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

Case Reference : **VG/LON/OOAD/OLR/2015/0617**

Property : **First Floor Flat, 8 Manse Court, 141
Sidcup Hill, Sidcup, Kent DA14 6
HX**

Applicants : **Mr M. and Mrs J. Grindle
(leaseholders)**

Representative : **Mr A. Robinson of N J Lewis &
Associates (Chartered Surveyors)
(with Cook Taylor Wood house
(solicitors)).**

Respondent : **Brewster Estates Limited (landlords)**

Representative : **Mr S.Brook MSc MRICS (South East
Leasehold Limited)**

Type of Application : **Application under section 48 of the
Leasehold Reform, Housing and
Urban Development Act 1993 to
determine the premium ('the Act').**

Tribunal Members : **Professor James Driscoll (Judge) and
Mr Charles Norman FRICS (Valuer
Chairman sitting as a Member)**

**Date and venue of
Hearing** : **The application was heard at 10
Alfred Place, London on 7 July 2015**

Date of Decision : **17 August 2015**

DECISION

Summary of the decision

1. The premium to be paid for the grant of a new lease under the provisions in the Act is the sum of £17,576.

Background

3. The parties to this application are Mr and Mrs Grindle, the joint leaseholders of the subject property (which is a one-bedroom flat), and Brewster Estates Limited, who are the landlords.
4. The subject property is a one-bedroomed flat on the first floor of a purpose-built block of flats in Sidcup, Kent. The block dates from the mid 1980s. It was purchased by Mr and Mrs Grindle in 2014 from the then owner Ms M. Stayne. Ms Stayne gave a notice under section 42 of the Act to the landlords seeking a new lease under the provisions in the Act. This notice, which was given on or about 6 August 2014, proposed a premium of £8,000. Later, as part of the transaction to sell the flat to Mr and Mrs Grindle, it appears that the benefit of the claim notice was assigned to them. At all events, a counter-notice dated 6 October 2014 was given on behalf of the landlords to Mr and Mrs Grindle under section 45 of the Act. In this notice the landlords accepted their entitlement to be granted a new lease but it also made a counter-proposal that the appropriate premium should be the sum of £21,200.
5. As the parties did not reach agreement on the price to be paid the leaseholders applied to this tribunal on 20 March 2015 seeking a determination of the premium. The application was made under section 48 of the Act. Directions were given by the tribunal on 10 April 2015. At this stage the leaseholders were advised by Cook Taylor Woodhouse, solicitors whilst the landlord was advised by Woolsey Morris & Kennedy, solicitors.
6. The parties were also advised on valuation. Mr Robinson FRICS of NJ Lewis & Associates advised the leaseholders and Mr Brook MRICS of South East Leasehold advised the landlords.

The hearing

7. The hearing of the application took place on 7 July 2015. Mr Robinson appeared for the leaseholders in the dual capacity as their advocate and also as their expert witness on valuation. For the landlords, Mr Brook similarly acted as their advocate and as their expert witness. A bundle of documents occupying 199 pages was prepared for the hearing. It consisted of a copy of the lease, the claim and counter-

notices, statements of matters agreed, copies of the two valuation reports, the new draft lease and Land Registry entries.

8. At the beginning of the hearing we were told that the two valuers had agreed on the following matters: that the valuation date is 6 August 2014, that the unexpired term at the valuation date was 69.35 years, on the nature and the size of the flat, that the capitalisation rate for valuing the ground rent is 7% whilst the deferment rate should be 5%.
9. The valuers did not agree on the size of the premium. After we heard the evidence and studied the photographs of the subject property and other properties we informed the representatives that we did not think that it was necessary for us to visit the premises for an inspection. We suggested that they had already given us a full description of the subject flat and the flat sales evidence that they used in arriving at their conclusions on valuation. Having regard to the comparatively modest sums in dispute we considered that the time involved in carrying out an inspection would be disproportionate. They agreed with us that an inspection was unnecessary in this case.
10. Mr Robinson gave evidence based on his report which is dated 23 June 2015. After speaking to his report he answered questions from the tribunal and he was cross-examined by Mr Brook. He told us that the applicants completed the purchase of the subject premises in October 2014 for the sum of £138,000. As the price was agreed in February 2014 he has adjusted the sales price to the sum of £145,000 to allow for time and using data from the Land Registry index. After buying the flat the leaseholders had it refurbished.
11. He has also considered comparable sales evidence (pages 48 and 49 of his report). We were told that there were no sales of comparable premises (that is one-bedroom flats) in the immediate area (an area he considers to be less expensive than other parts of Sidcup) so he gathered sales evidence of what he describes as comparable sales evidence, six transactions in all and all but one involving two-bedroom flats. Allowing for the value of improvements, and taking account of the comparable evidence and the adjusted sales price, he concludes that the subject property had a value of £154,000 at the valuation date.
12. Turning to relativity he uses four of the published relativity graphs. He took this approach as he could not find evidence of comparable market evidence of flats with unexpired terms of 69 years. On his analysis the average relativity is a figure of 92%.
13. Mr Robinson also told us that he has calculated the notional freehold value on the basis of an unimproved extended lease value to which he adds 1%. In his conclusion the premium to be paid is the sum of £8,677.
14. Mr Brook then gave his evidence which was based on his report dated 22 June 2015. He also answered questions from the tribunal and he was cross-examined by Mr Robinson.
15. Dealing first with the current value of the subject premises (as Mr Robinson did) he told us that there was a recent sale of a one-bedroomed flat in the vicinity, 7

Mayfield Court. This together with three other one bedroom flat sales elsewhere in Sidcup gave an average of £164,106. This he adjusted upward to £170,000 because the three properties other than Mayfield Court were less attractive.

16. As to relativity, he does not rely on the published graphs as he argues that the relativity can be assessed by considering the sales price of the subject flat as no time adjustment is needed. He considered that the unextended lease sale was the best evidence of value. He makes an adjustment for the existence of statutory rights of 2.5% with a resulting adjusted figure of £134,826. When that figure is compared to long lease value of £170,000 (as his comparables are of flats with long leases) this suggests a relativity of 79%.

17. Finally, he does not agree that it is appropriate to adjust figures upwards by a factor of 1% to assess the freehold value of the flat.

18. Mr Brook concludes that the premium to be paid should be the sum of £21,200.

19. There were certain documents that we asked the two surveyors to supply us with some additional documentation. Mr Brook emailed additional evidence of his comparable sales that is Flats 2 and 4, Medlar House, Sidcup and Flat 2 Sandalwood House, Sidcup DA15 7NB. He attached Land Registry information which indicates that the leases are for 999 years from 31 July 1982. Mr Robinson emailed us a copy of a lease and Land Registry information on the sale prices of his comparable sales evidence.

Reasons for our decision

20. We turn now to our decision. We start by summarising the various statutory provisions on valuing the premium to be paid on an application for a new lease. After this we set our conclusions on the valuation evidence and the submissions on what the premium should be. This is followed by our conclusion on the premium.

21. Section 56 and schedule 13 to the Act sets out how the premium for the new lease is to be calculated. It is the aggregate of the following three sums, that is (a) the diminution in value of the landlord's interest in the flat, (b) the landlord's share of any marriage value and (c) any amount of additional compensation payable. It was agreed that item (c) is not relevant in this claim. Items (a) and (b), however, are.

22. Dealing with the first element, paragraph 2 of schedule 13 defines it as the difference between the value of the landlord's interest in the flat before the new lease is granted and that value once the new lease has been granted. In valuing these interests, schedule 13 states that it must be valued at the open market value on the assumption that neither the leaseholder or any intermediate landlord is buying or seeking to buy. Other factors must be disregarded including the existence of the statutory rights available under the Act and the value of any leaseholder improvements. The property must be assumed to be in repair.

23. As to the valuation of the landlord's interests, this consists of two elements: first, the capitalised value of the ground rent the landlord would have received from

the current lease; second, the value of the landlord's reversionary interest in the flat. In this case the surveyors agree that a capitalisation rate of 7% should be used. As to the reversionary interest (that is to say the value at the valuation date deferred to the date on which the lease will expire), this should be deferred at the rate of 5%.

24. Where the term of the lease has more than 80 years unexpired the Act deems that no marriage value is payable (paragraph 4(2A), schedule 13). Where (as here) it is payable it is defined as the difference in value between two amounts. First, the aggregate of the leaseholder's and the landlord's interest in the flat prior to the grant of the new lease and those values after the new lease has been granted.

25. In assessing the evidence in this case, two main issues emerged; first, what is the most relevant and compelling market evidence? second, what relativity rate should be applied?

26. Adjustments of should be made to reflect the fact that the statutory right to a new lease has to be ignored. We accept Mr Robinson's evidence that the costs of certain improvements must be disregarded namely a window improvement which he valued at £500.

27. We did not consider that any of the properties put forward by Mr Robinson are relevant as comparable market evidence. This is on account of their being two-bedroomed properties apart from 57 Pollard Walk, which is one-bedroomed. This is not a helpful piece of evidence it is an ex-local authority property and dissimilar to the subject flat. The two bedroomed comparables are also all maisonettes rather than flats. None of them looked similar to the subject property. Mr Robinson explained that his opinion of the extended lease value was an opinion based on the average of his analysis of sales at 179 and 175 Sidcup Hill to which he gave the most weight and which averaged £154,000. Mr Robinson told the tribunal that he was not aware of the sale of 7 Mayfield Court (see above and below). Mr Robinson also placed some reliance on the sale of the short leasehold. However, he did not make any adjustment to that sale price to reflect its state of disrepair. This, he told the tribunal, required a new kitchen and bathroom at a cost of £8000 plus labour charges. Under the statutory hypothesis the property must be assumed to be in repair. Mr Robinson also allowed £500 for a window improvement which the Tribunal accepts (see above). The Tribunal did not accept the basis for time adjustments set out by Mr Robinson, because adjustment is relevant only for the time following exchange of contracts and completion and not from the date when a property went under offer, as this is a non-binding commitment. There was no evidence as to relevant dates of exchange of contacts. As completion is normally only 28 after exchange, the tribunal prefers to rely on completion dates which are easily ascertainable from Land Registry records.

28. As to Mr Brook's evidence, we consider that the best comparable is Mayfield Court. This looks physically similar the Manse Court, is of a similar age and is nearby. We do not give weight to Medlar House and Sandewood House because these are older buildings of a different type and far closer to the Sidcup Station than the subject property.

29. Mr Brooks relied heavily on the sale of 8 Manse Court which he considered compelling evidence of short lease value. However, Mr Brooks failed to consider that the subject property was in disrepair when it was sold. The tribunal prefers the evidence of Mr Robinson on this point regarding disrepair, except that the diminution in value as a result must be greater than the £8,000 spent on materials as this does not include labour costs.

Extended Lease Value

30. The tribunal finds that this should be assessed by reference to the sale of 7 Mayfield Court of £175,000 adjusted to disregard the window improvement of £500. The tribunal therefore finds that the extended value for 8 Manse Court is £174,500.

Unextended lease value

31. To arrive at the leaseholder's present interest in the flat on that date we must determine the correct relativity to apply. 'Relativity' has been defined as the '...value of a dwelling held on an existing lease at any given unexpired term divided by the value of the same dwelling in possession to the freeholder, expressed as a percentage' (*Leasehold Reform: Graphs of Relativity* RICS 2009).

32. In this case the approach of the two valuers to relativity could not have been more different. Mr Robinson relies on the graphs but this approach is rejected by Mr Brooks who favours market evidence which he submits is preferable to graphs and their imperfections (summarised by the research report published by the RICS in 2009).

33. Mr Brook relied heavily on the *Nailrile* and *89 Trinity Court* decisions to support his opinion of 2.8% as the value of "Act world" rights. Mr Robinson relied solely on the average of relativity graphs giving 92%.

34. The tribunal does not consider the properties or market conditions in *Nailrile* to be directly comparable to this case. That decision concerned high value properties in Prime Central London which are unlikely to be mortgage-dependent (such purchasers would not need to raise a loan to fund the purchase). In addition, the decision dates from 2006, was well before the financial crisis of 2008 onwards. However the tribunal agrees with the advantages of the Act as set out at paragraph 216 of *Nailrile*: the right to extend at a time of the leaseholders choosing, the right to come to the tribunal, the lessee receiving 50% of marriage value, a fixed valuation date and the deferred payment of the premium.

35. The tribunal does not agree that the value of the rights can be assessed on a straight line basis over time as was employed in *89 Trinity Court*. This is because the lack or reduction in mortgageability may limit the market to cash-buyers, thereby reducing value. In this case it is significant that the section 42 notice was given and assigned prior to the sale being effected which shows the importance of the rights. Further, Mr Brook told the tribunal (and we accept that some lenders now require 50 years after redemption of the mortgage in which case the subject short lease would not qualify, even for a 20 year mortgage. The nature of the subject property is one that plainly lies in a mortgage-dependent market.

36. As to the 2014 sale of the unextended lease, the tribunal considers that this is good evidence of the short leasehold value once adjusted for disrepair. Doing the best we can with the evidence as to condition, we assess the disrepair as depressing value by £10,000. We conclude that if the property was in repair it would have been sold for £148,000 with a short lease in the "Act world". For the reasons set out in *Nailrile* we consider that the value of the rights under the Act are substantial. We do not consider that the small adjustments suggested by Mr Brook are correct. Doing the best we can we assess the value of the Act world rights as 10% of the value of the short lease, or £14,800.

37. We therefore find that the short leasehold value in repair but disregarding Act world rights is £133,200. This is a relativity of 76% against the extended lease value of £174,500.

38. However, we do not consider it correct to rely solely only on the sale of the subject property. The relativity has to reflect the market as a whole. We therefore also give weight to the relativity graphs to which we referred above and which give a relativity of 92%. Doing the best we can with this evidence we adopt an average of these relativities of 76% and 92%, which is 84%.

39. We reject Mr Robinson's evidence that there should be a 1% differential as between an extended lease and freehold. Mr Robinson contended for this quite weakly and conceded that he could cite no actual examples demonstrating that this was reflected in the market.

40. For the above reasons we conclude that the premium to be paid is the sum of £17,576.

41. A copy of our valuation is attached to this decision.

42. We were told that the terms of the new lease and the payment of the landlord's costs (payable under section 60 of the Act) had been agreed before the hearing and did not, therefore, require a determination.

James Driscoll and Charles Norman
17 August 2015

**Flat 8 Manse Court 141 Sidcup Hill Sidcup Kent DA14 6HX
VALUATION BY THE FIRST-TIER TRIBUNAL**

Date of Valuation	(agreed)	06-Aug-2014
Leases expiry Date	(agreed)	31-Dec-2083
Unexpired Term	(agreed)	69.35
Virtual Freehold Value of Flat:	(LVT Decision)	£ 174,500
Value of 73.67 year leases @ 93% of virtual freehold value	(LVT Decision)	£ 146,580
Ground rent capitalisation rate	(agreed)	7.00%
Relativity	(LVT Decision)	84.00%
Reversionary deferment Rate	(agreed)	5.00%
Premium Payable		

**Value of Freeholder's Present Interest
Term 1**

Ground rent	£	80 per annum	
20.4 Years' Purchase @ 7.00%	10.6926		£ 855.41

Term 2

Ground rent	£	110 per annum	
25 Years' Purchase @ 7.00%	11.65		
PV £1 in 20.40 years @ 7.00%	<u>0.2515</u>		
	2.92998		£ 322

Term 3

Ground rent	£	140 per annum	
25.00 Years' Purchase @ 7.00%	11.6536		
PV £1 in 45.4 years @ 7.00%	<u>0.04634</u>		
	0.54003		£ 76

Reversion

Value of virtual freehold	£	174,500	
Present Value of £1 in 69.4 years time @ 5%	0.03384		
			<u>£ 5,905</u>
			£ 7,158

Calculation of Marriage Value

Value of Proposed Interests

Leaseholder			
Unimproved value of virtual freehold flat		£	174,500
Freeholder		£	174,500
PV 159.4 years @ 5%	0.00042	£	73
Total Value of Proposed Interests		£	174,573

Value of Present Interests

Leaseholders

Unimproved value of the existing lease @ 84% of extended lease	£	<u>174,500</u>	
	0.84		£ 146,580

Freeholder (see above)

	£	<u>7,158</u>
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Total Value of Present Interests	£	153,738
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Hence Marriage Value, Difference Between Proposed and Present Interests		<u>£ 20,835</u>
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Divide Marriage Value equally between the Parties		<u>£ 10,417</u>
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Hence Premium Payable for lease extension is **£ 17,576**