



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/22UB/OLR/2017/0113

Property : 19A Radford Way,
Billericay,
CM12 0AA

Applicant : Harish Kantilal Desai & Dharmishtha
Harish Desai

Represented by James Castle of counsel (Birketts)

Respondent : Akin Hunter & Esin Hunter
Represented by Mike Stapleton FRICS

Date of Applications : 21st June 2017

Type of Application : To determine the terms of acquisition
and costs of the lease extension of the
property

Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS

**Date and venue of
Hearing** : 26th October 2017 at The Court House,
Great Oaks, Basildon SS14 1EH

DECISION

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1. The form of Deed of Surrender and New Lease having been agreed save for the premium payable, it is the Tribunal's decision that the premium payable is £17,805.00 as set out in the Schedule.
2. Reasonable legal and valuation fees are determined to be:

Legal fees	1,325.00
VAT	265.00
Valuation fee	600.00
VAT	120.00
Disbursements	<u>69.20</u>
Payable	2,379.20

Reasons

3. This is an application for the Tribunal to determine the terms of the lease extension for the property and the amount payable by the Applicant for the Respondent's legal and valuation costs. The Tribunal issued its usual directions order on the 19th July 2017 timetabling the case to a final hearing.
4. Bundles were delivered in accordance with the Tribunal's order. The only part of the statutory 'equation' to be used for the calculation of the premium which was not agreed was the 'freehold' vacant possession value. Further, the legal costs and valuation fee were not agreed although it seemed that Mr. Stapleton had not been instructed in respect of those matters. However, he did his best to assist the Tribunal.
5. All other matters were agreed and those agreed matters have been adopted for the Tribunal's calculations. They will not be repeated here as both parties are represented although it should be said that it was agreed that no compensation is payable in accordance with paragraph 2 of Schedule 13 of the 1993 Act.

The Inspection

6. The members of the Tribunal inspected the building in which the property is situated together with the inside of the property itself in the presence of counsel for the Applicant and Mr. Stapleton for the Respondent. Mr. Desai was also present.
7. The building appears to have been erected in the 1970's of brick cross-wall construction under a flat roof. The property is a 1st and 2nd floor maisonette in a parade of similar properties all over shops. At the end of the block is a structure which, according to the Applicants' expert, Mr. Hooker, used to be offices but was converted into flats in 2005 when an extra storey was added. This is relevant because Mr. Hooker's comparable is in that section of the block. The property is next to Billericay rail station which has trains to central London. However, directly under the property is a Turkish kebab shop and next to that is a Pizza Hut takeaway.
8. A staircase at each end of the block in question takes one up to a walkway going the length of the block over the shops below with doors off to each flat. Flat 19 is the first along Radford Way when coming from the High Street end. One enters into a hallway and it is clear that the lower floor is open plan with a lounge diner at the rear leading onto a balcony. Towards the front is quite a large kitchen area although it is dated. There is no central heating but the windows and doors are uPVC double glazed.
9. On the floor above are 3 double bedrooms and a rather dated bathroom/WC with an original cast iron bath. There is a cupboard on the landing with a hot water tank and electric immersion heater. The property has a parking space in the demise and "*the right in common with all others entitled to a like right to use the refuse shoot and disposal until for the disposal of refuse serving the flat*".

The Lease

10. The existing term for the lease is for 99 years from the 16th April 1987 with an increasing ground rent. There are no particularly onerous covenants which would affect value.

The Law

11. The valuation of a premium payable in respect of a new lease in these circumstances is governed by Schedule 13 of the 1993 Act. Paragraph 2 says that:-

“The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of-

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,*
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and*
- (c) any amount of compensation payable to the landlord under paragraph 5*

12. As far as the legal costs and valuation fee are concerned, it is accepted by the parties that the Initial Notice was served and therefore Section 60 of the 1993 Act is engaged. The Applicants therefore have to pay the Respondents’ reasonable costs of and incidental to:-

- (a) any investigation reasonably undertaken of the tenant’s right to a new Lease;*
- (b) any valuation of the tenant’s flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56:*
- (c) the grant of a new lease under that section;*
(Section 60(1) of the 1993 Act)

13. What is sometimes known as the ‘indemnity principle’ applies i.e. the Respondents are not able to recover any more than they would have to pay their own solicitors or valuer in circumstances where there was no liability on anyone else to pay (Section 60(2)). Another way of putting this is to say that any doubt is resolved in the receiving party’s favour rather than the paying party.

The Hearing

14. The hearing was attended by Mr. Desai, Mr. Castle of counsel and also David Hooker BSc FRICS on behalf of the Applicants. Only Mr. Stapleton FRICS appeared for the Respondents. Mr. Hooker had prepared his original valuation in 2016 and, at that time, he was unaware of any sale completions in the same line of similar maisonettes. He therefore relied on a comparable in what had been the office block, namely 7 Radford House.
15. On the other hand, Mr. Stapleton was able to find evidence of a sale in the same block as the subject property, 2 doors away i.e. 25 Radford Way. This was sold on the 7th July 2017 i.e. well after the valuation date, for £270,000 and was on the market again for £284,995. Mr. Stapleton says that this maisonette was ‘identical’ to the subject property although it transpired at the hearing that this was not the case. Mr. Hooker said that he had been inside

that property in about 2014. The basic structure was the same but 25 had been modernised to the extent that in 2014 or shortly beforehand it had a new kitchen and central heating installed.

16. Much was said at the hearing on behalf of the Applicants about the differences between the subject property and 25 Radford Way i.e. the modernisation, the fact that 25 was not over fast food outlets which smelt and would be noisy in the evening and the fact that 25 had a ground floor storage facility as part of the demise. The problem with the attitude shown was that nothing was put to Mr. Stapleton about what adjustments should be made to the sale price of £270,000 to provide an accurate value for 19a. The Tribunal found this to be particularly unhelpful.
17. What was clear was that when Mr. Hooker found out about this sale, he also found that there had been a negotiated lease extension for 29 Radford Way in September 2016 at a figure of £15,500 although the ground rents on that property had been slightly different to the subject property. The circumstances of the agreement were unknown apart from those bare facts. Instead of starting from scratch when he found out about the comparable within a few doors of the subject property with the same design and layout and in the same block, he simply used the transaction to justify his original valuation.
18. The problem with Mr. Hooker's position was that his comparable was not particularly helpful and Mr. Hooker acknowledged when giving evidence that he had not considered comparables elsewhere in Billericay. 7 Radford House is a 2 bedroom flat some 59.2 square metres in size. The subject property is agreed to be 98 sq.m. i.e. some 66% bigger and with 3 double bedrooms plus a full width balcony as opposed to one said to be a metre wide which one could stand on. Mr. Hooker's description of the subject property does not even mention the balcony.
19. In his analysis he refers to a sale of 7 Radford House in September 2016 at £242,000 with modern centrally heated accommodation. He suggests that the subject property's greater size would produce a value of £255,000 but with no reasoning. He then says that this figure should be reduced by £35,000 because the subject property was not modernised. When questioned about this, he simply said that this was based on the cost of modernisation projects he had been involved in. This produced a value of £220,000 which he reduced by 10% to reflect the fact that the subject property was over food outlets.
20. He referred in his evidence to number 1 Radford House selling in May 2017 for £255,000 which, he said, confirmed his position. The Tribunal asked him several times to expand on his reasoning and provide evidence for his assumptions but received hardly any assistance.
21. Turning to the question of costs, Mr. Stapleton was clearly surprised that he had been given no information about this. It was noted by the Tribunal that the solicitors, Tolhurst Fisher LLP had told the Tribunal office that Mr. Robert Plant, the conducting solicitor, would be attending the hearing but it was told on the day that he was on leave. Generally, Mr. Stapleton said that £1,500 plus VAT or thereabouts was the sort of figure he had seen recently for the legal work in these cases. It was noted that Tolhurst Fisher LLP are claiming £1,700.

22. As far as his fee was concerned, he confirmed that this was £600 which was not as much as he would normally charge as he had been advising the landlord beforehand. He had just charged for the statutory valuation.
23. Mr. Castle repeated the points made in the written objections. As far as the hourly rate was concerned, he accepted that £217 per hour was the starting figure advised in 2010 but he tried to argue that 'some' were suggesting that those figures would be reduced and he added that District Judges were applying the 2010 figures rigorously. He produced a 2013 Upper Tribunal case (**The Appeal of Alka Arora** [2013] UKUT 0362 (LC)) where the Deputy President agreed to endorse an hourly rate of £250 which was in the middle of the Grade A range in London. He then suggested that a person of a lower Grade should have done some of the work despite the fact that in the case cited by Mr. Castle, the landlord had recovered a Grade A rate for all the work.
24. There was then a challenge to the time taken to undertake the initial investigations and preparation of the counter-notice, particularly as the counter-notice contained, in effect, a draft of the new lease. The suggested new terms would be added to the standard form of deed of surrender and new lease required by the 1993 Act of which every experienced solicitor dealing with this work will have a template. There was a challenge to the telegraphic transfer fee and then to the valuer's fee because most of the work had already been undertaken and paid for when the Initial Notice was served.

Conclusions – the 'virtual freehold value'

25. Based entirely on the evidence, the inspection, the collective experience of the Tribunal members and the submissions of the parties, it is the Tribunal's decision that as there is market evidence from the same block of flats, albeit after the valuation date, this dictates that Mr. Stapleton's approach should be looked at first.
26. The starting point is therefore the extended lease sale of 25 Radford Way. If the value of £270,000 were to be applied – and Mr. Hooker did not seem to disagree that this was the appropriate starting figure if 25 Radford Way was to be used – one must then move on to consider what deductions should be made to produce a figure for the subject property before relativity is applied. Mr. Stapleton did not seem to appreciate that 25 had been modernised. He had simply asked the selling agent about condition and nothing said alerted him to the improvements. He had also not made any deduction for the fast food selling agencies below the subject property because he felt that 25 was not far away from the subject property and would be almost as seriously affected.
27. The Tribunal did not accept that Mr. Stapleton had considered these issues properly. He knew that the subject property was pretty much in its original condition and he should have been more specific in his questioning of the selling agent. The Tribunal considers it to be self evident that if 19a and 25 had been on the market at the same time for the same asking price, any prospective buyer would have chosen 25 if only because of its upgrade. Thus improvements must affect value. A buyer viewing in the evening would probably be more likely to be persuaded by the location of the Turkish Kebab

shop under 19A that 25 would be better. Having said that, the Tribunal did not detect any unpleasant smells at 10.00 am when they inspected.

28. The Tribunal is not convinced that the storage area forming part of the demise for 25 would greatly affect value in view of the waste disposal right set out in Schedule 1 to the subject lease. The Tribunal is also not convinced that there was any material difference in values between the valuation date and the date when number 25 was sold, despite Mr. Stapleton's suggestion.
29. Thus, if one takes £270,000 as the starting point and a deduction is made for the general upgrading of the heating, kitchen and bathroom and an allowance is made in relation to the location, the Tribunal comes to the view that the total deductions should be in the region of £30,000, making a net value of £240,000. The deductions could have been greater but the Tribunal felt that this property could be particularly suited to a section of the community which Mr. Hooker's comparable would not attract because it is so much smaller i.e. occupiers with 2 or more children, particularly of different genders, where a parent worked in London. This may make the property more attractive to an investor.

Conclusions – legal costs

30. As far as the hourly rate is concerned, it has always been this Tribunal's view that this work is very specialised and generally needs a Grade A fee earner. Having 2 fee earners rather than 1 is potentially more expensive because there has to be liaison between them. Furthermore most commercial clients would expect to deal with one person rather than be handed round to others at different stages. Dealing with the lease is specialised because 'ordinary' conveyancers would not appreciate that the 1993 Act dictates the basic form of lease subject to modernisation clauses.
31. Counsel's submissions were just that. They were not evidence and the Tribunal is not convinced that a 4 year old case before the Upper Tribunal is particularly persuasive. It involved an 'in-house' solicitor and most people know that such a person will have fewer overheads than a solicitor in private practice. It is the Tribunal's experience that courts are now looking to award higher figures than the starting rates recommended in 2010. £250 per hour is, in this Tribunal's view, a reasonable rate for a person of Mr. Plant's experience.
32. Having said that, a commercial client would expect a high degree of speed and efficiency from such a fee earner and the Tribunal was somewhat surprised to see that some 3 hours had been spent on investigating the tenants' right to a new lease, preparing the counter-notice and drafting the deed of release and new lease. An experienced Grade A fee earner would know exactly what was to be considered and that would not include perusing Google Earth or Streetview. The proposed additions to the deed of surrender and new lease were clearly template clauses. The Tribunal was also surprised to see a charge for 3 letters to the client plus a telephone call all on the same day i.e. 20th November 2016. A total deduction of 1½ hours will be made from the time spent i.e. a deduction of £375 which will reduce the profit costs figure to £1,325.00.
33. As far as the telegraphic transfer fee is concerned, this is a point precisely on the indemnity costs principle. The clients clearly want their money

immediately it is received. Is that unreasonable? If this did not happen, the money would be tied up in the bank system for 2 or 3 days and there may well have been a resulting cost to the clients if they were having to discharge a loan. There is doubt and that doubt is resolved in favour of the receiving party. It is allowed.

Conclusions – valuation fee

- 34. Turning finally to the valuation fee. The point raised is an interesting one. Because the Applicants had made a voluntary approach earlier to see if the lease extension could be dealt with on an agreed basis, the Respondent landlords had consulted Mr. Stapleton who undertook an inspection and advised. Because he had done that and had allegedly been paid for it, the Applicant's case is that he should receive little or nothing for the subsequent valuation following the service of the Initial Notice.
- 35. The Respondents' answer to this in their written case is not particularly helpful. It seems to accept that a fee was paid earlier but this did not relate to a valuation under the 1993 Act. This rather misses the point being made namely that the earlier inspection and work meant that Mr. Stapleton spent less time on the statutory valuation.
- 36. Mr. Stapleton said that he charged less than usual for this valuation because of his earlier involvement. It must also be remembered that when a surveyor is instructed to do work in the earlier circumstances, he or she is bound to undertake a statutory valuation because without that, no real advice could be given to the client about what to seek in negotiations.
- 37. Having heard Mr. Stapleton, the Tribunal comes to the conclusions (a) that an allowance has been made for the earlier work unrelated to any statutory valuation and (b) that the earlier work must have included a statutory valuation which the Respondents are entitled to be reimbursed for. The fee will be allowed as claimed.

Valuation Schedule

**19a Radford Way
Billericay
Essex
CM12 0AA**

Lease expiry date	16/04/2086	
Valuation date	10/11/2016	
Unexpired term	69.43 yrs	
Capitalisation rate	6.5%	
Deferment rate	5.0%	
Relativity	89%	
Extended lease value	£240000	
Existing lease value	£213600	
<u>Value of Landlords existing interest</u>		
Ground rent capitalisation (as agreed)		£1099
Reversion to Freehold/ long lease value	£240000	

