



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

Case Reference : CHI/45UH/OLR/2015/0008

Property : Flat 3, 27 Salisbury Rd, Worthing BN11
1RD

Applicant : Ann Rowena Hughes

Representative : Coole & Haddock solicitors

Respondent : Keriakos Palikares (missing landlord)

Representative : Steven Sheehan

Type of Application : Leasehold Reform Housing and Urban
Development Act 1993 (Missing Landlord)

Tribunal Member(s) : Mr D Banfield FRICS

Date of hearing : 28 May 2015

Date of decision : 16 June 2015

DECISION

Summary of Decision

The Tribunal has determined for the reasons set out below that the price payable by the Applicant is to be the sum of **£8,250 (eight thousand two hundred and fifty pounds)**. **The draft lease at pages 140 to 149 of the bundle is approved.**

Background

1. Following a claim issued on 19 November 2014, on 16 March 2015 District Judge Ellis sitting at the County Court at Worthing made an order directing that the First-tier Tribunal (Property Chamber) determine the appropriate terms for the grant of a new lease in accordance with S51(5) of the Leasehold Reform Housing and Urban Development Act 1993 (The Act).
2. Directions were made by the Tribunal on 1 April 2015 indicating that the matter would be dealt with on the papers already received unless an objection was received within 28 days. No objection was received and the matter is therefore determined on the basis of the written information supplied with the application and the valuation report of Mr Julian Wilkins MRICS dated 28 April 2015.
3. An inspection of the property has not been made.

The Lease

4. The property is held by way of a lease dated 16 February 1987 for 99 years from 29 September 1986 between Steven Michael Sheehan trading as Sheehan Developments of the one part and Christopher Minchington of the other. There is a ground rent payable of £60 per annum for the first 33 years rising to £120 per annum for the next 33 years and £240 per annum for the last 33 years.

The Law

5. Section 27(5) of the Act provides:
The appropriate sum which in accordance with Section 27(3) of the Act to be paid in to Court is the aggregate of:
 - a. *Such amount as may be determined by (or on appeal from) the appropriate Tribunal to be the price payable in accordance with Section 9 above; and*
 - b. *The amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the Conveyance which remains unpaid.*
6. Schedule 13 sets out the basis of valuation which in summary is:-
 - The diminution of the landlord's interest in the tenant's flat

- The landlord's share of the marriage value
- Any compensation arising from "other losses"

The date of the valuation is the date of the application to the County Court.

The Premises

7. The property comprises part of a detached house now divided into 4 flats. Flat 3 occupies half of the first floor and the whole of the second or attic floor.

Evidence and Decision

8. In a valuation report dated 28 April 2015 Mr Julian Wilkins MRICS determined the value for the purposes of Schedule 13 of The Act as at 21 November 2014 being the date of the application to the County Court is £7,988.

Capitalization Rate

9. Mr Wilkins adopts a capitalization rate of 7% in respect of the ground rent as being appropriate for "modest ground rent reviews to fixed sums at regular intervals" He further explains the circumstances when he adopt rates either higher or lower.
10. The Tribunal agrees that for the reasons set out that 7% is the appropriate capitalization rate to apply.

Deferment rate

11. Mr Wilkins then goes on to consider the appropriate deferment rate which he assesses at 5.75%. He explains his divergence from the "Sportelli" rate for flats of 5% by allowing an extra 0.5% for the difference in growth rates between the PCL area and Worthing and a further 0.25 for obsolescence.
12. Mr Wilkins refers to the case of *Zuckerman and others v Trustees of the Calthorpe Estate [2009]* where 0.5% was allowed for the difference between growth rates in PCL and the Midlands, 0.25% for obsolescence and 0.25% for additional management problems. The last deduction is no longer appropriate following the case of *Voyvoda v West End Properties [2013]* following on from the *Daejan Investments Ltd v Benson & Others* Supreme Court case relating to consultation requirements.
13. In support of his addition of 0.25% for obsolescence he referred to the difference in value between properties in the PCL area and those in Worthing and provided printouts of sale prices from Rightmove to illustrate the difference. He pointed out that the cost of maintenance in PCL areas was small compared to the capital value and that properties

were therefore more likely to be kept in repair. He considered that due to their proximity to the sea properties in Worthing were more likely to suffer decay. This was evidenced by the large number of properties that have been redeveloped rather than refurbished.

14. The subject property has not been upgraded in respect of fire precautions and this is less likely due to the uncertainty of the Freehold ownership.
15. In support of his 0.5% uplift for difference in growth rates he states that capital values have risen at a greater rate than elsewhere in the country. He acknowledges that it is difficult to find sales evidence to support what is a *perception by the buying public*. He points out that Worthing is less convenient for transport than Brighton which explains the greater growth rate of the latter. All of which he considers supports a *Kelton case* addition of 0.5%
16. Looking first at the uplift of 0.25% for obsolescence the Tribunal accepts that the evidence does demonstrate the difference in capital values between PCL and Worthing.
17. No evidence of the costs likely to be incurred in maintaining a PCL property to the high standard that such values no doubt command has been provided to the Tribunal and the Tribunal is not persuaded to accept Mr Wilkins contentions. Likewise the suggestion that increased obsolescence is demonstrated by any preference for redevelopment is not accepted. There are many instances throughout the country, including PCL where such a route is undertaken and the decision one way or the other will largely depend on the circumstances of that particular building rather than its location. The only evidence of condition of this building relates to its lack of fire escape/alarm provisions. On the evidence presented therefore the Tribunal makes no allowance for obsolescence.
18. Looking now at differential growth rates between PCL and Worthing Mr Wilkins says that the growth of the former has been greater than elsewhere in the country including Worthing. He accepts that it is difficult to provide substantive data but refers to it as a "general perception". Based on this perception he considers the prudent investor would make an adjustment as in the *Kelton Court* case of 0.5%.
19. In coming to its conclusion in the *Zuckerman* case the Tribunal had before it considerable evidence of differential rates upon which to base their decision. No such evidence has been presented in this case and it is not sufficient to simply refer to a perception based on *Zuckerman*. Mr Wilkins also refers to other cases determined by the Tribunal where the *Sportelli* starting point has been departed from. Each of these decisions will have been determined on the evidence before it and such decisions are in any event not binding on this Tribunal.

20. On the evidence before it the Tribunal does not accept that the Sportelli starting point should be departed from and determines the deferment rate to be 5%.

Relativity

21. Turning to relativity Mr Wilkins refers to the lack of evidence of market transactions capable of adjustment for the *No Act world*. He therefore turns to the use of graphs as supported by *Arrowdell Ltd v Coniston Court (North) Hove Ltd*.

22. He refers to the RICS research on relativities and the various graphs available. The Beckett & Kay graph is not considered appropriate as it is not transaction based and he therefore relies on:

- Andrew Pridell Associates 91.9%
- Austin Gray 94%
- South-East Leasehold 91.4%
- Nesbitt & Co 93.3%
- Leasehold Advisory Service 93.7%

23. The average of the above being 92.9% he adopts this as the appropriate relativity.

24. The Tribunal agrees that for the reasons set out that 92.9% is the appropriate deferment rate to apply.

Market Valuations

25. Mr Wilkins values the long leasehold interest at £170,000 based on the following transaction evidence all of which are 2 bedroom flats in Worthing:-

- Flat 4, 1 Winchester Rd 17 November 2014 £145,000.
- 56a Victoria Rd 4 August 2014 £147,500
- 164a Heene Rd 20 March 2015 £195,000
Larger with section of garden and in better location.
- Flat 5, 80 Richmond Rd 4 November 2014 £195,00
Larger with shared garden
- Flat 3, 8 Winchester Rd available for £169,950
- GFF 20 Salisbury Rd available for £175,000
Similar size with new 125 year lease and private garden

26. Mr Wilkins then deducts £10,000 in respect of improvements consisting of Upvc double glazing, gas central heating, refitted kitchen and bathroom.

27. The Tribunal agrees that for the reasons set out above £160,000 is the appropriate value of the long leasehold interest after deducting £10,000 for improvements. Although Mr Wilkins valuation refers to a 1% difference in leasehold/freehold values no such adjustment appears

to have been made. The Tribunal considers that such an adjustment is appropriate as shown on Appendix 1

28. The Tribunal's Directions required details of any monies owing to the Missing Landlord. An invoice dated 17 March 2015 has been produced showing a payment of Maintenance for 29/3/15 to 29/9/15 of £200 was paid on 24/3/15.
29. No details have been provided as to whether the Ground rent payments of £60 per annum payable half yearly have been paid and although the Tribunal makes no deduction for this element this decision may be reviewed should it be discovered that payments are outstanding.
30. The Tribunal's valuation is shown at Appendix 1 and determines that the price to be paid into Court for this lease extension is **£8,250**.
31. A draft lease prepared by Coole and Haddock submitted at pages 140 to 149 of the bundle has been considered and approved.

D Banfield FRICS

16 June 2015

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. 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.
2. 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.
3. 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

Appendix 1

Flat 3, 27 Salisbury Rd,
Worthing BN11 1RD

LEASE EXTENSION VALUATION

In accordance with the Leasehold Reform and Urban Development Act 1993

Valuation Date	say	21/11/2014
Unexpired term		70.8yrs
Term		99yrs
Capitalisation rate		7%
Deferment rate		5%
Relativity		92.90%
Long leasehold value		£160,000
Uplift to freehold		1.00%
Freehold value		£161,600
Existing leasehold interest		£150,126

Freeholder's Present Interests

Ground rent as per valuation £1,581.00

Freeholder's reversion

Reversion to freehold				£161,600	
PV£1	70.8 yrs	5.00 %	0.031608044		£5,108

Total value of present interests

£6,689

less

Freeholder's Proposed interests

Freeholder's reversion

Defer	160.8 yrs	5.00 %	0.000391526	£161,600	£63
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Diminution of freeholder's interest

£6,626

Marriage Value

Values of proposed interests

Leaseholder	£160,000	
Freeholder	£63	£160,063

Less

Values of present interests

Leaseholder	£150,126	
Freeholder	£6,689	£156,815

Marriage value

£3,248

50% of marriage value to freeholder

£1,624

Premium to freeholder

£8,250