



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

Case Reference : **BIR/00CN/OLR/2013/0069**

Property : **18 Marine Drive, Perry Bar, Birmingham
B44 8BB**

Applicant : **Mr P R Hollick**

**Represented by Mr A W Brunt
FRICS of Anthony Brunt and Co**

Respondent : **Mrs S Abrahams**

**Represented by Mr. D Coleman MRICS,
MARLA, FNAEA of Hollier Browne**

Date of Application : **5th October 2013**

Type of Application : **Sections 48(1) and 60 of the Leasehold
Reform, Housing and Urban Development
Act 1993 (the Act).**

Tribunal : **Mr R T Brown FRICS
Mr P J Hawksworth**

Date of Hearing : **18th December 2013**

Venue of Hearing : **First-tier Tribunal, Priory Court, Bull
Street, Birmingham.**

Dated : **05 FEB 2014**

DECISION

DECISION

1. The Tribunal determines that the premium to be paid for a lease extension under the terms of the Act is **£6,684.00**
2. The Tribunal determines the Freeholder's legal costs in the sum of £700.00 plus VAT (if applicable) and disbursements.

REASONS FOR DECISION

The Application and Introduction

3. This is an application to determine the premium to be paid for a 90 year lease extension and the legal costs payable to the Freeholder under the terms of the Leasehold Reform Housing and Urban Development Act 1993.
4. The Applicant's served notice under section 42 of the Act on 20th May 2013.
5. The Respondent served a counter notice admitting the right to a lease extension on 23rd July 2013.

The Property and the Tribunal's inspection

6. The members of the Tribunal inspected the property on 18th December 2013.
7. The property comprises a ground floor maisonette in a purpose built block of 8 constructed in the mid 1970s in brick and tile. The property benefits from gas central heating and double glazing.
8. The accommodation comprises: Porch (with store off), entrance hall, 1 living room open plan to kitchen, 1 double bedroom, and bathroom (full suite). Outside there is a small fore garden/drive way (1 car) and an area of the rear garden adjoining the property. There is a single car garage in a block adjoining.
9. Mr Brunt showed the Tribunal members four comparable properties in Marine Drive namely, No's 16, 22, 24 and 26.

The Law

10. The relevant law is Chapter II sections 39 to 62 and Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993.

The Lease

11. The Tribunal was provided with a copy of the Lease dated the 28th February 1976 for a term of 99 years from the 24th June 1974, subject to a rising ground rent initially £35.00 per annum until 24th June 2007, and £52.50 per annum until the 24th June 2040 and £70.00 per annum until the 24th May 2073.

The Hearing

12. The hearing was held after the inspection.

Matters agreed between the parties

13. Capitalisation Rate 6.25%.

14. Deferment Rate 5.75%.
15. The number of years unexpired on the Lease 60.08.
16. Valuation Date 20th May 2013.
17. During the hearing it became apparent that both valuers were agreed that the value of the tenant's improvements was £2,000.00.
18. Landlord's Valuation fees £450.00 plus VAT.

Matters in dispute between the parties

19. Extended Leasehold Value.
20. Whether or not improvements should be deducted from the extended Leasehold Value before (if any) *Clarise* deduction is made.
21. Existing Leasehold Value.
22. Landlord's legal costs.

The Applicant's Case

Extended Leasehold Value

23. Mr Brunt explained that the valuers were in agreement that the Extended Leasehold Value was £77,000.00 however from this figure he had deducted 5.00% to reflect the decision in *Clarise Properties Ltd Re: 167 Kingshurst Road* [2012] UKUT 4(LC) LRA/170/2010 and a further £2,000.00 to reflect the tenant's improvements. Resulting in a figure of £71,625.00.
24. In support of the *Clarise* deduction Mr Brunt referred the Tribunal to 3 recent decisions of this Tribunal where deductions were made as follows:

BIR/00CT/OLR/2013/0020 227 Rowood Drive – 5.00% *Clarise* deduction awarded on a 51.78 years unexpired term.

BIR/00CT/OLR/2013/0042- 390 Rowood Drive – 5.00% *Clarise* deduction awarded on a 50.78 years unexpired term.

BIR/00CT/OLR/2013/0041- 68 Mallaby Close – 4.00% *Clarise* deduction awarded on a 60 years unexpired term. This case may be subject to appeal but the grounds are not known.
25. Mr Brunt said there was no reason why such a deduction should not be applied to '93 Act valuation. He had represented the Applicant leaseholder in all three cases.

Existing leasehold value

26. Mr Brunt had calculated the Existing Leasehold Value by reference to recent sales transactions (with similar lease terms) and used a relativity of 91.00% to arrive at a figure of £65,178.75.

27. The recent transactions he had considered were:

No 19 – currently on the market £74,950.00

No 26 – sale agreed recently (not contracted) £68,000.00

No 24 - Sold 23rd January 2013 £66,000.00

No 16 – Sold 9th November 2012 £65,000.00

28. He concluded that the sales of No's 16 and 24 supported his existing lease value of £65,000.00.

Valuation

29. Applying those figures (deducting the 'Clarise' adjustment before allowing for lessee's improvements) before the matters agreed at a meeting of the experts immediately prior the hearing Mr Brunt arrived at a premium for the lease extension of £4,888.00.

Further Submissions

30. In response to the Tribunal's request for further submissions in respect of the decision in *55 Amanda Drive, Yardley, Birmingham* (B1R/OOCN/2013/004) Mr Brunt said, in a letter dated 22nd January 2014 that in previous cases the Tribunal has reflected the fact that under Schedule 10 of the Housing and Local Government Act 1989 the lessee has a right to remain in occupation thus denying the freeholder from obtaining vacant possession.

Legal Costs

31. Mr Brunt proposed a figure of £550.00 plus VAT and disbursements. He referred to an article in the Daily Telegraph where Lord Neuberger, Master of the Rolls, had said that an alternative to hourly billing for legal work was urgently required and that some sort of fixed costs would be a viable alternative.

32. The right of the Respondent to a lawyer of own choosing was not disputed but Mr Brunt was confident from enquiries that he had made of Midlands' firms of solicitors, that the work could be done on a fixed fee basis using a properly qualified lawyer for £450.00 plus VAT.

The Respondent's Reply

Extended Leasehold Value

33. Mr Coleman had calculated a figure of £75,000.00 after allowing £2,000.00 for tenant's improvements.

34. Mr Coleman said he has always been a critic of the 'end discount'. Investor decisions were, in his experience, short term. In the late 1990's and early 2000's regulated tenancies had been selling for 90 to 100% of vacant possession value. Vacant possession values were rising fast at that time and investors had had no trouble recovering their investment.

35. Mr Coleman further said that Freehold ground rent sales had been selling at 1.5 to 1.6 x Leasehold Reform Act values in this period. The risk of a Schedule 10 (Local Government and Housing Act 1989) tenancy was too remote to

influence investment decisions in reality. His firm managed hundreds of ground rents and of the five cases where Schedule 10 Notices had been served, only one went to a statutory tenancy and this was because the tenant was very short of money and the property in poor condition but *'the investor still came out on top'*.

36. The Schedule 10 principle is valid where the lease has a short unexpired term (say less than 10 years) but *'where there are 60 years unexpired there are other drivers that determine price not Schedule 10'*.
37. If any *Clarise* deduction were to be made it should be made from the Extended Leasehold Value after allowing for improvements.

Existing Leasehold Value

38. Mr Coleman relied on 4 transactions to support his valuation of £64,000.00.

No 24 – Sold 23rd January 2013 £66,000.00
No 16 – Sold 9th November 2012 £65,000.00
No 22 – Sold 31st August 2012 £57,000.00
No 26 – Sold 12th August 2009 £68,000.00

Valuation

39. Mr Coleman's valuation before adjustment for the agreed matters was £7,238.50.

Further Submissions

40. In response to the Tribunal's request for further submissions in respect of the decision in *55 Amanda Drive, Yardley, Birmingham* (BIR/00CN/2013/004) Mr Coleman said, in a letter dated 17th January 2014:
- (a) There is no Upper Tribunal precedent for a *Clarise* deduction in 1993 Act cases.
 - (b) A discounted value should not apply when determining marriage value.
 - (c) As to any deduction when establishing the potential value at lease expiry this may have some credence but not in the case of 'longer mid term leases'. In *Clarise* the statutory calculation at lease expiry, section 9(1), reverted to a section 15 rent. Why not an upwards adjustment at the expiry of the original term to reflect the same windfall gain. I.e. for the ownership of a property with a tenant paying market rent rather than a rent based on the site.
 - (d) His experience was that claims under Schedule 10 were extremely rare.
 - (e) In the real world other variable factors knock out any consideration for a *Clarise* deduction:
 - (1) Schedule 10 tenancies are very rare
 - (2) Investors are short term thinkers:
 - (a) Investors in Business Expansion Schemes did not consider the risk of the tax advantages being withdrawn
 - (b) Multiples of statutory value paid by investors in the last 15 years varied from 1 (current) to 1.6 (10 to 15 years ago)
 - (c) Most investors in portfolio of ground rents having 10 years unexpired will base their purchase on around 60% of that portfolio being extended within 10 years.

41. Unless you can stare the tenant in the eye and establish the likelihood of his being in occupation at the end of the tenancy, and from his personal circumstances, establish the likely view of family support/investment then the *Clarise* deduction must be ignored.

Legal Costs

42. Mr Coleman said that his client's solicitor was a two partner North London firm and their hourly charge out rate was £240.00 and their fee, for this case was £800.00 plus VAT.

The Tribunal's Deliberations

43. The Tribunal considered all the relevant written and oral evidence presented and summarised above in its deliberations.
44. The Tribunal's view is that the premium payable under schedule 13 to the 1993 Act should be determined by the application of the established formula (helpfully set out in *Amanda Drive* (above)) and the Tribunal adopts the matters agreed by the parties.
45. The cases referred to by Mr Brunt were not discussed in detail at the hearing Mr Coleman having said that he was familiar with them.
46. The members of the Tribunal concluded that they would not be assisted by referring this back to the parties and determined that, although not bound by previous decisions of the First-tier Tribunal, it was appropriate in this case to follow the principles established in those decisions.
47. The members of the Tribunal gave careful consideration to Mr Coleman's expert opinion of his experience with regard Schedule 10 and the *Clarise* deduction. After considering the further submissions of the parties the Tribunal concluded that it was appropriate to apply a *Clarise* deduction in 1993 Act cases. The Tribunal was not persuaded that Mr Coleman's expert opinion (without the support of factual evidence) against a *Clarise* deduction held sufficient weight to ignore a decision of the Upper Tribunal. The rights which give rise to the deduction are under the aegis of the Housing and Local Government Act 1989 rather than the 1967 or 1993 Acts.
48. Accordingly the Tribunal determined on the evidence before it and using its own judgement and experience that a *Clarise* deduction of 4.00% should be made.

Extended Leasehold Value

49. The Tribunal's view is that the proper application of a *Clarise* deduction in a Schedule 13 of the 1993 Act valuation should apply only to the calculation of the Extended Leasehold Value to the Freeholder.
50. The Tribunal concluded on the evidence submitted that the Extended Lease Value to the Freeholder should be calculated as follows £77,000.00 (agreed by the parties) less £3,080.00 (4.00%) (*Clarise adjustment* as determined in 68

Mallaby Close on a 60 year unexpired term) = £73,920.00 less £2,000.00 (improvements agreed by the parties) = £71,920.00

51. The Tribunal concluded on the evidence submitted that the Extended Lease Value to the Leaseholder should be calculated as follows £77,000.00 (agreed by the parties) less £2,000.00 (improvements agreed by the parties) = £75,000.00.

Existing leasehold Value

52. The Tribunal is wary of considering transactions that are either not completed, and at a date not close to the valuation date. The Tribunal concluded that the relevant comparables were No's 16 and 24 at £65,000.00 and £66,000.00 respectively. Normally the Tribunal would average these figures however given the conclusions of both valuers the sum of £65,000.00 is determined.

The Tribunal's Valuation

53. Applying those figures to the valuation formula and adopting the matters agreed between the parties the Tribunal's calculation is given below:

Term

Ground Rent		52.50			
YP 27.08 years 6.25%		<u>12.90</u>	677.33		
Ground Rent		70.00			
YP 33 years 6.25%	13.84				
PV £1 in 28.08 years 6.25%	<u>0.194</u>	<u>2.685</u>	<u>187.95</u>		865.28

Reversion

Extended Lease Value to Freeholder	71920.00			
PV of £1 in 60.08 years at 5.75%	<u>0.03</u>		<u>2502.816</u>	
Freeholders Present Interest				£3,368.10

Marriage Value

Extended Lease Value to Leaseholder		75,000.00		
Existing Lease Value	65000.00			
Freeholders Present Interest	<u>3368.10</u>	<u>68,368.10</u>		
Marriage Value		6,631.90		
50% to each party		<u>2.00</u>	<u>£3,315.95</u>	
Premium payable				£6,684.05
		say		£6,684.00

Legal Costs

54. The Tribunal accepts that Mr Brunt may be able to have this work undertaken locally on a fixed fee basis of £450.00, however, the Freeholder's solicitor is North London based and it is accepted that not only is the freeholder entitled to employ whoever he chooses but also that the rate payable is the rate applicable to that location and not the location of the subject property.
55. The Tribunal concluded that, on the basis of the evidence presented and the knowledge and judgement of the members, the reasonable legal costs of the Freeholder are £700.00 plus VAT and Disbursements.

Appeal Provisions

56. 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).

Robert T Brown
Chairman