



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

Case Reference : CAM/22UB/OLR/2017/0048

Property : 79 Lincoln Road, Basildon, Essex SS14 3RB

Applicant : Christopher Charles Renham
as personal representative of Cheryl Ann Honey (deceased)

Represented by : Mr M Stapleton FRICS
of Mike Stapleton & Co Chartered Surveyors

Respondent : Area Estates Limited

Represented by : Mr C Horton BSc (Hons) MIRPM Assoc RICS
of McDowalls Surveyors Ltd

Application : Application under section 48 of the Leasehold Reform, Housing and
Urban Development Act 1993

Tribunal Members : Judge Reeder
Miss M Krisko BSc (EST MAN) FRICS
Mr D Barnden MRICS

Date of hearing : 19 October 2017, Basildon Magistrates Court, Great Oaks, Basildon

Date of Decision : 30 October 2017

Date Written : 9 January 2018

DECISION

DECISION

1. The Tribunal determines that the premium payable for the lease extension in respect of 79 Lincoln Road, Basildon, Essex SS14 3RB is £8,779 as set out in the valuation attached.
2. The parties have confirmed that, save for the issue of this premium, the form of Deeds of Surrender and New Lease have been agreed.
3. The representatives attending were unable to confirm whether the legal and valuation fees incurred by the respondent in connection with the new lease pursuant to section 60 of the 1993 Act have been agreed as this is being dealt with by their respective solicitors. This is unfortunate. It is doubly unfortunate that neither party complied with directions 1-3 & 10 of the Directions Order made by the Regional Judge on 28 March 2017 (hearing bundle at pages 11-13) which required a statement of costs and disbursements, schedule of objections and schedule of any replies. The Tribunal may not excuse such default on another occasion. If the costs are agreed then the parties should inform the Tribunal Office forthwith. In the event that the costs are not agreed then the parties must comply with those directions by filing the required documents at the Tribunal Office (Eastern Residential Property First-Tier Tribunal, HMCTS, Cambridge County Court, 197 East Road, Cambridge CB1 1BA) as follows -
 - (a) Statement of costs as per Direction (1) by 4pm on Friday 19 January 2018
 - (b) Schedule of objections as per Direction (2) by 4pm on Friday 26 January 2018
 - (c) Replies to objections as per Direction (3) by 4pm on Friday 2 February 2018

The Tribunal will then determine the costs payable pursuant to section 60 of the 1993 Act on the papers.

4. The Tribunal apologises for the delay in providing this written Decision which has resulted from a period of illness including in-patient treatment suffered by Judge Reeder.

REASONS

The Background

5. On 4 August 2016 the applicant served on the respondent a notice pursuant to section 42 of the Leasehold Reform, Housing & Urban Development Act 1993 ('the 1993 Act') seeking an extension of his lease in respect of 79 Lincoln Road, Basildon, Essex SS14 3RB ('the property') on terms set out in that Notice. The premium proposed was £3,000.
6. On 4 October 2016 the respondent served a counter notice pursuant to section 45 of the 1993 Act admitting the applicant's right to a lease extension but proposing a premium of £21,000 and disputing the proposed terms for the new lease.
7. The parties subsequently agreed the terms of the new lease which is included at pages 91-99 of the hearing bundle.

The issue for determination - the premium payable

8. The parties have been unable to agree the premium payable for the 90 year extension to the existing unexpired lease and comes before the Tribunal for a determination on that issue pursuant to an application received on 21 March 2017.
9. A directions order was made by the Regional Judge on 28 March 2017. In accordance with the permission granted in paragraph 8 of that order each party relies upon the evidence of one expert respectively being -
 - (a) Mr M Stapleton FRICS of Mike Stapleton & Co Chartered Surveyors who has provided a report dated 6 October 2017 upon instruction by the applicant, which report included a lease extension valuation ; and
 - (b) Mr C Horton BSc (Hons) MIRPM Assoc RICS of McDowalls Surveyors Ltd who has provided a report dated 6 October 2017 upon instruction by the respondent, and has subsequently provided a lease extension valuation on 12 October 2017 following a request from the Tribunal.

The Inspection

10. Prior to the hearing the Tribunal inspected the property in the presence of Mr Stapleton and Mr Horton. The occupying tenant kindly provided internal access. The property is a second and third floor maisonette in a four storey block (Nos 69-81 Lincoln Road) containing 13 maisonettes on the ground and first floor, or second and third floor respectively. It was constructed in or around the 1970s.
11. The property provides a lounge and kitchen at second floor level, together with 3 bedrooms, bathroom and separate WC at third floor level. It has the benefit of modern central heating system. The internal parts are in a very good decorative state which is the result of works by the occupying tenant. The small bathroom remains very basic and dated. The parties have agreed the internal floor area at 75 metres squared.
12. The block has solid brick flank walls with what appears to be a timber frame or concealed system build construction. It has a flat roof. It is in a very poor state of repair and decoration externally.
13. The block is one of 31 located on the Craylands Estate in Basildon. It is situated toward the outside of the estate and near to the A127 ring road. The estate appears to have been constructed by Basildon Council and has a mixture of property types (including rows of terraced and semi detached street level houses and blocks of maisonettes). The estate appears to have a mixture of tenure of occupiers. It is part of the "Fryerns and Craylands Regeneration Scheme" which is a major rolling redevelopment programme. As part of that scheme the majority of the Craylands estate is to be demolished and redeveloped.
14. Basildon Council retains the freehold of 30 of the blocks and we are informed that they are to be demolished. The property is situated in the only block which is not presently included within the scheme. The freehold of this block is in private hands. The parties stated that to their knowledge there was no present indication of an intention by Basildon Council to acquire this block by negotiation or the exercise of compulsory purchase powers. Given the context such steps cannot be ruled out within the timeline of the Fryerns and Craylands Regeneration Scheme.

15. Documents included in the hearing bundle suggest that the redevelopment programme will be phased to roll across the estate in the short to medium term. The precise timeline for the phases of the scheme is unclear. We have only partial information from a number of documents included in the hearing bundle and so are cautious to infer a precise timeline.
16. A copy of the 'Beechwood Village and Craylands News' newsletter dated September 2-16 states that a revised planning application has been submitted for the scheme and is expected to be considered by Basildon Council Planning Committee in Autumn 2016. Neither party knows of any such meeting or decision.
17. A screen print of a page from the Basildon Council website dated 10 February 2017 states that approval was given on 9 February 2017 for compulsory purchase orders in respect of the north phase of the scheme. This appears to be the first phase. It states that 521 properties will be demolished as part of the scheme and replaced by 994 new homes. It states that ownership of the land will be transferred from the council to the developer Swan Housing in December 2018, presumably with vacant possession of all affected properties. It states that homeowners in properties which are to be demolished will be offered full market value plus 10%.
18. What is visually apparent on inspection is that the majority of the properties on the estate, and all of the blocks seen, are in a delapidated state. It appears that maintenance has effectively ceased.
19. During the inspection the Tribunal took the opportunity to externally view the proposed comparable properties at 61 Lincoln Road, 80 Lincoln Road, 81 Lincoln Road, 82 Lincoln Road, 83 Lincoln Road, and 28 Craylands.

The Law

20. In reaching its determination the Tribunal has applied the law set out in section 48 of, and Schedule 13 to, the 1993 Act. Paragraph 2 of Schedule 13 provides 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.*

Matters agreed between the parties

21. At the time of the hearing the valuers have been able to agree -
 - a. The lease expiry date is 5 January 2080
 - b. The valuation dated is 5 August 2016
 - c. The unexpired term is 63.41 years
 - d. The gross internal area is 75 square metres.
 - e. The capitalisation rate is 7%

- f. The deferment rate is 5.75%.
- g. There were no improvements.
- h. The value of the Term was £71.

The Hearing

22. The hearing has been attended by Mr Stapleton for the applicant, and Mr Horton for the respondent. The tribunal has been assisted by oral argument from both, and from consideration of the hearing bundle including the key documents referred to by the representatives including their own respective expert opinion reports. It follows that they acted as both expert (which carries an obligation to provide considered expert valuer opinion to the tribunal) and advocate (which carries an obligation to pursue the most favourable outcome for their respective client) which can cause tensions between the two roles. In the event the tribunal was able to and was careful to 'unpack' the evidence adduced from the argument deployed. Both representatives asked questions of the other to test the respective contentions made. Both answered questions posed by the Tribunal and in particular by the two expert valuer members of the Tribunal. We are grateful to both Mr Stapleton and Mr Horton for the skilled professional manner in which they have presented their respective positions. This process has been observed by Ms Sharon Elliott, enfranchisement manager for Messrs Hamways.

The Tribunal's determinations

23. It is agreed that the matters which require determination by the tribunal comprise relativity and the long lease value.

Relativity

24. The hearing bundle filed includes an email exchange between Mr Stapleton (valuer instructed by the applicant) and Mr Bridges (Mr Horton's colleague at Mc Dowells who was initially instructed by the respondent). On 26 April 2017 Mr Bridges provides his valuation as an attachment to an open email. In an open email on 27 June Mr Stapleton asks "could we get to a relativity of around 88% on this?", and Mr Bridges replies by email dated 30 June stating in terms "yes, I could agree to 88% for relativity". Mr Bridges' email of 30 June is clearly marked as without prejudice.
25. Mr Stapleton states that he treated relativity as agreed following this email exchange, and hoped that this was a basis to continue negotiations on the other component parts of the premium calculation to reach agreement and negate the need for, and costs of, a formal report and a tribunal hearing.
26. Mr Horton argues that relativity is not agreed. He relies upon the without prejudice basis of Mr Bridges' email of 30 June. He states that email does not state whether it includes the value of Act rights or include any reference to other relevant parts of the calculation toward the appropriate premium.
27. The tribunal determines that there was no concluded agreement on relativity. Mr Bridges email of 30 June is expressly marked as 'without prejudice' and so expressly mitigates against any such concluded agreement. No subsequent correspondence or other contact between the parties changed that position.

28. The tribunal indicated during the hearing that this was its preliminary view and invited the parties to address the issue of relativity in any event, and directed the parties' attention to the decision of the Upper Tribunal in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] UKUT 223 (LC) and its initial view that the correct approach to considering relativity is to consider the available market evidence and then consider macro graphs and indices as a counterbalance and check to reach a determination. Both parties were clearly aware of this guidance and confirmed their agreement to this approach.
29. Mr Stapleton for the applicant argues for relativity of 88% as set out in his report and as considered in detail during the hearing.
30. Mr Horton for the respondent argues for relativity at 81.91% and sets out four methods which are set out in detail in his report and have been considered in detail during the hearing. For that reason, and meaning no disservice to his work, we summarise his methods briefly as follows -
- 1) Taking the comparables of 80 and 90 Lincoln Road and considering them against the average long lease price he considers to be £137,075, to produce a relativity of 67%.
 - 2) Taking the average of the 5 Greater London graphs, with the 2017 Leasehold Valuers Graph, the 2015 Gerald Eve graph and the Savills Enfranchisement graph, to produce a relativity of 86.01%.
 - 3) Taking the average of the Leasehold Valuers Graph and the Savills Enfranchisement graph, to produce a relativity of 86.38%.
 - 4) Taking the average of the Greater London graphs to produce a relativity of 88.24%.
 - 5) Taking the average of these 4 methods to produce a relativity of 81.91 %.
31. Both Mr Stapleton and Mr Horton have taken the opportunity to ask questions of the other on their respective methodology and resulting relativity figure. The valuer members have asked questions to analyse those respective positions. The particular assistance of the average of the Greater London graphs to a property at this location has been discussed. To his credit, by the end of the hearing Mr Horton indicated that he could see the basis for determining relativity at 88%. Having regard to the evidence, information and argument before it, and applying its own specialist knowledge, the Tribunal determines relativity at 88%.

Long leasehold value

32. Mr Stapleton for the applicant proposes a long leasehold value (and an existing leasehold value) of £91,775.
33. By way of market evidence within the relevant block he makes reference to the May 2016 sale of 80 Lincoln Close for £75,000 by private agreement without any market offering, to the August 2015 sale of 81 Lincoln Close for £90,000 by private agreement without any market offering. It is his evidence that both properties are let to tenants for £800 p/c/m providing gross yields of 12.8% and 10.66% respectively and that, given the circumstances of the block and the wider estate and area, the return on capital for a cash investor is the definitive consideration for the purchaser.

34. By way of wider market evidence beyond the relevant block but on the surrounding estate he makes reference to the May 2016 sale of 28 Craylands for £133,000 and to the May 2016 sale of 61 Lincoln Road for £135,000, both to a local social housing provider, 'Local Space Limited'. He makes further reference to the March 2016 sale of 82 Lincoln Road for £115,000 to the same social housing provider. He opines that comparables beyond the instant block provide no worthwhile comparables due to the particular circumstances resulting from the rolling estate redevelopment programme and timeline.
35. He adds the caveats that there have been no more recent sales within this instant block, that sales in neighbouring blocks have been subject to the estate redevelopment and resulting compulsory purchase context of market value plus at least 10% within blocks which remain in local housing authority ownership and are better maintained.
36. Mr Horton for the respondent proposes a long leasehold value of £137,075.
37. By way of market evidence within the relevant block he too makes reference to the May 2016 sale of 80 Lincoln Close (99 years from 01.01.81) for £75,000 by private agreement without any market offering, and to the August 2015 sale of 81 Lincoln Close (99 years from 01.01.81) for £90,000 by private agreement without any market offering.
38. By way of wider market evidence beyond the relevant block but on the surrounding estate he too makes reference to the May 2016 sale of 28 Craylands (125 years from 07.08.89) for £133,000 and to the May 2016 sale of 61 Lincoln Road (125 years from 28.04.03) for £135,000, to the March 2016 sale of 82 Lincoln Road (125 years from 29.09.98) for £115,000, and to the October 2015 sale of 83 Lincoln Road (125 years from 07.08.88) for £130,000.
39. 80 and 81 Lincoln Road are second and third floor maisonettes located on the same balcony as the instant property and so potentially provide good comparables. However, the Tribunal considers that the August 2015 and May 2016 sale evidence must be treated with some caution as both were by private agreement rather than open market sale. We are told that No 81 was offered to market in 2015 for offers in the region of £100,000 prior to the sale by private agreement.
40. Any proper valuation of 79 Lincoln Road must endeavour to reflect the unusual situation affecting the block of which it forms a part and the estate on which it located. The Craylands Estate is to be subject to a major rolling demolition and redevelopment programme, whilst this block is not included in that programme. It follows that for a lengthy period the block is likely to be affected by that programme whilst not benefiting from it. This situation will be well known to, or easily ascertained by, prospective purchasers. The parties agreed that the situation of the block and on the estate, together with the condition of the estate, are the same now as at the valuation date of 5 August 2016. We are told by both parties that lenders will not grant mortgages for properties in the instant block, whereas mortgages will be offered on the those properties which will be subject to the compulsory purchase within the programme. We are told by both parties that properties subject to compulsory purchase for the programme are compensated at negotiated market value + 10%. This should be reflected in the valuation. We are told that and that the market is likely to be a cash purchaser intending to rent the property out. We note that 79 Lincoln Road is presently let for £800 pcm which indicates the approximate gross yield achievable by letting.
41. Given the unusual situation of the block of which 79 Lincoln Road forms a part the Tribunal takes the view that wider market evidence beyond that block should also be treated with some caution, albeit that it does provide open market sale figures on the Craylands Estate. In addition we note that Nos 61, 82 and 83 Lincoln Road are ground floor properties with their own access (rather than the delapidated stairwell and walkway giving access to 79), and which provide a larger gross internal floor space (by approximately 6m square). We further note that 28 Craylands is a ground floor

property in a block some distance from 79 Lincoln Road, and that the ground floor properties have outdoor amenity space.

42. The issue of an appropriate adjustment for Act rights is addressed in the written evidence before us and has been discussed during the hearing. Mr Horton initially proposed 4.06% and Mr Stapleton 4.0%. Both have agreed the figure of 4% during the hearing, and the Tribunal endorses that figure.
43. Having regard to the expert reports and other evidence before the Tribunal, to the oral evidence and argument during the hearing, to the inspection and to the collective experience of the Tribunal members in analysing the same the Tribunal determines that the long leasehold value is £110,000.

Premium payable

44. Mr Stapleton for the applicant proposes a premium of £6,685 based on the premise set out in his report (including relativity at 88%). Mr Horton for the respondent proposes a premium of £17,784 based on the premise set out in his report. Having regard to those reports, to the oral evidence and argument during the hearing, and to the inspection, and applying the collective experience of the Tribunal members in analysing the same the Tribunal determines that the premium payable for the lease extension in respect of 79 Lincoln Road, Basildon, Essex SS14 3RB is £8,779 as set out in the valuation attached.

Legal and valuation fees : s60 RHUDA 1993

45. The representatives attending were unable to confirm whether the legal and valuation fees incurred by the respondent in connection with the new lease pursuant to section 60 of the 1993 Act have been agreed as this is being dealt with by their respective solicitors. This is unfortunate.
46. It is doubly unfortunate that neither party complied with directions 1-3 & 10 of the Directions Order made by the Regional Judge on 28 March 2017 (hearing bundle at pages 11-13) which required a statement of costs and disbursements, schedule of objections and schedule of any replies. The Tribunal may not excuse such default on another occasion.
47. If the costs are agreed then the parties should inform the Tribunal Office forthwith. In the event that the costs are not agreed then the parties must comply with those directions by filing the required documents at the Tribunal Office (Eastern Residential Property First-Tier Tribunal, HMCTS, Cambridge County Court, 197 East Road, Cambridge CB1 1BA) as follows -
 - a. Statement of costs as per Direction (1) by 4pm on Friday 19 January 2018
 - b. Schedule of objections as per Direction (2), now limited to 2 pages, by 4pm on Friday 26 January 2018
 - c. Replies to objections as per Direction (3), now limited to 2 pages, by 4pm on Friday 2 February 2018

The Tribunal will then determine the costs payable pursuant to section 60 of the 1993 Act on the papers only, this being the proportionate procedure given the parties' previous failure to comply with the case management directions of the Regional Judge.

**Stephen Reeder
Judge of the First Tier Tribunal, Property Chamber**

9 January 2018

ATTACHED - THE TRIBUNAL VALUATION

ANNEX - RIGHTS OF APPEAL

- a. 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.**
- b. 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.**
- c. 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.**
- d. 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.**

79 Lincoln Road Basildon

Calculations

Valuation assumptions

Lease expiry date	05/01/2080	
Valuation date	05/08/2016	
Unexpired term	63.41	Agreed by parties
Capitalisation rate	7.0%	Agreed by parties
Deferment rate	5.75%	Agreed by parties
Freehold value	£ 111,100	
Extended lease value	£ 110,000	
Existing lease value	£ 96,800	
Relativity	88.0%	

A Value of Landlord's existing Interest

Ground Rent 1		£	5		
Years Purchase	63.41 years @	7.0%	14.0900	£	71
					Agreed figure
Reversion to	Freehold Value		£ 111,100		
Present Value of £1	63.41 years	5.75%	0.02887	£	3,207
Sub-total				£	3,278

B Reversion to freehold after extended lease

	Freehold Value		£ 111,100		
Present Value of £1	153.41	5.75%	0.00018843	£	20.93

C Marriage value calculation

Value of Landlord's proposed interest		£	21
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	Value of Tenant's proposed interest	£	111,100	
	Sub-total			£ 111,121
	Value of landlords existing interest	£	3,278	
	Value of tenants existing lease	£	96,800	
				£ 100,078
	Marriage gain			£ 11,043
	Landlords 50% share			£ 5,521
Plus	Loss to landlord in granting new lease			£ 3,257
	Premium payable			£ 8,779