



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

Case Reference : **CAM/42UC/OLR/2019/0176**

Property : **4 Amberley House, Bury Rd, Newmarket CB8 7BU**

Applicant : **Susan Mary Drabble**

Representative : **PBW Solicitors Ely Ltd**

Respondent : **Meldire Ltd**

Representative : **Edmundson Hall Solicitors**

Type of Application : **Determination of the premium to be paid for a new lease and costs payable - Leasehold Reform Housing & Urban Development Act 1993**

Tribunal Members : **Mrs M Hardman FRICS IRRV (Hons)**

Date of Decision : **29 April 2020**

DECISION

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DECISION

The Tribunal determines that the premium payable for the new lease for the property at 4 Amberley House, Bury Rd, Newmarket CB8 7BU (the Property) is £20,743 and the section 60 costs payable by the applicant to the respondent are £2601.60 inclusive of VAT and disbursements.

Background

1. This is an application for a determination of premium of the new lease under section 48 of the Act and the respondent's costs under section 91(2)(d) of the Leasehold Reform Housing and Urban Development Act 1993 (the Act)
2. On 15 August 2019 the Applicant, Susan Mary Drabble gave notice to the Respondent, Meldire Ltd under section 42 of the Act seeking a new lease to the Property. The notice of claim under section 42 indicated a proposed premium of £5,500. It also proposed costs of a valuer's fee of £400 including VAT and legal fees of £400 including VAT.
3. On 28 August 2019 the Respondent landlord served a counter notice under section 45 accepting the tenant's right to a new lease. They, however, rejected the proposal for the premium and costs, instead suggesting a figure of £18,000 for the premium, valuer's fees of £500 including VAT and legal fees of £960 including VAT.
4. A copy of the Lease dated 12 December 1986 between Meldire Ltd and George Hugh Clunes and Violet Littlechild for a term of 105 years from 1 January 1986 was provided. The Applicant acquired the lease on 11 August 2011 under title number SK195533.
5. Matters could not be agreed and an application was made to the Tribunal on 18 November 2019 under section 48 of the Act seeking a determination as to the premium to be paid and the costs payable.
6. A directions order was issued by the Tribunal on 10 December 2019 indicating that the matter would be dealt with on the papers if a request for a hearing was not received by 30 January 2020. Amendments to directions were issued on 12 February 2020 extending time limits at the request of the Applicant. No request for a hearing was received.
7. The premium for the extended lease and the costs payable remain in dispute.

The Law

8. The method of calculation of the premium under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 is by reference to Schedule 13 of the Act.

The Property

9. Valuation reports provided by Raymond J Smith FRICS of Watsons Property for the Applicant and by Jonathan L Wilson BSc FRICS of Allen and Smith for the Respondent describe the property as a first -floor two-bedroom apartment. It forms part of a three-storey detached dwelling converted to flats in the mid-1980s. There are 9 converted flats with a further 15 purpose-built flats to the rear of the original house. The subject property is one of the converted flats.

10. The original part of the development is traditionally built with a pitched roof. There are communal gardens and parking. It is situated close to Newmarket Town Centre.
11. The accommodation comprises a hall, lounge/dining room, kitchen, 2 bedrooms and bathroom/wc. The property has an allocated parking space. Mr Smith states that the overall floor area is 89m² whilst Mr Wilson is silent on this.

Matters agreed

12. The following matters have been agreed
 - Property description and accommodation
 - Lease start date – 1 January 1986
 - Lease term – 105 Years
 - Unexpired term – 71.369 years
 - Ground rent £150.00 per annum revised every 25 years by agreement or determined in accordance with the lease

Matters to be determined

13. The matters that could not be agreed and that require to be determined are
 - Date of valuation
 - The Freehold value
 - The relativity between Freehold Value and Existing Lease Value
 - The unimproved extended lease value
 - Deferment rate
 - Capitalisation rate

And therefore, the Premium payable for the new lease. Costs are dealt with at paragraphs 36-40 below.

Applicant's Evidence

14. Mr Raymond Smith, Fellow of the Royal Institution of Chartered Surveyors of Watsons Property supplied a valuation report on behalf of the Applicants
15. To arrive at this valuation, he had inspected the property, applied his experience and knowledge and used comparable evidence – although the Tribunal was not provided with details of what comparable evidence had been considered.
16. He had adopted a date of valuation of August 2019, an extended lease valuation of £200,000, and a relativity between freehold and existing lease value of 92.78% to arrive at an existing lease value of £185,560.
17. He stated that he had adopted a three-stage valuation – capitalising the ground rent income, valuing the reversionary value of the lessor's interest on the expiry of the existing lease assuming full vacant possession and calculating the marriage value,
18. Adopting these values and this approach, he arrived at the premium to be paid of £10,615

19. No detailed valuation calculation was supplied nor any details of the capitalisation or deferment rates he had applied and why and how he had arrived at these. Neither was there any explanation as to why he had adopted a relativity between the extended lease and existing lease value of 92.78%.

Respondent's evidence

20. Mr, Jonathan Wilson, Fellow of the Royal Institution of Chartered Surveyors of Allen and Smith provided a valuation report on behalf of the Respondent.
21. He had adopted a date of valuation of 6 September 2019 and assessed the value of the 'virtual freehold' of the property at £250,000 – although the tribunal did note that he also refers to £275,000 at one place in his report and in the schedule of agreed and disagreed facts. However, the tribunal has assumed that his valuation is £250,000 as set out in his valuation calculation at page 42 of the bundle. He valued the flat subject to the extended lease at £247,500.
22. He provided the tribunal with 4 comparable sales in the same block which were both one and two bed roomed flats. He did not provide details in respect of the first 3 as to the remaining length of the leases when sold.

Flat 19 Amberley House	59m ²	2 beds	June 2018	£185,000
Flat 13 Amberley House	34m ²	1 bed	July 2017	£130,000
Flat 16 Amberley House	63m ²	2 beds	July 2019	£185,000
Flat 21 Amberley House	62m ²	2 beds	June 2018	£215,000

He stated that Flat 21 was on the market in February 2020 at £250,000 with the existing lease only. It was in the newer part of the development which he was informed sells well to buy to let investors and has a view of the Gallops, whilst the older part was more popular with owner occupiers.

23. He also referred to 3 other comparables in Newmarket but outside this development. These ranged from a 119m² two bedroomed flat in Meridian Gardens, Bury Rd under offer at £319,950 in February 2020 and two two-bedroomed maisonettes in a Victorian terrace in Mill Hill, Newmarket closer to the town centre. One of 72m² sold in March 2018 for £205,000 and the other of 65m² in September 2019 for £235,000. Again, lease length was not known or not stated.
24. He described the approach he adopted for arriving at capitalisation rates outlining that for a relatively modest ground rent (£10-£50) which was fixed for the full extent of the term he would adopt 7.5 -8% whilst where there were rent reviews at 25 or 33-year intervals and the ground rent doubled per review then a rate of 6-6.5% should be applied. Alternatively, where reviews are frequent and to cost of living then this would currently indicate a current capitalisation rate of 3.5 – 4%.
25. In this case he felt that the rent review procedure was somewhat complex and whilst the first review from £50 to £150 had taken place successfully, future rent increases cannot be accurately predicted and he had assumed a fixed ground rent for the purposes of the valuation and a lower capitalisation rate of 4.5%

26. He had followed the decision of the Upper Tribunal in *Earl of Cadogan v Sportelli* (2007) and adopted a deferment rate of 5%
27. In terms of valuing the value of the existing lease he referred to relativity graphs and referred to the approach of the Upper Tribunal in what he said is now known as the *Hampden* case (*Reiss v Ironhawk Ltd* (2018)) and adopted the figure from the 2015 *Savills Unenfranchiseable* table of 88.25% and adjusted this for Act rights to arrive at the 86% which he then adopted.
28. He made no further adjustment and arrived at an estimated premium for extension of the lease under the act of £21,640.

The tribunal's decision - premium

29. The valuers have agreed a number of the components of the valuation although a significant number are still outstanding and the schedule of 'assumed agreed and disagreed facts' is signed only by Mr Wilson, surveyor for the respondent. The main elements requiring a determination are as set out at paragraph 12 above and for clarity are:
 - Date of valuation
 - The Freehold value
 - The relativity between Freehold Value and Existing Lease Value
 - The unimproved extended lease value
 - Deferment rate
 - Capitalisation rate
30. In respect of the date of valuation, or relevant date, under s39 of the Act this is the date that the notice of claim is given to the landlord, which the tribunal has concluded from the papers supplied, is 16th August 2019.
31. Turning to the freehold/long leasehold value Mr Smith, for the tenant, does not supply any evidence to assist the tribunal, merely stating that his valuation of £200,000 is based on 'comparable evidence'. Mr Wilson supplied a number of comparables as set out at paragraphs 21 and 22 above, to support his valuation of £250,000 which the tribunal finds helpful. Having regard to the position of the comparables in respect of proximity to the subject property, the age and type of the properties, the number of bedrooms and the floor areas the tribunal finds that the freehold value of the subject property is £240,000. It agrees with the normal deduction of 1% to arrive at the value of the extended lease adopted by Mr Wilson and finds that the value of the long leasehold is £237,600.
32. The Tribunal notes that neither valuer was able to provide direct comparable sales evidence in respect of short leases of similar properties. Mr Smith has adopted a relativity of 92.78% to arrive at a value of the unimproved lease of £185,560 with no stated adjustment for 'no act world', or more correctly 'no act property' whilst Mr Wilson adopted 88.25% with an adjustment to 86% to reflect this. In the absence of any evidence presented to support the figure adopted by Mr Smith the tribunal is inclined to prefer the argument put forward by Mr Wilson and adopts 86% to reflect

absence of rights to enfranchise and determines the value of the existing lease at £206,400

33. With regard to the deferment rate, again the tribunal is unaware of what Mr Smith has adopted whilst Mr Wilson has adopted 5% and cited *Earl of Cadogan v Sportelli* (2007). The tribunal agrees that 5% is appropriate in this case.
34. On capitalisation rate there is no comment from Mr Smith whilst Mr Wilson sets out at some length his approach to capitalisation of ground rents and adopts 4.5%. The tribunal has considered the evidence provided by Mr Wilson, the terms of the ground rent and the mechanism for increases, and also applying its own experience has adopted the slightly higher figure of 5%.
35. The Tribunal determines that, on the basis of the elements of the valuation set out above the premium payable for the lease extension of the property is £20,743.

The Landlords costs

36. Under section 60 a claimant leaseholder is required to pay the reasonable costs incurred by the landlord in connection with a claim for a new lease. Copies of the relevant statutory provisions are annexed to this decision.
37. The costs claimed by the landlord's solicitor are £8,475.60 inclusive of the surveyor's fee of £1000, Counsel's fees of £2,500 and VAT. Michael Drake acted for the respondent, he is a consultant at Edmundson Hall and has over 45 years of post-qualification experience. His hourly rate is £300 plus VAT and his time is charged to the client in 6-minute units. The costs schedule sets out the work carried out by him for the respondent in some detail, including an anticipated 7 hours for attendance at the hearing and 3 hours and 18 minutes for drafting and preparation. He was assisted by a Grade D trainee solicitor. His hourly rate was £150 plus VAT and the costs schedule sets out the work carried out by him, again in some detail, and includes 2 hours for preparation of the respondent's witness statement and just over 7 hours on drafting and preparation
38. The Applicant's solicitors have commented that the Grade D fee earner should not be charged at £150 per hour and that £100 per hour is more than sufficient
39. They had no comment on details of the work carried out other than that time claimed for attendance at hearings should be nil and that Counsel's advice and hearing fees should also be nil.

The tribunal's decision - costs

16. The basis for assessing costs in enfranchisement cases was set out in the Upper Tribunal decision of *Drax v Lawn Court Freehold Ltd* [2010] UKUT 81 (LC). Costs must be reasonable, have been incurred in pursuance of the initial notice and in connection with the matters listed in sub-sections 60(1)(a) to (c). Section 60(2) also limits recoverable costs to those that the respondent landlord would be prepared to pay. This was described in *Drax* as a limited test of proportionality. It is not an assessment on the standard or indemnity basis.

17. In the absence of a detailed objection by the applicant, I have considered the costs in the round as follows:
- (i) The hourly rates for both the Grade A and Grade D are reasonable and in line with the SCCO Guidelines for National Grade 1 practices, bearing in mind they have not been updated since 2010.
 - (ii) I accept that enfranchisement is of sufficient complexity and importance to require the attention of a senior fee earner, particularly at the initial stage. However, this senior fee earner has been supported by a trainee solicitor and there would appear to be a degree of duplication.
 - (iii) I have deducted the 7 hours spent by the Grade A Fee earner for attendance at hearings, as this is not recoverable under section 60 (nor was it incurred) and a further 60 minutes, as the time claimed for drafting and preparation is excessive. I have further deducted the 30 minutes claimed for the respondent witness statement, again as this is not recoverable. This deducts a total of £3024.00 including VAT.
 - (iv_) In respect of the Grade D fee earner I have deducted the 2 hours claimed for the respondent witness statement, again this is not recoverable under Section 60 and I further consider that the time claimed for drafting and preparation is excessive and reduce it by 150 minutes. This deducts a total of £810 including VAT
 - (iv) The surveyor's costs at £1,000 plus VAT are high, particularly outside London. Whilst the report was thorough and helpful to the tribunal, it was not unduly complex a valuation and I have allowed £800 plus VAT.
 - (v) Given the seniority of the Grade A fee earner and the nature of the case I do not accept that advice would have been required from Counsel. Counsel's fee for a hearing is not recoverable under Section 60(5) and I have deducted the total cost claimed of £1800 to include VAT.
40. Taking into account the above the tribunal determines that the section 60 costs in respect of the original claim notice are £2601.60 inclusive of VAT and disbursements.

Appendix 1

Tribunal's valuation

Valuation date		16/08/2019
Unexpired term		71.369
Ground rent		£150
Capitalisation rate		5%
Deferment rate		0.05
Extended lease value		£237,600
Freehold uplift	1%	£240,000
Relativity		0.86
Existing Lease value		£206,400

Calculations

Diminution of freehold

Loss of ground rent	150			£		
Years Purchase	71.369	years @	5.0%	19.3851475	£2,908	£0

Sub-total

Reversion to Freehold

Capital value				£	240,000	
Present value of £1 in	71.369	years @	5%	0.0307426	£7,378	

£10,286

Marriage Value calculation

Value of proposed interests

Freeholder		£0	
Leaseholder		£237,600	£237,600

Value of existing interests

Freeholder		£10,286	
Leaseholder		£206,400	
Sub-Total			£216,686

Total marriage value			£20,914	
at 50%				£10,457

Enfranchisement Price

£20,743

ANNEX 1 – 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 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 to 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 (ie 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.

Annex 2

Leasehold Reform, Housing and Urban Development Act 1993

S60.— 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.

S91.— Jurisdiction of tribunals.

(1) [Any] question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by [the appropriate tribunal] .

(2) Those matters are—

(a) the terms of acquisition relating to—

(i) any interest which is to be acquired by a nominee purchaser in pursuance of Chapter I, or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II,

including in particular any matter which needs to be determined for the purposes of any provision of Schedule 6 or 13;

(b) the terms of any lease which is to be granted in accordance with section 36 and Schedule 9;

(c) the amount of any payment falling to be made by virtue of section 18(2);

(ca) the amount of any compensation payable under section 37A;

(cb) the amount of any compensation payable under section 61A;

(d) the amount of any costs payable by any person or persons by virtue of any provision of Chapter I or II and, in the case of costs to which section 33(1) or 60(1) applies, the liability of any person or persons by virtue of any such provision to pay any such costs; and

(e) the apportionment between two or more persons of any amount (whether of costs or otherwise) payable by virtue of any such provision.

(9) [The appropriate tribunal] may, when determining the property in which any interest is to be acquired in pursuance of a notice under section 13 or 42, specify in its determination property which is less extensive than that specified in that notice.

(11) In this section—

“*the nominee purchaser*” and “*the participating tenants*” have the same meaning as in Chapter I;

“*the terms of acquisition*” shall be construed in accordance with section 24(8) or section 48(7), as appropriate

(12) For the purposes of this section, “*appropriate tribunal*” means—

(a) in relation to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to property in Wales, a leasehold valuation tribunal.

