



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

Case reference : **CHI/29UP/OLR/2021/0044**

Property : **1 Crowton Court
May Street
Snodland
Kent**

Applicant : **Lee Wright**

Representative : **Homehold Services Limited**

Respondent : **Martin and Rebecca Turner**

Representative : **Martin Tolhurst Solicitors**

Type of application : **Determination of premium section 48 of
the Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal members : **Mr I R Perry BSC (Est Man) FRICS
Mr M J F Donaldson FRICS MCI Arb MAE**

Date of hearing venue : **14th July 2021 by CVP Video Platform**

Date of decision : **27th July 2021**

DECISION

Decision

The Tribunal determines a value of £16,390 (Sixteen Thousand Three Hundred and Ninety Pounds) for the extended lease of the subject property at a peppercorn rent.

Background

This is an application made by the Applicant Leaseholder pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid for the grant of a new lease of 1 Crowton Court, May Street, Snodland, Kent, ME6 5AY (“the property”).

1. By a notice of a claim dated 10th October 2020 served pursuant to section 42 of the Act, the Applicant exercised the right for the grant of a new lease in respect of the subject property. At the time, the Applicant held the existing lease granted for a term of 99 years from 1st January 1987.
2. The initial ground rent was £50 per annum with reviews after the 33 years and 66 years to £100 per annum and £150 per annum respectively.
3. On 9th March 2021 the Tribunal received an application from the Applicant for a determination of the premium.
4. On the 17th April 2021 the Tribunal issued directions indicating that it considered the matter could be dealt with on the papers, without an inspection, and invited the parties to also submit photographs of the property in an appropriate form. The Tribunal indicated that it would also seek to view the property on the internet.
5. Subsequently a hearing was arranged for Wednesday 14th July 2021 using the Tribunal Video Platform.
6. The directions issued by the Tribunal were clear in saying that the parties’ Valuers must have exchanged valuations and communicate with each other to seek to narrow the issues in dispute. In addition, “the Applicant must prepare a bundle containing one copy of all of the documents either party considers relevant to the dispute”.
7. Within its submission to the Tribunal the Applicant included an expert witness statement dated 4th June 2021 prepared by Mr Linz Darlington BSc (Hons) of Homehold Services Limited. His valuation of the proposed lease was £14,611.
8. The papers submitted to the Tribunal also included an expert witness report for the Respondent by Mr Adam Robinson MRICS and Registered Valuer of Selkent Chartered Surveyors. His valuation was £18,156.

The Matters Agreed

9. From the papers submitted the Valuers agree that the original lease is for 99 years from 1st January 1987 and the present ground rent is £100 which rises after the first 66 years of the lease to £150 per annum.

The Valuers agree that the valuation date is 10th October 2021 and that the unexpired term is 66.22 years.

The Valuers further agree deferment rate shall be 5% and the extended lease value shall be 99% of the 999 year/freehold value.

The Matters in Dispute

10. The following matters are in dispute.

- The unimproved long lease value of the property.
- The value of the current lessee's interest/relativity.
- The capitalisation rate.
- The premium payable for the extended lease.
- Any 'no 'Act world' adjustment

The Law

11. 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.
12. 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.
13. 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.
14. 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*).
15. Paragraph 4 of schedule 13 deals with the marriage value which is calculated by aggregating the values of the landlord 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.
16. Paragraph 5 of the schedule 13 enables compensation to be paid to the 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

17. The Tribunal was supplied with a bundle of some 1929 pages. The Hearing commenced at 10.00 a.m. on 14th July 2021 with tests of the technology and an introduction from the Tribunal as to the way the Hearing would proceed, issue by issue.
18. In the papers Mr Robinson had indicated that he would accept a short lease value of £107,622.54 as suggested by Mr Darlington. When questioned whether he was still arguing for a long lease value of £150,000 and thereby suggesting a relativity rate of 71.75% he withdrew his proposal to accept £107,622.54 as the short lease value.
19. A short recess was held for the parties to explore the possibility of agreeing a price but to no avail.

Unimproved extended lease value

20. The property is a first floor flat within a purpose-built block of four flats in total, situated at the junction of May Street and High Street Snodland. A driveway gives access to four parking spaces of which one space is owned with each of the flats. There is a small area of outside amenity space.
21. From the plans attached to the lease the property is seen to be accessed via a common staircase from the ground floor to a first-floor landing. An entrance door opens into the flat which has a Living Room, Kitchen, Bathroom and Bedroom.
22. Mr Darlington states that the property has a Gross Internal Area of 39.4 sq. metres and ascribes an unimproved long lease value of £130,300 to the property. This figure is based on his analysis of three comparable properties in the area. He adjusted the sale price of each of these properties suggesting that the subject property was in a less desirable area by being close to the A428 and a railway line.
23. 116 Holborough Road Snodland sold in October 2020 for £130,300. He suggests that this is a better flat than the subject property as it is on the ground floor, has its' own front door, access to a shared outdoor space and a share of the freehold of the block. The lease had 970 years to run, has 39.79 sq. metres of accommodation and was sold with a share of the freehold.
24. Mr Darlington adjusts the sale price by 1% for the freehold and a further £3,341 to reflect its condition, its position on the ground floor and being closer to the centre of the Town. Accordingly, he argues for an adjusted price of £130,300 to be applied to the property.
25. 112a High Street, Snodland sold in December 2019 for £125,000. This was said to be for a long lease with a share of the freehold, to have a private garden and is also on the ground floor with a floor area of 37 sq. metres.
26. Mr Darlington adjusts this price upwards by £2,186 to reflect the time difference between the sale date and the valuation date. He then reduces the price by 1% to reflect the share of the freehold and by a further £3,148 for the other differences to a net figure of £122,767

27. Flat 6 Red Lion House Snodland sold in October 2019 for £142,500 and is said to have a floor area of 62 sq. metres and a share of the freehold. This property also has access to outside space and was a larger property of some 62 sq. metres.
28. Mr Darlington adjusts this value by 1 per cent to reflect the share of the freehold, by 6 per cent to reflect its much better condition, by £1,711 for time and a further £11,847 for its size, a balcony and access to a private outdoor space. This produces a net figure of £127,534.
29. Mr Darlington also referred to the two most recent sales within the block. The property sold in June 2017 for £115,000 when the lease had 68.56 years remaining and the adjacent flat sold in August 2017 for £122,000. The adjacent flat is said to be in better condition.
30. Mr Darlington adjusted these figures using the Land Registry Flats and Maisonettes Index. This adjusted the actual sale price of the property from June 2017 to a Time Adjusted Value of £118,555 for its short lease value
31. In addition, Mr Darlington referred to two more comparable properties, 115 Warnett Court sold in March 2020 for £138,000 and 3 Clock Tower Mews sold in April 2019 for £146,000. He suggested that these were valuable cross-checks which affirmed his valuation of the property at £130,300.
32. Mr Robinson wished to emphasise his local knowledge of the area generally and of Snodland specifically. He argues for a long lease value of £150,000 and also referred to three main comparable properties, all maisonettes within $\frac{3}{4}$ mile of the property.
33. A 999-year lease of a one-bedroom first floor maisonette, 50 Midsomer Road Snodland sold in December 2020 for £165,000. This had an area of 44 sq. metres. Mr Robinson suggested a reduction of £2,500 to reflect the fact that the maisonette had its own entrance door offset by another £2,500 to reflect the properties proximity to the Railway Station.
34. A 999-year lease in 116 Holborough Road Snodland sold in October 2020 for £135,000. This property had a floor area of 39 sq. metres. Mr Robinson also adjusts this value downwards to reflect the property having its own entrance door and upwards again due to its proximity to the Railway station.
35. Mr Robinson also referred to a 999-year lease with 960 years remaining in 3 Clock Tower Mews, Snodland which sold for £148,000 in April 2019. He adjusts this value to reflect the separate entrance door and proximity to the station.
36. Mr Robinson also referred to an additional three further properties in support of his valuation, all in Snodland, producing adjusted figures for the property in a range from £135,000 to £165,000.
37. Mr Darlington and Mr Robinson disagreed as to the effect of the nearby A428, with Mr Robinson pointing out that it was within a cutting where it passed the property. They also disagreed on the effect on value of the nearby Railway Station. Mr Robinson suggesting that this was a major plus point for the property.

38. The valuers also disagreed on differences in value between an upper floor flat which is good for security, and a ground floor flat, easy access especially if there is an outside space. Both valuers argued for small percentage adjustments from the comparables to arrive at a value for the property.
39. The Tribunal had due regard to all of the comparables provided within the papers and was of the opinion that the proximity of the A428, albeit within a cutting, might have some downward effect on value but that this was more than offset by an increase in value generated by the proximity to Snodland Railway Station. The Tribunal also considered that there was unlikely to be a difference in value between a ground floor and a first floor flat within a block of this nature but accepted that a property with its own entrance door was likely to be worth slightly more than one without its own entrance.
40. Having due regard to all of the evidence the Tribunal concluded that the unimproved long lease value of the property should be taken as £140,000. The 999-year lease/freehold value therefore becomes £141,414.

Relativity/existing short lease value

41. For the Applicant, Mr Darlington argued that the relativity rate to be applied should be 81.77% based on an average of the Savills unenfranchiseable graph and the Gerald Eve graph, as per *Trustees of Barry and Peggy High Foundation and Claudio Zucconi and Mirella Zanre (2019) UKUT 0242 (LC)* (“Zucconi”) and endorsed by *Deritend Investments (Birkdale) Limited v Ms Kornelia Treskonova (2020) UKUT 0164 (LC)* UTLC case Number LRA/123/2019 (“Deritend”). Mr Robinson argued that the short lease value should be 121,500 which equates to 81% of his long lease value.
42. Given the small difference it seemed unfortunate that the two valuers had been unable to reach agreement on the relativity rate to be applied in this case.
43. Mr Darlington also referred to the case of *The Trustees of the Sloane Stanley Estate and Adrian Howard Mundy (2016) UKUT 0223 (LC)* (“Mundy”) which says that real sales should trump any graph. The most recent sales were from 2017 and indexation therefore becomes suspect although they may be regarded as a good cross-check
44. Mr Robinson argued that the market had only risen by 3 ½ per cent in the last three years.
45. The Tribunal was particularly mindful of the recent Upper Tribunal case *Deritend Investments (Birkdale) Limited v Ms Kornelia Treskonova (2020) UKUT 0164 (LC)* UTLC case Number LRA/123/2019 (*Deritend*). This decision dated 1st July 2020.
46. In *Deritend* the guidance given by the Upper Tribunal is “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 PCL. 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 PCL.”

47. Accordingly the Tribunal follows this guidance from the Upper Tribunal which would give a relativity rate of 81.77 per cent for a lease with 65.22 years unexpired.
48. Applying this rate of 81.77 per cent to the long lease value of £140,000 produces a short lease value of £114,478 which the Tribunal uses in its calculation for the decision.

Capitalisation rate

49. Mr Darlington contends that the present and future Ground Rents for the property are relatively modest figures and are therefore not particularly attractive as an investment.
50. He provided an analysis of the sale of leasehold ground rent investments through auctions and calculated the percentage yield of ground rents relative to the price paid. This led him to argue for a capitalisation rate of 8.92 per cent.
51. When questioned Mr Darlington conceded that none of these properties were in the same borough as the property.
52. Mr Robinson argued for a rate of 6.5% based on his experience and local knowledge but produced no evidence of sales or settlements in support of this. He asked the Tribunal to rely on his experience agreeing settlements in the area.
53. The Tribunal did not wish to rely entirely on the evidence of ground rent sales because, as Mr Darlington concedes, there was no mention, detail or adjustment for any reversionary capital value, hope value or development value involved in the sales. Neither was the Tribunal entirely convinced that Mr Robinson's view that his knowledge and experience should prevail without some factual basis.
54. The Tribunal was mindful of its own experience, the evidence given and decisions made in similar cases and came to the decision that a rate of 7.5 per cent should be applied in this case.

Adjustment for 'no Act world'

55. This had been submitted as a matter in dispute but Mr Darlington argued that an adjustment for a no act world was effectively 'baked into the calculation' by using the Savills unenfranchiseable graph. Mr Robinson also had no comment or argument for any adjustment in this regard.
56. The Tribunal decides that the disputed issues shall be.

Unimproved extended lease value: £140,000

Value of 'freehold': £141,141

Capitalisation rate: 7.5 per cent

Relativity: 81.77 per cent

Existing lease value: £114,478

Costs Order

57. Mr Robinson wrote to the Tribunal on 22nd June 2021 asking that the Tribunal consider a costs application against the lessee.

58. He questioned whether Mr Darlington could act as the Lessee's expert witness if he is not a Chartered Surveyor and suggested that a bundle of 1929 pages was too long in a case where the difference between the parties was £3,545. He also said that he was prepared to accept the lessees proposed figure for the existing lease, but Mr Darlington did not wish to agree this prior to the Tribunal hearing. At the hearing he withdrew this offer.
59. Mr Robinson further questioned whether some '1000 odd pages' within the papers relating to the Capitalisation Rate was appropriate where the difference between valuers was less than £500 and thought it unreasonable that the Lessee had stated that once the hearing had been set, for 14th July 2021, he would not attempt to reach a settlement after the 23rd June 2021.
60. The Tribunal does not consider that Mr Darlington acted unreasonably, despite the length of his Expert Witness Statement. It was regrettable that he did not feel able to negotiate a settlement prior to the Hearing but that may have been outside his remit. Nor did the Tribunal accept that only Chartered Surveyors can provide expert testimony. The Tribunal therefore considers there to be no basis for a costs order."

The Tribunal determines a value of £16,390 (Sixteen Thousand Three Hundred and Ninety Pounds) for the extended lease of the subject property at a peppercorn rent.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.

If the First-tier Tribunal refuses permission to appeal in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may take a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for the permission.

CHI/29UP/OLR/2021/0044

1 Crowton Court, Snodland, Kent, ME6 5AY
Lease 99 years from 1st January 1987

1. Diminution in Value of Landlord's Interest per Schedule 13(3)
(a) Value before grant of new lease:

	<u>Term 1</u>		
	Ground Rent	£100	
	Years Purchase 32.22 yrs at 7.5%	12.0363	£1,204
	<u>Term 2</u>		
	Ground Rent	£150	
	Years Purchase 33 years at 7.5%	12.1074	
	Present Value £1 in 32.22 yrs at 7.5%	0.0973	£177
plus	<u>Reversion</u>		
	Freehold value	£141,414	
	Present Value £1 in 65.22 yrs at 5%	0.0415	
			£5,868
less	Freehold value:	£141,414	
	Present Value £1 in 155.22 yrs at 5%	0.0005	(£73)
	Present Value of landlord's interest		<u>£7,176</u> <u>£7,176</u>
	Landlord's Share of Marriage Value per Schedule 13(4)		
	(i) Value of Tenant's interest with extended lease	£140,000	
	(ii) Value of Landlord's interest after new lease	<u>£73</u>	<u>£140,073</u>
Less			
	(i) Value of Tenant's interest before new lease, 81.77% of Long lease value £140,000	£114,478	
	(ii) Value of Landlord's interest Before new lease	<u>£7,176</u>	<u>£121,654</u>
	Total Marriage Value		<u>£18,419</u>
	Landlord's share 50%		<u>£9,209</u> <u>£9,209</u>
	Compensation Payable to Landlord		<u>£16,386</u>

Say £16,390