



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

Case Reference : CHI/00MS/OLR/2021/0145

Property : 67 Malmesbury Road SO15 5FP

Applicant : Rachel Durrant

Representative : Bonallack & Bishop

Respondent : Vivian Waters (Missing landlord)

Type of Application : Lease extension
Leasehold Reform Housing and Urban
Development Act 1993 (Missing Landlord)

Tribunal Member : D Banfield FRICS
Regional Surveyor

Date of Decision : 6 January 2022

DECISION

1. By an Order of District Judge Stewart sitting at the County Court at Southampton and dated 20 October 2021 the Tribunal is required to determine the premium and terms of the new lease.
2. The Tribunal made directions on 12 November 2021 indicating that the application would be dealt with on the papers unless the applicant objected within 28 days, no objection has been received and the matter is therefore determined in accordance with Rule 31 of the Tribunal's Procedural Rules.
3. Directions also required the submission of a bundle to include a Valuer's expert report complying with certain requirements and a draft of the proposed new lease.
4. A hearing bundle has been received complying with the above requirements and references to page numbers therein are shown as [x]
5. The bundle contains a valuation report prepared by Christopher Clark BSc FRICS MCI Arb which contains the required expert's declaration [30]
6. The existing lease is dated 23 December 1983 and is for a term of 99 years from 29 March 1983 at a fixed ground rent of £30.
7. The Tribunal has not inspected the property.

Evidence

8. Mr Clark's expert report describes the property as being located in an older residential quarter of the City off Shirley High Street secondary retail area. The road is mixed in character and some properties are ill kempt.
9. The property comprises a ground floor maisonette being part of what was built as a two-storied end-terrace house in about 1890 and converted some 50 years ago.
10. The accommodation comprises an entrance hall, lounge, kitchen, bedroom and bathroom/WC. The floor area is 45 sq. metres GIA approx. The front garden and the rear part of the rear garden is included in the demise. There is no on-site parking but there is resident's on street permit parking.
11. The location of the steps leading to the upper flat make egress from the external rear door of the ground floor maisonette very awkward.
12. The timber single glazed windows have been replaced by the Applicant with UPVC double glazed units. A gas central heating system has been installed which it is understood replaced electric space heaters which were present at the commencement of the lease.

13. Mr Clark refers to the following evidence;

49 Hatherley Mansions, Shirley Road, Southampton

A one-bedroom purpose built (1950s) top floor flat of 39 sq. metres with shared grounds and parking. A sale agreed in June 2021 at £125,000 for a 215-year peppercorn lease from 1971 is proceeding.

Flat B, 2 Newlands Avenue, Shirley

A one-bedroom ground floor converted maisonette of 53 sq. metres. Gas fired heating, a courtyard garden and parking space. A sale agreed in November 2021 at £110,00 for a 125-year lease from March 2014 is proceeding. The ground rent is £200 p.a. doubling every 25 years.

Flat 38 Withewood Mansions, Shirley Road, Southampton

A 1-bedroom purpose built (1950) mid-floor flat of 39 sq. metres with shared grounds and parking. Sale completed July 2021 at £110,000 for a peppercorn lease of 189 years from December 2016.

Flat 3, 58 Atherley Mansions, Shirley Road, Southampton

A one-bedroom ground floor maisonette of 44 sq. metres converted from a detached house and with on-site parking. In good condition and in a better location than the subject. Sale completed September 2020 at £127,000 for a 125-year lease from 1 March 2004. The ground rent is £250 escalating to £500 in 2030, £750 in 2055 and £1,000 for the remainder of the term.

5a Charlton Road, Southampton

A one bedroom first floor maisonette of 54 sq. metres converted from a semi-detached house. In good condition and with an adjacent rear garden. Sale completed at £137,500 in July 2020 for a 125-year lease from May 1966 at a ground rent of £75pa throughout.

14. Mr Clark adopts a capitalization rate of 6.5% due to the fixed and modest ground rent and a deferment rate of 5% following Sportelli.
15. Mr Clark values the Lower maisonette in its existing condition and assuming a long leasehold interest at £120,00 with an uplift of 1% to freehold i.e. £121,200. He values the tenant's improvements at £2,000 for Central heating and £2,000 for UPVC casement windows.
16. Mr Clark refers to the decisions of Mundy v Sloane Stanley Estate 2018, Zucconi 2019 and Deritend 2020. The Savills 2015 Unenfranchiseable graph gives a relativity of 78.71% and the Gerald Eve 2016 graph a relativity of 78.69%.

17. As the Lessor is a private individual rather than a property company Mr Clark considers that the receipt of an earlier but lesser premium would be attractive. If the usual section 42 and 45 procedures had been followed, negotiations between the parties' valuers would have resulted in the agreement of a higher relativity than the tables indicate which he considers to be 81%.
18. Applying the above variables Mr Clark determines the appropriate premium for an extension of the lease as at 4 August 2021 being the date an application to the Court for a Vesting Order was made.

Form of new lease

19. A draft of the new lease is in the bundle [66]. The new lease incorporates the majority of the terms of the original save that the term is now for 189 years from 29th March 1983 and the ground rent is reduced to a peppercorn.

Decision

20. The Tribunal accepts the majority of Mr Clark's valuation the exception being his adoption of 81% for relativity. Whilst it is agreed that the outcome of private treaty negotiations may be influenced by a variety of factors the tribunal does not accept that its valuation can be dependent upon the identity of the parties concerned. The Tribunal therefore adopts a relativity of 78.7% being the average of the Savills and Gerald Eve graphs which gives a value of £94,440 for the Lessee's current interest.

21. Applying this to the Marriage Value calculation gives;

Diminution in value of freeholder's interest			£6,455
Value of future interests			
Lessee	£120,000		
Freeholder	£78	£120,078	
Value of current interests			
Lessee	£94,440		
Freeholder	£6,533	£100,973	
Total marriage value		£19,105	
Freeholder's share @ 50%			<u>£8,172</u>
Total			<u>£14,627</u>

22. The Tribunal therefore determines that the appropriate premium for an extension of the lease is £14,627.

23. The Tribunal approves the draft lease referred to at paragraph 19 above.

D Banfield FRICS
6 January 2022

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.