



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

Case Reference : **CAM/00MC/OLR/2019/0020**

Property : **18 Farringdon Court, Erleigh Road, Reading
RG1 5NT**

Applicants : **Wai Tong Pang and Shui Fong Pang**

Representative : **R S Kaye MSc MRICS of Leasehold Assist
Limited, instructed by Griffiths Smith LLP
Solicitors**

Respondent : **Wallace Estates Limited**

Representative : **Mr G Evans FRICS eBureau Limited,
instructed by Stephenson Solicitors**

Type of Application : **Application for the determination of premium
pursuant to section 48(1) of the Leasehold
Reform Housing and Urban Development Act
1993**

Tribunal Members : **Tribunal Judge Dutton
Mrs S Redmond BSc Econ MRICS
Mrs M Wilcox BSc MRICS**

**Date and venue of
Hearing** : **Holiday Inn, Reading on 29th April 2019**

Date of Decision : **4th June 2019**

DECISION

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DECISION

The Tribunal determines that the premium payable in respect of the lease extension for the property at 18 Farringdon Court, Erleigh Road, Reading RG1 5NT to include car parking space is £19,182 as set out on the attached valuation sheet.

BACKGROUND

1. On 8th October 2018 the Applicants, Wai Tong Pang and Shui Fong Pang served on the Respondent, Wallace Estates Limited a notice under section 42 of the Leasehold Reform Housing & Urban Development Act 1993 (the Act). The notice of claim sought to extend the lease in respect of the property at 18 Farringdon Court, Erleigh Road, Reading and parking space (the Property) and put forward a premium of £16,800. The new lease was to be on the same terms as those of the existing lease.
2. By a counter notice dated 3rd December 2018 the Respondent, Wallace Estates Limited, accepted the Applicant's right to acquire a new lease but rejected the premium proposed and instead substituted a premium of £49,680 and sought to include different terms in the new lease.
3. Mr Kaye and Mr Evans were instructed to act on behalf of the Applicants and Respondent respectively and both have provided experts' reports which were included in the bundle of papers provided prior to the hearing.
4. We are pleased to say that the valuers have been able to agree a number of items. Those agreed items are as follows:
 - The extended lease value £275,000
 - The agreed freehold vacant possession value £277,750
 - Valuation date is 9th October 2018
 - Unexpired term is 106.32 years
 - The deferment rate is agreed at 5%.
5. Accordingly, unusually the area of concern centred around the capitalisation rate applicable to the ground rent.
6. Mr Kaye in his report had suggested that the premium payable for the lease extension should be £16,950 and Mr Evans had concluded that the appropriate premium was £25,560.
7. The reason for the dispute in respect of the capitalisation rate is the ground rent provisions contained within the lease for the subject Property. The lease is dated 23rd August 2000 and made between Bewley Homes PLC (1), Farringdon Court (Reading) Management Company Limited (2) and Claire Marie Julian (3). This lease has now been acquired by the Applicants. The yearly rent set out under the particulars in definitions indicates as follows:
 - From the date of the lease for the first five years the rent is £125 per annum.

- For the next five years it rises to £200 per annum.
- For the next five years it rises to £300 per annum.
- For the next five years it rises to £400 per annum.
- For the next five years it rises to £500 per annum.
- For the next 25 years of the term it increases to £2,000 per annum.
- For the next 25 years of the term it increases to £4,000 per annum.
- For the remaining 25 years of the term it is £5,000 per annum.

Both valuers agreed that this constituted an onerous ground rent.

8. The subject Property comprises a ground floor two bed-roomed flat with car parking space. We were able to inspect the Property in the company of both valuers on the morning of the hearing. The flat comprises two double bedrooms, one with an en suite shower, a separate bathroom with WC and wash hand basin, an internal kitchen and living room. There is car parking available on a development that appeared to be in good order and presented well.
9. We considered the report of Mr Kaye to be found at page number 109 through to page 118. There were a number of appendices attached dealing both with the value of the flat and the anticipated investment value for the ground rent. We noted all that was said.
10. Mr Evans' report was at page 459 of the bundle running through to page 483 where the valuation was to be found. There were some exhibits but not the number that was produced by Mr Kaye.
11. The reports are common to both parties and there seems no need for us to go into great detail with regard to the content of same.
12. Mr Kaye in analysing the ground rent position had relied on comparables throughout the country mainly with rents doubling every 10 years. He considered they represented a comparable risk to the subject with its increase from £400 pa to £2,000 pa in 6.23 years, a further doubling in 25 years and effectively a capped increase for the last period. The comparables were at Pump House Crescent in Watford, Plumstead Common Road in London, Ladywell Point in Manchester, Blythe Court in Birmingham, 15 Kensington Road in Morecombe and Waldegrave Road in Twickenham.
13. At the commencement of his report he had provided an explanation as to the abbreviations adopted. Gross initial yield (GIY) was calculated as a percentage based on the premium for the lease extension divided by the passing rent but did not take account of the costs of acquisition. The capitalisation rate (CR) was the yield applied to capitalise the rental income, either explicit or implicit, of future rental growth. The next was the explicit cap rate (ECR) where the capitalisation rate is applied to each known increase in the rental income and is therefore explicit of rental growth and will be stated in his report as ECR. The further abbreviation was YFR which stands for yield at first review and finally capital value per unit (CVPU) is the investment price divided by the number of units (houses or flats) and although a crude method is an easily calculated way of analysing comparable investment transactions.

14. In the schedule he had set these figures out against the named properties and this had produced a capitalisation rate (ECR) varying from 16% for the property in Plumstead Common Road down to 7.7% for the property in Twickenham. His view was that a valuation of £16,950, which is what he put forward, reflected a GIY of 2.36% and an ECR of 9.5%.
15. He said that the comparables were blocks of flats some with large rental incomes. Blocks of flats he said come with benefits of additional revenue and also have far lower acquisition cost per flat. This he said should be reflected in the capitalisation rate.
16. His report went on to address the market overview of onerous ground rents, in particular the Government attempts to prevent high ground rents being charged and the Law Commission's consultation into enfranchisement and leasehold ownership. It was, he said, therefore in any purchaser of the ground rent's mind at the time of the valuation date (October 2018) that there could be legislation which would affect the ground rent passing in this particular case. He also confirmed that he was aware of freeholders offering to compensate either leaseholders or owners of freeholds in respect of grounds rents that might appear to be excessive. Indeed, in this case on 12th April 2019 Simarc Property Management Limited had written to the Applicants offering to vary the terms of the lease as they had signed up the Government's 'Pledge' to deal with doubling ground rents. The letter whilst indicating a willingness to vary the lease does not appear to indicate what the financial impact might be on the Applicants. He also pointed out that this letter post-dated the valuation date.
17. In answer to questions from Mr Evans, he was of the view that steps would need to be taken to deal with the onerous ground rent in respect of this Property if the Applicants wished to sell or re-mortgage. Mr Evans indicated that he was a member of the advisory group working with the Law Commission and that there were no recommendations at the moment, although there may be some this summer.
18. Mr Evans, whose report was to be found in the bundle at page 459 onwards, had considered a number of auction sales at around the valuation date, for example there were details of an Allsops auction held in July of 2018 where a number of lots are put forward, some stated to be of no assistance. There is then a further auction of 13th September 2018 where some analysis is given of some of the properties and further auctions in October and December of 2018. From those auctions there were seven properties that he considered would be helpful. These were at 34 Bell Street in London; 1 – 11 Smuggler's Wharf; 102 West Way Oxfordshire; 1 – 22 Church Mews postcode CO5 0SN; 15 – 29 Mornington Place with a postcode CB24; further properties at 34 – 56 Mornington Place with the same postcode.
19. In a schedule attached he had referred to these as properties A to F and also added a property at Handford Place where there had been a negotiated settlement by himself with both parties represented. Unfortunately, in his report he did not seem to have followed, to the letter, the abbreviations used by Mr Kaye in his report. In Mr Evans' report he refers to the initial yield (IY) as a single rate

of interest being used. He then refers to an equated yield (EYC) which reflects current rent and then accounts for growth after review by selection of remunerative capitalisation rates and finally EYF where all the future growth is implicit within same and is perhaps most appropriate as here, where the rent reviews state the financial sums that will arise in future years.

20. Taking guidance from the Upper Tribunal, he had relied on the various auctions from Allsops over the period of time. In the schedule we have referred to reciting those properties A to F, he included EYC calculations for Handford Place and Smuggler's Wharf which gave lower figures. If one extrapolated those as well as property C which appeared to have a growth rate considerably below the others, there was an average EYF of 7.554% This led him to his rate of 7% for which he argued. It is noted that the GIY growth in respect of properties A, E and F were at around the same percentage levels as those of the subject Property, that is to say around 2.4%.

FINDINGS

21. It is unusual to find a case of this nature resting solely on the capitalisation rate applicable to the ground rent. Usually that is one element that is agreed between valuers and does not exercise the minds of the Tribunal. In this case, however, we do have, what is by the common consent of the valuers, an onerous ground rent which needs to be reflected in the capitalisation rate. The comparables provided by both valuers were not agreed, although the freehold vacant possession value was. It appears that both valuers agree that in Mr Kaye's case what he defines as the explicit capped rate (ECR) and Mr Evans the EYF rate are agreed. If one takes the average of the properties that Mr Evans has put forward at page 479 being properties A (GR doubles every 25 years next in 2032 to £7,500, 3 further reviews); E (GR doubles 25 yearly next in 2035 to £4,000, 3 further reviews) and F (GR doubles 25 yearly next in 2035 to £6,000, 3 further reviews) which all have similar GIY growth rates, we find the average of the EYF or ECR is 7.66%. We find this to be the starting point for the assessment of the ground rent capitalisation rate.
22. The evidence given to us is in all cases of blocks of properties where the assessment of the ground rent and the capitalisation rates applicable thereto would undoubtedly be affected by, as Mr Kaye says, the others matter that arise in owning a block of flats. That of course is not the position this case. This is a purchase of a single ground rent on an existing lease of some 106 plus years.
23. There is, it seems to us, little doubt that at the valuation date a purchaser of ground rents aware of the publicity associated with onerous rents and the risk of Government interference, would take that into account when considering whether or not to acquire the property.
24. Mr Kaye's comparables are in some cases quite dated. . The closest in time would be the Ladywell Point property (a book valuation) and Kensington Road. Ladywell Point doubles in the 8th, 18th and 28th years and Kensington is a ten year doubling with no cap. The ECR rates for both are 9.25% and 9.5% respectively. It seems to us, therefore, that 9.5% sets the upper limit as to what

the capitalisation rate might be. As a matter of comment we note that for example Waldegrave Road with the 20 year doubling GR included by Mr Kaye is analysed to produce 7.7%

25. If we therefore contrast this percentage with the 7.66% realised taking Mr Evans' closer three comparables, we can see the parameters before us. Insofar as Mr Evans' comparables are concerned, we do not believe that these reflect the risk of a single ground rent investment as compared to a freehold. Of course, with regard to Mr Kaye's comparables, if we take the two later ones, Ladywell Point and Kensington Road Morecombe, this should also reflect the knowledge in the market of the Government proposals and plans in connection with a possible interference with onerous ground rents, but they are of blocks not individual properties.
26. We consider that the GR regime at the subject property falls between the standard 10 year doubling and 20 year and 25 year doubling of the comparables. Doing the best we can, therefore, and taking the maximum rate of 9.5% and the minimum rate of 7.66% we conclude that a capitalisation rate in this case of 8.5% fairly reflects the evidence that was given to us by the valuers, whom we would like to thank for their assistance.
27. This gives a premium payable of £19,182 which is set out on the attached valuation schedule.

Judge:

A A Dutton

Date: 4th June 2019

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

