



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

Case Reference : **CAM/22UQ/OLR/2019/0200**

HMCTS code : **BTMMREMOTE**

Property : **Flat 7, Fenman Court, Station Rd, Elsenham,
Bishops Stortford CM22 6LZ**

Applicant : **Alistair Paul Hamish Johnson and Claire
Louise Johnstone**

Representative : **Tim Palmer BSc(Hons) MRICS**

Respondent : **Groundrents UK Ltd**

Representative : **Alan Cohen BSc FRICS IRRV**

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

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

Date of Decision : **21 May 2020**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote [audio] hearing which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle of 229 pages, the contents of which I have noted.

Decision of the Tribunal

The Tribunal determines that the premium payable for the new lease for the property at Flat 7, Fenman Court, Station Rd, Elsenham, Bishops Stortford CM22 6LZ (the Property) is £11,057.

Background

1. This is an application for a determination of premium of the new lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act)
2. On 9 July 2019 the Applicants, Alistair Paul Hamish Johnstone and Claire Louise Johnstone gave notice to the Respondent, Groundrents UK 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 £6,500.
3. On 19 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, instead suggesting a figure of £12,600 for the premium.
4. A copy of the Lease dated 27 March 1997 between Simon Howe and Robert James Parr and Wesley Phillip Bardoe for a term of 99 years from 25 October 1996 was provided. The Applicants acquired the lease on 8 December 2015 under title number EX574892.
5. Matters could not be agreed and an application was made to the Tribunal on 10 December 2019 under section 48 of the Act seeking a determination as to the premium to be paid.
6. A directions order was issued by the Tribunal on 14 January 2020 indicating that the matter would be dealt with on the papers if a request for a hearing was not received by 3 March 2020.
7. The Applicant requested a hearing and an oral hearing was arranged for 21 April 2020.
8. However following government guidelines in respect of face to face hearing due to the coronavirus, the tribunal wrote to parties postponing the face to face hearing. It stated that the application would be dealt with on the papers unless either party objected. An objection was received from the applicant and a remote hearing by telephone was arranged for the original hearing date, 21 April 2020.
9. The premium for the extended lease remains in dispute.

The Law

10. 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

11. Valuation reports provided by Mr Tim Palmer Bsc(Hons) FRICS of McNeill Lowe and Palmer, Chartered Surveyors for the Applicant and by Mr Alan Cohen BSc FRICS IRRV of Talbots Surveying Services Ltd, for the Respondent describe the property as a ground-floor apartment within a two-storey development built some 20 years ago.
12. The accommodation comprises a hall, living room, kitchen, bedroom and shower room /wc. The property has an allocated parking space.

Matters agreed

13. The following matters have been agreed
 - Property description and accommodation
 - Date of Valuation – 9 July 2019
 - Unexpired term – 76.29 years
 - Capitalisation rate – 6.5%
 - Deferment Rate – 5%
 - Freehold value - £166,650
 - Long Leasehold value - £165,000

Matters to be determined

14. The matters that could not be agreed and that require to be determined are
 - Existing Lease Value

And therefore, the Premium payable for the new lease.

Applicant's Evidence

15. Mr Tim Palmer for the Applicant explained that he had been unable to find any comparable evidence of sales of short leases. Therefore, he had approached arriving at the valuation of the existing lease value by reference to relativity graphs and tables together with his own 'Test of Relativity'.
16. In respect of the graphs of relativity he considered the Greater London and England graph as the most appropriate given the location of the property which was close to the Hertfordshire border and some 40 miles north of London.
17. He did not accept that the use of the Savills 2015 graph was appropriate and he believed that they were based on 5000 flat transactions in Prime Central London. (PCL) and that no subsequent analysis had been done.

18. He had also used his knowledge and experience of dealing with numerous lease extension cases, mainly on behalf of the tenant and had carried out an analysis of 4 of these in the Bedford/Hertfordshire area. He had done this by applying what he described as his 'Ten stage test of relativity' which was set out in his submission. He derived a relativity for leases with between 72 years and 78 years outstanding of 92.7% to 97.83% of the Freehold Value.
19. With reference to these factors he had arrived at a relativity of 94.75% which he said was slightly lower than the Greater London and England graph (95.08%) for an unexpired term of 75 years. He did not make an explicit 'no act world' adjustment.
20. He had applied this to the Freehold Value of £166,650 to arrive at the existing lease value of £157,900. Applying the agreed factors of the valuation this gave a premium payable of £7,099.
21. He did not accept that, had the property had an unexpired term of 80 years where no marriage value would be payable, that the 3.71 years would impact the short lease value to the extent suggested by Mr Cohen.
22. When questioned in cross examination by Mr Cohen he said he was aware of the recent case of *The Trustees of Barry and Peggy High Foundation and Claudio Zucconi and Mirella Zanre (2019) UKUT 0242*. He believed that the decision was made on the facts and what was in front of the tribunal by way of evidence.
23. He also did not agree that negotiated settlements should not be accepted as evidence and said that the ones he has used were all available for people to find.

Respondent's evidence

24. Mr Cohen for the Respondent said that he had had regard to the RICS report on Leasehold Reform: Graphs of Relativity in the absence of any compelling or analysed sales evidence.
25. He had considered the judgment handed down in the recent tribunal decision of *The Trustees of Barry and Peggy High Foundation and Claudio Zucconi and Mirella Zanre (2019)* in respect of a property in Whetstone which he said determined that relativity should be ascertained with reference to Savills Enfranchiseable Graph for 2015 with an appropriate deduction for the benefit of the act.
26. He suggested that this was now the accepted methodology for anywhere in the country whether acting for the landlord or the tenant .
27. In his evidence he referred to exchanges he had had by e mail with authors of some of the graphs but omitted to include any written evidence to this effect.
28. He also suggests that applying the average of the 5 Greater London and England graphs of 95.51% to the Freehold Value results in a negative marriage value which he did not believe could be correct.
29. He had adopted 89.42% for the outstanding lease length from Savills Enfranchiseable 2015 and then calculated the difference between this and Savills Unenfranchiseable 2015 (87.72%) of 1.7%. He had then adjusted this relative to the

89.42% which produced a 'no act world' discount of 1.52% resulting in what he refers to in his submission as a Freehold London Relativity of 87.9%.

30. Adopting the relativity of 87.9% resulted in a value of tenants existing interest of £146,485. Applying the agreed factors of the valuation this gave a premium payable of £12,806.

Determination

31. The Tribunal notes that neither valuer was able to provide direct comparable sales evidence in respect of short leases of similar properties, which is not unusual.
32. Mr Palmer adopted the RICS Greater London and England graphs with no separate deduction for 'no act world' – although by adopting 94.75% against a graph average for 76.29 years of 95.51% it could be assumed that he had reflected some small allowance. He has then supported this with a number of negotiated settlements.
33. Mr Cohen adopted a relativity based on Savills Enfranchiseable 2015 adjusted in line he submits with Savills Unenfranchiseable to 87.9%.
34. The tribunal does not agree with Mr Cohen that negotiated settlements are not accepted by the tribunal as evidence. The tribunal does admit these as evidence – but it does however accept, in the absence of evidence before the tribunal that a detailed analysis of the price or value has been agreed, that less weight must be given to these.
35. It also has to agree that very recent Upper Tribunal decision appear to have favoured the use of more recent tables of relativity but also agrees with Mr Palmer that any decision of the Upper Tribunal is influenced to a great extent by the evidence that is put before it. It also does not agree that the Upper Tribunal in *Trustees of Barry and Peggy High Foundation and Claudio Zucconi and Mirella Zanre (Zucconi)* found that 'relativity should be ascertained from Savills Enfranchiseable Graph of 2015 with an appropriate deduction for the benefit of the Act'. Rather they found that the FTT were wrong to exclude Savills and Gerald Eve's graphs from their consideration. They found, based on the evidence before the FTT, that they should have preferred the approach of the surveyor for the appellant who had adopted a relativity, indeed based on Savills Enfranchiseable Graph of 2015 with an appropriate deduction for the benefit of the Act.
36. However, of the different approaches taken by the experts in this case, we largely prefer that of Mr Cohen to that of Mr Palmer in that we are more inclined, in the absence of evidence of short leasehold sales to favour the more recently published graphs of relativity. However, we do not totally disregard the settlement evidence provided by Mr Palmer and determine, having regard to both the Savills Enfranchiseable and Unenfranchiseable graphs as starting point and the evidence provided by Mr Palmer we determine a relativity of 90%.
37. 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 **£11,057**

Appendix 1

Tribunal's valuation

Valuation date	9/07/2019
Unexpired term	76.29
Period to 1st review	10.29
Ground rent to 1st review	£125
Capitalisation rate	7%
Deferment rate	5%

Extended lease value	£165,000
Freehold uplift	1% £166,650
Relativity	90.00%
Existing Lease value	£149,985

Calculations

Diminution of freehold

Loss of ground rent	125			£	
Years Purchase	10.29	years @	6.5%	7.3371	£917
Loss of ground rent	250			£	
Years Purchase	33	years @	6.5%	13.4591	
Present value of £1 in	10.29	years @	6.5%	0.5231	£1,760
				7.0403	
Loss of ground rent	500			500	
Years Purchase	33	years @	6.5%	13.4591	
Present value of £1 in	43.29	years @	6.5%	0.0655	
				0.8812	
Sub-total					£441
					£3,118

Reversion to Freehold

Capital value				£	166,650
loss of reversion					
Present value of £1 in	76.29	years @	5%	0.0241807	£4,030
Less :					
New reversion				£166,650	
Present value of £1 in	166.29	years @	5%	0.0003	£50
Value of freeholders present interest					£7,098

Marriage Value calculation

Value of proposed interests			
Freeholder		£0	
Leaseholder		£165,000	£165,000

<u>Value of existing interests</u>		
Freeholder	£7,098	
Leaseholder	<u>£149,985</u>	
Sub-Total		<u>£157,083</u>
<u>Total marriage value</u>		£7,917
at 50%		<u>£3,959</u>
Enfranchisement Price		<u>£11,057</u>

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.

