



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

Case Reference	:	BIR/23UB/OLR/2021/0009
Property	:	47 Tom Price Close, Cheltenham, Gloucs., GL52 2LF
Applicants	:	Nina Louise Maynard Sarah Dawn Maynard
Representative	:	Willans Solicitors LLP
Respondent	:	Persons Unknown
Representative	:	None
Type of Application	:	An Application to determine the premium payable into Court by a lessee to extend a lease under section 48 of the Leasehold Reform Housing & Urban Development Act 1993, pursuant to an Order of the Gloucester and Cheltenham County Court dated 5 th March 2021, Claim No.HOOGL065.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS V. Ward B.Sc. FRICS
Date and Venue of Hearing	:	None. Determined by paper submission
Date of Decision	:	7 May 2021

DECISION

Introduction

- 1 This is an application to determine the premium payable into Court by a Lessee to extend a lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act').
- 2 The Lessees had been unable to locate the freeholder to serve Notice under section 42 of the Act and applied to the County Court for a vesting order on 25th January 2021 by Claim No. HOOGL065. This was granted on 5th March 2021 subject to assessment of the premium and other terms by the First-tier Tribunal (Property Chamber).

The Law

- 3 There are three interests in the property:

Freehold	Owned by parties unknown. In 1982 it had been owned by Barratt Bristol Limited who granted two concurrent leases:
Head-Leasehold	of the block, including the benefit of the sub-leases. The lease was granted to O.M. Ltd. and is currently vested in Proxima G.R. Properties Ltd. The lease is for a term of 120 years less one day from 1 st July 1982 at rent of £1 p.a., subject to concurrent sub-leases of the flats.
Sub-Leasehold	of the flat. The sub-lease was granted to S.E.Pattenden and is currently vested in the Applicants who hold for a term of 120 years from 1 st July 1982 at rent of £20 p.a. subject to review every 21 years. The present rent of £49 p.a. is due for review on 1 st July 2024 in accordance with a formula in the lease. The rent is payable to the head-leaseholder.

- 4 The sub-leaseholders wish to extend their lease and their Solicitors Willans LLP made enquiries of the head-leaseholder to establish the freeholder's identity. The title is unregistered. The block had been built by Barratt Bristol Limited in 1982 but unfortunately they were unable to assist.
- 5 On 25th January 2021, the valuation date, the Applicants applied to the County Court for a vesting order for a new lease on statutory terms to add 90 years to the unexpired term.
- 6 The Court issued the Vesting Order on 5th March 2021 subject to the terms and any sums due being determined by the First-tier Tribunal (Property Chamber).
- 7 Section 48 of the Act provides that the Tribunal has jurisdiction to assess the premium in accordance with a formula in Schedule 13. It sets out the basis of calculation and requires the premium to be based on the landlord's loss of ground rent for the term and compensation for the deferred right to possession of the flat together with a share of any marriage value arising from the lease extension. In this case, there is no Marriage Value as the unexpired term is greater than 80 years and therefore excluded by paragraph 4(2A) of Schedule 13 to the Act.
- 8 It also allows the landlord to claim any diminution in the value of land retained in its estate due to the grant of the lease extension if such loss can be justified under paragraph 5, Schedule 13.

Facts Found

- 9 The Tribunal has been unable to inspect the flat due to Government Covid Regulations and relies on the Submission of the Applicant's agent, Mrs J.Coupe FRICS.
- 10 According to the Submission, the property is a first floor Bedsit in a three storey purpose built block of 12 similar flats, five minutes' walk from Cheltenham town centre. There is a communal hall on the ground floor with stairs to the first floor. The flat comprises an open plan Reception Room / Kitchen, a Bedroom, Bathroom with shower cubicle, toilet and basin and small storage area. The bedroom was created by partitioning off part of the Reception Room. There is an allocated parking space within the development.
- 11 The block is three storey brick and tile construction built about 1982.

Issues

- 12 The Court Order requires the Tribunal to determine the terms of a new lease as if the Applicant had served Notice under section 42 of the Act.

The terms of the new lease

- 13 The County Court has determined that the Applicants are entitled to a new lease on terms similar to the existing, save that the term is extended by 90 years and the ground rent reduced to a peppercorn.

The premium payable under Schedule 13 to the Act

Applicants' Submission

- 14 The Applicants presented a Submission by Mrs J.Coupe FRICS, a Chartered Surveyor experienced in valuing residential property in Cheltenham, which proposed a premium of £1,427 payable to the freeholder in exchange for a new lease, with the term extended by 90 years but otherwise similar terms to the present lease. Compensation for the head-lease has already been agreed by the Applicant and the head-leaseholder's agents in the sum of £964 (Nine Hundred and Sixty Four Pounds) plus a valuation fee of £350 and legal fees of £450.

Mrs Coupe's valuation incorporates the following elements:

Unexpired Term

81.42 years.

Ground Rent

£49.00 p.a. for 3.42 years from the valuation date.

£66.40 p.a. anticipated on review in 2024 for the following 21 years.

Capitalisation Rate

6.5% based on:

- i) previous Tribunal decisions within the development where 6.5% had been held as the appropriate capitalisation rate:
 - 18 Tom Price Close, Cheltenham. Case Ref. BIR/23UB/OAF/2020/0020
 - 39 Tom Price Close, Cheltenham. Case Ref. BIR/23UB/OAF/2020/0019
 - 100 Tom Price Close, Cheltenham. Case Ref. BIR/23UB/OAF/2020/0026

- ii) general guidance handed down in *Nicholson v Goff* (2007) 1 EGLR 83;
- iii) the fact that the ground rent is modest;
- iv) previous negotiations undertaken by Mrs Coupe throughout the south west over a three year period in the range of 6% - 7.5%;
- v) Tribunal guidance in another missing landlord case relating to Flat 1, 56 St.James St.,Cheltenham, (case ref. CHI/23UB/OLR/2020/0024) where a differently constituted Tribunal determined the capitalisation rate at 6.5% for ground rent of £50.00 p.a.

Deferment Rate

5%, as determined in *Earl Cadogan v Sportelli* LRA/50/2005.

Relativity

Not applicable as the unexpired term is greater than 80 years and no marriage value payable.

Development Value

Not applicable as the site is considered fully developed.

Comparable Sale Values

Mrs Coupe refers to the sale prices of the following properties described in the Submission:

1	53 Tom Price Close, Cheltenham. Sale agreed May 2020	£75,000
2	49 Tom Price Close, Cheltenham. Sale agreed December 2020	£68,450
3	100 Tom Price Close, Cheltenham. Sale agreed December 2020	£68,450

Improvements

Mrs Coupe advises that since the Applicants bought the flat in 2017 they had improved it by installing double glazing, electric heating, a new shower cubicle, new built-in kitchen appliances and had also refurbished the kitchen units. The improvements were more than normally found in flats at Tom Price Close for which Mrs Coupe deducts £2,500 from the value of the extended lease in accordance with Sch.13.3(2)(c) to the Act.

Conversion to Freehold

Mrs Coupe makes 1% allowance for the difference between a leasehold and theoretical freehold value. This is based on *Contactreal Ltd. v Hannah Smith* (2017) UKUT 178 (LC) and *Elmbirch Properties plc* (2017) UKUT 314 (LC).

Schedule 10 Deduction

Mrs Coupe considers no allowance should be made to reflect the risk of a tenant remaining in occupation by Assured Tenancy on expiry of the lease as envisaged by Schedule 10 of the Local Government and Housing Act 1989, as the unexpired term was over 81 years at the valuation date.

- 15 The Submission contains the required Statement of Truth for RICS and Court requirements.

Tribunal Decision

16 The Tribunal has considered Mrs Coupe's valuation and determines the inputs as follows:

Unexpired Term

The Tribunal agrees the unexpired term at 81 years from the date of Notice.

Ground Rent

The Tribunal agrees the ground rent at £49.00 p.a. for the four years until the next review. However, it would be unlikely to remain at that level on review and a potential purchaser of the investment would probably expect an increase. The lease contains a formula at clause 1.(e)(i) requiring the reviewed rent to represent the same proportion of the value of the block at the review date as at commencement of the lease. The value of the block is unknown but the premium at the date of sale in 1982 was £22,875 and the present value is £76,000 in Mrs Coupe's submission, so applying the same ratio, the ground rent could be expected to increase from £49.00 today to £66.40 on review in 2024, other factors remaining constant.

Capitalisation Rate

The Tribunal agrees the capitalisation rate at 6.5% which would be reasonable for a ground rent of £49 p.a. with 81 years unexpired.

Deferment Rate

Mrs Coupe adopts 5% deferment rate as determined by the court in *Earl Cadogan v Sportelli* LRA/50/2005 and we see no reason to depart from this.

Relativity

Not applicable with no marriage value to consider.

Development Value

The block is relatively modern and we see no reasonable prospect of redevelopment at present. We therefore make no allowance for future redevelopment in our valuation.

Comparable Sale Values

The Tribunal has considered the comparable prices referred to by Mrs Coupe and agrees that based on that evidence, the value of the lease would be £78,500 for the flat in present condition, prior to adjustment for improvements.

Improvements

The Tribunal agrees £2,500 as a fair deduction to reflect for the value of the tenant's improvements, leaving £76,000 at the valuation date on statutory terms.

Conversion to Freehold

The Tribunal accepts there is a difference between the value of a lease and the value of a freehold and agrees that 1% variation would be reasonable in this instance. The equivalent value of the freehold interest in the Flat at the valuation date is therefore £76,768 (i.e. £76,000/0.99).

Schedule 10 Deduction

The Tribunal agrees there is no reasonable prospect of the Lessee remaining in occupation in 81 years' time with an Assured Tenancy and makes no allowance for this.

Tribunal Valuation

Based on the above, the Tribunal values the premium payable to the freeholder as follows:

1 Freehold Premium

Term

Ground Rent	£ 0.00	
Years Purchase 81 years 6.5%	<u>15.2909</u>	£ 0

Reversion

Extended lease value	£ 78,500	
Less value of tenant improvements	<u>£ 2,500</u>	
	£ 76,000	
Convert to Freehold equivalent, 1% variation	£ 76,768	
Present Value £1, 81.42 years @ 5.00%	<u>0.01882</u>	£ 1,445

<u>Less</u> value of Freehold reversion after lease extension: deferred 171 years @ 5%	£ 76,768 <u>0.000238</u>	£ 18
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Premium £ 1,427

1 Head-Leasehold Premium

The Tribunal has no jurisdiction to determine this element as it has been agreed with the head-leaseholder. £ 964

3 Total Premium Payable

Total value of premiums payable by Applicant: £ 2,391

Any other sums payable by the Claimants under Schedule 13 to the Act

- 17 In addition, the Tribunal determines the Applicant remains liable for:
- any ground rent due to the head-leaseholder, Proxima GR Properties Limited, to the date of completion of the new lease.
 - the head-leaseholder's valuation fee of £350 (no VAT has been claimed and so none payable);
 - the head-leaseholder's legal fee of £450 (no VAT has been claimed and so none payable);

The form and provisions of a new lease

18 The Tribunal has considered the draft Lease included with the Application and approves the form subject to alteration of the premium in paragraph 1.1 to £2,391 (Two Thousand Three Hundred and Ninety One Pounds) comprising £1,427 (One Thousand Four Hundred and Twenty Seven Pounds) payable to the Freeholder and £964 (Nine Hundred and Sixty Four Pounds) to the Head-Leaseholder.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date 7 May 2021

Appeal to the Upper Tribunal

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.