



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

Case Reference : **BIR/00CR/OLR/2019/0019**

Property : **37 Central Drive, Lower Gornal,
Dudley, DY3 2QE**

Applicant : **Ms Alison Ferris**

Representative : **Midland Valuations Limited**

Respondents : **Mr Nachattar Singh Gill and Mrs Avtar
Kaur Gill**

Type of Application : **To determine the appropriate sum to
be paid into court for the new lease,
and the terms of the same, under
section 51(1)-(5) of the Leasehold
Reform Housing and Urban
Development Act 1993.**

Tribunal Members : **Judge S McClure
N Wint FRICS
R P Cammidge FRICS**

Date of decision : **18 June 2019**

DECISION

The Background

1. The Applicant holds a 99 year lease of 37 Central Drive (the Property) granted on 15 March 1996, with a term commencing on 31 January 1996, at a ground rent of £50 a year and increasing as set out at paragraph 13 below.
2. The Applicant wishes to apply for a new lease of the Property, incorporating a 90 year extension to the original lease term, in accordance with the Leasehold Reform Housing and Urban development Act 1993 (the 1993 Act). However, the whereabouts of the freeholder are unknown.
3. As is required in such a 'missing landlord' case, the Applicant has applied for and obtained a vesting order from the County Court as provided for by section 50 of the 1993 Act. This order permits the surrender of the existing lease and the granting of a new lease to the Applicant on terms to be determined by this Tribunal.
4. Accordingly, the Applicant has applied to the Tribunal for a determination of the premium payable, and for the determination of any other sums payable.
5. The premium proposed by the Applicant is £3,440. The Applicant submits that no other sums are due.

The Inspection

6. The Tribunal inspected the Property on 4th June 2019. Present at the inspection were the Applicant, and the current tenant of the Property, Ms Whitehead.
7. The hearing took place later on the same day, at which the Applicant's representative, Mr Moore of Midland Valuations, was present.
8. The Property is a two-storey purpose-built maisonette of brick and tile construction, situated above a shop, in a small row of shops. The Property is accessed by a side external staircase. The accommodation on the first floor comprises a lobby hall, living room, kitchen, and toilet with sink. The second floor comprises a lobby landing, 3 bedrooms and a bathroom/WC. There is a garage to the rear of the building, which is contiguous to the ground floor structure, the roof of which forms part of the access to the Property. The Property is double glazed and has gas central heating.
9. The Tribunal came to its decision on the basis of the findings of the inspection, and the written and oral submissions of the Applicant, which are mentioned specifically below where necessary.

The Law

10. Section 51 of the 1993 Act prescribes that, upon a vesting order being made by the County Court and upon application to the Tribunal, the Tribunal will assess the premium in accordance with the formula in Schedule 13 to the 1993 Act, and will determine if any other sums are payable by the Applicant.
11. The Schedule 13 formula sets out the basis of calculation, and requires the premium to be based on the landlord's loss of ground rent for the term together with a sum of compensation for the landlord's deferred right to possession of the flat and a share of any marriage value arising from the extension. The share is defined at 50% in the Commonhold and Leasehold Reform Act 2002.

The premium

12. The calculation of the premium relies on various inputs. The inputs proposed by the Applicant are as follows:

13. Applicant's inputs:

Ground Rent to 30 Jan 2029	£50.00 p.a.
Ground Rent to 30 Jan 2062	£100.00 p.a.
Ground Rent to 30 Jan 2095 (expiry	£150.00 p.a.
Unexpired term at date of notice	76.67 years
Valuation date	19 June 2018
Value of existing lease	£66,941
Freehold VP value adjustment	1%
Value of extended lease	£70,000
Deduction for 1993 Act rights	0%
Schedule 10 adjustment	0%
Relativity	95.63%
Capitalisation Rate	6.00%
Deferment Rate	5.50%

Matters for determination by the Tribunal

14. The ground rent, unexpired term and valuation date are matters of fact, correctly set out by the Applicant and accepted by the Tribunal.
15. The Applicant's proposed inputs for the following are in accordance with accepted practice and with current precedent, and are accepted by the Tribunal: Freehold VP value adjustment, Capitalisation rate, Deferment rate.
16. The following proposed inputs require determination by the Tribunal: Value of existing lease, Value of extended lease, Deduction for 1993 Act rights, Schedule 10 adjustment, Relativity.

Submissions

17. We have considered written and oral submissions from the Applicant. Unsurprisingly the Tribunal has received no submissions from the Respondent, this being a missing landlord application.

Determinations

Value of extended lease

18. The comparable of 123 Central Drive is of a two-bedroomed flat with a lease of 113.66 years remaining in, it is submitted, a better location. This property sold for £70,000 in August 2018.
19. The comparable of 87 Central Drive is of a three-bedroomed flat with a lease of 119.75 years remaining in, it is submitted, a better location. This property sold for £78,500 April 2019.
20. The Tribunal accepts Mr Moore's submissions that the two comparables, whilst on the same estate, are in better locations than the Property. The comparables are not above a shop and are in purpose-built blocks of flats. The Tribunal accepts that the Property is in an area subject to a greater level of anti-social behaviour than the comparables.
21. The Tribunal finds that the proposed comparables are relevant comparables to be taken into account. The Tribunal finds that the value of the subject Property is lower than the comparables because it is above a parade of shops which tends to create increased noise, traffic movements and anti-social behaviour.
22. The Tribunal determines the extended lease value to be £70,000.

Value of existing lease

23. Mr Moore submitted that there was no relevant market evidence and, therefore, reliance was placed on relativity graphs.
24. Mr Moore provided data from 4 separate sources, being 2009 RICS Prime Central London, 2009 RICS Greater London & England, Published research, and 2015 Data. The Applicant relied upon the 2009 RICS Greater London & England data, which provided a relativity of 95.63% based on an average of five data sets.
25. Mr Moore rejected the other data sets because they were either biased toward prime central London or were historical. He submitted that the 2009 RICS Greater London & England data was the most relevant to the Property.
26. In the absence of market evidence, the Tribunal has to consider the evidence from graphs of relativity. The Tribunal accepts Mr Moore's arguments, and finds that the 2009 RICS Greater London & England data submitted by him to be satisfactory data for determining relativity for the Property.
27. The Tribunal finds relativity to be 95.63%. Applying this to the extended lease value of £70,000 produces a value of the existing lease of £66,941.
28. The Tribunal determines the value of the existing lease to be £66,941.

Deduction for 1993 Act rights

29. Mr Moore submitted there should be no deduction on the basis that the appropriate deduction is 0.18%, and this is so small as to be de minimus such that no deduction should be made. Mr Moore admitted that the figure of 0.18% was derived from the 2009 RICS Prime Central London graph.
30. Upon being told by the Tribunal of Upper Tribunal decisions in which a deduction of 3.5% was made with a remaining term of some 67 years, Mr Moore candidly admitted he was not aware of such decisions, and if that was the case he would leave it up to the Tribunal to determine what, if any, deduction should be made.
31. The Tribunal rejected the 0.18% submission on the basis it was based on Prime Central London data. In accordance with precedent, including the decision of the Upper Tribunal in *Contactreal Limited v Smith [2017] UKUT 0178 [LC]*, where a deduction of 3.5% was made where there was a term remaining of 67.49 years, the Tribunal determines that a deduction should be made, and the deduction in this case, with a term remaining of 76.67 years, to be 2%.

Housing Act 1989 Schedule 10 rights

32. Mr Moore submitted that there should be no deduction for Schedule 10 rights, for a lease of nearly 76.67 years, relying on the decision of the Upper Tribunal of *Midland Freeholds Limited v Speedwell Estates Limited [2017] UKUT*

0463 (LC). In Speedwell no deduction was made in respect of leases with terms of 46 and 57 years.

33. Whilst there are other Upper Tribunal decisions that have taken a different view some, such as Contractreal where a 2.5% deduction was applied with a term of 67.49 years, predate Speedwell, and in others, such as *JGS Properties Limited v King [2017] UKUT 0233 (LC)* where a 2.5% deduction was applied with a term of 60 years, the deduction was agreed between the parties, and so not subject to scrutiny or determination by the Tribunal.
34. Taking into account the precedent cases, and noting the term of the subject Property is in excess of any of the cases cited here, the Tribunal accepts the submission of Mr Moore, and finds there should be no deduction in respect of schedule 10 rights.

Valuation

35. Applying that determination to the matters agreed by the parties, the Tribunal's valuation is as follows:

Valuation

Term

Ground Rent	£50		
YP 10.67 years @ 6%	<u>7.7164</u>	£385.82	
Ground Rent	£100		
YP 33 years @ 6%	14.2302		
PV 10.67 years @ 6%	<u>0.5370</u>	£764.16	
Ground Rent	£150		
YP 33 years @ 6%	14.2302		
PV 43.67 years @ 6%	<u>0.07850</u>	<u>£167.56</u>	£1,317.54

Reversion (to Freehold)

Leasehold Market Value	£70,000		
<u>Add Freehold uplift 1%</u>	<u>£700</u>		
	£70,700		
<u>Less Sch. 10 Rights 0%</u>	<u>£0.00</u>		
	£70,700		
PV 76.67 years @ 5.5%	<u>0.0165</u>		<u>£1,166.55</u>
			£2,484.09

Less Reversion (after extension)

Freehold Market Value	£70,700		
PV 166.67 years @ 5.5%	<u>0.00013</u>		<u>£9.19</u>
Diminution in Freehold Interest			£2,474.90

Marriage Value

Proposed Interests			
Freehold	£9.19		
Leasehold	<u>£70.000</u>		£70.009.19
Present Interests			
Freehold		£2,474.90	
Leasehold	£66,941		
<u>Less 'No Act World'</u>			
<u>adjustment 2%</u>	<u>£1,338.82</u>	<u>£65,602.18</u>	
			<u>£68,077.08</u>
Marriage Value			£1,932.11
Shared equally			<u>£966.06</u>
Total			£3,440.96
Premium to be paid by Leaseholders SAY			£3,440

Other sums payable

36. The Tribunal determines that no arrears of ground rent are due as there has been no demand made and, as such, no ground rent is payable. The Tribunal finds no other sums are payable.

Decision

37. The Tribunal determines the premium payable by the Applicant at £3,440.
38. The Tribunal determines that no other sums are payable by the Applicant.
39. Accordingly, the Tribunal determines that the sum to be paid into court in accordance with section 51(3) and (5) of the 1993 Act is £3,440.

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) Rule 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: Judge S McClure

Date: 18 June 2019