

2887



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

Case Reference : CAM/00MA/OCE/2014/0005

Premises : 1-6 Seafield Court, Baker Street,
Reading, Berks, RG1 7XD

Applicants : Eric Thomas McKinnon
& Irene Ann McKinnon
Louise Mary Webb
Catherine Margaret Purves
Amy Lisette Butler
& Mark Edisbury Gittins

Represented by Enever Freeman & Co

Respondent : Richard John Harris

Unrepresented

Date of Application : 9th April 2014

Type of Application : Application for determination of
the price payable for a freehold and
terms of transfer, pursuant to section
27 of the Leasehold Reform, Housing
and Urban Development Act 1993
("the 1993 Act")

Tribunal : Judge J. Oxlade
D.D. Banfield FRICS
D. Barnden MRICS

**Date and venue of
Hearing** : 30th July 2014
Reading Magistrates Court,
Civic Centre, Reading, Berks

Attendees

Applicants

Mr. C. Bennett, Solicitor
Mr. M. Carr, Kempton Carr Croft
Ms. Webb, Applicant and lessee Flat 4
Mr. McKinnon, Applicant and lessee Flat 1

Respondent

None

Observers

Mr. Lora, Lessee flat 3 and Ms. Hiller, Kempton Carr Croft

© CROWN COPYRIGHT 2014

DECISION

For the reasons given below the Tribunal finds that the price payable for purchase of the freehold of the premises is £50,484.12.

The case is transferred to a County Court sitting at Reading.

REASONS

Background

1. The Applicant lessees intended to exercise the right to collectively enfranchise the premises, a building and appurtenant land, known as 1-6 Seafeld Court.
2. On 12th February 2014 Wakem DDJ sitting at Reading County Court was satisfied that the Applicants had the right to acquire the freehold, and in view of the enquires made by them was satisfied that the Respondent freeholder could not be found. Accordingly, he dispensed with the need to serve a notice pursuant to section 13 of the 1993 Act and made a vesting order pursuant to section 26(1) of the Act.
3. The Court made an Order that the Leasehold Valuation Tribunal or its successor¹ do assess the premium payable for the acquisition of the freehold ("the premium") and approve a form and terms of Transfer. The Court further Ordered that the Defendant's assessed costs of £4681.13 be deducted from the premium.

The Tribunal

5. On 9th April 2014 the Applicants filed an application with the Tribunal for determination of the premium and terms of transfer, as Ordered.
6. On 24th April 2014 Directions were made for the filing of an expert report, in compliance with which reports made on 15th May and 9th July 2014 by Michael Carr of Kempton Carr Croft were filed.

¹ The Decision recorded in this document was made by the First-tier Tribunal (Property Chamber) rather than the leasehold valuation tribunal, to whom the application had been made, because by virtue of The Transfer of Tribunals Function Order (2013 No1036) ('the Transfer Order') the functions of leasehold valuation tribunals were, on 1st July 2013, transferred to the First-tier Tribunal (Property Chamber). In this Decision the expression 'the Tribunal' means the First-tier Tribunal (Property Chamber).

Inspection and Hearing

7. On 30th June 2014 in the presence of three of the lessees (Ms. Webb, Mr. McKinnon, and Mr. Lora) the Tribunal inspected the interior of flats 2, 3, 4, and 5, the internal common parts of the building, the void under the building, and the gardens to the rear of the premises currently used as a car park.

8. The building is a three storey purpose-built block of 6 flats of brick construction under a tiled roof, partly rendered, built in the 1980's, set back from the road, with an area of the land at the rear which is used as a car park.

9. The bare descriptions of flats 1-6 given by Mr. Carr at section 2 of his report were accurate. The Tribunal's internal inspection revealed flats presented in differing states of repair, from those with a new kitchen, bathroom, and UPVC windows (for example flat 4) to those with dated kitchen, bathroom, and poorly decorated original single glazed windows (for example flat 3). At the time of our inspection flat 5 was being refurbished, and was without any fittings in the kitchen and bathroom, though we later learned at the hearing from Mr. Carr that at the date of his inspection they were in the same condition of flat 3 - and so would be valued on the basis that they were fitted and useable, albeit dated.

10. The building and grounds were generally in fair condition. The Tribunal noted the following: the paintwork of the fascia boards was peeling; some of the render had popped and there was rust-staining of the beading; part of the brick perimeter wall had fallen down; the tarmac of the parking area had disintegrated in parts; the decorative condition of the common parts was a little tired, and the floor coverings were dated. There were no fire extinguishers or integrated system, and no emergency lighting.

Hearing

11. At the commencement of the hearing the Tribunal indicated that as the landlord was missing and so there was no effective challenge to the evidence of Mr. Carr, it was incumbent on the Tribunal not to simply accept or "rubber stamp" evidence adduced, without appropriately examining and testing it. This we have done.

12. The Tribunal used the reports of Mr. Carr as the starting point, and then tested it, particularly in relation to (a) comparable market evidence relied on by Mr. Carr to arrive at his assessment of the long lease values of flats 1, 2, 3, and 6 as £150,000 and flats 4 and 5 as £160,000 (b) the deductions made by him for condition/improvements to the various flats in the sum of £20,000 per flat (c) relativity (d) the absence of development potential to the premises, particularly in relation to the void under the premises, and (e) the assessment of hope value, to reflect the future possibility that the non-participating lessees of flats 2 and 3 would wish to extend their leases, so giving rise to a potential receipt of a lump sum by the freeholders.

13. Mr. Carr accepted that the leases provided for a rising ground rent, that the rents used in his calculations should be £40, £60 and £90, but that he had used £40, £60, and £80.

Findings

14. Having considered the evidence adduced, we make the following findings:

- (i) at the date of the vesting Order made on 12th February 2014 the long lease market values of flats 1, 2, 3, and 6 were £130,000 and flats 4 and 5 were £140,000,
- (ii) the appropriate relativity rate is 90.74%
- (iii) the unexpired term at 12th February 2014 was 69.364 years,
- (iv) the deferment rate is 5%,
- (v) the capitalisation rate is 7%,
- (vi) hope value is 20% of the freeholder's marriage value for non-participating flats,
- (vii) there is no development value to the freehold.

Reasons

15. Mr. Carr's report and oral evidence satisfied us that within the streets surrounding the premises there were sufficient sales of one bedroom flats with long leases at the valuation date to be able to conclude that sales of small one bedroom flats fell within a band of £114,000 to £125,000 and larger flats from £140,000 to £160,000. The particulars of the comparable properties sold were included. Flats 1, 2, 3, and 4 fell within the middle of the upper range, at £150,000. However, Flats 5 and 6 were larger, each having an additional room off the living room, over the communal stairwell. These rooms were large enough to be described as one bedroom, and could reasonably be used as single bedroom, a study, or a nursery. This would put them at the top of the upper band of one bedroom flats.

16. In his report, Mr. Carr applied a £20,000 deduction from the value of each flat as against the comparables. When tested by the Tribunal about this it became apparent that he had merged as one figure (i) what he saw as improvements made by individual lessees to the flats, and (ii) the general condition of the building, which would involve a service charge contribution from each flat, and as against comparables requiring a downward adjustment. When exploring this further, Mr. Carr said that he would split this sum as between (i) and (ii) as to 60%/ 40%. This approach did not reflect the fact that not all flats were in the same condition, nor that the leases provided for the windows to be part of the demise, so that the replacement of them by the lessee with UPVC was not an "improvement" – rather it was a case of the lessee complying with the terms of the lease.

17. However, the Tribunal accepted that there was required quite some external work, not least the re-surfacing of the car park area, some high-level work to the fascia and rainwater goods, and that there was no emergency lighting or integrated fire alarm system. Further, in some of the flats there was some updating work needed (bathrooms and kitchens) to bring them in line with the comparable evidence. Despite this rather broad-brush approach, and whilst the Tribunal would have preferred that these aspects be dealt with separately, when considered in the round, the Tribunal finds that the deduction of £20,000 per flat is appropriate.

18. Mr. Carr had local knowledge, and his evidence was that there was no local market in sales of short leases so he relied on graphs to arrive at a relativity of 90.74%. He relied on Nesbitt, Pridell and Moss and Kay graphs and correctly excluded Prime Central London ("PCL"). He satisfied us that the market in Brighton and Hove was an established market in flats by contrast with Reading which was not so well-established, so that it was not appropriate to rely on the South East Leasehold graph. The Tribunal is satisfied with this approach and that relativity is correctly assessed as 90.74%.

19. Mr. Carr had considered the development potential of the undercroft or void. The entrance was too narrow for most modern cars, and would require a turning circle which would take away some of the current parking facilities, and so it was not practically useful as an underground car park. As to converting it into flats, he had measured the head height to the beams, and concluded that even if planning permission was granted, there would be excavation of the concrete slab and that the costs would outweigh the benefits. The potential profit from development was too speculative. The Tribunal also noted that the light came into the void from the rear of the building only, and so configuring flats – though not impossible – would mean that at best there was potential for two studio flats. The Tribunal is not satisfied that there is any reasonably ascertainable profit to be made from the development of the void, and is too speculative to add to the premium payable.

20. As to hope value, the Tribunal notes that the leases of flats 2 and 3 were 69.364 years at the valuation date, and that there is a reasonable expectation of a lease extension being granted in the not too distant future. Mr. Carr put this at 20% of the freeholder's marriage value, which the Tribunal considers to be a fair assessment.

21. The deferment rate of 5% is in accordance with Sportelli, and there is nothing which suggests a deviation from that. Likewise the capitalisation rate of 7% is entirely in keeping with usual practice.

22. Accordingly, aside for slight adjustments needed for (i) the ground rent of £90 (in place of £80 p.a. used by Mr. Carr) and (ii) unexpired term of 69.364 years (in place of 69.33 years as assessed by Mr. Carr) which the Tribunal has calculated in respect of each flat and attached as Annex A, the Tribunal accepts Mr. Carr's evidence. The premium is slightly adjusted to take these two points into account.

Corrections to TR 1

23. The Tribunal has been Ordered by the County Court to approve the transfer, and as indicated at the hearing the Tribunal is content with the draft TR1 (found at part 4 of the bundle), in the current format and terms, save that:

- (a) the sum specified as consideration in part 8 should be £50,484.12, in place of £52,000 based on Mr. Carr's calculations, and it should also specifically refer to the sum being paid into Court,
- (b) part 9 should be amended, as the transferor transfers with limited title guarantee, not full title guarantee,

(c) part 9 should also include a statement that “This transfer is executed for the purposes of Chapter 1 Part 1 of the Leasehold Reform Housing and Urban Development 1993”,

(d) part 12 should be amended to read “signed as a Deed by the Officer of the Court nominated to execute this deed on behalf of Richard John Harris in accordance with the orders of the Court dated 12th February 2014”.

24. Mr. Bennett asked that the sum referred to in part 8 of the TR1 should be the premium minus the summarily assessed costs of £4681.13 set out in the Order. The Tribunal does not consider that this is the correct approach, as (i) the land registry will need to know the entire premium payable to accurately calculate the stamp duty payable and (ii) the Order for deduction of assessed costs is not expressed as a set off, but a deduction for assessed costs.

25. The draft as amended by this Order should be sent to the Land Registry for approval to ensure that it is happy with the format and wording.

26. For completeness the case is transferred to the County Court.

.....

Judge Oxlade
Judge of the First-tier Tribunal (Property Chamber)

12th August 2014

Flat 1 Seafield Court, Panel Decision: Valuation

Calculations

Lease expiry date 25/06/2083
 Valuation date 12/02/2014
 Unexpired term Years 69.364

Capitalisation rate 7%
 Deferment rate 5%

Freehold value	£	131,300
Extended lease value	£	130,000
relativity		90.74%
Existing Lease value	£	117,962

Diminution of freehold

Loss of ground rent	1		£	40.00	
Years Purchase	3.364	years @	7%	2.908002406	£ 116.32
Loss of ground rent	2		£	60.00	
Years Purchase	33	years @	7%	12.75379	
Present value of £1 in	3.364	years @	7%	0.796439832	
					£ 609.46
Loss of ground rent	3		£	90.00	
Years Purchase	33	years @	7%	12.75379	
Present value of £1 in	36.364		7%	0.08541	£ 98.03
Sub-total					£ 823.81

ANNEX A

Loss of Reversion to Freehold

Capital value £ 131,300

loss of reversion

Present value of £1 in 69.364 5% 0.0339020 £ 4,451.33

Sub-total £ 5,275.14

Marriage Value Calculation

Value of existing interests

Freeholder £ 5,275.14

Leaseholder £ 117,962.00

Sub-Total £ 123,237.14

Value of proposed interests

Freeholder £ -

Leaseholder £ 131,300.00

Sub-total £ 131,300.00

Total marriage value £ 8,062.86

at 50% £ 4,031.43

Plus Value of freeholder's existing interest £ 5,275.14

Enfranchisement price £ 9,306.57

Flat 2 Seafield Court, Panel Decision: Valuation

Calculations

Lease expiry date 25/06/2083
 Valuation date 12/02/2014
 Unexpired term Years 69.364

Capitalisation rate 7%
 Deferment rate 5%

Freehold value	£ 131,300
Extended lease value	£ 130,000
relativity	90.74%
Existing Lease value	£ 117,962

Diminution of freehold

Loss of ground rent	1		£ 40.00	
Years Purchase	3.364 years @	7%	2.908002406	£ 116.32
Loss of ground rent	2		£ 60.00	
Years Purchase	33 years @	7%	12.75379	
Present value of £1 in	3.364 years @	7%	0.796439832	£ 609.46
Loss of ground rent	3		£ 90.00	
Years Purchase	33 years @	7%	12.75379	
Present value of £1 in	36.364	7%	0.08541	£ 98.03
Sub-total				£ 823.81

Loss of	Reversion to Freehold					
	Capital value	£	131,300			
	loss of reversion					
	Present value of £1 in	69.364		5%	0.0339020	£ 4,451.33
Sub-total						£ 5,275.14
Marriage Value Calculation						
	Value of existing interests					
	Freeholder					£ 5,275.14
	Leaseholder					£ 117,962.00
	Sub-Total					£ 123,237.14
	Value of proposed interests					
	Freeholder					£ -
	Leaseholder					£ 131,300.00
	Sub-total					£ 131,300.00
	Total marriage value					£ 8,062.86
	At 10% Hope value of future reversion					£ 806.29
	Plus Value of freeholder's existing interest					£ 5,275.14
	Plus					
	Enfranchisement price					£ 6,081.43

Flat 3 Seafield Court, Panel Decision: Valuation

Calculations

Lease expiry date 25/06/2083
 Valuation date 12/02/2014
 Unexpired term Years 69.364

Capitalisation rate 7%
 Deferment rate 5%

Freehold value	£ 141,400
Extended lease value	£ 140,000
relativity	90.74%
Existing Lease value	£ 127,036

Diminution of freehold

Loss of ground rent	1		£ 40.00	
Years Purchase	3.364 years @	7%	2.908002406	£ 116.32
Loss of ground rent	2		£ 60.00	
Years Purchase	33 years @	7%	12.75379	
Present value of £1 in	3.364 years @	7%	0.796439832	£ 609.46
Loss of ground rent	3		£ 90.00	
Years Purchase	33 years @	7%	12.75379	
Present value of £1 in	36.364	7%	0.08541	£ 98.03
Sub-total				£ 823.81

Loss of Reversion to Freehold

Capital value £ 141,400

loss of reversion

Present value of £1 in 69.364 5% 0.0339020 £ 4,793.74

Sub-total £ 5,617.55

Marriage Value Calculation

Value of existing interests

Freeholder £ 5,617.55

Leaseholder £ 127,036.00

Sub-Total £ 132,653.55

Value of proposed interests

Freeholder £ -

Leaseholder £ 141,400.00

Sub-total £ 141,400.00

Total marriage value £ 8,746.45

At 10% Hope value of future reversion £ 874.64

Plus Value of freeholder's existing interest £ 5,617.55

Plus

Enfranchisement price £ 6,492.20

Flat 4 Seafield Court, Panel Decision: Valuation

Calculations

Lease expiry date 25/06/2083
 Valuation date 12/02/2014
 Unexpired term Years 69.364

Capitalisation rate 7%
 Deferment rate 5%

Freehold value £ 131,300
 Extended lease value £ 130,000
 relativity 90.74%
 Existing Lease value £ 117,962

Diminution of freehold

12

Loss of ground rent	1		£	40.00	
Years Purchase	3.364 years @		7%	2.908002406	£ 116.32
Loss of ground rent	2		£	60.00	
Years Purchase	33 years @		7%	12.75379	
Present value of £1 in	3.364 years @		7%	0.796439832	£ 609.46
Loss of ground rent	3		£	90.00	
Years Purchase	33 years @		7%	12.75379	
Present value of £1 in	36.364		7%	0.08541	£ 98.03
Sub-total					£ 823.81

Loss of Reversion to Freehold

Capital value £ 131,300

loss of reversion

Present value of £1 in 69.364 5% 0.0339020 £ 4,451.33

Sub-total £ 5,275.14

Marriage Value Calculation

Value of existing interests

Freeholder £ 5,275.14

Leaseholder £ 117,962.00

Sub-Total £ 123,237.14

Value of proposed interests

Freeholder £ -

Leaseholder £ 131,300.00

Sub-total £ 131,300.00

Total marriage value £ 8,062.86

at 50% £ 4,031.43

Plus Value of freeholder's existing interest £ 5,275.14

Enfranchisement price £ 9,306.57

14

Flat 5 Seafield Court, Panel Decision: Valuation

Calculations

Lease expiry date 25/06/2083
 Valuation date 12/02/2014
 Unexpired term Years 69.364

Capitalisation rate 7%
 Deferment rate 5%

Freehold value £ 141,400
 Extended lease value £ 140,000
 relativity 90.74%
 Existing Lease value £ 127,036

Diminution of freehold

Loss of ground rent	1		£ 40.00	
Years Purchase	3.364 years @	7%	2.908002406	£ 116.32
Loss of ground rent	2		£ 60.00	
Years Purchase	33 years @	7%	12.75379	
Present value of £1 in	3.364 years @	7%	0.796439832	£ 609.46
Loss of ground rent	3		£ 90.00	
Years Purchase	33 years @	7%	12.75379	
Present value of £1 in	36.364	7%	0.08541	£ 98.03
Sub-total				£ 823.81

15

Loss of	Reversion to Freehold					
	Capital value	£	141,400			
	loss of reversion					
	Present value of £1 in	69.364		5%	0.0339020	£ 4,793.74
Sub-total						£ 5,617.55
Marriage Value Calculation						
	Value of existing interests					
	Freeholder					£ 5,617.55
	Leaseholder					£ 127,036.00
	Sub-Total					£ 132,653.55
	Value of proposed interests					
	Freeholder					£ -
	Leaseholder					£ 141,400.00
	Sub-total					£ 141,400.00
	Total marriage value					£ 8,746.45
	at 50%					£ 4,373.22
	Plus Value of freeholder's existing interest					£ 5,617.55
	Enfranchisement price					£ 9,990.78

16

Flat 6 Seafield Court, Panel Decision: Valuation

Calculations

Lease expiry date		25/06/2083
Valuation date		12/02/2014
Unexpired term	Years	69.364

Capitalisation rate		7%
Deferment rate		5%

Freehold value	£	131,300
Extended lease value	£	130,000
relativity		90.74%
Existing Lease value	£	117,962

Diminution of freehold

Loss of ground rent	1		£	40.00	
Years Purchase	3.364 years @		7%	2.908002406	£ 116.32
Loss of ground rent	2		£	60.00	
Years Purchase	33 years @		7%	12.75379	
Present value of £1 in	3.364 years @		7%	0.796439832	£ 609.46
Loss of ground rent	3		£	90.00	
Years Purchase	33 years @		7%	12.75379	
Present value of £1 in	36.364		7%	0.08541	£ 98.03
Sub-total					£ 823.81

Loss of Reversion to Freehold

Capital value £ 131,300

loss of reversion

Present value of £1 in

69.364

5%

0.0339020

£ 4,451.33

Sub-total

£ 5,275.14

Marriage Value Calculation

Value of existing interests

Freeholder

£ 5,275.14

Leaseholder

£ 117,962.00

Sub-Total

£ 123,237.14

Value of proposed interests

Freeholder

£ -

Leaseholder

£ 131,300.00

Sub-total

£ 131,300.00

Total marriage value

£ 8,062.86

at 50%

£ 4,031.43

Plus Value of freeholder's existing interest

£ 5,275.14

Enfranchisement price

£ 9,306.57

18