



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

Case Reference: CHI/18UB/OLR/2014/0288
Property: Flat 3 Copplestone House, Bedlands Lane,
 Budleigh Salterton, Devon EX9 6QN

Applicant: Miss Phyllis Coe
Representative: Mr T Selley, solicitor
Respondents: J S Jenkins and C K Whyment Jenkins
Representative: Mr D Ambrose

Type of Application: Section 48 Leasehold Reform, Housing and
 Urban Development Act 1993
 (New Lease: Matters in Dispute)

Tribunal Members: Judge A Cresswell (Chairman)
 Mr E G Harrison FRICS

Date and venue of Hearing: 27 February 2015 in Exeter
Date of Decision: 9 March 2015

DECISION

The Application

1. The Applicant is tenant of the property. The Respondents are the landlord and freeholder.
2. By written notice dated 28 February 2014, the Applicant claimed to exercise the right to acquire a new lease of the property, pursuant to Section 42 Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). She proposed a premium of £45,000.
3. The Respondents' counter notice, pursuant to Section 45 of the 1993 Act, is dated 15 May 2014 and proposed a premium of £125,000.

4. The Applicant referred the dispute as to the premium to the Tribunal by written notice of 17 October 2014.

Inspection and Description of Property

5. The Tribunal inspected the property on 27 February 2015 at 1000. Present at that time was Ms K Hart, the Applicant's Attorney. Copplestone House is a detached Edwardian House once used as a school and probably sub-divided into 9 self-contained flats on 3 floors in the 1960s. The construction is with mainly brick cavity walls under tiled roofs. Most of the original timber casement windows and doors remain with some evidence of uPVC double-glazed replacements. The building is located on the western outskirts of Budleigh Salterton, a renowned seaside town very popular as a retirement destination. The site is almost level and the original house was built with its principal aspect southwards with a pleasant aspect over unspoilt countryside. Flat 1, on the east side of the building, appears to be approached via the original oak front door. The other flats generally share communal halls and stairs to the first and second floor flats. Flat 3 is located at the south-west corner of the ground floor. A path adjoins the west side and beyond is a grass bank and hedge. The whole property is approached via two entrances from Bedlands Lane. Parking is not allocated but available in the surfaced communal areas. Garages are let separately.

Directions and Hearing

6. Directions were issued on 7 November 2014.
7. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
8. This determination is made in the light of the documentation submitted in response to those directions and the Inspection and the evidence and submissions at the hearing.

The Law

9. The relevant law is set out in section 48 and in the statutory assumptions set out in Schedule 13 of the 1993 Act.
10. Section 91(1) of the Act states that "*any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by a leasehold valuation tribunal.*"
11. Section 91(2) sets out the list of those matters, including "*the terms of acquisition relating to...any new lease to be granted to a tenant in pursuance of Chapter 11.*"

The Lease

12. The Applicant holds Flat 3 under the terms of a lease dated 24 November 1970, which was made between John Byron Fraser Austin and Lady Rhoda Noreen Austin as lessors and Bernard Comins and Marie Hilda Comins as lessees.

Agreed Matters

13. At the commencement of the hearing, the parties informed the Tribunal that the terms of the new lease had been agreed and that the only issue for resolution remained the premium.
14. The following items were agreed in respect of the premium:
 - a) The Valuation Date of 21 March 2014.

- b) The Unexpired Term of the Lease: 12.67 years.
- c) The Ground Rent of £35 p.a.
- d) The Capitalisation Rate of 8%.
- e) The Deferment Rate of 5%.

Disputed Items

15. The following items were disputed:
- a) Relativity.
 - b) Tenant's Improvements to be disregarded.
 - c) The Extended Lease Value.

Relativity

16. In **Voyazides v Eyre and Others** (2013) UKUT 013 (LC), the Upper Tribunal said this: "*In Arrowdell Limited v Coniston Court (North) Hove Limited [2007] RVR 39, which was followed in Nailrile and Others v Earl Cadogan and Others [2009] RVR 95, the Tribunal said:*

"In such circumstances, in our view, it is necessary for the tribunal to do the best it can with any evidence of transactions that can usefully be applied, even though such transactions take place in the real world rather than the no-Act world. Regard can also be had to graphs of relativity..."

The use of graphs is a recognised method of assessing the relativity and is one which we prefer in this instance, given that there is only one piece of usable transactional evidence to support Mr Buchanan's preferred approach."

17. On behalf of the tenant, Mr Linnell placed reliance on graphs produced by the Leasehold Advisory Service (LAS) and the College of Estate Management (CEM). Both were based on LVT decisions and both came to similar conclusions. It was noted that the graphs produced were based on data from 1994 to 2007 and 1994 to 1999 respectively.
18. Mr Ambrose had considered the RICS tables and graphs produced by Beckett & Kay, Austin Gray, Andrew Prudell and Moss Kaye, including a 2014 revision in relation to Beckett & Kay. Other than the 2014 revision, the graphs considered by Mr Ambrose were also of some age. Mr Ambrose told the Tribunal that he was aware of one comparable sale, being Flat 8 at the same property. He told the Tribunal that there was little detail about this sale and that he had, accordingly, resorted to the graphs. He told the Tribunal that he had been forced to look at the graphs and that "*you tend to cherry-pick a number that helps your client.*"
19. The Tribunal was conscious that there were here two quite competing arguments by the parties. The Tribunal noted that the graphs relied upon by Mr Ambrose were predominantly based on data from London and the South East. Both parties agreed that this was an unusual case because there was such a short time remaining on the lease, less than 13 years, and both agreed too that Budleigh Salterton is a non-mortgage dependent market. Budleigh Salterton is a popular retirement destination which attracts non-mortgage purchasers.
20. Having regard to the above, the Tribunal was less disposed to take account of the graphs relied upon by Mr Ambrose and more inclined towards some reliance upon the graphs relied upon by Mr Linnell; those latter graphs having a wider geographic spread. The Tribunal also took account of the particular nature of the Budleigh Salterton market, referred to above.

21. There was also some support for a finding of a higher relativity figure rather than a lower one based upon the sparse details available within the documents as to the sale of Flat 8. The Tribunal noted that Flat 8 had been sold on 1 March 2012 which, whilst 2 years before the valuation date, was a sale of a flat at the same property and in a market which the Tribunal perceived to be a relatively flat market during the years 2012-2014. The Tribunal noted that the unexpired term of the lease of Flat 8 was 14 years and 2 months, a term not too dissimilar to that under consideration. The premium of £60,000 for the sale of Flat 8 pointed towards a higher level of relativity.
22. The Tribunal had to do its best with the available information and concluded, when all of the above factors were considered, that the appropriate level of relativity was 37.5%.

Tenant's Improvements to be Disregarded

23. Under Schedule 13 Part 11, paragraph 3(2)(c) of the 1993 Act, the Tribunal is to assume "*that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded*".
24. In ***John Lyons Charity v Shalson*** [2003] UKHL 32, the House of Lords found that the concept of "improvements" connotes additions or alterations that go beyond mere renewal or repair. It is a physical and not an economic concept and refers to the works themselves; not the effect, if any, which they have on the value of the premises. "*For the tenant to secure a reduction, he must therefore, first, identify improvements which he or his predecessors have carried out at their own expense, and secondly, satisfy the tribunal that but for those improvements the house and premises would have been worth less.*"
25. "*What does it mean to say that the value of the house and premises has been increased by the improvement? In my opinion, it signifies a simple causal relationship: but for the improvement, the house and premises would have been worth less. The comparison is between the value of the house as it stands and what its value would have been if the improvement had not been made.*" (Lord Hoffman at para 19).
26. Lord Bingham said this: "*It would not be fair if the tenant were obliged to pay an enhanced price to the extent that such enhancement was attributable to works done by him or his predecessors in title (probably voluntarily) at their own expense: the tenant would in effect be paying twice. It would not be fair if the owner received a price inflated as a result of works done by the tenant or his predecessors in title (probably voluntarily) at their own expense: the owner would be reaping an adventitious gain as a result of works which he had had no right to require.*"
27. Lord Millett said this: "*Whether an 'improvement' really improves the property is considered from the point of view of the tenant alone, so that work may constitute an improvement although it does not increase the value of the property at all or even reduces it: see ***Balls Brothers Ltd v Sinclair*** [1931] 2 Ch 325. As my noble and learned friend Lord Hoffmann observes, the concept is a physical and not an economic one.*" and "*It must be remembered that the landlord is prima facie entitled to the full value of his interest in the property as it stands at the valuation date. If the tenant claims a diminution in the price he must establish the facts which entitle him to it.*"
28. The Tribunal found that there were here a number of Tenant's improvements to be disregarded and discusses those improvements below.

29. Mr Ambrose submitted that there had been no improvements that would affect the valuation over and above what the tenant was required to do to comply with the terms of the lease. He argued that the failure by the Applicant to deal with asbestos (a bitumen sink pad and asbestos insulation in a hall wall lining together with asbestos in the cellar) had damaged the Respondents' reversion. He relied upon Clause 2(d) of the Lease, which he submitted required the tenant to keep the property in a tenable condition, but which actually says:
"During the said term sufficiently to repair uphold and cleanse and keep in good repair and condition the said Flat and the internal walls floors (which term shall include the joists supporting the same) and ceilings thereof and all fixtures and fittings therein and all glass in the windows and doors thereof".
30. Mr Linnell sought to persuade the Tribunal that there had been a number of Tenant's improvements, which included removal of asbestos at the beginning of the term and other items, which the Tribunal comments upon below.
31. As to the asbestos, there was no dispute before the Tribunal that asbestos had been identified in the basement/cellar at the commencement of the Applicant's tenancy in May 1994; that there was discussion then between the parties as to its removal; that the landlord said that it was for the tenant to effect removal; that some asbestos was removed with the cost met by the Applicant. More recently, decorators had identified asbestos used as fire proofing in the hall and a subsequent study had also identified the bitumen sink pad and asbestos associated with an old boiler unit in the cellar (the building had once been a school); the parties were not in disagreement that the cellar was damp and of little practical use to the Applicant.
32. The Tribunal finds that removal of asbestos is not an issue envisaged by the Lease or covered by Clause 2(d). In today's housing market, the presence of asbestos is, the Tribunal finds, a factor highly likely to lead to a diminution in the value of a property. The removal of asbestos can only be seen as an improvement causing a higher resultant value. Its continued presence can only be seen as a factor reducing the value of the property.
33. Original windows had been replaced by the Applicant with uPVC double-glazed units. Clause 2(d) of the Lease places responsibility on the tenant for the glass only, yet here the Applicant had replaced windows with double-glazed units which would, the Tribunal finds, increase the value of the property and which work could not have been required of the tenant by the landlord under the terms of the lease. The replacements had been paid for by the Applicant and did improve the value of the property, given the resulting extra warmth, insulation, security and reduction in maintenance costs.

The Extended Lease Value

34. The process of valuation for lease extension requires the assessment of the value of the extended leasehold interest in the subject property. The Tribunal was provided with comparable evidence by both parties. The Applicant's Valuer, Mr Linnell, considered that the best evidence available was the sale of Flat 6 at Copplestone House which took place within a month of the valuation date. The Estate Agents' particulars and the Tribunal's external inspection revealed that this 2-bedroomed first floor flat occupied the south-east corner of the building. It was said to have lovely aspects down the Knowle Valley with some distant sea views. This flat has 2 bedrooms, 2 reception rooms, a utility room, kitchen and bathroom. Heating is by electrical storage heaters.
35. In Mr Linnell's, the Applicant Valuer, exhibit is a valuation of Flat 3 based upon the sale price of Flat 6 in the sum of £152,500 on 28 February 2014 with adjustment for

- differences between the two. The Applicant's Valuer also "had regard" to the sale of Flat 5 on 19 July 2013 at a price of £143,000.
36. The Respondent's Valuer also relied upon the sale of Flat 6. He also provided the Estate Agents' Particulars of Flat 1 which was sold for £187,950 on 11 August 2014. He had not inspected these flats.
 37. Flat 1 is on the ground floor on the south-east corner. The Tribunal had some concerns about using Flat 1 as a comparable sale. The sale occurred in August 2014, which was after the valuation date, although the Tribunal does accept that the price might have shown a trend. From the details and plan, Flat 1 is significantly larger than Flat 3 and Flat 6 and had an extra room, a study/bedroom. It has gas-fired central heating and the benefit of the original front door and hall. All the comparables were sold with the benefit of long leases with low ground rents.
 38. The Tribunal determined, having regard to the above, that £152,500, the sale price of Flat 6, should be its starting point.
 39. Mr Linnell, for the Applicant, contended that the value of Flat 3 with an extended lease without a ground rent was £99,500. Mr Ambrose, for the Respondent, contended for a figure of £160,000.
 40. The Tribunal prefers the more detailed analysis of Mr Linnell and, with some adjustments to his additions and deductions, concludes that the correct figure is £120,000. A schedule of calculations is attached.
 41. The Tribunal has deleted the deductions suggested by Mr Linnell for lack of some repair by the landlord as this would also affect the sale of the comparables. Damp ingress into the kitchen ceiling was noted and appeared to be caused by the failure of a flat roof. The basement/cellar is considered by the Tribunal to be of little practical value in its present state but the removal of the boilers and asbestos from the basement would count as a Tenant's improvement.
 42. There was no dispute about those works which the Applicant had carried out. The difficulty arose over their effect on value, if any. The Tribunal does not consider that replacement wiring would be reflected in the value, nor the part-laminate flooring. The Tribunal does consider that more major matters, such as the installation of gas-fired central heating and the replacement of original windows with new uPVC double-glazed units, does affect value. Historical cost is only one factor to be considered; the Tribunal was careful to reflect that it was the measure of improvement which was of relevance. The Tribunal assessed the value of the improvements to the property using its own knowledge of the influence of those factors on premium in the local market. The original asbestos removal is a matter to be taken into consideration; there was no evidence of actual cost and again the Tribunal was careful to reflect upon the measure of improvement. The future liability of asbestos removal is reflected as an "end allowance"; this had been costed by the Applicant and that costing was the only actual and reliable evidence of likely cost.

Conclusion

43. Using the agreed figures and those it has determined above, the Tribunal calculated the premium to be £71,700.
44. The Tribunal's valuation schedule is annexed below this Determination.

Signed A Cresswell
Judge of the First-tier Tribunal

Date 9 March 2015

Valuation Schedule

**Value of Flat 3 Coppelstone House
at 21 March 2014
assuming a long lease**

Price paid for Flat 6	£152,500	
Adjustments compared to Flat 3		
<u>Add for :</u>		
No ground rent of £65 pa for 87 years	£ 811	
Basement storage	£ 250	
Gas central heating in Flat 3 as against electric heating	£2500	
Part double-glazing in Flat 3	£3500	
<u>Deduction for :</u>		
Deduct for no sea view 5%	£ 7625	
Modernised kitchen in Flat 6	£ 8000	
Modernised bathroom in Flat 6	£ 3000	
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	£7061	£ 11,564

		£140,936
 <u>Deduct for Leaseholder improvements :</u>		
Installation of gas-fired central heating	£5000	
Installation of some uPVC double-glazing	£3500	
Original asbestos removal	£1000	

	£9500	£ 9,500

		£131,436
Allow for liability of future asbestos removal		£ 11,500

	say	£120,000
		=====

VALUATION FOR LEASE EXTENSION**Flat 3, Copplestone House, 9 Bedlands Lane, Budleigh Salterton, Devon**Components :

Valuation date	21/03/14
Existing Lease terms	56 years 26 days from 24/11/70
Ground Rent - per annum	£35
Unexpired Term	12.67 years
New Lease term	146 years 26 days from 24/11/70
Ground Rent - per annum	£0
Capitalisation Rate	8.00%
Deferment Rate	5.00%
Existing lease value	£45,000
Extended lease value	£120,000

Relativity Adopted 37.5 %

VALUE OF EXISTING INTERESTS**A. Diminution in Landlord's interest****Current Value**

a) Ground Rent	£35	
YP @ 8% for 12.67 years	<u>7.7812332</u>	£ 272
b) Reversion to freehold value	£120,000	
PV £1 in 12.67 years @ 5%	<u>0.5745147</u>	<u>£68942</u>
		£69214

Future Value

Value of Extended Lease	£120,000	
PV of £1 deferred 102.67 years @ 5%	<u>0.006788</u>	<u>£815</u>

Diminution in value of Landlords' Existing Interest **£68,399****B. Landlord's Share of Marriage Value****Interests after Marriage**

Value of Extended lease	£120,000	
Value of Landlords interest after Lease extension	<u>£815</u>	
Value of combined interest		£120,815

Interests before marriage

Value of Tenant's current lease	£ 45,000	
Value of Landlord's current interest	<u>£ 69,214</u>	
Value of combined interest		<u>£114,214</u>

Marriage Value **£6,601****Landlord's share @ 50%** **£ 3,301****Price to be paid for Lease Extension** **£71,700**

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.