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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL

Case Number: CAM/00MD/OLR/2006/0020

Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")

In the matter of: 319 Farnham Road, Farnham Royal, Slough, SL2 3HU.

Parties:	Maria Gumbs	Applicant
	Jeffrey Matthey	Respondent

Representatives:
Mr John Geraint Evans BSc(Hons) MSt (Cantab), Dip Surv, FRICS for the Applicant

Mr Laurence Nesbitt BSc(Hons) FRICS MCI Arb for the Respondent

Hearing Date: 29th September 2006.

Tribunal members:

Mrs H Bowers	MRICS
Mr G R Petty	FRICS
Mr J J Sims	LLB LLM

Decision Date: 9th November 2006

1. Introduction

1.1 This matter relates to 319 Farnham Road, Farnham Royal, Slough (the subject property) and an application pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

1.2 On 16th December 2005, Maria Irene Gumbs served a notice on Alan Matthey and Stephen Matthey under section 42 of the Act. The premium proposed in the initial notice was £13,250. A counter-notice was served on 23rd December 2005 by Jeffrey Matthey, as the Reversioner that recognised the Applicant's right to acquire a new lease and proposing a premium of £26,500. An application was made on the 9th May 2006 to the Tribunal to determine the terms of acquisition that were in dispute between the parties.

2. The Law

2.1 Chapter II of the Act sets out the provisions for the grant of a new lease and in particular Section 56 provides for a new lease of a flat to be granted for a term expiring 90 years after the expiry of the current lease and at a peppercorn rent. Schedule 13 of the Act sets out the provisions for the calculation of the premium that is payable in respect of the grant of a new lease.

3. Inspection

3.1 Shortly prior to the hearing the Tribunal had the opportunity to carry out an inspection of the interior and exterior of the subject property. The property is a ground floor maisonette situated in a purpose built block of maisonettes. The two storey block is of brick and part rendered construction under a tiled roof and would appear to date from the 1930's. The accommodation comprises a kitchen, living room, three bedrooms and a bathroom. The property has central heating and the benefit of UPVc double glazed windows.

3.2 Externally there is a small front garden that is included in the lease with the maisonette. There is a concrete driveway to the side of the maisonettes and although this appears to be blocked off, we understand that there are rights of access over this land in the lease for the subject property. There is a

small access road at the rear of the block that gives access to a block of garages. One of the garages is included in the lease with the subject property.

4. The Lease

4.1 In the papers submitted to the Tribunal, there was a copy of the lease. The lease is dated 11th May 1956 and is between Lithgoy Estates Limited, as the Lessor and Jack Stoger as the Lessee. The lease is for a term of 99 years from 25th March 1956 at an annual rent of £8.40, without review. Various terms in the lease are the subject of this application and will be considered in more detail below.

5. Agreed Matters

5.1 Mr Evans and Mr Nesbit, the Valuers representing Ms Gumbs and Mr Matthey respectively, provided an agreed statement of facts in which amongst other issues, the following matters have been agreed:

- i) The Extended Lease Value of the property, unimproved is £125,000.
- ii) The discount rate to be applied for the capitalisation and deferment is 5%.
- iii) The ground rent of £8.40 per annum, fixed for the current term.
- iv) The valuation costs of £400 plus VAT was agreed.

6. Matters in Dispute

6.1 The following issues are still unresolved and were brought to the Tribunal for our consideration:

- i) The relativity between the Extended Lease Value and the Value of the Current Leasehold Interest.
- ii) Accordingly the premium to be paid for the acquisition of a new lease.
- iii) Various proposed amendments to the current lease.
- iv) Legal costs under section 60 of the Act.

7 Hearing

7.1 A hearing was held on 29th September 2006 at the Slough Borough Town Hall, in Slough. Both of the Experts had produced a report and we were referred to these documents. A summary of each case is set out below with

reference to submissions given at the hearing and the contents of the reports. At the start of the hearing it was confirmed that the value of the diminution of the Freeholder's interest was agreed at £11,370.

8. Terms of the Lease

8.1 Mr Chowdrey expressed the view that the terms of the current lease render the subject property unmortgageable. The only covenant in respect of the Lessor is to give quiet enjoyment to the Lessee. The current wording has no provision for the insurance of the Building and repair of the Building and the common parts. Such a lease would not comply with the recommendations of the Council of Mortgage Lenders Handbook. It was considered that the proposed amendments would be of benefit to the Respondent and would bring the lease into a modern format. In respect of other leases in the block and particularly 321 Farnham Road, it is anticipated that this would be up for renewal at some stage in the future and appropriate amendments could be inserted. To overcome the existing problems in the lease the Applicants have proposed that the following clauses should be inserted:

"3.4

3.4.1 There shall be granted or confirmed(as the case may be) to the Lessee by the Lessor the following rights:

- (a) a right of way at all times with and without vehicles along and across the roadway delineated and coloured brown on the Plan subject as provided in the Lease and
- (b) a right of way at all times on foot only across the area delineated and coloured blue on the Plan
- (c) a right of support and shelter from the rest of the Building

3.4.2 The Lessor covenants with the Lessee:

- (a) To repair and keep in repair the main structural parts and the roof of the Building, the areas delineated and coloured brown and blue on the Plan and the pipes wires drains and sewers which serve the Property or to procure that the same is effected
- (b) That if and so long as any flat in the Building is unlet the Lessor will observe and perform in respect of the unlet flat covenants similar in all material respects to those contained in this Lease on the part of the Lessee

(c) To require every person to whom a Lease to any flat in the Building is granted to agree to observe covenants and restrictions similar in all material respects to those contained in this Lease on the part of the Lessee and must ensure that any sub-lease of any flat in the Building contains agreements on the part of the sub-tenant similar in all material respects to those contained in this Lease

(d) If so requested by the Lessee to enforce the covenants on the part of the Lessee of any flat in the Building provided that the Lessee must reimburse the Lessor for all costs and expenses of the enforcement and provide whatever security for costs and expenses the Lessor reasonably requires

(e) To keep the Building insured with a reputable Insurance Office to be stipulated by the Lessor against loss or damage by fire aircraft explosion storm tempest and (so far as is insurable) act of war or accident or by any other peril within the usual comprehensive policy of the insurers to the full costs of rebuilding plus ten per centum for professional fees and shall make all payments necessary for those purposes within fourteen days after they become payable and shall supply a copy of and produce to the Lessee on demand the policy and latest schedule of insurance and the receipt for the latest premium and shall as often as the Building is destroyed or damaged by fire aircraft or any other insured peril as soon as practical rebuild or reinstate the Building in accordance with the bye-laws regulations and planning or development schemes of any competent Authority and apply all such monies received (and any further sum as may be necessary out of its own resources) to the rebuilding or reinstatement of the Building and in respect of any other flat in the Building to procure compliance by the Tenant of that flat with a similar covenant in the lease of that flat or to procure that the Building is so insured.

3.4.3

(a) The Lessee covenants with the Lessor to contribute one quarter of the reasonable costs incurred by the Lessor or on his behalf in repairing the main structural parts and the roof of the Building and the area delineated and coloured blue on the Plan

(b) The Lessee covenants with the Lessor to pay within 14 days of demand from the Lessor one quarter of the premium paid in complying with 3.4.2(e) above PROVIDED ALWAYS that the premium must be reasonable.”

8.2 Mr Chowdrey referred the Tribunal to Section 57(6)(b) in particular and to the relevant paragraphs in Hague on Leasehold Enfranchisement. It was suggested that due to changes in conveyancing practices since the grant of the original lease that the new clauses were necessary and such a scenario was envisaged in the provisions of section 57(6)(b) of the Act.

8.3 The Respondents stated that the reference to rights granted in the lease in clauses 3.3 and 3.4.1 should be as contained in the original lease and that in particular as to the right to shelter, the Respondent would not be able to grant this new right as there would be no corresponding provisions in the lease for 321 Farnham Road, the upper maisonette. With respect to the covenants in clause 3.4.2, the Respondents are of the opinion that the interpretation of “defect” in section 57(6) of the Act should be construed strictly and that terms of a lease should not be altered purely on the grounds that they are to modernise a lease or that the amendments are desirable. It is also stated that in their opinion the Tribunal will not impose obligations onto a landlord where that would create a financial shortfall to the landlord. An additional point in respect of clause 3.4.3 is that although the Applicant currently enjoys rights of way in respect of the “blue area”, there are currently no obligations on the landlord to maintain these areas. Overall their opinion is that the amendments suggested by the Applicant are not defects but merely desirable alterations. It was also pointed out that these issues were not raised in the initial notice.

9 Relativity

9.1 Mr Evans was of the opinion that the relativity to be adopted in this case should be 87% and this would produce a current lease value of £108,750. Mr Evans stated that he was frustrated by the lack of any market evidence and therefore he was obliged to rely upon previous LVT decisions, from academic data and from his own personal experience. In 16 Dugdale

Hill Lane, Potters Bar, a relativity of 85% was determined and the Tribunal in that case stated that there was little difference in value between unexpired terms of 48 and 57.75 years. In an LVT decision for 7 Woodside, Walton on the Naze, in which there was an unexpired term of 59.5 years it was determined that there was no distinction for the long and short lease values. Other cases showed relativity ranging from 83% to 89% for terms between 45 and 55 years. Reference was made to the College of Estate Management (CEM) research document into relativity that was conducted in August 2000. This research based on all LVT decisions up to 1999, and excluding London LVT decisions, indicates that relativity should be about 86.25% for the unexpired term in the subject lease. Using this as a base and then making a small adjustment for changes in elasticity of supply and demand since the report accounts for the adopted rate of 87%. Finally, Mr Evans states that using a rule of thumb of ½% for each year under 80 years unexpired would come to a figure close to 87%. Placing these figures into his valuation, Mr Evans calculated that the premium to be paid in this case should be £13,810 (this reflects Mr Evans agreement at the hearing that the valuation of the freeholder's diminution is £11,370).

9.2 Mr Nesbitt also acknowledged the problems of obtaining any market evidence. He also relied upon LVT decisions and provided details of four cases with unexpired terms of between 54.4 years and 57 years and the relativities ranged from 80% to 83%. With the subject property having a term of 49.4 years unexpired Mr Nesbitt was of the opinion that the relativity to be adopted in this case should be 75%. As a cross check Mr Nesbitt reproduced a copy of the "graph of graphs" prepared by Messrs Beckett & Kaye and this shows a range of between 68% and 80.5% for a term of 49.4 years unexpired. By adopting a relativity of 75% this produced a premium of £21,240.

10. Legal Costs

10.1 At the hearing the parties indicated that no agreement had been reached in respect of the legal costs recoverable under Section 60 of the Act. It was agreed that the parties would send in written representations on this issue for the Tribunal to consider.

10.2 In a letter dated 9th October 2006, The Alan Matthey Group indicated that the legal work had been undertaken by a Mrs Sandler, a senior in-house solicitor. One and half hours had been spent on the consideration of the initial notice and investigation of the leasehold title. It was stated that the length of time reflected the fact that the initial notice had been defective. In respect of the preparation of the draft lease and responding to questions in relation to the draft, a further three hours had been expended and it was anticipated that a further two hours was needed to complete this matter. This gives a total time expended on this matter of six and half hours. In subsequent correspondence it was indicated that the relevant charge out rate was £145 per hour, this was based on a rate of £95 per hour being Mrs Sandler's rate of pay and £50 per hour for overheads. It was stated that it was reasonable to use in-house resources and there had been previous LVT decisions that had allowed these costs.

10.3 The Applicants indicated in their response to this correspondence that a property company should not make a profit from supplying the legal services of an in-house solicitor. They made no comment in respect of the number of hours spent or to be spent on this matter. There were no further comments made on the hourly rate suggested by the Respondents.

11. Determination

11.1 In respect of the proposed lease amendments the Tribunal are of the opinion that all the suggested alterations in clause 3.4.1(a) and (b) are rights that already exist in the current lease and their duplication is not necessary. In respect of clause 3.4.1(c) the right of support is in the current lease and this does not need to be duplicated. The question arises in respect of the right of shelter as this goes beyond what is currently offered. We consider that there are there two aspects of to this issue. First we must look at the provision of section 57(6) to determine whether the proposed alterations are covered. In the opinion of the Tribunal there should be a strict interpretation of this section and the changes that are envisaged by this section relate to such factors such as physical changes to the property and not to changes in conveyancing practice. We feel that there are many leases that are defective and there are

other solutions to these issues, which are beyond our remit here. On a practical point the changes requested would have an implication upon other leases in the Building and it would seem impractical to deal with these suggested alterations in isolation to the leases of the other flats.

11.3 Turning to clause 3.4.2 and clause 3.4.3, in the opinion of the Tribunal the addition of these clauses may be seen as being desirable but the lack of these clauses in the original lease would not be seen as a defect under the provisions of section 57(6). The inclusion of some of these clauses would have a financial impact on the landlord and they would not necessarily be able to obtain full compensation from other lessees in the Building. As mentioned in paragraph 11.2 some of the suggested alterations have an impact upon other leases in the building, which would be impractical to implement. In conclusion it is the view of the Tribunal that the Applicants have not shown that the provisions of section 57(6) are satisfied and therefore these proposed clauses should be removed from the new lease.

11.4 On the question of relativity both Experts presented LVT decisions that supported their opinion as to the level of relativity to be adopted. No clear pattern emerged from these decisions and some of the decisions appeared to be contradictory. We noted in particular the decisions in Potters Bar and Walton the Naze, but we do not necessarily agree with those comments. It seems entirely logical to us that the market would make a distinction of leases as their terms diminish below say 60 years unexpired, and without the benefit of the rights granted by this Act, the value of such a leases would deteriorate at a greater rate. As to the rule of thumb used by Mr Evans, whilst we agree that under statute we are not allowed to include any marriage value for lease terms in excess of 80 years, we are of the opinion that a lease of 80 years would be perceived in the market to be of less value than a lease in excess of 125 years. We noted that the CEM graph was produced in 2000 and that the "graph of graphs" presented by Mr Nesbitt included various sources of data and in particular data from LEASE in respect of LVT decisions up to 2006. This is a subjective matter and the evidence presented by both sides is inconclusive, in these circumstances we have considered all matters and

relied upon our own knowledge and experience, having done so, we are of the opinion that in this case the relativity should be 80%. This is within the range of the "graph of graphs" produced by Mr Nesbitt.

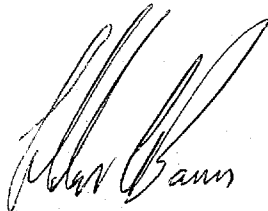
11.3 In respect of the issue that the Respondent should not make a profit from the use of their in-house legal resources, the Tribunal are of the opinion that reasonable costs would come within the scheme of section 60, and that if in-house resources had not been used then the Respondent would have been obliged to use external resources, which may have been more expensive. The time spent in dealing with this matter is an "opportunity cost" to the Respondent and it would not seem reasonable that these costs not be recovered. The Tribunal are of the opinion that both the time expected to be spent on this matter and the hourly rate of £145 are reasonable. Accordingly the Tribunal determine that the legal costs under section 60 to be £942.50.

12. Decision

12.1 The alterations to the lease terms suggested by the Applicant are not to be inserted into the new lease.

12.2 The relativity is determined at 80%. Accordingly the Tribunals determination of the premium to be paid for the extended lease is £18,185 and the valuation is shown in Appendix 1.

12.3 Legal costs under section 60 are £942.50.



Chairman

Helen C Bowers

Date

12/11/06

Appendix 1

Tribunal's Valuation

Valuation of 319 Farnham Road
Freeholder's Current Interest

Ground Rent £8.40 per annum
YP for 49.4 yrs @ 5% 18.2041

£153

Reversion to £125,000
PV of £1 in 49.4 yrs @5% 0.090

£11,217
£11,370

Marriage Value

Value of Extended Lease £125,000

Less

Landlord's Current Interest £11,370

Lessee's Current Interest £100,000

£111,370

Marriage Value £13,630

50% of Marriage Value

£6,815

£18,185

Premium Payable for a New Lease

£18,185