



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

Case reference : CHI/00MS/OLR/2022/0063

Property : Flat 1 Waverley Lodge, 22 Waverley Road,
Southampton, SO15 1JG

Applicant : Mr Matthew Duncan McKellar

Representative : Mr Darren Cooper BA (Hons)

Respondent : Elmdon Real Estate LLP

Representative : Mr Geraint Evans FRICS

Type of application : Section 48 Leasehold Reform, Housing
and Urban Development Act 1993

Tribunal member(s) : Mrs J Coupe FRICS

Date of decision : 21 November 2022

DECISION

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Covid-19 pandemic: Description of determination

This has been a remote determination on the papers which has been consented to by the applicants. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote determination on papers. The documents that the Tribunal were referred to are in an electronic bundle, the contents of which have been noted. The order made is described below.

Summary of the Tribunal's decision

- 1. The premium to be paid by the Applicant for the new lease of Flat 1 Waverley Lodge, 22 Waverley Road, Southampton, SO15 1JG is £5,359.00.**

Background

2. This is an application made by the applicant leaseholder, pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"), for a determination of the premium to be paid for the grant of a new lease of Flat 1 Waverley Lodge, 22 Waverley Road, Southampton, SO15 1JG ("the Flat").
3. By a notice of claim dated 27 August 2021, served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease of the Flat. At the time of service, the Applicant held the existing lease dated 20 September 2002 for a term of 99 years commencing on an unspecified date in 2002. The passing ground rent is £100.00 per annum rising to £500.00 per annum.
4. The Applicant's s.42 notice proposed a premium for the new lease of £3,086.00
5. On 22 November 2021, the Respondent landlord served a section 45 notice admitting the validity of the claim and counter-proposed a premium of £30,000 for the grant of a new lease.

Application

6. On 26 April 2022, the Applicant applied to the Tribunal for a determination of the premium.
7. On 13 July 2022, the Tribunal issued Directions advising the parties that it considered the matter suitable for determination on papers, in accordance with Rule 31 of the Tribunal Procedure Rules 2013, unless either party objected in writing within 28 days of the date of the Directions. The parties were also advised that no inspection would be undertaken. No objections were received and neither of the parties sought to persuade the Tribunal that an inspection of the property was necessary or appropriate.
8. The Tribunal has reviewed the papers and is satisfied that the matter is capable of being determined fairly, justly and efficiently on the material

available and without an inspection, consistent with the overriding objective of the Tribunal. The Tribunal viewed the building and locality via publicly available platforms.

9. The Tribunal was supplied with an electronic bundle of 93 pages. References in this determination to page numbers in the paginated bundle are indicated as [].
10. These reasons address in summary form the key issues raised by the application. They do not recite each and every point raised or debated. The Tribunal concentrates on those issues which, in its view, go to the heart of the appeal.
11. The Applicant provided an undated expert witness report concerning the value of the premium to be paid, prepared by Mr Darren Cooper BA (Hons) RICS student member and senior Valuer at Hortons Valuers Ltd, info@hortonsvaluers.co.uk. The report stated that it was prepared on behalf of the Respondent; the Tribunal assumes this to be a typographical error.
12. The Respondent relied upon an expert witness report dated 22 September 2022, prepared by Mr Geraint Evans FRICS, Registered Valuer at eBureau Ltd, Park House, PO Box 2521, Cardiff, CF23 0GP.
13. The Applicant seeks a determination of the premium of the new lease.
14. The terms of the new lease are agreed.
15. The Respondents statutory costs have not been agreed. However, no submissions on this point have been provided by either party.
16. Mr Cooper was of the opinion that a number of valuation matters had been agreed by the valuers and that the only matters outstanding for determination were the unexpired term; long lease value; and capitalisation rate. However, Mr Evans informed the Tribunal that Mr Cooper had provided his valuation under privilege, thereby preventing Mr Evans from commenting on the content within his own report. Consequently, Mr Evans advised the Tribunal that all valuation matters should be regarded as being in dispute.
17. Accordingly, the Tribunal identified the following matters that need to be determined:
 - The lease commencement date.
 - The unexpired term.
 - The capitalisation rate.
 - The deferment rate.
 - The value of the property with a long lease.
 - The value of the property as a virtual freehold with vacant possession.

Law

18. The statutory provisions dealing with the premium payable by the Applicant for the grant of a new lease are found in paragraph 2, part II of Schedule 13 of the Act and it is these provisions which apply in this application.
19. The premium payable in respect of a new lease is the aggregate of: (a) the diminution in value of the landlord's interest in the tenant's flat as determined

in accordance with paragraph 3; (b) the landlord's share of the marriage value

as determined in accordance with paragraph 4; and (c) any amount of compensation payable to the landlord under paragraph 5.

20. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between: (a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and (b) the value of his interest in the flat once the new lease is granted.
21. Paragraph 3(2) details the factors to be taken into consideration when valuing the landlord's interest including the requirement to ignore the right of a Tenant to acquire a new lease under statute and to disregard any value attributable to tenant's improvements.
22. Paragraph 4 of Schedule 13, as amended, provides that the freeholder's share of the marriage value is to be 50%, although no payment is due where the unexpired term of the lease exceeds 80 years.
23. Paragraph 4 of Schedule 13 provides for the payment of compensation for other loss resulting from the enfranchisement. Compensation was not a matter in dispute in this application.

Lease

24. Salient details of the lease in respect of the Flat are as follows:

- i. Title HP620566
- ii. Date of lease 20 September 2002
- iii. Term 99 years
- iv. Commencement *To be determined*
- v. Unexpired term *To be determined*
- vi. Ground rent £100.00 per annum for first 33 years
£200.00 per annum for next 33 years
£500.00 per annum for last 33 years

Evidence

25. The Tribunal noted the description of the Flat provided by Mr Cooper, as undisputed by Mr Evans. The property comprises a first floor flat in a converted Victorian house. A photograph of the front exterior was included in Mr Cooper's report.
26. The accommodation consists of a reception room; kitchen; bedroom; and bathroom. A copy of the original lease plan was provided [60]. The Tribunal accepts the description of the Flat.
27. The Tribunal considers that the building was most likely built as a single dwelling which was configured some years ago to provide a number of self-contained dwellings. The date of construction and subsequent conversion were not provided. The Tribunal note that the lease of Flat 1 is dated 20 September 2002 which may indicate an approximate date of the conversion.
28. Mr Cooper makes no reference to allocated parking in his description of the Flat. However, the Tribunal note that in his comparable table [62] Mr Cooper

indicates that the property includes two allocated parking spaces. Further, the

Tribunal note that the Freehold Title HP171293 lists the exclusive right to use the car parking space numbered 3 [26]. Mr Evans' report included no reference to parking. The Tribunal value the Flat with one allocated parking space as per the Freehold title.

29. Neither Valuer state in their report whether they inspected the Flat. Mr Cooper, within his comparable table, records the gross internal area of the Flat as 35m². The Tribunal is not advised as to whether this is an agreed floor area derived from actual measurements or simply a scaled measurement taken from the lease plan. However, the Tribunal note that the Energy Performance Certificate for the Flat, as published online, records a total floor area of 32m². The Tribunal is therefore satisfied that Mr Cooper's floor area should be adopted for the purpose of this valuation.
30. Having considered the contents of each Valuation Report the Tribunal is satisfied that the method of valuation adopted by each Valuer is appropriate to determine the premium for the new lease for the Flat.

Valuation date

31. The Valuers now agree that the valuation date is 27 August 2021, a date the Tribunal hereby adopt in this matter.

Lease commencement date

32. At section 4(1) the lease states that the Landlord lets the property to the Tenant for a term of 99 years from an unspecified date in 2002, the relevant space being left blank on the copy provided.
33. The official copy of register of title records a commencement date of 20 September 2002, such date being adopted by Mr Cooper in his valuation. Mr Evans, having been instructed on other flats in the building, adopts a commencement date of 30 August 2002 in common with those, unspecified, leases.
34. The Tribunal: In the absence of a specific date within the lease the Tribunal adopts the date provided within the official copy of register of title, that being 20 September 2002. As Mr Evans correctly points out, very little turns on the matter however the Tribunal is not prepared to adopt Mr Evan's preferred date simply on the basis of other, unevicenced, leases in the block.

Unexpired term

35. The Tribunal: Adopting a commencement date of 20 September 2022, the Tribunal determines the unexpired term to be 80.06 years.

Capitalisation rate

36. Mr Cooper adopts a capitalisation rate of 7% based on the general guidance handed down in *Nicholson v Goff* (2007) 1 EGLR 83 and his opinion that the current ground rent, which, he stated, doubled every 33 years, is relatively small.

37. Mr Evans adopts a capitalisation rate of 5.5% based on the Tribunal's decision in *Flat 5, 40 Nutbeem Road (2020)* CHI/24UD/OLR/2020/0154 (Nutbeem) in which 5.5% was determined on a rising ground rent.
38. The Tribunal: The Tribunal finds that the ground rent increases from £100.00 to £200.00, followed by a final increase to £500.00. Mr Cooper is incorrect when he refers to the rent doubling [64].
39. The current rent of £100.00 is relatively modest, particularly once the costs of collection are accounted for. However, the sum does represent a fixed and thereby reliable income stream which could appeal to a particular sector of the investment market. Further, in approximately 14 years the rent rises to £200.00 per annum, followed by a final increase to £500.00 in an additional 33 years. The Tribunal therefore finds that Mr Cooper's yield of 7% does not adequately reflect the value of such an income stream and, accordingly, is too high.
40. In applying a yield of 5.5% Mr Evans relies solely on this Tribunal's decision in Nutbeem. However, the ground rents in Nutbeem varied considerably from those under consideration in this application, doubling every 25 years from their current level of £200.00 per annum to a final rent of £1,600.00 per annum. In Nutbeem, the Tribunal weighed up the appeal of fixed rent growth to an investor against the length of term between reviews which would diminish such benefit.
41. In the absence of market evidence from either valuer the Tribunal relies on its own expertise and experience, and adopts a rate of 6% to reflect the security and level of fixed return balanced against the length of reviews.

Deferment rate

42. In accordance with the decision in *Earl Cadogan v Sportelli (2007)* 1 EGLR 153 (Sportelli) Mr Cooper adopted a deferment rate of 5%.
43. Also referring to Sportelli, Mr Evans adopted a deferment rate of 5%. However, Mr Evans commented on guidance provided by the Upper Tribunal in two determinations in regard to 23 and 29 Pavenham Drive, Birmingham, guidance which Mr Evans interpreted as meaning that a challenge to Sportelli is unlikely to be successful without the evidence of a financial markets' expert. Due to the relatively modest premium in this application, Mr Evans considered it financially unviable to appoint such an expert. Accordingly, although Mr Evans applies 5% in this instance he remained of the opinion that the risk-free rate element of Sportelli is incorrect.
44. The Tribunal: In accordance with the Upper Tribunal's decision in Sportelli and in the absence of any market or financial market evidence, the Tribunal finds that a deferment rate of 5% is appropriate in this matter.

Value of the long lease

45. Mr Cooper valued the long lease interest at £120,000 in support of which he provided the following three comparables, all of which were in close proximity of the Flat and each with a long unexpired lease term:

| | | | |
|--------------------------|----------|------------|-------------------------------|
| 28 Millbrook Road East | £133,000 | June 2021 | FF/1 bed 53m ² |
| Flat D Parklands Court | £135,000 | July 2021 | GF/ 1 bed 53m ² |
| Flat 3, 22 Waverley Road | £146,000 | April 2021 | FF/2 beds 70m ² |

46. Mr Cooper adjusted each comparable by the House Price Index to arrive at an adjusted value as per the valuation date.

47. Mr Cooper further adjusted each value to take account of the differences between the comparable and the subject Flat.

48. Mr Evans valued the long lease interest at £150,000 in support of which he provided the following two comparables, both of which are in the same building as the subject Flat.

| | | | |
|--------------------------|----------|--------------|--|
| Flat 3, 22 Waverley Road | £146,000 | April 2021 | Extended lease |
| Flat 4, 22 Waverley Road | £140,000 | January 2020 | Lease 99 yrs from 29/11/2002 Same GR pattern as Flat |

49. Mr Evans adjusted both comparables to reflect “Act rights” and a rising market between the transaction and valuation date.

50. Mr Evans adjusted the sale of Flat 3 upwards by 1% to reflect both a shorter lease as envisaged by the Act and the effluxion of time between the two relevant dates, to arrive at an adjusted value of £147,460.

51. The sale of Flat 4 was adjusted by Mr Evans to reflect the assumed cost of a lease extension premium plus an estimate of costs, to arrive at an adjusted value of £160,00.

52. Finally, Mr Evans averaged the two sales to arrive at a figure of £153,750, from which he deducted £3,750 to reflect the smaller floor area of the subject. Accordingly, Mr Evans arrived at an extended lease value of £150,000.

53. The Tribunal: In regard to the adjustments made by Mr Cooper the Tribunal noted some inconsistencies.

54. In his table [62], Mr Cooper describes the subject as in a “good” condition and the third comparable, Flat 3, 22 Waverley Road, as in “poor” condition and yet within his adjustments-rationale Mr Cooper notes the comparable to be in a

similar condition for which he makes no adjustment.

55. In his adjustments-rationale Mr Cooper refers to the comparable at Millbrook Road East and at Parklands Court as “much bigger” and adjusts the value by minus £13,000 and minus £15,000 respectively but without any explanation as to the difference.
56. Further, Mr Cooper makes no adjustment for Parklands being a ground floor flat or it being within a modern purpose built property, in comparison to the subject Flat being located on the first floor of a converted house. Mr Cooper may have determined that no adjustments were required however some narrative on the point could have assisted. The Tribunal attribute less weight to the Parklands transaction, primarily due to its position within a purpose built block.
57. Having adjusted the HPI values to reflect the differences to the subject Flat, Mr Cooper’s three comparable transactions rather conveniently all arrive at an identical final figure, that being £120,000.
58. In regard to Mr Evans evidence, the Tribunal find the sale of Flat 3 the most useful comparable. The flat is located in the same building as the subject Flat and on the same floor, that being the first floor. However, according to Mr Coopers unchallenged evidence, Flat 3 is a two bedroom flat, twice the size of the subject one bedroom accommodation. The Tribunal therefore finds Mr Evans adjustment for size too modest.
59. The Tribunal finds the sale of Flat 4 too historic to be considered useful evidence in this matter. Mr Evans adjusted this transaction to reflect the potential costs of a lease extension however, such calculations were based upon a number of variables, including a 5.5% capitalisation rate which the Tribunal has rejected.
60. The Tribunal therefore finds the most useful comparables from both Valuers to be the sale of Flat 3 in the subject block at £146,000 in April 2021 and the sale of 28 Millbrook Road East (“Millbrook”) for £133,000 in June 2021.
61. In common with the subject Flat, Millbrook is a first floor flat in what appears to be a converted house, with the benefit of off-road parking. Millbrook differs, in that it has a garden and a long lease. The Tribunal adjusts the value for the effluxion of time between the transaction date and valuation date, the size difference, the lack of garden and location.
62. Flat 3 is within the same building and on the same floor of the subject but is twice the size. The Tribunal adjusts this transaction to reflect the differences between the comparable and subject Flat, and for the effluxion of time.
63. Accordingly, the Tribunal adopts a long lease value of £135,000.
64. Neither Valuer made any adjustment for improvements.

Adjustment for freehold vacant possession value

65. Following established practice the Tribunal follows the principle of making an adjustment of 1% to reflect the difference between a notional freehold

vacant possession value and a long leasehold value. Both Valuers concurred.

The Tribunal's Decision

66. The Tribunal determines that the premium to be paid for a 90 year lease extension in respect of the Property known as Flat 1 Waverley Lodge, 22 Waverley Road, Southampton, SO15 1JG under the Leasehold Reform, Housing and Urban Development Act 1993 is £5,359.00 (Five thousand, three hundred and fifty nine pounds) as per the Valuation attached at Schedule 1.

Costs application

67. The Applicant makes an application for a determination of the costs of these proceedings under Rule 13(5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and requested further Directions in this regard.
68. Under Rule 13(5) an application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends:
- (a) A decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) Notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
69. The Applicant asserts that the Respondents Valuer conceded two points under negotiation on 27 September 2022 and issued a revised offer of premium on 28 September 2022, thereby leaving no time for further negotiations.
70. The Tribunal issued Directions on 13 July 2022. At paragraph 7 of the Directions the Tribunal stated “... *If the parties seek an extension of the date for the filing and serving of the bundle, they must apply for the permission of the Tribunal with reasons, at which time the application will be considered by a Judge.*” It was therefore open to the Applicant to seek the Tribunal’s permission to delay service of the bundle should they have considered there was a realistic prospect that settlement could be reached in light of the Respondent’s concessions. The Tribunal did not receive a case management application in this regard.
71. The approach that the Tribunal should adopt when considering an application under Rule 13(1)(b) was set out by the Upper Tribunal in *Willow Court Management Co (1985) Ltd v Alexander* (2016) UKUT 290 (LC) (“Willow Court”).
72. In applying for a costs application, the Applicant should provide evidence that the tests as laid out in Willow Court have been met.
73. The Applicant is to notify the Tribunal, electronically, **within 10 days** of the date of this decision if they are to pursue a costs application, following which Directions will be issued. The Applicant must copy all correspondence to the Respondent. If no response is received within this time the Tribunal will consider the costs application withdrawn without further notice.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix 1

Tribunal's valuation

| | |
|-------------------------------|---------------------------|
| Valuation date | 27/08/2021 |
| Unexpired term | 80.06 |
| Ground rent at valuation date | £100.00 rising to £500.00 |
| Capitalisation rate | 6% |
| Deferment rate | 5% |
| Extended lease value | £135,000 |
| Freehold value | £136,364 |

Calculations

Diminution of freehold

| | | | | |
|------------------------|---------------|----|---------|--------|
| Loss of ground rent | | | £100.00 | |
| Years Purchase | 14.06 years @ | 6% | 9.3207 | £932 |
| Loss of ground rent | | | £200.00 | |
| Years Purchase | 33 years @ | 6% | 14.2302 | |
| Present value of £1 in | 14.06 years @ | 6% | 0.4408 | £1,255 |
| Loss of ground rent | | | £500.00 | |
| Years Purchase | 33 years @ | 6% | 14.2302 | |
| Present value of £1 in | 47.06 years @ | 6% | 0.0644 | £458 |

Reversion to Freehold

| | | | | |
|------------------------|---------------|----|----------|--------|
| Capital value | | | £136,364 | |
| Present value of £1 in | 80.06 years @ | 5% | 0.0201 | £2,741 |
| | | | | <hr/> |
| | | | | £5,386 |

Less Freehold reversion after extension

| | | | | |
|----------------|----------------|----|----------|--------|
| Freehold value | | | £136,364 | |
| PV £1 deferred | 170.06 years @ | 5% | 0.0002 | £27 |
| | | | | <hr/> |
| | | | | £5,359 |

Marriage Value calculation

Nil

Enfranchisement Price

£5,359.00