



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

Case Reference : BIR/23UB/OAF/2020/0019

Property : 39 Tom Price Close, Cheltenham, Gloucs., GL52 2LF

Applicants : Tim Douglas Moore and Lynn Louise Moore

Representative : Willans LLP Solicitors

Respondent : Persons Unknown

Representative : None

Type of Application : An Application to determine the premium payable into Court by lessees to extend a lease under section 48 of the Leasehold Reform Housing & Urban Development Act 1993, pursuant to an Order of the Gloucester and Cheltenham County Court dated 8th July 2020, Claim No. GOOGL211.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
R. Bryant Pearson FRICS

Date and Venue of Hearing : None. Determined by paper submission

Date of Decision : **13th October 2020**

DECISION

Introduction

- 1 This is an application to determine the premium payable into Court by the Lessees to extend a lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act').
- 2 The Lessees had been unable to locate the Freeholder to serve a s.42 notice under the Act and applied to Gloucester and Cheltenham County Court for a vesting order on 20th March 2020 by Claim No.GOOGL211. This was granted on 8th July 2020 subject to assessment of the premium and other terms by the First-tier Tribunal (Property Chamber).

The Law

- 3 There are three interests in the property:

| | |
|----------------|---|
| Freehold | Owned by parties unknown. In 1982 it had been owned by Barratt Bristol Limited who granted two simultaneous leases: |
| Head-Leasehold | to O.M. Limited, currently vested in Proxima G.R. Properties Limited. The lease was granted for as term of 120 years from 1 st July 1982 less 1 day, subject to concurrent leases of 'Studio Flats' in the building at a ground rent of £1 p.a. |
| Sub-Leasehold | to K.M. Ward, currently vested in the Applicants Tim Douglas Moore and Lynn Louise Moore who hold the sub-lease of a Studio Flat for a term of 120 years from 1 st July 1982, at ground rent of £20 p.a. for the first 21 years subject to 21 yearly rent reviews. The current rent is £50 p.a. to be reviewed on 1 st July 2024 in accordance with a formula in the lease. |

- 4 The sub-tenants wish to acquire an extended lease and their Solicitors Willans LLP made enquiries of the head-leaseholder to establish the name of the party that owned the Freehold. The title is unregistered. The block had been built in a development by Barratt Bristol Limited in 1982 but unfortunately the company were part of a Group and Solicitors for the Group have been unable to establish the name of the party owning the Freehold.
- 5 On 20th March 2020 ('the Valuation Date') the Applicants applied to the County Court for a vesting order for a new lease to be granted on statutory terms, adding 90 years to the existing unexpired term.
- 6 The Court granted the Order on 8th July 2020 subject to the terms of the new lease to be determined by the First-tier Tribunal (Property Chamber).
- 7 Section 48 of the Act provides that the Tribunal has jurisdiction to assess the premium in accordance with a formula in Schedule 13. It sets out the basis of calculation and requires the premium to be based on the landlord's loss of ground rent for the term and compensation for the landlord's deferred right to possession of the flat together with a share of any marriage value arising from the lease extension. In this case, there is no Marriage Value as the unexpired term is greater than 80 years which is excluded by paragraph 4(2A) of Schedule 13 to the Act.
- 8 It also allows the landlord to claim any diminution in the value of land retained in its estate due to the grant of the lease extension if such loss can be justified under paragraph 5, Schedule 13.

Facts Found

- 9 The Tribunal carried out an external inspection on 26th August 2020.
- 10 The Tribunal was unable to gain access due to Covid 19 restrictions but according to the Applicants' agent, the property is a ground floor Studio Flat comprising two rooms, a living room / bedroom / kitchen and a bathroom, accessed from a communal hall. The Flat has shared use of a car park but no designated parking space. The Flat is in a block of 12 similar flats built in 1982 as part of a larger development, 5 minutes' walk from Cheltenham town centre.
- 11 The block is of three storey brick and tile construction.

Issues

- 12 The Court Order requires the Tribunal to:
 - 1 determine the terms of the new lease;
 - 2 determine the appropriate sum payable by the Claimants ('Applicants') to the Defendant ('Respondent') comprising:
 - i) the premium payable under Schedule 13 of the 1993 Act;
 - ii) any other sums payable by the Claimants under Schedule 13;
 - iii) any other amounts payable by the Claimants to the Defendant.
 - 3 approve the form and provisions of a new lease.

The terms of the new lease

- 13 Having reviewed the papers, the Tribunal determines the Applicants are entitled to a new lease on terms similar to the existing lease but with the term extended by 90 years and the ground rent reduced to a peppercorn per annum in accordance with the Act.

The premium payable under Schedule 13 of the 1993 Act

Applicants' Submission

- 14 The Tribunal received Submissions from Mrs J.Coupe FRICS, a Chartered Surveyor with extensive experience of valuing residential property in Cheltenham, proposing premiums of £1,405 payable to the Freeholder and £1,072 to the head leaseholder, O.M. Ltd., in exchange for a new lease with the term extended by 90 years but otherwise similar to the existing lease. The submitted valuation is based on the following elements:

Unexpired Term

82.28 years.

Ground Rent

£49 p.a. for the remainder of the term.

Capitalisation Rate

6.5% until the review on 1st July 2024. Thereafter 4.5% based on the decision of a differently constituted First-tier Tribunal in *St.Emmanuel House, St.Gabriel House and St. Saviour House, Eastbourne* (CHI/21UC/OCE/2017/25-26-29), a collective enfranchisement case where the Tribunal capitalised the rental income at 3.35%. Reference was also made to a case in the same area involving a lease extension with a missing landlord, *Flat 1, 56 St.James Street, Cheltenham, GL52 2SH* (CHI/23UB/OLR/2020/0024), decided 2nd April 2020, where the Tribunal capitalised the ground rent at 6.5%.

Deferment Rate

5% as determined in *Earl Cadogan v Sportelli* LRA/50/2005.

Relativity

Not applicable to the case as there is no marriage value to consider.

Development Value

None applied, as the site is considered fully developed.

Comparable Sale Values

Mrs Coupe referred to the sale and asking prices of the following properties described in the Submission:

| | | |
|---|---|---------|
| 1 | 53 Tom Price Close, Cheltenham. Sale agreed March 2020 | £75,000 |
| 2 | 100 Tom Price Close, Cheltenham. Sale agreed September 2019 | £66,995 |
| 3 | Berkeley Court, High St., Cheltenham. Asking price | £92,500 |
| 4 | Flat 1, 69 High St., Cheltenham. Asking price | £95,000 |
| 5 | Tom Price Close, Cheltenham. Number unknown. Asking price | £85,000 |
| 6 | 70 Tom Price Close, Cheltenham. Sold March 2018 | £75,000 |
| 7 | 42 Tom Price Close, Cheltenham. Sold November 2017 | £69,000 |
| 8 | 20 Tom Price Close, Cheltenham. Sold January 2017 | £71,250 |

Based on these comparables Mrs Coupe valued the existing leasehold interest at £76,000 before adjustment for tenant improvements.

Improvements

Mrs Coupe deducted £1,500 to reflect the value of the tenant's improvements which are disregarded to arrive at the statutory basis. The improvements are the installation of upvc double glazing and upgrades to the plumbing and electrical installations.

Conversion to Freehold

Mrs Coupe made an allowance of 1% to represent the difference between the Leasehold value and theoretical Freehold value. This was based on *Contactreal Ltd. v Hannah Smith* (2017) UKUT 178 (LC) and *Elmbirch Properties plc* (2017) UKUT 314 (LC).

Schedule 10 Deduction

Mrs Coupe did not consider any allowance should be made to reflect the risk of a tenant remaining in occupation on an Assured Tenancy on expiry of the existing lease as envisaged by Schedule 10 of the Local Government and Housing Act 1989, as the lease had 82 years to run.

- 15 The Submission contained a Statement of Truth in accordance with RICS and Court requirements.

Tribunal Decision

- 16 The Tribunal has considered the points raised by Mrs Coupe and determines the valuation inputs as follows:

Unexpired Term

The Tribunal agrees the unexpired term at 82.28 years at the date of Notice.

Ground Rent

The Tribunal agrees the ground rent at £49 p.a. for the four years until the next rent review. However, it finds it unlikely to remain at that level on review and a potential purchaser would probably expect an increase. The lease contains a formula at clause 1(e)(i) requiring the reviewed rent to represent the same proportion of the value of the block at the review date as at commencement of the lease. The full value of the block is unknown but the premium at the date of sale in 1982 was £22,775 and the present value is £76,000 in Mrs Coupe's submission. Applying the same ratio, the ground rent could be expected to increase to £66.73 p.a., rounded to £70.00 p.a. on review in 2024, assuming present values remain constant.

Capitalisation Rate

The Tribunal agrees the capitalisation rate of the ground rent at 6.5% until 2024.

However, the Tribunal is not convinced there should be any variation beyond 2024, the date of review, because the same investment criteria apply to the rental income after that date as before.

The Tribunal has considered the case cited, *St.Emmanuel House, St.Gabriel House and St. Saviour House, Eastbourne* (CHI/21UC/OCE/2017/25-26-29), but finds it to have been a completely different type of investment for four reasons:

- 1 it related to collective enfranchisement of large modern blocks whereas the subject investment is a single flat in a larger scheme that would be far less attractive to the market;
- 2 the ground rents in the cases cited were substantial compared to the relatively modest ground rent of the subject flat. The cost of rent collection, administration and site inspection would be proportionately far higher for a single unit than for a large block with several flats and would leave little profit;
- 3 the subject block has not been well maintained. The common areas need cleaning and decoration and
- 4 the blocks cited for comparison are on the south coast where different market conditions apply.

The cases cited were decided by another Tribunal and do not set a precedent. The same point is relevant to the other case cited, *Flat 1, 56 St.James Street, Cheltenham, GL52 2SH* (CHI/23UB/OLR/2020/0024) although it has similarities and it is noted that the Tribunal in that case determined the capitalisation rate at 6.5%.

Having considered the Submission and issues, the Tribunal determines the capitalisation rate at 6.5% in this case.

Deferment Rate

Mrs Coupe adopted the 5% deferment rate held in *Earl Cadogan v Sportelli* LRA/50/2005 and we see no reason to depart from this.

Relativity

Not applicable in this case as there is no marriage value to consider.

Development Value

The block is 38 years old but still relatively modern and we not consider there is currently a reasonable prospect of redevelopment. We therefore make no allowance in our valuation.

Comparable Sale Values

The Tribunal has considered the comparable sale and asking prices referred to by Mrs Coupe and agrees that based on the evidence, the value of the leasehold interest is £76,000 for the flat in present condition.

Improvements

The Tribunal has not seen the improvements as we were unable to gain access to the Flat, but agrees that the list of works provided by Mrs Coupe would have added £1,500 to the value of the lease which is a sum that needs to be deducted for the statutory basis. The net value of the lease at the valuation date is therefore £74,500.

Conversion to Freehold

The Tribunal accepts there is a difference between the value of a lease and the value of a Freehold and agrees a 1% variation in this instance would be reasonable. The equivalent value of the Freehold interest in the Flat at the valuation date is therefore £75,252.

Schedule 10 Deduction

The Tribunal agrees there is no reasonable prospect of the Lessee remaining in occupation in 82 years' time under an Assured Tenancy and makes no allowance for this in the valuation.

Tribunal Valuation

Based on the above, the Tribunal values the premiums payable to (1) the Freeholder and (2) the head-leaseholder as follows:

1 Freeholder Premium

Term

| | | | |
|------------------------------|---|----------------|-----|
| Ground Rent | £ | 0.00 | |
| Years Purchase 82 years 6.5% | | <u>15.2966</u> | £ 0 |

Reversion

| | | | |
|--|---|----------------|---------|
| Extended lease value | £ | 76,000 | |
| Less value of tenants' improvements | £ | <u>1,500</u> | |
| | £ | 74,500 | |
| Convert to Freehold equivalent, 1% variation | £ | 75,252 | |
| Present Value £1 82 years 5.00% | | <u>0.01830</u> | £ 1,377 |

| | | |
|---------|---|-------|
| Premium | £ | 1,377 |
|---------|---|-------|

1 Head-Leaseholder Premium

Term

| | | |
|---|---------------|-------|
| Ground rent to 2024 | £ 49.00 | |
| Less rent paid (£1 for whole estate, say nil) | <u>£ 0.00</u> | |
| Profit rent | £ 49.00 | |
| Years Purchase 4.28 years 6.5% | <u>3.6348</u> | £ 178 |

| | | |
|---|---------------|-------|
| Ground rent 2024 - 2102 | £ 70.00 | |
| Less rent paid (£1 for whole estate, say nil) | <u>£ 0.00</u> | |
| Profit rent | £ 70.00 | |
| Years Purchase 78 years 6.5% | 15.2714 | |
| Present Value 4.28 years 6.5% | <u>0.7637</u> | £ 816 |

Premium £ 994

3 Total Premium Payable

Premium payable by Applicants for new lease: £ 2,371

Any other sums payable by the Claimants under Schedule 13

17 The Tribunal determines that the Applicants remain liable to pay any ground rent due to the Head-Leaseholder, O.M. Limited, to the date of completion of the new lease.

Any other amounts payable by the Claimants to the Defendant

18 The Tribunal determines that no sums other than the premium are payable by the Applicants to the Defendant.

The form and provisions of a new lease

19 The Tribunal has considered the draft Lease included with the Application and approves the form, subject to alteration of the Premium at LR7 of the Particulars and clause 1.1 of the Definitions to £2,371 (Two Thousand Three Hundred and Seventy One Pounds) comprising £1,377 (One Thousand Three Hundred and Seventy Seven Pounds) to the Freeholder and £994 (Nine Hundred and Ninety Four Pounds) to the Head-leaseholder.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date 13th October 2020

Appeal to the Upper Tribunal

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.