



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

Case Reference	:	BIR/OOCN/OLR/2015/0116
Property	:	18 Spreadbury Close, Harborne, Birmingham, B17 8TQ
Applicant	:	Mr Mohammed Zahid Shah
Representative	:	Mr A.W. Brunt
Respondent	:	WEL (No.1) Limited
Representative	:	Mr G.Evans FRICS in respect of Application (1) Messrs Stevensons Solicitors in respect of Application (2)
Type of Application	:	(1) An Application to determine the premium payable by a tenant to extend a lease under Section 48 of the Leasehold Reform Housing & Urban Development Act 1993 and (2) to determine the landlord's costs under section 91(2)(d).
Tribunal Members	:	I.D. Humphries B.Sc.(Est.Man.) FRICS P.J. Hawksworth (Lawyer)
Date and Venue of Hearing	:	26th November 2015 at the First-tier Tribunal (Property Chamber), Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU.
Date of Decision	:	13th January 2016

DECISION

Introduction

- 1 This is an application to determine the premium payable by a tenant to surrender and renew a lease of a flat under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act') and the landlord's costs under section 91(2)(d).
- 2 The Applicant made separate applications to the Tribunal to determine the premium and costs, both made 14th October 2015, which the Tribunal treated as one application under Ref.No. BIR/OOCN/OLR/2015/0116 when issuing Directions on 20th October 2015.
- 3 Mr Evans FRICS had conduct of the case for the Respondents in respect of the premium and attended the Hearing on 26th November 2015.
- 4 However, Messrs Stevensons Solicitors acted for the Respondents in respect of the costs application and did not attend the Hearing but submitted a letter dated 25th November 2015 enclosing a copy of a costs breakdown, signed by G.N. Stevenson, Solicitor, dated 23rd November 2015, which the Tribunal treats as the Respondent's Submission on legal costs.

The Law

- 5 The Applicant ('the tenant') holds a Lease ('the Lease') for a term of 99 years less 11 days from 25th March 1964 expiring 24th March 2063, at a ground rent of £30 p.a. increasing to £40 p.a. on 25th March 2030.
- 6 On 27th February 2015 ('the Valuation Date') the tenant served Notice on the Respondent ('the landlord') requesting a new lease under section 42 of the Act for an additional term of 90 years on the same terms as the Lease, offering to pay a premium of £14,478 plus legal costs and surveyor's fees. At the valuation date there were 48 years 1 month unexpired.
- 7 The landlord accepted the tenant's right to a new lease on 29th April 2015 but counter-proposed a premium of £25,910 plus costs. The landlord also proposed amendments to insurance provisions in the Lease that have since been agreed by the parties. The landlord's valuation fee has been agreed at £545 plus VAT leaving the only outstanding issues as the premium and the landlord's legal costs.
- 8 Section 48 of the Act provides 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 a formula in Schedule 13. This 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 compensation for the landlord's deferred right to possession of the flat and a share of any marriage value created by the grant of the new lease. The share is defined as 50% of any marriage value in the Commonhold and Leasehold Reform Act 2002. It also allows the landlord to claim for diminution in the value of any land retained in its estate due to the grant of the lease extension if such loss can be justified, although no such claim has been made in this case.

Facts Found

- 9 The Tribunal inspected the property on 26th November 2015 with Mr Brunt representing the Applicant. Mr Evans did not attend.
- 10 It is a second floor flat in a three storey 1960s block which is one of several similar blocks fronting a site to the south side of the A456 Hagley Road, one of the main roads leading into

Birmingham city centre from the west. It is opposite Lightwoods Park within walking distance of local shops in Bearwood Road with a good bus service to the city centre. It is in a pleasant and well established residential area.

- 11 The blocks have brick elevations and flat roofs and are well spaced out, with open plan gardens and blocks of lock-up garages. The flat is in part of the development known as Spreadbury Close which is near Hagley Road and to some extent affected by traffic noise, whereas other parts of the development are further from the main road and quieter.
- 12 The flat has a hall, lounge, kitchen, two bedrooms and bathroom. The kitchen and bathroom have been refitted and the original warm air central heating system has been upgraded to a boiler and radiator system. The demise includes a lock-up garage.

Issues in Dispute

- i The premium payable to extend the lease and
- ii The landlord's legal fees.

Premium

- 13 The value of the premium depends on various inputs, some of which have been agreed and others are disputed:

- 14 Agreed inputs:

Valuation date	27.2.15
The value of the Term	£491
Unexpired term at date of Notice	48 years 1 month
The value of tenant's improvements	£4,000
Deferment rate	5.75%
The landlord's valuation fee	£545 plus VAT

- 15 Disputed inputs

	<u>Landlord</u>	<u>Tenant</u>
Value of extended lease	£136,000*	£120,000
Deduction for Sch.10 rights	0	5%
Relativity	73.46%	78.00%
Value of present lease	£101,008	£ 90,480
Addition for Freehold vacant possession	1%	0
Premium	£23,190	£16,755**

* amended at Hearing after agreeing £4,000 for improvements.

** revised after Application to Tribunal

The parties submissions and the Tribunal's decision on each disputed point are set out below.

Value of extended Lease

- 16 Applicant's Submission (Tenant)

Mr Brunt referred to the sales of eight flats in the development over a period from January 2012 to August 2015 covering a range in prices from £107,500 to £125,000 based on information obtained from the internet. He had also researched the market by discussing the

sales of comparable flats with local estate agents to research their sales history although he was already familiar with the area having practiced in Birmingham for over 30 years. He made the point at the inspection that the flat was affected by traffic noise from the Hagley Road and that its value would have been marginally less than other flats in the scheme in quieter positions. From this, he concluded that the value of an extended lease in the subject flat at the valuation date would have been £120,000 including £4,000 for the value of the tenant's improvements, i.e. a net value of £116,000.

17 Respondent's Submission (Landlord)

Mr Evans had not inspected the flat. Instead, he relied on information from a colleague who had inspected on his behalf and information obtained from the internet on 16 sales, together with enquiries of local estate agents. He was based in Cardiff but had carried out other valuations in Birmingham. From his research, he concluded that the value of an extended lease in the flat would have been £137,500 at the valuation date which was revised at the Hearing to £136,000.

18 Tribunal Valuation

The Tribunal is grateful to the parties for the research carried out. According to the parties and the Tribunal have no reason to doubt this, all the flats in the development offer broadly similar accommodation built at around the same time. Some would have been modernised and it would now be impossible to discover the condition of each flat at the date of sale and the effect such improvements may have had on their sale values. Equally, there may have been special reasons why some flats sold for higher or lower prices than expected and both Surveyors provided an honest opinion at the Hearing that there was no way all the sale prices could be rationalised into a logical pattern, there would always be spurious data and the Surveyors and Tribunal had to do the best they could with the available evidence to form a balanced view. The parties provided a time line of sales at the Hearing summarised below:

<u>Date</u>	<u>Address</u>	<u>Price £</u>	<u>Comment</u>
Jan 2012	5 Spreadbury Close	116,500	Lease not extended
May 2012	24 Walmead Croft	120,000	
May 2012	64 Winchfield Drive	120,000	
Jul 2012	16 Walmead Croft	107,000	
Sep 2012	48 Winchfield Drive	112,000	Re-sold Apr 2014 £125,000
Nov 2012	30 Walmead Croft	113,000	
Mar 2013	40 Walmead Croft	94,000	Needed refurbishment
Aug 2013	36 Sheepmore Close	107,500	
Sep 2013	18 Walmead Croft	112,000	
Sep 2013	33 Sheepmore Close	117,000	
Jan 2014	14 Walmead Croft	70,000	Lease not extended
Apr 2014	48 Winchfield Drive	125,000	
Nov 2014	27 Sheepmore Close	118,500	
Dec 2014	76 Winchfield Drive	124,950	
Dec 2014	26 Walmead Croft	119,950	Asking price
<u>Feb 2015</u>	<u>Valuation Date</u>		
Aug 2015	6 Walmead Croft	122,500	Needed refurbishment
Nov 2015	3 Spreadbury Close	140,000	For sale
Nov 2015	30 Sheepmore Close	135,000	Under offer
Nov 2015	49 Sheepmore Close	136,000	Under offer

- 19 Until the valuation date, there are two sales that are clearly outside the normal range, i.e. Nos.40 and 14 Walmead Croft that are significantly below the expected norms and neither Valuer contended that they should be considered as primary evidence. Apart from those, the others show a general range of prices that sometimes increase, sometimes decrease over the three year period that may reflect individual characteristics such as the degree of improvements, location in the development and personal choices. However, the Tribunal notes that they are all within 8.5% of the average price of £116,415.
- 20 The valuation date is significant as it is only the information up to that point that would have been available to the parties. The post-date sales are interesting and the Tribunal have not discounted them completely, but apply less weight to them as evidence as they were not available to the parties at the time. They are all over 6 months post-date and only one is a sale, the others are asking prices and offers that had not been completed according to the Surveyors. Nevertheless, they show a trend of increasing prices or at least aspirations over 2015.
- 21 Doing the best it can with the evidence, the Tribunal prefers Mr Brunt's assessment of £120,000 rather than Mr Evans' £136,000 since none of the flats had sold for figures near this by the valuation date, and accordingly the Tribunal determines the value of the extended lease at £120,000 less £4,000 for tenant improvements leaving a net value of £116,000.

Deduction for Sch.10 Rights

22 **Applicant's Submission (Tenant)**

Mr Brunt referred to the Upper Tribunal decision in *Clarise Properties Ltd.* (LRA/170/2010) where the value of the landlord's interest was reduced to reflect the possibility of the tenant remaining in occupation on expiry of the original term date of the lease under Schedule 10 of the Local Government & Housing Act 1989. He also referred at paragraph 34 of his submission to the subsequent Upper Tribunal decision in *Mallaby Close* [2014] UKUT 0304(LC) (Appeal by Midland Freeholds Limited) where the Upper Tribunal upheld the First-tier Tribunal's decision to reduce the value of a flat with 60 years unexpired by 4% at the original term date. In Mr Brunt's opinion the potential Schedule 10 rights adversely affected the value by 5% in the present case, i.e. the extended lease value of £120,000 was reduced by 5% to leave £114,000, from which a further £4,000 needed to be deducted for tenant's improvements.

23 **Respondent's Submission (Landlord)**

Mr Evans disagreed. In his experience, purchasers of ground rent portfolios were paying prices in excess of valuations based on Tribunal decisions and there was no justification for deducting the value where a lease would not expire so far into the future.

24 **Tribunal Valuation**

The Tribunal has considered the Upper Tribunal's decision in *Mallaby Close* and finds that the value of the landlord's interest should be reduced to reflect Schedule 10 rights. In *Mallaby Close* there were 60 years unexpired from which 4% was deducted, whereas in the present case there are just over 48 years unexpired which would have a greater effect on value for which the Tribunal determines the reduction at 5%.

Relativity

25 Applicant's Submission (Tenant)

Mr Brunt relied on the decision in *Coolrace Ltd. and Others Appeal* [2012] UKUT69(LC) ('Coolrace') as authority for applying the LEASE graph to assess the relative value of the subject lease with 48 years unexpired compared to the value of a hypothetically extended lease. The LEASE graph relativity of 78.00% produced a current lease value of £90,480. i.e.

Extended lease value		£120,000
Less tenant improvements		£ 4,000
Net Value		£116,000
Relativity	x	<u>0.78</u>
Present 'short lease' Value		£ 90,480

26 Respondent's Submission (Landlord)

Mr Evans also adopted a 'relativity' approach to the valuation of the present lease because he said the Act required an assumption of a 'no-Act world' and in reality there were no comparables that could be applied. Most flats were sold with extended leases and even those that at first sight had been sold unextended, were still sold under the background of the Act where either the vendor was selling with the benefit of a s.42 notice or the purchaser had a right to apply for an extension after two years.

27 The main difference in approach to Mr Brunt was that Mr Evans applied extracts from *Arrowdell Ltd. v Coniston Court (North) Hove Ltd.* [2007] ('Arrowdell') and *Coolrace* where the Upper Tribunal expressed the hope that the RICS might provide a composite graph analysing all the graphs in existence to arrive at a single curve that could be used to assess relativity. Mr Evans had taken this a stage further by interpolating evidence from five RICS graphs to create a single graph which in this instance produced a relativity of 73.46%.

28 As further evidence, Mr Evans referred to other decisions of the First Tier Tribunal in *Penns Lane* [2012] (BIR/OOCN/OLR/2012/0079 &85) where the Tribunal determined the relativity of two properties held on leases with 49 years unexpired at 69.23% and 69.86%.

29 Tribunal

The Tribunal is aware of the decision in *Coolrace* where at para.27 P.R.Francis FRICS held:

'It is, of course, and with Arrowdell in mind, with some reluctance that I make a determination that clearly relies upon a graph that is based only upon past LVT decisions, but with the absence of any reliable transactional evidence, it is the only option open to me and the LEASE graph is clearly, in my view, more representative of appropriate relativities than the Midland graph. However, it needs to be stressed that this decision should not be seen as setting a precedent in other cases where evidence which is more reliable than the LEASE graph is available.'

30 The Tribunal therefore has to consider four pieces of evidence to assess relativity:

- i the LEASE graph showing 78.00% submitted by Mr Brunt
- ii Mr Evans' composite graph showing 73.46%
- iii the Penns Lane decisions showing 69.23% and 69.86% and
- iv the Tribunal's own expert knowledge and experience.

Using the same numbering as above, the Tribunal comments on the above four pieces of evidence as follows:

i Is relied upon by Mr Brunt but can only be used as a graph of last resort in the absence of any better evidence based on the Upper Tribunal decision in *Coolrace*.

ii Mr Evans' graph is a valiant attempt to combine 5 RICS graphs but the Tribunal have not been provided with all the background data and is unwilling to adopt this as a sole means of determination when it has so far eluded the profession. If it were as straightforward as presented by Mr Evans the Tribunal considers it would have been carried out by the RICS already but as far as the Tribunal is aware (and the parties' Surveyors have not advised otherwise) the RICS has not prepared a single all encompassing graph. Furthermore, the Tribunal is aware of the numerous other graphs in existence prepared by firms of Surveyors, Valuers and interested parties around the country that rely on different types of data such as Tribunal decisions and open market transactions, and it is not clear whether all this body of data has been included in Mr Evans' graph as optimistically hoped by the Tribunal in *Arrowdell*. The Tribunal is not convinced that this is 'more reliable' per *Coolrace* than the LEASE graph.

iii Penns Lane was criticised by Mr Brunt at the Hearing as one of the properties referred to was apparently a repossession which did not provide good evidence. The Tribunal notes the decision by a differently constituted Tribunal, but is not bound by its decision.

iv The Tribunal is aware that a large number of market transactions are undertaken in the Midlands using the LEASE graph applied by the Upper Tribunal in *Coolrace*. There is clearly no reliable open market evidence of sale prices of short leases on this estate and both the Evans' graph and Penns Lane decisions can be criticised as above. We therefore find that unless and until the RICS are able to produce and certify one single graph representing relativity across the UK or in regions of similar markets, combining all the available evidence, the Tribunal are faced with the same problem as the Upper Tribunal in *Coolrace* and adopt the LEASE graph as a method of last resort.

31 Accordingly, the Tribunal applies relativity of 78% and determines the present lease value at £90,480 net of tenant's improvements.

Addition To Freehold Vacant Possession Value

32 Applicant's Submission (Tenant)

Mr Brunt makes no addition for the value of a hypothetical Freehold interest.

33 Respondent's Submission (Landlord)

In written submissions, Mr Evans added 1% to the value of the extended lease for marriage value purposes to reflect a hypothetical Freehold interest. However, at the Hearing he submitted that while it was common to add this in the South East, it was less common in other parts of the country.

34 Tribunal

There is nothing in the Leasehold Reform Housing & Urban Development Act 1993 referring to a 1% addition for a notional freehold. The calculation of marriage value is clearly set out in Schedule 13 Part II.4 of the Act where paragraph (b) shows that the aggregate value after grant of the new lease is to comprise the value of the tenant's extended lease plus the value of the landlord's reversionary freehold interest. It would be a short cut to add 1% to the tenant's extended lease value to give an assumed freehold value, but in the instant case, Mr Evans had assessed the extended lease at £136,000 and calculated the landlord's reversionary freehold at £61 (based on established valuation principles), i.e. a total of £136,061 which is not 1% more than £136,000. For these reasons, the Tribunal were not persuaded that an extra 1% should have been added.

35 The Tribunal's Valuation

Applying these inputs:

Diminution in value of the landlord's interest per Sch.13 para.3(1)

Term

Agreed £ 491

Reversion

Value of extended lease £ 120,000

Less Sch.10 rights 5% £ 6,000

£ 114,000

Less value of tenant improvements [Sch.13.3.(2)(c)] £ 4,000

£ 110,000

Present Value £1 48 years 1 month 5.75% 0.06816

£ 7,497

Landlord's present interest

£ 7,988

Less value of Landlord's interest after lease extension £ 120,000

Present Value £1 139 years 5.75% 0.000421

£ 50

£ 7,938

Landlord's Share of Marriage Value

per Sch.13 para.4(2)

i value of Tenant's interest after extension £ 120,000

Less value of tenant's improvements

[Sch.13 .4B.(1)(c)] £ 4,000

£ 116,000

ii value of Landlord's interest after extension £ 50

£ 116,050

Less

i value of Tenant's interest before extension

net of tenant improvements [Sch.13.4A.(1)(c)] £ 90,480

ii value of Landlord's interest before extension £ 7,988

£ 98,468

Marriage Value

£ 17,582

Landlord's share 50%

£ 8,791

Premium

£ 16,729

Summary

- 36 The Tribunal determines the premium payable by the Applicants to the Respondents to be £16,729 (Sixteen Thousand Seven Hundred and Twenty Nine Pounds) in accordance with the terms of the Leasehold Reform Housing & Urban Development Act 1993.

Legal Costs

37 Applicant's Submission (Tenant)

The Application to the Tribunal by the Applicant offered to pay the Respondent's legal costs in the sum of £575 plus VAT and disbursements. Mr Brunt modified this at the Hearing by offering to increase this to 4 hours at £170 / hour i.e. £680 plus VAT and disbursements.

38 Respondent's Submission (Landlord)

Messrs Stevenson's schedule of costs totalled £1,043.63 plus VAT and disbursements.

39 Tribunal

The Tribunal examined the Schedule of Costs and noted, for example, that charges had been made for the perusal of documents and reviewing file and checking counter-notice. The Tribunal considers that such items are not properly payable by the tenant. To have another solicitor check the counter-notice is a luxury, no checking of it should have been necessary if done correctly in the first place and file reviews are administrative matters within the office of the solicitor concerned and the time spent on them should be recorded in any time-recording system as administration and is not properly chargeable to clients. This matter was a straightforward lease extension with no unusual features. The Landlords instructed a highly experienced and competent Chartered Surveyor to look after its interests and no time needed to be spent by the solicitor perusing at any length his professional valuation. The legal work should have been carried out by no one more senior than a Grade B Fee earner and should have involved about 4 hours' work in total. Any time spent on the matter beyond that is excessive. The Landlord's Solicitors are based in Hoe Dereham Norfolk. As such, the Tribunal would allow an hourly rate for a Grade B Solicitor's time in this case of £195 per hour plus VAT (if applicable, see paragraph 40 below). Thus, the charge allowed is £780 which the Tribunal rounds up to £800 plus the disbursements as claimed are also allowed. The legal costs, ordered, therefore, total £824.45.

VAT

40 The Applicants are required to pay the Respondent's costs. If the Respondent is VAT registered and able to re-claim VAT on fees paid to its solicitor and surveyor from HMRC as an input, it has suffered no loss and the Applicants are not required to pay VAT.

41 If however the Respondent is not VAT registered and, therefore, unable to reclaim VAT on fees as an input for VAT purposes, the Applicant is required to pay the VAT incurred on fees paid by the Respondent.

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

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 ground on which that party intends to rely and the result sought by the party making the application.