



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

Case Reference : CHI/45UC/OLR/2015/0285
CHI/45UC/OLR/2015/0286

Property : Flats 18 & 22 Harsfold Close, Rustington,
Littlehampton, West Sussex BN16 2QQ

Applicant : Mr Alan Ernest Brewer (Flat 18)
Ms Caroline Susan Bowles (Flat 22)

Representative : Mr Julian Wilkins MRICS

Respondent : Long Acre Securities Limited

Representative : Mr Howard Gross FRICS

Type of Application : Section 48 Leasehold Reform Housing and
Urban Development Act 1993

Tribunal Member(s) : Judge D.R. Whitney
Mr. D. Banfield FRICS

Date of Hearing : 5th May 2016 at Chichester Magistrates
Court

DECISION

BACKGROUND

1. This decision relates to two applications for lease extensions under the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”) which were heard together.
2. Mr Alan Ernest Brewer served Notice under the 1993 Act dated 26 May 2015 seeking a lease extension of Flat 18 Harsfold Close, Rustington, Littlehampton BN16 2QQ (“Flat 18”). Counter notice admitting the right to a lease extension was served by the Respondent dated 3 August 2015 which challenged the premium payable under the 1993 Act.
3. Ms Caroline Susan Bowles served Notice under the 1993 Act dated 26 May 2015 seeking a lease extension of Flat 22 Harsfold Close, Rustington, Littlehampton BN16 2QQ (“Flat 22”). Counter notice admitting the right to a lease extension was served by the Respondent dated 3 August 2015 which challenged the premium payable under the 1993 Act.
4. In respect of both Flat 18 and Flat 22 application was made to the tribunal dated 23 December as neither the premium nor form of any new lease had been agreed. Directions were given dated 30 December 2015 in respect of both claims. Both claims are being heard together although a bundle for each was prepared. References to page numbers are the page numbers in the bundles supplied.
5. The bundles included an agreed form of lease and only the Premium payable in respect of each extension was to be determined by the tribunal.

INSPECTION

6. Immediately prior to the hearing the tribunal inspected the two flats. Mr Wilkins was present and Ms Bowles in her Flat.
7. Harsfold Close is a development not far from the seafront at Rustington. The subject block in which both Flats was to be found is towards the end of the close which is a cul de sac. The subject block was built in the late 1960's and is of brick built construction with a pitched roof. It is three storeys high. Most of the flats appear to have replaced their windows with UPVC double glazed units although not all flats on the development have done so. The grounds and communal areas all appeared well maintained and cared for. To the rear of the subject block was a block of garages in which we were told each of the Flats in question had one garage.

8. Flat 22 was on the top floor. It had two bedrooms, a lounge, kitchen diner, bathroom with separate WC. It was just possible from the rear bedroom window and via the balcony accessible by French doors in the lounge to just see the sea. The central heating in this flat was the original system. The kitchen had obviously at some point been replaced. The bathroom had a bath with a shower over. The windows had been replaced with UPVC units we were told prior to Ms Bowles purchasing the property.
9. Flat 18 had the same lay out as 22 but was on the First Floor immediately below Flat 22. As with Flat 22 you could just about see the sea but neither flat could be described as having sea views in this tribunal's opinion.
10. Flat 18 had a wet room with a shower and separate WC. The kitchen looked as though it has recently been refitted. There was also in the kitchen a modern combi boiler for provision of heating and hot water.
11. The tribunal also viewed externally the other blocks, particularly with a view to ascertaining the locations of the flats being used to provide valuation comparables.

HEARING

12. Both Mr Wilkins and Mr Gross explaining they would be appearing as advocate and expert for their respective clients.
13. At page 211 and 212 of the bundle was a statement of agreed facts. The items to be determined was the appropriate relativity to be applied and the long leasehold unimproved valuation and from these the premium payable.
14. At the start of the hearing Mr Gross explained he wished to present some substitute pages for his report and correct some errors. The errors were essentially factual errors which did not change his opinion of the value.
15. Mr Wilkins was explaining he had only heard about this first thing this morning did not object as he was going to raise many of these inconsistencies when cross examining Mr Gross. The amended pages were added in to the bundle and the tribunal made manuscript amendments to the report of Mr Gross appearing at pages 156-212 of the bundles.
16. Mr Wilkins also sought to rely on two documents. One a decision and the second an extract from the RICS paper on the graphs of relativity. Mr Gross had not seen these and so it was agreed the tribunal would

- consider the admissibility later once Mr Gross had an opportunity to consider the same.
17. Mr Wilkins then took the tribunal through his report to be found at pages 68-153.
 18. He explained he looked at the various graphs and market evidence when assessing relativity. In respect of market evidence he relied on 5 long lease sales and 4 short lease sales.
 19. At page 74 he listed what he believed were the relevant graphs. He discounted the Beckett & Kay graph as this was based on opinion. He also did not seek to rely on South-East Leasehold graph as he did not feel this was relevant to the particular area. In respect of the Andrew Pridell Associates graph he also had some more recent data which that company had supplied updating their graph from 2009.
 20. He adopted an average of the four graphs he relied upon.
 21. As for market data he says this gives a figure of 92% which he reduced by 8% to take account of the no Act world. This gave a figure of 84% which he still felt may be too high so averaged this with the graph to give 78%. He felt this was fair and that whilst there was evidence the relativity could be higher he believes the "coast" location and elderly buyers can distort the market.
 22. In respect of the market evidence he took all transactions since 2013 which seemed to be a natural point when there was a gap in sales. In his opinion it was at that time that the market started to improve. He took us to page 101 of his report which was a table of the flats showing adjustments he had made.
 23. Mr Wilkins explained that where the flats had been double glazed he made an allowance of £3,000. For fitted kitchens he allowed £2,500 and the same figure for bathrooms. If there was no garage he added £5,000.
 24. He allowed £5,000 for a garage as in his opinion a stand-alone garage would sell for about £8,000 but in his opinion when included with a flat you would not get the full value added on.
 25. The sales of Numbers 3 & 8 Harsfold Close were the closest in time. Flat 3 sold for £175,000 in September 2015 and Flat 8 for £173,500 in July 2015.
 26. His view was when you considered all of the comparables and made adjustments for improvements and to adjust to the agreed valuation date the correct figure is £165,000.
 27. Mr Gross then cross examined. Mr Wilkins explained he had not adjusted the raw data for short leases. He felt 8% reduction for no act

World is arguably too high but acting as an expert felt this was appropriate.

28. Mr Wilkins said that grey buyers could affect relativity but he did not adjust. He feels that geographically the graphs cover this area. He did accept that the LEASE graph is nationwide but felt it was relevant and appropriate to include.
29. In respect of the Andrew Pridell Associates (“APA”) he had relied on the updated figures. Mr Wilkins explained he understood it was based on further transactional settlements. Mr Gross put to him that it was a “smoothing” exercise. Mr Wilkins said that was not his understanding from conversations with APA. He accepted that perhaps it had not been peer reviewed but there was no other document since the RICS report of 2009 which had peer reviewed the various graphs.
30. Mr Wilkins confirmed that in making his adjustments he had relied upon his professional judgement.
31. He explained he expected the windows to be replaced because of modern expectations as to comfort and energy efficiency. He reminded everyone that some flats had not had the original wooden frames replaced. He accepted he did not know when the windows in the comparables had been replaced or to what standard.
32. As for the kitchens and bathrooms he accepted the argument that replacement could be just repair and stated in his opinion if very basic it would be just a repair. He had discussed each comparable with the sales agent and came to the conclusion adjustments were appropriate and utilised a blanket approach.
33. He explained he discounted Flat 7 as the price seemed out of kilter with the others.
34. Mr Wilkins does not accept should be a 1% adjustment for freehold value. He understands that the leaseholder can remain as an assured tenant but accepts when the freeholder gets the flat back he could sell at a full rent and price. Mr Wilkins did not accept however that this justified an uplift of 1% on the freehold value.
35. This concluded the evidence for the Applicants. At this point the tribunal adjourned for lunch.
36. After the adjournment Mr Gross confirmed he had no objection to the two documents Mr Wilkins sought to rely upon. One was an extract from the RICS report on the graphs and the second was a tribunal decision in respect of Flat 3, 27 Salisbury Road, Worthing BN11 1RD.
37. Mr Gross’ report was at pages 157 to 212 of the bundle. The inaccuracies he had identified this morning did not affect his valuation on page 172.

38. In his opinion the unimproved long leasehold value is £175,000 and to that a 1% addition for the freehold value should be applied. He submitted that this is a valuation judgement. Mr Gross noted that the tribunal accepted and adopted the 1% in the Flat 3, 27 Salisbury Road case which Mr Wilkins had submitted.
39. Mr Gross had essentially used the same comparables but looked to rely on the most recent as these needed the least adjustment.
40. Flat 3 completed in September 2015 although the sale itself was agreed in the valuation month. When he discussed the property with the selling agents they described it as being "in nice condition". As for improvements in his opinion it is difficult to tell what is an improvement. The block is 49 years old and the leaseholder is responsible for windows, kitchens and bathrooms. The standard is the leaseholders choice. In his opinion there is no adjustment since whilst there could be arguably an improvement he could not calculate the value of the same.
41. Flat 8 was a ground floor flat which he says the agent described as being in average condition with a dated kitchen. The sale itself was agreed in January 2015 in what was a rapidly rising market. He felt compelled to consider the date when the agreement for the sale was agreed.
42. Flat 31 completed in October 2014 at £164,000. He made no adjustment for sea glimpses and adjusted for time and garage. He added on £10,000 for a garage. He accepts there is a range of values which in his opinion would be £7,500 to £10,000. This flat does have a combined WC and shower and the price is £170,750 without a garage and supports £175,000 for the subject flats.
43. He had considered the earlier comparables but felt they were too historic to be relied upon.
44. In respect of relativity there is 51 years unexpired. In his opinion there is no evidence that flats here sell for more than they ought to. He looked at both market evidence and the graphs.
45. Mr Gross went through his methodology of considering the market evidence by refereeing to long and short leasehold transactions. From these figures he discounted by 10% to allow for the no Act world. He accepts this is subjective and again may be a range of discounts which he says is 7.5% to 10%. From this he reaches a relativity of 74.96% adjusted.
46. He then considered the graphs and used three to come up with an average of 77%. He used the 2009 APA graph and not the more recent figures as he was not sure how these had been calculated. He discounted the LEASE graph as being very general.

47. Taking account of both he suggests the correct relativity is 76%.
48. Mr Wilkins then cross examined. He expressed surprise at the number of alterations Mr Gross made to his report. Mr Gross accepted had made alterations after going through the report with a fine toothcomb in preparation for the hearing but the report was reliable. The changes did not affect his valuation. He felt it was appropriate to point out the errors he had detected.
49. Mr Gross explained he had not inspected any flat which still had wooden frames. In his opinion some, maybe not all, would have rotted. He accepts double glazing is a partial improvement but difficult to assess how much repair and how much improvement. He did not think the improvement value was very high and fitting double glazing is the only way to repair today.
50. Mr Wilkins referred Mr Gross to page 162 and para 8.8 of his report which was a brief description of the repairing covenant of the leaseholder. Mr Gross accepts it had not specifically mentioned windows as being the leaseholders liability but the tribunal had a copy of the lease and it was a broad summary of the background.
51. Mr Wilkins referred to page 163 para 9.1 and length of lease referred to 141.07 years. He suggested this was wrong and should be 141.08. Mr Gross accepted this was correct.
52. Mr Wilkins asked why Mr Gross had not referred to Flat 7 as a comparable? Mr Gross accepted perhaps he should have included this since it was close in time to the sale of Flat 26 when comparing long and short lease transactions.
53. Mr Gross did not accept he had cherry picked. He accepted if he had included it this may have affected the relativity he found.
54. Mr Gross said there was good justification for 1%. Mr Wilkins referred him to the case of 24 Sutherland Close Rustington from August 2015 when he had not sought 1%. Mr Gross said that at that time he was in two minds.
55. Mr Wilkins challenged various matters referred to in Mr Gross' report.
56. Mr Wilkins then read the definition of relativity and invited Mr Gross to look at his calculation. He suggested that his calculation at page 172 was incorrect as he should have applied the relativity to the Freehold Vacant Possession valuation. Mr Gross accepted that this should be corrected. Mr Gross recalculated his figures and this gave a new premium of £27,665.
57. Mr Wilkins continued to challenge parts of the report. Mr Gross stood by his report and said that he had exercised his professional judgement in coming to the conclusions he did.

58. In summing up Mr Gross acknowledged he had been compelled to re-work his figures but took the view both parties had put forward useful evidence. Consideration should still be given to his report and its conclusions.
59. In respect of relativity both valuers had looked at market evidence but had experienced difficulties looking at this hence the fall back on the graphs. He looked at an average of the three local graphs. As for market value this is a matter of his professional opinion as to the figure. He contends for a premium of £27,665.
60. Mr Wilkins suggested his valuation was reasoned, reasonable and as an expert should. He had taken account of improvements which is what the 1993 Act requires valuers to do. He believes £165,000 is a balanced valuation. He had taken account of improvements as the 1993 Act required. As for the relativity he had assessed carefully the graphs and the sales data to reach his conclusions.
61. Mr Wilkins suggested he was concerned that Mr Gross' evidence was weighted in favour of his client and he had not prepared as he should have done for the hearing. He was concerned that Mr Gross made no deduction for improvements. Mr Wilkins suggested the report of Mr Gross contained various omissions and discrepancies and a significant error. Mr Gross had conceded this was a fundamental error.
62. Mr Wilkins suggested that Mr Gross was selective in his use of comparables. He had not used Number 7 when comparing the values of long and short lease transactions on a one to one basis despite this being close in time.
63. Mr Wilkins urged the tribunal to accept his figure.

DETERMINATION

64. The tribunal thanks both experts for their submissions. In making its determination the tribunal had regard to all the evidence put before it either within the bundles or during the hearing itself.
65. The tribunal accepts all of the matters agreed between the parties which essentially meant the tribunal was left with determining the correct unimproved valuation and the relativity.
66. Before determining those points the tribunal comments on the points made with regards to Mr Gross' evidence. Mr Gross did seek to make a not inconsiderable number of amendments at the beginning of the hearing. This tribunal does however consider that it was right and proper for Mr Gross to draw those errors to the tribunal's attention and seek to amend them. As to the fundamental error in his calculation when drawn to his attention on cross examination by Mr Wilkins he conceded this and re-worked his valuation.

67. We do not find that Mr Gross was acting in any other way than as an expert and that he understood his duty to the tribunal.
68. Dealing firstly with the question of relativity the tribunal was not persuaded by either valuers assessment of the market data. It seemed that on either valuers case this evidence probably led to the wrong answer.
69. The tribunal preferred considering the graphs. This tribunal agreed that certain graphs had no relevance and this tribunal was persuaded by the submissions that the correct graphs to have regard to were the Andrew Pridell Associates, Nesbitt & Co and Austin Gray graphs.
70. Discussion was had as to whether the updated Andrew Pridell Associates graph should be considered. On balance given the limited information that either Mr Wilkins or Mr Gross was able to provide as to these figures we preferred to rely on the 2009 graph.
71. This tribunal believes that the correct relativity to be applied is an average of the three graphs referred to above (77%) which we accept on the evidence essentially of both valuers was the most relevant.
72. Turning now to the unimproved lease value.
73. Both valuers essentially relied upon the same comparables. Mr Wilkins did include Flat 7 Harsfold Close but then discounted this as he felt the sale price of that flat appeared out of kilter with other transactions and he could not ascertain why. He did seek to criticise Mr Gross for not referring to this at all.
74. Mr Wilkins sought to make various adjustments for improvements particularly deductions for double glazing, refitted kitchens and refitted bathrooms. Mr Gross did not make adjustments believing that it could not be said that any of the changes amounted to improvements.
75. In short the tribunal was not satisfied that any adjustments for double glazing and refitted kitchens and bathrooms were required.
76. Looking at double glazing in this tribunal opinion the replacement of wooden window frames with UPVC units is essentially the only method available to the leaseholder and after 49 years one would expect that most windows either would have been or would require replacement given the buildings close proximity to the sea.
77. In respect of refitted kitchens and bathrooms we were not satisfied from the property particulars attached to the two expert reports that these had been undertaken to any better standard to a normal replacement. We accept it may be possible for both to be refitted in such a way and to such a level that it is arguably an improvement but we do not think this was the case with the various comparable

properties. Essentially they had been refitted with what could be said to be fixtures typically of their time and period.

78. This tribunal does accept that there must be an addition for those comparable where there is no garage. On this point we agreed with Mr Wilkins that essentially you will not achieve the full value of selling a stand-alone garage and agreed with his figure of £5,000.
79. Turning now to the comparable themselves all appeared to be sufficiently close in location to be worth considering. However this tribunal was of the view that it was appropriate to consider the three most recent being number 3, 8 and 31 Harsfold Close. These three transactions were all relative close to the agreed valuation date and there was then a gap of some 5 months to the next historical transaction.
80. The tribunal accepts Mr Wilkins analysis of the adjusted values contained within his schedule at page 101 of the bundle save for improvements. The tribunal believes that if you then average these three transactions this gives a value of £172,383.
81. Mr Wilkins contended for no uplift in calculating the unimproved freehold value whereas Mr Gross contended for 1%. This tribunal accepts that there is some modest uplift and so agrees with Mr Gross that the value is uplifted by 1%.
82. As a result of the above findings the tribunal determines that the proper premium payable for the statutory lease extension in respect of Flats 18 and 22 Harsfold Close is £26,375 for each flat and the calculation is annexed to this decision.

Judge D.R. Whitney

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix 1

LEASE EXTENSION VALUATION

In accordance with the Leasehold Reform and Urban Development Act 1993

18 and 22 Horsfold Close, Rustington BN16 2QQ

Valuation Date	26/05/2015
Unexpired term	51.08
Capitalisation rate	7%
Deferment rate	5%
Relativity	77.00%
Long leasehold value	£172,383
Adjust to freehold	1.00%
Freehold value	£174,124
Existing leasehold interest	£134,075

Freeholder's Present Interests

Ground rent as per valuation £218.00

Freeholder's reversion

Reversion to freehold			£174,124	
PV£1	51.08 yrs	5.00 %	0.082727634	£14,405
Total value of present interests				<u>£14,623</u>

less

Freeholder's Proposed interests

Freeholder's reversion			£174,124	
Defer	141.08 yrs	5.00 %	0.00102474	<u>£178</u>

Diminution of freeholder's interest £14,445

Marriage Value

Values of proposed interests

Leaseholder	£172,383	
Freeholder	<u>£178</u>	£172,561
Less		

Values of present interests

Leaseholder	£134,075	
Freeholder	<u>£14,623</u>	<u>£148,698</u>
Marriage value		£23,863

50% of marriage value to freeholder £11,932

Premium to freeholder

SAY £26,377
£26,375
each flat