

4385



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

**Case Reference** : **BIR/00CN/OLR/2016/0076**

**Property** : **Flat 31 Westhouse Court and  
Garage 12, Kings Heath,  
Birmingham, B14 6PS**

**Applicants** : **Mr Keith Bowen and Mr Peter  
Elliman**

**Representative** : **David Coleman and Company**

**Respondent** : **Abacona Investments Limited**

**Representative** : **Pennycuick Collins**

**Type of Application** : **Application under section 48 of the  
Leasehold Reform, Housing &  
Urban Development Act 1993**

**Tribunal Members** : **Judge S McClure  
D Satchwell FRICS**

**Date of decision** : **13 February 2017**

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**DECISION**

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## **Decision of the tribunal**

- (1) The Tribunal determines that the premium to be paid for a 90 year lease extension under the terms of the Leasehold Reform and Urban Development Act 1993 in respect of 31 Westhouse Court is £11,452.

## **Introduction**

1. This is an application to determine the premium payable to the Respondent by the Applicants to extend a lease under section 48 of the Leasehold Reform Housing and Urban development Act 1993 (the Act).

## **The Law**

2. The Applicants hold a 99 year lease of 31 Westhouse Court (the Property) granted from 25 March 1975, at a ground rent of £30 a year until the 33<sup>rd</sup> anniversary of the commencement of the term, £45 a year until the 66<sup>th</sup> anniversary of the commencement of the term, and at £60 a year thereafter.
3. On 4 February 2016 the Applicants served notice on the Respondent requesting a new lease for a term of 90 years in addition to the remaining unexpired term of the present lease at a peppercorn ground rent, and otherwise in accordance with the existing lease.
4. The Respondent admitted the claim on 7 April 2016, accepting the Applicants' right to a new lease, 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 to the Act. 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.
6. In the 7 April 2016 Notice the Respondent proposed some amended terms to the lease, but this point is not pursued in this application to the Tribunal. This application is concerned solely with the amount of the premium.
7. The premium proposed by the Applicant was £11,203. The premium proposed by the Respondent was £15,790.67.

## Facts Found

8. The Tribunal inspected the Property on 10 January 2017. Present at the inspection was Mr Coleman, of David Coleman and Company Chartered Surveyors, the representative for the Applicants.
9. The Property is a second floor purpose built flat of brick and tile construction. The accommodation comprises a hall, 2 bedrooms, lounge, kitchen and bathroom/WC. There is a separate garage nearby.
10. Neither party requested an oral hearing, nor did the Tribunal find that an oral hearing was necessary. The Tribunal came to its decision on the basis of the findings of the inspection and the written submissions of the parties, both of which are mentioned specifically below where necessary.

## The premium

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

12. Agreed inputs:

Ground Rent to 24 March 2014	£45.00 p.a.
Ground Rent from 25 March 2014	£60.00 p.a.
Unexpired term at date of notice	58.13 years
Deferment rate	5.75%
Capitalisation rate of ground rent	6.25%
Valuation date	4 February 2016

13. Disagreed inputs:

	<u>Tenant</u>	<u>Landlord</u>
Value of existing lease	£77,355	£70,850
Value of extended lease	£95,500	£98,000
Schedule 10 rights adjustment	5%	2.5%

## The parties' submissions are set out below

### Comparables

14. Details of the following properties were submitted by the Applicant as comparables or relevant to the assessment of existing and extended leasehold values:
  - (i) 14 Westhouse Court. A determination by the First-tier Tribunal on 12 October 2016, with a valuation date of 16 December 2015. The parties in 14 Westhouse Court agreed an extended lease value of £95,000, relativity of 81% (assuming no comparables) and Schedule 10 rights at 5% deduction. Determination by the Tribunal of existing lease value of £76,950 and Premium of £11,133.00. The parties in 14 Westhouse Court were represented by the same representatives as are acting for the parties in this, 31 Westhouse Court, application.
  - (ii) 20 Westhouse Court. An extended lease transaction sold in June 2016 for £95,000.
  - (iii) 26 Westhouse Court. An extended lease transaction sold in May 2016 for £115,000.
15. Details of the following properties were submitted by the Respondent as comparable or otherwise relevant:
  - (iv) 25 Westhouse Court. Sold under the existing lease in January 2015 for £58,000. Subsequently sold with an extended lease transaction in November 2015 for £107,000.
  - (v) With regard to 14 Westhouse Court, an application to appeal the decision of the First-tier Tribunal was considered, on the grounds that insufficient regard had been paid to the actual market evidence. Subsequent agreement between the parties for a premium of £10,000 with an enhanced ground rent.

### Value of extended lease

#### Applicants' submissions:

16. Whilst Mr Coleman made reference to 20 and 26 Westhouse Court in his submission, he did not submit that they were comparables. He stated that those properties were not sold at the date of the valuation of the Property.

17. Mr Coleman submitted that the only transactional evidence from the date of the valuation is that relating to 14 Westhouse Court. He stated that the parties had agreed a valuation of the extended lease of Flat 14 Westhouse Court of £95,000. He increased that amount by £500 to take account of the 7 week difference between the two valuations. On that basis, Mr Coleman submitted that the value of the extended lease for the Property was £95,500.

Respondent's submissions:

18. Mr Herbert of Pennycuik Collins submitted that the sale of 25 Westhouse Court in November 2015 is a reliable comparator. He adjusted the sale price of £107,000 of November 2015 to the valuation date of the subject property of February 2016, to £108,023. He considered that the enhanced gas central heating, new kitchen and bathroom fittings and replacement glazing all resulted in an enhanced sale price. He assessed the value of the works over and above the standard to be £10,000 and adjusted the indexed sale price of £108,023 to £98,000. He submitted that a value of £98,000 is the appropriate sum for the extended lease value.

Value of existing lease

Applicants' submissions:

19. Mr Coleman submitted that there is insufficient transactional evidence to value the existing lease on that basis.
20. He contended that the sale of 25 Westhouse Court in January 2015 is not a reliable comparator, on the basis that this was a repossession property with a forced sale and that too little was known about the cost of the refurbishments, making this an unsafe transaction upon which to base relativity.
21. He submitted that details of settled cases and of FTT cases in the Midlands should be the basis of determining relativity. Mr Coleman provided a graph reflecting those cases, showing relativity rates of 76%-86%. From his Valuation it can be seen that Mr Coleman proposes a relativity rate of 81%.
22. He relies upon *DeLaforce v Evans 1970 CA*, *Sloane Stanley Estate v Mundy UKUT 2016/0226*, *14 Westhouse Court BIR/00CN/OLR/2016/0067* and *4 Lomas Drive BIR/00CN/OLR/2016/0045*.

Respondent's submissions:

23. Mr Herbert submitted that the sale of 25 Westhouse Court in January 2015 is a reliable comparator. He noted the circumstances of the sale. He stated that this was in essence a cash sale, as a property with such a short unexpired term was not mortgageable. He stated that this is the market that such an interest would sell in, this is the market that exists.
24. He adjusted the January 2015 sale price of 25 Westhouse Court of £58,000 to take account of: the difference in time between that sale and the date of the valuation of the Property; to reflect the poor condition of 25 Westhouse Court; to reflect that the sale was in the Act world; and reflecting the decision in *Sloane Stanley Estate v Mundy*. Applying those factors to the Property, he valued the existing lease to be £72,360.
25. Mr Herbert submitted that if no comparable sales evidence for the existing 'short' lease value was available then relatively should be based on the Gerald Eve Relativity Graph at 80%, but adjusted by 5-10% to reflect that the data is collected within the PCL district. From his Valuation it can be seen that Mr Herbert proposes a relativity rate of 73%.
26. Mr Herbert provided information on lease extension agreements he had negotiated at Westhouse Court between 2014 and 2016. He provided details of 6 properties with premiums of between £9,500 and £13,500, being numbers 2 (premium £13,500), 4 (£13,125), 15 (£11,500), 25 (£9,750), 10 (£9,500) and 14 (£10,000). He submitted that capitalisation of the ground rent stream enhances the premium payable in 4 of those properties by £2,500-£3,000, raising the premium of Flats 2, 25, 10 and 14 accordingly.

### **Schedule 10 rights**

27. From his Valuation it can be calculated that Mr Coleman proposes a Schedule 10 deduction rate of 5%.
28. From his Valuation it can be calculated that Mr Herbert proposes a Schedule 10 deduction rate of 2.5%.

### **Determinations**

#### **Value of extended lease**

29. Mr Coleman relies on 14 Westhouse Court. Both parties refer the Tribunal to 14 Westhouse Court in their submissions. The parties agreed the valuation of the extended lease of 14 Westhouse Court. It is in the same block as the Property, and is a similar type of property. The Tribunal finds that the 14 Westhouse Court transaction is a reliable comparator, and takes that valuation into account.

30. Mr Herbert relies on 25 Westhouse Court. 25 Westhouse Court is in the same block as the Property and, as of November 2015, is a similar type of property having, inter alia, an extended lease. The Tribunal finds that the November 2015 sale of 25 Westhouse Court is a reliable comparator, and takes that sale into account.
31. The Tribunal accepts the submission by Mr Herbert that the condition of 25 Westhouse Court is superior to the standard condition in which such a property would be sold, and accepts his contention that this increased the sale price by £10,000. Accordingly, the Tribunal accepts his valuation of £98,000 to be accurate.
32. The Tribunal finds that the condition of the Property is such that it requires works of £1500 to bring it up to lease standard. Making such an adjustment to Mr Coleman's submitted valuation of £95,500 brings the value up to £97,000. Indexing brings the value to £98,000.
33. Although mentioned by Mr Coleman, neither party relied on 20 and 26 Westhouse Court as comparators. Accordingly, the Tribunal does not take those properties into account.
34. The Tribunal determines that the value of the extended lease is £98,000.

#### **Value of existing lease**

35. *Sloane Stanley Estate v Mundy* held that the starting point for the valuation of the existing lease is evidence of a reliable market transaction. Only if there is no such evidence should other methods of valuation be adopted.
36. The Tribunal does not find the January 2015 sale of 25 Westhouse Court to be a suitable comparator. Mr Herbert's submissions regarding that sale did not satisfactorily deal with the fact that this was a distressed sale. The Tribunal accepts the arguments of Mr Coleman on this point. Accordingly, the Tribunal finds that there is no reliable market transaction upon which to base the value of the existing lease.
37. As stated above, the parties have referred the Tribunal to 14 Westhouse Court. In that case both parties agreed a relativity rate of 81% should the Tribunal find insufficient market evidence to otherwise determine the value of the existing lease. Whilst the Respondent considered appealing the decision of the First-tier Tribunal, this was not on the basis that the 81% was incorrect.
38. Having found 14 Westhouse Court to be a reliable comparator, and with the parties in this case agreeing 81% in 14 Westhouse Court, the

- Tribunal considers the relativity of 81% in 14 Westhouse Court to be a reliable guide to relativity in this case.
39. The evidence of local settlements provided by Mr Coleman and Mr Herbert are consistent with a relativity rate of 81%.
  40. Mr Herbert's application of, and adjustment to, the Gerald Eve graph produced a relativity rate of 73%.
  41. In *Sloane Stanley Estate v Mundy* at, inter alia, paragraph 153, the Upper Tribunal were not able to give an unqualified endorsement to the Gerald Eve graph. In particular, they held that there was reason to think the relevant market forces at the valuation dates would have been different from the relevant market forces.
  42. In view of the concerns expressed by the Upper Tribunal regarding the Gerald Eve graph, the Tribunal prefers the evidence of the agreement between the parties in 14 Westhouse Court, which is supported by the evidence of settlements provided by the parties.
  43. Taking all of the above into account the Tribunal determines the relativity rate to be 81%.

#### **Schedule 10 rights**

44. Neither party made submissions in support of their proposed Schedule 10 deduction rates. Mr Coleman proposed 5%. In 14 Westhouse Court the parties agreed 5%. Mr Herbert submitted no argument as to why there should be departure from 5%. The Tribunal can see no material difference between numbers 14 and 31 with regard to Schedule 10 rights, for example the remaining terms are almost identical being 58.27 years and 58.13 years. The Tribunal finds that 5% is an appropriate %, subject to consideration of any arguments as to why that should be departed from. No such arguments were submitted.
45. The Tribunal finds that the rate for Schedule 10 deductions is 5%.

#### **Decision**

46. Applying that determination to the matters agreed by the parties, the Tribunal's valuation is as follows:

Term		£
Ground rent	45	
YP 25.13 yrs @ 6.25%	<u>12.51</u>	563



Ground rent		60	
YP 33 yrs @ 6.25%	13.83		
PV £1 58.13 yrs @ 6.25%	0.22	3.04	183
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Reversion		98000	
Less Risk Tenancy @ 5%		93100	
PV £1 58.13 yrs @ 5.75%		0.04	3538
		<hr/>	4284
Marriage Value			
Reversion		98000	
Less present leasehold	79,380		
present freehold	4,283	83663	
		<hr/>	
		14337	
		x 50%	7168
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47. Accordingly, the Tribunal determines the premium payable by the Applicants at £11,452.
48. No application for costs was made. Accordingly, no order for costs was made by the Tribunal.
49. If any party is dissatisfied with this decision they may apply to the First-tier Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property), within 28 days of the date this decision is sent to the parties.

**Name: Judge S McClure**

**Date: 13 February 2017**