



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

Case Reference	:	BIR/OOCN/OLR/2015/0060 BIR/OOCN/OLR/2015/0061
Property	:	Flat 1 Brockenhurst Court & Flat 3 Lymington Court Station Road Wylde Green Sutton Coldfield B73 5JY
Applicant	:	Doveteam Limited
Representative	:	Pennycuik Collins Chartered Surveyors
Respondent	:	Stanley N Evans (Properties) Ltd
Representative		Cottons Chartered Surveyors
Type of Applications	:	Determination of Premium and terms of acquisition; Sections 48 Leasehold Reform and Urban Development Act 1993 ("the 1993 Act")
Tribunal Members	:	V Ward BSc (Hons) FRICS (Chairman) Judge M K Gandham
Date and venue of Hearing	:	6 October 2015 Tribunal Hearing Rooms, City Centre Tower, 5-7 Hill Street, Birmingham B5 4UU
Date of Decision	:	19 November 2015

DECISION

Introduction

1. Applications were submitted by the Applicant, Doveteam Limited, under section 48 (1) of the Leasehold Reform, Housing and Urban Development Act 1993 for the determination of premiums to be paid for lease extensions in respect of Flat 1 Brockenhurst Court and Flat 3 Lymington Court, Station Road, Wylde Green, Sutton Coldfield B73 5JY ("the Properties").
2. The Applicant was represented by Mr Samuel Boot BSc (Hons) MRICS of Pennykuick Collins Chartered Surveyors, whilst the Respondent freeholder, Stanley N Evans (Properties) Limited, was represented by Mr Kenneth Davis FRICS of Cottons Chartered Surveyors.
3. Due to their similarities the properties were dealt with together by the Tribunal. The existing lease in respect of each of the Properties is for a term of 99 years from 25 March 1970.
4. The Tribunal was not asked to consider the terms of the new leases under the provisions of sections 56 and 57 of the Act.

Matters agreed between the parties before and during the hearing

5. The following items were agreed between the parties:
 - a) Valuation Date: 3 October 2014
 - b) Capitalisation rate: 7.00%
 - c) Length of term unexpired: 54.5 years
 - d) Valuation of the Ground Rent: £487.48

Matters in dispute between the parties

6. The Tribunal was advised that the following matters were still in dispute:
 - a) Extended Lease Value (before allowance for improvements)
Applicant: £130,000 Respondent: £139,250
 - b) Existing Lease Value
Applicant: £103,750 Respondent: £102,548
 - c) Deferment Rate.
Applicant: 6.00% Respondent: 5.5%

- d) Improvements.
Applicant: £5,000 Respondent: £1,750
- e) Allowance for the risk of a modern assured tenancy under Schedule 10 to the Local Government Act 1989 ("Schedule 10 Allowance").
Applicant: 5.00% Respondent: None

Citations

7. The following decisions are referred to below:
- a) *Cadogan and Another v Sportelli and Another* [2007] EWCA Civ 1042
"Sportelli"
 - b) *Arrowdell Limited v Coniston Court (North) Hove Limited* [2007] RVR 39
"Arrowdell"
 - c) *Zuckerman & Others v Trustees of the Calthorpe Estate* (LRA/97/2008)
"Zuckerman"
 - d) *Nailrile Limited v Cadogan* [2009] 2EGLR151
"Nailrile"
 - e) *Coolrace Limited and Others* (LRA/39/2011)
"Coolrace"
 - f) *Alexander Voyvoda v Grosvenor West End Properties/32 Grosvenor Square Limited* (LRA/52/2012)
"Voyvoda"
 - g) *Clarice Properties Limited* [2012] UKUT 4 (LC)
"Clarice"
 - h) *Sinclair Gardens Investments (Kensington) Limited* (LRA/48/2013)
"Sinclair Gardens"
 - i) *68 Mallaby Close* [2014] UKUT 0304 (LC)
"68 Mallaby Close"

The Law

8. The relevant law is Chapter II sections 39 to 62 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”).
9. Chapter II of the 1993 Act relates to the individual right of a tenant of a flat to acquire a new lease of that flat. The law is contained in Sections 39 to 61B of the 1993 Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
10. Section 42 sets out what must be contained in the tenant’s notice. Section 45 sets out what must be contained in any counter-notice given in response by the Landlord.
11. Section 48 deals with applications where the terms of the new lease are in dispute or where there is a failure to enter into a new lease.
12. Section 56 deals with the obligation to grant a new lease and section 57 sets out the terms on which a new lease is to be granted.

Inspection

13. The Tribunal carried out an inspection of the Properties on 6 October 2015 in the presence of Mr Boot. The Respondent was not represented.
14. Brockenhurst Court and Lymington Court are adjacent blocks of flats sharing common infrastructure in a residential area of Sutton Coldfield. Both blocks date from the 1970's and are constructed of cavity brickwork being surmounted by flat roofing systems.

Flat 1 Brockenhurst Court - Ground Floor

Accommodation: Entrance Hall, Kitchen, Two Bedrooms and Bathroom with full suite including shower over the bath.

Flat 3 Lymington Court - Ground Floor

Accommodation: Entrance Hall, Kitchen, Two Bedrooms and Shower room with walk in shower unit.

Each property benefits from a single garage in a block to the rear of the site.

The following improvements were identified in respect of both Properties:

Gas fired central heating (originally electric)

Double glazing
Replacement kitchen and bathroom facilities
New electrical installation

The Hearing

15. A Hearing was held following the inspections at the Tribunal Hearing Rooms, City Centre Tower, Hill Street, Birmingham. The Applicant was again represented by Mr Boot, whilst Mr Davis appeared for the Respondent.

The Applicant's submissions

16. Mr Boot submitted the following evidence in respect of extended lease values:

Available at the valuation date

Flat 5 Lymington Court. First floor flat with similar accommodation to the subject Properties. Sold on 12 June 2014 for £136,000. Unexpired lease term 145 years.

Flat 8 Brockenhurst Court. Second floor flat with similar accommodation to the subject Properties. Sold on 3 November 2013 for £124,450. Unexpired lease term of approximately 98 years.

Flat 4 Brockenhurst Court. First floor flat with similar accommodation to the subject Properties. Sold on 28 February 2013 for £112,500. Unexpired lease term of approximately 99 years. Reported to be in poor condition.

Not available at the valuation date

Flat 1 Highfield Court. This development is located on the same road as the subject Properties. Ground floor flat with similar accommodation to subject, albeit slightly larger. Sold on 24 July 2015 for £140,000. Unexpired lease term of approximately 985 years.

Flat 10 Duncan House. This development is located on the same road as the subject Properties. Ground floor flat with similar accommodation to subject, albeit slightly larger. Sold on 20 March 2015 for £130,000. Unexpired lease term of approximately 114 years.

In addition to the above, Mr Boot provided details of similar properties that were currently available on the market. Prices of these properties ranged from £137,500 to £145,000. In particular, he quoted evidence of Flat 2 Lymington

Court which was sold in April 2015 for £139,000, although these details could not be confirmed at the Land Registry.

Having considered the above evidence, Mr Boot submitted an extended lease value of £130,000.

In response, Mr Davis noted that Mr Boot had given more credence to evidence that was significantly before the valuation date - Flat 8 Brockenhurst, 12 months before the valuation date, and Flat 4 Brockenhurst, 18 months before the date. He further considered that that whilst Mr Boot had set out his comparables, he had not shown how he arrived at his adopted value of £130,000. Mr Boot had not adjusted his evidence by use of the Land Registry House Price Index, which is common practice and acceptable to First-tier Tribunals.

Existing Lease Values

17. As there was no evidence of sales of properties with short leases, Mr Boot had utilised the "Lease" relativity graph following on from the decision in *Coolrace*. Applying the "Lease" graph relativity as per *Coolrace* for an unexpired term of 54.50 years resulted in a (rounded) relativity of 83%. Applying this to an extended lease value of £130,000, less £5,000 for Tenant's Improvements (please see below), gave an existing lease value of £103,750 per property.
18. Questioning Mr Boot, Mr Davis stated that Mr Boot had accepted "*Coolrace*", specifically, the use of the LEASE Graph, but had not looked carefully at the decision which at paragraph 12 states, and which approach was accepted:

"if there is clear and good evidence of sales of very similar properties with both extended and unextended leases, then it is possible for a suitable relativity to be established."

Deferment Rates

19. The starting point for Mr Boot's consideration of the deferment rate was the *Sportelli* decision as follows:

Risk Free	2.25%
Less Real Growth	(2.00%)
Plus Risk Premium	4.50%
Plus Management Risk	0.25%

20. A further addition of 0.5% was made to reflect the *Zuckerman* decision in respect of the lack of growth between Prime Central London (PCL) and the West Midlands. The *Zuckerman* decision also made further allowances of 0.25% for the risk of obsolescence and 0.25% to reflect increased management issues. This leads therefore to a deferment rate of 6% for flats. It was noted by Mr Boot that the Upper Tribunal decision in *Sinclair Gardens*, where the property was a maisonette, adjusted the rate adopted by the Tribunal from 5.75% to 5.5% as it was considered that there was no evidence that the property in question was a "poorer structure".
21. In Mr Boot's opinion, the subject Properties represent a significant risk of deterioration and obsolescence due to their nature and characteristics; both are situated in 1970's blocks of early cavity brickwork with flat roofs in respect of which there had been management issues. On balance therefore Mr Boot adopted a deferment rate of 6%.
22. Cross examining Mr Boot, Mr Davis noted that Mr Boot had ignored the decision in *Voyvoda* and also the fact that matters such as standard of construction were taken into account when assessing the present market value.

Schedule 10 Allowance

23. Following the decision in *68 Mallaby Close*, Mr Boot's opinion was that a deduction of 5% should be made to reflect the risk of a modern assured tenancy under Schedule 10 to the Local Government Act 1989. It was noted by Mr Davis that the case cited was determined on the basis of written representations, therefore not debated and, in addition, Tribunal decisions on this point had been inconsistent as, on occasions, no deduction had been made.

Deductions for Tenant's Improvements

24. In respect of the improvements made by the leaseholder, detailed above, Mr Boot had made an allowance of £5,000. Mr Davis asked Mr Boot when the improvements were carried out, to which Mr Boot indicated 5 to 10 years ago. The Tribunal was then directed to the Tribunal's decision in *26 Eldon Drive* where the improvements were discounted.

Applicant's Valuation

25. Applying those conclusions to the agreed matters. Mr Boot calculated the premium at £13,350.00.

The Respondent's submissions

Extended lease values

26. With regard to evidence of sales of comparable properties, Mr Davis considered that the sales of Nos 2 and 5 Lymington were the most relevant as they were either side of the valuation date and were proximate to the same. Adjusting the values reported in those sales by the use of Land Registry Indices and then averaging the result, produced a sales value of £139,250.

Existing Lease Values

27. In his submissions, Mr Davis opined that the leading cases on relativity were *Arrowdell*, *Nailrile* and *Coolrace*. As a result of *Arrowdell*, the Royal Institution of Chartered Surveyors arranged a consultation of its members on relativity who determined that a consensus on a standard relativity graph was not possible.

The decision in *Coolrace* included the following statement:

"... it needs to be stressed that this decision should not be seen as setting a precedent in other cases where evidence more reliable than the Lease graph is available."

28. Accordingly, whilst acknowledging that there was no clear evidence of sales of properties with short lease terms available, Mr Davis submitted that evidence could be drawn from four cases that had been brought before the Tribunal:

271 & 285 Penns Lane Walmley BIR/00CN/OLR/2012/0085
5 Eldon Drive Walmley BIR/00CN/OLR/2012/0080
26 Eldon Drive Walmley BIR/00CN/OLR/2013/0083

29. In each of these matters, where Mr Davis had represented the freeholder whilst the Applicant was represented by an experienced Chartered Surveyor, there was good short lease evidence, hence there was no need for the use of graphs.

The relationship of these determinations to the LEASE graph was illustrated by Mr Davis in his submissions:

	Lease Graph	Determination	Term (Years)
271 Penns Lane	78.28%	69.22%	49.10
285 Penns Lane	78.28%	69.86%	49.10
5 Eldon Drive	78.60%	71.30%	49.08
26 Eldon Drive	77.90%	69.62%	47.75

Mr Davis noted that in these cases the determinations showed, on average, a relativity of 8% below that illustrated by the LEASE graph. Continuing his analysis, Mr Davis said that the LEASE graph would show a relativity for the Properties of 82.58%, which after making the 8% deduction as above, would give a relativity of 74.58%. To support this figure, Mr Davis analysed the movement on the LEASE graph between 49.10 and 54.50 years i.e. 5.40 years which indicated an annual change of 0.8%, resulting in an increase in relativity of 4.3%. Adding this sum to the average of the four contested cases equalled 74.39%.

30. Concluding with a statement from the *Nailrile* Decision:

"Relativity is best established by doing the best one can with the transaction evidence as may be available and with graphs of Relativity."

Mr Davis adopted 74.58%. Applying this to an extended lease value of £139,250, less £1,750 for Tenant's Improvements (please see below), gave an existing lease value of £102,548 per property.

Deferment Rates

31. The starting point for Mr Davis's consideration of the deferment rate was also the *Sportelli* decision. He then considered the *Voyvoda* decision and quoted from paragraph 70 of the same:

"The Supreme Court decision in Daejan v Benson has removed the basis on which the Tribunal reached the conclusion in Zuckerman and Yates that post Sportelli there was a raised level of concern about possible management problems which would be reflected in the market. The potential effects of the legislation for the Landlord of an effectively managed block of flats are no longer "draconian". The subject property was a well managed block. Of the 6% there should be a reduction of 0.25% which was allowed in Zuckerman."

32. Considering the decision in *Sinclair Gardens*, Mr Davis stated that in his opinion this was a well managed block and an allowance for obsolescence should not be automatically made. Accordingly, he adopted a deferment rate of 5.5%.

Schedule 10 Allowance

33. In his submissions, Mr Davis noted the inconsistency in Tribunal decisions with regards to both whether an allowance for Schedule 10 was made and also the quantum allowed. Therefore, Mr Davis made no allowance.

Deductions for Tenant's Improvements

34. Considering that the Properties would have originally benefitted from some form of electric heating and the fact that the kitchen and bedroom fittings are modest, Mr Davis made an allowance for Tenant's improvements of £1,750.

Respondent's Valuation

35. Applying those conclusions to the agreed matters, Mr Davis calculated the premium at £21,435.00.

The Tribunal's Deliberations

36. The Tribunal considered all of the evidence submitted by the Parties both oral and written and summarised above.

Extended lease values

37. The Tribunal can see no reason as to why evidence should not be taken post the valuation date. This coupled with evidence from that which precedes the date can be used if necessary to assess the "tone" of values. Of the comparables, that of Nos 2 and 5 Lymington must be considered the strongest evidence, they are close in time to the valuation date and are obviously very similar, with the exception that 5 Lymington is located at first floor level.
38. Considering these two comparables, the Tribunal would not differentiate between a ground and first floor flat. Whilst the former may be of more appeal to older tenants, they are also more vulnerable from a security aspect. In order to arrive at the extended lease value the Tribunal therefore favours the approach of the Respondent and has adopted £139,250.

Existing lease values

39. The Tribunal notes that there was, unfortunately, no direct evidence of sales of properties with short leases. In the absence of any evidence, the Tribunal can not fault Mr Boot for his use of relativity graphs. However, the Tribunal prefers the method adopted by Mr Davis as it has its root in fully argued determinations and whilst this approach is still subjective, it is perhaps less so than by direct reference to a graph. Accordingly, the Tribunal adopts a relativity of 74.58%. Applying this to an extended lease value of £139,250 less £3,000 for Tenant's Improvements (please see below) results in an existing lease value of £101,615.

Deferment Rates

40. The dispute between the parties in respect of the deferment rate to be adopted essentially concerned obsolescence and management issues in block of flats generally and, in particular, in respect of this block. There was some argument at the Hearing as to whether or not the block in which the Properties were situated was badly managed or not. The Tribunal's inspection did not reveal any evidence of poor management; however, it does consider that maintenance of this type of development will be relatively onerous due to the nature of its construction in particular the flat roofing systems.

Considering the Upper Tribunal's decision in *7 Grange Crescent*, where 5.5% was adopted for a maisonette, the Tribunal considers that some further allowance must be made to reflect the nature of the subject as flats rather than maisonettes i.e. the cost of maintaining and upgrading internal communal areas, especially with regard to fire safety and the inherent problems as indicated above with blocks of this type. The Tribunal therefore adopts 5.75%.

Schedule 10 Allowance

41. Whilst noting the inconsistencies mentioned by Mr Davis, in the view of the Tribunal, the principle of an allowance for the possibility of an assured tenancy was established by *Clarise* and endorsed by Upper Tribunal decision in *68 Mallaby Close* and the Tribunal has in this matter adopted 5%.

Deductions for Tenant's Improvements

42. In considering an allowance for Tenant's improvements the Tribunal must take note of the fact that the Properties did originally benefit from a form of electric heating and, as conceded by Mr Boot, the kitchen and bathroom improvements were 5 to 10 years old. Accordingly, the Tribunal adopts £3,000.

The Tribunal's Valuation

43. Applying those determinations to the matters agreed by the parties the Tribunal's valuation is as follows:

Term	£ 487.48
Reversion	
Extended Lease Value	£ 139,250.00
Less	

Tenant's Improvements	£	3,000.00		
Allowance for Schedule 10 Rights @ 5%	£	6,962.50		
		<u>£ 129,287.50</u>		
PV of £1 54.5 years @ 5.75%		0.0475	£ 6,141.16	£ 6,628.64

Marriage Value

Extended Lease Value	£	139,250.00		
Less				
Tenant's Improvements	£	3,000.00		
		<u>£ 136,250.00</u>		
Less				
Existing Lease Value @ 74.58%	£	101,615.25		
Freeholder's Interest before Extension	£	6,628.64		

Marriage Value			£ 28,006.11	£ 14,003.06
Freeholder's Share			50%	

Premium				£ 20,631.69
Say				£ 20,630.00

44. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as Flat 1 Brockenhurst Court Station Road Wylde Green Sutton Coldfield B73 5JY under the Leasehold Reform and Urban Development Act 1993 is £20,630.00.
45. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as Flat 3 Lymington Court Station Road Wylde Green Sutton Coldfield B73 5JY under the Leasehold Reform and Urban Development Act 1993 is £20,630.00.

Appeal

46. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Vernon Ward
Chairman