



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

Case Reference : **CAM/22UN/OCR/2018/0173**

Property : **9 Langley Close, Dovercourt,
Harwich, Essex CO12 4AY**

Applicant : **Mr Maurice Leslie Hardy**

Representatives : **Mr Adam Shirley – Bawtrees LLP –
Solicitors;
Mr Christopher Woodhouse FRICS
– Joscelyne Chase Limited**

Respondent : **Silson Properties Limited**

Representative : **Mr Ray Jones - Director**

Type of Application : **S91 Leasehold Reform, Housing
and Urban Development Act 1993
(the Act) – determination of terms
of acquisition in dispute - s48 and
determination of costs – s60**

Tribunal Members : **Judge John Hewitt
Mrs E Flint DMS, FRICS, IRRV
Mr S Moll FRICS**

**Date and venue of
Hearing** : **5 February 2019
Lifhouse Spa & Hotel
Thorpe-le-Soken
CO16 0JD**

Date of Decision : **12 February 2019**

DECISION

The issues before the tribunal and the decisions of the tribunal

1. The issues before the tribunal were:
 - 1.1 The amount of the premium payable by the applicant to the respondent on the grant of the new lease – s48 of the Act; and
 - 1.2 The amount of costs payable by the applicant to the respondent pursuant to s60 of the Act.
2. The decisions of the tribunal are that:
 - 2.1 The amount of the premium payable by the applicant to the respondent on the grant of the new lease is £6,550.00 (see paragraph 35 below); and
 - 2.2 The amount of costs payable by the applicant to the respondent is £1,050 made up as to:

Valuation costs (s60(1)(b))	£550.00
Legal costs (s60 (1)(a) and (c))	£500.00
3. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Title and procedural background

4. On 2 July 2003 the respondent was registered at HM Land Registry as proprietor of title number EX504524 being the freehold title of a parcel of land at Vicarage Farm, Langley Close [1]. The Schedule of notices of leases in the Charges Register records the registration of leases flats (most with parking spaces) including that of 9 Langley Close which is registered with title number EX437713.
5. On 12 May 2014 the applicant was registered at HM Land Registry as proprietor of the lease of 9 Langley Close and a parking space. The lease is dated 18 January 1991 and granted a term of 99 years from 1 January 1991.
6. For the purposes of these proceedings the applicant is a qualifying tenant and the respondent is the reversioner.
7. The applicant gave to the respondent a notice of claim pursuant to s42 of the Act. It is dated 21st February 2018 [55]. The notice proposed a premium of £5,000 for the grant of the new lease.
8. The respondent gave to the applicant a counter-notice pursuant to s45 of the Act. It is dated 6 April 2018 [59]. The respondent admitted that on the relevant date the applicant had the right to acquire a new lease.

The respondent rejected the premium proposed and counter-proposed a premium of £9,150.

9. Despite negotiations the parties were unable to agree all of the terms of acquisition and on 1 October 2018 the tribunal received from the applicant's solicitors an application pursuant to s48 of the Act [43].

It was apparent that the matters in issue were the premium and costs.

As to premium, the application form recorded the rival positions as follows:

Applicant	£6,250
Respondent	£7,850

Directions were given on 10 October 2018 [61].

10. An inspection of the property and the development of which it is part was scheduled for 10:00 Tuesday 5 February 2019 and the hearing to commence as soon thereafter as was convenient to the parties, their representatives and the members of the tribunal.

Inspection

11. The respondent's representative, Mr Roy Jones, did not attend the inspection of the property although he had been invited to do so.

The applicant showed the members of the tribunal around the property. Before and after the inspection the members of the tribunal were able to carry out an external inspection of the block, its car parking spaces, the modest communal gardens and the immediate locality generally including a nearby sports stadium. The members were not accompanied when they did so.

12. The development is located in a low lying area about 1 mile from the Dovercourt town centre.

13. The subject property is a one-bedroom flat on the first floor of a purpose-built self-contained three-storey block of 9 similar one-bedroom flats constructed in 1990. The construction is of cavity brick/load bearing timber framed walls beneath a pitched and concrete tile clad roof draining to PVC rainwater goods, and with solid floors.

The communal entrance at ground floor has a door entry system. A hallway leads to the ground floor flats and a stairway leads to the flats on the first and second floors. There is no lift. A helpful photograph of the block is at [27].

The flats enjoy the benefit of mains water, drainage and electricity amenities but there is no gas connection.

The property has the benefit of replacement uPVC double-glazed windows. It is heated by mounted electric night storage heaters.

It was not in dispute that the accommodation comprises:

Entrance hall with a storage cupboard and a further cupboard housing hot and cold water tanks.

Reception room	3.13m x 5.02m
Kitchen	1.81m x 3.20m
Bathroom/wc	2.32m x 1.67m
Bedroom	3.30m x 3.23m

The total GIA was estimated to be 42.4m² (457 ft²).

Hearing

14. The applicant was represented by his solicitor, Mr Shirley. Mr Shirley wished to call a valuer, Mr Woodhouse of Joscelyne Chase to give expert valuation evidence. Mr Woodhouse' report/valuation dated 9 January 2018 is at [40]. That report is not compliant with the provisions of rule 19.

However, Mr Woodhouse confirmed to us that he fully understood his duty as an expert witness was to help the tribunal and that overrode any obligation he may have to the applicant, and that he fully understood the obligations imposed upon him by the RICS of which he is a Fellow.

In the absence of any objections to Mr Woodhouse giving oral evidence and speaking to his report, the tribunal permitted him to do so.

15. The respondent was represented by Mr Roy Jones, a director. Mr Jones did not propose to call his valuer, Mr Mark P Burton BSc FRICS of Mass & Co to give expert valuation evidence. This was because the respondent did not wish to incur the cost of doing so and did not consider it necessary to do so. Instead Mr Jones wished to rely upon Mr Burton's report/valuation dated 19 March 2018 [26], save that he did not agree with Mr Burton's opinion of a long lease value of £85,000 and instead submitted a long lease value of £95,000. In support of that Mr Jones wished to rely upon his 'Statement of Fact' at [35]. Upon the tribunal seeking clarification of his position, Mr Jones was clear that he wanted to rely upon Mr Burton's report, he did not disavow it; it was just wrong in one particular, he said.

The valuation evidence

16. The parties were agreed that:
- 16.1 The valuation date was 21 February 2018;
 - 16.2 There were no tenant's improvements to take into account;
 - 16.3 The unexpired term was 70.86 years (in his report Mr Woodhouse had cited 71 years unexpired but at the hearing he

- agreed that 70.86 years was more accurate and the figure to adopt);
- 16.4 The current ground rent was £60 pa rising to £120 pa as from 01.01.2023 and rising to £240 pa as from 01.01.2056;
 - 16.5 The yields were 6% on the ground rent and 5% on the reversion; thus
 - 16.5 The loss or diminution in value of the freehold value was £4,588.

The lease values

- 17. Mr Woodhouse had originally adopted a long lease value of £80,000 but later revised that to £85,000 evidently adopting that figure arrived at by Mr Burton.
- 18. Mr Woodhouse then applied the Beckett & Kay graph of relativity of 93% to arrive at a short lease value of £79,050.
- 19. Mr Woodhouse considered this fitted well with the sale of 19 Langley Close at £76,000 in March 2017. In oral evidence Mr Woodhouse accepted that he had not made a conscious adjustment for time. He accepted that the market had improved between March 2017 and February 2018, by perhaps as much as 7.5%. However, when it was put to him that a 7.5% increase amounted to £5,700 and that would provide a time adjusted value of £81,700, Mr Woodhouse said that might not be right and that he preferred a long lease value of £85,000 and a relativity of 93% to arrive at a short lease value of £79,050.

The attention of Mr Woodhouse was drawn to two comparables relied upon by Mr Burton:

1 Langley Close Sold February 2017 £65,000

7 Langley Close Sold February 2017 £65,000

And how these might square with the sale of 19 Langley Close for £76,000 just three weeks later.

Mr Woodhouse accepted that these transactions cannot be ignored, but there might be special circumstances, including perhaps a forced sale, or at a sale below value such that little weight should be attached to them. The applicant observed that one of those sales may have been a probate sale.

- 20. Mr Woodhouse said that he relied upon the Beckett & Kay graph because it was a graph he had always used and that it had served him well for many years in arriving at settlements. Mr Woodhouse said that he had not considered whether the underlying data on which the graph was based might now be a little outdated.
- 21. Mr Woodhouse did not wish to make any observations on the Savills 2015 graphs mentioned by Mr Burton to arrive at a relativities of 84.94% and 87.74%.

22. From his report, it is clear that Mr Burton relied upon the sales of 1,7 and 19 Langley Close mentioned above and also on the proposed sale of 11 Langley Close which he noted was under offer (at the time of his report – 19 March 2018) at £75,000. Mr Burton also noted that this sale was subject to and with the benefit of an assured shorthold tenancy which might impact on value.

Mr Burton further says he relied upon information from local selling agents who evidently told him that the market was saturated with one-bedroom flats, but there were few sales of long leases to draw on to arrive at a comparable value, but that in their experience the market value of the subject flat with a long lease would lie in the range £85,000 - £90,000.

Mr Burton made reference to the ‘recent’ *Sloane Stanley Estate v Mundy* decision and to the Savills 2015 graphs - 84.94% (unenfranchisable) and 87.74% (enfranchisable) which considered lent support to the local agents’ views of long lease values.

In the light of the above and applying his experience and expertise, Mr Burton was of the opinion that it was appropriate to adopt a long lease value of £85,000. As noted above, that was a value which Mr Woodhouse adopted.

23. Mr Jones did not agree with those opinions. Mr Jones contended for a higher value. At one time he suggested a figure above £100,000, but eventually he settled for £95,000.
24. Mr Jones wished to rely upon a document which he termed ‘Statement of Fact’ prepared by him and dated 12.11.2018 [35]. The document makes a number of criticisms of Mr Woodhouse report. He noted that 11 Langley had been under offer for a period at £80,000 and then £75,000 but had not sold because it was overpriced and unmarketable.

At the hearing Mr Jones told us that so far as he was aware 11 Langley Close has still not sold – at least he has not been given a notice of assignment.

Mr Jones also said that he was aware from Rightmove that a ground floor one-bedroom flat was being marketed for sale with a long lease at an asking price in excess of £100,000. Mr Jones was not able to provide any details of the property on offer.

Mr Jones was not able to explain to us why he had not requested Mr Burton to comment on this further evidence Mr Jones had unearthed or to provide an amended valuation taking into account such further data as he - Mr Burton – considered appropriate. We infer that Mr Jones was not willing to incur the costs and was convinced that his own analysis was self-evident.

Finally and for the sake of completeness we record that Mr Jones was not able to tell us why Mr Burton had placed some reliance on the Savills 2015 graphs.

Discussion

25. There were shortcomings in the valuation evidence of both parties. It was not helpful that Mr Burton was not asked to attend to speak to his report. It was also unhelpful that Mr Jones had not instructed Mr Burton to update his valuation in the light of the further evidence which Mr Jones said he had unearthed and which he believed had a significant effect or impact on the premium ultimately payable by the applicant.
26. Doing the best we can with the materials presented to us by the parties we find that the starting point is a long lease value of £85,000. This was a value that both valuers had agreed upon as being the right value as at February 2018 – the valuation date. It was a value that Mr Burton had tested in more than one way and he says it was supported by information from local selling agents. In the absence of any compelling evidence to the contrary, we find it is a value we can rely upon with some confidence.
27. We find that we are not able to place any weight on the further materials relied upon by Mr Jones in his ‘Statement of Fact’ dated November 2018 [35]. Mr Jones does not identify the ground floor flat he relies upon. He gives no information about it at all. Also it is a property on the market with an asking price. There is no suggestion that it led to a concluded transaction, or even went under offer. We find that whatever the circumstances are of the property on the market in November 2018 that Mr Jones refers to, it does not provide us with any assistance as to the long lease value of the subject property in February 2018.
28. The evidence in this case well illustrates the need to be wary of the weight that might be given to properties ‘under offer’. Mr Burton relied upon 11 Langley Close under offer in March 2018, when he wrote his report, but which remains unsold in February 2019.
29. In the absence of compelling evidence to the contrary we prefer to rely upon the agreed professional opinions of both valuers.
30. As to the short lease value, we find that we cannot place much weight on the fact that 11 Langley Close was allegedly under offer at £75,000 in March 2018. If it was, it did not lead to a concluded transaction. We accept Mr Jones evidence that it was on the market for a good while, and, so far as he is aware has still not sold because he has not been served with a notice of assignment. Moreover, as Mr Burton pointed out, the fact it was on the market subject to and with the benefit of an assured shorthold tenancy might have had an impact on its value, such that it was not a ‘vacant possession on completion value’.

31. We find that the most helpful comparable is 19 Langley Close; followed by 1 and 7 Langley Close. We have to bear in mind that 1 Langley Close was probably a probate sale and some adjustment might be appropriate. We also bear in mind that neither party adduced any evidence as to the condition of these flats. We cannot speculate but we note these flats are now nearly 30 years old and the interiors might well be somewhat dated.

We conclude from these comparables that allowing for appropriate adjustments the average short lease value in February/March 2017 was £72,000. Making an adjustment for time to February 2018 using HM Land Registry data we arrive at a short lease value of £76,500 at the valuation date.

32. We have tested this value by reference to relativity. Leasehold relativity may be defined as the value of the current lease divided by the long lease value of the same flat with vacant possession. This is expressed as a percentage of the long lease value. Part of the process requires a valuation of the current lease as if it has no rights under the Act.

Over the years some valuers have compiled graphs of relativity and these have been refined and developed as an aid to assess relativities. The graphs are based on a range of data and there is some controversy amongst valuers as to the accuracy and value of them. As they are ultimately an expression of the valuer's opinion, their utility has often been criticised. To try to assist valuers the RICS established a working group chaired by Jonathan Gaunt QC to carry out research into the range of graphs. In October 2009 the RICS issued a report: Leasehold Reform: Graphs of Relativity. The authors of the report were not able to agree upon definitive graphs that might be used throughout the profession. Instead, the report drew together various graphs of relativity that are in existence together with details of the data that lies behind each one. The hope was that they might provide useful guidance to practitioners considering them.

33. The Upper Tribunal (Lands Chamber) (and its predecessor) has concluded that the graphs can be used - 'doing one's best' - along with any market evidence a valuer may have – *Nailrile Ltd v Earl Cadogan* [2009] RVR 95; [2009] 2 EGLR 151. The controversy about the graphs and their reliability to show relativity continues. As Lewison LJ put it in *The Trustees of the Sloane Stanley Estate v Mundy* [2018] EWCA Civ 35 – at para 13 “*The holy grail would be a method of determining relativity which is both reliable and simple to apply.*”

34. Mr Burton cited the Upper Tribunal decision in *Sloane Stanley v Mundy* as support for adopting the Savills 2015 graphs to cross-check his values. Why he chose to do so is not clear to us. That case concerned properties in prime Central London (PCL) and the Savills graphs are based solely on data concerning properties in PCL. With no disrespect to Dovercourt, in our judgment there is a wide difference in the market in PCL and in Dovercourt. Moreover, some valuers hold the strong view

that the PCL market is not mortgage dependent and this has a material effect.

35. In contrast Mr Woodhouse relies on just one graph – Beckett & Kay. This graph was prepared in 2009 and is based on opinions arising from transactions which took place in Greater London. He says it provides a relativity of about 93%, although more accurately the figure is 93.14%

Following questions from the members of the tribunal Mr Woodhouse adopted this graph because it has served him well for many years. He did not consider it to be dated and he did not consider it would be helpful to consider a range of appropriate graphs and perhaps strike an average.

36. In our judgment, given the general controversy over the benefit and accuracy of the range of graphs in existence, the better practice is to look at several and take a broad view. Our short lease value of £76,500 is 90% of the valuers’ agreed long lease value of £85,000. Having regard to a number of graphs available to us we find that relativity of 90% sits well within the range of the data. We are therefore reinforced in our view that the short lease value of £76,500 is in the right region.

Valuation of the premium

37. Having made the findings above we determine the premium payable is arrived at as follows:

Diminution in freehold (agreed)			£4,588
Marriage value:			
Long lease value	£85,000		
Less: Freehold value	£ 4,588		
Short lease value	£76,500	£3,912	
		50% =	£1,956
			£6,544
Premium, say			£6,550

Costs

38. The valuation costs of £550 were not in dispute.
39. Mr Jones told us that the respondent was registered for VAT and was so was able to set off input tax against output tax. Thus to achieve an indemnity of the net cost the applicant was not required to pay over the VAT of £110 on the valuer’s invoice.
40. The counter-notice [60] had been given by the respondent’s then solicitors. Evidently the solicitor dealing with the matter retired and the firm did not have a fee-earner experienced in enfranchisement work.

So, Mr Jones and his daughter-in-law visited the solicitors discussed the issues, took the file and decided to deal with the matter in-house.

41. In respect of the matters set out in s60(1) (a) and (c) Mr Jones claimed 10 hours at £70 per hour = £700. Mr Jones produced a schedule which, in broad terms showed how the 10 hours had been arrived at. No claim was made as to any costs which may have been incurred in connection with the solicitors serving the counter-notice
42. Mr Shirley submitted that the costs mentioned in s60 concerned professional costs only and did not apply to services rendered by a director who was not professionally qualified. Mr Jones told us that as a director he was paid £6,000 pa for his services but there was no fixed arrangement as to what those services comprised or how much time was spent on them. It was a case of he did what needed to be done. The respondent is a small private family company.
42. Mr Jones said that he arrived at £70 as being a fair rate having made enquiries via Google. Mr Shirley said that if costs were payable he did not object to the rate of £70 which he equated as the charge-out rate applicable to a trainee solicitor.
44. Rival submissions were put to us as to the reasonableness of the time claimed for. The parties were not agreed as to the number of email that passed before the terms of the new lease were agreed. Mr Shirley also submitted that there was duplication in both Mr Jones and his daughter-in-law visiting the solicitors.
45. We were satisfied that on the true construction of s60 the costs payable by the tenant were not limited to external professional costs incurred by the landlord. If a landlord had an in-house lawyer handling the matter costs were recoverable at a rate close to what an external lawyer might have charged. Where the work was carried by someone not professionally qualified a reasonable rate was recoverable. Here that rate was agreed at £70. That rate is much less than would have been payable by the applicant if the respondent had instructed solicitors.
46. Mr Shirley had argued that if a solicitor had carried out the work in question, the time claimed for would have been less. We find that is right but the rate claimed for would have been much higher than £70.
47. We can but take a broad view on the rival submissions before us. In doing so we find that a reasonable sum for the applicant to pay in respect of costs under s60(1)(a) and (c) of the Act is £500.
48. The question of VAT does not arise in respect of the services rendered by Mr Jones to his company which is an in-house arrangement.

Judge Joh Hewitt
12 February 2019

Statutory Provisions

Leasehold Reform, Housing and Urban Development Act 1993

60.— Costs incurred in connection with new lease to be paid by tenant.

(1) Where a notice is given under section 42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely—

- (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;

but this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the tenant's notice ceases to have effect, or is deemed to have been withdrawn, at any time, then (subject to subsection (4)) the tenant's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) A tenant shall not be liable for any costs under this section if the tenant's notice ceases to have effect by virtue of section 47(1) or 55(2).

(5) A tenant shall not be liable under this section for any costs which a party to any proceedings under this Chapter before [the appropriate tribunal]¹ incurs in connection with the proceedings.

(6) In this section “*relevant person*”, in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by section 40(4)) or any third party to the tenant's lease.

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.