



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

Case Reference : **MAN/00DA/OLR/2020/0012**

Property : **19 OAKDENE VALE, LEEDS LS17 8XT**

Applicant : **ALVIN JACOBS and DENISE SOLDEN**

First Respondent : **WALLACE PARTNERSHIP REVERSIONARY
GROUP HOLDINGS LIMITED**

Second Respondent : **SHADWELL MEAD MANAGEMENT
COMPANY LIMITED**

Type of Application : **Determination of premium: s 48(1) Leasehold
Reform, Housing & Urban Development Act
1993**

Tribunal Members : **A M Davies, LLB
I D Jefferson TD BA BSc FRICS**

Date of Decision : **23 March 2021**

Date of Determination : **1 April 2021**

DECISION

The premiums payable by the Applicants for extension of the term created by his lease of the Property are

£250 payable to the First Respondent, and

£18,340 payable to the Second Respondent.

REASONS

Background

1. The Applicants hold the Property under an underlease dated 20 June 1984 (“the Underlease”), which creates a term of 99 years from 1 January 1984. Their immediate landlord is the Second Respondent, which holds a lease (“the Intermediate Lease”) dated 10 January 1984 from the freeholder, the First Respondent. The Intermediate Lease creates a term of 189 years and one day from 1 January 1984. The rent payable under the Underlease is £50pa. The rent payable under the Intermediate Lease is the same amount (whatever it may be) as is payable under the Underlease. The Second Respondent therefore receives no profit rent.
2. On 1 August 2019 the Applicants served a notice on the Second Respondent pursuant to section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) applying for a 90 year extension to their lease term at a peppercorn rent, and offering a premium of £7,000. The Second Respondent served a counter-notice under section 45 of the Act, requesting a premium of £20,100. Both proposed premium figures were subsequently amended by the parties.
3. No agreement as to price having been reached, on 20 March 2020 the Applicants applied to the Tribunal for determination of the premium pursuant to section 48 and Schedule 13 of the Act.
4. The Tribunal and the parties agreed that the matter would be heard by video hearing and that the tribunal members would not inspect the Property. Evidence was to be provided in the form of expert reports.

Agreed matters and issues

5. The parties are agreed on the following:
 - (a) that the use of relativity tables is not required (even as a confirmatory check), because there are sufficient comparable properties to provide evidence of relativity;
 - (b) a 1% uplift to reflect notional freehold value; and
 - (c) a “no Act world” allowance of 4.33%.

6. The issues between the parties at the hearing were:
 - (a) the appropriate deferment rate;
 - (b) the relativity percentage, by reference to comparable properties; and
 - (c) the premium payable, and the amount due to each of the Respondents.

The Property

7. The Property is a first floor flat built in the early 1980s as part of an estate of houses, bungalows and flats in a popular area of north Leeds. It has two bedrooms, a kitchen, one bathroom and a separate single garage. There is a communal entrance shared with 3 other flats. Tenant's improvements (the assessed value of which were to be discounted) were identified by both experts as follows: the addition of fitted wardrobes, updating of the kitchen and bathroom, and gas fired central heating to replace the original heating system. The management company regulations for the estate prohibit children over the age of 16 staying permanently in Oakdene Vale flat. Insofar as this may affect the value of the flat, a similar effect applies to the other flats at Oakdene Vale which were cited as comparable properties.

The Applicants' case

8. The Applicants were represented at the hearing by their counsel Mr L Gibson, and relied on their expert witness Mr Nabarro FRICS, who filed reports dated 13 October 2020 and 30 November 2020 along with a third document called "Proof of Evidence" dated 10 February 2021 which Mr Nabarro said had been intended as an aide memoire for himself, not originally intended to be filed. Although this document was produced only a few days before the hearing and without permission, the Tribunal accepted it as evidence subject to deletion of property references that had not been mentioned in earlier reports, and a right for the Respondent's expert to respond in writing subsequent to the hearing.
9. Mr Nabarro has extensive knowledge of leasehold properties in Leeds. He had inspected the Property and a number of comparable two bedroomed flats in the north Leeds area. He calculated the extended lease value of the Property at £137,000 and calculated the price to be paid for the lease extension at £14,700. His valuation is headed "A diminution in value of freeholder's [ie First Respondent's] interest. No loss of rental income". He did not produce a figure to represent the Second Respondent's interest.
10. To support his valuation of the Property Mr Nabarro referred to a September 2019 sale of 27 Oakdene Vale at £145,000 and 2018 sales of 7 and 11 Oakdene Vale at £142,000 and £132,500 respectively. These were all 2 bedroomed flats with garages, and sold with extended leases. He also referred to recent sales of flats in nearby Highbury Court, where during 2018 Flat 2 was sold for £163,000 and flat 14 was sold for £166,750. A little further away at Park Villa Court, Flat 32 was sold in May 2017 for £155,000. Other potential comparables produced by Mr Nabarro had been sold even earlier, and were therefore less helpful.

11. He inspected 5 Oakdene Vale and rejected it as a comparable on the basis that it was markedly superior to the Property, having a private ground floor entrance and uPVC double glazing. He considered that the size of the rooms was preferable to the subject Property. Completion of the sale of 5 Oakdene Vale having taken place in February 2020, it had also, in his opinion, had the advantage of “very rapidly” rising prices in the area after August 2019, the valuation date for the Property.
12. Mr Nabarro considered that the appropriate reduction for a short lease was 10%. To support this he referred to the prices achieved for a number of flats in the area that had been sold with short leases, including 22 Oakdene Vale which sold for £141,500 in October 2018. He rejected 26 Oakdene Vale as a helpful comparable because when it was sold in January 2020 for £109,500 this appeared to be a forced or distressed sale, with the property said (by the selling agent) to have been in disrepair.
13. Mr Nabarro contended for a deferment rate of 5.5%, a departure from the 5% rate established by the Sportelli case which he said was generally accepted by valuers in Leeds to reflect differences between the London and local market.
14. As to compensation due to the freeholder the Applicants had little to say and indeed their valuation did not split the figure between the First and Second Respondents.

The Respondent’s case

15. The Respondent’s expert witness was Mr Geraint Evans FRICS, who produced a report dated 18 November 2020 and a letter dated 17 March 2021 purporting to comment on Mr Nabarro’s third report. The Tribunal did not find useful additional information in that letter. Mr Evans valued the First Respondent’s interest at £270 and the Second Respondent’s interest at £29,820 on the basis that the Second Respondent has a continuing obligation to pay rent to the First Respondent.
16. Mr Evans has considerable experience of properties in the Leeds area, but is based in Wales. It emerged during the hearing that he had therefore arranged for a local valuer to visit the Property on his behalf. The Tribunal has seen neither the instruction to nor the report from that local valuer. On the basis of that report and after allowing for tenant’s improvements Mr Evans values the Property with a long lease at £153,000.
17. To support his % deduction for a short lease of the Property Mr Evans relies mainly on two sales, completed early in 2020 after being on the market since August 2019. These are Flats 5 and 26 Oakdene Vale, sold respectively at £158,000 with an extended lease and at £109,500 with a short lease. Mr Evans considered that with appropriate adjustments these flats were the best possible comparables given their proximity to the Property and the dates on which they were first marketed. On the basis of these prices and also by reference to recent sales of 11 and 56 Worcester Avenue he contends for a relativity figure of around 69.3% as opposed to Mr Nabarro’s 90%.

18. Mr Evans further contends that there are no circumstances justifying a departure by the Tribunal from the “Sportelli deferment rate” of 5% for the Property.
19. Finally, Mr Evans helpfully set out the Respondents’ different interests, and calculated that the amount of compensation due to the freeholder was £270.

Findings

20. The Tribunal was not provided with a copy of the head lease, but was informed by both experts that “the annual rent [is] the amount receivable by the Lessee from the Underlessees on the 1st December preceding the relevant Rent due date under the lease”. Although this suggests to the Tribunal that the rent under the head lease will revert to a peppercorn (ie the sum payable by the Applicants) following a lease extension, Mr Evans assumed that the First Respondent would continue to receive £50pa for the Property from the Second Respondent. Mr Nabarro assumed that the First Respondent would suffer a loss of income. The Tribunal prefers the latter view.
21. There is no evidence to authorise the Tribunal to depart from the 5% deferment rate applied to flats nationally by the decision in Sportelli.
22. Neither 5 Oakdene Vale nor 26 Oakdene Vale are considered to be safe comparables, given their respective differences to the Property.
23. Flat 20 Oakdene Vale, mentioned by both experts, is a one bedroomed flat and not to be taken into account in view of the number of local two bedroomed flats available as comparables.
24. After due consideration of all the appropriate comparables suggested to them with the appropriate adjustments, the value of the Property with an extended lease and excluding tenant’s improvements is £145,000. A relativity of approximately 83% is adopted, giving a short lease value of £120,000.
25. Mr Evans’ methodology for calculation of the First Respondent’s interests is largely adopted: that sum has been rounded by the Tribunal to £250. The total premium for both Respondents’ interests is £18,590.
26. The parties’ valuers’ calculations are appended at Appendix 1 to this decision, and the Tribunal’s calculation of each Respondent’s interest is as shown in Appendix 2.

Tribunal Judge A Davies 23 March 2021