



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

Case Reference : **CAM/38UD/OLR/2016/0167**

Property : **25 Stonesfield, Didcot, Oxfordshire OX11 9RF**

Applicant : **Christopher Mark Hempzell**

Representative : **Mr W Dunsin FRICS, Chartered Surveyor**

Respondent : **Danesdale Land Limited**

Representative : **Mr S Gallagher – Counsel
Mr K McKeown MRICS, Chartered Surveyor**

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

Tribunal Members : **Tribunal Judge Dutton
Mrs H C Bowers BSc(Econ) MSc MRICS
Mrs S F Redmond BSc(Econ) MRICS**

Date and venue of Hearing : **The Combined Court, St Aldates Oxford on 31st January 2017**

Date of Decision : **15th February 2017**

DECISION

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DECISION

The Tribunal determines that the premium payable for the lease extension in respect of 25 Stonesfield, Didcot, Oxfordshire OX11 9RF (the Property) is £6,806 as set out on the valuation attached.

BACKGROUND

1. On 17th June 2016, the Applicant, Christopher Mark Hempzell, sent to the Respondent, Danesdale Land Limited, a notice under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) giving notice of intention to exercise his rights to a lease extension. The premium suggestion by the Applicant was £5,648.
2. On 18th August 2016, the solicitors for the Respondent served a counter-notice admitting the Applicant's right to seek a lease extension but counter proposing a premium of £17,150. Agreement could not be reached and this triggered an application to the Tribunal under Section 48 of the Act originally seeking a determination as to the premium and the lease terms, the latter having been, at the time of the hearing, agreed.
3. Prior to the hearing we were provided with a bundle of documents which included the application and the notices as well as copies of the Register of Title and the reports of Mr Dunsin and Mr McKeown. In fact we received a second copy of Mr McKeown's report as it was suggested the copy in the hearing bundle was not complete.

Inspection

4. Prior to the hearing we inspected the subject premises in the presence of Mr Hempzell and Mr McKeown. The Property is to be found on the first floor of a three-storey purpose-built block of flats in a pleasant area with a good amount of car parking. The Property itself comprises a bedsitting room with a retractable bed with a kitchenette off. By the front door was a small internal bathroom, with wash hand basin, WC, bath and electric shower over. There were also two cupboards, one contained the water tank and the other a form of wardrobe which had electric sockets. There was a door entry phone. The Property was in reasonable decorative order.
5. In addition to reviewing the subject property, we also considered the comparables that had been suggested by Mr Dunsin in his report, which were both ground floor properties having the benefit of a private patio area to the rear.

MATTERS AGREED

6. There were certain matters that the valuers had been able to agree, apart from the lease terms. They are as follows:
 - The GIA for the subject property is 26.68 square metres or 287 square feet.

- The valuation date is 17th June 2016.
- The unexpired term of the lease is 69.77 years.
- The long lease value is agreed at £105,000.
- The freehold vacant possession value is agreed at £106,060.
- The deferment rate is agreed at 5%.
- The rent reserve for the second term is agreed at £77 per annum.

MATTERS NOT AGREED

7. The parties were unable to agree the following issues:
- Capitalisation rate for which Mr Dunsin argued 6% and Mr McKeown either 5.5 or 5%.
 - Relativity and the use thereof.
 - The short lease value for which Mr Dunsin argued a value of £98,000 and Mr McKeown £86,445 but less Act rights reducing the value to £82,858.

HEARING

8. Mr Dunsin acted both as expert and advocate in the hearing. We had before us his report, which is dated 23rd December 2016 and speaks to the premium payable for the lease extension of £5,805 set out at appendix 9.
9. It appears that Mr Dunsin inspected the Property in May of 2016 and after setting out briefly the situation, description and construction of the Property he moved on to the comparable evidence, which he relied upon, to produce the short lease value. Two properties were put forward, one at 13 Pebble Drive, Didcot and the other at 33 Stonesfield, Didcot. Both were studio flats in the same development having similar floor areas and had been sold in the case of 13 Pebble Drive on 16th June 2016 and in the case of 33 Stonesfield sold on 28th October 2016. Both had short leases of around 70 years but were ground floor properties with patios which were privately demised. 13 Pebble Drive had achieved a price of £115,000 and 33 Stonesfield £118,000. His report then went on to confirm the valuation date of 17th June 2016, that the deferment rate should be in accordance with the Court of Appeal in Sportelli at 5% and for the reasons set out at paragraph 5.03.03 onwards he concluded that the capitalisation rate should be 6%.
10. Unusually in this case there had been a proposed sale at the Property which had gone under offer on 2nd May 2016. A Memorandum of Sale was included within the bundle. This confirmed a sale price of £105,000 but on the understanding that the vendor (Mr Hemsell) would obtain a lease extension within that price. This long lease value has been agreed between the parties at £105,000 and as a 1% uplift to freehold vacant possession value is also agreed this gives that figure of £106,060 or 61 depending on whose report you read.
11. Returning then to the existing lease values, Mr Dunsin told us that he considered there were three main methods used by valuers. The first was the transactional evidence of comparable short leases without rights under the 1993 Act. The second method was transactional evidence of comparable properties which did have rights under the Act for which a deduction needs to be made. This he

thought, however, was not so good as the first method as there were two drawbacks relating to the number of sales available to review and the deduction has to be made for the benefit of the Act. The third method was to use relativity graphs, which give percentages between freehold value and statutory existing lease values, the main graphs being those contained in the RICS research reports. He referred to some Upper Tribunal cases. His view was that the existing lease values of the two comparables referred to before were the most suitable for the purposes of determining the short lease value. He confirmed that adjustments to be made would be in respect of time and lease length and also the condition of the property, its location, size and any outside space.

12. Making such adjustments as were appropriate he considered that 33 Stonesfield that sold for £118,000 in October need to be adjusted for time and doing so gave a sale price of £112,254. The other property at 13 Pebble Drive sold around the valuation date so did not require adjustments for time. That price was £115,000 and taking the average of those two gave, at the valuation date, an average of £113,627. However, the adjustments did not stop there because he had to make allowances for the fact that both these comparables had the benefit of small private patio areas which he considered would add to the value in the region of 10 to 12.5%. He made a deduction of 12% being £13,636 reducing the value on the short lease basis to £100,000 before deductions for the benefit of the Act.
13. Under that heading he referred us to the case of Earl Cadogan v Cadogan Square Limited and a number of other cases where various deductions had been made for the benefit of the Act. In all cases, however, those comparable authorities had shorter lease lengths. His view was that a formula could be relied upon which provides a deduction of 2.24% which he had rounded down in line with other reductions made giving a deduction, therefore, of 2% for the benefit of the Act thus reducing the existing lease value to £98,000.
14. By way of check, he considered the relativity between the freehold value and the short lease value to be 92.4% which he believed sat comfortably with the various graphs produced for properties for Greater London and England. There is no argument that marriage value applies and he thus reached the premium of £5,805.
15. He was cross examined by Mr Gallagher. However, this occurred after there had been a short adjournment to consider late evidence introduced by the Respondent. These were comparable properties which sought to show the potential value of the patio. In particular, a property at 4 Pebble Drive, Didcot was relied upon which had sold on a long lease on 31st March 2016 at £127,000. In addition, whilst the parties were considering this, the Tribunal had found a further comparable at 57 Worcester Drive, sold in March of 2016, it was said to be on a long lease at £116,500, without the benefit of a patio. There had been an objection by Mr Dunsin to the late introduction of these sales particulars for 4 Pebble Drive but it seemed that the valuers had discussed this property in December 2016, but for reasons that were not wholly clear had not included in their reports.
16. It appeared to be accepted that adjusted for time the value for Flat 4 Pebble Drive would be £124,789. Mr Dunsin further adjusted this by £4,789 for condition to give a long lease value of £120,000. If £15,000 were deducted for the patio this brought the property back to the same price as the subject flat was under offer for

in May of 2016. It is not said, however, that the £15,000 was agreed as a value for the patio.

17. Following the adjournment Mr Dunsin returned to give further oral evidence on the question of capitalisation rate, the extended lease, no act deductions, the existing lease and finally the premium. He told us that he considered a capitalisation rate of 6% was appropriate given the ground rent passing which increased only by RPI every 20 years, this having been agreed at £77 from the review for the remainder of the term although it appeared Mr McKeown had adopted a figure of £77 for the whole period. The price of £105,000 for the long lease had of course been agreed and he confirmed that he had not used 4 Pebble Drive to support the extended lease value because that element had already been agreed.
18. In respect of the existing lease value he confirmed it was proper he used graphs of relativity but in the case of Trustees of the Sloane Stanley Estate v Mundy [2016]UKUT0223(LC) the Tribunal there had set out the method for assessing relativity in future cases which was referred to at paragraphs 163 onwards and which he had utilised in relying on the market transactions for the two properties referred to before. On the question of the patio adjustment, he had considered that a 12% reduction was reasonable and explained also how he had determined the reduction in respect of no act world and relativity.
19. Cross examined by Mr Gallagher he said that he could not accept Mr McKeown's capitalisation rate of 5 or 5.5% and did not accept the relationship between high and low interest rates. He said he had not taken the change of interest rates into account. He was questioned about his use of PCL graphs for the purposes of calculating the no act rights when he had not used the same graphs for dealing with relativity.
20. On the question of short lease comparables he accepted that the outside space would add value and although there was no mathematical formula, his experience indicated a percentage figure of 12%. He accepted that the patio area was a good percentage of the interior floor area but it was difficult to put a figure on it. He conceded it could be more or less than 12%.
21. Mr Hemsell told us that he had financial responsibility to effect the sale of the Property, in effect that he was financially stretched and needed to conclude the transaction. No contract had been entered into.
22. We then heard from Mr McKeown but firstly asked him to explain his relationship with the Respondent as there was some concern on our part as to his impartiality. We were told that Mr McKeown deals with all statutory lease extensions for the Respondent but had no interest in the company as such. However, it was noted that Mr Paul Church, an accountant, had prepared a report which Mr McKeown produced with his expert's report and which was relied upon for the purposes of seeking to establish relativity. It appears that Mr Paul Church is the father of a Mrs Tamara Folkesson who is a Director of the Respondent Company. Furthermore, Mr Church's company CA Church Limited is a partner with Mr McKeown in his surveyor's practice and indeed Mr McKeown had been the Company Secretary of C A Church Limited but had resigned that role before he

had formed the partnership between his company and C A Church Limited. His report indicated there had not been any previous or material involvement between the surveyor McKeown & Co LLP and the Property. It makes no mention of the relationship between himself and Mr Church.

23. As with Mr Dunsin he had prepared a report which was dated 19th December 2016 and a valuation showing his calculation leading to a price for the premium of £13,555.
24. After describing the Property he moved on to the calculation of the premium confirming that the long lease value and freehold vacant possession value were agreed.
25. As regards existing lease values, he indicated that although he had sourced various shorter lease sales in the development, in his opinion there were too many adjustments to be made and fell back on the Upper Tribunal decision in the property of 20C Mount View Road which was Sarum Properties Limited v Webb and others under reference [2009]UKUT188(LC). At paragraph 28 of that decision consideration was given to calculations based on the existing lease value less the premium costs and a contingency. In his report Mr McKeown had accepted a long lease value of £105,000, deducted the premium that he had calculated would be payable for the lease, £13,555, deducted a further £5,000 for costs and contingencies giving an initial existing lease value of £86,445. He made a further deduction of 4.15% in respect of no act rights reducing the existing lease value without rights to £82,858. He had reached his 4.15% deduction by reference to an Upper Tribunal decision where a 2.5% had been deducted for 78 years and another Tribunal decision where 10% had been deducted for 44 years and applying a straight line between the two concluded that for a lease with a remaining term of 69.77 years 4.15% was reasonable. He had sought a capitalisation rate in his valuation of 5% although in the agreed terms it appeared to be 5.5%. There is no clear indication in his report as to why 5% had been adopted other than to say that he considered investors were paying a very high price for ground rent investments and that Stonesfield was a substantial block and would be attractive to an institutional investor.
26. In oral evidence he expanded somewhat on the capitalisation rate indicating that he thought from experience an investor would be paying for a 30-year purchase and did not consider an investor would “get a look in” at 6.0%. This was based on settlement evidence although no settlement evidence was in fact adduced.
27. As to existing lease values, he referred to the paper he had prepared and the Mount View case and did not see how the difference between long and short lease values could be as low as £5,000. He said that he adjusted the figures until he got “a figure that fits.” In fact, taking the freehold vacant possession value and his short lease value he agreed, gives a relativity of 78%.
28. Asked by Mr Dunsin whether any changes to the calculation of the short lease value could create something of a roundabout method he did not seem to accept that. It was put to him the model he suggested just did not work. On the question of his report, he confirmed this dealt with lease extensions, which he had utilised

his experience to create. It was, he said, meant to be a helpful tool. He accepted that it had not been tested by his peers or by any professional body.

29. Mr Gallagher then made submissions on the various aspects in the dispute. As to capitalisation rate he thought Mr McKeown's evidence should be preferred as a 30-year purchase was not unreasonable. It was a low interest rate environment which must be a factor. In respect of the no act rights deduction, we were referred to the Mundy case at paragraph 127. The Applicant in this case had morally sold the flat on the basis that it would be a lease extension before the valuation date and was financially bound to proceed and procure such an extension. The rights under the Act must, therefore, enhance the value and he, therefore, suggested that the figure put forward by Mr McKeown in this regard was appropriate.
30. The short lease comparables put forward by Mr Dunsin, he said, were all in need of an adjustment for the patio and that 12% may or may not be correct. There was no real evidence that provided assistance to the Tribunal on the question of the patio but the adjustment needed to be made which was quite substantial. He suggested that the valuation of £105,000 for the long lease value may be too low but we could not take that matter any further. He did not consider that the short lease comparables, having patios, as compared to the subject property were sufficiently reliable market evidence. He was critical of the graphs used by Mr Dunsin and suggested that Mr McKeown's research was exhibited and prayed in aid of his evidence. Mr McKeown, he said, is an independent expert, qualified surveyor and was objective. There was nothing to suggest that Mr McKeown had not complied with his duty to the Tribunal. This concluded the evidence.

THE LAW

31. The law applicable to this matter is contained at Section 48 of the Act and schedule 13 which we have applied.

FINDINGS

32. We record that the existing lease value has been agreed at £105,000 and the freehold vacant possession value at £106,060.
33. An area of dispute centred around the capitalisation rate. Mr Dunsin had suggested 6% and Mr McKeown 5% or 5.5%, depending upon the report or the statement of agreed facts. We consider that 6% is more representative. The ground rent is low, with limited potential and we do not consider this would be attractive to investors.
34. The next step we need to take is to consider the existing lease value. We did not accept Mr McKeown's arguments contained at paragraph 3 of his report. These were a circular argument and would be affected by whatever figure he decided to insert for the premium he had already calculated. Further, there was no real evidence to support the costs or contingency that he arrived at. As he said to us, he adjusted until he got the figure that fitted. In contrast, Mr Dunsin in his report had concluded that after taking into account the deduction for benefits of the Act he would achieve a short lease value of £98,000. This we consider is closer to the correct figure.

35. The position appears to be this. Mr Dunsin had concluded that the average of the short lease value using his two comparables at 13 Pebble Drive and 33 Stonesfield gave a figure of £113,627. We considered that the comparables at 57 Worcester Drive a first floor property and 4 Pebble Drive ground floor property with patio, provided us with some assistance on the value of the patio. Both we were told were sold with long leases. Pebble Drive sold at £127,000 and Worcester Drive at £116,500, both in March 2016. That would lead us to the conclusion, they needing no adjustments for time or it would seem condition, that the patio is worth around £10,500. Mr Dunsin had argued for a higher figure.
36. Accordingly, if we take the existing average lease values, £113,627 deduct £10,500 for the value of the patio and we accept Mr Dunsin's evidence of £2,000 for condition as these really are quite small bedsits, we come, rounded down to a figure of £100,000. As far as deductions for the no act rights are concerned, we are more persuaded by Mr McKeown's calculation at 4.15% based on a straight line graph. Mr Dunsin's appears to rely on the findings made by the Upper Tribunal in the Cadogan case where a table of relativity and deductions for rights was set out under paragraph 79. However, the unexpired terms were up to 50 years. In addition, the comparables that he relied on from the various cases had without exception shorter lease terms. It seems to us that it is not unreasonable to take the simplistic approach as adopted by Mr McKeown as in this case and to take a figure of 4% as being appropriate for no act rights. This, therefore, reduces the existing lease value for the purposes of the calculation and valuation to £96,000. If we include that within the valuation attached to this decision it leads to the premium for the lease extension of £6,806 which we find to be correct.

Andrew Dutton

Judge:

A A Dutton

Date: 15th February 2017

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

**25, Stonesfield
Didcot, Oxon
OX11 9RF**

Long Lease Value (Unimproved)	£105,000
Freehold Value (Unimproved)	£106,060
Existing Lease Value (Unimproved)	£96,000
Deferment Rate	5%
Capitalisation Rate	6%

Freeholder's Present Interest

Term

Term 1

Rent Reserved	£60
YP to 1st review 10.77 years @ 6%	<u>7.7684</u>

£466

Term 2

Rent Reserved	£77
YP to 2nd review 59 years @ 6%	16.1311
PV of £1 @ 6% in 10.77 years	<u>0.5339</u>

£663

Reversion

FH reversion	£106,060
PV of £1 in 69.77 years @ 5%	<u>0.03324</u>

£3,525

£4,654

less

Freeholder's Proposed Interest

FH reversion	£106,060
PV of £1 in 159.77 years @ 5%	<u>0.0004</u>

£42

£4,612

Marriage value

Proposed

Extended lease value	£105,000
FH in reversion	£42

less

Existing

Freeholder's Interest	£4,654
Short lease value	<u>£96,000</u>

Marriage Value

£4,388

50:50 division

£2,194

Premium for lease extension

£6,806

