



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

Case Reference : **CAM/00MD/OLR/2018/0164**

Property : **58A Hampshire Avenue, Slough SL1 3AQ**

Applicant : **Junaid Ali and Ayesha Junaid**

Representative : **Mr Ali in person**

Respondent : **Daejan Estates Limited**

Representative : **Miss N Muir of Counsel and R D Sharpe BSc
FRICS**

Type of Application : **Determination under sections 48 and 60 of
the Leasehold Reform Housing & Urban
Development Act 1993**

Tribunal Members : **Tribunal Judge Dutton
Mrs M Hardman FRICS
Mr D Barndon MRICS**

**Date and venue of
Hearing** : **Slough Magistrates' Court on 7th February
2019**

Date of Decision : **18th March 2019**

DECISION

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DECISION

- 1. The Tribunal determines that the premium payable for the lease extension for the property at 58A Hampshire Avenue, Slough SL1 3AQ (the Property) is £38,019.**
- 2. The Tribunal determines that the sums payable in respect of the costs under the provisions of section 60 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) are £1,500 plus VAT of £300 and disbursements of £19.25. The fee of Mr Sharp is allowed at £954 inclusive.**

BACKGROUND

1. On 17th May 2018 the Applicants, Junaid Ali and Mrs Ayesha Junaid gave notice to the Respondent, Daejan Estates Limited, under section 42 of the Act seeking an extension for the lease to the Property. The notice of claim under section 42 indicated a proposed premium of £26,874 and that in essence the terms of the extended lease should be the same as the existing lease save that the term would be increased by 90 years and the ground rent reduced to a peppercorn.
2. On 13th July 2018 the Respondent landlord, Daejan Estates Limited, served a counter notice under section 45 accepting the tenant's right to a new lease. They, however, rejected the proposal for the premium, instead suggesting a figure of £65,800. They also sought to include additional terms into the lease, the details of which are set out in the counter notice.
3. Matters could not be agreed and on 20th September an application was made to the Tribunal under section 48 of the Act seeking a determination both as to the premium and the lease terms. It also included provision for costs under section 60 to be considered.
4. A directions order was issued by the Tribunal on 3rd October 2018, which by and large has been complied with.
5. Prior to the hearing we were provided with a substantial bundle of documents. These included the costs issues with a detailed point of dispute served by the Applicant and replied to by the Respondent. We will return to that when we deal with the costs issue.
6. In addition to those matters, we were provided with a joint statement of facts which confirmed the following matters:
 - The unexpired term was 55 years.
 - The ground rent is £40 per annum rising to £60 per annum from 14th August 2040.
 - The capitalisation rate was agreed at 6.5% and the deferment rate at 5%.
 - It was agreed that there was a 1% allowance in respect of the extended lease/freehold value.

- The description of the Property and the internal area was not in dispute and it was accepted that a conservatory had been added, which had been the subject of a licence in November 2012.
7. Accordingly, the matters that we needed to determine related to the extended lease value, the freehold value, the value of the tenant's existing lease and subsequently the premium payable. There had been some prior discussion as to whether the valuation date was 17th or 18th May 2018. This seemed to be an unnecessary exercise. It seems clear that the initial notice was received by the Respondents on 18th May 2018 and we understood that both parties were content for that to be the valuation date for the purposes of these proceedings.
 8. The bundle included what purported to be an expert's report by Mr Ali. As we pointed out to him, that could not be the case as he is a party and although the report itself was prepared competently and addressed the issues, it was not to be an independent expert's report.
 9. We did have an independent expert's report from Mr Sharp on behalf of the Respondent landlord. Mr Ali's report was dated 17th May 2018 and Mr Sharp's report dated 18th October 2018. Mr Sharp's report was amended slightly to adjust for the 'time' indices he now chose to use, which was the Slough flats and maisonettes index. This had the impact of slightly reducing the premium payable.
 10. Initially, it appeared that there were disputes concerning the terms of the proposed new lease. However, Miss Muir told us at the start of the hearing that the lease terms were no longer in dispute and it was not a matter, therefore, that we needed to concern ourselves with.
 11. The bundle contained the existing lease and also some other decisions of the First Tier Tribunal as well as the Upper Tribunal decision in *Mallory v Orchidbase Limited* [2016]UKUT468(LC) and a number of graphs and property details relevant to the issues before us.
 12. Prior to the hearing we had the opportunity of inspecting the subject Property in the company of Mr Ali and the tenant.

INSPECTION

13. The Property is a ground floor maisonette in a two-storey semi-detached purpose-built property. There is parking available to the front. The Property benefits from double glazing and gas central heating. The flooring appeared to be wooden throughout. There is a good-sized living room and to the rear a kitchen, albeit small but with a full range of units. Beyond the kitchen is a conservatory, which had been added by Mr Ali's predecessor in title. This is not a substantial construction but does have heating and is double glazed. Access from this conservatory is available to the private rear garden. There is also a bathroom with bath and shower over, wash hand basin and WC and two bedrooms, one being a good sized double bedroom, the other somewhat smaller. The larger double bedroom had the benefit of built-in wardrobes. There was evidence of some mould on the walls.

14. We did have a chance to look externally at the comparable properties, which were referred to by both Mr Ali and Mr Sharp in their reports. In truth this is a road of identical two-storey, purpose-built maisonettes, some in better condition than others. Some have the benefit of off road parking and others do not. We will deal with the comparable properties in due course.

HEARING

15. We had been provided with a skeleton argument by Miss Muir which was of assistance to us. It set out at paragraph 8 the parties' respective views on valuations. In tabular form they are as follows:

Description	Applicant	Respondent
Freehold vacant possession value	£201,237	£234,650
Long lease value	£199,225	£232,303
Short lease value	£159,158	£162,554
Relativity	79.09%	69.275%
Premium	£25,224	£43,125

16. The skeleton argument went on to explain the major difference between the long lease values was that the Applicant had made a deduction of £15,000 from his value to reflect the addition of the conservatory. However, it was noted that none of the comparables put forward by either party had a conservatory and accordingly, as we think was conceded by Mr Ali, this was not an adjustment that was required. The parties had relied on very similar comparables. The skeleton argument also went on to deal with the question of costs to which we will return.
17. On the question of values we heard firstly from Mr Sharp. We noted the contents of his report and the amended pages to reflect the different indices used for calculating time adjustments. His preferred comparables were at 74B and 62A Hampshire Avenue, both of which had been used by Mr Ali to produce his valuations. The details of the properties are not in dispute. They are similar although there are adjustments to be made for time and condition. In respect of other comparables that were suggested, 60B Hampshire Avenue was also common to both parties but this appeared to have no off-street parking, but the same should be said for 74B.
18. In tabular form in his report Mr Sharp had made adjustments for the passage of time and concluded that 60B would have a value of £228,062; 74B £240,498 and 62A £232,640. Reference had also been made to 80A Hampshire Avenue but this did not appear to be an actual sale. Taking these matters into account he came to the conclusion that these comparables gave a freehold vacant possession value which included the 1% agreed uplift of £234,650 and the long lease value of £232,303.
19. In respect of the existing lease values, he accepted that the starting point was reliable market evidence, an approach confirmed in the Upper Tribunal in the case of *Sloane Stanley v Mundy* [2016]UKUK223(LC) and endorsed in the *Mallory v Orchidbase* case referred to above. The subject Property had been purchased in November 2015 for £154,000. He concluded that at the valuation date, allowing for the passage of time, the value would now be £179,848. However, as the lease

was some 2½ years shorter by the valuation date, he adjusted this by 1½% to produce the figure of £177,150 inclusive of 1993 Act rights. He did make a deduction of £500 in respect of the conservatory but he considered this to be only of minor value and an allowance of £500 was sufficient, producing a value of £176,650. From this he made a deduction of 10% for the no act world impact bringing the value to £158,985. This, when compared to the freehold vacant possession value gave a relativity on his calculation of 67.75%.

20. However, because this was historic evidence he considered that graphs should also be visited and in that regard he was of the view that the Savills 2015 enfranchisable graph and the Gerald Eve 2016 table and graphs of relativity were appropriate. These graphs indicated that the average was 74.59% albeit for prime central London areas.
21. Outside the centre his view was that the Beckett and Kay graphs of 2014 and 2017 were the most appropriate. These indicated a relativity of 67%, which is almost the same as indicated by the market. Taking the average of the two Gerald Eve and Savills graphs and the Beckett and Kay graph, gave an average relativity of 70.795%. Comparing this to the market evidence, gave a relativity of 69.275% which he had used in his calculation. We noted all that he said concerning relativity and the graph comments as well as the effects of the Act.
22. Finally, under the head valuation, applying the agreed capitalisation and deferment rates he concluded that the premium payable is £43,125 and attached a valuation to that effect.
23. Mr Ali in his report to us, which as we have indicated we cannot accept as an independent expert's report, used similar properties to Mr Sharp. He confirmed that there had been retrospective licence for the alteration in respect of the conservatory which had caused some issues in the Respondent's solicitor's offices and is more of relevance in respect of costs. His comparables included 62A Hampshire Avenue which he considered should be given the most weight but he also referred to 74B, 60B, 76B and 72A Hampshire Avenue. His view was that the market evidence indicated an unimproved freehold value of £216,237. However, he considered that it was appropriate to make a deduction of £15,000 in respect of the improvements to the subject Property being the conservatory. In fact, during the course of the hearing he accepted that the deduction of £15,000 should not be made as no other comparables had a similar extension in place.
24. In respect of the existing short lease values, he considered that 72A was a useful comparable to consider. This was sold in April 2016 at £180,000 with an unexpired lease of 64.42 years. He considered that the property was in a very similar condition to the subject Property. This short lease transaction needed adjustments for time, lease length and the no act world element which he said gave a relativity of 79.09% triggering a market value for the short lease of £159,158.
25. Having valued the freehold vacant possession value at £201,237 having deducted £15,000 for the conservatory and with the 1% agreed for the freehold, leasehold difference, this gave an extended lease value of £199,225.

26. These figures appeared in the valuation which he had attached to his report, giving a premium payable of £27,455.
27. Mr Ali under questioning from Miss Muir confirmed that he had used the Land Registry indices which ran to the valuation date. Mr Sharp had, however, used the indices which were up to date, which had a minor impact on the timing adjustments.
28. We confirm that we have carefully reviewed the report by Mr Sharp with his amendments and also the statement from Mr Ali. We have taken in account all that was said to us at the hearing and the points raised in Counsel's skeleton argument before reaching our decision.

FINDINGS

29. Dealing firstly with the long lease and freehold value. As we have indicated the 1% uplift is agreed between the parties. We have looked at the comparables provided by both sides which are 62A, 74B, 60B and 76B Hampshire Avenue. We do not consider that great weight can be given to the sale of 76B Hampshire Avenue. There is no evidence that this was not a sale at arm's length but the value is out of kilter with all the other comparables put to us. Both parties appear to agree that 62A Hampshire Avenue was the best comparable and that in respect of the property at 74B Hampshire Avenue, adjustments would need to be made to reflect the condition. Against that is, however, the fact that there is no off-street parking. We agree with Mr Sharp's view that some adjustments would need to be made to reflect this element.
30. Taking all the above into account we felt that the Freehold Value proposed by Mr Ali of £201,237 was too low. Mr Ali had averaged the four sales that he referred to, adopting a weighting approach. Whilst he had adopted a lower weighting in respect of 76b we felt that this was still attaching too much weight to 72b. He had then made a deduction of £15,000 in respect of the tenant's improvements, namely the lean-to conservatory to the rear of the property. We did not consider that such a deduction was appropriate.
31. By contrast Mr Sharp had proposed a freehold value of £234,650 which he derived by taking the average of the adjusted May 2018 value of 60b, 74b and 62a (£233,733), the average of 74b and 62A (£235,569), which he considered to be the best comparables and then adopting the midpoint between these two figures. We felt that insufficient regard had been had to the extensive refurbishment of 72b in this calculation and concluded that a freehold valuation of £230,000 was appropriate. Adopting the agreed 1% adjustment from Freehold to Long leasehold, the Long Leasehold value for the subject property at the valuation date we find was £227,700.
32. As to the existing lease value we looked at two comparable sales provided by Mr Ali, namely the sales of 72A Hampshire Avenue and 58A Hampshire Avenue (the subject property) which were both sold subject to short leases. Mr Sharp did not refer to 72a, which we found somewhat surprising given the close physical proximity to the property and the similarities in respect of lease length.

33. The parties had provided adjustments for time of sale and lease length at sale using broadly similar methodologies. We find that the most up to date Land Registry Indices (House Price Index) for Flats and Maisonettes in Slough should be used to account for movement in prices between the dates of sale and the date of valuation. Mr Ali had adopted 0.6% per annum to adjust for the lease length at time of sale and Mr Sharp had adopted 0.68% (1.5% for 2.5 years) in respect of the sales of 58a. Having regard to this, to the Savills 2015 Enfranchisable Tables and the Outer London/South East tables we preferred Mr Sharp's adjustment of 0.68%.
34. The two comparable sales, adjusted for time, would point to an existing lease value for the subject property of £177,600 before applying an adjustment for 'Act Rights'. However, we considered that two transactions dating back to late 2015 and early 2016 were insufficient to rely on entirely and therefore stepping back we had regard to the average of the RICS 2009 Outer London and South-East relativity tables. These gave an average of 79%. This average supported the market evidence and our findings in respect of the existing lease value of £177,600.
35. Adjustment for 'Act Rights' of 5.5% was made by Mr Ali and 10% by Mr Sharp. Having regard to the decision of the Upper Tribunal in Sinclair Garden Investments (Kensington) Ltd v Flats 9 and 11 George Court, 37 George St Chelmsford where the UT set out a table of adjustments we preferred the adjustment of 5.5% made by Mr Ali.
36. Taking all the above into account we find that the Existing leasehold value for the subject property at the valuation date was £167,838
37. These values have been included in the valuation which is attached to this decision. There is no dispute in respect of the capitalisation rate or deferment rate to be applied. Taking these elements into account we find that the premium payable in respect of the extended lease is £38,019

Costs under section 60 of the Act

1. In the papers before us we had details of the costs schedule showing a total cost liability of £1,950 plus disbursements of £19.25 and VAT. It was estimated that there would be a further two or three hours to complete the conveyancing transaction. A copy of a fee note from Mr Sharp was attached showing a figure inclusive of VAT of £954.
2. Mr Ali had proceeded to produce a detailed Point of Dispute running to some 15 pages, which appeared to challenge most items of expenditure, a detailed assessment in fact. We should say at the outset that the assessment of costs under section 60 is in accordance with that section and it is not necessary for it to be such a detailed review. We propose to deal with the matter by way of summary assessment and we do not propose to complete the points of dispute in this case as that seems to be unnecessarily onerous.

3. At the hearing, we were referred to the Upper Tribunal case of *Drax v Lawn Court Freehold Limited* which, although being a collective enfranchisement case, set out the principles relating to costs in particular at paragraphs 21 and 22 of that decision. The principle to be applied is a limited test of proportionality associated with the assessment of costs on a standard basis. The case of *Sinclair Gardens Investments (Kensington) Limited v Wisbey* had also been provided to us which gave some hint to the level of fees that might be allowed.
4. The decision of *Sidewalk Properties Limited v Twinn* went to the specific point of instructing a surveyor and it was found to be incidental to the valuation process. Bearing these matters in mind, we make the following findings.
5. The first matter is the hourly rate charged by Mr Parienta, a partner in the firm of Bude Nathan Iwanier LLP. It seems to us that an hourly rate of £300 is not unreasonable. This is specialist work and a Grade A fee earner is appropriate. It is not necessarily appropriate in these cases to just look at the Court's guidance for hourly rates, which are in any event somewhat out of date. The question we need to consider under the provisions of section 60 is whether these are costs, which if they had to be met by the Respondent would have been agreed. **We find that an hourly rate of £300 is reasonable.**
6. We consider then the statement of costs produced by the solicitors for the Respondent which is dated 12th October 2008 and contains the confirmation as to the liability of Daejan to meet these expenses. This follows the format of form N260 for summary assessment in the Courts.
7. On the first page of the statement of costs under the heading 'Letters and faxes in', there is a charge of £30. This is from the landlord's agent. We do not understand why there would be this expense and in any event in our finding, incoming faxes and letters unless they are charged at a specific rate because they require special attention should form part of the normal hourly rate of the solicitor. **Accordingly, we would disallow the sum of £30.**
8. The 'letters and faxes out' seem to us to be reasonable and the **sum of £150 is allowed.**
9. We then have a number of emails coming in which are quite extensive and lead to a figure of £330. As we have indicated above, it seems to us that these are items that should be included within the normal hourly rate and **accordingly we would disallow the sum of £330.**
10. In respect of 'emails out' these seem to us to be reasonable. We do, however, find that costs associated with the unauthorised alterations are not recoverable. The Respondent should know what works have been done to the Property the more so as a licence for these alterations was entered into. We therefore disallow the four elements relating to that issue. **This reduces the time spent to 108 minutes, that is to say 18 units giving a figure of £540.**
11. Under the heading 'Attendances on documents', we do not understand why there would be a fee for opening the file and that is disallowed. The same applies to diarising deadlines. In the case of *Sidewalk Properties* the Deputy President

concluded that the instruction of the surveyor was an administrative act that should not be charged to the client and is thus irrecoverable from the purchaser. It is noted that these attendances include the drafting of the lease. The drafting includes provisions which are no longer being pursued. We would therefore propose to halve that time and deducting the four units which we have referred to above gives 102 minutes or 17 units, **giving a figure of £510** instead of the £780 claimed. We would suggest that a **further sum of £300** should be allowed for completing the matter which might, in part be dealt with by way of a lower rate of fee earner. **Accordingly, we conclude that the fees recovered under the provisions of section 60 should be £1,500 plus VAT and the disbursements as sought of £19.25.**

12. In respect of Mr Sharp's fee, we note that when the Applicants considered a purchase outside the terms of the act, correspondence had been entered into with the agents Highdorn Company Limited who had suggested MGC Chartered Surveyors would be charging a figure of £700 inclusive of VAT for carrying out this valuation which would be payable by Mr and Mrs Ali. Discussions took place but the parties were unable to agree the premium.
13. When asked by us as to why Mr Sharp's fees were not in line with these previous ones, she indicated it was not possible to say what instructions had been given to the earlier surveyor and the client preferred to use Mr Sharp for the contested proceedings. The time spent including travel of three hours does not seem excessive. **Taking the matter in the round, we conclude the fee of £954 is not unreasonable and we therefore allow that.**

Andrew Dutton

Judge: _____
A A Dutton

Date: 18th March 2019

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.