

2891



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

Case Reference : **BIR/00CT/OLR/2013/0042**

Property : **390 Rowood Drive Solihull West Midlands
B92 9LL**

Applicants : **Ms. Carol Ann Bennett & Mr Peter John
Jennings**

Representative : **Mr Anthony W. Brunt FRICS**

Respondent : **Sidewalk Properties Limited**

Representative : **Mr Nick Plotnek LL.B**

Type of Application : **An application to determine the
premium payable and the terms of a
new lease under section 48 of the
Leasehold Reform, Housing & Urban
Development Act 1993 and the
landlord's reasonable costs in respect of
the tenant's lease renewal under section
91(2)(d) of the said Act**

**Tribunal Members
and** : **Judge Roger Healey LL.B (Chairman)
Mr Stephen Berg FRICS**

**Date and venue of
hearing** : **Temple Court 35 Bull Street Birmingham
on 1 October 2013**

Date of Order : **30 October 2013**

Date of Certificate : **21 NOV 2013**

DECISION

1. This Correction Certificate is issued in accordance with the provisions of Rule 50 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
2. In paragraph 12 of the determination the figure of £140,000 shall be deleted and substituted by the figure of £114,000.
3. In all other respects the determination shall remain in full force and effect.

Roger Healey
Chairman



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DECISION

Introduction

1. This is a decision on an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act') made to the Tribunal for the determination of the premium payable under section 56 and Schedule 13 to the Act and for the determination of the landlord's costs under section 91 of the Act in respect of the grant of a 90 year lease extension of the lease of a maisonette known as 390 Rowood Drive, Solihull, West Midlands, B92 9LL ('the subject property').

Background

2. **Carol Ann Bennett & Peter John Jennings ('the Applicants')** hold the leasehold estate in the subject property by virtue of a lease dated 23 September 1966 made between Bryant Homes Limited of the one part and Stanley Vaughan of the other part ('the Lease') whereby the subject property was demised for a term of 99 years from 29 September 1964 subject to a fixed yearly ground rent of twenty eight pounds (£28). **Sidewalk Properties Limited ('the Respondent')** are the freeholders.

3. On 17 December 2012 the Applicants served a Notice of Claim under section 42 of the Act claiming the right to a new lease. On 1 March 2013 the Respondent served a counter notice admitting the right of the Applicants to a new lease.

4. The Applicants subsequently made the present application to the Tribunal on 2 July 2013.

Inspection of the subject property

5. The Tribunal was able to gain access on the morning of 1 October 2013 and inspected the subject property in the presence of the Applicants and Mr Brunt. Mr Plotnek was not present.

6. The subject property is a ground floor purpose built maisonette comprising hallway, living room, kitchen two bedrooms and bathroom and garden. The subject property has no garage or allocated parking space.

7. The Tribunal observed the subject property has the benefit of double glazing, and central heating.

Hearing

8. At the hearing on 1 October 2013 the Applicants was represented by Mr Anthony Brunt FRICS and the Respondent by Mr Nick Plotnek LLB. Both appeared as expert witnesses, and in the case of Mr Brunt, in accordance with the Royal Institution of Chartered Surveyors Practice Statement.

9. Standard directions were issued by the Tribunal on 5 July 2013. The directions provided (inter alia) for the parties to exchange documents and in accordance therewith both parties exchanged skeleton arguments. At the hearing the parties expanded upon their arguments and made submissions.

Agreed Matters

10. The following matters are agreed by the parties -

- The date of the valuation is 17 December 2012
- The unexpired term at the date of valuation is 50.78 years
- The annual ground rent is £28 without review throughout the term
- A capitalisation rate for the ground rent of 6.5% producing an agreed figure of £413
- Extended lease value of £114,000 subject to argument on improvements and
- A deferment rate of 5.75%.

11. The matters agreed by the parties as set out in the preceding paragraph are accepted by the Tribunal.

Disputed Matters

11. The matters requiring resolution are –

- The value of the tenants' improvements (if any)
- Whether there should be an allowance in respect of the tenant's rights under Schedule 10 to the Local Government and Housing Act 1989 ("a Clarise deduction") following the Upper Chamber's determination in *Clarise Properties (2012) UKUT 4 (LC)* ("Clarise decision") and
- The existing lease value.

Tenant's improvements

12. Mr Brunt for the Applicants submitted that central heating and double glazing constituted improvements and valued them at £3,800. Mr Plotnek submitted that the value of any improvements was within his valuation of £140,000. The Tribunal determines the replacement of the windows to be by way of compliance with the repairing obligation set out in paragraph 5 of the Fourth Schedule to the Lease and therefore do not fall to be valued as improvements. The Tribunal values the central heating at £2,000 and therefore finds the value of improvements to be £2,000.

The Clarise deduction

13. The parties acknowledge that any claim for a Clarise deduction arises out of the interpretation of the Clarise decision where the Upper Tribunal in an enfranchisement case determined under the Leasehold Reform Act 1967 ("the 1967 Act") that 20% be deducted 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 to the Local

Government Act 1989 (“the 1989 Act”) at the end of the 50 year notional lease extension contemplated by the 1967 Act which would deprive the freeholder of vacant possession.

14. Mr Brunt referred the Tribunal to a recent decision of the Midland Leasehold Valuation Tribunal relating to 55 Amanda Drive Yardley Birmingham (Case Ref: BIR/00CN/LR/2013/0004). That decision relates to the determination of the premium payable for a lease extension of a flat calculated by reference to section 56 and Schedule 13 to the 1993 Act. The tribunal accepted that the rationale for the deduction expounded in the Clarise decision should apply equally to new leases under the 1993 Act as it does to enfranchisements under the 1967 Act. The Tribunal notes in that determination the unexpired term at the date of valuation was 46.76 years. The tribunal determined that the discount for deduction needs to be decided on its own particular facts. The most significant factor is the length of the unexpired term; the shorter the term the greater the deduction. The tribunal determined that any discount should be deducted at the end of the original term of the lease and further determined an appropriate deduction of approximately 5.5%.

15. Mr Brunt submitted in the present application for a Clarise deduction of 5%.

16. Mr Plotnek acknowledged that a Clarise deduction was made as submitted in the earlier determination referred to by Mr Brunt. Mr Plotnek also acknowledged that a Clarise deduction was accepted by the Northern Tribunal in the Barston Towers case (Case Ref: MAN/00CB/OCE/2013/001) in which he appeared for the applicant leaseholders on a 1993 Act application.

17. Mr Plotnek referred the Tribunal to a decision from the Eastern Tribunal in the case of Tillet Court (Case Ref: CAM/33UG/OLR/2013/0022) in which a Clarise deduction was not accepted on a 1993 Act application. Mr Plotnek explains the decision on the basis that in the opinion of that tribunal Schedule 10 to the 1989 Act did not apply to long leases of flats and referred to section 59(2) of the 1993 Act.

18. Section 59(2) of the 1993 Act reads as follows –

“(2) *Where a lease has been granted under section 56 –*

(a) *none of the statutory provisions relating to security of tenure for tenants shall apply to the lease;*

(b) *after the term date of the lease none of the following provisions, namely–*

(i) *section 1 of the Landlord and Tenant Act 1954 or Schedule 10 to the Local Government and Housing Act 1989 (which make provision for security on the ending of long residential tenancies), shall apply to any sub-lease directly or indirectly derived out of the lease;”*

19. Mr Plotnek submitted that a Clarise deduction is effective 50 years after the end of the original term only in enfranchisement proceedings under the 1967 Act. He submitted that under the 1993 Act if the lease is extended section 59(2) of the 1993 Act applies and if no steps are taken to extend the lease then the freeholder acquires possession at the end of the original term subject to Schedule 10 to the 1989 Act.

20. Mr Plotnek submitted that it is not appropriate to make a Clarise deduction in lease extension proceedings under the 1993 Act and accordingly has not done so in his valuation.

21. In reply Mr Brunt submitted that a valuation of the freeholder's reversionary interest is prior to the lease being extended and section 59 of the Act is therefore not relevant to the valuation.

22. The Tribunal determines that section 59 of the Act does not affect the valuation in these proceedings. Although not bound by the decision of another Tribunal, the Tribunal agrees with the reasoning and the decision in the 55 Amanda Drive decision (see paragraph 14 above) and determines that a Clarise deduction is appropriate. The Tribunal accepts Mr Brunt's submission for a deduction of 5%. The Tribunal accepts that at the end of the new lease the effect is that there will be no security of tenure for the tenant, but there is such security at the end of the existing lease and that should be reflected in the valuation of the reversion.

Existing lease value

23. Mr Brunt produces comparable evidence of relevant existing leases sales; 129 Rowood Drive at £85,000 and 62 Banbrook Close at £97,000 and submits for the average at £91,000.

24. Mr Plotnek submits that the two examples of market evidence are not persuasive and submits the valuation should proceed by way of relativity. Mr Plotnek refers the Tribunal to the decision in *Coolrace (2012) UKUT 69 LC*. Mr Plotnet submits that by taking an average of the graphs considered in the *Coolrace* decision a relativity rate of 77.18% is given and for the Leasehold Advisory Service (LEASE) graph 79.62% is given. Mr Plotnek submits for an existing lease value of £87,985.

25. The Tribunal determines an existing lease value at £91,000 on the basis that no evidence of actual sales is considered to be more persuasive in this instance.

Costs

26. The parties agree the Respondent's legal costs at £500 and valuation fees at £450 in each case plus VAT and disbursements if applicable.

Determination

27. The Tribunal's calculation of the premium payable based on the preceding determinations is as follows –

1.	Term agreed	£413
2.	Reversion	
	Extended lease value	£114,000
	Value to freeholder	

Deduct 5% (Clarise)	£ 5,700
	<u>£108,300</u>

Deduct tenants improvements	£ 2,000
	<u>£106,300</u>

P.V. of 1£ in 50,78 years @ 5.75% 0.05848	£6,216.42
	£6,629.42
	Say <u>£6,629.00</u>

3. **Marriage Value**

Extended lease value (excluding tenant's improvements)	£112,000.00
Deduct freeholder's current interest	£ 6,629.00
Deduct existing lease value	£ 91,000.00
Gain on Marriage	£ 14,371.00
Lessor's share @ 50%	£ 7,185.50
Say	£ 7,186.00

4. **Premium Payable**

Marriage value (Freeholder's share)	£ 7,186.00
Plus Freeholder's current interest	£ 6,629.00
Premium Payable	£ 13,814.50
Say	£ 13,815.00

28. In addition the Applicant shall pay the Respondent's legal fees of £500 plus VAT and disbursements (if applicable) and valuation fees of £450 plus VAT and disbursements (if applicable). VAT will no however be payable on such fees if the Respondent is registered for VAT purposes.

29. In reaching its determination the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert tribunal but not any special or secret knowledge.

Appeal

30. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Roger Healey
Chairman