



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

Case Reference	:	CHI/00MW/OLR/2018/0139
Property	:	Lower flat, Woodside Pier Road Seaview Isle of Wight PO34 5BL
Applicants	:	Mr C & Mrs D Edwards
Representatives	:	Mr S R Woolford MBA BSC(Hons) Dip Proj Man FRICS.
In attendance		Mr Mark Living of Counsel
Respondents	:	Mr M & Mrs K Finch
Representative	:	Mr T N J Smart FRICS
Type of Application	:	Lease extension under the provisions of the Leasehold Reform Housing and Urban Development Act 1993
Tribunal Member(s)	:	Mr B H R Simms FRICS (Chairman) Judge Tildesley OBE (Legal Member)
Date and Venue of Hearing	:	29 November 2018 Havant Justice Centre
Date of Decision	:	30 January 2019

DECISION

SUMMARY OF DECISION

1. We Determine that the price to be paid for the extended lease of the Property is £30,827.
2. The other terms have been agreed.

BACKGROUND

3. The Applicants own the lower flat at Woodside, off Pier Road in Seaview Isle of Wight (“the Property”). Messrs Slee Blackwell solicitors, served, on behalf of Mr & Mrs Edwards letters being a S.42 claim notice dated 07 February 2018 seeking a statutory extension of their lease under the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”) paying a premium of £25,000. The Notice was served on the basis that the new lease terms should be the same as the existing lease terms.
4. The Building consists of 2 flats and the subject property is a flat with accommodation on the ground floor and basement.
5. Counter notice was served on behalf of the Respondent dated 03 April 2018 admitting the right to a new lease but disputing the premium to be paid and counter proposing a premium of £42,000.
6. The parties were unable to agree terms and an application to the Tribunal to determine a premium was made on the 19 June 2018. Directions were issued on 25 June 2018 offering the parties a three month stay to attempt to agree the outstanding matters which was not accepted. On 13 July 2018 the Tribunal issued Directions bringing the claim to a hearing asking for availability for October 2018. On 31 July 2018 the Applicants’ solicitors advised the Tribunal that lease terms had been agreed.
7. On 07 September 2018 the Tribunal formally advised the parties that as matters were agreed the application had been withdrawn. On 13 September 2018 the Applicants’ solicitors wrote to the Tribunal indicating that they had not intended to withdraw the application. The Tribunal responded asking the parties which terms remained outstanding and whether they required a reinstatement of proceedings and on what basis.
8. The Applicants’ solicitors explained in their letter dated 01 October 2018 that their letter of 31 July had intended to indicate that the lease terms had been agreed not that the parties had agreed the price to be paid, this amount is still in dispute. They applied for reinstatement for the Tribunal to determine the value and payment due to the respondent. The Respondents’ solicitors were content to allow the application to remain withdrawn.
9. On 16 October 2018 the Tribunal considered the explanation provided regarding the 31 July letter and agreed to reinstate proceedings insofar as the determination in respect the premium and Directions were issued for the conduct of the case.
10. An agreed bundle was prepared including the matters indicated in Directions. The expert for the Respondent provided the Tribunal with a copy of his report to his clients dated 29 March 2018 but did not provide the valuation required by Directions. On 29 November 2018 the matter came to a hearing.
11. The parties’ experts had met and produced a Memorandum of Agreed Facts and Issues Remaining in Dispute. They had agreed most of the basic valuation issues but were unable to agree the value of the long leasehold unimproved value of the Property or the value of the existing lease of the flat in an unimproved condition and disregarding the value of the tenants’ rights under the 1993 Act.

INSPECTION AND DESCRIPTION

12. The tribunal advised the parties that it did not intend to inspect the Property and proceeded to determine the matter based on written documentation and evidence presented at the oral hearing.
13. The Independent Experts were Directed to agree facts but did not agree a description of the Property.
14. Mr Smart had inspected the Property on a number of occasions over the past twenty years but did not indicate when he had inspected to prepare his report for the Tribunal. He describes the property as having, on the ground floor: Entrance Hall, Living Room, Kitchen, Two Double Bedrooms, Bathroom with W.C. and Two Single Bedrooms, and in the Basement: two rooms used for storage.
15. Mr Woolford for the Applicant is believed to have inspected specifically for the purpose of preparing his report. In his report he describes the property as having a ground floor entrance hall leading through to a living room incorporating an open plan kitchen, one double and two single bedrooms, bathroom and shower room. There is no mention of a toilet. He says that the lower ground floor has a hall with two double bedrooms and shower room. He supplies a plan of the ground floor.
16. It would have assisted the Tribunal if the valuers had followed the Directions and listed and agreed if possible the original layout and accommodation, the current layout and details of the extensive improvements and the dates undertaken.

HEARING

17. Mr Woolford and Mr Smart acted for their respective parties.
18. Mr Living of Counsel explained that he had been instructed only to consider the terms of the lease rather than conduct the case. Direction para. 10 clearly states that the hearing had been reinstated to deal only with the price payable. Having absented himself to consult with his instructing solicitors he was unable to assist the Tribunal. It was left that he would advise the Tribunal in writing following the conclusion of the hearing if anything further was required and nothing has been received from him.
19. It was confirmed by both parties that most matters had been agreed except for the value of the existing lease of the flat, the value of the extended lease and the premium to be paid. There is a joint experts' report setting out those matters agreed and the parties' respective positions.
20. Mr Woolford for the Applicant was to act as advocate and as expert witness. The Chairman emphasised the need for him to distinguish his dual role. He had been instructed by the Applicant and had provided a detailed report on his valuation opinion of the price to be paid for the statutory lease extension and this was at page 69 of the bundle. His qualifications were set out and explained.
21. As noted at para. 16 above the property description was not agreed between the valuers. Mr Woolford described the building as being of conventional construction with reasonable garden areas and an improved coastal wall creating the Eastern, seafront,

boundary. There is no off-street parking but the location is close to Seaview village centre.

22. Mr Woolford's assumption is that the Property was in reasonable repair at the commencement of the lease. The Applicant has undertaken a significant programme of upgrading and improvement over the last 10 years. The significant matters were the excavation and improvement of the basement accommodation, marine protection work and excavations. A figure of over £475,000 is mentioned but this would not all relate to improvements. Mr Woolford believed that at the start of the lease the rear addition now comprising two small bedrooms and a bathroom was only a clad, timber frame structure under a felt roof. It would not have been considered a habitable structure. He opined that this addition needs to be removed from the area of habitable space when considering the unimproved property. Various floor area calculations are provided.
23. Mr Woolford explained the damage caused to the sea wall and the cost of repairing it. The Chairman suggested that the terms of the lease would make a significant difference to the effect of this on the costs to the lessee and the valuations. Mr Woolford had not considered the effect of the terms of the lease.
24. He gives reported information from the Applicants' estate agents of the property being offered in the market at £750,000 but without interest and informal offers being made by the Respondent at £600,000 and a cash buyer at £450,000.
25. The Property was purchased by the Applicant in October 2005 at £270,000 and the top flat was acquired by the Respondent in April 2008 at £300,000. These figures were apparently obtained from the Land Registry and were not challenged.
26. Mr Woolford quotes the Land Registry statistics as showing a change in value for flats on the Isle of Wight ("IOW") between October 2005 and April 2008 at under 7.5% whereas the difference in prices paid for the two flats was 11% which he believes is within market variation parameters. He goes on to say that if the same index calculation of [now] 8% is applied to the purchase price in October 2005 an unimproved value of £291,600 is suggested.
27. Mr Smart had not had an opportunity of seeing Mr Woolford's report until just prior to the hearing but he was content to proceed. The Chairman suggested he could raise any difficulties he found during the hearing. His written report was not in the usual form expected by the Tribunal and omitted any detailed valuation analysis. He did discuss properties that might be comparable and gave oral evidence.
28. Mr Smart challenged Mr Woolford's evidence regarding the cost of the improvements and Mr Woolford accepted that the Respondent had only paid £12,000 towards the repair to the sea wall. He also found Mr Woolford's reliance on the Land Registry index which covered the whole of the Island unreliable for a valuation. The subject Property was in a special area and would generate its own specific index.
29. Both valuers used similar information on comparable properties but had not formally agreed any of the details. The following were common to both valuers although the interpretation varied.

36. The conclusion was that a long lease value with a relativity applied would be the best approach. The relativity would be obtained from graphs. This the valuers agreed this was the requirement of Mundy¹.in the absence of reliable market
37. The Chairman raised the question of the standard practice in some valuations to add 1% to provide a 'virtual freehold value' to be used in the relativity calculation. Neither valuer wished to adopt this approach.
38. The various graphs available were discussed with Mr Woolford favouring the Gerald Eve and Savills graphs arriving at 90%. Mr Smart preferred the graph of graphs at 85%. This produces short lease values of £288,000 and £382,500 respectively.
39. The valuers produced worked examples based on the agreed capitalisation rate of 7% and a deferment rate of 5% Mr Woolford producing a price payable of £42,000 and Mr Smart £22,000.

DECISION

40. The Tribunal found both the experts' presentations rather jumbled and difficult to follow. Mr Smart reserved most of his argument to oral submissions.
41. The Tribunal has considered all of the written representations as well as the oral presentations and has done its best with the evidence provided. Little of the evidence presented was supported by documentation and as such is hearsay to which little weight should be given. The Tribunal however is left with little else and has to rely on it.
42. The Tribunal is familiar with the relevant cases but fair copies of them were not supplied. Copies of the various indexes quoted were not supplied. The Tribunal was not supplied with good copies of the relevant graphs offered in evidence but they are publicly available. However none of this evidence was challenged at the hearing and is accordingly taken at face value.
43. Although we sometimes found the evidence of Mr Smart confusing, his approach was based on looking at comparable properties and making expert adjustments. His written report omitted a clear pathway to the conclusions he reached but this became clearer from his oral evidence.
44. Mr Woolford relies on a substantial amount of indexation and the application of a price per square metre derived from the analysis of comparable sales. This approach was challenged by Mr Smart particularly his use of an index for the whole of the IOW rather than the local market on the sea edge in Pier Road. This is further confirmed by the comparison to the price paid for the upper flat showing a higher percentage increase.
45. We remind ourselves that given the matters agreed upon there are only the two elements to the valuation calculation we need to determine: 1) the value of the existing lease of the flat in an unimproved condition and disregarding the value of the tenants' rights under the 1993 Act and 2) the value of the extended lease.

¹ The Trustees of The Sloane Stanley Estate and Adrian Howard Mundy LRA/20, 21 & 35/2015

46. We first had to establish the details of the Property to be valued, its accommodation omitting any improvements and taking account of matters of repair. Again the experts' evidence was confusing. We were assisted by a large scale plan handed to us at the hearing showing "The Existing" (but undated) layout. Taking this and the evidence together we Determine that the unimproved Property would have had, at the valuation date, on the ground floor: a living room, kitchen, two bedrooms and two further rooms in a poor quality rear addition with some form of bathroom and toilet and, in the basement two further rooms used for storage. There would have been an opportunity for improvement.
47. Having heard the evidence of both surveyors this Tribunal preferred the approach and method propounded by Mr Smart for the value of the long leasehold interest. The subject Property is unique in that all the properties and buildings along this part of the coast are different. They all benefit from the proximity to the sea and suffer to a greater or lesser extent from its presence. Mr Woolford's proposed value falls well outside the level of values and interest shown for properties in this locality.
48. On this basis we prefer Mr Smart's valuation for the long leasehold interest of £450,000.
49. Mr Smart relies on the 'Gerald Eve' and 'Savills' graphs to calculate 'relativity'. These graphs are for properties in prime central London ("PCL") and although it has been promulgated in other reported cases that this difference is illusory it is clearly not when dealing with seafront properties in IOW. The Tribunal preferred the approach by Mr Woolford in using the comparison of various graphs including those of the South of England. On this basis we adopt Mr Woolford's 'relativity' of 90%.
50. We attach as an appendix to this decision calculations giving effect to the determination we have made and these calculations set out the premium we determine is payable for a statutory lease extension under the 1993 Act and taking account of the matters agreed by the parties in the sum of **£30,827**.

B H R Simms (chairman)

30 January 2019

APPENDIX

Address Lower Flat, Woodside, Pier Road, Seaview, Isle of Wight

Facts used

Value of new very long lease (unimproved)	£450,000		
Value of existing lease (unimproved)	£405,000	Relativity	90.00%
Valuation date	07/02/18		
Capitalisation rate	7.00%		
deferred yield	5.00%		
Unexpired term at valuation date	67.75	yrs	

	£	£
<u>Value of landlord's interest</u>		
Capitalised ground rent for current term	£25.00	
YP 67.75 years 7.00%	<u>14,1398</u>	353 agreed
plus Landord's net reversion		
Value of new very long lease (unimproved)	£450,000	
x PV 5.00% 67.75 years	<u>0.036680</u>	16,506
Less eventual reversion	£450,000	
x PV 5.00% 157.75 years	<u>0.000454</u>	204
		<u>16,301</u>
	Value of landlord's interest	16,654
<u>Landlord's share of marriage value</u>		
Capital value of new extended lease	450,000	
Value of landlord's interest after grant of new lease	<u>204</u>	450,204
Less Capital value of existing lease	405,000	
Value of landlord's interest lost	<u>16,858</u>	421,858
	Marriage value	<u>28,346</u>
	Landlord's share of marriage value at 50%	14,173
	Compensation	<u>nil</u>
	Price payable	<u>£30,827</u>

APPEALS

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.