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HM COURTS & TRIBUNALS SERVICE
MIDLAND LEASEHOLD VALUATION TRIBUNAL

BIR/00CN/OLR/2013/0004

In the matter of 55 Amanda Drive, Yardley, Birmingham B26 2DB
Leasehold Reform, Housing & Urban Development Act 1993, sections 48 & 91.

Pauline Mary Jones and Robert Norman Frederick Jones

Applicants

and

Bushcharm Limited

Respondent

Date of notice:

18th June 2012

Date of application:

17th January 2013

Date of hearing:

2nd April 2013

Tribunal:

Ms. T N Jackson BA Law (Hons)

Mr. N R Thompson FRICS

Mr. N Wint MRICS

Attendances:

For the Applicants:

Mr. Anthony Brunt FRICS

For the Respondent:

Mr. Geraint Evans FRICS

Background

1. This is the Tribunal's decision on the application by Mrs. Pauline Mary Jones and Mr. Robert Norman Frederick Jones for determination of the premium payable under section 56 and Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") for a new lease of 55 Amanda Drive, Yardley, Birmingham, B26 2 DB.
2. By a Notice dated 18th June 2012, the Applicants gave Notice of Claim to the Respondent of their claim under section 42 of the 1993 Act to acquire a new lease of 55 Amanda Drive. The Notice proposed a premium of £11,933.00.
3. The existing lease dated 10th March 1961, made between Morris & Jacombs Limited (1) and Irene Monk (2), demised 55 Amanda Drive to Ms Monk for a term of 99 years from 25th March 1960. Thus the unexpired term at the date of the Notice was 46.76 years. The ground rent payable is £12.00 p.a.
4. By a Counter-notice dated 3rd September 2012, the Respondent admitted the Applicant's right to the new lease (or extended lease as it is sometimes referred to) but did not accept the proposal that the premium be £11,933; the Respondent's counter-proposal was £17,800.00.
5. Accordingly, on 17th January 2013 the Applicants applied for determination of the premium that should be paid and the application was heard by the Tribunal on 2nd April 2013.

Inspection

6. The Tribunal inspected the subject property on 2nd April 2013 in the presence of Mrs Jones and her representative, Mr Brunt. Mr Evans was not present.

7. The property comprises a ground floor maisonette that forms part of a larger 2 storey residential development of traditional brick and pitched roof construction. The subject accommodation is accessed from the side of the property and briefly comprises a hallway, living room, kitchen, 2 bedrooms and a bathroom. There is a small forecourt to the front which is used for parking and a well maintained garden area and patio to the rear and side. In addition there is a separate garage area/ block situated which includes one garage space.
8. The property is located in a cul de sac that includes a number of other similar type maisonettes as well several semi-detached and terrace style 2 storey residential dwellings. The adjoining properties all appear to be reasonably well maintained and looked after by the local residents.

Hearing

9. At the hearing, the Applicants were represented by Mr. Anthony Brunt FRICS and the Respondent was represented by Mr. Geraint Evans BSc (Hons), MSt (Cantab), Dip Surv, MCIM, FRSA, FRICS.
10. Written submissions dated 19th March 2013 were provided by Mr. Brunt on behalf of the Applicants and submissions dated 21st March 2013, (received on 28th March 2013), were provided by Mr. Evans on behalf of the Respondent.

Agreed matters

11. The following matters had been previously agreed between the parties:-
 - The date of valuation is 18th June 2012.
 - The lease expires on 24th March 2059.
 - The unexpired term at the date of valuation is 46.76 years.
 - The annual ground rent is £12.00 without review throughout the entire term.
 - A capitalisation rate for the ground rent of 6.5%.
 - A deferment rate of 5.75%.

- The market value of the property with an extended lease, ignoring tenants improvements, is £90,000.00.
 - Marriage value should be apportioned equally between Landlord and Tenant.
12. At the beginning of the hearing, the representatives further agreed that the value of the subject property with the original lease was £63,000.00.

Matters in dispute

13. The outstanding issue between the parties is the amount by which to discount the extended lease value by way of a “Clarise deduction.” Both representatives agreed, that in their expert opinions, the principle of a “Clarise deduction” should apply equally to both the sale of a freehold under the Leasehold Reform Act 1967, (“the 1967 Act”) and the grant of a new individual lease under the Leasehold Reform, Housing and Urban Development Act 1993, (the “1993 Act”). The matter in dispute was the appropriate level of discount. The Applicants submitted that the discount should be 20% whereas the Respondent submitted that in this case it should be 0%.

Clarise deduction

14. The phrase ‘Clarise deduction’ refers to a recent decision of the Upper Tribunal Lands Chamber (“UT”), *Clarise Properties Limited [2012] UKUT 4 (LC)* in which, in an enfranchisement case decided under the 1967 Act, the UT deducted 20% from the standing house value when calculating the value of the ultimate reversion, to reflect the risk of an assured tenancy arising under Schedule 10 of the Local Government and Housing Act 1989 at the end of the 50 year notional lease extension contemplated by the 1967 Act; thus depriving the freeholder of vacant possession. The reasoning in that case is set out at paras. [39] – [40] of the judgment.

15. Whilst such deductions have been made in cases involving the 1967 Act, to date, the representatives were not aware of such a deduction having been made in cases involving individual new leases under the 1993 Act and referred to cases of this Tribunal where arguments to apply the principle of a deduction in enfranchisement cases under the 1967 Act had been not been accepted in respect of new lease cases under the 1993 Act.
16. Both representatives were of the expert opinion that as the right of a tenant to remain in occupation after the term of the lease emanated from Schedule 10 of the Local Government and Housing Act 1989, rather from the 1967 or 1993 Acts, then the rationale for the deduction expounded in the Clarise case applied equally to cases under both Acts and was not restricted to those under the 1967 Act. They also considered that the right applies to flats/maisonettes as well as houses.
17. Both representatives were also of the view that the correct time to include the discount is at the end of the original term of the lease, not at the expiry of the extended lease.
18. In relation to the level of discount to be applied in this case, Mr. Brunt submitted that following the Clarise case, it should be 20%. Mr. Evans submitted that the discount should be 0%, as in reality, no one would make a discount for a lease with an unexpired term of approximately 47 years with a theoretical right of a tenant to remain in occupation. Neither party adduced any evidence to support their respective percentages and it was accepted by both representatives that it would be hard to adduce direct evidence in such cases to assist Tribunals in determining the level of discount to be applied.
19. On questioning by the Tribunal, both representatives agreed that rather than a blanket 20% deduction being applicable in all cases, a sliding scale of discount would be more appropriate, taking into account a range of factors, as more particularly detailed below.

20. Mr. Brunt considered that a sliding scale would range from 10-20%, although Mr. Evans submitted that the percentage should be 0%, if the unexpired term was more than 10-15 years. In support of this, Mr Evans cited an extract from page 246 of the Fifth Edition of "Hague - Leasehold Enfranchisement" concerned with the case of *Lloyd-Jones v Church Commissioners for England (1982) 1EGLR209* ("*Lloyd-Jones*") in which it was suggested, inter alia, that the appropriate deduction to take account of the tenant's rights was a matter of valuation evidence rather than a convention, so that each case would depend upon the particular circumstances, facts and evidence. Whilst noting that no Tribunal had given a discount under section 9 (1A) of the 1967 Act for the existence of Scheduled 10 rights, it was pointed out that some tribunals had awarded discounts under the 1993 Act of up to 10% for assured tenancy rights. The Tribunal noted however - and the parties acknowledged - the previous valuation practice arising from *Lloyd Jones* of a deduction being made based on 10% for a 27.5 year unexpired term, subject to adjustment up or down depending upon the length of the lease at the date of valuation in the particular case. (The longer the unexpired term, the smaller the deduction.)
21. The range of factors to be considered in establishing the appropriate deduction included:-
- Acceptance that a property subject to an assured tenancy is worth less than one with vacant possession.
 - The "right to a tenancy" at the expiry of a term is less risk than having an actual tenant in at the expiry and therefore needs to be valued accordingly.
 - The length of the unexpired term affects the amount of discount, with a shorter unexpired term attracting a greater discount.
 - The capital value, location, type and development potential of the investment.
22. Mr. Brunt had some reservations about the issue of the length of the unexpired term affecting the value, as a tenant's circumstances, and their decision as to whether or not to exercise the right to remain, would be unknown, whatever the length of the unexpired term. However, he accepted that the longer the unexpired term, the greater the risk of a change in the law and conceded that the right to remain on an unexpired term of 99 years was more likely to be considered a de minimis risk when it came to valuation contrasted to such a right on an unexpired term of one year.

23. Mr. Evans submitted that there should be no discount where the unexpired term was for more than 10-15 years, as in practice, “the risk of the right to remain” at the end of the unexpired term was low and was an acceptable risk which would be taken by investors.

Determination

24. The Tribunal has given full consideration to the evidence and submissions made on behalf of the parties which has assisted them in exploring all aspects of the issue in dispute.
25. The Tribunal agrees that the right of a tenant to remain in occupation after the term of the lease emanates from Schedule 10 of the Local Government and Housing Act 1989, rather from the 1967 or 1993 Acts, and therefore the rationale for the deduction expounded in Clarise should apply equally to new leases under the 1993 Act as it does to enfranchisements under the 1967 Act. The Tribunal agrees that the right applies to flats/maisonettes as well as houses.
26. The Tribunal also accepts that any deduction should be made at the end of the unexpired term and not at the expiry of the extension.
27. In relation to the amount of discount to be applied, the Tribunal notes that the 20% deduction in Clarise was arrived at “in the absence of any comparable evidence to indicate the scale of the appropriate deduction”. Whilst neither representative was able to adduce any direct comparable evidence in this case to support their respective positions on the level of appropriate deduction, the Tribunal was greatly assisted by the comments referred to at para 21 above which resulted in a range of factors to be taken into consideration when determining an appropriate percentage.
28. The Tribunal considers that the appropriate deduction to take account of a tenant’s right to remain in occupation is a matter of valuation evidence. The fact that a particular discount has been given on one set of facts in one case is not relevant for the purpose of

determining what the discount should be in another case. Each case needs to be decided on its own particular facts and evidence.

29. The Tribunal considers that there is a sliding scale of deduction, depending on the factors referred to at para 21 above, but that the most significant factor is the length of the unexpired term, as a measure of the risk of a tenant remaining in occupation at the end of the term. The shorter the unexpired term, the greater a deduction should be made.
30. In the absence of any direct evidence upon which to base a determination, The Tribunal confirms it has used its own judgement and experience.
31. The Tribunal noted the previous valuation practice arising from the case referred to by Mr Evans of *Lloyd Jones* , in which a deduction of 10% had been made in respect of an unexpired term of 27.5 years under section 9 (1A) of the 1967 Act. The Tribunal accepts however, that such a deduction was not intended to be regarded as a convention, even though it was in fact universally adopted as a principle and accepted on many subsequent occasions by the Lands Tribunal. Nor would it necessarily translate exactly into the circumstances of any other case now, particularly as in 1982, a freeholder faced with having a tenant remaining in occupation at the end of a long lease (then under Part I of the Landlord and Tenant Act 1954) would have had to contend with not only an occupier with security of tenure, but also one enjoying a Regulated tenancy at a “Fair Rent” rather than a market rent.

In contrast, such an occupier would now have an Assured tenancy arising out of Schedule 10 to the Local Government and Housing Act 1989, and whilst that would still confer on him a degree of security of tenure, the rent would be based on the market rent of the premises, rather than one constrained artificially by the Regulated tenancy regime of the Rent Act 1977.

32. Whilst noting that *Lloyd-Jones* was concerned specifically with the enfranchisement of a house under the 1967 Act, the Tribunal agrees with the parties that the appropriate principles apply equally to relevant cases under the 1993 Act. (See paragraph 13 above.)
33. The Tribunal also had regard to the representatives' comments on the above case.
34. In considering the range of factors referred to at para 21 above, particularly the nature of the property and that it has an unexpired term of 46.76 years, the Tribunal determines that in this case, an appropriate deduction would be in the order of £5,000 which equates to an allowance of approximately 5.5%. If the unexpired term had been much shorter, the Tribunal would have considered a greater reduction to reflect the increased investor risk.
35. The Tribunal's view is that the premium payable under schedule 13 to the 1993 Act should be determined by the application of the established formula and the Tribunal adopts the factors within that formula that have been agreed by the parties as detailed above in paragraph 21 as determined by the Tribunal in relation to the matter in dispute ie. a £5,000 deduction from the extended lease value of £90,000 to reflect a 'Clarise deduction'.
36. **The Tribunal therefore determines the premium payable to be £16,720 (sixteen thousand seven hundred and twenty pounds) in accordance with the attached valuation.**
37. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, you must apply in writing to this Tribunal for permission to appeal within 21 days of the date of issue of this decision which is given below, stating the grounds on which you intend to rely in the appeal.

Ms T N Jackson BA Law (Hons)

Chairman

Midlands Leasehold Valuation Tribunal

Date: 20 May 2013

Valuation

55 Amanda Drive, Yardley, Birmingham Valuation – Lease Extension Premium

1. Term

Ground Rent (pa)	£12.00	
Years Purchase (YP) 46.76 yrs. @ 6.5%	<u>14.5753</u>	
		£175.00

2. Reversion

Extended leasehold value to freeholder* (£90,000 less £5,000)	£85,000.00	
Present Value (PV) 46.76 yrs. @ 5.75%	<u>0.0732</u>	
		£6,222.00

Freeholders Interest after new lease granted	£85,000.00	
Present Value (PV) 136.76 yrs. @ 5.75%	<u>0.0005</u>	
		<u>£43.00</u>

Freeholders Present Interest £6,440.00

3. Marriage Value

Extended leasehold value to leaseholder*	£90,000.00
<u>Less</u> Freeholders present interest	£6,440.00
Leaseholders present interest	<u>£63,000.00</u>

Marriage Value £20,560.00

Freeholders share @ 50%	<u>0.5</u>	
		<u>£10,280.00</u>

PREMIUM PAYABLE **£16,720.00**

*see 1993 Act, Sch. 13, para. 4 (2)