



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

**Case Reference(s)** : **BIR/00CT/OLR/2022/0047**

**Property** : **78 Bridge House Dickens Heath Waterside  
Solihull B90 1UD**

**Applicants** : **Christopher Sutton & Deborah Sutton**

**Representative** : **Loveitts Chartered Surveyors**

**Respondent** : **Carlburne Property 1 Limited**

**Representative** : **Edwin Cole LLP**

**Type of Application** : **An application under section 48 of the  
Leasehold Reform Housing & Urban  
Development Act 1993 (“the Act”) for the  
determination of the premium to be paid for  
the lease and the other terms of acquisition  
which remain in dispute.**

**Tribunal Members** : **V Ward BSc Hons FRICS – Regional Surveyor  
N Wint BSc (Hons) FRICS ACI Arb**

**Date of Decision** : **13 December 2022**

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**DECISION**

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## DECISION

1. The Tribunal determines the premium payable by the Applicants as follows:

**£3,465.00 (Three Thousand Four Hundred and Sixty-Five Pounds)**

### REASONS FOR THE DECISION

2. On 1 August 2022, the Tribunal received an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for the determination of the premium to be paid for the new lease and the other terms of acquisition which remain in dispute, in respect of 78 Bridge House, Dickens Heath, Waterside, Solihull B90 1UD, the Property.
3. The Applicants served a Notice of Claim (to extend the current lease by 90 years at a peppercorn ground rent and otherwise in accordance with the existing lease) under section 42 of the Act dated 23 March 2022. The Notice proposed a total premium of £2,000.00. By way of reply, the Respondent served a Counter-Notice under section 45 of the Act dated 25 May 2022, admitting the Applicants right to acquire a new lease on the relevant date and proposing a premium of £9,950.00.
4. Directions were issued by the Tribunal on 10 August 2022.
5. The Applicants were represented by Emma Brooks BSc (Hons) MRICS of Loveitts Chartered Surveyors whilst the Respondent was represented by David Johnson Solicitor of Edwin Coe LLP with valuation advice provided by Arjun Shah of Lotus Trident Development Limited.
6. In accordance with the Tribunal’s Directions, the Applicants and Respondent had prepared and submitted their valuations respectively £2,827.00 and £9,950.00.
7. The Tribunal has been advised that the draft lease has been agreed in principle.

### The Law

8. Section 48 of the Act prescribes that if a premium, or the terms of a new lease, are not agreed it can be referred to the First-tier Tribunal (Property Chamber) where the premium can be assessed in accordance with the formula in Schedule 13 to the Act. The relevant law in relation to the application under the Act is set out in Chapter II sections 39 to 62 and Schedule 13.
9. Chapter II of the Act relates to the individual right of a tenant of a flat to acquire a new lease of that flat. The law is contained in Sections 39 to 61B of the Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.

10. Section 42 sets out what must be contained in the tenant's notice. Section 45 sets out what must be contained in any counter-notice given in response by the landlord.
11. Section 48 deals with applications where the terms of the new lease are in dispute or where there is a failure to enter into a new lease.
12. Section 56 deals with the obligation to grant a new lease and section 57 sets out the terms on which a new lease is to be granted.

### **The Lease**

13. The lease in respect of the Property was made between Dickens Heath Development Company Limited (1) (Landlord) Dickens Heath Management Company Limited (2) (Management Company) and Vicky Baker (3) (Tenant) and is dated 18 September 2007 for a term of 999 years from 1 January 2003. The initial ground rent is £100.00 pa subject to a review on 1 January 2013 and every five years thereafter. The review is linked to formula based on the "all items" index figure of the Index of Retail Prices on an upwards only basis. The current ground rent is £155.88 per annum.

### **Hearing**

14. Neither party requested an oral hearing accordingly the Tribunal has made its determination based on its inspection of the Properties and the written submissions of the parties.

### **The Property**

15. The Tribunal carried out an inspection of the Property, on 3 November 2022.
16. Dickens Heath is a new village located on formerly an area of open common land approximately 4 miles to south west of Solihull Town Centre. Development originally began on the site in 1997 and it comprises a mixed development of housing, retail offices community facilities and park areas.
17. The Property is located on the fourth floor of a purpose-built block within the 'Waterside' element of the development which consists of ground floor retail/leisure units with residential flats above. A lift serves the building.
18. The flat, which the Tribunal is advised, extends to 85 sq.m. and offers the following accommodation:

Hallway

Open plan lounge/dining room kitchen area

Master bedroom with ensuite shower room  
Second bedroom  
Bathroom  
Terrace

The Property benefits from gas fired central heating, double glazing and a parking space in the basement below.

### **Matters to be determined**

19. Prior to the Tribunal's determination, the Tribunal was advised that the following matters were agreed between the parties:
- a) The valuation date of 23rd March 2022
  - b) The current ground rent being £155.88 per annum
  - c) The date of the lease and the remaining lease term.
  - d) The terms of the new lease (largely the same as the original lease save for modernisation).

The matters in dispute were given as follows:

- a) Capitalisation Rate. Applicant 5.5% Respondent 6.0%
- b) Treatment of ground rent. The Applicant has capitalised the current rent for the term whilst the Respondent has made an assumption of the future increases for every five-year period until 2073.
- c) Extended lease value. The Applicant's extended lease value is taken as £250,000. The Respondent's valuation does not calculate the reversion.
- d) The Deferment Rate. The Applicant has used 5%. As above the Respondent's valuation does not calculate the reversion.

### **Discussion.**

20. As will have been noted from the above, the parties have adopted different valuation approaches. The Applicant's valuation is set out in the format usually seen by the Tribunal i.e. calculation of the landlord's current interest minus the value of their interest after the lease extension by taking into account the reversionary value. The Respondent makes assumptions as to the level of the RPI related increases until 1 January 2073; compound growth until December 2027 of 9% and then 5.00% until 2073 to produce the level of ground rent for each period. This is then capitalised at 6%, deferred as appropriate. Due to the significant lease term remaining (and therefore over 80 years), there is no marriage value.

## **The Tribunal's Valuation**

21. The Tribunal's decision in respect of each element of the valuation is given below.

### *Capitalisation Rate & Treatment of Ground Rent Income.*

22. Due to the lease term remaining – 980 years – the calculation of the term income will form the fundamental element of the premium. The Applicant confirms that the ground rent of £155.88 has been capitalised at 5.5% which they state appears to be standard for rents at this level whilst the Respondent does not give any indication or justification as to why they have employed 6%.
23. The Tribunal notes the method employed by the Respondent in calculating the ground rent over the first 50 years but does not agree with it. In the Tribunal's opinion, this is employing subjective assumptions at numerous stages in the valuation. The Tribunal prefers the more usual method of reflecting the value of the landlord's interest in the choice of capitalisation rate and then applying the same to the term income.
24. A consideration of the rate to be employed must take into account the current level of ground rent, the rent review mechanism and the term over which the income will be received. The Tribunal considers the current level of ground rent at £155.88 per annum is an amount that is already significant enough to be worth collecting, but given the fact that the rent is also subject to review every 5 years and any increase geared to the RPI indices, it would be an attractive investment that will provide regular periods of rental growth over the term of the lease.
25. As the parties have not produced any evidence, the Tribunal must rely on its own expert opinion. As the Tribunal is of the opinion that this income stream would be an attractive proposition to an investor it has therefore adopted a more bullish capitalisation rate than that suggested by either of the parties.
26. The Tribunal therefore adopts 4.5% as the capitalisation rate.

### *Extended Lease Value & Deferral Rate*

27. The calculation of the Landlord's reversion both after the remaining lease term (980 years) and after the grant of the statutory extension of 90 years (1070 years) is *de minimis* and the Tribunal therefore ignores the same.

## **Valuation**

28. The Tribunal's valuation therefore becomes simply a calculation of the ground rent for the term at the adopted capitalisation rate of 4.5%:

Ground Rent (pa)	£155.88
YP 980 years @ 4.5%	<u>22.22</u>
	£3,463.65
Say	£3,465.00

29. The Tribunal therefore determines the premium payable to be the sum of £3,465.00 (Three Thousand Four Hundred and Sixty-Five Pounds) plus costs in accordance with section 60 of the Act.

### **Appeal**

30. 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 stating the result sought by the party making the application.

V Ward