

1a Old Way and Garage, Hathern, Leicestershire, LE12 5HN

Rule 50
The Tribunal Procedure (First-tier Tribunal) (Property Chamber)
Rules 2013

CERTIFICATE OF CORRECTION

I hereby certify that due to a clerical error, the following correction should be made to the Tribunal's Decision in this case dated 5th February 2018.

On the front page and paragraph 1 of the Decision, the Applicant's name is incorrectly spelt as Mr P H Longthorn. This should read "Mr P H Longhorn". A copy of the corrected Decision is attached.

G S Freckelton FRICS
Chairman

Date: 20th May 2019



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

Case reference : **BIR/31UC/OLR/2017/0068
BIR/31UC/OC9/2017/0014
1a Old Way & Garage**

Property : **Hathern
Leicestershire
LE12 5HN**

Applicant : **Mr P H Longhorn**

Representative : **SDL Bigwood**

Respondent : **The Trustees of PMA Pensions Management.
Ltd**

Representative : **Mr R A Sadleir**

Type of application : **Application under Sections 48(1) and 91(2) of
the Leasehold Reform, Housing and Urban
Development Act 1993 for a determination of
the premium payable for the grant of a new
lease of the Property and the amount of the
reasonable costs**

Tribunal members : **G S Freckelton FRICS
Judge S McClure**

Venue : **The property was inspected on 12th October
2017 and the Hearing was held on 24th
January 2018**

Date of decision : **5 February 2018**

DECISION

BACKGROUND

1. This is an application by Mr P H Longhorn (“the Applicant”) for determination of Premium or other Terms of Acquisition of a new lease in respect of 1a Old Way, Hathern, Leicestershire, LE12 5HN (“the Property”).
2. The Respondent is the landlord of the property. The lease is dated 14th April 1975 for a term of 99 years from 1st December 1974 between William Corah & Son Limited and Mr F W Dajani at a Ground Rent of £10.00 per annum.
3. The Notice of Claim to Exercise the Right to acquire a new lease by a qualifying tenant under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) was served by the Applicant on the Respondent on 10th December 2016.
4. The terms proposed for the new lease were the existing unexpired term of the existing lease term plus a 90 year lease extension all at a peppercorn ground rent.
5. The Premium proposed by the Applicant was £9500.00.
6. The Respondent served a Counter Notice pursuant to Section 45 of the Act on 17th February 2017. The Counter Notice was within the time allowed for service of such Notice.
7. By its Counter Notice the Respondent admitted the Applicants right to acquire a new lease of the property for a term of 90 years in addition to the existing term at a peppercorn rent and at a Premium to be agreed. The Premium proposed by the Applicant of £9500.00 was not agreed but a counter proposal of a Premium of £15,000.00 was made, plus costs, in accordance with Section 60 of the Act.
8. On 24th July 2017 the Applicant made an application to the First-tier Tribunal for the Determination of Premium or other terms of Acquisition remaining in dispute. On the same day the Applicant also applied for Determination of Reasonable Costs. Both Applications were received by the Tribunal on 27th July 2017.
9. On 2nd August 2017 the Tribunal issued Directions following which Submissions were made on behalf of both parties.
10. This Tribunal noted that the Application originally appeared to relate only to the determination of the dispute regarding the Premium and Costs. In relation to the Premium the item in dispute appeared to be the un-extended lease value. Initially it was directed that the matter be dealt with by a paper determination.

THE INSPECTION

11. The Tribunal inspected the property on 12th October 2017 in the presence of the Applicant.
12. The property comprises a first floor maisonette in a block of four. There is a single garage nearby. The property is built of traditional brick construction surmounted by a pitched tiled roof.

13. The accommodation was found to comprise of a side ground floor entrance hall with store off and stairs leading up to the first floor. On the first floor a landing area leads to the front lounge. A door leads from the lounge to an inner lobby which in turn leads to the kitchen, one double bedroom with built in wardrobe and bathroom with three piece sanitary suite and electric shower over the bath. There are electric convector radiators to the lounge and bedroom and full uPVC double glazing.
14. The flat was noted to be in good condition with a re-fitted kitchen.
15. Externally the property is approached by a pedestrian footpath from Old Way. To the rear is a slabbed shared drying area. There is a brick built single garage having an up and over door in a block of two garages adjacent to the property. The Tribunal understands that the front and rear garden areas (with the exception of the drying area) are owned by the ground floor maisonette.

THE APPLICANT'S SUBMISSIONS

16. The Applicant submitted that the following matters had been agreed:
 - a. Lease term – 99 years from 1st December 1974
 - b. Unexpired Lease Term – 56.7 years
 - c. Ground Rent - £10.00 per annum throughout the term
 - d. Capitalisation Rate – 6%
 - e. Value of the Term - £160.53
 - f. Reversionary Rate – 5%
 - g. Extended Lease Value - £85300.00
17. As the above matters have been agreed by the parties the Tribunal has not considered these aspects of the valuation except that as further submissions were made it appeared to the Tribunal that the Extended Lease Value could also be in dispute. The Tribunal has not raised issues of valuation beyond those raised by the parties.
18. The Tribunal was pleased to note that the parties had endeavoured to narrow the issues between them which is an obligation under paragraph 3(4) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (“the Tribunal Rules”) although on consideration of the Respondents Submissions there appeared to be a minor discrepancy in respect of the Improved (Extended) Lease Value which the Applicant submitted was £85,300.00 and the Respondent submitted was £85,000.00.
19. However, the Current Lease Value and Relativity remained in dispute together with the Costs.
20. The Applicant submitted a copy of a valuation provided by Mr G S Milnes FRICS on behalf of Andrew Grainger & Company carried out on 1st February 2017 in which the property was valued in its present condition (Existing Lease Value) at £72500.00. In the report reference was made to four comparable sales:
 - a) **38 Old Way, Hathern** – a similar ground floor flat with garage sold in April 2016 for £75,000.00.

- b) **10 High Meadow, Hathern** – a similar ground floor flat with garage on the same development sold in June 2016 for £70,000.00.
 - c) **23 Colling Close, Loughborough** – a more modern flat on the outskirts of Loughborough sold in June 2016 for £85,000.00.
 - d) **10 Bates Close, Loughborough** – a more modern Coach House style flat on the outskirts of Loughborough with gas fired central heating and parking space sold in July 2016 for £93,000.00.
21. The Applicant further submitted a copy of a Valuation and Report carried out by Mr I Lloyd FRICS of SDL Bigwood carried out on 24th March 2017. This report valued the premium to be paid as being in the range of £9,000.000 - £12,000.00. In addition to the comparable of 38 Old Way detailed in the report from Andrew Grainger & Company this valuation report also referred to a further comparable sale:
- a. **40a Old Way, Hathern** – sold in January 2015 for £75,000.00.
22. The Applicant submitted a valuation with a proposed Premium of £9500.00.
23. Following receipt of the Respondent's further submission dated 29th August 2017 the Applicant wrote to the Tribunal by letter dated 6th September 2017 with further details in respect of 10 High Meadow Hathern and 38 Old Way Hathern.
24. In respect of 10 High Meadow, Hathern the Applicant submitted that the property had suffered from long-term neglect and in respect of 38 Old Way the flat had undergone significant modification to allow disabled access to the bathroom which had been replaced by a wet room with the inclusion of aids for disabled use. In both cases, it was submitted, the owner was not selling the property themselves and there was therefore likely to be more pressure to obtain a rapid sale rather than open market value.
25. The Tribunal assumed from the contents of this letter that the Applicant was suggesting that both properties were sold subject to un-extended leases at below open market value and that as such the Applicant believes that the open market value of the subject property which, it is suggested, is in better condition than the two comparables should be higher.

THE RESPONDENT'S SUBMISSIONS

26. The Respondent submitted that there had been very little movement in the prices paid for maisonettes on the development over a number of years, despite the fluctuations in the property market, both for properties with extended and un-extended leases. The premium proposed by the Applicant was £9,500.00 and by the Respondent £12,100.00.
27. The Respondent submitted that in its opinion the value in a 'no Act world' subject to the existing lease is considered to be £66,300.00, being 78% of the long leasehold value of £85,000.00. In arriving at the relativity figure the Respondent had regard to the Lands Tribunal decision in the case of '*In Shulem B Association Ltd*' where it was determined that the value of a lease of 60.75 years unexpired was 78% for the

long leasehold value and to settlements in 2006 of the freehold purchase price of 42/42a Albion Street, Sandhurst involving two maisonettes converted from former off-licence premises where, for just over 59 years the Tribunal agreed 80% represented a fair proportion of the freehold value. Neither of these properties were in prime central London.

28. The Respondent further submitted that it had also had regard to the case of *The Trustees of the Sloane Stanley Estate and Adrian Howard Mundy and others* and to the 2016 table of relativities calculated by Gerald Eve although the Respondent had adjusted the relativity figure to reflect the fact that this table relates generally to prime central London properties.
29. The Respondent submitted that recent settlements support the premium claimed and that the value of the present lease was for that of a property with no right to extend the lease. A lease of this length with no rights to extend would, in the opinion of the Respondent, make the property unmortgageable and saleable only to a very limited market, particularly having regard to the new stamp duty charges for second properties.
30. There was, in the opinion of the Respondent, broad agreement with the Applicant in respect of long lease vacant possession value, the capitalisation rate of 6% for the present income and the deferment rate of 5% for the reversion. There remained a difference in the relativity rate and existing lease value.
31. The Respondent submitted details of recent lease extension settlements:
 - a) **44a Old Way, Hathern** - a new lease for 189 years from 1 December 1975 at a peppercorn rent on payments of a premium of £12,000.00 plus legal costs of £800.00 plus VAT and valuation fees. The lease was completed on 19th February 2016.
 - b) **10 High Meadow, Hathern** - a new lease for 125 years from 1st December 2000 at a ground rent of £100.00 per annum doubling at 2050 and each subsequent 25th year on payment of a premium of £12,000.00 plus legal costs of £900.00 plus VAT and valuation fees. The lease was completed on 29th July 2016.
 - c) **49a High Meadow, Hathern** - a new lease for 125 years from 1st January 2000 with a ground rent of £150.00 per annum doubling at 2050 and each subsequent 25th year of term on payment of a premium of £12,000.00 plus legal costs of £950.00 plus VAT and valuation fees.
32. In addition to the above the Respondent also submitted that the terms had been agreed, subject to contract, in respect of a lease extension for 44 Old Way, Hathern, on payment of a premium of £12,250.00 plus legal costs of £950.00 Plus VAT and a valuation fee of £600.00 (no VAT). Solicitors have been instructed in respect of this transaction.
33. On 29th August 2017 the Respondent wrote to the Tribunal enclosing a copy of the front page of the lease extension in respect of 38 Old Way, Hathern dated 6th April 2016 and a copy of the Notice of Assignment. In respect of 10 High Meadow,

Hathern the Respondent submitted a copy of the Notice of Assignment and a copy of parts of the Transfer together with a copy of the Counterpart Lease.

34. The Respondent submitted that these documents showed that the price of £75,000.00 for 38 Old Way, Hathern was for the extended lease and that the figure for the extended lease on 10 High Meadow was £65,000.00 and not £70,000.00 as previously submitted by the Applicant. The Respondent further submitted that the sale price of £75,000.00 in respect of 40A Old Way, Hathern was for the original un-extended lease.
35. The Tribunal issued Further Directions following which the Respondent submitted the following lease details in respect of agreed sales:

Address	Sale Price	Date of Sale	Unexpired term at sale date
38 Old Way Hathern	£75,000	06/04/2016	139 years from 01/12/1975. Unexpired term 98 years subject to ground rent
10 High Meadow Hathern	£65,000	29/07/2016	125 years from 01/12/2000. Unexpired term 125 years subject to ground rent
40a Old Way Hathern	£75,000	22/01/2015	99 years from 1/12/1975 subject to ground rent

THE HEARING

36. The Tribunal was confused by the various submissions and was unable to ascertain exactly when the lease extensions submitted, primarily by the Respondent, were agreed and, more importantly, completed and what effect they had, if any, on the sale prices.
37. It appeared to the Tribunal, without further information, that the sale of properties both with and without the benefit of extended leases was the same, being around £75,000.00. At the same time the parties had agreed an extended lease valuation at around £85,000.00 and this did not seem logical if market evidence existed to support a valuation of around £75,000.00.
38. There was also the question of the un-extended lease value (the main item of dispute). If there was market evidence to suggest sales at figures in the region of £75,000 the Tribunal did not understand why the Respondent should contend for a lower figure of £66,300.00 based on only one relativity graph.
39. The Tribunal therefore determined that the only way to proceed was by way of a hearing and the Tribunal are grateful to the parties and their representatives for not only attending the hearing but explaining the details of the various transactions.
40. The Tribunal initially dealt with the un-extended lease value.
41. On examination by the Tribunal the Respondent confirmed that in the case of 38 Old Way Hathern the sale of the property and the lease extension had been completed contemporaneously. As far as the Respondent was aware the sale price of £75,000.00 was for the un-extended lease with the premium being paid by the

vendor to the purchaser who then paid it to the Respondent for the new lease. As such, the un-extended lease value of the property was £75,000.00 and the extended lease value would be £75,000.00 plus the premium paid to the Respondent. The same arrangement was true in respect of 10 High Meadow Hathern although the sale price in this case was only £65,000.00 due the condition of the property. This was agreed by the Applicant.

42. With regard to 40a Old Way Hathern it was submitted by the Respondent that the sale at £75,000.00 was for the un-extended lease. This was agreed by the Applicant.
43. With regard to the subject property the Tribunal asked the Applicant to explain the difference between this figure of £75,000.00 and the Applicant's original submitted valuation of £72,500.00. It was explained that the differential was in respect of assessed tenants improvements. The Tribunal also noted that the valuation provided to the Applicant by Andrew Grainger and Company was in the sum of £72,500.00.
44. On questioning by the Tribunal both parties agreed that the market evidence indicated an un-extended lease value for this type of property as being in the region of £75,000.00.
45. The Tribunal then proceeded to consider, with the parties, the extended lease value and the Respondent submitted that he had obtained evidence of a sale in respect of 49a High Meadow, Hathern which was an identical style property, with a garage which was sold in July 2017 for £85,000.00. This property had the benefit of an extended lease of 125 years from 1st December 2000. The Respondent confirmed that the lease extension was completed contemporaneously with the sale.
46. Both parties therefore agreed that this supported their earlier agreement as to the extended lease value of £85,000.00 - £85,300.00.

THE RELEVANT STATUTORY PROVISIONS

47. Chapter II of the 1993 Act confers the rights for the tenant of a flat to acquire a new lease on the payment of a premium calculated in accordance with the provisions of Schedule 13 to the Act. The new lease is for a term equal in duration to the unexpired term of the original lease plus an additional 90 years, and no rent is payable.
48. For the purpose of this application the premium payable for the new lease is the aggregate of the two sums specified in Paragraph 2(a) and (b) of schedule 13.
49. The first of these is the diminution in the value of the landlord's interest in the tenant's flat caused by the grant of the new lease. This is described in paragraph 3 of Schedule 13 and, in short, is the difference between the value of the landlord's interest in the flat prior to the grant of the new lease and the value of its interest once the new lease is granted, in each case assuming the sale on the open market subject to the relevant lease. For the purpose of the assumed sale the tenant is taken not to be a potential buyer and the 1993 Act is taken to confer no right to acquire any interest in any premises containing the tenant's flat or to acquire a new lease of that flat.

50. The second element of the premium is the landlord's share of the Marriage Value created by the grants of the new lease (but no Marriage Value is payable when the unexpired term of the current lease is more than 80 years). By paragraph 4 of Schedule 13 the Marriage Value is the difference between the aggregate of the value of the tenant's interest under the existing lease and the landlord's interest in the flats prior to the new lease being granted on the one hand, and the aggregates of the value of those interests after the grounds of the new lease on the other. The landlord's share of the Marriage Value is 50% of this sum.
51. The determination of the premium therefore requires separate valuations of the existing lease and new lease and of the landlord's interests in the flats before and after the grant of the new lease.

THE TRIBUNALS DETERMINATION

52. The Tribunal first considered the valuation of the property subject to an extended lease. The Applicant proposed £85,300.00 and the Respondent £85,000.00. There is apparently only evidence of one comparable sale at £85,000.00 which was submitted and agreed by the parties. The Tribunal therefore agreed with the parties and determined the extended lease value at £85,000.00.
53. The Tribunal then proceeded to consider the question of the valuation of the un-extended lease. The Tribunal always prefers market evidence to the use of relativity graphs. In this case the Applicant referred to market evidence and proposed relativity at 85%. The Respondent also referred to market evidence and relativity graphs and proposed relativity at 78%. This appears to be based primarily on the Gerald Eve Graph which it had adjusted.
54. The Upper Tribunal in "*Elmbirch Properties PLC [2017] UKUT 0314(LC)*" at paragraph 59 stated '*Good Market Evidence should always be preferred to relativity graphs where it is available....*'. In this case the Tribunal considers that 38 Old Way, Hathern and 10 High Meadow, Hathern where sales were both completed in 2016, provided 'good market evidence'. At the same time the Tribunal took into account the discussions at the hearing where the parties agreed that these sales indicated a fair un-extended lease value.
55. The Tribunal also considered the comparables at 23 Colling Close, Loughborough and 10 Bates Close Loughborough, where sales were also completed in 2016 but determined that as these were more modern properties in a different location they did not provide as good evidence as the two properties on the same development as the subject property.
56. The Tribunal has not had the benefit of inspecting the two comparable properties internally although from an external inspection it is evident that they are of an identical design. Number 38 Old Way and 10 High Meadow, Hathern are both ground floor maisonettes and 40A Old Way, Hathern is a first floor maisonette. All three properties appear to have brick built single garages.
57. The valuation provided to the Applicant by Andrew Grainger and Company for the subject property is the sum of £72,500.00. Number 38 Old Way, Hathern sold in 2016 for £75,000.00 although the Applicant contends that this property is in worse condition than his. At the same time 10 High Meadow Hathern sold in 2016 for

£65,000.00 and again, in the opinion of the Applicant, this is in worse condition than his property.

58. The Tribunal also noted the sale in January 2015 of 40a Old Way Hathern for the sum of £75,000.00. This reinforced to the Tribunal, the opinion of the Respondent that, *‘There has been very little movement in prices paid for maisonettes on this estate over a number of years.....’*.
59. The Respondent submits that the value of the property is £66,300.00 based on the Gerald Eve relativity graph. However, this figure is considerably lower than recent market evidence sales (with the exception of 10 High Meadow). The Tribunal is not persuaded that the evidence of one relativity graph is more relevant than market evidence. In view of the market evidence the opinion of the Tribunal is that it is unrealistic to expect the open market value to be below £70,000.00. At the hearing the parties agreed that the un-extended lease value for this type of flat would be *‘in the region of £75,000.00’*. The valuation provided to the Applicant by Andrew Grainger and Company was in the sum of £72,500.00 and the Applicant submitted to the Tribunal that this differential, in his opinion, reflected the improvements the Applicant had made to the flat. The Tribunal agrees with the Applicant in this matter and determines that the un-extended lease value is £72,500.00.
60. The Tribunal then considered the evidence provided by the Respondent in respect of various lease extension settlements which had been completed on the development.
61. It is clear to the Tribunal that all of these have been negotiated between the parties and although on some occasions the tenants have been professionally represented none have been determined by the First-tier Tribunal. There are various reasons why tenants might wish to settle without reference to the First-tier Tribunal such as time constraints together with surveyors and application costs. Although this Tribunal is not privy to any knowledge as to the background of the settlements referred to it does not consider them to be relevant to this determination.
62. The Tribunal therefore determines the Premium Payable to be £9,008.00 (Nine Thousand and Eight Pounds).
63. The Tribunal’s valuation is attached as an appendix and is based on the same format as the valuations submitted to the Tribunal by the parties.

COSTS

64. In the Application to the Tribunal the Applicant refers to the following cost proposals:

Applicant: Valuation Charges	£350.00 (No VAT)
Legal Costs	£700.00 plus VAT
Respondent: Valuation Charges	£650.00 (No VAT)
Legal Costs	£950.00 plus VAT

65. In its submission the Applicant includes copies of invoices for valuations from Andrew Grainger & Company in the sum of £150.00 plus VAT and SDL Bigwood in the sum of £350.00 plus VAT. There is no evidence provided by the Respondent.
66. In the submission of the Respondent the details of recent settlements refer to agreed legal costs of between £800.00 - £950.00 plus VAT. There was no further detailed evidence of Solicitors invoices or time costings provided by the Applicant and no evidence of any quotations or invoices for similar work completed to support the submission of the Respondent.
67. Section 60 of the Act provides:
- (1) *Where a notice is given under s42, then (subject to the provisions of this section) the tenant by whom it is given shall be liable, to the extent that they have been incurred by any relevant person in pursuance of the notice, for the reasonable costs of and incidental to any of the following matters, namely*
- (a) *Any investigations undertaken of the tenant's right to a new lease;*
- (b) *Any valuation of the tenant's flat obtained for the purpose of fixing the premium or any other amount payable by virtue of Schedule 13 in connection with the grant of a new lease under section 56;*
- (c) *The grant of a new lease under that section;*
- But this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.*
- (2) *For the purpose of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*
- (3)
- (4)
- (5)
- (6) *In this section "relevant person" in relation to a claim by a tenant under this Chapter, means the landlord for the purposes of this Chapter, any other landlord (as defined by s40(4)) or any third party to the tenant's lease.*
68. The test for determining the sum payable under this section is described as the 'reasonable expectation test'. See *Metropolitan Property Realizations Ltd V John Keith Moss [2013] UKUT 0415 (LC)*.
69. With regard to Valuation costs these should be incurred before the Application to the Tribunal or they are deemed to be 'in connection with a reference to the Tribunal' *Covent Garden Group v Naiva [1995] 1 E.G.L.R. 243*.
70. In this case the Application to the Tribunal was dated 27th July 2017 and on the evidence provided at the hearing the Tribunal is satisfied that the Respondent's valuation was carried out prior to the Application to the Tribunal and prior to service of the Counter Notice.
71. The Tribunal considered the two invoices provided by the Applicant for the valuations he had arranged to be carried out on his property and determined that the sum of £550.00 was reasonable in respect of the valuation completed. The

Tribunal understands that the Valuer is not VAT Registered and that VAT is not payable in respect of the valuation.

72. With regard to legal costs the Tribunal considered the limited submissions of the parties and in particular the letter of 22nd August 2017 sent by the Respondent to the Tribunal. Although neither the Tribunal nor the Applicant had seen the letter prior to the hearing it detailed the identity of the Solicitor and the fee charge out rate. In the absence of any detailed comparable evidence from the Applicant the Tribunal accepts that the legal fees proposed by the Respondent in the sum of £950.00 plus VAT is reasonable and determines accordingly.

APPEAL

73. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal on a question of law only to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Appendix – Valuation in respect of 1A Old Way, Hathern, Leicestershire

Value of the Term

Ground Rent	10.00	
YP 56.67 years @6%	16.053 say	161.00

Value of the Reversion

Extended Lease Value	85,000.00	
PV 56.67 years @ 5%	0.063	<u>5355.00</u>

Freehold Interest		5516.00
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Marriage Value

Extended Lease Value	85,000.00	
Less: Present Interest	5516.00	
Un-extended Value	72,500.00	
Marriage Value	6984.00	
50%		<u>3492.00</u>
Premium payable		£9008.00