

**IN THE LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT
ASSESSMENT PANEL**

**IN THE MATTER OF AN APPLICATION UNDER SECTION 48 OF THE
LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No : CAM/26UK/OLR/2007/0073

Property : 34 Pretoria Road , Watford, Hertfordshire, WD18 0RL

Applicant : Angela Lorraine Neale

Respondent : Twinsectra Limited

Date of Inspection : 29th January 2008

Date of Hearing : 29th January 2008

Members of the Tribunal : Mr Stephen Reeder LLB (lawyer chairman)
Miss Marina Krisko BSc (Est Man) BA FRICS
Mr Roland Thomas MRICS

Date of Decision : 5th February 2008

The application

1. This is an application under section 48 of the Leasehold Reform, Housing & Urban Development Act 1993¹ (referred to in this decision as “the 1993 Act”) by Angela Lorraine Neale (referred to in this decision as “the applicant”) for the determination of the rights of acquisition relating to an extension of the leasehold interest in 34 Pretoria Road, Watford, Hertfordshire (referred to in this decision as “the premises”).

The lease & the parties

¹ as amended by the Housing Act 1996 and the Commonhold & Leasehold Reform Act 2002

2. In February 2003 the applicant acquired a leasehold interest in the premises. There is no dispute that she is a qualifying leaseholder. Twinsectra Limited (referred to in this decision as “the respondent”) are the freehold owner of the immediate reversionary interest in the premises. There is no dispute that they are the competent owner for the purposes of the lease extension.
3. The lease was provided to the Tribunal.

The premises

4. The premises are held on a lease for a term of 99 years from 29th September 1987 at a ground rent of £45p/a for the first 25 years thereafter increasing by the sum of £45 for each period of 25 years thereafter. The premises comprise a purpose built flat on the ground floor of a small block of four flats constructed in the 1980's. They are located in a residential street to the west of Watford town centre affording ready access to town centre amenities. They provide one bedroom, combined kitchen/reception room, a combined bathroom/WC and an entrance hall. To the right of the block is a car parking forecourt. To the rear of the block is a garden area. The premises provide use of a car parking space on the forecourt and use of the front right-hand side quarter of the rear garden.

The application

5. On 19th February 2007 the applicant gave notice of her claim to exercise her right to a lease extension to the respondent pursuant to section 42 of the 1993 Act. She proposed a premium of £1,492.50 and that the terms for the new lease be the same as for the existing save for the term extension of 90 years and the peppercorn ground rent.
6. By counter-notice served pursuant to section 45 of the 1993 Act and dated 26th April 2007 the respondent did not accept any of the applicant's proposals and countered with a premium proposal of £6,000. No counterproposals were made in relation to lease terms or ground rent.
7. Agreement was not reached. Application was made to this Tribunal on 22nd October 2007 for determination of the premium, lease terms and costs.
8. The parties subsequently agreed the right to a lease extension, the form of the deed of variation/surrender and re-grant, and the terms of the lease. This was concluded by an exchange of correspondence concluding in the respondent's letter dated 14th January 2008 and applicant's letter of 16th January 2008 which were produced at the hearing by the applicant.

Issues for determination by the Tribunal

9. The issues for the Tribunal to determine are –

- (i) the premium to be paid by the applicant for the respondent's interest in the premises ; and
- (ii) the surveyor/valuer and legal costs payable.

Summary of the Tribunal's Decision

- 10. The Tribunal determines the premium payable as £3,565.00
- 11. The Tribunal determines the valuation costs payable as £400 plus VAT
- 12. The Tribunal determines the legal costs payable as £537 plus VAT.

Reasons

Inspection of the premises

- 13. On 29th January 2008, before the commencement of the hearing, the Tribunal inspected the premises, the block of which it forms a part, and its immediate vicinity. The applicant attended the inspection. The respondent did not attend. The resident tenant gave full and helpful access.
- 14. The premises were found as described at paragraph 3 above. Construction, finishes and external decorations were noted to be of a poor standard. Windows were dilapidated with water penetrating causing damage to the frames and cills. The only space heating comprised storage heaters in the kitchen/living room and bedroom. One was not working. The boundary wall to the front remained in pieces. The parking spaces were ad hoc and unmarked. Dustbins, recycling boxes, refuse and discarded household items littered the parking area. The rear garden was overgrown with a dilapidated shed and no demarcation of individual portions for use by the 4 flats in the block. The external view of the block and immediate surroundings was materially unattractive.

The Hearing & the Evidence

- 15. The hearing was listed for 11am. It was attended by the applicant who acted in person. The respondent did not attend. No prior notification of non-attendance had been received. The clerk to the Tribunal telephoned the respondent's solicitors and talked to "Natasha". Mr Holder, the fee earner with conduct was in a meeting. They were reminded of the hearing date and time. Natasha gave the clerk a mobile telephone number for the respondent's surveyor/valuer Mr Nesbitt. This number rang to an answerphone. The clerk left a message. No reply was received. A further telephone call to the respondent's solicitors was

made. Natasha had also left a message on Mr Nesbitt's answerphone. She had received no reply. There was no further reply by Mr Nesbitt or the respondent's solicitors. The hearing commenced at 11.30am.

The applicant's case

16. The applicant argued in her statement of case and witness statement for a present value of £135,000 before extension. Her witness statement did not address the value of the new lease, relativity, the term yield or the reversion yield. Nor does it address the application of the decision of the Court of Appeal in *Earl Cadogan & Cadogan Estates v Michele Francesco Sportelli & Others* [2007] EWCA 1042 to the deferment rate/ reversion yield.
17. However, in her opening statement the applicant challenged the respondent's valuation and deferment rate as too high. She relied upon her own witness statement and valuation evidence, and developed her arguments orally before the Tribunal. These points had not been raised earlier and, as the respondent did not attend the hearing, it did not reply on them. As a result the Tribunal took particular care to test and consider the points raised.
18. The applicant relied upon a letter from Messrs Iain Andrews, estate agents, dated 14th January 2008 and advising a marketing price of £140,000 for 34 Pretoria Road with an anticipated sale price "somewhere close to this figure". The applicant stated that the agent had reported he could sell it in its present state with its existing lease for £135,000. The applicant contended that the extended lease value would be in the region £138,000 - £139,000 and that £140,000 was "not way off the mark".
19. She relied upon her own experience of purchasing thirteen one bedroom flats in Watford since 2000 to determine the present value of the premises and resulting knowledge of values in the West Watford area. Four were in West Watford and the remainder in Central Watford. She checked properties and values in the local press every few days. She received estate agents particulars 2 or 3 times each week.
20. The applicant offered a comparable property by an undated memorandum of proposed sale from Messrs Watford Estates in respect of 10 Islay House, Scammel Way, Watford for an agreed sale price of £144,000. The applicant described this as a well managed and well kept block with a pleasing aspect. It was constructed in the 1990's. The lease was 80 years plus. She was not aware whether it offered central heating.
21. She offered a further comparable in an email from Messrs Iain Andrews, estate agents, dated 11th January 2008 attaching sale particulars for a property in 42A Durban Road West, Watford offered for sale at £149,950 leasehold. This detailed a ground floor one bed flat in West Watford with a modern, separate kitchen and central heating. The property had a car parking space and communal rear garden. The unexpired term on the lease was 85 years. The location is near to these premises in Pretoria Road.

22. The applicant offered a further comparable in an email from Messrs 'Your Move' estate agents, dated 16th January 2008 and attaching sale particulars for a property in Whippendell Road, West Watford together with confirmation that a sale had been agreed at £139,000. On 16th January 2008 the agent had confirmed by telephone that contracts had not yet been exchanged. This is a one bed purpose built flat with gas central heating, double glazing and a parking space. This property is located near to Pretoria Road but at the busier 'Croxley Green' end of Whippendell Road.
23. She referred to a mortgage offer she had received from Birmingham Midshires BS dated 16th January 2008 in respect of 15c Gladstone Road, West Watford giving a valuation of £135,000. The applicant described this as having a better location and its own rear garden. It is a basement flat in a converted Victorian terraced house. The railway line runs close behind.
24. The applicant also provided sale particulars from Messrs Connells for 57a Gladstone Road, West Watford describing it as a one bed flat on the top floor of a converted two storey Victorian house. It is offered for sale at £144,950. The applicant stated that a sale was agreed for £140,000 but fell through. The property had been on the market from many weeks by January. It was presently withdrawn from the market.
25. The applicant had produced for the bundle a number of photographs showing a wall to the front of the block which has fallen down, refuse and large items such as a bed left to the side of the block, and the poor state of the communal bins and recycling boxes outside of the block. The Tribunal took the time to inspect the state of the immediate vicinity during its inspection of the premises and found it corresponded with the photographs.
26. The applicant argued that the prices in West Watford, including Pretoria Road, were lower than other parts including central Watford and those districts to the other side of the ring road. Owner occupation is not so prevalent in West Watford and there is a more multi-cultural community with numerous shops serving ethnic community groups.
27. She argued that the poor state of the communal/ external parts would make the premises less attractive to buyers. She also identified that the premises had no central heating and that the windows required upgrading. She stated that mould growth to internal walls had recently been cleaned away.
28. In the hearing the applicant conceded that in the circumstances of the case there should be a differential between the present and extended lease value of the premises and submitted figures of £135,000 and £138,000 respectively on the basis that the issue is largely immaterial to most prospective purchasers and the market produces a differential of only approximately 2%.
29. In the hearing the applicant accepted the remaining term and term yield figures as stated in the valuation report by Mr Nesbitt for the respondent.

30. In relation to the deferment rate & reversion yield she argued that, after *Sportelli*, the generic deferment rate of 5% should not be adopted and that a rate of 6.5 - 7% was appropriate in this case. In support of this proposition she argued that the property was not located in the Prime Central London area ('the PCL') and was located in West Watford rather than Central Watford or other prime locations. She argued that 34 Pretoria Road was not prime property and was not very easily rentable or saleable due to its poor 1980's construction, lack of central heating, and poor external surroundings. To support her contention she produced a November 2005 LVT decision (KAM/00ME/OLR/2005/0022&23) relating to Sycamore Court in Windsor which determined a 7% deferment rate, and statistical materials available from the HBOS website summarising the house price index in, *inter alia*, Watford and London for periods including 1992 to 2007.

The respondent's case

31. The respondent's counter-notice dated 26th April 2007 proposed a premium of £6,000. It was only on 21st January 2008 that the respondent produced a valuation report from Laurence Nesbitt BSc(Hons) FRICS MCI Arb. The Tribunal were content that Mr Nesbitt's qualifications and experience entitled him to put forward his expert opinion. He had inspected the premises on 24th April 2007 and produced his report on 25th April 2007. There is no material dispute about the premises, its state or location. He takes the capital value of the flat as £150,000. To determine the value of the premises as held on the 79.61 years unexpired he applies a relativity rate of 96%. He applies a deferment rate of 5%. He arrives at a premium payable of £5,109.
32. On 24th January 2008 the respondent filed and served a witness statement from Mr Nesbitt which annexed a re-drawn valuation report. He addressed the capital value and percentage yield as the only two matters remaining in dispute to determine the premium. He accepted a capital value of £140,000 and reasoned his application of a relativity rate of 96% and deferment rate of 5%. His statement considers at length the application of the *Sportelli* decision. He argues that the generic 5% deferment rate should be applied. He states that there is no reason for adjustment in the risk premium. He states that the premises are generally easily maintainable and at no greater risk of obsolescence than the *Sportelli* properties. He further states that no adjustment is required to reflect a different rate of growth in capital values between Watford and the PCL/*Sportelli* areas. Curiously, and presumably by oversight, he relies upon Land Registry HPI statistics for the period April 2000 to November 2007 for Kensington & Chelsea RBC and Herefordshire Council.
33. On this basis he arrives at a premium payable of £4,800.
34. The Tribunal did not have the benefit of attendance from Mr Nesbitt or from the respondent in any form. As a result the Tribunal took particular care to consider the content of Mr Nesbitt's valuation report, his witness statement with re-drawn valuation report, and the supporting materials he provided.

The Tribunal's decision

35. Section 39 of the 1993 Act as amended provides that a qualifying tenant has the right to acquire a new lease on payment of a premium determined in accordance with Chapter II of the Act. Section 56 of the Act sets out the obligation to grant a new lease and provides the payment of the premium. Part II of Schedule 13 to the Act sets out the provisions for calculating the premium payable. Section 48 of the Act provides for an application to this Tribunal where any of the terms of acquisition, including the premium, are in dispute.
36. The only matters in dispute before the Tribunal were the premium and the costs payable in relation to the new lease. Section 91 of the Act provides that this Tribunal has jurisdiction to determine both matters.

The premium payable

37. There was no dispute that the valuation date is 19th February 2007. The Tribunal determines this date to be correct.
38. There was no dispute that the unexpired term is 79.61 years. The Tribunal determines this term to be correct.
39. There was no dispute that the ground rent is £45 for the first 25 years then increasing by £45 for each period of 25 years thereafter. The Tribunal determines that this is correct. However, it is noted that the lease is actually for a total of 99 years. Therefore, the calculation of the ground rent has been made on a final period of 24 years only.
40. In relation to both matters in dispute the Tribunal had careful regard to all of the evidence and argument received in writing, by inspection and at the hearing, and applied the members' knowledge and experience as an expert Tribunal.
41. The Tribunal determines the value of the extended leasehold interest at £139,000. Regard was had to the comparables offered which were all for leases in excess of 80 years remaining. These ranged from a mortgage valuation of £135,000 to an unsold property at £149,950. Bearing in mind the differences in location, quality of building, facilities being offered and that demand for property in the general Watford area has maintained without material change since the date of the applicant's notice in February 2007, the Tribunal determines a value of £139,000. No actual sales evidence of leases under 80 years was produced. However the applicant accepted that a differential would exist and had stated that an agent expected to be able to sell the existing lease at £135,000. Having careful regard to this and to all the other evidence received, the Tribunal determines the value of the existing interest at £135,000. We note that this falls approximately mid-way between the parties' respective contentions. The £4000 difference equates to a relativity of 97.12%.

42. The Tribunal determines the term yield at 7%. This is secure investment with the lessor's obligations reduced by the comprehensive lessee covenants contained in the lease.
43. We considered carefully the application of the decision in *Sportelli*. Although the premises are located outside of the PCL area our starting point is to apply the 5% generic deferment rate. *Sportelli* permits departure from that generic rate where the evidence before us justifies an adjustment to reflect regional or local differences and/or property condition and obsolescence and/or exceptional management difficulties which are not fully reflected in the vacant possession value and result in a materially different risk premium for the premises. The construction, finishes and external decorations are very poor such that dilapidation is inevitable without above average maintenance and repair. The lease imposes a full internal and external repairing and decorating covenant on the lessee. The same arrangement applies to the other 3 flats in the block. The premises fall at the least expensive end of the one bed smaller lettings market for this area. There is no impetus to maintain. It is apparent from inspection that there is in fact little or no maintenance. There is every likelihood that such dilapidation will lead to early obsolescence. This is borne out by the conditions seen at the inspection as summarised in paragraphs 3 & 13 above. In such circumstances the reversion is likely to be a seriously dilapidated property. The West Watford area is not PCL nor indeed prime Watford. Mr Nesbitt's statistical evidence was of little use given the erroneous use of Herefordshire statistics when we are considering Watford in Herefordshire. The HBOS HPI statistics were of some use although the Tribunal are cautious about the reliability of short periods with a uniform starting date when seeking a reliable indication of long term movement in values. The Seymour Court LVT decision produced by the applicant was not given great weight. It was given before the Court of Appeal decision in *Sportelli* and we are mindful that any departure from the generic rate must be determined carefully on its own facts and evidence. Accordingly, we have careful regard to all of the materials and arguments before us and our own knowledge and experience as an expert Tribunal. We are satisfied that it is proper to depart from the generic deferment rate adopted in *Sportelli* as the added risk factors properly increase the rate applicable. The Tribunal determines the reversion yield at 5.5%.
44. The Tribunal calculates the appropriate premium payable for the Respondent's interest in the premises to be £3,565.00. The Valuation Calculation is attached.

Costs

45. Section 60 of the 1993 Act provides that the applicant is liable for the reasonable costs of and incidental to the valuation obtained for the purpose of fixing the premium and legal costs referable to the grant of the new lease.

Valuation costs

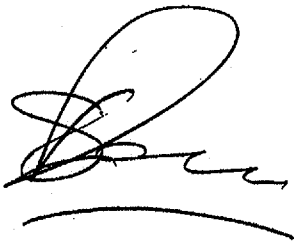
46. The respondent's only reference to costs in their written materials is contained in the witness statement of Mr Nesbitt. At paragraphs 6.0 & 6.1 he refers to an attached fee invoice which in fact is not attached to the copies filed with the Tribunal and served on the applicant. Costs claimed comprise 3 hours work at a rate of £200 p/hour plus VAT ; totalling £600. It is unclear whether this covers all of his work : inspection, valuation report and witness statement.
47. The applicant's witness statement pre-dated Mr Nesbitt's statement but concedes that a sum of £450-500 plus VAT for the 'initial report' of a surveyor/valuer would be reasonable. At the hearing she indicated that Mr Nesbitt was the 'usual' surveyor used by the respondent.
48. The Tribunal determines that it is reasonable for the respondent to use Mr Nesbitt on this relatively simple case despite his extensive qualifications and experience. The latter is reflected in his high hourly rate but it follows that we also allow this rate.
49. In the absence of Mr Nesbitt, the invoice referred to in his witness statement, or any other useful materials on costs the Tribunal must do the best it can. We allow 1 hour for the inspection including travelling. We allow one hour for preparation of the valuation report dated April 2007. In the absence of any supporting materials or argument we conclude that the witness statement and re-drawn valuation report dated January 2008 are referable to the LVT and do not allow any costs relating to those items.
50. Accordingly, the Tribunal allows the costs of and incidental to the valuation at the rate of 2 hours at £200 per hour plus VAT ; totalling £400 + VAT.

Legal costs

51. The respondent has acted by Messrs SLP Solicitors. The applicant's witness statement conceded that a sum of £500 plus VAT would be reasonable for legal costs. The Respondent failed to provide the Tribunal with any supporting materials on this issue. Again, the Tribunal is left to do the best it can on the materials before it.
52. The appellant is herself a solicitor and partner engaged in residential property work. She very fairly indicated that her hourly charging rate is £230 plus VAT. She very fairly conceded that such a rate for the respondent's solicitors would be high but not unreasonably so. The Tribunal determined to allow a rate of £230 per hour plus VAT.
53. In relation to the time spent investigating the appellant's right to the lease extension that right is granted by the 1993 Act. With her section 42 notice the appellant served on the respondent a copy of the lease and the Land Registry entry recording her interest. The only work required was to check both

documents and the terms of the right granted by the 1993 Act. We allow twenty minutes : £77 plus VAT.

54. The Deed of Variation was prepared by the respondent. It is common practice to use a template adapted for the individual case. The lease terms will have been considered and imported into the draft Deed as appropriate. We allow one hour : £230 plus VAT.
55. The *inter partes* work comprises a number of telephone calls together with approximately 10 letters in and 10 out, with only two of any length. We allow one hour: £230 plus VAT.
56. Accordingly, the total legal costs allowed comprise 2 hours 20 minutes at £230 per hour: £537 plus VAT. The Tribunal notes that the respondent failed to deliver any substantive reply to applicant's proposal for the case to be determined paper dated 18th December 2007 and then failed to attend the hearing without prior notice or any explanation. We have not reflected that unfortunate conduct in the costs order on this occasion.



Stephen Reeder
Chairman

5th February 2008

LVT Valuation – 34 Pretoria Road, Watford, WD18 0RL

Matters Determined

Valuation date	19.02.07
Unexpired Term	79.61 years
Ground Rents	£ 45.00 pa
	£ 90.00 pa
	£135.00 pa
	£180.00 pa

(£45 per annum for the first 25 years and thereafter increasing by the sum of £45 for each period of 25 years)

Value of unimproved extended leasehold interest of £139,000.

Value of existing unimproved leasehold interest £135,000.

Relativity 97.12%

Term yield 7%

Reversion Yield 5.5%

Value of landlords existing interest

Term

	£	£	£
As per respondents valuation		1,170.00	
Reversion			
Leaseholders extended lease	139,000.00		
PV of £1 @ 5.5% in 79.61 years			
0.0141		1,960.00	
Total			3,130.00

Marriage Value

Leaseholders' extended lease value	139,000.00		
Landlords' extended lease value	Nil		
Less		139,000.00	
Leaseholders' existing lease value	135,000.00		
Landlords' existing interest	3,130.00		
		138,130.00	
Total marriage value		870.00	
Landlords share of marriage value @ 50%			435.00
Premium Payable			3,565.00