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FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)

**Case reference** : LON/00AQ/OLR/2015/1654

**Property** : 5 Canons Court, Stonegrove, Edgware  
HA8 7ST

**Applicant** : Mr and Mrs J Fraser

**Representative** : Mr B R Maunder Taylor FRICS,  
chartered surveyor

**Respondent** : Mr P Karl

**Representative** : Beazer Investments Ltd, managing  
agents

**Type of application** : Applications to determine the premium  
payable on a flat lease renewal under  
section 48(1) of the Leasehold Reform  
Housing and Urban Development Act  
1993 ("the Act")

**Tribunal member(s)** : Judge Pittaway  
Mr W R Shaw FRICS

**Date and venue of  
Hearing** : 23 February 2016 at 10 Alfred Place,  
London WC1E 7LR

**Date of decision** : 8 April 2016

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DECISION

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## Summary of the Tribunal's decisions

1. The tribunal determines that the premium payable for the extended lease is **£16,138.00.**, as shown in Mr Maunder-Taylor's valuation
2. The tribunal makes no order for costs under Rule 13 of the procedure rules.

## Background

1. The applicants seek a determination pursuant to section 48(1) of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the "Act") as to the premium payable for the proposed extended lease of 5 Canons Court, Stonegrove, Edgware HA8 7ST (the "property").
2. By a notice of claim dated 23 February 2015 served pursuant to section 42 of the Act the previous tenant of the property exercised his right for the grant of a new lease in respect of the property. At the time the unexpired term of the existing lease was 68.8 years. The then tenant proposed to pay a premium of £14,000.00.
3. On 23 April 2015 the respondent landlord admitted that the applicants had the right to acquire a new lease and counter-proposed a premium of £34,865.00.
4. By an application dated 8 October 2015 the applicants applied to the tribunal for a determination of the premium.
5. The Tribunal issued directions on 30 October 2015. These required, among other things, the parties to exchange expert reports at least two weeks before the hearing date notified to them in accordance with the directions, for bundles to be prepared by the applicant once agreed and sent to the tribunal at least one week before the hearing.

## Matters agreed

The following matters were agreed

1. Valuation date: 23 February 2015
2. Unexpired term: 68.8 years
3. Deferment rate: 5%
4. There is no compensation payable under paragraphs 2(c) and 5 of Schedule 13 of the Act,
5. The ground rent payable for each year of the term of the existing lease; £75 for the first 33 years, rising to £150 for the next 33 years and £300 for the last 33 years.

### **Matters not agreed**

1. Long lease and freehold vacant possession values
2. Relativity; and
3. Rate of capitalisation.

### **Inspection**

Neither party suggested that an inspection would assist the tribunal and the tribunal did not consider an inspection necessary.

### **The hearing**

1. At the hearing the tribunal had before it the bundle of documents provided by the applicants in accordance with the instructions, which included Mr Maunder-Taylor's expert report and valuation. It did not contain any expert report from the respondent's valuer. The only document included was a copy of a "without prejudice" valuation prepared by Marsden's chartered surveyors. It had no addressee and was not signed. It did not identify the surveyor who had prepared it. The attached conditions of engagement stated that it was prepared for the "stated purpose and for the sole use of the named Client". No purpose was stated and no Client named on the valuation before the tribunal. It was included in the bundle under cover of an e mail from Mr Connolly which stated that it could be included in the bundle for the FTT hearing.
2. The tribunal at the start of the hearing made it clear to Mr Connolly that, as no expert was appearing for the respondent and there was no expert report in the bundle they could only have regards to his evidence to the extent that it related to matters of fact. During the hearing, and with Mr Maunder-Taylor's agreement, the tribunal offered Mr Connolly the opportunity of inviting the surveyor who had prepared the valuation included in the bundle to attend the hearing. Mr Connolly contacted the surveyor but he was not available to attend.

### **Long lease value**

3. In calculating the long lease value of the flat Mr Maunder-Taylor submitted that the idiosyncrasies of the block of which the property forms part (the possibility of two additional floors being constructed on the block, the lack of parking rights and the use of the area to the rear of the flats as a builders' yard) meant that the only useful comparables were those from the block itself.
4. Mr Maunder-Taylor submitted that the primary evidence had to be the sale in the open market of Flat 5 itself for £208,750, in the same month as the valuation date; referring the tribunal to estate agents' particulars which marketed it for £215,000 on the basis of the existing lease, £245,000 with a new 99 year lease and £250,000.00 for a 161

year lease at a peppercorn rent. He submitted that the agents would only have suggested these latter two figures following discussion with the landlord.

5. Mr Maunder-Taylor reached his long lease value of £245,000.00 by adding to the achieved sale price £15,175 (being the premium determined by a previous tribunal for the extension of the lease of 24 Canons Court ( a similar flat with a similar lease) plus costs and risk. He then cross checked this figure by reference to the price specified in the Counter-notice (£34,865) plus small costs; and with reference to the sales of other flats in the block. Flat 11 sold in November 2015 for £282,000 with an extended lease and Flat 1 sold in December 2015 for £299,950.00 with an extended lease. He ascribed the significant increase in values for extended leases (from February 2015 to November/December 2015) to the impact that the announced 3% increase in SDLT on buy-to-let properties was having on properties at the lower end of the market. When questioned by the tribunal as to why he had made no time adjustment for these he submitted that he had referred to them to demonstrate a volatility in the market.
6. Mr Maunder-Taylor then referred to the sale of the refurbished 16 Canons Court in July 2014 for £249,950 with a lease in excess of 90 years, adjusting the price by 10% to reflect the refurbishment works and a time adjustment (using the Land Registry House Index) of 9.4% to achieve a figure of just over £246,000.00.

#### **Freehold vacant possession value**

7. Mr Maunder-Taylor assumed that the value of the extended lease with an unexpired term of 158.8 years would be 99% of the freehold vacant possession value, making that value £247,500.00.

#### **Relativity**

8. Mr Maunder-Taylor's valuation used a relativity of 90.28%, based on the Nesbitt and Co graph which he advised the tribunal was the one which he used for property in north London, whether acting for landlord or tenant. He submitted that he had cross-checked this against the Leasehold Advisory Service Graph (in accordance with the Upper Tribunal preference expressed in the *Coolrace* case) which indicated a relativity of 92.9%.
9. The tribunal had no evidence before it as to how Marsdens had reached a relativity of 79%. Mr Connolly made reference to a Beckett & Kay graph having been used. Mr Maunder-Taylor did not accept this as evidence before the tribunal. It was noted however that the bundle before the tribunal did refer to a Beckett & Kay graph (it was not known whether it was the same one) but that this showed a relativity of 91.97% for a lease with an unexpired term of 68.8 years.

### **Capitalisation rate**

10. Mr Maunder-Taylor saw no reason to depart from 7%, which is regarded as the norm and had been used in the previous tribunal decisions in respect of flats in this block.
11. Mr Connolly offered no evidence as to why Marsdens had adopted a capitalisation rate of 6%.

### **Rule 13 costs**

12. Mr Maunder-Taylor applied during the hearing for the tribunal to make an order for costs against the respondent under Rule 13 of the procedure rules, submitting that the respondent had acted unreasonably in the defending/conducting the proceedings. If the respondent's expert had discussed the valuation with Mr Maunder-Taylor it would not have been necessary to prepare the bundles (at a cost of £350) nor for Mr Maunder-Taylor to have prepared for, and attended the hearing (at a cost of £1,500.00). Mr Maunder-Taylor sought an order for costs in the sum of £1,950 plus VAT.
13. In reply Mr Connolly argued that the bundles would have had to have been prepared in any event; and that as he did not consider that the applicants were prepared to compromise there would have had to have been a hearing in any event.

### **Closing submissions**

14. In his closing submissions Mr Maunder-Taylor invited the tribunal to accept his valuation as prepared objectively, impartially and honestly. He did not consider the Marsden's valuation as credible, given the respondent's preparedness to settle a lease extension on another flat (without coming to the tribunal) at £25,000.00. He believed that the landlord's counter-notice had inflated the lease premium, expecting a negotiation which would result in the tenant settling at a premium between their initial proposal and the landlord's counter-proposal. He believed that Mr Connolly knew the genuine level at which the premium should be settled and therefore avoided a genuine negotiation. Compromise for compromise's sake is not compromise as recognised by the surveying profession. He would have welcomed a negotiation with Marsdens as he would have expected to reach a greater level of agreement with them, through analysis of both valuations to identify differences and understand why they existed, and through finding common ground.

Mr Maunder-Taylor questioned the admissibility of Marsden's valuation and further that it was not one prepared by them as an expert owing their primary duty to the tribunal. He regretted that their assumption of a relativity of 79% could not be examined as they were not present at the hearing.

He invited the tribunal to accept his valuation and his submissions on Rule 13 costs.

15. Mr Connolly submitted that there had been no attempt by the applicants to compromise and that it was not fair for the applicants to use such a well recognised expert.

On the costs he submitted that these would have been incurred in any event.

### **Reasons for the tribunal's decision.**

It is extremely unfortunate that the respondent had not complied with the directions in exchanging expert reports two weeks before the hearing, that no expert report was included in the bundle before the tribunal and that no expert attended the hearing on behalf of the respondent. The exchange of reports might have narrowed the issues between the parties, and the inclusion of an expert report in the bundle and the attendance of an expert at the hearing might have provided evidence that the tribunal could have had regard to when reaching their determination.

By reason of Mr Connolly having appeared before a tribunal previously representing the respondent, and by reason of the directions in this application, he was aware of the need for expert evidence which he ignored. In the circumstances the tribunal consider it just that their determination is based solely on the evidence before them at the hearing, namely that of Mr Maunder-Taylor.

### **Long lease value, freehold vacant possession value, relativity and capitalisation rate.**

In the absence of any expert evidence from the respondent the tribunal accepts Mr Maunder-Taylor's evidence of

1. A long leasehold value of £245,000.00;
2. A freehold vacant possession value of £247,500.00;
3. Relativity of 90.28%; and
4. A capitalisation rate of 7%.

### **Rule 13 costs**

These were addressed by the tribunal in the decision in relation to 24 Canons Court, in which Mr Connolly represented the same respondent and Mr Maunder-Taylor the applicants.

We would repeat some of the comments made by the tribunal in that case, which we consider to be of equal application to this case.

1. The cost that a party is prepared to incur is a matter for them.

The applicants are at liberty to instruct whichever surveyor they choose.

2. The tribunal is generally a no-cost jurisdiction and no application fee or hearing fee is paid by the applicants to bring their claim to the tribunal.

Once an application is made it must be within the contemplation of the applicants that they may have to attend a hearing; with the costs that entails.

3. It is the tribunal's function to resolve disputes were settlements cannot be reached.

In this case Mr Maunder-Taylor invited the tribunal to accept that a meeting with Marsdens would have resolved the valuation without the need for a hearing but there was no evidence before the tribunal that that would have been the case.

4. Rule 13 sets a high bar.

The respondent's counter-proposal of a premium of £35,000 may have been misguided in light of the previous decision and the expert evidence provided inadequate but it was not sufficient to amount to "unreasonable" conduct within the meaning of rule 13.

Accordingly the tribunal makes no order for rule 13 costs.

Name: Judge Pittaway

Date: 8 April 2016

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).