



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

Case Reference : **CHI/29UN/OLR/2019/0030**

Property : **10H Arlington House,
All Saints Avenue
Margate
Kent, CT9 1XR**

Applicants : **(1) Susan Jane Kenten
(2) Karl Stephen Jastrzebski**

Representative : **EVC Southeast Ltd**

Respondents : **(1) Thanet District Council
(2) Metropolitan Property
Realizations Ltd**

Representative : **Wallace LLP**

Type of Application : **Lease Extension**

Tribunal Members : **Judge D Dovar
Mr R Athow FRICS MIRPM**

**Date and venue of
Hearing** : **5th June 2019, Margate**

Date of Decision : **21st June 2019**

DECISION

© CROWN COPYRIGHT

1. This an application for the determination of the premium payable for the lease extension of the Property.
2. The Tribunal inspected the Property on the morning of the hearing. Arlington House is a 1960's tower block, occupying a prominent position on the Margate seafront. It was built as part of a larger development which includes Arlington Square, comprising some 50 shop units and a large multi-storey car park. At present the shops are vacant and boarded up. There are 142 flats over 18 floors. On the ground floor beyond the entrance area is a porter's office and store room and a meter room, and there is external access to a bin store, and the pump room. There are fire escape staircases at both end of the building. On the roof area are several communications masts.
3. The Applicants were represented by Mr Bushnell, retired solicitor, of EVC Southeast Ltd and by Mr Wilson BSc FRICS, surveyor. The Respondent was represented by Mr Sharp BSc FRICS, surveyor.
4. The flat is currently held on a lease dated 19th May 1965. The First Respondent owns the reversion to the block, the Second Respondent owns an intermediary lease for a term of 85 years.
5. The following were agreed between the parties:
 - a. The date of valuation: 29th May 2019;
 - b. The lease terms;
 - c. The unexpired term: 57.354 years
 - d. The adjustment from long lease to freehold value:1%
 - e. No adjustments were required due to the condition of the flat
6. The matters which were not agreed, and which the Tribunal therefore has to determine, are:
 - a. The long leasehold value;

- b. The short leasehold value / relativity;
 - c. The deferment rate;
 - d. The capitalisation rate;
 - e. The split of premium between the Respondents.
7. Dealing with those issues in turn.

Long Leasehold value

8. Both valuers relied on the comparable sales of other flats in the block in which the subject flat is located. The task was made a little easier by the fact that the flats in the building are constructed along similar lines, with all those that bear the same letter, having the same or very similar square footage.
9. The first was of 18H, which was sold for £170,000 on 9th November 2017. The first difference between the two surveyors was what adjustment for time should be made; Mr Wilson made an adjustment of 3% to £165,000, Mr Sharp adjusted using the Land Registry index of sales in the Thanet area to £168,850. He had produced that index, Mr Wilson said he had used a postcode index, but had not provided that, it was therefore not possible to check his adjustment.
10. The next adjustment was for floor. The subject property is on the 10th floor, no18H is on the top floor, the penthouse floor. Mr Wilson considered a further adjustment of £5,000 was warranted for this premium position. Finally he reduced it by a further £30,000 to take into account its level of refurbishment. He therefore arrived at a value of £130,000. There were a couple of photographs of the flat annexed to Mr Sharp's report, but the Tribunal did not consider that there was sufficient evidence before it to warrant such a large deduction. Mr Sharp also made reductions for floor and condition, although they were a little more modest, being 1.25% per floor and 7.5% for condition. He arrived at a value of £141,235.

11. The second was of 4H, which sold in March 2017 for £115,000, adjusted for time according to the Thanet index resulted in £121,134. Mr Sharp then adjusted to account for the fact that the Property was on a better floor, and added 2.5% per floor. He did this based on the difference in value between flats 6H and 10H. That adjustment requires a small diversion to understand.
12. 6H sold for £82,500 in September 2016, which Mr Sharp adjusted for time and to account for an assured shorthold tenant to £80,680. 10H we were told sold for £90,000. Mr Sharp therefore extrapolated from that a difference of 2.5% per floor.
13. The Tribunal was not entirely convinced of this calculation. It was not certain that the adjustment for a tenant was warranted, but more significantly, it was not certain that it could be said with much confidence that the difference was purely down to floor level or that it would apply evenly at 2.5% per floor. It was also aware of the fact that a lesser reduction had been applied in relation to flat 18H. For example, there was no evidence as to condition.
14. Applying an adjustment of 2.5%, as a result, Mr Sharp figure for 10H was £140,000.
15. Mr Wilson on the other hand arrived at a figure of £111,000. He had adjusted the price down for time, contending that prices had fallen approximately 3%. He confirmed in evidence that he had used a postcode index, but had not provided the Tribunal with a copy, so verifying that figure was difficult. It also went significantly against the trend shown in the Thanet index which was for an increase in value and so some doubt was placed on the reliability of the adjustment made. The additional adjustment he made was £1,000 for floor level; i.e. about 1%.
16. When giving evidence Mr Wilson increased his long leasehold value from £130,000 to £135,000.

17. In assessing the evidence, the Tribunal prefers that of Mr Sharp and considers that £139,500 is the proper reflection of the long lease value of the subject property. The Tribunal had some concerns over Mr Wilson's adjustments, in particular those for time, which it considered had suppressed the values and whilst he did make some allowance for error in suggesting a figure of £135,000, the Tribunal did not think that that was enough. Further, the Tribunal's lesser concern that Mr Sharp had overly increased value by reference to floor position, was sufficiently accommodated by the fact that he had reduced his final value figure from that arrived at on based on his comparables.

Short Lease Value

18. In their reports, both parties relied on market evidence to determine the short lease value. Whilst Mr Sharp relied on graphs as a means of cross checking his market evidence, Mr Wilson in his report said he did not; instead he relied on relativities that he had ascertained from settlements of other lease extension claims in the block.
19. Mr Wilson arrived at a figure of £105,950 for his short lease value. His report suggested that he had arrived at that from an assessment of a number of sales of short leases in the block. In oral evidence he shifted from that.
20. He firstly suggested that he had applied a relativity of 81.5% which had been derived from the graphs, and then he suggested that it was derived from a mixture of evidence and relativities. The latter being derived from settlements as referred to above. In itself that was troubling in that not only should Tribunals be at the very least, very cautious about relying on settlement evidence, but in this case no details of the settlements had been given. The Tribunal understood that Mr Wilson had taken a settlement figure on the premium payable and worked out what he considered the relativity would be.
21. The final difficulty Mr Wilson had with maintaining a relativity of 81.5% was that having increased his long lease value to £135,000 he could not

sustain his short lease value. Either his relativity figure was wrong or his short lease value was. A relativity of 81.5% would produce a short lease value of £111,125.

22. The Tribunal had a little difficulty in ascertaining what it was that he was ultimately suggesting.
23. Mr Sharp also, based on the market evidence arrived at a figure of around £106,000 for short lease length.
24. The real difference between the two surveyors on short lease length therefore appeared to be the fact that Mr Sharp went onto adjust for Act rights; i.e. the fact that the valuation set out in the 1993 Act directs that no account should be taken in the valuation of the rights to extend a lease contained in that Act. Mr Sharp relied on various authorities which supported the contention that there should be a deduction, in particular, comments by the Upper Tribunal in *Mundy v Sloane Stanley Estate Trustees* [2018] EWCA Civ 35, [2016] UKUT 233 (LC) that these rights were substantial and a reduction of 5.5% was considered modest in *Mallory v Orchidbase* [2016] UKUT 468 (LC) more recently *Reiss v Ironhawk* [2018] UKUT 0311 (LC). He also listed a number of points which he contended showed it had value, such as: the right of compulsion; a fixed valuation date; the right to withdraw a claim; and marriage value at 50%.
25. Mr Wilson contended that there should be no deduction for Act rights in this case. He disagreed with the contention from *Mundy* that the rights were valuable and further sought to distinguish this flat. He considered that the type of purchaser of these flats was atypical, being those looking for a holiday flat with views of the sea and many were retirement purchases. Therefore, they were not price specific and were not interested in long lease lengths. Further, they were cash purchases and not mortgage dependent. Mr Sharp did not feel in a position to comment on the purpose for purchasing the flats, but contended that if a purchaser were not mortgage dependent, but spending their own money, they would be more acute to not overpaying.

26. The Tribunal prefers the evidence of Mr Sharp on this point. Firstly not only are the various factors relied on by Mr Sharp credible reasons for considering that some deduction should be made, but the authorities also strongly support that conclusion (a matter that was also considered in *Sinclair Gardens Investments (Kensington) Ltd* [2017] UKUT 494 (LC). The Tribunal did not consider that there was sufficient evidence of the type of purchaser to rebut those points in this case nor to warrant a deduction. Without more evidence, the Tribunal was not prepared to make the assumptions that Mr Wilson asked it to, in particular, that in purchasing out of retirement funds, the purchaser would not be overly concerned about lease length to the extent they would not value the Act rights.
27. There is no precise method for calculating the actual deduction that should be made, but in this case the Tribunal considers that 10% is appropriate. Therefore the short lease value is as Mr Sharp contends, £96,015.

Deferment Rate and Capitalisation Rate

28. Mr Wilson contended for a 5.5% deferment rate for both interests. He sought to justify the rate by reason of poor management following *Zuckerman v Calthorpe Estate Trustees* [2009] UKUT 235 (LC). However, there was no evidence before the Tribunal of any poor management. Whilst Mr Wilson had asserted this was the case in his report, there was no evidence filed in response and the Tribunal was not prepared to admit evidence during the course of the hearing, particularly when the Respondent had not been given the opportunity of considering it prior to the hearing.
29. Mr Sharp contended for a 5% deferment rate for the freehold and 5.5% for the intermediate interest. Mr Sharp justified his adjustment on the basis that *Earl of Cadogan v Sportelli* [2007] EWCA Civ 1042 provided a rate of 5% for freehold, but that a small adjustment should be made for an intermediate interest, which by definition, was not freehold.

30. Again on the capitalisation, Mr Wilson relied on poor management to justify a departure from the usual rate of 6% to 8%. He also relied on what he classified as an un-dynamic ground rent of around £40 to £80. Mr Sharp contended for 6%, there being nothing in this block to warrant any adjustment and pointed out that there were rent reviews.
31. The Tribunal had no evidence before it of any aspect of bad management that it was able to consider as a factor in either rate. It also did not consider that rents of between £40 to £80 were sufficient to make any adjustment; this was particularly so when dealing with a block with a significant number of flats. Accordingly, the Tribunal considers that the deferment rate should be 5% for freehold and 5.5% for the intermediate interest and the capitalisation rate, 6%.

Share between freehold and intermediate interest

32. Whilst the parties differed on the share of the premium between the superior interests, Mr Wilson candidly stated that his client was not overly concerned about how the premium was divided. He had calculated that the Freeholders interest was approximately 2.03% compared to the Head Lessee and had calculated the share on that basis. Mr Sharp carried out a valuation of the head lessee's interest separately by reliance on an average of graphs, resulting in a total of £103 being paid to the First Respondent and £25,078 to the Second Respondent. Mr Wilson did not challenge his calculations and the Tribunal prefers Mr Sharp's approach which is closer to the valuation prescribed by paragraph 6 of Schedule 13 of the 1993 Act.

Conclusion

33. For those reasons the Tribunal determines that the premium payable is £25,181 of which £25,078 is payable to the Second Respondent and £103 to the First Respondent.

Judge Dovar

APPENDIX

10H Arlington House, All Saints Avenue, Margate CT9 1XR

Existing lease value	£96,015		68.14%	
Extended lease value	£139,500			
Freehold value	£140,909	Premium	£25,181	
Unexpired term –	Claimant	57.339 yrs	Head lessee	£25,078
	Head lease	142.34 yrs		
Head lease reversion	85 yrs	93.39%	£131,595	
Statutory lease expires	147.339 yrs			

Diminution in value of Head-lessee's interest

Loss or rental income	£40		
YP 28.821 yrs @ 6%	£13.56		
		£542	
Reviewed Income	£80		
	2.5183		
		£201	
Head lease reversion	£131,595		
PV £1 in 57.339 @ 5.5%	0.0464		
		£6,106	
			£6,850

Diminution in value of Freeholder's interest

Freeholder			
Reversion to freehold value	£140,909		
PV £1 in 142.34 yrs @ 5%	0.001		
		£140.91	
Less - Value of Landlord's proposed interest	£140,909		
PV £1 in 147.339 yrs @ 5%	0.0008		
		£112.73	
			<u>£28</u>
			£6,878

Marriage Value

Tenant's proposed interest	£139,500	
Head lessee's proposed interest	£0.00	
Freeholder's proposed interest	£112.73	
		£139,612.73
Head landlord's present interest	£6,849.87	
Tenant's present interest	£96,015	
Freeholder's present interest	£140.91	

£103,006.13

£36,606.59

50% Marriage Value £18,303.30

Lease Extension Premium**£25,181**

Division of marriage Value

Head lessee	£6,850.00	£18,303.30	£18,228
	£6,878.05		
Freeholder	£28.18	£18,303.30	£75
	£6,878.05		

Division of Premium

Head lessee	£18,228.30	£6,850.00	£25,078
Freeholder	£75.00	£28.00	£103

£25,181

Appeals

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.

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.

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.

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.