



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

Case Reference : **CAM/00MA/OLR/2020/0008**

HMCTS code : **A: BTMMREMOTE**

Property : **11 Broadlands Court and Garage no.14,
Wokingham Rd, Bracknell RG42 1PJ**

Applicant : **Indarjit Singh Notey and Rajinder Kaur Notey**

Representative : **Wilson Dunsin FRICS
Nicky Clayton-Hill**

Respondent : **Stanley N Evans(Properties) Limited**

Representative : **Kenneth Davis FRICS**

Type of Application : **Determination of the premium to be paid for a
new lease - Leasehold Reform Housing & Urban
Development Act 1993**

Tribunal Members : **Mrs M Hardman FRICS IRRV (Hons)
: Judge David Wyatt**

Date of Decision : **4 June 2020**

DECISION

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Covid-19 pandemic: description of hearing

This has been a remote audio hearing which has been consented to by the parties. The form of hearing was A: BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in a bundle of 223 pages, the contents of which we have noted, together with separate colour copies of the expert reports contained in that bundle.

Decision of the Tribunal

The Tribunal determines that the premium payable for the new lease for the property at 11 Broadlands Court and Garage no.14, Wokingham Rd, Bracknell RG42 1PJ is £56,220.

Background

1. This is an application for a determination of premium of the new lease under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act)
2. On 28 May 2019 the predecessor in title to the applicant, Phillip Michael Bell, gave notice to the Respondent, Stanley N Evans (Properties) Ltd under section 42 of the Act seeking a new lease to the Property. The notice of claim under section 42 indicated a proposed premium of £36,000.
3. On 25 July 2019 the Respondent landlord served a counter notice under section 45 accepting the tenant's right to a new lease. They, however, rejected the proposal for the premium, instead suggesting a figure of £63,350 for the premium.
4. A copy of the Lease dated 21 February 1984 between George Wimpey and Co. Limited and Peter Anthony Rolfe and Angela Edwina Kay for a term of 99 years from 1 April 1962 was provided. The Applicants acquired the lease on 27 June 2019 under title number BK30699.
5. Matters could not be agreed and an application was made to the Tribunal on 10 January 2020 under section 48 of the Act seeking a determination as to the premium to be paid.
6. A directions order was issued by the Tribunal on 3 February 2020 and a hearing was subsequently arranged for 19 May 2020.
7. Following government guidelines in respect of face to face hearing due to the coronavirus, the tribunal informed the parties that this would take place as a remote hearing by telephone.
8. The hearing was attended by Wilson Dunsin FRICS and Nicky Clayton-Hill for the Applicant and Kenneth Davis FRICS for the Respondent. The Applicant Indarjit Singh Notey and representatives of the Respondent, Steven and Alan Parkinson, were also present on the call.
9. The premium for the extended lease remains in dispute.

The Law

10. The method of calculation of the premium under section 48 of the Leasehold Reform Housing and Urban Development Act 1993 is by reference to Schedule 13 of the Act.

The Property

11. Valuation reports provided by Mr Wilson Dunsin FRICS of Dunsin Surveyors, Chartered Surveyors and Valuers for the Applicant and by Mr Kenneth Davis FRICS of Cottons Chartered Surveyors, for the Respondent describe the property as a split level purpose built maisonette on the first and second floor of a three storey block of flats and maisonettes. The development was built in the 1960's of brick with a pitched tiled roof.
12. The accommodation comprises a hall, living room, kitchen/dining room, 2 bedrooms and bathroom/wc. The property has a garage in a separate block.

Matters agreed

13. The following matters have been agreed
 - Property description and accommodation
 - Date of Valuation – 28 May 2019
 - Unexpired term – 41.83 years
 - Capitalisation rate – 7%
 - Deferment Rate – 5%
 - Relativity of Extended lease value to Freehold VP Value – 99%

Matters to be determined

14. The matters that could not be agreed and that require to be determined are

Extended Lease Value
Existing Lease Value

And therefore, the Premium payable for the new lease.

Applicant's Evidence

15. Mr Dunsin had provided the tribunal with a comprehensive report to which he referred.
16. In arriving at the **Extended Lease** Value he had identified three comparables. These were:

Address	Date trans.	Sale Price	Lease yrs	Adjusted price
14 Broadlands Court	20/9/19	£185,000	124.53	£207,890
15 Broadlands Court	4/5/18	£235,000	131.91	£210,000
21 Broadlands Court	8/3/18	£220,000	85.06	£205,244

17. He had made adjustments to the sales prices to bring them in line with the subject property. In respect of 14 Broadlands Court he said that the purchaser had paid an additional £16,950 to extend the lease to 125 years so that the total price paid was £201,950. He had then adjusted for time using the HPI for Bracknell Forest to arrive at an extended lease value of £207,890 as at the valuation date. He considered this to be the best comparable as it was a similar flat to the subject property, located in the same section of the same block.
18. He had also looked at the sales of 15 and 21 Broadlands Court. He had adjusted both by deducting £15,000 as they were ground floor flats with direct access to the communal gardens. He had adjusted for time and added £10,000 to 21 Broadlands Court to reflect the lack of a garage. He had also added 1% to the sale price of 21 Broadlands Court to reflect the shorter lease (85.06 years) When questioned he accepted that he had no direct evidence on the adjustments for garden access or lack of garage but that this was based on his own knowledge and experience.
19. He said that he felt that the sales of 15 and 21 Broadlands Court were less reliable as these were ground floor flats. However, he had averaged the adjusted price of all three flats to arrive at the extended lease value of the subject property of £207,711. Applying the agreed relativity his Freehold valuation was £209,809.
20. He did not agree with Mr Davis's assertion that the sale of 14 Broadlands Court, which was four months after the valuation date, meant that this was not a good comparable and that the asking price of £200,000 as at the valuation date was more relevant. He felt that it was right to use later evidence and adjust it for time using the HPI.
21. He did not believe that it was necessary to adjust the price on 14 to reflect the costs of the informal lease extension. When asked by Mr Davis whether he was aware of the circumstances of the sale of 14 Broadlands Court he confirmed he did not have personal knowledge but had the property details and photographs, the Land Registry entries and the ground rent details.
22. He did not accept that the lease on 21 Broadlands Court at 85.06 years was a short lease and did not believe that it required more than a 1% adjustment to the sale price to render it comparable to lease of lease of 125-130 years.
23. In arriving at the value of the **Existing lease** with 41.83 years outstanding he had looked to the guidance set out by the Upper Tribunal in *The Trustees of the Sloane Stanley Estate v Mundy* [2016] and *Mallory v Orchidbase Ltd* [2016] and had looked in the first instance to reliable market transactions at or around the valuation date. He felt the best comparable in this respect was the sale of the subject property. This sold on 27 June 2019 at auction for £139,000. He felt that the condition was inferior to that of 14 Broadlands – on which he had based his extended lease value, and had added £5,000 for refurbishment works and had deducted 5% for the value of act rights. When questioned he said he had adopted the 5% based on other tribunal cases. Making these adjustments he had arrived at an existing lease value of £139,000.
24. He had not looked to the Graphs of Relativity as he felt that the sale of the subject property rendered this unnecessary.

25. When questioned by the tribunal he was aware of the sales of other leases as cited by Mr Davis but did not believe it was necessary to refer to these as he felt that the sale price of the subject property was sufficient in itself. Furthermore, he was aware that 30 Broadlands Court was going onto the market at the date of his report but had not sold at the point.
26. Applying this existing lease value and the agreed elements of the valuation he had arrived at a premium of £47,896.
27. In response to questions from Mr Davis he confirmed that the photographs that he supplied were taken at the time of his inspection when the property was subject to a tenancy.
28. He agreed that the property was lettable and saleable but felt that the 5% adjustment for refurbishment was appropriate to bring it up to the standard of no. 14.

Respondent's evidence

29. Mr Davis had also provided the tribunal with a comprehensive report to which he referred.
30. In arriving at the **Extended Lease** value he had also had regard to the sales of 15 and 21 Broadlands Court.
31. In respect of 15 Broadlands Court he had adjusted the sale price of £235,000 by the Bracknell Forest HPI to account for the time from the date of negotiation of sale to the valuation date to arrive at an adjusted value of £223,500.
32. For 21 Broadlands Court he had similarly adjusted for the time from negotiation of sale which he said was December 2017, and also the shorter lease and higher ground rent. He had made a reduction of 4.2% for time and a further adjustment of £8000 for the lease length/ground rent. This he explained as the £300 ground rent at 20 years purchase - £6,000 and a further £2,000 to account for the difference between 85 years and 125-130 years. On this basis the adjusted value of 21 Broadlands Court was £218,750.
33. Based on his analysis he was of the opinion that the value of the extended lease for the subject property was £221,125 and applying the agreed relativity his Freehold valuation was £223,358.
34. In arriving at the **Existing Lease** value Mr Davis said that he had had regard to 4 comparables of sales of short leases – which he stated – and the tribunal concur – is rare short leasehold evidence. These were:

Address	Date trans.	Sale Price	Lease yrs	Adjusted price
4 Broadlands Court	30/5/19	£120,000	41.8	£125,000
11 Broadlands Court	30/5/19	£139,000	41.8	
30 Broadlands Court	24/7/19	£122,000		

35. He had adjusted the sale price of No.4 as it was a corner flat with a smaller floor area to bring it in line with the others which were 'duplex' apartments. He had then averaged all four values and arrived at an average price of £129,750 for the existing lease value with act rights.
36. He then made a further adjustment for 'no act world' of 10% which was in line with guidance in *Sinclair Gardens Investments (Kensington) Ltd's Appeal [2017]*, *Mundy (UT)* and the *Midland Freeholds Ltd and Speedwell Estates Ltd appeals [2017]* to arrive at an existing lease value of the subject property of £116,775.
37. He did not accept that 14 Broadlands Court was a good comparable as it was after the date of valuation and he also believed that name changes on the documentation suggested that there was some urgency around the sale and that had driven down the price.
38. He believed that 30 and 45 were good comparables and were not located in an inferior position to the subject property as suggested by the valuer for the applicant.
39. He did not accept that it was appropriate to make a £15,000 adjustment to differentiate ground from first floor properties – rather that they each had their own market and from his experience there was no difference in value.
40. He believed, in response to a question from the tribunal, that the purchasers of 11 Broadlands Court despite purchasing at auction had overpaid for the property. He felt that it was more correct to take an average of all four sales which indicated the 'tone of the market'.
41. He did not know why the reserves on 4 and 11 were set at £20,000 difference (£100,000 (4), £120,000(11)) which then translated into a similar difference in sale prices ((£120,000 (4), £139,000(11)).

Determination

42. The valuers have very helpfully agreed a number of the components of the valuation. The main elements requiring a determination are as set out at paragraph 14 above and for clarity are:

Extended Lease Value
Existing Lease Value

43. Turning firstly to the Extended Lease value Mr Dunsin for the applicant tenant supplied three comparables of properties within the development which had sold within 4-14 months of the valuation date, namely 14,15 and 21 Broadlands Court. He preferred No.14 which had sold within 4 months of the valuation date and he felt was most similar to the subject property. He had made adjustments to sales prices for time and to 15 and 21 for direct access to the garden and further to 21 for lack of a garage and an adjustment of 1% for the shorter lease.

44. Mr Davis had relied on only two – 15 and 21, had made adjustments for time but did not agree that there was a requirement for adjustments for access to the garden or for lack of a garage. He had made an £8,000 adjustment for the shorter lease on 21.
45. The tribunal does not accept that the sale of 14 Broadlands should be disregarded, being the only comparable of a similar configuration to the subject property and sold very close to the valuation date. It accepts equally that it is right that 15 and 21 are part of the basket of evidence but that less weight should be attached to these sales given that they pre- date the valuation date by some 12 months and are a different type of flat from the subject property. It accepts the adjustments made for time are appropriate and does not believe that whether the adjustment is taken to an assumed negotiation date or completion date makes any significant difference in this case. Taking all these factors into account it finds that the value of the long leasehold is £210,000 and the freehold value is £212,121.
46. On Existing Lease value, the tribunal is not persuaded by Mr Davis's approach of looking at the average of the sales of the four short leases given that the subject property sold on the open market at auction two days after the valuation date. Whilst Mr Davis stated that the purchasers overpaid for the property he was not able to provide the tribunal with any reason why this might be the case. The tribunal has adopted the sale price of £139,000 as the existing lease value with act rights.
47. It is similarly not persuaded by the adjustment made by Mr Dunsin whereby he has added 5% for refurbishment works and then deducted 5% for value of act rights. The tribunal does not believe that any addition for refurbishment is required and accepts Mr Davis's argument that following recent case law that 10% is a more appropriate deduction for act rights on a lease of this length. Therefore, the tribunal finds that the Existing Lease value of the subject property at the valuation date is £125,100.
48. The Tribunal determines that, on the basis of the elements of the valuations set out above, the premium payable for the lease extension of the property is **£56,220**. The valuation calculation is attached at Annex 1.

Annex 1

Tribunal's valuation

Valuation date	28/05/2019
Unexpired term	41.83
Ground rent	£12
Capitalisation rate	7%
Deferment rate	5%
Extended lease value	£210,000
Freehold value	£212,121
Existing Lease value	£125,100

Calculations

Diminution of freehold

Loss of ground rent			£	
Years Purchase	41.83	years @	7%	13.4428
				£161

Reversion to Freehold

Capital value			£	
Present value of £1 in	41.83	years @	5%	0.1299
				£27,557
				£27,718

Less Freehold reversion after extension

Freehold value			£212,121	
PV £1 deferred 131.83 years		@	5%	0.0016
				£339
				£27,379

Marriage Value calculation

Value of proposed interests

Freeholder	£339	
Leaseholder	£210,000	£210,339

Value of existing interests

Freeholder	£27,557	
Leaseholder	£125,100	
Sub-Total		£152,657

Total marriage value

		£57,682	
Landlords share @ 50%			£28,841
Enfranchisement Price			£56,220

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).