

4272



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

Case Reference : BIR/47UC/OLR/2015/0125

Property : Flat 4 Shenstone, 131 Church Street,
Malvern, Worcestershire WR14 2BA

Applicant : Allen Alfred Denny & Patricia Lilian
Denney

Representative : Thursfields Solicitors and David
Prosser Chartered Surveyor

Respondent : Perry-John Properties Limited

Representative : Russell & Co Solicitors and John
Goodwin Chartered Surveyor

Type of Application : Determination of Premium and terms
of acquisition; Sections 48 and 60
Leasehold Reform and Urban
Development Act 1993 ("the 1993 Act")

Tribunal Members : V Ward BSc (Hons) FRICS (Chairman)
Judge M K Gandham

Date of Decision : 3 March 2016

DECISION

Introduction

1. An Application was submitted by the Applicants, Allen Alfred Denny & Patricia Lilian Denney ("Mr and Mrs Denney"), under section 48 (1) of the Leasehold Reform, Housing and Urban Development Act 1993 for the determination of the premium to be paid for a lease extension in respect of Flat 4 Shenstone, 131 Church Street, Malvern, Worcestershire WR14 2BA ("the Property").
2. The Applicants were represented by Thursfields Solicitors and Mr David Prosser FRICS, whilst the Respondent freeholder Perry-John Properties Limited was represented by Russell & Co Solicitors and Mr John Goodwin FRICS.
3. The lease in respect of the Property is for a term of 99 years from 25 March 1983. The ground rent is £40 per annum until 2016, £60 per annum for the following 33 years and £90 per annum for the remaining 33 years.
4. The Tribunal was not asked to consider the terms of the new lease under the provisions of sections 56 and 57 of the Act.
5. Neither Party requested an oral hearing, the Tribunal therefore made its determination on the basis of the submissions of the Parties and the inspection carried out.
6. The Date of the Tenant's Notice and therefore the Valuation Date is 24 March 2015.

Matters agreed between the Parties.

7. In a Statement of Agreed Facts produced by the Parties, it was confirmed that the current value of the Property was agreed at £168,000.

The Tribunal also noted that in their respective valuations the Parties had employed 6% as both the capitalisation and deferment rate and, further, neither side had made an allowance for the risk of a modern assured tenancy under Schedule 10 to the Local Government Act 1989. The Tribunal therefore also took these matters as settled.

8. For the Applicant, Mr Prosser had produced two valuations, one with an extended lease value of £179,000 which produced a premium of £7,762.00 and the second with an extended lease value of £183,500 which resulted in a premium of £10,975.00. For the Respondent, Mr Goodwin had taken the extended lease value to be £195,000 which gave a premium of £16,250

(rounded). Mr Goodwin had included in his valuation an amount for the value of the landlord's interest after a grant of the new lease, i.e. in 157 years' time.

9. The Tribunal therefore had to determine the value of the Property with the benefit of the extended lease and determine if any allowance for improvements should be made, as the Applicants had made submissions in this regard.

The Law

10. The relevant law is Chapter II sections 39 to 62 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act").
11. Chapter II of the 1993 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 1993 Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
12. 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.
13. 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.
14. 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.

Inspection

15. The Tribunal carried out an inspection of the property on 26 February 2016 in the presence of the Applicants.
16. Shenstone is a former period dwelling house that has been converted into four flats. The Property is located at first floor level and offers the following accommodation:

Hallway with store cupboard
Kitchen
Lounge
Double Bedroom
Single Bedroom
Bathroom with full suite including shower

Outside there are gardens which are shared between Flats 2, 3 and 4. The Property additionally benefits from a garage with access from Victoria Road.

The Property is within walking distance of the town centre.

17. At the Inspection the following improvements were identified to the Tribunal:
- a) New bathroom fittings (with the exception of the shower)
 - b) Extra wall units to the kitchen
 - c) A new gas fired boiler with some new radiators
 - d) New bedroom furniture
 - e) Sealing of open fireplace and replacement with electric fire
 - f) Some improvements to the windows and garage

The Applicants' submissions

18. On behalf of the Applicants, Mr Prosser did not provide any evidence for the extended lease values employed in his two valuations. The Applicants had produced a statement in connection with the improvements they had carried out to the Property. This was an extensive range of items which totalled £23,798.67, with a further additional amount for 'handy man' and 'electrical work' which was thought to be in excess of £1,500.

The Respondent's submissions

19. For the Respondent Mr Goodwin had provided four comparables of extended lease values.

ADDRESS	DATE OF SALE	PRICE ACHIEVED
Flat 2 Landsdowne Court, Priory Road, Malvern	Sale agreed December 2015	£195,000
5 Park View, Malvern	July 2015	£185,000
3 The Corner, Court Road, Malvern	October 2015	£185,000
The Poplars, Holly View Drive, Malvern	October 2015	£212,500

20. There was no detail given as to the type and arrangement of these properties and their comparability to the subject.

The Tribunal's Deliberations

21. The Tribunal considered all of the evidence submitted by the Parties summarised above.
22. The Tribunal initially considered the likely value of the Property with the benefit of the extended lease. In its deliberations, it noted that the price paid for the Property in December 2012, with the benefit of the existing lease, was £168,000. Of the limited evidence produced by the Respondent's surveyor, Mr Goodwin, the Tribunal preferred the sale of the property at Landsdowne Court, Priory Road, Malvern as, on the basis of the information available, it appeared to be the most comparable property to the subject. The Tribunal accordingly adopted £195,000 as the value of the Property with the benefit of the extended lease.
23. In considering the allowance for the Tenant's improvements, the Tribunal notes the submissions of the Applicants, however many of the items listed are not allowable as improvements in the context of this matter. The Tribunal takes note of the fact that the Property did originally benefit from gas heating, albeit understood that the installation was quite old. In respect of the bathroom, again the Tribunal understood that there were bathroom fittings in place. The improvements to the kitchen essentially comprised of additional wall units. Taking all factors into account, the Tribunal therefore considered £5,000 as being a reasonable allowance for the improvements made by the Applicants to the Property.
24. As is noted above, Mr Goodwin had included in his valuation an amount for the value of the landlord's interest after a grant of the new lease, i.e. in 157 years' time. The amount produced in this regard was not significant - in the sum of £20.75. The Tribunal has not however adopted an extra stage in its valuation as it considers that the Property may not be in a beneficial condition at the end of that period.

The Tribunal's Valuation

25. Applying those determinations to the matters agreed by the Parties, the Tribunal's valuation is as follows:

Term

Ground Rent pa	£	40.00		
YP 1 year @ 6%		0.9434	£	37.74
Ground Rent pa	£	60.00		
YP 33 years @ 6%		14.23		

PV of £1 1 year @6%	0.9434	£	805.47		
Ground Rent pa	£	90.00			
YP 33 years @ 6%	14.23				
PV of £1 34 years @6%	0.1379	£	176.61	£	1,019.82

Reversion

Extended Lease Value	£	195,000.00			
less					
Tenant's Improvements	£	5,000.00			
	£	190,000.00			
PV of £1 67 years @ 6%	0.0202	£	3,838.00	£	4,857.82

Marriage Value

Extended Lease Value	£	195,000.00				
less						
Tenant's Improvements	£	5,000.00				
	£	190,000.00				
less						
Existing Lease Value	£	168,000.00				
Freeholder's Interest	£	4,857.82				
Marriage Value			£	17,142.18	£	8,571.09
Freeholder's Share				50%		

Premium				£	13,428.91
say				£	13,430.00

26. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as Flat 4 Shenstone, 131 Church Street, Malvern, Worcestershire WR14 2BA under the Leasehold Reform and Urban Development Act 1993 is £13,430.00. (Thirteen Thousand Four Hundred and Thirty Pounds).

Appeal

27. 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).

Vernon Ward
Chairman