



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

Case Reference	:	BIR/23UB/OAF/2020/0026
Property	:	100 Tom Price Close, Cheltenham, Gloucs., GL52 2LF
Applicants	:	David Carl William Keysell
Representative	:	Lodders Solicitors LLP
Respondent	:	Persons Unknown
Representative	:	None
Type of Application	:	An Application to determine the premium payable into Court by a lessee to extend a lease under section 48 of the Leasehold Reform Housing & Urban Development Act 1993, pursuant to an Order of the Gloucester and Cheltenham County Court dated 17 th June 2020, Claim No. G00GL270.
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS V. Ward B.Sc. FRICS
Date and Venue of Hearing	:	None. Determined by paper submission
Date of Decision	:	12 January 2021

DECISION

Introduction

- 1 This is an application to determine the premium payable into Court by a Lessee to extend a lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act').
- 2 The Lessee had been unable to locate the Freeholder to serve Notice under section 42 of the Act and applied to Gloucester and Cheltenham County Court for a vesting order on 27th April 2020 by Claim No.G00GL270. This was granted on 17th June 2020 subject to assessment of the premium and other terms by the First-tier Tribunal (Property Chamber).

The Law

- 3 There are three interests in the property:

Freehold	Owned by parties unknown. In 1982 it had been owned by Barratt Bristol Limited who granted two simultaneous leases:
Head-Leasehold	to O.M. Limited, currently vested in Proxima G.R. Properties Limited. The lease was granted for as term of 120 years less 1 day from 1 st July 1982 subject to concurrent leases of 'Studio Flats' in the building.
Sub-Leasehold	to D.J. Randall, currently vested in the Applicant D.C.W. Keysell Esq. who holds the sub-lease of a Studio Flat for a term of 120 years from 1 st July 1982 at ground rent of £20 p.a. for the first 21 years subject to review after 21 years. The current rent is £53.20 p.a. to be reviewed on 1 st July 2024 in accordance with a formula in the lease.

- 4 The sub-tenant wishes to acquire an extended lease and his Solicitors Ladders LLP made enquiries of the head-leaseholder to establish the name of the party that owned the Freehold. The title is unregistered. The block had been built by Barratt Bristol Limited in 1982 but unfortunately the company did not reply to the Applicant's requests for information.
- 5 On 27th April 2020, the valuation date, the Applicants applied to the County Court for a vesting order for a new lease on statutory terms, adding 90 years to the existing unexpired term.
- 6 The Court issued the Order on 17th June 2020 subject to the terms of lease being determined by the First-tier Tribunal (Property Chamber).
- 7 Section 48 of the Act provides that the Tribunal has jurisdiction to assess the premium in accordance with a formula in Schedule 13. It sets out the basis of calculation and requires the premium to be based on the landlord's loss of ground rent for the term and compensation for the deferred right to possession of the flat together with a share of any marriage value arising from the lease extension. In this case, there is no Marriage Value as the unexpired term is greater than 80 years, excluded by paragraph 4(2A) of Schedule 13 to the Act.
- 8 It also allows the landlord to claim any diminution in the value of land retained in its estate due to the grant of the lease extension if such loss can be justified under paragraph 5, Schedule 13.

Facts Found

- 9 The Tribunal has been unable to inspect the flat due to Government Covid Regulations and relies on the Submission of the Applicant's agent, Mrs J.Coupe FRICS.
- 10 According to the Submission, the property is a second floor Studio Flat comprising two rooms; a living room/bedroom/kitchen and bathroom, accessed from a communal hall. The Flat has an allocated parking space in the development. It is one of 12 flats in a block of several similar blocks about five minutes' walk from Cheltenham town centre.
- 11 The building is three storey brick and tile construction, built about 1982.

Issues

- 12 The Court Order requires the Tribunal to determine the terms of a new lease as if the Applicant had served Notice under section 42 of the Act.

The terms of the new lease

- 13 Having reviewed the papers, the Tribunal determines that the Applicant is entitled to a new lease on terms similar to the existing lease save that the term is extended by 90 years and the ground rent reduced to a peppercorn per annum in accordance with the Act.

The premium payable under Schedule 13 to the Act

Applicants' Submission

- 14 The Tribunal received Submissions from Mrs J.Coupe FRICS, a Chartered Surveyor with extensive experience of valuing residential property in Cheltenham in which she proposed a premium of £1,286 payable to the Freeholder in exchange for a new lease, with the term extended by 90 years but otherwise similar terms to the present lease. Compensation for the head-lease has been agreed by the Applicant and agents acting on behalf of the head-leaseholder at £1,011 (One Thousand and Eleven Pounds) plus a valuation fee of £300.

Mrs Coupe's valuation of the Freehold incorporates the following elements:

Unexpired Term

82.17 years.

Ground Rent

£53.20 p.a. at the valuation date.

Capitalisation Rate

6.5% based on:

- i) previous Tribunal decisions within the development dated 13th October 2020 where 6.5% had been held as the capitalisation rate:
18 Tom Price Close, Cheltenham. Case Ref. BIR/23UB/OAF/2020/0020 and
39 Tom Price Close, Cheltenham. Case Ref. BIR/23UB/OAF/2020/0019
- ii) general guidance handed down in *Nicholson v Goff (2007) 1 EGLR 83*;
- iii) the fact that the ground rent is relatively modest at just over £50 p.a;

- iv) previous negotiations undertaken by Mrs Coupe throughout the south west over a three year period in the range 6-7.5%;
- v) Tribunal guidance in a missing landlord case for Flat 1, 56 St.James St., Cheltenham, (case ref. CHI/23UB/OLR/2020/0024) where a differently constituted Tribunal had determined the capitalisation rate at 6.5% for a ground rent of £50.00 p.a.

Deferment Rate

5% as determined in *Earl Cadogan v Sportelli* LRA/50/2005.

Relativity

Not applicable as there is no marriage value to consider.

Development Value

None applied, as the site is considered fully developed.

Comparable Sale Values

Mrs Coupe referred to the sale and asking prices of the following properties described in the Submission:

1	53 Tom Price Close, Cheltenham. Sale agreed March 2020	£75,000
2	Berkeley Court, High St., Cheltenham. Asking price	£92,500
3	Flat 1, 69 High St., Cheltenham. Asking price	£95,000
4	Tom Price Close, Cheltenham. Number unknown. Asking price	£85,000
5	70 Tom Price Close, Cheltenham. Sold March 2018	£75,000
6	42 Tom Price Close, Cheltenham. Sold November 2017	£69,000
7	20 Tom Price Close, Cheltenham. Sold January 2017	£71,250

The key evidence was the sale of 53 Tom Price Close which provided similar accommodation which Mrs Coupe said had been improved and modernised by the tenant. It was also the most recent sale. By comparison, the subject flat had not been modernised apart from tenant installed double glazing. Using this as a datum, Mrs Coupe submitted that the value of the existing lease in No.100 would be £72,000 before adjustment for tenant improvements.

Improvements

Mrs Coupe deducted £1,000 to reflect the value of the tenant's double glazing in accordance with the statutory basis, to leave a net value of £71,000.

Conversion to Freehold

Mrs Coupe made an allowance of 1% to represent the difference between the Leasehold value and theoretical Freehold. This was based on *Contactreal Ltd. v Hannah Smith* (2017) UKUT 178 (LC) and *Elmbirch Properties plc* (2017) UKUT 314 (LC).

Schedule 10 Deduction

Mrs Coupe did not consider any allowance should be made to reflect the risk of a tenant remaining in occupation with an Assured Tenancy on expiry of the existing lease as envisaged by Schedule 10 of the Local Government and Housing Act 1989, as the term had over 82 years remaining.

- 15 The Submission contained a Statement of Truth in accordance with RICS and Court requirements.

Tribunal Decision

- 16 The Tribunal considered Mrs Coupe's points and determines the valuation inputs as follows:

Unexpired Term

The Tribunal agrees the unexpired term to be 82.17 years at the date of Notice.

Ground Rent

The Tribunal agrees the ground rent at £53.20 p.a. for the four years until the next rent review. However, it would be unlikely to remain at that level on review and a potential purchaser would probably expect an increase. The lease contains a formula at clause 1(e)(i) requiring the reviewed rent to represent the same proportion of the value of the block at the review date as at the commencement of the lease. The value of the block is unknown but the premium at the date of initial sale in 1982 was £20,750 and the present value is £71,000 in Mrs Coupe's submission, so applying the same ratio, the ground rent could be expected to increase from £53.20 to £69.40 or say £70.00 p.a. on review in 2024, assuming other factors remain constant.

Capitalisation Rate

The Tribunal agrees the capitalisation rate of the ground rent at 6.5% which would be reasonable for a ground rent of £53.20 p.a. with 82 years unexpired.

Deferment Rate

Mrs Coupe adopted the 5% deferment rate held in *Earl Cadogan v Sportelli* LRA/50/2005 and we see no reason to depart from this.

Relativity

Not applicable as there is no marriage value to consider.

Development Value

The block is relatively modern and we not consider there is a reasonable prospect of redevelopment at the present time. We therefore make no allowance in our valuation.

Comparable Sale Values

The Tribunal has considered the comparable sale and asking prices referred to by Mrs Coupe and agrees that based on the evidence, the value of the leasehold interest would be £72,000 for the flat in present condition, prior to adjustment for improvements.

Improvements

The Tribunal agrees £1,000 would be a fair deduction for the value of the tenant's improvement of double glazing, leaving £71,000 at the valuation date on the statutory basis.

Conversion to Freehold

The Tribunal accepts there is a difference between the value of a lease and the value of a Freehold and agrees that 1% variation in this instance would be reasonable. The equivalent value of the Freehold interest in the Flat at the valuation date is therefore £71,717 (i.e. £71,000/0.99).

Schedule 10 Deduction

The Tribunal agrees there is no reasonable prospect of the Lessee remaining in occupation in 82 years' time under an Assured Tenancy and makes no allowance for this in the valuation.

Tribunal Valuation

Based on the above, the Tribunal values the premium payable to the Freeholder as follows:

1 Freehold Premium

Term

Ground Rent	£	0.00		
Years Purchase 82 years 6.5%		<u>15.2966</u>	£	0

Reversion

Extended lease value	£	72,000		
Less value of tenant improvements	£	<u>1,000</u>		
	£	71,000		
Convert to Freehold equivalent, 1% variation	£	71,717		
Present Value £1, 82.17 years @ 5.00%		<u>0.01815</u>	£	<u>1,302</u>

<u>Less</u> value of Freehold reversion after lease extension: deferred 172 years @ 5%	£	71,717		
		<u>0.000226</u>	£	<u>16</u>

Premium	£	1,286
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1 Head-Leasehold Premium

Agreed at	£	<u>1,011</u>
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3 Total Premium Payable

Total value of premiums payable by Applicant:	£	<u>2,297</u>
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Any other sums payable by the Claimants under Schedule 13 to the Act

- 17 In addition, the Tribunal determines the Applicant remains liable to pay:
- any ground rent due to the Head-Leaseholder, Proxima GR Properties Limited, to the date of completion of the new lease.
 - the head-leaseholder's valuation fee of £300 (no VAT has been claimed and so none payable);
 - the head-leaseholder's reasonable legal fees which if not agreed may be the subject of further Tribunal Application under section 60 of the Act.

The form and provisions of a new lease

- 18 The Tribunal has considered the draft Lease included with the Application and approves the form subject to alteration of the premium in paragraph 1.1 to £1,286 (One Thousand Two Hundred and Eighty Six Pounds) payable to the Freeholder and £1,011 (One Thousand and Eleven Pounds) to the Head-Leaseholder.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date: 12 January 2020

Appeal to the Upper Tribunal

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.
