



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

| | | |
|----------------------------|----------|---|
| Case reference | : | BIR/00CQ/OLR/2020/0026 |
| Property | : | 20 Braemar Close Coventry CV2 3BE |
| Applicant | : | Mr Farooq Nawaz |
| Representative | : | Fraser Wood (Midlands) Limited |
| Respondent | : | St Ermins Property Company Limited |
| Representative | : | Bureau Property Consultants |
| 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 |
| Tribunal members | : | G S Freckelton FRICS (Chairman) V Ward BSc Hons FRICS (Regional Surveyor) |
| Venue | : | Neither party requested a hearing so the matter was dealt with by a paper determination |
| Date of Decision | : | 13th October 2020 |

DECISION

BACKGROUND

1. This is an application by Mr Farooq Nawaz (“the Applicant”) for determination of Premium or other Terms of Acquisition of a new lease in respect of 20 Braemar Close, Coventry, CV2 3BE (“the property”).
2. The Respondent, St Ermins Property Company Limited, is the landlord of the property. The original lease is dated 8th March 1963 for a term of 99 years from 25th December 1962 between Norton Hill Estates Limited and Arnold Elliott Hincks and Geraldine Marguerite Joan Hinks at a Ground Rent of £10.00 per annum for the whole of the term.
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 19th February 2020.
4. The term proposed for the new lease was the existing unexpired term of the existing lease term plus a 90-year lease extension all at a peppercorn (nil) ground rent.
5. The Premium proposed by the Applicant was £26,250.00.
6. The Respondent served a Counter Notice pursuant to Section 45 of the Act on 21st April 2020. The Counter Notice was within the time allowed for service of such Notice.
7. By its Counter Notice the Respondent admitted the Applicant’s 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 £26,250.00 was not agreed but a counter proposal with a Premium of £34,000.00 was made.
8. On 9th July 2020 the Applicant made an Application to the First-tier Tribunal for the Determination of Premium or other terms of Acquisition remaining in dispute. No application has been made for Determination of Reasonable Costs. The Application was received by the Tribunal on the same date.
9. On 21st July 2020 the Tribunal issued Directions following which Submissions were made on behalf of both parties.
10. The Tribunal understands from the parties’ submissions that the following matters have been agreed:
 - 1) The Valuation date is 19th February 2020.
 - 2) The Lease Term is 99 years from 25th December 1962.
 - 3) There are 41.85 years remaining.
 - 4) The Ground Rent is £10.00 per annum for the whole of the lease.
 - 5) A Capitalisation Rate of 6.5% at all three stages of the rent.
 - 6) That the difference in value in an ‘Act World’ and ‘No Act World’ is 11.78%
 - 7) The value of the Extended Lease in the sum of £110,000.00.
 - 8) An uplift of 1% to Freehold Vacant Possession Value (FHVP).

11. As the above matters have been agreed by the parties the Tribunal has not considered these aspects of the valuation. The Tribunal has not raised issues of valuation beyond those raised by the parties.
12. 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”). However, the following items remained in dispute:
 - 1) The Deferment Rate. The Applicant seeks 5.5% and the Respondent 4.75%.
 - 2) The present lease value. The Tribunal infers from the submissions that the Applicant contends £80,000.00 and the Respondent £49,825.00.

THE INSPECTION

13. Due to the Covid-19 Pandemic, in accordance with the revised Tribunal Regulations the Tribunal was unable to inspect the property. This was accepted and agreed by the parties.
14. From the submissions the Tribunal deduces that the property comprises of a self-contained ground floor flat in a purpose built three storey block. The accommodation is understood to comprise kitchen with door way leading to the inner hallway, lounge, two bedrooms and bathroom with three-piece sanitary suite. There is a communal parking area.

THE HEARING

15. Neither party requested a hearing. The matter was therefore dealt with by a paper determination.

THE APPLICANT’S SUBMISSIONS

16. The Applicant submitted that there were two substantive issues remaining for determination:
 - 1) The deferment rate and;
 - 2) The Present Lease Value
17. The Applicant’s representative submitted that he had inspected the property which had an overall floor area of approximately 525 sq ft (48.77 sq m). He considered it to have a slightly unusual layout as the front door leads directly into the kitchen which in turn leads to the inner hallway with the remaining accommodation off.

Deferment Rate

18. The Applicant submitted that he had calculated the deferment rate from the starting point of the rate of 5% for flats in Prime Central London (“PCL”), as indicated in *Cadogan-v-Sportelli and Another 2006 LRA/50/2005* and other decisions. This provided a starting point and there were then three elements to the deferment rate, firstly the risk-free rate, less secondly, the real growth rate and finally plus the risk premium.

19. This had been modified by *Zuckerman and Others-v- Calthorpe Estates LRA/97/2008 (Kelton Court)* by 0.5% reflecting lower real growth rate outside PCL and 0.25% for deterioration/obsolescence. On that basis the Applicant calculated the deferment rate as follows:

| | |
|--|--------|
| Risk Free Rate | 2.25% |
| Real Growth Rate | -2.00% |
| Risk Premium | +4.50% |
| Poor Growth due to outside PCL | +0.50% |
| Additional Premium to reflect deterioration and obsolescence | +0.25% |
| | |
| Deferment Rate | 5.50% |

20. The Applicant confirmed that he had used what he considered to have been the pre-conceived figure for a number of years with applications before the Midlands Tribunal but considered that the subject flat had a detrimental appearance compared to deferment rates that have been used in Prime Central London of 5%. It was submitted that in the last published case of *BIR/OOCN/OLR/2020/001 (Michael Court)* the Tribunal awarded 5.5%. There had been a number of cases that had come forward through the Midlands Tribunal and had been decided at 5.5% taking into account *Sportelli* and adjusted for *Zuckerman*.

21. The Applicant submitted that in his opinion the deferment rate should be adjusted to reflect the expected lower growth rates for properties in the Midlands compared to PCL and bearing in mind the adjustment for increased obsolescence given the higher values in PCL and the greater likelihood that these properties would be repaired, modernised and maintained as a result, in comparison to the subject properties he referred to.

22. In addition, the case of *Flat 6, Elmwood Court*, together with *Midlands Freeholders Limited and Speedwell Estates Limited* also confirmed a deferment rate of 5.5%.

The Present Lease Value and Comparables

23. The Applicant submitted that he was aware that the subject property was originally sold in December 2017 in a very basic condition with an original lease for the sum of £50,000.00. In the opinion of the Applicant a property in better condition than the subject property would have sold for a figure in the region of £70,000.00 at that time.

24. As comparables the Applicant referred to the following properties:

- 1) 30 Braemar Close. A floor flat with an original lease sold for £68,500.00 in April 2017. This property also had the benefit of a balcony which the subject property did not. It was submitted that this flat was in only average condition but in the opinion of the Applicant, with the appropriate adjustment to make a leaseholder's condition as at February 2020 this would have increased to approximately £80,000.00. To support this the Applicant submitted, at appendix 3 of his submission bundle photographs of the interior of the property.
- 2) 34 Braemar Close. The Applicant submitted that this property was presently on the market, with an original lease at an asking price of £85,000.00. The Applicant understood that the sale had been agreed, subject to contract at £77,000.00. The

Applicant further submitted that this property has been marketed since the original valuation was submitted and therefore was a more relevant comparable than Relativity Graphs. Although completion of the sale had not yet taken place it was only six months since the valuation date and in the opinion of the Applicant this was better than the evidence of a sale taking place over two years ago.

25. The Applicant further submitted that he would prefer to use evidence of these transactions in preference to Relativity Graphs. However, if it was necessary to use Relativity Graphs the Applicant would use the Savills 2016 Enfranchisement Graph. Based on 41.85 years unexpired the graph suggested a relativity of 72.34% +1% for Freehold Vacant Possession.
26. In conclusion the Applicant submitted that he appreciated that the subject property would be a good comparable in most instances but its condition when it was sold in December 2017 included an original kitchen and poor-quality bathroom. The Applicant therefore submitted that he would attach higher regard to flat 30 Braemar Close which sold at a considerably higher figure although still not fully modernised. The Applicant was therefore of the opinion that the value of the property with its original lease in February 2020 would be £80,000.00.
27. The Applicant provided a valuation for the lease extension premium in the sum of £25,540.86.

THE RESPONDENT'S SUBMISSIONS

28. The Respondent's Representative submitted that he agreed with the Applicant that there were two matters remaining in dispute being the Deferment Rate and Present Lease Value.

Deferment Rate

29. The Respondent referred to *Sportelli* and submitted that in the original decision the Tribunal decided that the deferment rate for flats should be determined as the Risk-Free Rate (2.25%) less Real Growth Rate (2%) plus Risk Premium (4.75%) to give a Deferment Rate of 5%. It was submitted that prior to *Zuckerman* 5% was adopted for flats across England and Wales.
30. It was submitted that the 5% deferment rate determined in *Sportelli* for flats in PCL was the starting point for calculating the appropriate rate for *Kelton Court*. However, an investor considering long-term growth prospects at Kelton Court would not be confident that the PCL growth rate would be achieved in the West Midlands and would reduce his bid accordingly. In the opinion of the Respondent, the appropriate way to attest that reduction is by further increasing the risk premium by 0.5% to 5.25%.
31. The Respondent submitted that using any published Relativity Graph comparing the West Midlands and PCL would show a considerable advantage to PCL.
32. The Respondent further submitted that in his opinion *Zuckerman* did not look at the actual Real Growth Rate in Kelton Court. *Zuckerman* seemed to have assumed that as the property price was less than in PCL then the Real Growth Rate had to be less

and 2%. In the opinion of the Respondent it was not. In conclusion the Respondent submitted that in his opinion the deferment rate should be 4.75%.

The Present Lease Value and Comparables

33. The Respondent submitted that the subject property was sold on 19th December 2017 for the sum of £50,000.00. It was the understanding of the Respondent that the property was sold in basic, unimproved condition with no value attached to tenants' improvements, as envisaged by the Act.
34. The Respondent further submitted a document from the Land Registry showing the price movement for flats and apartments in Coventry between the date of sale in December 2017 and the date of valuation in February 2020. Adjusting the value using data from that table provided a figure for the date of valuation of £50,636.00.
35. The Respondent also submitted that he adjusted the figure to reflect the different lease lengths using the 'Savills Enfranchisable' Graph. The property was sold with an unexpired term of 43.9 years (Savills 73.91%) and is to be valued with an unexpired term of 41.84 years (Savills 72.34%). Further adjusting the value using the Savills data provides a figure for the date of valuation of £49,841.00.
36. It was further submitted by the Respondent that it was agreed that this figure should be reduced by 11.78% to achieve a 'No Act World' value which resulted in a valuation of £43,970.00.
37. The Respondent's Representative submitted that either he or a colleague had inspected five properties at Braemar Close since April 2017. The most recent inspection had been carried out on 28th July 2020. It was further submitted that the subject property, being a ground floor flat would trade at a discount to upper floor flats simply for reasons of security. The only other recent sale of flat in the block which the Respondent's Representative was able find details of, was Flat 30 which was sold for £68,500.00 on 13th April 2017.
38. The Respondent's Representative submitted that he had inspected this property on 22nd August 2017. Flat 30 Braemar Close, was a top floor flat with a balcony enjoying long views from the windows, especially from the lounge and had a much lighter and more open feeling than the subject property. It also benefited from uPVC double glazing including the front door and modernised kitchen and bathroom.
39. In the opinion of the Respondent's Representative the position and condition of 30 Braemar Close was superior to the subject property but more importantly it was purchased with the process to extend the lease in place. Although there was then a long period of negotiation with regard to terms for an extension agreed in March 2018, the matter did not subsequently complete.
40. In conclusion, the Respondent submitted that the only evidence he could obtain to contradict his position regarding the value would be the sale of number 30 Braemar Close, but he saw no reason why the best evidence for value of the subject property, without the benefit of tenant improvements and without Act rights, was the actual sale of the subject property in those circumstances.
41. The Respondent provided a valuation for the lease extension premium in the sum of £40,230.00.

THE RELEVANT STATUTORY PROVISIONS

42. 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.
43. 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.
44. 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.
45. The second element of the premium is the landlord's share of the Marriage Value created by the grant 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 flat prior to the new lease being granted on the one hand, and the aggregate 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.
46. 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

47. 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....*'. This course had also been adopted in *The Trustees of the Sloane Stanley Estate – v – Mundy [2016] UKUT 223 (LC)*, *Reiss – v – Ironhawk Ltd [2018] UKUT 311 (LC)* and *Oliyide – v – Elmbirch Properties PLC [2019] UKUT (LC)*.
48. Both parties referred the Tribunal to the cases of *Sportelli* and *Zuckerman*. The Tribunal is surprised that neither party referred to the case of *Deritend Investments (Birkdale) Limited-v- Treskonova UT 2020 UKUT 0164 (LC)* during their submissions. This case is dated 1st July 2020 and was available to the parties when their written submissions were made.
49. The Tribunal considers that this case follows the earlier decisions of the Upper Tribunal. In the Decision, Martin Rodger QC Deputy Chamber President states at paragraph 58:

“The guidance given by this Tribunal endorses the use of the Savills and Gerald Eve 2016 graphs where there is no transaction evidence, notwithstanding that the subject of the valuation is outside PLC. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PLC graphs. The RICS 2009 graphs do not provide that persuasive evidence and, if it is to be found, it is likely to comprise evidence of transactions; if those are available it may be unnecessary to make use of graphs at all....”

50. In this case the Tribunal considers that there is relevant transaction evidence which should take precedence over Relativity Graphs.
51. The Tribunal do not accept the Respondent’s submission that ‘a ground floor flat would trade at a discount to upper floor flats simply for reasons of security’. The Tribunal accepts the argument that flats on upper floors are likely to be more secure than ground floor flats but is of the opinion that there are also potential purchasers who would prefer a ground floor flat as such would provide easier access.
52. Both parties refer to market evidence and Relativity Graphs. In this case the Applicant submits market evidence supports a Present Lease Value of £80,000.00. The Respondent uses market evidence but then adjusts it using Land Registry figures and Relativity Graphs to arrive at a value of £43,970.00.
53. Following the Upper Tribunal decisions, the Tribunal determined that it was appropriate to accept the comparable market evidence as a starting point for the value of the unextended lease. The Tribunal is of the opinion that the valuations derived using Relativity Graphs produced were unhelpful in this case.
54. The Tribunal then considered the sale of the subject property in December 2017 for £50,000.00 and the sale of 30 Braemar Close sold in April 2017 for £68,500.00. The Tribunal determined to adjust these figures to reflect the increase in the Land Registry Index between the respective sale dates and the date of valuation and to use the average of the adjusted valuations. The Tribunal determined that it was not appropriate to rely on the evidence submitted in respect of 34 Braemar Close, as the sale had not yet been completed.
55. The Tribunal therefore adjusted the valuations as follows:

20 Braemar Close, Coventry

| | |
|---------------------------------------|------------|
| Price Paid | £50,000.00 |
| Date of Purchase | 19/12/2017 |
| Land Registry Index at Purchase Date | 125.08 |
| Land Registry Index at Valuation Date | 126.67 |
| Adjusted Value | £50,635.59 |

30 Braemar Close, Coventry

| | |
|---------------------------------------|------------|
| Price Paid | £68,500.00 |
| Date of Purchase | 01/04/2017 |
| Land Registry Index at Purchase Date | 116.35 |
| Land Registry Index at Valuation Date | 126.67 |

Adjusted Value

£74,575.80

56. The Tribunal therefore assessed the Present Lease Value as being the average between the two adjusted valuations and determined it in the sum of £62,605.69.
57. The Tribunal then considered the evidence provided by the parties in respect of the deferment rate. The Applicant contends for 5.5% and the Respondent for 4.75%. In this the Tribunal prefers the evidence of the Applicant based on *Cadogan-v-Sportelli and Another 2006 LRA/50/2005* and modified by *Zuckerman and Others-v-Calthorpe Estates LRA/97/2008 (Kelton Court)* and adopts 5.5%.
58. The Tribunal therefore determine the premium payable to be the sum of **£33,319.00** plus costs in accordance with section 60 of the Act. A copy of the Tribunal's valuation is attached at the appendix.

APPEAL

59. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this Decision, (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Graham Freckelton FRICS
Chairman
First-Tier Tribunal Property Chamber (Residential Property)

Date: 13th October 2020

Appendix – Valuation in respect of 20 Braemar Close, Coventry, CV2 3BE

Freeholders Present Interest

Term

| | | |
|-----------------------|---------------|---------|
| Ground Rent | £10.00 | |
| YP 41.85 years @ 6.5% | <u>14.281</u> | £142.81 |

Reversion (to Freehold)

| | | |
|------------------------|------------------|-------------------|
| Market Value | £110,000.00 | |
| Add Freehold uplift 1% | <u>£1,100.00</u> | |
| | £111,100.00 | |
| PV 41.85 years @ 5.5% | 0.1064 | <u>£11,821.04</u> |
| | | £11,963.85 |

Freeholders Proposed Interest

| | | | |
|--------------------------|------------------|-----------------|------------|
| Extended Leasehold Value | £110,000.00 | | |
| PV 131.85 years @ 5.5% | <u>0.0008593</u> | <u>(£94.52)</u> | |
| | | | £11,869.33 |

Marriage Value

1. Proposed Interests

| | | |
|-----------|--------------------|-------------|
| Freehold | £94.52 | |
| Leasehold | <u>£110,000.00</u> | £110,094.52 |

2. Present Interests

| | | |
|--|-------------------|-------------------|
| Freehold Value | £11,963.85 | |
| Existing Leasehold Value | <u>£62,605.69</u> | |
| Less 'No Act World' adjustment 11.78% | <u>£ 7,374.94</u> | <u>£67,194.60</u> |
| Marriage Value | | £42,899.92 |
| Shared equally | | <u>£21,449.96</u> |
| Total | | £33,319.29 |

Premium to be paid by Leaseholder SAY £33,319.00