

16/10/17



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

Case Reference : **BIR/00CN/OLR/2017/0022**

Property : **42 Hazel Avenue, Sutton Coldfield,
West Midlands, B73 5AX**

Applicants : **Ms H Sketchley-Bates**

Representative : **Mr R Bakewell**

Respondent : **Voteglen**

Representative : **David Coleman and Company**

Type of Application : **Application under section 48 of the
Leasehold Reform, Housing & Urban
Development Act 1993**

Tribunal Members : **Judge S McClure
N Wint FRICS**

Date of decision : **21 December 2017**

DECISION

Decision of the tribunal

- (1) The Tribunal determines that the premium to be paid for a 90 year lease extension under the terms of the Leasehold Reform and Urban Development Act 1993 in respect of 42 Hazel Avenue is £15,959.

Introduction and background

1. This is an application to determine the premium payable to the Respondent by the Applicant to extend a lease under section 48 of the Leasehold Reform Housing and Urban development Act 1993 (the 1993 Act). The Applicant holds a 99 year lease of 42 Hazel Avenue (the Property) granted from 25 March 1974, at a ground rent of £52.50 a year and increasing to £70 a year from 25 March 2040 until expiry.
2. On 24 June 2016 the Applicant served notice on the Respondent requesting a new lease for a term of 90 years in addition to the remaining unexpired term of the present lease at a peppercorn ground rent, and otherwise in accordance with the existing lease.
3. The Respondent admitted the claim on 9 August 2016, accepting the Applicant's right to a new lease, but disputing the premium. On 16 November 2016 the Applicant submitted her application to the Tribunal for a determination of the premium. The premium proposed by the Leaseholder is £8,818. The premium proposed by the Freeholder is £18,130.

The Inspection and hearing

4. The Tribunal inspected the Property on 15 May 2017. Neither party was represented at the inspection, both having been duly notified of the time and date of the inspection. The hearing took place on 23 October 2017, at which both Mr Bakewell and Mr Coleman of David Coleman and Company, were present.
5. The Property is a small first floor purpose built maisonette of brick and tile construction. The accommodation on the ground floor comprises a self-contained entrance and lobby with stairs up to a first floor which includes hallway, 2 bedrooms, living room with through kitchen, bathroom with wc. The windows are PVCu double glazed units and there are wall mounted radiators throughout. There is a small garden area to the rear accessed from the side of the property.
6. The Tribunal came to its decision on the basis of the findings of the inspection, and the written and oral submissions of the parties which are mentioned specifically below where necessary.

The Law

7. Section 48 of the 1993 Act prescribes that if a premium is not agreed it can be referred to the First-tier Tribunal (Property Chamber) where it can be assessed in accordance with the formula in Schedule 13 to the Act.

The premium

8. The calculation of the premium relies on various inputs, some of which are agreed and others disagreed as follows:

9. Agreed inputs:

Ground Rent to 25 March 2040	£52.50 p.a.
Ground Rent to expiry 24 March 2073	£70.00 p.a.
Unexpired term at date of notice	56.75 years
Valuation date	24 June 2016
Value of existing lease	£72,000
Schedule 10 adjustment	96%

10. <u>Disagreed inputs:</u>	<u>Tenant</u>	<u>Landlord</u>
Value of extended lease	£85,308	£95,000
Deduction for 1993 Act rights	£500	6-10%
Capitalisation Rate	6.25%	6%
Deferment Rate	5.5%	5.25%
Freehold VP value Adjustment	£1	1%

Submissions

11. We have considered written submissions from the Applicant dated 29 March 2017, with amendments dated 29 August 2017. We have considered a written submission from the Respondent dated 29 August 2017, which replaced the Respondent's earlier submission of 30 March 2017. We received oral submissions from Mr Bakewell and Mr Coleman.

Determinations

Value of extended lease

12. Mr Bakewell's valuation is based on 22 Wiseman Grove which sold for £95,000 in April 2017. To reflect the increase in capital values between the valuation date of the subject property and sale date of the comparable Mr Bakewell adjusts the sale price downwards based on the Land Registry statistics to reflect the increase in

values that occurred during this period. Mr Bakewell then applies an adjustment of 7.5% to reflect the fact that the comparable is freehold and to reflect the difference in the layout of the accommodation which he describes as being a 'quarter house'.

13. The Tribunal does not find the evidence presented by Mr Bakewell in respect of 22 Wiseman Grove helpful. Unlike the subject Property, 22 Wiseman Grove is a 1 bedroomed semi-detached house located in a different residential area. It is freehold, includes a service charge and post-dates the subject property's valuation date by nearly a year.
14. The Tribunal also does not accept Mr Bakewell's contention that the LEASE graph should be relied upon. In *Sloane Stanley v Mundy [2016] UKUT 0223 (LC)* the Upper Tribunal commented extensively on the unreliability of graph based evidence. Mr Bakewell has not provided arguments or evidence to make us depart from the view expressed by the Upper Tribunal.
15. The Tribunal has considered the evidence presented by Mr Coleman in respect of 35 Hazel Grove which is on the same road and housing estate as the subject property and was sold for £108,000 but is again mindful of the fact that this was in the summer of 2017, more than a year after the valuation date.
16. However, in the absence of comparable market evidence, the Tribunal prefers Mr Coleman's contention that the market based evidence that led to findings in the First-tier Tribunal in BIR/OOCN/2015/004 of relativity of 88.8% with a remaining term of 67.25 years, and in BIR/OOCN/2016/0088 of relativity of 79% with a remaining term of 56.75 years, may be considered. Mr Coleman submitted that on a straight line basis this produces a relativity of 76% for a remaining term of 56.75 years which the Tribunal adopts.
17. The Tribunal is aware that the Upper Tribunal in *Elmbirch Properties Plc v two leaseholders [2017] UKUT 314 (LC)*, at paragraph 37 expressed concerns about the use of a straight line graph, although not going so far as to say they must not be relied upon. In this case, the Tribunal finds that the use of a straight line graph is the most appropriate method of valuing the extended lease given the evidence adduced by the parties. Applying the percentage of 76% to the agreed value of the existing lease, a value of say £95,000 is obtained. Further, a valuation of £95,000 is broadly consistent with the sale just over a year later of 35 Hazel Grove for £108,000, and lends support for the finding of 76%. The Tribunal values the extended lease at £95,000.

Deduction for 1993 Act rights

18. The parties cited *Contractreal Limited v Smith [2017] UKUT 0178 (LC)* and *Elmbirch*, and accepted that there should be a deduction in respect of 1993 Act rights. The difference between them was in the amount of the deduction.
19. The Tribunal does not accept Mr Bakewell's argument that a deduction of a significant sum will result in double counting and that the deduction therefore should be just £500. This is inconsistent with *Contractreal* and *Elmbirch*. Mr Bakewell made no submissions which persuaded the Tribunal to depart from the guidance provided by the Upper Tribunal in *Elmbirch*.

20. Mr Coleman submitted the deduction should be between 6-10%. He had applied a straight line graph to several Upper Tribunal decisions, however he submitted that the resulting 15% deduction felt wrong and proposed instead 6-10%.
21. In *Contracteal*, at paragraph 36, the Upper Tribunal did not apply a straight line approach. Instead of allowing the 4.6% that would have resulted from such an approach it adopted, what it termed, a more cautious approach. It allowed 3.5% with a remaining term of 67.49 years. *Elmbirch* followed *Contracteal* and allowed 3.5% on a remaining term of 67.59 years. In *Contracteal* at paragraph 31, the Upper Tribunal confirmed that as the remaining term decreases, the deduction will increase. Applying *Contracteal* and *Elmbirch*, the Tribunal finds that the appropriate allowance in this case, with a remaining term of 56.75 years, is 5%.

Capitalisation Rate

22. Mr Bakewell proposed 6.25% on the basis that the rate for a flat should be higher than the rate for a house, however he did not say what the rate for a house was.
23. Mr Coleman referred to *Elmbirch* where 5.5% had been allowed, and proposed 6% in this case based on its fixed increase rent reviews and the economics of collecting small amounts of rent. The Tribunal prefers Mr Coleman's precedent based evidence and finds that the appropriate rate is 6%.

Deferment Rate

24. Mr Coleman argued that the decision in *JGS Properties [2017] UKUT 0314* should be extended to apply to 1993 Act cases. We do not agree. *JGS* is authority for Leasehold Reform Act 1967 cases. The authority for the deferment rate for 1993 Act cases remains the decision of the court of Appeal in *Sinclair Gardens Investments (Kensington) Ltd v Ray [2015] EWCA Civ 1231* (7 Grange Gardens). Mr Bakewell proposed 5.5% in accordance with precedent. The Tribunal finds that the appropriate deferment rate is 5.5%.

Freehold Vacant Possession value

25. Both parties accepted that *Contracteal*, and other Upper Tribunal decisions, dictated that there should be a deduction to reflect the fact that the value of an extended leasehold was not 100% of the freehold vacant possession value. The difference between the parties was in the amount of the deduction.
26. Mr Bakewell proposed a deduction of £1 on the basis that his experience was that sometimes a lower value might be ascribed to a freehold flat than to a leasehold. We do not accept Mr Bakewell's proposed £1. This is such a small sum as to effectively ascribe no valuation to the freehold, and so is inconsistent with *Contracteal*.
27. Mr Coleman argued for a 1% deduction, in accordance with *Contracteal*. 1% is consistent with *Contracteal Limited*, which refers, at paragraph 70, to the range of deductions set out at paragraph 98 in *Earl Cadogan v Erkman [2011] UKUT 90 (LC)*. We determine there should be a 1% uplift.

Valuation

28. Applying the Tribunal's findings, the Tribunal determines the value of the premium as follows:

Term

Ground Rent	£52.50	
YP 23.75 years @ 6%	<u>12.4899</u>	£655.72
Ground Rent	£70.00	
YP 33 years @ 6%	14.2302	
PV 23.75 years @ 6%	<u>0.2506</u>	£249.63

Reversion (to Freehold)

Leasehold Market Value	£95,000	
<u>Add Freehold uplift 1%</u>	<u>£950</u>	
	£95,950	
<u>Less Sch. 10 Rights 4%</u>	<u>£3,838</u>	
	£92,112	
PV 56.75 years @ 5.5%	<u>0.0479</u>	<u>£4,412.16</u>
		£5,317.51

Less Reversion (after extension)

Freehold Market Value	£95,950	
PV 146.75 years @ 5.5%	<u>0.0004</u>	<u>£38.38</u>

Diminution in Freehold Interest £5,279.13

Marriage Value

Proposed Interests		
Freehold	£38.38	
Leasehold	<u>£95,000</u>	£95,038.38

Present Interests		
Freehold		£5,279.13
Leasehold	£72,000	
<u>Less 'No Act World'</u>		
<u>adjustment 5%</u>	<u>£3,600</u>	<u>£68,400</u>
		<u>£73,679.13</u>

Marriage Value £21,359.25

Shared equally £10,679.63

Total £15,958.76

Premium to be paid by Leaseholders SAY £15,959

Decision

29. The Tribunal determines the premium payable by the Applicants at £15,959.
30. No application for costs was made. Accordingly, no order for costs was made by the Tribunal.
31. If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 21 December 2017