



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

Case Reference : **BIR/00CN/OLR/2020/0010**

HMCTS (paper, video, audio) : **P: PAPERREMOTE**

Property : **Flat 62 Michael Court, 115 Bristol Road
Edgbaston Birmingham West Midlands,
B5 7TS**

Applicant : **Safa Abdul-Hafez Hassouna**

Representative : **Lawrence & Wightman**

Respondent : **WEL (No. 1) Limited**

Representative : **Stevensons Solicitors**

Type of Application : **Application under section 48 of the
Leasehold Reform, Housing & Urban
Development Act 1993**

Tribunal Members : **N Wint BSc (Hons) FRICS ACI Arb
V Ward BSc Hons FRICS**

Date of decision : **16 June 2020**

DECISION

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was Paper Remote:(P:PAPERREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested it and all issues could be determined in a hearing on paper. No physical property inspection was undertaken.

Decision of the Tribunal

- 1) The Tribunal determines that the premium to be paid for a 90 year lease extension under the terms of the Leasehold Reform and Urban Development Act 1993 in respect of Flat 62 Michael Court, 115 Bristol Road Edgbaston Birmingham B5 7TS is £34,134.

Introduction

- 2) This is an application to determine the premium payable to the Respondent by the Applicant to extend a lease under section 48(1) of the Leasehold Reform Housing and Urban development Act 1993 (the 1993 Act).
- 3) The Applicant, Safa Abdul – Hafez Hassouna, holds a 99 year less 3 days underlease made 23 October 1970 of Flat 62 Michael Court, 115 Bristol Road Edgbaston Birmingham (the Property) which was granted from 25 March 1967. The Respondent landlord is WEL (No 1) Limited.
- 4) The initial ground rent was £45.00 per annum rising to £67.50 per annum from 25 March 2000 and £90.00 per annum from 25 March 2033 until expiry.
- 5) On 15 July 2019 the Applicant served notice on the Respondent proposing a premium of £21,800 for the grant of a new lease for a term of 90 years in addition to the remaining unexpired term of the present lease at a peppercorn ground rent, and otherwise in accordance with the existing lease.
- 6) The Respondent served a counter notice admitting the claim on 16 September 2019, accepting the Applicant's right to a new lease, but disputing the premium and proposing a premium of £38,300 for the grant of a new lease.
- 7) On 26 February 2020 the Applicant's representative submitted an application to the Tribunal for a determination of the premium.
- 8) The Tribunal issued Directions dated 4 March 2020 requiring the parties to submit and exchange written evidence by no later than 27 March 2020. The parties were also directed to exchange any documents (including a statement of case and valuation) and to submit these to the Tribunal by no later than 17 April 2020.

- 9) The Applicant confirmed they were content to have the application dealt entirely on the basis of written representations and documents and without the need for the parties to attend and make oral representations.
- 10) The Tribunal received written representations from Mr Keith Chew LLB FRICS of Lawrence & Wightman on behalf of the Applicant dated 16 April 2020 and a statement of case prepared by Stevenson Solicitors enclosing an expert valuation report prepared by Mr G Evans BSc (Hons) MSt (Cantab.) Dip Surv FRICS of eBureau Limited dated 23 April 2020.
- 11) Mr Chew's valuation of the premium payable is £28,170 and Mr Evans's valuation of the premium payable is £35,550.
- 12) A draft lease prepared by Stevensons Solicitors was submitted to the Tribunal and the Applicant has confirmed that the terms are agreed.
- 13) Both parties have prepared their Reports in accordance with the requirements of the RICS Practice statement for surveyors acting as an expert witness and include a Statement of Truth. The Tribunal is also satisfied that both parties valuations have been prepared by suitably qualified and experienced valuers.
- 14) The Tribunal has carefully considered the evidence adduced by the parties and has also had regard to its own experience, knowledge and judgement in coming to its findings and decision.

The Inspection

- 15) Due to the Public Health Emergency in respect of Covid-19, the Tribunal was unable to carry out an inspection.
- 16) The parties were notified, and they confirmed they were content for the matter to be determined without an inspection.

The Property

- 17) The Property comprises a late 1960's purpose built flat located on the second floor of a three-storey residential block. The development includes 5 three-storey blocks each containing six flats.
- 18) The site fronts onto the A38 Bristol Road which forms one of the main arterial routes into Birmingham city centre.
- 19) The subject accommodation briefly includes an entrance hallway, living room, kitchen, two bedrooms and a bathroom and separate WC. It includes a gas fired radiator central heating system, fitted kitchen, bathroom suite and original timber frame windows with galvanised steel single glazed opening

casements. Externally there are communal gardens and a separate garage block which includes a single garage allocated to the Property.

- 20) Mr Chew advises that the Property is in average condition with basic kitchen fittings, a dated bathroom suite and includes the original window frames. Mr Evans makes no comment in this respect.

The Law

- 21) Section 48 of the 1993 Act prescribes that if a premium is not agreed it can be referred to the First-tier Tribunal (Property Chamber) where it can be assessed in accordance with the formula in Schedule 13 to the Act.
- 22) The relevant law in relation to the application under the Act is set out in Chapter II sections 39 to 62 and Schedule 13 to the Leasehold Reform, Housing and Urban Development Act 1993.
- 23) Chapter II of the 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 Act and Part 2 of Schedule 13 deals with the premium payable in respect of the grant of a new lease.
- 24) 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.
- 25) 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.
- 26) Section 56 deals with the obligation to grant a new lease and section 57 sets out the terms on which a new lease is to be granted.

Matters Agreed

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|---|------------------|
| 27) Ground Rent to 25 March 2000 | £45.00 per annum |
| 28) Ground Rent to 25 March 2033 | £67.50 per annum |
| 29) Ground Rent to expiry 22 March 2066 | £90.00 per annum |
| 30) Unexpired term at date of notice | 46.69 years |
| 31) Valuation date | 15 July 2019 |
| 32) Freehold VP value Adjustment | 1% |

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|-----------------------------------|--------|
| 33) Capitalisation Rate | 6.0% |
| 34) Deduction for 1993 Act rights | 10.15% |

Matters in Dispute

	<u>Applicant</u>	<u>Respondent</u>
35) Value of existing lease	£107,263	£100,000
36) Value of extended lease	£140,000	£145,000
37) Deferment Rate	5.5%	5.0%

Value of existing lease

38) Mr Chew for the Applicant adduces the following existing lease evidence:

1. Flat 78 – Sold August 2018 at £120,000 and considered to be in good order.
2. Flat 92 – On market at £112,00 including a modernised kitchen and bathroom.

39) However, Mr Chew considers that these two comparables are of limited assistance and insufficient to determine existing lease values and has referred to the Savills Enfranchisable Graph (2016). Based on an unexpired term of 46.69 years the Graph suggests a relativity of 75.85% (extended lease value - £140,000 plus 1% for freehold vacant possession adjustment) which produces an existing lease value of £107,263.

40) Mr Evans for the Respondent adduces the following existing lease evidence:

1. Flat 58 – Sold November 2018 at £100,000. In the same block but considered to be in basic order.
2. Flat 78 – Sold August 2018 at £120,000 but considered to be better as it is a ground floor flat with direct access to the communal gardens.

41) Based on these transactions Mr Evans concludes that the most helpful is Flat 58 given its similarities to the subject Property.

42) Mr Evans also considers there is no need to make any adjustment for any changes in the market between the date this comparable was sold and the subject Property's valuation date as based on the evidence from the Land

Registry price movements for flats and apartments in Birmingham have shown limited growth. Mr Evans therefore concludes that the value of the subject Property, subject to the existing lease is £100,000.

- 43) The Tribunal finds that there is sufficient open market evidence to not have to rely on a graph. In *Sloane Stanley v Mundy [2016] UKUT 0223 (LC)* the Upper Tribunal commented extensively on the unreliability of graph-based evidence. The Tribunal is also aware that the Upper Tribunal in *Elmbirch Properties Plc v two leaseholders [2017] UKUT 314 (LC)*, at paragraph 37 expressed concerns about the use of a straight-line graph, although not going so far as to say they must not be relied upon.
- 44) The Tribunal is satisfied that there is no reason to depart from these decisions and the evidence adduced is sufficient to follow the view expressed by the Upper Tribunal on this point.
- 45) The Tribunal prefers the evidence in respect of Flat 58. The Land Registry House Price Index provided by Mr Evans shows negligible growth between November 2018 and July 2019 and based on its findings the Tribunal adopts a value of £100,000 for the subject Property on the basis of the existing lease.

Value of extended lease

- 46) Mr Chew for the Applicant has considered the following evidence:
 1. Flat 42 – On the market at £160,000 and placed under offer at £147,000 and considered to be in good condition.
 2. Flat 84 – Sold September 2018 at £149,000 and considered to be in good order and in better condition than the subject premises with gas fired central heating and double glazing.
 3. Flat 60 – Sold December 2016 at £129,000 but no comment concerning condition.
- 47) Mr Chew considers that given the evidence to hand and having regard to the relative condition of the each comparable concludes that the extended lease value of the subject Property is £140,000.
- 48) Mr Evans for the Respondent has considered the following evidence:
 1. Flat 42 – Sold September 2019 at £147,000
 2. Flat 66 – Sold May 2018 at £148,000
 3. Flat 72 – Sold February 2019 at £152,000

4. Flat 84 – Sold September 2018 at £149,000

- 49) Based on these transactions Mr Evans concludes that as the evidence is consistent its can be assumed to be reliable and after adjusting for tenant's improvements arrives at an unimproved extended lease value of £145,000.
- 50) The Tribunal prefers Mr Evans's evidence and finds that the value of the subject Property is £145,000 on the basis of an extended lease.

Deferment Rate

- 51) Mr Chew for the Applicant has adopted a deferment rate of 5.5%.
- 52) Mr Chew advises he has dealt with numerous cases before the Midlands Tribunal and these have been decided based on a rate of 5.5% having regard to the decision in 'Sportelli' and adjusted by 'Zuckerman' and more recently supported by 'Sinclair Gardens'. In essence, these cases followed the argument that the deferment rate should be adjusted 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.
- 53) In further support Mr Chew refers to the decisions of Flat 6 Elmwood Court Edgbaston as well as the Upper Tribunal decisions in respect of Midland Freeholds Limited and Speedwell Estates Limited which confirmed the adoption of a deferment rate of 5.5%.
- 54) Mr Evans for the Respondent has adopted a deferment rate of 5%.
- 55) Mr Evans's starting point is 'Sportelli'. In the decision Mr Evans refers to paragraph 88 which says that it is accepted that the deferment rate can be adjusted for location but that based on the evidence adduced there was no justification for making an adjustment to reflect regional or local differences. It was acknowledged that based on the evidence no adjustment to the real growth rate is appropriate given the long-term basis of the deferment rate and that any locational differences, in the absence of clear evidence suggesting otherwise, are to be assumed as being reflected in the freehold vacant possession value.
- 56) Mr Evans says that the 'Sportelli' decision also provides guidance on the need for consistency and predictability notwithstanding a Judge's discretion to decide various matters which, unless there is compelling evidence to the contrary, include the adoption of a single deferment rate (with a standard adjustment for flats).

- 57) The decision goes on to say that the adoption of a deferment rate of 5% for flats needs to be considered in relation to the facts of each individual case. In adopting a different rate, the valuer or Tribunal has to be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the particular property concerned.
- 58) In 'Sportelli' it was held that the deferment rate is made up of the risk-free rate (2.25%) less the real growth rate (2%) plus the risk premium (4.75%). In 'Zuckerman' it was held that the deferment rate should be greater to reflect the burden of a service charge provision and that there should be a further addition for the risk that flats may be subject to a greater deterioration and obsolescence.
- 59) It was therefore decided that the starting point was 5% for flats which should then be adjusted to reflect an investor's view on the long-term growth prospects (i.e. the real growth rate) being less than that achievable in PCL. To that extent this would reduce the value of the property and to reflect this the risk premium would need to be increased from 4.75% to 5.25% producing a deferment rate of 5.5%.
- 60) Mr Evans also refers to 'Clarise' and the land registry data evidence to demonstrate the difference in property price growth between Kensington and Chelsea and the West Midlands. This Mr Evans suggests shows the West Midlands performing better than expected. In addition, Mr Evans advises that in Zuckerman it was assumed that the actual real growth rate (2%) was less than PCL where in fact this was not the case.
- 61) Mr Evans then refers to 'Elmwood' and explains that the reason he was unable to provide evidence from 1974/75 to 1995 was because Land Registry did not make such information available prior to 1995.
- 62) In 'Lanehead' Mr Evans states he did in fact provide evidence from 1974/75 which was for a period longer than in 'Zuckerman' and suggests that the Tribunal made certain assumptions regarding real growth rates based on price growth which were incorrect.
- 63) Based on this Mr Evans concludes that an adjustment in the deferment rate should only be made if it can be shown that the real growth rate was in fact less than 2% and considers that this was not provable in either 'Elmwood' or 'Lanehead' and for these reasons adopts 5%.
- 64) However, the Tribunal weighing the evidence above, considers 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 1231 (7 Grange Gardens).
- 65) The Tribunal therefore finds that the appropriate deferment rate is 5.5%.

Valuation

66) The Tribunal determines that the value of the premium payable by the Applicant for the subject Property is calculated as follows:

Freeholders Present Interest

Term

Ground Rent	£67.50	
YP 13.69 years @ 6%	<u>9.1606</u>	£618.34

Ground Rent	£90.00	
YP 33 years @ 6%	14.2302	
PV 13.69 years @ 6%	<u>0.4504</u>	£576.84

Reversion (to Freehold)

Market Value	£145,000	
<u>Add Freehold uplift 1%</u>	<u>£1,450.00</u>	
	£146,450	
PV 46.69 years @ 5.5%	<u>0.0821</u>	<u>£12,023.55</u>
		£13,218.73

Freeholders Proposed Interest

Extended Leasehold Value	£145,000	
PV 136.69 years @ 5.5%	<u>0.0007</u>	<u>£101.50</u>
		£13,117.23

Marriage Value

1. Proposed Interests

Freehold	£101.50	
Leasehold	<u>£145,000</u>	£145,101.50

2. Present Interests

Freehold	£13,218.73	
Leasehold	£100,000	
<u>Less 'No Act World'</u>		
<u>adjustment 10.15%</u>	<u>£10,150</u>	<u>£103,068.73</u>

Marriage Value		£42,032.77
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Shared equally		<u>£21,016.39</u>
Total		£34,133.62

Premium to be paid by Leaseholder SAY

£34,134.00

Decision

- 67) The Tribunal determines the premium payable by the Applicant at **£34,134 (Thirty-Four Thousand, One Hundred and Thirty-Four Pounds)**.

Costs

- 68) 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

- 69) If either party is dissatisfied with this decision, they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision (regulation 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013) stating the grounds upon which it is intended to rely on in the appeal.

Name: N Wint

Date 16 June 2020