FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/24UD/OLR/2020/0154
Property	:	Flat 5, 40 Nutbeem Road, Eastleigh, SO50 5JQ
Applicant	:	Teodozia Gyongyi Fazakas
Representative	:	Dutton Gregory Solicitors l.uphill@duttongregory.co.uk
Respondent	:	Elmdon Real Estate LLP
Representative	:	Keystone Law Sal.Mamujee@keystonelaw.co.uk
Type of Application	:	S.48(1) Leasehold Reform Housing and Urban Development Act 1993 (The Act)
Tribunal Member(s)	:	W H Gater FRICS MCIArb Mr M Ayres FRICS Mrs J E Coupe FRICS
Date of Decision	:	18 March 2021

DECISION

Summary of Decision

The Tribunal has determined for the reasons set out below that the price payable by the Applicant for the lease extension at the property is the sum of £9325.
The Draft lease is approved subject to the amendments set out below.

Background

1. This is an application to determine the premium and other terms of the acquisition under The Act.

2. Directions were made on 1 October 2020 setting out a timetable for the determination of the case, including exchange of written submissions on the matters not agreed.

3. The Applicant submitted a bundle in compliance with those directions but pointed out that the Respondent's had not engaged in meaningful negotiations. As a result, the format of the bundle had not been agreed between the parties.

4. The Tribunal issued directions on 22 February 2021 confirming that as no objection had been made within 28 days of the directions of 1 October 2020, the matter would be determined on the papers without a hearing.

5. The Tribunal reviewed the bundle and determined that it could fairly and reasonably proceed to a decision on the papers.

6. The matter was determined on 4 March 2021 and the parties having regard to the evidence contained in the bundle and application.

7. The Tribunal identified the following issues that need to be determined

   - The Premium to be paid in accordance with The Act.
   - The form of the new lease.
   - The inclusion or otherwise of the parking space relating to the flat.

8. In considering the premium to be paid, the Tribunal noted that the matters not agreed between the valuers, summarised at 11 below, would also need to be determined.

9. Valuation reports have been submitted on behalf of both parties. Mr Simon P Dancer FRICS was instructed by the Applicants. Mr Geraint Evans FRICS was instructed by the Respondents.

10. The following matters have been agreed between the experts.
- A date of valuation of 4 February 2020.
- A lease term of 125 years from 1 January 1981 expiring on 31 December 2105.
- The unexpired term should be 85.9 years or thereabouts according to Mr Evans. Mr Dancer reports 85.96 years.
- The ground rent is doubled every 25 years and is currently £200 per annum, rising to £400 per annum, then £800 per annum, then £1,600 per annum.
- A deferment rate of 5%.

11. The following matters are not agreed between the valuers.

- The date of the ground rent increases under the lease.
- The capitalisation rate.
- The value of the property with an extended lease.
- The value of the property as a virtual freehold with vacant possession.

The Law

12. The statutory provisions dealing with the premium payable by the Applicants for the grant of a new lease are found in paragraph 2, part 11 of schedule 13 of the 1993 Act. The premium is the aggregate of:

(i) The diminution in value of the landlord's interest in the tenant's flat
(ii) The landlord's share of the marriage value
(iii) Any amount of compensation payable to the landlord.

13. Paragraph 3(1) states that the diminution in value of the landlord's interest is the difference between:

i. The value of the landlord's interest in the tenant's flat prior to the grant of the new lease: and

ii. The value of his interest in the flat once the new lease is granted.

14. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord's interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple which ignores the right to acquire a new lease and disregards any value attributable to tenant's improvements.

15. The value of the landlord's interest comprises two elements:
    i. The right to receive rent under the existing lease for the remainder of the term (The term)
    ii. The right to vacant possession at the end of the term subject to the tenant's right to remain in occupation (The reversion).

16. Paragraph 4 of schedule 13 deals with marriage value which is calculated by aggregating the values of the landlord's and tenant's corresponding values prior to the grant of the new lease. The landlord is entitled to a 50 per cent share of the marriage value.

17. Paragraph 5 of the schedule 13 enables compensation to be paid to a landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this application.

The Evidence and Consideration

18. The Tribunal will not recite all the evidence submitted but has examined all submissions made in accordance with directions. It has considered in turn, the evidence in relation to each disputed item and makes the following findings.

19. The Tribunal's directions of 1 October 2020 required the party's valuers to provide a full description of the property with a photograph of its exterior and a plan identifying any comparable properties relied on.

20. Neither expert has provided this information and there is no comment on improvements, if any. Doing the best that it can the Tribunal has examined internet data and finds that this is a 2 bedroomed purpose built flat in a block of similar units about 6 miles north of the centre of Southampton.

21. The flat is held on a lease dated 3 April 2006 (The Lease) for a term of 125 years commencing on 1 January 1981, registered under Title number HP137521.This lease was granted on the surrender of a lease dated 1 May 1981 registered under title number HP 195211.

The date of ground rent increases under the lease.

22. The lease states that the ground rent shall double every 25 years from the commencement of the term, 1 January 1981.Rents are increased on a fixed basis as follows:-

- With effect from 1 January 2006 £200 p.a.
- With effect from 1 January 2031 £400 p.a.
- With effect from 1 January 2056 £800 p.a.
- With effect from 1 January 2081 £1600 p.a.

23. At the date of valuation, 4 February 2020 the ground rent was in the second term at £200 per annum.

24. Mr Evans states that the next review in 2031 is 10.91 years from the valuation date. Mr Dancer, in his calculation, appears to say that this is 12 years away.

25. The lease is clear. The remaining term during which a ground rent of £200 p.a. is payable is from 4 February 2020 to 31 December 2030.This is a period, for the purposes of the valuation, of 10.906 years. The Tribunal adopts Mr Evans assessment at 10.91 years rounded.

26. It follows that the Tribunal also accepts Mr Evans assessment of the resultant deferment pattern following the initial term remaining.

The capitalisation rate.

27. Mr Evans adopts a rate of 5% and points out that the income growth from the valuation date covers a range of 6.56%, 3.94 % and 2.45% per annum respectively. He states that with falling base rates, purchasers would look at the return rate in a very favourable light.

28. Mr Dancer considers that 6% is the industry average. With a review period of 25 years the value of money is eroded and therefore 6% is appropriate.

29. He cites the First Tier Tribunal decisions in 3 and 4 Observatory Way Ramsgate and 24,36,54,60 and 86 Pretoria Rd Chertsey citing ref CHI/29UN/OLR/2019/0004.

30. These cases related to a determination of capitalisation rates on escalating ground rents, doubling on review. Mr Dancer states that the Tribunal mentioned the possible effect of Government proposals to prohibit escalating ground rents. Mr Dancer considers this may have a

detrimental effect on future values. It determined a capitalisation rate of 6.15%

31. The Tribunal has considered these submissions. The Observatory Way and Pretoria cases were decisions which this tribunal is not bound by. Further, the tribunal in those cases made additional comments which were not mentioned by Mr Dancer. It found that in valuing in the No Act world, Government proposals to amend the 1993 Act would have no effect on the hypothetical valuation. The Tribunal in those cases [27] stressed that the decision was reached on the particular facts and evidence. Accordingly, this Tribunal finds these cases to be of no assistance in the current case.

32. No comparable ground rent transactions were submitted by either valuer.

33. In the absence of comparable evidence, the tribunal relies on the opinions offered by the valuers and its own expertise and experience. The prospect of income growth doubling will be attractive to an investor keen to offset inflationary devaluation. However, the 25-year review pattern diminishes that benefit to an extent. At the date of the valuation, gilt yields were on a downward trend and the bank base rate was 0.75%.

34. There are therefore competing arguments on the correct rate to adopt. On the one hand the fixed rent growth would appeal to an investor, but the length of term between reviews would reduce that benefit. 6% is considered to be too high in the market circumstances at the valuation date. 5% is low in the experience of the Tribunal.

35. The Tribunal determines that the capitalisation rate in this case is **5.5%.**

The value of the property with an extended lease.

36. <u>Mr Evans</u> submitted the following evidence.

37. The subject property last sold on 3 April 2006 for £104,950 .

38. 34 Nutbeem Road (similar property) was sold for £155,000 in July 2017. It had a substantially longer lease than the subject property - 125 Years from October 2015 .

39. 36 Nutbeem Road (a similar property) was offered to the market in March 2020 for £140,000 but is shown as having sold in March 2020 for £94,000. It has a lease of 99 Years from March 1981. Mr Evans regards this as an " outlier" and therefore discounted the property.

40. The subject property was sold around the date of valuation for £145,000. The property was sold with the valuable benefit of the Notice.

41. Mr Evans takes £145,000 as a starting position. In the light of 34 with its longer lease selling for £155,000 and in the light of the subject property having been sold with the benefit of the Notice, saving the applicant a two year wait to serve Notice he adjusts the extended lease value to £160,000.

42. He assumes an extended lease term of 999 years.

43. Mr Dancer offers no comparable evidence. He states that the property sold with the benefit of the Notice for £145000 close to the valuation date. The purchaser proceeded on the basis of advice that the premium to extend the lease would be in the region of £8000.

44. Mr Dancer values the extended lease at £145000.

45. The Tribunal finds that under the Act the correct term of the new lease will be the balance of the existing lease, 85.91 years plus 90 years , i.e. 175.91 years.

46. 85.91 years is still a lengthy term . The Act provides that there shall be no element of marriage value compensation where a lease has more than 80 years remaining.

47. Mr Evans comparables show transactions some years before the valuation date and with shorter leases. The actual sale of the subject property, close to the valuation date is more helpful. The purchasers bought the property with the benefit of the notice and with the advice that the cost of the lease extension would be around £8000.

48. In effect they paid a total of £153000 knowing that they would acquire a long lease. The Tribunal does not therefore accept Mr Dancers valuation of the long lease at £145000.

49. Mr Evans' suggestion that the purchasers would add £5000 for the benefit of not waiting 2 years is not consistent with the actual sale.

50. Allowing for further costs and some uncertainty the Tribunal increases the effective price paid of £153000 to **£155000** and adopts this as the value of the extended lease.

The value of the property as a virtual freehold with vacant possession.

51. Both valuers adopt the variance of 1% to allow for the difference between long leasehold value and the virtual Freehold Valuation (FHVP). This was laid down in Olyide v Elmbirch PLC [2017] UKUT 0314 (LC)

52. The Tribunal adopts this figure. Accordingly the value of the long leasehold interest £155000 is 99/100 of the FHVP , £156565.

53. The tribunal finds that the value of the FHVP is £**156565.**

Premium payable

54. Adopting the findings above, the Tribunal calculates the premium payable in accordance with The Act to be **£9325**. The calculation is set out in Appendix 1 below.

The other terms

55. The Applicants state that the main issue in dispute between the parties is that when the Applicant's lease was previously extended on 3 April 2006 ("the Extended Lease") it did not demise the car parking space. The car parking space was demised by the original lease dated 1 May 1981 ("the Original Lease"). The Extended Lease granted the lessee an exclusive right to use the parking space. [Paragraph 3 of the Second Schedule].

56. The Applicant contends that the parking space should be demised by the new lease.

57. No evidence has been submitted by the Respondents on this point and the Tribunal relies on the submissions and documents issued by the Applicant.

58. The copy of Original lease provided by the Applicant is incomplete. Clause 1 refers to the Property being more fully described in Part 1 of the First Schedule but the page showing Part 1 of the First Schedule is missing.

59. The Extended Lease is a new lease. Although granted in consideration of the surrender of the Original Lease it does not cross reference any terms in the Original Lease.

60. The Lessee paid a premium for the grant of the Extended Lease so the Tribunal assumes that this lease was granted at “arm's length” with the agreement of both parties. This application relates to the extension of the Extended Lease so the Tribunal finds that the terms of the Original Lease are not relevant to the determination of this application.

61. Whilst the parking space was not demised by the Extended Lease the Register of Title and the Title Plan for Title Number HP675392, which is the leasehold title, include the parking space.

62. Since the parking space is included within the current leasehold title to the Property the draft lease should be amended to include the parking space within the demise.

63. Clause 6, Incorporation of Covenants, in the draft lease should be altered to reflect amendments relating to the ground rent and parking space .

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.

Appendix 1

Flat 5, 40 Nutbeem Road, Eastleigh, SO50 5JQ

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Premium Calculation.

Diminution in Value of Landlord's Interest per Schedule 13(3)

(a) Value before grant of new lease:

<u>Term 1</u>		
Ground Rent	£ 200	
Years Purchase 10.91 yrs at 5.5%	8.0438	£ 1609
<u>Term 2</u>		
Ground Rent	£ 400	
Years Purchase 25 years at 5.5%	13.419 x	
Present Value £1 in 10.91 yrs at 5.5%	0.5576	£ 2992
<u>Term 3</u>		
Ground Rent	£ 800	
Years Purchase 25 years at 5.5%	13.419	
Present Value £1 in 35.91 yrs at 5.5%	0.1462	£ 1569
<u>Term 4</u>		
Ground Rent	£ 1600	
Years Purchase 25 years at 5.5%	13.419	
Present Value £1 in 60.91 yrs at 5.5%	0.0383	£822
		<u>£ 6992</u>
<u>Reversion</u>		
Freehold value	£156565	
Present Value £1 in 85.9 yrs at 5%	0.0151	<u>£ 2364</u>

Value before grant of new lease. £9356

Less (b) Value after grant of new lease.

Freehold value: FHVP	£156565		
Present Value £1 in 175.91yrs at 5%		0.0002	£31
Diminution of landlord's interest			**£9325**