



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

- Case Reference** : **MAN/00CB/OLR/2015/0040-48 & 52**
- Property** : **Flats 1, 3, 5, 9, 15, 16 & 19, Nicola Court,  
Penkett Road, Wallasey CH45 7QG  
Flats 10, 17 & 18, Lois Court, Penkett Road,  
Wallasey CH45 7ND**
- Applicant** : **The leasehold owners of the flats,  
represented by Bingham, Solicitors,  
Wallasey**
- Respondent** : **Evsil properties Limited, represented by  
Oliver and Co, Solicitors, Chester.**
- Type of Application** : **Application for determination of a premium  
S48(1) Leasehold Reform Housing and Urban  
Development Act 1993**
- Tribunal Members** : **Mr J R Rimmer  
Mr J Faulkner**
- Date of Decision** : **25<sup>th</sup> January 2016**

**DECISION**

**Order : The premium payable in respect of each flat shall be £9.134.00**

**A. Applications and background**

- 1 The Applicants are the leasehold owners of the 10 flats that are the subject of these conjoined applications. They are applying for the determination of the appropriate premiums on the grant of a new lease extending their leases pursuant to section 48(1) Leasehold Reform, Housing and Urban Development Act 1993. The applications are dated 29<sup>th</sup> July 2015. Section 48 of the Act is the appropriate statutory provision under which the application should be made, there having been counter notices served by the Respondent following the Applicants requests for new leases. The application will extend the leasehold interests by 90 years, from 54.79 years to 144.79 years.
- 2 Following the commencement of the tribunal procedure to determine the appropriate premiums a considerable level of agreement was reached between the respective professional witnesses employed by the parties: DH Thomas BSc, FRICS, CBuildE, MEWI on behalf of a number of the Applicants and J Davies BSc MRICS on behalf of the Respondent (Mr Thomas provides two reports, the second in response to that of Mr Davies. Those matters are considered further, below.
- 3 Nicola Court and Lois Court are both three-storey blocks of residential flats constructed in 1970 on Penkett Road and Imperial Road respectively in Wallasey, Merseyside. The two blocks back on to each other, but are totally separate developments, each consisting of 18 flats (there apparently being no flats numbered 13) accessed by three staircases in each block all of which serve two flats on each of the three floors. The entrance hallways provide access to both the front and rear of the blocks. There are no lifts to the upper floors. Common grounds and parking areas serve both blocks and there are garages in two blocks, equal in number to the number of flats. By agreement, the Tribunal has been asked to value each flat as though there is no garage forming part of the lease for any flat. A number of the flats were inspected by the Tribunal on the morning of 25<sup>th</sup> January 2016, as were the immediate environs of Lois Court and Nicola Court.

- 4 All the flats are of a nearly similar internal layout, comprising hallway, lounge, kitchen, bathroom/wc and two bedrooms, and are of very similar floor areas. The flats on the ground floors do not have an additional store/internal wardrobe that can be provided in the flats on the second and third floors by reason of the construction of the hallway and staircase. Neither expert has suggested that this difference in arrangement affects the value of those lower flats. There is no gas supply and all heating and cooking arrangements use electricity as the source of power.
- 5 The leases of the various flats appear to be broadly identical in their content, with the exception of the identities of the lessees and the dates of commencement, but all take effect for a period of 99 years from 26<sup>th</sup> October 1970 at a premium and a yearly rent which may be either £10.00 or £12.50. All the leases appear to have the amount of £10.00 inserted in type and then altered to £12.50 in manuscript.
- 6 The Tribunal notes that both valuer experts have proceeded on the basis that the rent is £10.00 and bearing in mind that a rent of £12.50 makes minimal difference to the required calculations it is minded to accept the rent as being £10.00 per year.

### **The law**

- 7 Section 48(1) of the Act, together with Schedule 13 thereof, provide the statutory regime within which the Tribunal should assess the premium that is to be payable for the new lease. The Tribunal does not consider it necessary to repeat those provisions within this decision. They are fully known to the advisors of the parties and the expert witnesses have taken those provisions into account in the preparation of their reports and valuations.

### **The evidence**

- 8 All parties were satisfied that this matter could be considered by the Tribunal in the absence of a formal hearing and could be concluded by a consideration of the documents and reports placed before it by them.
- 9 As indicated in paragraph 2, above, some matters were agreed between the parties, either formally or informally, or were no longer the subject of any dispute:
  - The valuation date for the purposes of the application was 8<sup>th</sup> January 2015, that being the date upon which the Applicants had served their notices seeking new leases.
  - The value of the leaseholders' existing interests was to be taken as being £59,500. The analysis of recent market transactions for similar properties, being somewhat limited in number, had been

extensive on the part of the witnesses and this was a figure acceptable to all parties.

- All the flats were to be treated as identical in layout and size: there being some differences in the floor areas, but not sufficient to make any material difference to the valuation. No observations were made regarding the reduced storage space for ground floor flats.
- The capitalisation rate for the current ground rent of £10.00 per year. (there are no rent review clauses) was agreed at 8%.
- The deferment rate was agreed to be 5.5%, following earlier different views but agreed within the second report of Mr Thomas.
- There is a “marriage value” calculation to be done, dependent upon the final determination of matters left to the Tribunal, now divisible on a 50/50 basis between the leaseholder and freeholder under the provisions of the Commonhold and Leasehold Reform Act 2002.

- 10 There remained, therefore, only one significant matter about which Mr Thomas and Mr Davies were unable to agree: the value of the respective properties under the new lease.
- 11 The valuations of the extended lease provided by Mr Thomas and Mr Davies respectively are £70,000 and £77,500. Both valuers provide an extensive analysis of those matters that they consider relevant to the assessment of this value, by reference to transactions relating to comparable properties. The Tribunal has given this evidence careful consideration. Mr Thomas reaches his conclusion in paragraph 6.9 of his report after consideration earlier in paragraph 6 of what he considers to be relevant sales evidence for comparable properties. Mr Davies reaches his conclusion in paragraph 13.3.8 of his report, again after considering evidence relating to comparable properties that he considers relevant.

### **Determination**

- 12 Following its inspection of the properties on 25<sup>th</sup> January the Tribunal considered that matter raised by the parties and in respect of which no agreement had yet been reached.
- 13 The extended lease value

The Tribunal gave consideration to the evidence of both Mr Thomas and Mr Davies upon this issue. The Tribunal found the evidence provided by both witnesses to be helpful but ultimately inconclusive and it was not persuaded that either was more reliable than the other. A number of factors influenced this view (without it necessarily being the case that all such factors related to every comparable suggested):

- The limited number of transactions that had occurred in the recent past in relation to either flats in the two buildings involved, or in the wider area.
  - The number of assumptions that were made in relation to the circumstances in which such transactions had taken place.
  - The state and condition of the properties in those transactions were not fully apparent from the information provided.
  - The inclusion of garage or allocated parking facilities in some transactions.
  - The references to the floor area of some flats in Penkett Court, which appeared to the Tribunal to be so similar to Lois court and Nicola Court, that to rely on them basis of valuation may not necessarily be a valid exercise.
- 14 The Tribunal did consider that the sales of 2 and 6, Penkett Court, referred to by both Mr Davies and by Mr Thomas as providing the best comparable evidence of those properties referred to, particularly in the light of the successive sales of number 2 in unimproved and then improved condition.
- 15 When the observations of Mr Davies in relation to number 2 are viewed in the light of graphs of relativity provided by the Royal Institution of Chartered Surveyors, a sale price in May 2014 of £74,000 in what the Tribunal considers to have been a static market in the relatively short period from then until the valuation date is somewhat persuasive. Without any further clear evidence available to the Tribunal and in seeking to do justice between the parties an amount of £73,750, the mid-point between the respective valuations, appeals most strongly to the Tribunal and makes little difference to the eventual outcome. It is of the view that Mr Thomas was a little too cautious in concluding £70,000 as being the appropriate conclusion to draw (in paragraphs 6.8 and 6.9 of his report). Similarly the Tribunal considers the views of Mr Davies as a little over-optimistic, given the limited evidence of the actual state and condition of numbers 6, Penkett Court at the time of sale and the valuation of the additional garage.
- 16 The annex hereto sets out the calculation made by the Tribunal in relation to the premium payable, based upon the matters agreed by the parties and those determined by the Tribunal

## Appendix

### (a) The Freeholder's Loss

#### (i) Market Value of Freeholder's Existing Interest

<b>Term</b>	Rent Received	£	10.00	p.a.	
	YP for 54.8 yrs @ 8%		<u>12.3158</u>		£ 123
<b>Reversion</b>	Extended Lease Value	£	73,750		
	PV of £1 in 54.8 yrs @ 5.5%		<u>0.0532</u>		<u>£ 3,924</u>
	<b><u>Market Value</u></b>				<b>£ 4,047</b>

#### (ii) Market Value after 90-year lease extension

	Extended Lease Value	£	73,750		
	PV of £1 in 144.8 yrs @ 5.5%		<u>0.0004</u>		
	<b><u>Market Value</u></b>				<b><u>£ 30</u></b>

(iii) Freeholder's Loss £ 4,017

### (b) Freeholder's Share of Marriage Value

#### Interests after Lease Extension

Market Value of Freeholder's Interest	£	30	
Extended Lease Value	£	<u>73,750</u>	
Total of Values after Lease Extension			£ 73,780

#### Existing Interests

Market Value of Freeholder's Interest	£	4,047	
Market Value of Lessee's Interest	£	59,500	
Total of Values before Lease Extension			<u>£ 63,547</u>

**Marriage Value** **£ 10,233**

Freeholder's 50% share £ 5,117

**New lease premium (excluding costs)** **£ 9,134**