



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

Case Reference : **BIR/00CN/OLR/2020/0043-44**

HMCTS Code : **P:PAPERREMOTE**

Property : **32 & 42 Hindon Square,
Vicarage Road, Edgbaston
Birmingham B15 3HA**

Applicants : **Jacqueline Ann Moroney & Lily Ann
Moroney**

Representative : **Lawrence & Wightman**

Respondent : **WEL (No1) Limited**

Representative : **Messrs Stevensons Solicitors**

Type of Application : **Determination of premium: Section 48
Leasehold Reform, Housing & Urban
Development Act 1993**

Tribunal Members : **Mrs A J Rawlence MRICS
Mr T.W. Jones FRICS**

Date of Decision : **17 February 2021**

DECISION

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Covid-19 pandemic: description of hearing:

This has been a remote hearing on the papers which has been not objected to by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper.

1. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as 32 Hindon Square, Vicarage Road, Edgbaston, Birmingham B15 3HA (“the Property”) under the terms of the Leasehold Reform, Housing and Urban Development Act 1993 is **£35,485**.
2. The Tribunal determines that the premium to be paid for a 90 year lease extension for the property known as 42 Hindon Square, Vicarage Road, Edgbaston, Birmingham B15 3HA (“the Property”) under the terms of the Leasehold Reform, Housing and Urban Development Act 1993 is **£36,165**.

Reasons for Decision

Introduction

3. By Application received by the Tribunal on 16 November 2020, the Applicants applied to the First-tier Tribunal, Property Chamber for the determination, under section 48 (1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”), of the premium to be paid for lease extension in respect of the two Properties.
4. Directions were issued on 18 November 2020 and, in compliance with those Directions, both parties made submissions.
5. It was agreed by both parties that the matter could be dealt with by paper determination with an external inspection.
6. in the light of the current Public Health Epidemic, having had regard to the photographic evidence, the Tribunal were satisfied that they could determine the matter without an inspection.

Matters agreed between the parties for both properties:

7. The following items were agreed between the parties:
 - a) Valuation Date: 27 May 2020
 - b) Unexpired term 51.33 years
 - c) Capitalisation rate 6%
 - d) Adjustment to Freehold VP value 1%
 - e) Relativity 78.76%

- f) No Act world deduction 8.63%

Matters in dispute between the parties.

- 8. With regard to 32 Hindon Square. the Tribunal was advised that the following matters were still in dispute:
 - a) Extended Leasehold Value:
Applicant: £195,000 Respondent: £217,500
 - b) Existing Lease with 1993 Act Rights:
Applicant: £155,133 Respondent: £173,016
 - c) Deferment Rate
Applicant 5.5% Respondent: 5%
- 9. With regard to 42 Hindon Square. the Tribunal was advised that the following matters were still in dispute:
 - d) Extended Leasehold Value:
Applicant: £200,000 Respondent: £217,500
 - e) Existing Lease with 1993 Act Rights:
Applicant: £159,111 Respondent: £173,016
 - f) Deferment Rate
Applicant 5.5% Respondent: 5%

The Law

- 10. The relevant law is set out in Chapter II sections 39 to 62 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”).
- 11. Chapter II of the 1993 Act relates to the individual right of a tenant of a flat to acquire a new lease of that flat. The law is contained in Sections 39 to 61B of the 1993 Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
- 12. Section 42 sets out what must be contained in the tenant’s notice. Section 45 sets out what must be contained in any counter-notice given in response by the Landlord.
- 13. Section 48 deals with applications where the terms of the new lease are in dispute or where there is a failure to enter into a new lease.

14. The Tribunal notes that the terms of the new lease had been agreed between the parties except for a minor technicality. More information was not provided to the Tribunal nor were they asked to make a determination on the proposed new lease other than the premium payable.

The Properties

15. The properties are purpose-built flats situated in three storey blocks and constructed in the 1970s. There is no lift.
16. The accommodation in both properties comprises hallway, lounge, kitchen, two double bedrooms and a bathroom. The properties have gas central heating and replacement UPVC double glazing.
17. According to Mr Chew, for the Applicant, No 32 has a basic fitted kitchen and a dated bathroom suite with the windows of basic quality.
18. Again according to Mr Chew, for the Applicant No 42 is in slightly better condition with more modern kitchen fittings.
19. Both properties are tenanted.
20. Mr Evans for the Respondent made no comments in these respects.
21. The properties both have an allocated garages .

Value of the extended leases

22. Mr Chew for the Applicants considered the following evidence:

8 Hindon Square sold in July 2019 for £175,000. A ground floor flat and assumed to be in average to mediocre condition.

3 Hindon Square sold April 2019 for £222,000. A first floor flat.

5 Hindon Square sold April 2019 for £221,000. A second floor flat and sales particulars were produced showing a well fitted modern kitchen with fitted white goods.

39 Hindon Square sold in May 2018 for £185,000. A ground floor flat and sales particulars were produced to show a fitted kitchen and fitted wardrobes.

15 Hindon Square – ground floor flat on the market with an asking price of £220,000

41 Hindon Square – first floor flat on the market where a sale was recently completed at £231,000. The provided sales particulars show a flat that has been upgraded to a high specification throughout.

23. Mr Chew, having considered the above evidence valued the properties assuming the leases had been extended at:
No 32 - £195,000
No 42 £200,000
24. Mr Evans for the Respondents considered the following evidence:

41 Hindon Square – first floor flat on the market where he stated that the sale was completed on the valuation date at £231,000. He contended that an allowance of £10,000 be made for the tenants’ improvements.
25. Mr Evans also referenced the sales of 8, 3 and 5 Hindon Square and made the following comments:

3 Hindon Square – inspected on 27 July 2018 and noted to be a well presented property.

No further knowledge of 5 and 8 but considered 8 Hindon Square to be an outlier when compared to the other sales.
26. Mr Evans, having considered the above evidence valued both properties assuming the leases had been extended at £217,500.
27. Both parties accept an uplift of 1% to the extended lease value to obtain the notional freehold vacant possession value of each flat.

Existing Lease Value

28. Both parties noted there had been an absence of recent sales of flats in the development sold with existing leases. Therefore, both parties had agreed a relativity for the unexpired term of 78.76%.

No Act World Deduction

29. Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease and states that there is to be an assumption that the lessee would have no statutory rights to a new lease. Both parties agreed an additional reduction of 8.63%.

Deferment Rate

30. Mr Chew for the Applicants, having adopted a deferment rate of 5.5% states that this rate should be adopted to reflect the expected lower growth rates for properties in the Midlands compared to Prime Central London and a further 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.

31. To this end he referred to the “Sportelli”, “Zuckerman”, and 7 Grange Crescent, Halesowen decision. He also referred to First Tier Tribunal decisions at Elmwood Court and Flat 62 Michael Court as well as the Upper Tribunal decisions of Midland Freeholds and Speedwell Estates.
32. He further pointed out that determinations from both the First-tier Tribunal and the Upper Tribunal have continued to adopt a deferment rate of 5.5% for cases in West Midlands. In the last two years he had negotiated in excess of 100 cases in the Midlands and in virtually all of these agreements had been reached using a deferment rate of 5.5%
33. Mr Evans for the Respondents, having adopted a deferment rate of 5%, set out his points in his written submissions.
34. He referred to paragraphs 88, 114 121 and 123 of “Sportelli”. From that he states that the deferment rate should be 5%.
35. He added that “Zuckerman” was to change that in the West Midlands. The addition of .25% for the burden of a serve charge provision was removed by “Voyvoda” and the further .25% addition for a perception of greater risk of deterioration and obsolescence, as to those flats in Prime Central London had been consigned to history by a series of UTLC cases.
36. Mr Evans also refers to Clarise” where he had demonstrated the difference in property price growth between Kensington and Chelsea and the West Midlands. Furthermore, Zuckerman did not look at the actual real growth rate at Kelton Court.
37. With reference to “Elmwood” and “Lanehead” Mr Evans rebutted Tribunal criticisms as to his approaches to evidence regarding regional growth rate.
38. He concludes that an adjustment to the deferment rate in Sportelli is only valid if the regional growth rate is less than 2%. This was not the case in either “Elmwood” and “Lanehead” and given low inflation and strong property growth since 2015 (when he undertook the full analysis) he doubts this is current the case. Thus, he has adopted a deferment rate of 5%

Tribunal’s Deliberations

39. The Tribunal considered all the evidence submitted by the parties as summarised above.
40. The valuation is 27 May 2020.

41. The property must be valued as if it was vacant freehold. Therefore, comparable evidence of two bedroom flats would need to be adjusted by the addition of 1%, the accepted norm being the long leasehold value is 99% of the freehold with vacant possession value.

The Extended Lease Value

42. The Tribunal considered the evidence before it and noted that 41 Hindon Square had been refurbished to a very high standard. It also considered the other four comparables but gave particular weight to Numbers 3 and 5 Hindon Square.
43. The subject properties, as described above, require works to bring them to a similar standard and the Tribunal finds the following values based on an extended lease.

32 Hindon Square
Extended lease value £206,000

42 Hindon Square
Extended lease value £210,000

Existing Lease Value with 1993 Act Rights

44. Both sides had agreed a relativity figure of 78.76%

32 Hindon Square
Notional freehold value of £208060 x 78.76% = **£163,868.**

42 Hindon Square
Notional freehold value of £212100 x 78.76% = **£167,050**

Existing Lease Value – No Act world

45. Both sides had agreed a further deduction of 8.63%

32 Hindon Square
£163,868 less 8.63% = **£149,726**

42 Hindon Square
£167,050 less 8.63% = **£152,630**

Deferment Rate

46. The Tribunal has weighted the evidence put by both parties and consider that the authority for the deferment rate for 1993 Act cases remains the

decision of the Court of Appeal in Sinclair Gardens Investments (Kensington) Ltd v Ray (2015) EWCA Civ 1247.

47. It has had regard to paragraph 27 in that decision and the expert evidence of Mr. Chew.

The Tribunal's Valuation

48. Applying those determinations to the matters agreed by the parties, the Tribunal determines that the premium to be paid for a 90-year lease extension for:
 49. **32 Hindon Square is £35,485.**
 50. **42 Hindon Square is £36,165.**

The Tribunal's valuations are detailed in Appendixes 1 and 2.

Costs

51. The application to determine the landlords' recoverable costs associated with this case was stayed. The parties are to advise the Tribunal within 21 days of the date of this decision if costs are agreed or if they require the Tribunal to issue Directions in this regard.

Appeal Provisions

52. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) setting the grounds upon which it is intended to rely on in the appeal.

Anthea J Rawlence
Chair

Annexe 1 - Valuation of 32 Hindon Square, Edgbaston

Valuation of 32 Hindon Square, B15 3HA						
Freeholder's Present Interest						
Term						
Initial ground rent		£60				
YP 2.33 years @6%		2.2	£127			
Increased ground rent		£80				
YP 25 yrs @6%	12.78					
PV £1 in 2.33 years @6%	0.87	11.1186	£893			
Increased ground rent		£100				
YP 24 yrs @6%	12.55					
PV £1 in 27.33 years @6%	0.2034	2.5526	£256			
Reversion						
Freehold VP	£208,060					
PV £1 in 51.33 years 5.5%		0.064	£13315.84	£14591.84	£14,591.84	
Present interest						
After extension	£206,000					
PV of £1 141.3years at 5.5%		0.000518	£106.708			
Diminution						
Marriage Value						
Value after lease extension						
proposed freeholder's interest			£107			
proposed leaseholder's interest			£206,000	£206107		
less						
existing freeholder's interest		£14,592				
existing leaseholder's interest	£163,868					
no act world deduct 8.63%		£149,726		£164,318		
				£41,789		
Landlord's share 50%				£20,894.58	£20,895	
Lease Extension Premium					£35,486.42	say £35,485

Annexe 2 - Valuation of 42 Hindon Square, Edgbaston

Valuation of 42 Hindon Square, B15 3HA						
Freeholder's Present Interest						
Term						
Initial ground rent		£60				
YP 2.33 years @6%		2.1158	£127			
Increased ground rent		£80				
YP 25 yrs @6%	12.7834					
PV £1 in 2.33 years @6%	0.873	11.1599	£893			
Increased ground rent		£100				
YP 24 yrs @6%	12.55					
PV £1 in 27.33 years @6%	0.2034	2.5526	£255			
Reversion						
Freehold VP	£212,100					
PV £1 in 51.33 years 5.5%		0.064	£13574.4	£14849.41	\$14,850.00	
Present interest						
After extension	£210,000					
PV of £1 141.3years at 5.5%		0.000518	£108.78			
Diminution						
Marriage Value						
Value after lease extension						
proposed freeholder's interest			£109			
proposed leaseholder's interest			£210,000	£210,109		
less						
existing freeholder's interest		£14,850				
existing leaseholder's interest	£167,050					
no act world deduction 8.63%		£152,630		£167,480		
				£42,629		
Landlord's share 50%				£21,314.39	£21,314	
Lease Extension Premium					£36,164	say £36,165