



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

Case Reference	:	BIR/OOCN/OLR/2014/0116
Property	:	44 Whittington Grove, Yardley, Birmingham, B33 8HE
Applicants	:	Stephen Cartwright and Jessica Cartwright
Representative	:	Mr G.P. Kilroy MRICS
Respondent	:	New Brook Developments (Yardley) Limited
Representative	:	Mr K.F. Davis FRICS
Type of Application	:	An Application to determine the premium payable to the landlord by the tenants to extend a lease under section 48 of the Leasehold Reform Housing & Urban Development Act 1993 and the landlord's legal costs and surveyor's fees under section 60 of the Act.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS P.J. Hawksworth (Lawyer)
Date and Venue of Hearing	:	11th December 2014 at the offices of the First-tier Tribunal (Property Chamber), Priory Courts, 35 Bull St., Birmingham
Date of Decision	:	30 th January 2015

DECISION

Introduction

- 1 This is an application to determine the premium payable to the landlord by the tenants to extend a lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act').
- 2 At the hearing, the tenant's surveyor indicated that the amount payable to the landlord for its legal costs and surveyors fees in the transaction had not been agreed and the Tribunal agreed to leave this open for further submission should agreement not be reached.
- 3 Following the Hearing the Tribunal wrote to the parties inviting comment on the Upper Tribunal decision in *68 Mallaby Close* [2014] UKUT 0304 (LC) which were received on 15th January 2015, and the parties' further representations have been taken into account in this decision.

The Law

- 4 The tenants hold a 99 year lease granted from 25th March 1965 at a ground rent of £27.50 p.a. which is fixed for the duration of the term.
- 5 On 26th March 2014 ("the Valuation Date") they served notice on the landlord requesting a lease extension under section 42 of the Act for an additional term of 99 years although the request was later altered to a request for a statutory addition of 90 years at a peppercorn ground rent.
- 6 The landlord admitted the claim on 20th May 2014, accepting the tenant's right to an extension but disputing the premium.
- 7 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 extension. 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.
- 8 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.

Facts Found

- 9 The Tribunal inspected the property on 11th December 2014 with the tenants' surveyor, Mr Kilroy.
- 10 It is a first floor maisonette with a lounge, two bedrooms, kitchen and bathroom in a two storey block forming part of a development of similar buildings in a 1960s housing estate. It is located in a residential part of Yardley, a suburb of Birmingham about 6 miles to the east of the city centre but within walking distance of local shops and facilities.
- 11 The property is of traditional two storey brick and tile construction surrounded by communal open plan gardens. There is no garage included within the demise but there is street parking around the estate.

Issues in Dispute

- 12 1 The value of the premium payable under Schedule 13 to the Act;
2 The landlord's legal costs and surveyor's fees under section 60 of the Act.

Premium

- 13 The calculation of the premium relies on various inputs, some of which are agreed and others disagreed as follows:

14 Agreed inputs:

Ground Rent	£27.50 p.a.
Unexpired term at date of notice	52 years
Capitalisation rate of ground rent	6.5%
Relativity	81%

15 Disputed inputs

	<u>Landlord</u>	<u>Tenant</u>
Value of present lease	£75,735	£52,000
Value of extended lease	£93,500	£65,000
Schedule 10 rights	0%	5%
Deferment rate	5.5%	5.75%
Premium	£12,346	£8,389

The parties submissions on each point are set out below.

Value of present Lease

16 Applicants' Submission (Tenants)

Mr Kilroy for the tenants provided a schedule of 54 property sales in Whittington Grove dating from June 1995 to May 2014. Some of these were too old to be of material assistance but there had been 9 since 2007 ranging in value from £52,000 to £100,000, some of which had extended leases and others had their original unextended leases. Of these, he referred to the last two sales in his submission but concentrated on the most recent sale which was also the lowest being the sale of No. 48 on 9th May 2014 for £52,000 which he used to form the basis of his assessment. Land Registry documents showed that the lease of No.48 had not been extended by the date of sale and as it was in the same block, offering similar accommodation, Mr Kilroy submitted that it was the closest comparable sale to the subject property. Accordingly he considered the present value of the unextended lease in No.44 to be £52,000.

17 Respondent's Submission (Landlord)

Mr Davies was familiar with the estate having acted for the landlord over a number of years and negotiated several lease extensions. He referred to the sales of seven flats since 2007, two of which had been subject to lease extensions agreed outside the Act and he was able to provide details of the new ground rents paid in each case.

He referred to No.48 but said it should be disregarded as the date of sale was after the valuation date and was information that would not have been available to a Valuer at that time. Furthermore, he had spoken to the estate agent handling the sale and had been advised that it had been in poor internal condition and had been sold on behalf of a deceased estate. Consequently the vendors would have had an interest in securing a quick sale.

The sale prior to that had been No.72 in September 2012 for £60,000 with an original lease.

However, evidence was brought from Land Registry records to show that property prices in Birmingham had been flat lining (i.e. fairly constant) since early 2009 and that rather than rely on one particular sale, he preferred to rely on several earlier sales of extended leases over the period to show the general level of prices being achieved. He then applied the agreed relativity percentage to arrive at the equivalent value of the unextended lease in No.44 as at March 2014. Reference was made to No.18 which sold in May 2009 for £92,000 with a new ground rent of £100 p.a. and new 50 year extension, No.46 which sold in May 2009 for £83,000 with an extended lease subject to a new £100 p.a. ground rent and No.32, sold in July 2008 for £98,000, again with an extended lease.

He adopted the sale of No.18 as his datum and added back the value of the new capitalised ground rent of £100 p.a. to show that the equivalent sale price of No.44 with a statutory peppercorn ground rent would have been £93,500.

Applying a 'relativity percentage' of 81%, i.e. a percentage to represent the value of an unextended lease compared to an extended lease based on graphs produced by the LEASE organisation which in this case had been agreed with Mr Kilroy, resulted in an unextended lease value of £75,735 for No.44.

Value of extended Lease

18 Applicants' Submission (Tenants)

Having assessed the value of the original lease at £52,000, Mr Kilroy applied the same relativity of 81% agreed with Mr Davis to show that the equivalent value of an extended lease in No.44 would have been £65,000 at the Valuation Date.

19 Respondent's Submission (Landlord)

As above, Mr Davis valued the extended lease at £93,500 based on an adjusted sale price of the lease in No.18 in 2009. Prices had been shown to be stable in Land Registry records and accordingly there should have been no difference in the value of an extended lease in No.44 by the valuation date in March 2014.

Schedule 10 Rights

20 Applicants' Submission (Tenants)

Mr Kilroy initially deducted 10% from the value of the landlord's present interest to reflect 'schedule 10 rights' i.e. the ability of a tenant to remain in occupation after a term date under Schedule 10 of the Local Government & Housing Act 1989. He was unable to assist the Tribunal more specifically but submitted in oral evidence that it ought to be reflected in the value, having spoken to another surveyor elsewhere.

However, having considered the Upper Tribunal decision in *68 Mallaby Close* he revised his deduction to 5%.

21 Respondent's Submission (Landlord)

Mr Davis said he was aware of at least one Tribunal case where a schedule 10 deduction had been made but it was not normal practice and by way of example, he had recently agreed a premium for a lease extension with another experienced practitioner in Birmingham where the lease had only 15 years unexpired and there had been no mention of a schedule 10 deduction. Accordingly, his view was that there should be no deduction in this case.

He also considered the *Mallaby Close* decision but submitted that it had not been fully explored before the Upper Tribunal as it had been determined on written representations. Furthermore, he said that it was not deducted in practice in market transactions.

Deferment Rate

22 Applicants' Submission (Tenants)

By reference to *Cadogan and Another v Sportelli and Another* [2006] EW Lands LRA 50 2005, Re Kelton Court: *Zuckerman v Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC) and *Voyvoda v Grosvenor West End Properties* [2014] L&TR 10, Mr Kilroy submitted that the appropriate deferment rate to assess the present value of the landlord's reversion, should be 5.75%.

This comprised a risk free rate of 2.25%, less a 'real growth rate' of 2.00%, plus a risk premium of 4.5%, plus 0.25% for the extra risk of managing flats, plus 0.5% representing lower price growth in the West Midlands compared to prime central London, plus 0.25% for a greater risk of deterioration and obsolescence in West Midlands property than in central London.

The rate had been set by the Upper Tribunal on appeal in respect of a similar flat at 7 Grange Crescent Halesowen at 5.5% (LRA/48/2013), but Mr Kilroy submitted that Halesowen was a better area than Yardley and that an investor in Yardley would require a greater return. He submitted evidence of the number of sales in Grange Crescent Halesowen compared to Whittington Grove Yardley over a similar period and referred to local amenities in the two areas to support his point.

23 Respondent's Submission (Landlord)

Mr Davis also referred to the Upper Tribunal decision in respect of 7 Grange Crescent Halesowen [*Sinclair Gardens Investments (Kensington) Ltd.* LRA/48/2013] where 5.5% had been applied and said it was commonly applied by Valuers of flats and maisonettes in the West Midlands.

Premium

24 Applicants' Submission (Tenants)

Applying the inputs above, Mr Kilroy valued the premium at £8,389.

25 Respondent's Submission (Landlord)

Mr Davis submitted for a premium of £12,346 based on the inputs above calculated by reference to the sales of the several extended leases. He also provided a check valuation based on the sale of the most recent original lease, No.72 for £60,000 in September 2012, which produced a premium value of £9,823, although he emphasised that he considered the former figure more reliable and contended for £12,346.

Decision

The Tribunal considered the parties' written and oral submissions and finds as follows:

Value of Present and Extended Lease

26 There is a significant range in the value of these flats and the parties have helpfully analysed the most recent sales to assist the Tribunal. However, the Tribunal is unwilling to place significant weight on the most recent sale referred to, No.48 for £52,000 (unextended), since as Mr Davis points out, it is information that would not have been available to a Valuer at the Valuation Date. It, therefore, carries limited weight as evidence.

27 The sale prior to that, No.72 for £60,000 (unextended) in 2012, is good evidence and produces an extended value of £72,289 at a relativity rate of 83% which is the rate for a lease with then 54 years unexpired based on the LEASE graph referred to by the parties.

- 28 The Tribunal also notes the Land Registry research data showing prices fairly static in Birmingham from 2009 to 2014 and that the sales of Nos.18, 32 and 46 show extended lease values ranging from £83,000 to £98,000 from 2007 to 2009.
- 29 Making the best it can of the evidence before it and taking a balanced view, the Tribunal finds that the extended lease value in the subject property would have been £83,000 in March 2014 and it follows, accepting the agreed 81% relativity, that the value of an unextended lease at that date would have been £67,230.

Schedule 10 Rights

- 30 After the Hearing the Tribunal wrote to the parties to enquire whether they wished to make any further submissions based on the decision of the Upper Tribunal in *68 Mallaby Close* [2014] UKUT 0304 (LC), where the Upper Tribunal had confirmed a first-tier Tribunal decision to reduce the capital value of an existing lease of a flat by 4% for Schedule 10 rights.

Mr Kilroy for the tenants modified his submission to request a 5% reduction and Mr Davis for the landlord submitted that it made no difference but if it were allowed, it should not exceed 5%.

The Tribunal accepts the principle but finds that in *Mallaby Close* there were 60 years unexpired and in the present case there are 52 and as 4% discount was appropriate for 60 years, there should be a higher discount for 52. Having considered the parties' further submissions we find a 5% discount to be reasonable in the present case.

Deferment Rate

- 31 Mr Kilroy relies on the location of Yardley compared with Halesowen to apply a 0.25% increase in the deferment rate over the 5.5% applied by the Upper Tribunal at Halesowen. However, while location is a factor, it is only relevant when considering the viability of keeping property in repair in one location compared with another and in the Tribunal's opinion there is no great difference in value between Halesowen and Yardley. Certainly a far lower difference than between Birmingham and prime central London as discussed in the *Kelton Court* case referred to above. The 0.25% addition in that case was awarded on the grounds of 'age and obsolescence'.
- 32 The main factor affecting age and obsolescence is the type of construction of the subject property but the Tribunal saw nothing at Whittington Grove to suggest that it may not last as long as the property at Grange Crescent Halesowen. Both are traditional 1960s buildings of brick and tile pitched roof construction that Mr Kilroy said at the hearing were similar.
- 33 In the Appeal of Grange Crescent, The Upper Tribunal held at paragraph 88:
- 'The LVT did not identify anything about the appeal property in particular which would cause an investor to perceive a greater risk of deterioration and obsolescence than was already accommodated in the 4.75% risk premium applied by the Lands Tribunal in Sportelli or reflected in the freehold vacant possession value. It appears to have based its decision to make the addition on Zuckerman, but it is a misreading of Zuckerman to assume that the same 0.25% allowance is appropriate to all property outside PCL or all properties in the West Midlands. On the contrary, whether such an allowance is justified must be considered in each case by reference to the characteristics of the property in question.'*
- 34 Accordingly, the Tribunal makes no allowance for age and obsolescence in this case and follows the decision in Grange Crescent by determining that the deferment rate shall be 5.5%.

The Tribunal's Valuation

35 Applying the inputs above:

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

Term

Ground Rent	£ 27.50	
Years Purchase 52 years 6.5%	<u>14.8026</u>	£ 407

Reversion

Extended lease value	£ 83,000	
Less 5% for Sch.10 rights	<u>£ 4,150</u>	
	£ 78,850	
Present Value £1 52 years 5.5%	<u>0.0617834</u>	£ 4,871

Landlord's present interest £ 5,278

Landlord's Share of Marriage Value

per Sch.13 para.4(2)

i value of Tenants' interest after extension	£ 83,000	
ii value of Landlord's interest after extension	<u>£ 0</u>	£83,000

Less

i value of Tenants' interest before extension	£ 67,230	
ii value of Landlord's interest before extension	<u>£ 5,278</u>	£72,508

Marriage Value £10,492
Landlord's share 50% £ 5,246

Premium £10,524

Landlord's Legal Costs and Surveyor's Fees

36 The parties asked the Tribunal to make no decision on costs at the hearing but to leave these points open for further submission should agreement not be reached. The Tribunal agreed.

Summary

37 The Tribunal determines the premium payable by the Applicants to the Respondents at £10,524 (Ten Thousand Five Hundred and Twenty Four Pounds) in accordance with the Leasehold Reform Housing & Urban Development Act 1993.

Appeal to the Upper Tribunal

38 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 grounds on which that party intends to rely in the appeal and the result sought by the party making the application.

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