



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

Case Reference : **BIR/00CN/OLR/2020/0048**

Property : **23 Edencroft Wheeleys Road Edgbaston
B15 2LW**

Applicant : **Martyn Adrian Liberson & Caroline
Judith Sturruck Liberson**

Representative : **K Davis FRICS Cottons Chartered
Surveyors**

Respondent : **WEL (No. 1) Limited**

Representative : **Stevens Solicitors; G Evans eBureau
Ltd**

Intermediate Landlord : **Edencroft Residents limited; David
Coleman & Company**

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

Tribunal Members : **N Wint BS (Hons) FRICS ACI Arb
V Ward BSc Hons FRICS**

Date of Decision : **25 May 2021**

DECISION

Introduction

1. This is an application under section 48(1) of the Leasehold Reform Housing and Urban development Act 1993 (the 1993 Act) to determine the premium payable to extend a lease and the other terms of the acquisition in addition to an application under section 60 (1) of the Act for a determination of reasonable costs.
2. By way of a section 42 Notice of Claim dated 19 May 2020 the Applicants proposed to pay a premium of £30,614 to the Respondent for the benefit of a 90 year lease extension and that the new lease shall be granted on the same terms as the current lease save for reasonable modernisation and the rent shall effectively be nil. In addition, the applicant proposed to pay £6,819 to Edencroft Residents Limited by way of other amounts under Schedule 13 of the 1993 Act.
3. The Landlord responded by way of a section 45 Counter-Notice accepting the Applicants offer of £6,819, that the rent for the new lease shall be a peppercorn ground rent and that the new lease shall be subject to reasonable updating. However, the Landlord's counter proposal in respect of the premium payable was £47,716 including the intermediary Landlords share of the marriage value of £4,426.
4. On 22 December 2020 the Applicant's representative submitted an application to the Tribunal for a determination of the premium payable following which the Tribunal issued its Directions dated 29 December 2020 requiring the parties to submit and exchange written evidence setting out their respective valuations. The application in respect of the recoverable costs was stayed.
5. The Tribunal received Reports and Valuations from both parties' representatives and a Statement of Agreed Facts setting out a brief description of the Property, the valuation date, unexpired term, relativity of extended lease value to freehold vacant possession value and current ground rent. The parties have also agreed a figure of £8,250 for the remaining ground rent and a sum of £700 in respect of the Respondent No.2 legal costs and £550 in respect of the valuation fee.
6. The hearing was held on 16 March 2016 by way of video link due to the Covid-19 Public Health Emergency. In accordance with the guidance the Tribunal did not carry out an inspection of the Property.
7. In attendance for the Applicant was Mr Davis of Cottons and for the Respondent, Mr G Evans of eBureau Ltd.
8. At the beginning of the Hearing, the Tribunal noted that Mr Davis had slightly different figures in his Valuation Report for the Extended Leasehold Value and Existing Leasehold Value to that set out in the Statement of Agreed Facts. Mr Davies advised that he wished to correct these figures and that

these should be £143,275 in respect of the extended value and £97,282 in respect of the existing value. Mr Evans for the Respondent did not object to the corrections and the Tribunal has therefore proceeded on the basis of the revised figures.

9. In coming to its findings, the Tribunal has considered the evidence adduced by the parties and has had regard to its own experience, knowledge and judgement.

The Property

10. The parties advise that the Property forms part of a mid-1960's three storey purpose-built development arranged in three blocks of 9 flats situated on the corner of Wheeleys Road and St James Road.
11. The agreed statement of facts describes the accommodation as having a communal entrance hall with stairs to upper floor landings leading through to the flat which has a hall, living room, kitchen and two bedrooms with a bathroom and WC. Externally there are communal gardens and a garage in a separate compound.
12. Mr Davis advises that he has not inspected the Property due to the Covid-19 restrictions but having dealt with a number of previous matters on the same development is fully aware of the layout of the flats. In Mr Davis's view the subject Property would be considered to be in average condition with basic kitchen fittings, a dated bathroom suite and includes the original window frames.
13. Mr Evans also advises he has not carried out an internal inspection but agrees that some updating and modernisation is probably required to the Property.

The Lease

14. The freehold interest is owned by WEL (No.1) Limited and is subject to a lease dated 8 April 1967 between Trustees of the Calthorpe Edgbaston Estate and Templefield (Cost Rent) Housing Society Limited. The lease was granted for a term of 99 years from 25 March 1967 and the ground rent payable to the freeholder in respect of the subject Property is £241 per annum.
15. The Applicants hold the Property by way of an underlease originally granted between Edencroft Housing Society Limited (successors to Templefield) and Mr & Mrs A C West on a 99 year less 3 days lease from 25 March 1967. The ground rent is £241 per annum.

16. The Property is described in the Third Schedule of the lease as Flat 23 Edencroft, Wheeleys Road, Edgbaston B15 2LW as shown edged red on the lease plan together with the garage coloured pink.

The Law

17. 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.
18. The relevant law in relation to the application under the Act is set out in Chapter II sections 39 to 62 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993.
19. Chapter II of the 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 Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
20. 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.
21. 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.
22. 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.

Statement of Agreed Facts

23. The parties have agreed the following matters:

- | | |
|----------------------|--|
| 1) Ground Rent Value | £8,250 |
| 2) Valuation Date | 19 May 2020 |
| 3) Term | Head Lease 99 years from 24 March 1967
Underlease 99 years from 24 March 1967 (less 3 days) |
| 4) Unexpired Term | 45.85 years |
| 5) Ground Rent | £241 per annum |

6) Freehold Relativity 99%

24. The matters for the Tribunal to decide are, therefore, as follows:

	Applicant	Respondent
1) Deferment Rate	5.5%	5%
2) Extended Leasehold Value	£143,275	£160,000
3) Existing Leasehold Value	£97,282	£89,510
4) Premium Payable	£33,285*	£47,900*

Note: The above Premium figures include the agreed figure of £8,250

Issue No. 1: Deferment Rate

25. Mr Davis has adopted a deferment rate of 5.5%.
26. This, Mr Davis advises, follows *Sportelli* which decided a generic rate of 5% for flats and *Zuckerman* which increased the rate to 6% after being adjusted upwards to reflect lower capital growth rates in the West Midlands, obsolescence and the likely increased costs of management. However, following *Voyoda* and *7 Grange Crescent* the Upper Tribunal decided that the adjustments for obsolescence and management costs should only be considered in exceptional circumstances and Mr Davis therefore concludes that the correct deferment rate is 5.5%.
27. In further support Mr Davis refers to the decisions of *Flat 6 Elmwood Court Edgbaston* and *42 Michael Court Bristol Road Edgbaston* in which the Tribunal in both cases adopted a deferment rate of 5.5%.
28. Mr Evans for the Respondent has adopted a deferment rate of 5%.
29. Mr Evans's starting point is *Sportelli*. In that decision Mr Evans refers to paragraph 88 which says that it is accepted that the deferment rate can be adjusted for location but based on the evidence adduced there was no justification for making an adjustment to reflect regional or local differences and that no adjustment to the real growth rate was appropriate given the long-term basis of the deferment rate and that any locational differences, in the absence of clear evidence suggesting otherwise, are to be assumed as being reflected in the freehold vacant possession value.
30. Mr Evans also refers to paragraph 114 in the *Sportelli* decision where the Tribunal effectively observes that its function is to promote consistent

practice and predictability thereby avoiding the need to submit extensive financial and valuation evidence in every case. That is unless there is compelling evidence to the contrary.

31. The Tribunal therefore suggested that the deferment rate was not influenced by long-term growth rates and that location and obsolescence were already reflected in the vacant possession value.
32. In effect the decision effectively goes on to say that the adoption of a deferment rate of 5% for flats needs to be considered in relation to the facts of each individual case. But in adopting a different rate, the valuer or Tribunal has to be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the particular property concerned.
33. *Sportelli* calculated that the generally accepted deferment rate for flats of 5% was made up of the risk-free rate (2.25%) less the real growth rate (2%) plus the risk premium (4.75%).
34. *Zuckerman*, which followed *Sportelli*, held that the deferment rate should be increased to reflect an investor's view that the long-term growth prospects (i.e. the real growth rate) in the West Midlands compared to that achievable in PCL would not be lower and to reflect this the risk premium should be adjusted upwards by 0.5%.
35. In *Clarise*, where Mr Evans also acted, the evidence adduced demonstrated a difference in property price growth between Kensington and Chelsea, the West Midlands and the UK as a whole. However, Mr Evans considered that the actual real growth rates in *Zuckerman* was not fully considered and that these were simply assumed to be less than 2% whereas in his view the RGR exceeded 2%.
36. In further support of this Mr Evans refers to *Elmwood* and explains that the reason he was unable to provide evidence of growth rates from 1974/75 to 1995 was because Land Registry did not make such information available prior to 1995 and he only had details of sales of 32 of the 36 properties at Kelton Court.
37. In *Lanehead*, Mr Evans states he did in fact provide evidence from 1974/75 which was for a period longer than *Zuckerman* and suggests that the Tribunal made certain assumptions regarding real growth rates based on price growth which were incorrect.
38. Based on this Mr Evans concludes that an upward adjustment in the deferment rate should only be made if it can be shown that the real growth rate was in fact less than 2% and considers that as this is not the case, as in shown in *Elmwood* and *Lanehead*, then *Zuckerman* should not be followed and for these reasons adopts 5%.

39. The Tribunal has carefully considered the respective arguments of Mr Davis and Mr Evans. The issues were also addressed thoroughly at the Hearing and weighing the evidence above, the Tribunal is not persuaded by Mr Evans arguments. The Tribunal finds that the guidance in *Sportelli* to promote consistent practice in the application of the law remains and finds no compelling evidence to the contrary which would persuade the Tribunal to depart from this principal. The Tribunal considers that 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).
40. The Tribunal therefore finds that the appropriate deferment rate is 5.5%.

Issue No.2: Existing Lease Value

41. Mr Davis considers the existing lease value is £97,282.
42. Mr Davis bases this on an extended lease value of £144,722 adjusted by 67.22% from the Savills/ Gerald Eve Relativity Graphs.
43. Mr Davis accepts that although it is preferable to use actual sales evidence the only transactional evidence is the sale of the subject Property itself in 2016 at £100,500. However, as this predates the valuation date by nearly three and a half years and requires various subject adjustments Mr Davis considers it unsafe to rely on and therefore prefers the graph approach. Based on this Mr Davis refers to the Savills and Gerald Eve graphs and has taken an average of the two arriving at a figure of 67.22% to arrive at his figure.
44. Mr Evans considers the existing lease value is £89,510.
45. Mr Evans considers the sale of the subject Property in 2016 to be the best evidence and after adjusting for any changes in the market up until the valuation date and to reflect the shorter lease term arrives at a value of £100,000. Mr Evans then makes a further adjustment of 10.49% to account for the 'No Act World' assumption to arrive at his figure.
46. The Tribunal finds that there is insufficient open market evidence to not have to rely on a graph. In *Sloane Stanley v Mundy [2016] UKUT 0223 (LC)* the Upper Tribunal commented extensively on the unreliability of graph-based evidence. The Tribunal is also 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.
47. However, given the lack of transactional based evidence the Tribunal is satisfied that there is good reason to depart from these decisions as the evidence adduced is insufficient to follow the view expressed by the Upper Tribunal on this point.

48. The Tribunal does not consider the sale of the subject Property in 2016 to be helpful or reliable and agrees with Mr Davis that it requires too many subjective adjustments. The Tribunal has therefore calculated the existing lease value by adjusting the Freehold Value (Extended Lease Value and freehold adjustment) by a relativity of 67.22%.
49. The Tribunal finds that the existing lease value is £101,732.31

Issue No.3: Extended Lease Value

50. Mr Davis considers the Extended Lease Value is £143,275.
51. Mr Davis considers the best evidence to be the sale of Flat No. 6 which was sold in June 2019 at £163,000 (the lease having been extended until 2153). The details taken from Rightmove and the Land Registry advise that the property has double glazed windows, a modern kitchen and bathroom the benefit of which Mr Davis has valued at £7,500 with a further adjustment of £12,225 (7.5%) to reflect the decline in market conditions as a consequence of the effects of Covid-19 between the respective valuation dates.
52. In support of the decline in the market conditions Mr Davis refers to various articles taken from Estate Agent Today which predicted that values would drop by 12 to 15%. Further Mr Davis has considered the Land Registry House Price Index between June 2019 and the date of the Notice which shows a decline of 3.47% and based on this concludes that an adjustment of 7.5% is reasonable in the circumstances.
53. Mr Davis has also considered two further flat sales both of which have extended leases expiring in March 2156. Flat No. 11 was sold in September 2017 at £150,000 and Flat No. 26 which was sold in February 2017 at £134,250. However, Mr Davis discounts both on the basis they occurred 3 years prior to the subject Property's valuation date. Mr Davis has also considered Flat No. 17 which was on the market at the time of the Notice at £170,000 and following further enquiries understands it had exchanged but as it post-dates the valuation date considers it is of no evidential weight. The Tribunal asked the parties to confirm the date the property was actually sold and a copy email from agents Oakmans advised that the sale was agreed in July 2020 and completed in December of that year.
54. Mr Evans considers the Extended Lease Value is £160,000.
55. Mr Evans considers that there is good evidence of sales of similar properties with long leases and in particular Flat No.6 which was sold at £163,000 in June 2019. Mr Evans advises he has not seen the inside of this property but believes it is a similar 2-bedroom flat with an updated kitchen and bathroom which, incidentally, accords with Mr Davis. To reflect the benefit of the improvements Mr Evans values these at £3,000.

56. Mr Evans has made no adjustment for any changes to the market conditions. At the Hearing Mr Evans was questioned on this and advised that he is of the view that as a consequence of Covid-19 there has been a move away from 1 bed city centre flats to larger suburban flats and houses with gardens and generally speaking values have held up in 2020.
57. The Tribunal considers the best evidence is the sale of Flat No. 6 being the closest to the subject Property's valuation date and finds the evidence in respect of Flat No. 11 and Flat No. 26 less relevant having occurred approximately 3 years prior to the valuation date. The Tribunal has also considered the sale of Flat No. 17 but as it post-dates the valuation date in better market conditions also finds it less helpful.
58. Mr Davis and Mr Evans are both in agreement that the Property is un-modernised and would require updating in particular to the kitchen, bathroom and windows. The parties are also in agreement that Flat No. 6 has been modernised and therefore an adjustment is necessary to the subject Property's value to reflect the differences. Mr Davis considers a deduction of £7,500 and Mr Evans a smaller deduction of £3,000. The Tribunal considers that any adjustment in the offer made for the Property to reflect any improvements required must reflect how the market would approach this. The Tribunal considers that the cost of replacing the kitchen, bathroom and windows is likely to exceed £7,500 however it is for the parties to strike a bargain at the point of sale whereby the purchaser and vendor are satisfied that a fair adjustment has been made. Therefore, the total costs of any improvements required may not necessarily equate to the reduction in the price of the property sought by a purchaser. To that extent the Tribunal is satisfied that an adjustment of £7,500 is fair and reasonable in the circumstances.
59. The Tribunal has carefully considered Mr Davis's evidence on the effects of Covid-19 and the views of Mr Evans that the market for similar type flats has remained relatively robust during 2020. The evidence before the Tribunal is somewhat limited however the Tribunal prefers Mr Davis's evidence and although the information at the time from Estate Agent Today were effectively predictions/ forecasts the evidence from the Land Registry House Price Index does show a reduction of 3.47% between June 2019 and May 2020. However, the Tribunal is not persuaded that Mr Davis has proved his case for a reduction of 7.5% and therefore adopts the lower figure of 3.47% producing an adjusted value for the Property of £157,343.90.
60. The Tribunal therefore finds that the Extended Lease Value is £149,843.90.

Valuation

61. The Tribunal determines that the value of the premium payable by the Applicant for the subject Property is calculated as follows:

Freeholders Present Interest

Term £0.00

Reversion (to Freehold)

Market Value	£149,843.90	
<u>Add Freehold uplift 1%</u>	<u>£1,498.44</u>	
	£151,342.34	
PV 45.85 years @ 5.5%	<u>0.0858766</u>	£12,996.77

Freeholders Proposed Interest

Extended Leasehold Value	£151,342.34	
PV 135.85 years @ 5.5%	<u>0.0006937</u>	<u>£104.99</u>
		£12,891.78

Marriage Value

1. Proposed Interests

Freehold	£104.99	
Leasehold	<u>£149,843.90</u>	£149,948.89

2. Present Interests

Freehold	£12,996.77	
Head Lease Compensation	£8,250.00	
Leasehold	<u>£101,732.31</u>	<u>£122,979.08</u>

Total Marriage Value £26,969.81

Marriage Value Share at 50% £13,484.90

Total £26,375.78

Add Head Lease Compensation £8,250.00

Premium to be paid by Leaseholder SAY £34,626.00

Decision

62. The Tribunal determines the premium payable by the Applicants at **£34,626 (Thirty-Four Thousand, Six Hundred and Twenty-Six Pounds)**.

Costs

63. The application to determine the landlords' recoverable costs associated with this case was stayed. The parties are to advise the Tribunal within 21 days of the date of this decision if costs are agreed or if they require the Tribunal to issue Directions in this regard.

Appeal

64. 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: Nicholas Wint FRICS

Date: 25 May 2021