

29/18



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

Case Reference : **MAN/00CJ/OLR/2014/0001**

Properties : **Flats 7, 13, 16, 29, 41 and 56 Granville Court, Granville Road, Jesmond, Newcastle upon Tyne NE2 1TQ**

Applicant : **Stonecross Estates Limited**

Representative : **Bude Nathan Iwanier Solicitors**

Respondent : **St Mary Magdalene & Holy Jesus Trustee Limited**

Representative : **(unrepresented)**

Type of Application : **Application for determination of premium - sub-section 48(1) Leasehold Reform and Urban Development Act 1993**

Tribunal Members : **Mr S. Moorhouse LLB
Mr I.R. Harris BSc FRICS
Mrs S. Aldred**

Date and venue of Hearing : **1 September 2014 - Quayside House, 110 Quayside, Newcastle upon Tyne**

Date of Decision : **10 September 2014**

DECISION

DECISION

The premiums payable upon the grant of the new leases of the Properties shall be as follows:

Flat 7:	£3,092
Flat 13:	£2,997
Flat 16:	£3,197
Flat 29:	£2,451
Flat 41:	£2,574
Flat 56:	£2,772
Total:	£17,083

REASONS

The Applications

1. Six applications were made by the Applicant, one in relation to each of the Properties, for the determination of the premium on the grant of a new lease and other terms of acquisition pursuant to sub-section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act'). Directions were issued on 27 May 2014. Prior to the hearing, the Tribunal was notified by the parties that only the premium remained in dispute.
2. The Properties are situated in a purpose built block of 82 flats in a popular residential location close to the city centre. The site, including the block of flats and a former caretakers bungalow, was leased to the Applicant by the Respondent freeholder on 14 February 2006 for a term of 125 years from 25 March 2003, expiring on 24 March 2128. All of the flats, and the bungalow are offered for rent. The Properties are as follows:

Flat 7:	3 bedrooms	to include parking space
Flat 13:	3 bedrooms	to include parking space
Flat 16:	4 bedrooms	to include parking space
Flat 29:	Studio (1 room + bathroom & kitchen)	no parking space
Flat 41:	1 bedroom	to include parking space
Flat 56:	2 bedroom	to include parking space

3. Immediately prior to the hearing the Tribunal conducted an inspection. The Properties were each tenanted at that time and it was not practical to gain access, however the Tribunal inspected a vacant three bedroom flat (No. 1), internal stairwells, lifts and passageways, the basement car park, roof and external areas.
4. The hearing was attended by Mr Maurice Berger FRICS FBEng, Mr Berger having been appointed as an expert by the Applicant. The Respondent was unrepresented at the hearing.

The Law

5. Subsection 48(1) of the Act states as follows:

'48(1) Where the landlord has given the tenant -

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 46(4) or section 47(4) or (5),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice or further counter-notice was so given, a tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.'

6. The following paragraphs appear in Part II of Schedule 13 to the Act:

'2. The premium payable to the tenant in respect of the grant of a new lease shall be the aggregate of -

(a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,

(b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and

(c) any amount of compensation payable to the landlord under paragraph 5.

3. (1) The diminution in value of the landlord's interest is the difference between -

(a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and

(b) the value of his interest in the flat once the new lease is granted.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions -

(a) on the assumption that the vendor is selling for an estate in fee simple or (as the case may be) such other interest as is held by the landlord, subject to the relevant lease and any intermediate leasehold interests;

(b) on the assumption that Chapter I and this Chapter confer no right to acquire any interest in any premises containing the tenant's flat or to acquire any new lease;

(c) on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by an predecessor in title is to be disregarded; and

(d) on the assumption that (subject to paragraph (b)) the vendor is selling with and subject to the rights and burdens with and subject to which the relevant lease has effect or (as the case may be) is to be granted.

(3) In sub-paragraph (2) "the relevant lease" means either the tenant's existing lease or the new lease, depending on whether the valuation is for the purposes of paragraph (a) or paragraph (b) of sub-paragraph (1).

[(4), (5), (6); 4, 4B]

5(1) Where the landlord will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

(2) This paragraph applies to -

(a) any diminution in value of any interest of the landlord in any property other than the tenant's flat which results from the grant to the tenant of the new lease; and

(b) any other loss or damage which results therefrom to the extent that it is referable to the landlord's ownership of any such interest.

(3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the tenant's flat to the extent that this is referable as mentioned in that paragraph.

(4) In sub-paragraph (3) "development value", in relation to the tenant's flat, means any increase in the value of the landlord's interest

in the flat which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction affecting, the flat (whether together with any other premises or otherwise).'

Preliminary matters

7. At the commencement of the hearing the Tribunal established that Mr Berger, the sole attendee, was present in his capacity as an expert witness but was also authorised by the Applicant to represent its interests in the event that the Tribunal had any questions.
8. The Tribunal then sought to identify the common ground between the parties and to identify the issues in dispute. The following are areas of common ground:
 - the terms for the new leases, save for the premium, are agreed;
 - since the lease of the site is subject to a single ground rent, the parties have treated this as being divided equally between the 82 flats - Mr Berger confirms that the bungalow on the site has been disregarded for these purposes;
 - in valuing the rental stream, marriage values and hope values are not applicable; and
 - a deferment rate of 5% is to be used in calculating the 'present value' of the reversionary interest.
9. With Mr Berger's concurrence, the Tribunal identified the following issues as being in dispute:
 - the yield to be assumed in capitalising the ground rent;
 - the value of the reversionary interest in the Properties;
 - the value of the car parking spaces (where applicable); and
 - the compensation to be payable (if any) pursuant to paragraph 5 of Schedule 13 to the Act.
10. Three preliminary issues arise and are addressed first:

Admissibility of Expert Evidence

11. There is no challenge to the admission of Mr Berger's evidence as being 'expert' in nature and the Tribunal is content to admit it as such.

12. The Respondent's valuation evidence is offered by Miss Sharon Hepple, General Manager of the Respondent and, Mr Eric Jefferson FRICS, a Chartered Surveyor. The Tribunal notes, and it is pointed out on the Applicant's behalf, that Miss Hepple has a potential conflict of interest as an employee of the Respondent. However, given that the valuation evidence offered by the Respondent is offered jointly by Miss Hepple and by an independent Chartered Surveyor whose credentials are not challenged, the Tribunal is content to accept the Respondent's valuation report as expert evidence.

Late evidence

13. In advance of the hearing the Tribunal received from the Respondent a letter dated 26 August 2014 enclosing various drawings. These are stated by the Respondent to have been prepared on the Applicant's behalf in the period March to June 2000 and to relate to a proposed comprehensive refurbishment of the entire block (including relocating the lifts and staircases to the central courtyard, enlarging existing flats and increasing their number) and the addition of 8 penthouse apartments with very large floor areas.
14. The Respondent indicates that these are submitted in rebuttal of a statement by Mr Berger that he was not aware of any development plans for the building. Mr Berger clarified to the Tribunal that the statement referred to was made in the course of discussions directly between surveyors.
15. The Tribunal accepts the submission of late evidence in this instance because:
 - (1) the Applicant also seeks to admit late documents (see below), and
 - (2) within his arguments to the Tribunal Mr Berger refers also to the development proposals that are the subject of the letter.

Replacement calculations

16. Mr Berger tabled at the hearing revised valuation evidence, having identified errors and omissions within his earlier valuation evidence. In each instance the revisions favour the Respondent.
17. In response to a question from the Tribunal Mr Berger also acknowledged that there were some minor arithmetical or 'rounding' differences between the ground rent figures quoted within his calculations (both the previous and revised calculations) and those submitted by the Respondent. Mr Berger stated that his client was content to accept the Respondent's figures in this respect.

18. The Tribunal is prepared to admit into evidence Mr Berger's revised calculations recognising that, whilst the Respondent has not had the benefit of reviewing Mr Berger's revised calculations, the revisions are in the Respondent's favour. The Tribunal notes also that the Applicant is prepared to accept the Respondent's apportioned ground rent figures where minor arithmetical or 'rounding' differences arise.
19. However the Tribunal notes that there are other anomalies concerning ground rent within the calculations submitted by both parties, including the Applicant's revised calculations. In the light of these anomalies the Tribunal has, for its own calculations in relation to each of the Properties, applied the agreed 1/82 apportionment to the ground rent figures as stated within the existing lease.

Yield

Submissions

20. The Applicant has argued for a 7% yield to be assumed in capitalising ground rent and the Respondent has argued for a 5% yield, in each case supported by the advice of their expert(s).
21. The Respondent's expert report refers to the 'unbroken' nature of the block, the minimal management required on the part of the freeholder and the fixing of future ground rent increases to specific amounts. The Respondent's experts go on to identify a Northern Rent Assessment Panel case determined on 16 April 2012 relating to a property at 52 the Meadows, Darwen, Lancashire. In this case the tribunal considered yield rates by reference to investment rates and a yield rate of 5% was found to be appropriate.
22. Replying to the Respondent's submission Mr Berger submits that the Applications relate only to 6 of the flats (approximately 7% of the ground rent income), that the freeholder's level of management responsibility will not change and that the lack of any dynamic review of ground rent makes the investment less attractive and justifies a higher yield assumption. In relation to the case referred to, Mr Berger comments that no valuation evidence was submitted and that it was a case under the Leasehold Reform Act 1967 (going on to outline the differences in approach required under the two acts).
23. Mr Berger argues for a yield rate of 7% on the basis that this is the applicable level outside central London and for the remainder of the country, Savills recommend a rate of 7.1% outside London and it would (in his view) be inconceivable that a rate of less than 7% could apply given that a rate of 7-8% is available on a reasonable quality buy to let property.
24. In view of the 'stepped' increases in ground rent it is necessary to apply a deferment rate to calculate 'present value' within the capitalisation calculations. Neither party made any submission on this specifically and

the Applicant and the Respondent have taken rates of 7% and 5% respectively within their calculations.

Findings

25. The Tribunal notes that the case referred to by the Respondent is brought under the Leasehold Reform Act 1967 and relates to the acquisition of the freehold interest in a house, not the grant of a new lease of a flat. The Tribunal accepts Mr Berger's argument that no valuation evidence was brought in that case.
26. The Respondent has provided nothing to persuade the Tribunal that a yield rate of 5% is appropriate in the present case and Mr Berger's arguments in favour of a rate of 7% are supported. The Tribunal finds that the appropriate assumed yield for capitalisation purposes is 7%.
27. In the absence of any specific submission as to the deferment rate to be adopted to determine 'present value' within the capitalisation calculations the Tribunal finds a rate of 7% to be appropriate to reflect the market and the asset type.

Reversion

Submissions

28. The Respondent has made no submission as to the value of the reversion but disagrees with the approach advocated by the Applicant of calculating reversionary values by reference to a consistent price per square foot.
29. Mr Berger argues that in the absence of any evidence from the Respondent a rate per square foot would seem to be a reasonable approach, notwithstanding that there are acknowledged flaws in this approach. Mr Berger states that he has arrived at his proposed values by analysing the asking prices of flats at the neighbouring property of Osborne Court. Mr Berger comments that he also looked at converted flats in the area and the rates proved to be similar.
30. The Applicant's proposed values (referred to by the Applicant as the 'flat value') are as follows:

Flat 7:	£241,960
Flat 13:	£215,970
Flat 16:	£270,480
Flat 29:	£76,820
Flat 41:	£100,510
Flat 56:	£154,560

Findings

31. The Tribunal finds the comparables adopted by Mr Berger to be reasonable. It recognises that there are flaws in the methodology of taking floor areas, for example the difference in value between a 2 bed flat and a similar flat with 1 or 2 extra bedrooms would not be proportionate to the additional floor area in the Tribunal's experience.
32. However, taking Mr Berger's proposed individual values for each flat, these values are reasonable in the market place from the Tribunal's experience of nearby properties in similar or better condition - in this respect the Tribunal notes that the flats at Granville Court are of basic quality with small kitchens and dated fittings. Whilst the methodology of calculating price by reference to floor area has flaws, the resulting values are, in this instance, reasonable.
33. Analysing this further, the Tribunal considers that ground floor flats are generally less desirable in the market. The ground floor flats in the present case are numbers 13 and 29. Flat 13 is a 3 bed flat and is smaller than the 3 bed flat at number 7 on the third floor. Whilst the difference in size would not wholly justify the difference in value, when the ground floor position of Flat 13 is taken into consideration the difference is justified. Flat 29 is a very small studio flat. Its ground floor position justifies the low valuation which would otherwise have overly compensated for its small floor area.
34. The reversionary values proposed by the Applicant are accepted by the Tribunal.

Car parking spaces

Submissions

35. The Applicant puts forward a proposed value of £1,500 for each of the car parking spaces that are to be demised with the Properties. The Respondent's value is £15,000 per space. Neither party has put forward comparable evidence.

Findings

36. The Tribunal notes that the car parking spaces in question are identifiable and are situated within a lockable basement. The Tribunal notes also that other on-site parking is available around the perimeter of Granville Court. Parking in the area, given its proximity to the city centre and to two universities is at a premium. To the Tribunal's knowledge unsecured open space parking in the area is available at a cost in the region of £1,000 to £1,500 per annum.
37. Taking these considerations into account the Tribunal determines the value of each of the car parking spaces to be included within the demise of one of the Properties to be £10,000.

Compensation

Submissions

38. The Applicant submits that no compensation pursuant to paragraph 5 of Schedule 13 to the Act should be included in the premiums. The Respondent, in its letter dated 26 August 2014 identifies former development plans prepared on the Applicant's behalf and asks the Tribunal to ignore its previously submitted valuation, using the Tribunal's own expertise in considering the compensation due.
39. Mr Berger commented within the hearing that the plans previously prepared by his client and submitted to the Tribunal by the Respondent had not proceeded - it had not been financially viable to re-model the existing scheme and to add penthouse apartments. Mr Berger acknowledged that on the expiration of the existing lease the Respondent would have lost its ability, having granted new leases of the Properties, to redevelop the site in its entirety. He questions however whether this gives rise to a loss since there is no evidence that at that time (after 109 years) the value of the site would exceed the value of the flats.
40. Mr Berger also quotes section 61 of the Act which provides a mechanism for a landlord who has granted a new lease pursuant to the Act to recover possession of the flat in question at the expiration of the original lease term, upon payment of compensation. This mechanism can be used in the event that the landlord cannot reasonably proceed with redevelopment plans for premises in which the flat is contained unless the flat is re-acquired.

Findings

41. Compensation under paragraph 5 of Schedule 13 to the Act is payable only in relation to an interest in 'other property'. If there is any redevelopment value in the Properties then this should be reflected in the valuation of the reversionary interest.
42. There have been no arguments in the context of the reversionary interest in the Properties that any redevelopment value should be taken into consideration. In relation to the remainder of Granville Court, no evidence has been put forward to substantiate that there is any redevelopment value, save that certain drawings have been submitted in relation to a proposed scheme of redevelopment that the Applicant maintains did not proceed because it was not financially viable.
43. The Tribunal recognises that by taking extended leases of 6 flats out of a total of 82, located in various parts of the building, the Applicant potentially restricts the options that would otherwise be open to the Respondent at the expiration of the term of the existing lease. For example the Respondent might wish in 109 years time to redevelop the entire site.

44. No evidence has been put forward however to demonstrate any diminution in value as a consequence of any limit in future flexibility, or as a consequence of any other factor.
45. The landlord enjoys a statutory right under section 61 of the Act that enables it, upon payment of compensation, to repurchase the Properties at the expiration of the term of the existing lease should it have redevelopment plans at that time.
46. The question therefore arises, whether the Tribunal should anticipate the need to pay compensation under section 61 of the Act, or to negotiate the repurchase of the Properties at some future time, and make provision for this within the premium payable for the new leases of the properties by way of compensation under paragraph 5 of schedule 13 to the Act. The Tribunal considers that there is no basis for awarding compensation in this respect. No evidence has been put forward by the Respondent to suggest that the repurchase of the Properties would be a likely scenario or that overall the grant of the new leases results in any loss or diminution in value in respect of its interest in the remainder of Granville Court.
47. The Tribunal therefore finds that no compensation element is to be included in the calculation of the premiums.

Determination

48. The Tribunal has applied these findings and has calculated the premiums payable on the grant of the new leases of the Properties to be as follows:

Flat 7:	£3,092
Flat 13:	£2,997
Flat 16:	£3,197
Flat 29:	£2,451
Flat 41:	£2,574
Flat 56:	£2,772
Total:	£17,083

49. The Tribunal's calculations are appended to this decision.
50. No application concerning costs has been received.

Appendix

7 Granville Court Granville Road Jesmond Newcastle Including parking space 19	£251,960	Years Purchase and Deferment	Ground rent x YP x PV	
		Ground Rent YP 15 years @ 7%	£122.00 9.110	£1,111.42
		Ground Rent YP 25 yrs @ 7%	£183.00 11.65	
		PV of 1 in 15 years @7%	0.36	£771.77
		Ground Rent YP 25 yrs @ 7%	£274.00 11.65	
		PV of 1 in 40 years @ 7%	0.07	£212.91
		Ground Rent YP 25 yrs @ 7%	£412.00 11.65	
		PV of 1 in 65 years @ 7%	0.01	£57.60
		Ground Rent YP 25 yrs @ 7%	£617.00 11.65	
		PV of 1 in 90 years @ 7%	0.00	£16.32
	Reversion to Market Value	PV in 115 years@5%	0.00366	£922.17
			total	£3,092.19
			Say	£3,092.00

13 Granville Court Granville Road Jesmond Newcastle Including parking space 20	£225,970	Years Purchase and Deferment	Ground rent x YP x PV	
		Ground Rent YP 15 years @ 7%	£122.00 9.110	£1,111.42
		Ground Rent YP 25 yrs @ 7%	£183.00 11.65	
		PV of 1 in 15 years @7%	0.36	£771.77
		Ground Rent YP 25 yrs @ 7%	£274.00 11.65	
		PV of 1 in 40 years @ 7%	0.07	£212.91
		Ground Rent YP 25 yrs @ 7%	£412.00 11.65	
		PV of 1 in 65 years @ 7%	0.01	£57.60
		Ground Rent YP 25 yrs @ 7%	£617.00 11.65	
		PV of 1 in 90 years @ 7%	0.00	£16.32
	Reversion to Market Value	PV in 115 years@5%	0.00366	£827.05
			total	£2,997.06
			SAY	£2,997.00

16 Granville Court Granville Road Jesmond Newcastle	£280,480	Years Purchase and Deferment	Ground rent x YP x PV	
Including parking space 21		Ground Rent	£122.00	
		YP 15 years @ 7%	9.110	£1,111.42
		Ground Rent	£183.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 15 years @7%	0.36	£771.77
		Ground Rent	£274.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 40 years @ 7%	0.07	£212.91
		Ground Rent	£412.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 65 years @ 7%	0.01	£57.60
		Ground Rent	£617.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 90 years @ 7%	0.00	£16.32
	Reversion to Market Value	PV in 115 years@5%	0.00366	£1,026.56
			total	£3,196.57
			SAY	£3,197.00

29 Granville Court Granville Road Jesmond Newcastle	£76,820	Years Purchase and Deferment	Ground rent x YP x PV	
Including no parking space		Ground Rent	£122.00	
		YP 15 years @ 7%	9.110	£1,111.42
		Ground Rent	£183.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 15 years @7%	0.36	£771.77
		Ground Rent	£274.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 40 years @ 7%	0.07	£212.91
		Ground Rent	£412.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 65 years @ 7%	0.01	£57.60
		Ground Rent	£617.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 90 years @ 7%	0.00	£16.32
	Reversion to Market Value	PV in 115 years@5%	0.00366	£281.16
			total	£2,451.17
			SAY	£2,451.00

Address	Extended Value	Valuation		Sum
41 Granville Court Granville Road Jesmond Newcastle	£110,510	Years Purchase and Deferment	Ground rent x YP x PV	
Including parking space 22		Ground Rent	£122.00	
		YP 15 years @ 7%	9.110	£1,111.42
		Ground Rent	£183.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 15 years @7%	0.36	£771.77
		Ground Rent	£274.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 40 years @ 7%	0.07	£212.91
		Ground Rent	£412.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 65 years @ 7%	0.01	£57.60
		Ground Rent	£617.00	
		YP 25 yrs @ 7%	11.65	
	PV of 1 in 90 years @ 7%	0.00	£16.32	
	Reversion to Market Value	PV in 115 years@5%	0.00366	£404.47
			total	£2,574.48
			SAY	£2,574.00

Address	Extended Value	Valuation		Sum
56 Granville Court Granville Road Jesmond Newcastle	£164,560	Years Purchase and Deferment	Ground rent x YP x PV	
Including parking space 23		Ground Rent	£122.00	
		YP 15 years @ 7%	9.110	£1,111.42
		Ground Rent	£183.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 15 years @7%	0.36	£771.77
		Ground Rent	£274.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 40 years @ 7%	0.07	£212.91
		Ground Rent	£412.00	
		YP 25 yrs @ 7%	11.65	
		PV of 1 in 65 years @ 7%	0.01	£57.60
		Ground Rent	£617.00	
		YP 25 yrs @ 7%	11.65	
	PV of 1 in 90 years @ 7%	0.00	£16.32	
	Reversion to Market Value	PV in 115 years@5%	0.00366	£602.29
			total	£2,772.30
			SAY	£2,772.00