figure of £150,000.
19. He was confirmed in that view by the fact that when he applied his relativity to his existing leasehold value he also arrived at £150,000.
20. The Tribunal prefers to apply the relativity determined above. Once the existing leasehold value has been determined, it is satisfied that the correct relativity will produce the long leasehold figure. When rounded up this produces a long leasehold value of **£156,000** which is in line with the evidence before the Tribunal.

Deferment

21. The Applicant contended for a deferment rate of 5.5%. He considered that it was appropriate to increase the rate above that set out in *Cadogan v Sportelli* [2008] UKHL 71, for two reasons. Firstly, a persistent lack of management over the years meant that an increase of .25% was justified on the ground of obsolescence and deterioration. Secondly, uncertainty over a neighbouring development justified a further .25%.
22. The Applicant complained of a persistent lack of management over the decades that went beyond management issues and service charges, but showed a clear lack of ability to run the development in a reasonable fashion. He asserted that he was paying more money in service charges, yet nothing was being done; the windows were falling apart, parts of the front door were missing, repairs were reported, but not actioned. Whilst there was some signs of dilapidation, the Tribunal, did not consider on their inspection that the Property was in such a serious state as to warrant a reduction on this basis. Further, the management company is run by tenants and it would seem a harsh result for the Respondent to be penalised for any lack of repair in the building when that was in the power of the tenants themselves. The Applicant complained that no one was addressing the repair issues as there was a high turnover in ownership; it occurred to the Tribunal that the Applicant or other tenants who wished more works to be carried out, could be more proactive in terms of involvement with management.
23. The Applicant also relied on the proximity of Property to sewage works and a proposal to redevelop the entire site either to residential or to more intensified industrial use as a basis for adding a further .25%. The Tribunal does not consider that this warrants an uplift. At present, the Property has the blight of a nearby sewage works. The proposed redevelopment could go either way; residential or industrial. If it were the former, that would no doubt be seen by many as a benefit. Accordingly the future development could be either beneficial or detrimental and therefore the Tribunal's view is that this neutralises any argument for an uplift.

24. The Tribunal therefore determines that the appropriate deferment rate is 5%.

Conclusion on premium

25. The Tribunal therefore determines that:
- a. The existing leasehold value is £146,600;
 - b. The relativity is 94%;
 - c. The long leasehold value is £156,600; and
 - d. The deferment rate is 5%.
26. Accordingly, the premium payable for the new lease is **£7,320**.

Section 60 Costs

27. The Respondent also provided details of its section 60 costs which the Tribunal were asked to determine.
28. The Applicant agreed:
- a. £342 for the preparation of the counter-notice;
 - b. £540 for the conveyancing costs.
29. The only item he took issue with was the £540 surveyors fees. He doubted that they had been produced for the purpose of the counter-notice, but considered that they covered work for the hearing. He also asserted that £540 worth of work had not been carried out.
30. The Tribunal considers that as the invoice for the work pre-dated the counter-notice, it was clear that it was incurred for the counter-notice. The Respondent stated that it had been a desk top calculation, but was done for the purposes of the counter-notice. The Tribunal considers that a fee of £540 for the valuation was justified and allows it in full.
31. The Section 60 costs are assessed at £1,422.

J. Dovar

Judge D Dovar

Calculation

A. Lessor's Current Interest

Ground Rent: £1027.70

Reversion

Long Leasehold Value £156,000

PV £174 years at 5% 0.027

Reversion £4,212

Lessor's current interest **£5,239.70**

B. Marriage Value

Interests before lease extension

Lessor £5239

Lessee £146,600

Interests after

Lessor £0

Lessee £156,000

Difference before and after £4,161

Lessee's share of marriage value **£2080.50**

C. Premium payable: **£7320**

Appeals

1. 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.
2. 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.
3. 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.
4. 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.