



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

Case Reference : CHI/29UD/OLR/2020/0091

Property : Flat 3 Thistle Court, Churchill close, Dartford, Kent
DA1 1QJ

Applicant : Valerie Hobbs

Representative : Martin Tolhurst Solicitors
Mr A Robinson MRICS

Respondent : Abbey Developments Limited

Representative : Perrin Myddleton Solicitors
Mr TJ P Reeves FRICS

Type of Application : S.48(1) Leasehold reform Housing and Urban
Development Act 1993

Tribunal Member(s) : Mr R T Athow FRICS MIRPM
Judge S Lal LLM

Date of Decision : 27 November 2020

Decision

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Summary of Decision

The Tribunal has determined for the reasons set out below that the price payable by the Applicant for the lease extension at the property is the sum of **£15,000** to be apportioned between the two respondents as shown below.

Background

1. This is an application to determine the premium and other terms of the acquisition.
2. Directions were made on 17th June 2020 setting out a timetable for the exchange of written submissions on the matters not agreed.
3. The matter was determined on papers and based upon written submissions as agreed between the parties.
4. Valuation reports have been received on behalf of both parties. Mr Adam Robinson MRICS, instructed by the Applicant and Mr Timothy Reeve FRICS instructed by the Respondents.
5. An inspection of the property has not been made. The Tribunal relied on evidence of the nature and condition of the property from the expert witnesses.
6. The flat is currently held on an occupational lease for a term of 99 years (less 3 days), commencing on 25th December 1991, and the balance remaining on that lease at the valuation date was 22.20 years.
7. The Respondent owns the reversion to the block.
8. There is an intermediate Head lease, a copy of which was included in the bundle. It is for a term of 99 years from 25th December 1991, and the balance remaining on that lease at the valuation date was 22.21 years. The ground rent was set at £100 per unit for the first 25 years and then reviewed to the aggregate of the yearly rents revised under the subleases of all the flats included in the Demised Property, with further 25 yearly reviews. It cites the head lessee as Holdswift Property Management Limited, but they did not take part in the application or any part of the proceedings.
9. The following were agreed between the parties:
 - Date of valuation 10th of October 2019
 - Unexpired term at valuation date 71.20 years
 - Accommodation—entrance hall, lounge, kitchen, bedroom, bathroom/WC.
 - Floor area 34 m² Gross Internal Area.
 - Premium payable to Freeholder £10,500
10. The following are disputed
 - Whether a premium should be attributed to the Head Lessee.
Applicant's position: £100 (de minimis)
Freeholder's position: £7,206

The Premises

11. Thistle Court is a block of purpose built block of 21 flats erected in the early 1990's as part of a major development, comprising 129 flats, by Abbey Homes Limited. It is close to the M25 and Dartford with its many amenities including good transport links into London city centre. The flats are of similar construction and facilities in that there is no gas to the site, all heating is via electric convector heaters. All have double glazing. Each property has a parking space and there are large areas of amenity land within the development.

The Evidence

12. Within the Statement of Facts both Surveyors included their respective positions.
13. Mr Robinson for the Applicant stated – “there is simply no reversion value attributable to the Head Lease (save a de minimis sum as within a S42 Notice), all compensation payable under the Act is included within the premium payable to the freeholder. (There are other issues not agreed such as the freehold and existing lease values but these are no longer relevant as the entire premium has been agreed and only that portion attributable to the Head Lessee is in dispute. Insofar as the Head Lessee's interest must be considered valueless due to the Head Lease terms, any specific flat value considerations are no longer relevant).”
14. Mr Reeve for the Respondent stated - “the Applicant's Surveyor's arguments that no premium is payable to the Head Lessee are entirely without foundation. The Head Lessee has a contractual obligation to continue paying ground rent to the freeholder until the next rent review and therefore must be financially compensated to enable it to do so. There is an argument (not advanced by the Freeholder in this instance) that the Head Lessee's negative profit rent of £334 per annum is a Minor Intermediate Leasehold interest, and as such should be capitalised at the relevant National Loan Fund Rate of Interest. This argument has not been used in this case as it is common, but not universal, for the Freeholder too abate the Head Lessee's obligation to pay Ground Rent, and therefore the use of a simple investment capitalisation yield is adopted. The Expert Witness Statement submitted on behalf of the Freeholder contains detailed relevant comparable evidence which has not been reciprocated on behalf of the Applicant.”

Flat Values

15. Mr Robinson valued the Unencumbered FHVP Value at £145,000 whereas Mr Reeve valued it at £148,000. Both made a 1% adjustment to OMV 999 year lease value, giving the Applicant's value of £143,550, and the Respondent's value of £146,520.
16. Mr Robinson gave no evidence on flat sale values but did give 5 examples of premiums paid for lease extensions within the development from 2017 to 2019.
17. Mr Reeve gave 5 examples of leasehold sales December 2018 and January 2020. He analysed each one and computed a price per square foot and applied this to Flat 3.
 - 15 Foley Court - 40.41sq m – 71.11 yrs remaining - sold 19/11/2019 £151,000 = £3,736.70/sqm – computed equivalent £126,674.
 - 4 Fitzroy Court – 30.56 sqm – 160.93 yrs remaining – sold 20/1/2020 £145,000 = £4,744.76/sqm – computed equivalent not given.
 - 2 Fitzroy Court – 39.95 sqm – 71.81 yrs remaining – sold 1/3/2019 £125,000 = £3,128.91/sq – computed equivalent £106,070.
 - 13 Sidmouth Court – 30.56 sqm – 71.88 yrs remaining – sold 6/2/2019 = £3,926.70/sqm – computed equivalent £133,115
 - 6 Selwood Court – 39.95 sqm – 72 yrs remaining – sold 20/12/2018 £142,000 = £3,554.44/sqm – computed equivalent £120,495.

He gave no reason for not computing 4 Fitzroy Court.

From these comparables he assessed the current leasehold value at the valuation date to be £133,000 with 71.2 years remaining. This in turn was adjusted to take into account the updated kitchen and bathroom by deducting £8,000 to reach a value of £125,000.

18. Mr Reeve included a schedule showing the 50 flats which have extended their leases. He could not state whether they had all been carried out under the Leasehold Reform Acts, or that they were now at a peppercorn ground rent.

Yield

19. Mr Robinson Proposed a Yield Term of 6.5%. No discussion was given as to how this had been arrived at.
20. Mr Reeve proposed 6.0% stating that he felt this was appropriate as the vast majority of settlements of premium negotiations for ADL under similar lease terms have been achieved by adopting this rate.
21. Although no Relativity was specifically mentioned by Mr Robinson his valuation computations showed a figure of 91.0%. Mr Reeve's report contains no mention of Relativity, nor does his valuation computation.

Minor Intermediate Leasehold interest

22. With regard to the Minor Intermediate Leasehold interest issue, Mr Robinson addresses this in some detail but in the end concludes "that whilst the Head Lessee's gross sub-lease income will reduce by £334 per annum as a result of the lease extension, so will the Head Lessee's payment tot Freeholder. This in turn indicates that there is no net loss of income to the Head Lessee as a result of the lease extension."
23. Mr Reeve accepted that ADL usually offers an option of abating the ongoing obligation to pay ground rent after a lease extension, but this was not a formal agreement. As a result it would be incorrect to assume this will be automatic when a Section 42 Notice was served. The correct procedure should be for the premium to be calculated in the proper way as set out as required by the Act. A counter-notice would also be based on the same basis.

Surveyors valuations

24. The conclusion from the foregoing is that Mr Robinson valued the premium at £10,560, which he rounded up to £10,600. £10,000 had been agreed as the premium to go to the Freeholder, the balance to the Head Lessee.
25. Mr Reeve valued the total premium at £17,706, £10,500 as agreed to the Freeholder and £7,206 to the Head Lessee.

Consideration and Decision

26. The Tribunal has found it difficult to assess both parties' views in full as neither side has given its full analysis as to how various conclusions were reached.
27. Consequently, the Tribunal has had to make the best of the evidence before it and from this has made certain assumptions.

28. Turning firstly to the main area of dispute – whether a premium should be attributed to the Head Lessee.
29. In the current world of extending leases, there is ample evidence of situations where there are head and underleases. The latest decision to come from The Upper Tribunal (Lands Chamber) is the case of *Deritend Investments (Birkdale)Ltd v Treskonova [2020] UKUT 164 (LC)*. (Deritend). In that case there was a head lease and an underlease, similar to this case. The main difference was the rent review periods were every 25 years during the 99 year lease term. Consequently, this Tribunal has followed the Deritend decision in reaching its own decision in this case.

Flat values

30. Mr Robinson made no reference to Leasehold or Freehold values in his evidence. Mr Reeve gave 5 examples, but only relied on two of those. However, he only gave details of his analysis of one of them. Why he did not rely on the others is not explained other than to say they two he relied on were both completed after the valuation date here. The flat he analysed was 40 sqm whereas the other one was 30 sqm. The Tribunal reminded itself that the floor are of the subject flat is 34 sqm. It might have been more helpful if Mr Reeve had given the analysis of the smaller flat, but he did not.
31. The Tribunal is left to reach its own conclusion from the other sales given in evidence.
32. The only detailed plan in the bundle is for Flat 4 Fitzroy Court which is 30.56 sqm and has similar accommodation. This is slightly smaller than Flat 3 , and the Tribunal assumes it is likely to be very similar in style and layout. It sold in January 2020 for £145,000 but it had an extended lease of 160.93 years remaining. If Mr Reeve’s methodology is adopted this would give a long lease value to Flat 3 of £161,322. This is considerably above the value suggested by Mr Reeve and is not considered to be a reliable comparable as there has been no submissions given on how the long lease affects the current value of the subject property.
33. Mr Reeve’s other comparable of Flat 13 Sidmouth house (30.56sqm) was sold in February 2018 with 71.88 years remaining lease. The price achieved was £142,000. Mr Reeve analysed this to give £3,926.70/sqm, which he sated would give a value of £133,115, but he made no adjustment for time.
34. Mr Reeve concluded the value when taking into account his evidence and after making suitable adjustments was £146,520. He did not show any calculations as to how he reached that figure. Nor did he give detailed reasons on how he concluded that £8,000 was an appropriate sun for “updated kitchen and bathroom”.
35. In all, both valuers failed to give the Tribunal any suitably persuasive evidence on values. It might have been though by both surveyors that this would not be required by the Tribunal, but this is not the case. Where there are disputes of tis nature it is imperative that surveyors give the Tribunal every assistance they can when giving expert evidence.
36. The nearest truly comparable sale was of 13 Sidmouth Court albeit that it took place 8 months earlier than the Valuation Date.
37. Using the Land Registry Index for flat sales in Dartford area shows a stable market with very little price fluctuation in 2019. It shows a slight rise in average flat sale prices during the summer, but this drops back down again by October to almost the same level, less than 1% difference between January and October.

38. As Flat 3 flat is slightly larger than 13 Sidmouth Court, by about 10% it is feasible that it might sell for a slightly higher price, say 10% more, which computes to £132,000, only £1,000 different to Mr Reeve's valuation.
39. The Tribunal concludes that the value of the flat when compared against Fla13 Sidmouth Court is likely to have been £132,000 at the Valuation Date.

Relativity

40. Relativity has not been discussed by either Valuer. Mr Robinson has a figure of 91% in his valuation, but does not explain how he arrived at this figure. Mr Reeve has not considered it at all.
41. In Deritend The Upper Tribunal considered the various graphs and from those available decided that only those of Gerald Eve (2016) and Savills were reliable as a basis for calculating Relativity outside Prime Central London. Looking at these tables the Tribunal notes an average of the two to be 86.08%.
42. Computing this back gives a Freehold value of £153,350, rounded to £153,500 which gives the short lease value of £132,133.
43. The Tribunal compared this with the evidence on the long leasehold flat 4 Fitzroy Court, which sold for £145,000 in January 2020. Normally, one would adjust for time but during the whole of 2019 the average price of flat sales range varied by about 1% throughout the year. The annual average sale price was the same as the LR sales price for October. By January 2020 average flat prices had not risen by a significant amount, certainly not enough to warrant any significant uplift in flat values. We do not know the condition of 4 Fitzroy Court compared with the subject flat; for example if the £8,000 reduction for improvements was made in the case of Flat 3, it would bring it back to £145,500, so in line with 4 Fitzroy Court.
44. Having looked at these figures, the Tribunal is satisfied with its valuation in paragraph 44 above.
45. Neither party gave any firm evidence of why their proposed yield should be adopted over the other's. The Tribunal is aware of the regular variance between the two figures, but feels in this instance that it prefers to use the 6.0% yield as most other cases in Kent has used this figure.

Determination

46. Based on the findings above the Tribunal determines the premium payable as £15,000, of which £10,500 has already been agreed as the sum to be paid to the Freeholder. The balance of £5,000 is payable to the Head Lessee. The tribunal's calculation is shown below.

R T Athow FRICS MIRPM

Appeals

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.

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.

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.

LEASEHOLD REFORM HOUSING & URBAN DEVELOPMENT ACT 1993

Lease Extension

FACTS

Lease Commenced	25/12/1991	
GR2 from	25/12/2041	22.21
GR 3 from	25/12/2066	25.00
Lease end	21/12/2090	23.99
Ground rent 2	£334.00	
Ground rent 3	£334.00	
Valuation date	10/10/2019	
Unexpired term	71.20	
Number of flats	1	

ASSUMPTIONS

Yield-Term	6.00%
Yield-Reversion	5.00%
Percentage uplift	1.00%
Unencumbered FHVP Value	£153,500
OMV 999 year lease	£151,965

1 Diminution in value of Freehold Interest

(i) Capitalisation of Ground Rent

Ground rent 2				£334	
YP	22.21	years @	6.00%	<u>12.09768</u>	£4,041
Ground rent 3				£334	
YP	25.00	years @	6.00%	12.78320	
PV £1	22.21	years @	6.00%	<u>0.2741</u>	£1,170
Ground rent 3				£334	
YP	23.99	years @	6.00%	12.54773	
PV £1	71.20	years @	6.00%	<u>0.0639</u>	£268

(ii) Freehold Reversion

Unencumbered FHVP Value				£153,500		
PV £1	55.95	years @	5.00%		0.03100	£4,759
CURRENT VALUE OF FREEHOLD INTEREST						<u>£10,237</u>
(III) Less interest after Extension						
Unencumbered FHVP Value				£153,500		
PV £1	161.20	years @	5.0%		0.00038	£59
DIMUNITION IN FREEHOLD INTEREST						<u>£10,178</u>
2 Marriage Value						
(i) Combined value of interests after extension						
Freehold				59		
Leasehold				<u>151,965</u>		
						£
						152,024
(ii) Less combined value of current interests						
Freehold					£10,237	
Leasehold at						
Relativity	86.08%				<u>£132,133</u>	
						<u>£142,370</u>
						£
MARRIAGE VALUE						9,654
						£
Landlord's Share at	50%					4,827
<u>PREMIUM PAYABLE</u>						<u>£15,005</u>
Rounded to						£15,000
Apportioned						
Freeholder						as greed
Head Lessee						£ 10,000
						£ 5,000