



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

Case Reference : CHI/29UC/OLR/2021/0019

Property : Top Flat, 109 Sturry Rd Canterbury CT1 1DA

Applicant : Hazelnut UK Ltd

Representative : Marsden Rawsthorn Solicitors Limited

Respondent : Simon Ross Damien Joseph Gardner Emily
Louise Triffault

Representative :

Type of Application : S.48(1) Leasehold Reform Housing and Urban
Development Act 1993 (The Act)

Tribunal Member(s) : Mr R T Brown FRICS
Mr B Bourne MRICS MCI Arb

Date of Decision : 16th August 2021

DECISION

Decision of the Tribunal

- 1. The Tribunal determines the premium payable for the new lease of Top Flat, 109 Sturry Road, Canterbury (“the property”) at £14,197.00 in accordance with section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”).**

The Application

2. The Applicant seeks a determination of premium for the acquisition of a new lease pursuant to Section 48 of the Leasehold Reform, Household and Urban Development Act 1993.
3. On 4th June 2020 the Applicant served a notice to exercise the right to acquire a new lease of the property at a premium of £8,000.00 plus £600.00 by way of other amounts under Section 13 of the Act for a 90- year extension at a peppercorn rent.
4. The Landlord’s solicitor issued a counter notice admitting the Applicant’s right to a new lease but disputing the Applicant’s proposals in respect of the premium and proposing a price of £27,280.00.
5. The sole matter in dispute was the premium, in particular the freehold vacant possession value.

Paper Consideration

6. The parties are in agreement that this case would be determined by the Tribunal on the evidence and information contained in the agreed Bundle, without the parties or their representatives being present.
7. Directions for the conduct of the case were issued on 10th March 2021 with Further Directions given on 23rd July.
8. With the parties’ consent, the proceedings were conducted without an inspection by the Tribunal members.

Background

9. The property is two- bedroom First Floor Flat in a converted Victorian mid terrace house located on the busy A28 road to the North East of Canterbury.
10. The flat comprises: Landing, Living Room, Kitchen, 2 Bedrooms, Bathroom and separate w.c. Externally the front garden is included in the demise.
11. The flat is held under a lease for a term of 99 years from 25th December 1989 at a fixed Ground Rent of £75.00 per annum. 68.55 years unexpired at the date of the Notice.

12. The terms of the new lease to be granted are agreed.

The Law

13. A summary of the relevant law is set out in Appendix 1.

The Issues

14. The matters agreed between the parties in respect of the premium were as follows:

- Valuation date: 4th June 2020.
- Unexpired term: 68.55 years.
- The capitalisation rate for the ground rent 7.00%.
- Deferment Rate: 5.00%
- Relativity: 84.85%
- The nature of any improvements to the property.

15. The matters remaining in dispute on which the valuers have not been able to reach agreement for the Tribunal to determine are:

- The freehold vacant possession value
Applicant Leaseholder £155,000.00.
Respondent Freeholder £181,800.00.

Summary of the Evidence

Freehold Vacant Possession Value

16. Mr T Jackman MRICS of Aspects Surveyors produced an expert's report on behalf of the Applicant in which he concluded that the Freehold Vacant Possession Value to be adopted for this calculation is £155,000.00.

17. In support of his valuation he referred to 3 sales of flats in the vicinity:

166 Downs Road CT2 7TW: 3rd February 2020 £157,500.00 A more modern two-bedroom second floor with a newly granted 99- year lease and with a floor area of 67 sq.m.

14 Halstead Close CT2 7UD: 3rd September 2020 £156,000.00. A more modern two bedroom second floor flat subject to a long- lease and with a floor area of 57 sq.m.

28 Hometown CT1 3RG: 29th October 2020 £177,995.00. A more modern two bedroom second floor flat subject to a 160 year- lease and with a floor area of 63 sq.m.

This property also benefits from en-suite bathroom, allocated parking and is close to a public park

18. Mr William Bradley MRICS of Bradley Harris produced a report on behalf of the Freeholder in which he concluded the Freehold Vacant Possession Value is £181,800.00.

The Parties Valuations

19. Applying the inputs presented above together with the agreed inputs the parties calculate the premium as follows:

Leaseholder: £14,197.00.

Freeholder: £16,610.00.

20. The Statement of Agreed Facts lists a number of issues as being in dispute and is signed by Mr Jackman on behalf of the Applicant but not signed by the Respondents or their representative. The Directions of the Tribunal dated the 23rd July 2021 identify a single matter as remaining in dispute namely the Freehold Vacant Possession Value. This is the sole issue to be determined by the Tribunal.
21. The Tribunal found as a matter of fact that the report prepared by Mr Jackman was in the correct format for an expert report before the First-tier Tribunal.
22. The Tribunal found as a matter of fact that Mr Bradley's report was prepared for the benefit of and addressed to his client and not the Tribunal.
23. Mr Bradley's Report is not in the appropriate format of an expert report before the First-tier Tribunal. Further, it failed to address the remaining issue in dispute, namely how he arrived at his Freehold Vacant Possession Value. Further, at page 60 of the Bundle he provides an incomplete valuation using but at page 61 a complete valuation using different figures.
24. For these reasons the Tribunal places limited weight on this report, which lacks any kind of supporting evidence for his conclusions in relation to the Freehold Vacant Possession Value.
25. Both valuations were headed Without Prejudice and Subject to Contract. Normally such documents would not appear before the Tribunal without agreement of the parties. In this case however it appears the parties are agreed about disclosure.
26. The Tribunal treats with caution evidence of sales post the valuation date in particular in this case taking account of the current pandemic and the effect of the resulting Stamp Duty holiday. The Tribunal also notes the apparently limited local evidence of directly comparable properties. The Tribunal finds no reason to disagree with the Applicant's expert's analysis of the comparable evidence.
27. Having regard to its findings above the Tribunal confirms the Applicants valuation of the Freehold Vacant Possession Value in the sum of £155,000.00

The Tribunal's Valuation

28. The Tribunal confirms the valuation prepared by the Applicant as being a reasonable premium to pay for a 90- year lease extension in respect of the subject property.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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

1. The statutory provisions dealing with the premium payable by the Applicant for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the Act. The premium is the aggregate of
 - The diminution in value of the landlord's interest in the tenant's flat
 - The landlord's share of the marriage value.
 - Any amount of compensation payable to the landlord.
2. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:
 - The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and
 - The value of his interest in the flat once the new lease is granted.
3. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements.

The value of the landlord's interest comprises two elements:

 - The right to receive rent under the existing lease for the remainder of the term (*The term*).
 - The right to vacant possession at the end of term subject to the tenant's right to remain in occupation (*The reversion*).
5. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's interests after the new lease had been granted, and then deducting the corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.
6. Paragraph 5 of schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this Application.