



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : CAM/00KF/OLR/2017/0124

Properties : 5 Ravens Court,
Alexandra Road,
Southend-on-Sea,
SS1 1HF

**Applicant
Represented by** : Teresa Littlewood
Ian G. Burden Dip BS FRICS

**Respondent
Represented by** : St. John's Court (Southend) Ltd.
Mike Stapleton FRICS

Date of Applications : 14th July 2017

Type of Application : To determine the terms of acquisition
and costs of the lease extensions of the
properties

Tribunal : Bruce Edgington (lawyer chair)
Stephen Moll FRICS
Roland Thomas MRICS

**Date and venue of
Hearing** : 24th October 2017 at The Court House,
80 Victoria Avenue, Southend-on-Sea
SS1 6EU

DECISION

Crown Copyright ©

1. The form of Deed of Surrender and New Lease having been agreed save for the premium payable, it is the Tribunal's decision that the premium payable is £27,880.00 as set out in the Schedule.
2. The legal fees and valuation fees were said to have been agreed.

Reasons

3. This is an application for the Tribunal to determine the terms of the lease extension for the property and the amount payable by the Applicant for the Respondent's legal and valuation costs. The Tribunal issued its usual directions order on the 2nd August 2017 timetabling the case to a final hearing.

4. Bundles were delivered in accordance with the Tribunal's order which, for some unknown reason did not include the Respondent's valuer's report or the statement of agreed and disputed matters. However, the Respondent's valuers report was received and from this and the comments of both valuers at the hearing it became clear that the only parts of the statutory 'equation' to be used for the calculation of the premium which were not agreed were the amount of future ground rent, relativity and the 'freehold' vacant possession value.
5. All other matters were agreed and those agreed matters have been adopted for the Tribunal's calculations. They will not be repeated here as both parties are represented although it should be said that it was agreed that no compensation is payable in accordance with paragraph 2 of Schedule 13 of the 1993 Act.

The Inspection

6. The members of the Tribunal inspected the building in which the property is situated together with the inside of the property itself in the presence of the 2 valuer representatives.
7. The building appears to have been erected in the mid 20th century of block/brick under pitched tiled roofs. The properties are within easy walking distance of Southend town centre and several railway stations which have trains to central London.
8. The flat is on the first floor. It has 2 bedrooms, a kitchen, a living room and a bathroom/WC. Alterations have taken place. Compared with the lease plan, the reception room is where bedrooms 1 and 2 were situated and the dividing wall has been removed. The present bedroom 1 was the reception room. With the relatively high ceilings, these alterations give the impression of a light, airy and spacious apartment with large windows and a partial view of the Thames estuary. The heating is by radiators fed by a Combi gas boiler in the very small second bedroom. The windows are in uPVC units.
9. There is a fire escape from the kitchen. Both the kitchen and the bathroom are rather dated and small. There is no off street parking and the on street parking appears to be a real problem. The occupier said that only permit holders would be able to park from December 2017 which, he said, would be an improvement. There is a pleasant large open communal garden to the rear which this flat overlooks and which appears to be shared by the block to the rear, known as St. John's Court.

The Leases

10. The existing term for the lease is 99 years expiring on the 24th December 2075 i.e. in less than 60 years from the valuation date. The ground rent is £25 per annum until 24th December 1999. There is then provision for rent reviews every 25 years which will be either the amount then payable or "*Such amount as may be agreed between the Lessor and the Lessee not later than two months before the expiry of such preceding twenty-five period (sic) or in the absence of such agreement...*" as determined by an independent surveyor appointed by the RICS on the application of the Lessor within the 2 months prior to the expiry of each 25 year term. The new ground rent would be what the surveyor determined to be an 'open market' ground rent.

11. The rent review due on the 24th December 1999 did not take place and cannot now happen.

The Law

12. The valuation of a premium payable in respect of a new lease in these circumstances is governed by Schedule 13 of the 1993 Act. Paragraph 2 says that:-

“The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of-

- (a) the diminution in value of the landlord’s interest in the tenant’s flat as determined in accordance with paragraph 3,*
- (b) the landlord’s share of the marriage value as determined in accordance with paragraph 4, and*
- (c) any amount of compensation payable to the landlord under paragraph 5*

13. Mr. Stapleton argued, in effect, that the case of **The Trustees of the Sloane Stanley Estate v Mundy** [2016] UKUT 223 (LC) created a change in the way that relativity was to be considered with the Upper Tribunal giving guidance. The view of the Tribunal is that the Upper Tribunal was saying, in effect, that if there is direct market evidence of extended and unextended leases, this should be looked at first but that the various graphs and indices referred to before should be considered to provide some sort of counterbalance or check.
14. In summary, Mr. Burden said that relativity should be calculated by looking at the graphs and a midpoint of 85% has been applied. Mr. Stapleton, on behalf of the Respondent argues that the ‘differential’ is capable of calculation from the evidence of the comparables which, in his view, produces a relativity figure of 73%. He says that the graphs should be ignored.

The Hearing

15. The hearing was attended by Mr. Burden and Mr. Stapleton only. Mr. Burden had prepared his report on the 16th August 2017 and, at that time, he was unaware of any sale completions in the same block in recent times. On values and relativity he therefore, quite properly, relied on the sales of 4 flats in nearby blocks, the details of which were set out in his report. He also relied upon the relativity graphs referred to in the RICS Research report dated October 2009.
16. On the other hand, and contrary to the directions given by the Tribunal, Mr. Stapleton’s report was not prepared until 6th October 2017, despite his having inspected on the 2nd February 2017. However, he was able to find evidence of 2 sales in the same block as the subject property. It is worth mentioning that the footprint of each flat on the lease plan appears to be the same i.e. with 3 bedrooms. Flat 1 on the ground floor was sold on the 21st October 2016 and flat 15 on the 3rd floor was sold for £230,000 on the 4th August 2017.
17. During the evidence, it transpired that there were unusual features in both sales. With regard to flat 1, this was an unextended lease with less than 60 years to run. It is accepted that although borrowing money for such a lease

was not impossible, any lender would want an unexpired term of much more than 60 years to protect its security. In this case, therefore, the evidence from Mr. Stapleton was that the vendor agreed to pay £25,000 out of the sale proceeds of £190,000 to buy a lease extension. In effect, the vendor has received £165,000 for an extended lease.

18. With regard to flat 15, both witnesses agreed that the flat had actually been on the market for £220,000 and there was no explanation as to why £230,000 had been paid. It must also be born in mind that this sale was some 9 months or thereabouts after the valuation date which was 30th November 2016 as opposed to the 22nd September 2016 relied upon by Mr. Burden. One small point which may affect valuation is that Mr. Stapleton suggested that a 3rd floor flat (flat 15) would be less valuable than a 1st floor flat in a building with no lift. In this particular location, the Tribunal was not entirely convinced about this as a 3rd floor flat would have much better views of the Thames.
19. On the question of the ground rent reviews, Mr. Burden argued that as the 1999 review had not taken place, there is nothing to suggest that any future review would take place and he based his calculations on the ground rent remaining at £25 per annum throughout the remaining term. Mr. Stapleton said that as one review had been missed by the landlord, it was highly likely that such landlord would not forget the next time and some effort should therefore be made to set an estimated open market ground rent. He had used £250 per annum and Mr. Burden did not seem to disagree that this was the sort of figure which a landlord could expect to achieve on the open market at the moment.

Conclusions

20. Based entirely on the evidence, the inspection, the collective experience of the Tribunal members and the submissions of the parties, it is the Tribunal's decision that as there is market evidence from the same block of flats, the **Munday** case dictates that Mr. Stapleton's approach should be looked at first. The end result should then be compared with the several graphs considered by the Royal Institution of Chartered Surveyors to reflect a broad brush overview of the relativity evidence. It should be emphasised that these are not figures 'produced by' the RICS. They are produced by others and collated by the RICS.
21. The starting point is therefore the extended lease sale of flat 15. The Tribunal was troubled by 2 things. Firstly, why was the sale price more than the asking price? From the photographs set out in the sales particulars, flat 15 would appear to have been improved to some extent – at least in the kitchen – which is not the case in the subject property. As has been said, the sale was completed many months after the valuation date and looking at Mr. Burden's comparables, the price achieved does appear to be very high.
22. In Regents Court, for example, which is next door to Ravens Court, 2 similarly sized flats (according to Mr. Burden) appear to have been sold for a similar price in 2016 but in a block which has a lift and off street parking, both of which have a considerable upwards affect on value, in his view. It should be said that those flats have 2 bedrooms and 2 bathrooms rather than 3 bedrooms

and 1 bathroom which is the basic unaltered footprint of the Ravens Court flats.

23. Taking these various factors into account, the Tribunal's view is that the correct value of an extended lease on the valuation date would have been £210,000. There is not much difference between the parties as to the current unextended lease value. Although the Tribunal has some doubts about the open market value of flat 1, it considers, on balance, that £168,000 is the correct figure.
24. On the basis of those 2 figures, the relativity is 80%. Compared with the RICS figures, Mr. Burden is a little high in any event and, in the Tribunal's view, cross checking with those graphs, does pass the 'counterbalance' and 'check' criteria referred to in **Munday**.
25. As far as ground rent is concerned, the Tribunal was convinced by Mr. Stapleton's general argument. Having missed one review, a commercial landlord would be unlikely to miss another. However, the second term has to be assessed with a £25 per annum ground rent in view of the wording of the lease which does not allow retrospective reviews. £250 per annum is certainly a current market rent figure but whether it remains like that is another thing. It is known, for example, that the Government is considering a change in the law to keep control of ground rents.
26. Setting a figure for reviews which will be in the future will always be a matter of conjecture. Taking everything into account, and doing its best with what limited information it has, the Tribunal determines that the correct figure for the capitalisation of ground rent is £2,000. This is slightly less than Mr. Stapleton's figure excluding the second term to reflect the uncertainty. For reasons which are obvious, the Tribunal has not made a detailed calculation in the Schedule.

Valuation Schedule

**5 Ravens Court,
Alexandra Road,
Southend-on-Sea
SS1 1HF**

Lease expiry date	24/12/2075
Valuation date	30/11/2016
Unexpired term	59.07 yrs
Capitalisation rate	6%
Deferment rate	5%
Extended lease value	£210000
Existing lease value	£168000
Relativity	80%

Value of landlords existing interest

Ground Rent (ref. decision items 10, 11, 25 & 26)		£2000
Reversion to Freehold/ long lease value	£210000	
PV of £1@5% def. 59.07 yrs	0.0560	£11760
Marriage Value		
Freehold/long lease value	£210000	
Less freeholders existing interest	£13760	
Less existing lease value	<u>£168000</u>	
Marriage Value	£28240	
50% marriage value		<u>£14120</u>
Total Premium payable by Lessee		£27,880

.....
Bruce Edgington
Regional Judge
25th October 2017

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.