

1949

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

BIR/00CR/OLR/2009/0116

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER SECTION 48 AND SECTION 60
OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT
1993 AS AMENDED

Applicants: Mr. D. R. Dulson (leaseholder)

Respondent: Sinclair Gardens Investments (Kensington) Limited
(freeholder)

Subject property: 113 Lyde Green, Halesowen, West Midlands, B63 2PS

Hearing: 8 February 2010

Appearances:

For the Applicants: Mr. N. Plotnek LLB

For the Respondent: Mr. L. A. Nesbitt FRICS

Members of the LVT: Mr. A .P. Bell MA LLB (Chair)
Mr. R.H. S. Cooper FRICS

Date of determination: **18 MAR 2010**

Introduction

1. This is a decision on an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended ("the 1993 Act") for the determination of the premium payable in respect of the grant of a 90 year extension of the lease of the subject property pursuant to Chapter II of Part I of the 1993 Act. The Applicant is Mr. D.R. Dulson, the leaseholder of the subject property. The Respondent is Sinclair Gardens Investments (Kensington) Limited, the freehold owner of the subject property.
2. The Respondent has owned the freehold reversion to the subject property at all material times. The Applicant holds the subject property under a lease dated 4 August 1978 for a term of 99 years from 29 September 1973 at a ground rent of £20 per year for the first 33 years, £45 for the next 33 years and £100 for the final 33 years.
3. On 2 July 2009 the Applicant gave a tenant's notice to the Respondent under section 42 of the 1993 Act claiming the right to acquire a new lease of his flat under the 1993 Act. On 25 August 2009 the Respondent gave a counter-notice under section 45 admitting the Applicant's right. On 27 November 2009 the Applicant made the present application to the Leasehold Valuation Tribunal.

Subject property

4. The subject property is a first floor flat in a purpose built three storey block and the accommodation comprises an entrance hall, living-room, kitchen, one double bedroom, a bathroom / wc. It also has a single garage beneath the building. The tenant's improvements identified by the parties are double glazing, gas central heating, refitted kitchen, refitted bathroom, fully tiled walls and floors and rewiring.

Inspection and hearing

5. The members of the Tribunal inspected the subject property on 8 February 2010.
6. The subsequent hearing was attended by Mr. N. Plotnek LLB representing the Applicant, and by Mr. L.A. Nesbitt FRICS representing the Respondent.

Representations of the parties

Agreed matters

7. The following matters are agreed by the parties:
 - the valuation date is 2 July 2009
 - the unexpired term at the valuation date is 63.2 years
 - the marriage value is shared equally
 - the yield rate to be applied in capitalising the ground rent is 7%

Matters in dispute

8. Since both parties have applied the same established formula to determine the premium payable for the extended lease, the three matters that remain in dispute between the parties and which have been left to the Tribunal to determine are namely:
 - the appropriate deferment rate to be applied in calculating the value of the landlord's reversion
 - the value of the existing lease at the date of valuation.
 - the value of the extended lease at the date of valuation.
9. Mr. Plotnek, on behalf of the Applicant, adopted a deferment rate of 6%, whereas Mr. Nesbitt, on behalf of the Respondent, adopted a rate of 5%.
10. Mr. Plotnek, on behalf of the Applicant, valued the existing lease at the relevant date at £60,000, whereas Mr. Nesbitt, on behalf of the Respondent, valued it at £66,667.
11. Mr. Plotnek, on behalf of the Applicant, valued the extended lease at the relevant date at £64,865, whereas Mr. Nesbitt, on behalf of the Respondent, valued it at £75,000.

Evidence and submissions on behalf of the Applicant

12. Mr. Plotnek, taking account of *Sportelli* and the subsequent Upper Tribunal (Lands Chamber) decision in *Zuckerman and others v Calthorpe Estates (LRA/97/2008)*, considered that a deferment rate of 6% was appropriate on the basis that the management of the flats was carried out by the freeholder.
13. Mr. Plotnek placed the value of the existing lease at the date of valuation at £60,000, after excluding £4,000 in respect of the tenant's improvements noted in paragraph 4 above. He referred in his Schedule of Sales to 12 flats in the close locality to the subject property for the period from January 2007 to date, placing most reliance on 32 Netherend Lane sold for £65,000 on 16 October 2009 with an unexpired term of 63 years. He maintained that this flat had a more pleasant appearance than the subject property.
14. Mr. Plotnek stated that he had been unable to obtain any relevant supportable evidence of the value of an extended lease in the locality of the subject property, and he accordingly relied on relativities, placing most reliance on the LEASE Graph of Relativities derived from LVT determinations from 1994 to 2007 and then superimposing on this the graph Midlands only components, which approach had had been accepted by a Midlands Leasehold Valuation Tribunal in respect of *17 Merryfield Close Solihull (BIR/00CT/OLR/2009/0056)*. The Midlands only graph showed a relativity of approximately 93.5% and, adopting this relativity, he arrived at an extended lease value of £64,865.

Evidence and submissions on behalf of the Respondent

15. Mr. Nesbitt adopted a 5% deferment rate following *Sportelli* and the recent Midland Leasehold Valuation Tribunal decision in respect of flats at *Kelton Court Edgbaston (BIR/00CN/ OLR/ 2008/0013-0020, 0023, 0032)*.
16. Mr. Nesbitt, as evidence of the open market value of the extended lease at the date of valuation, relied on 4 comparable flats all on the market or sold in Lyde Green for the period from January 2007 to December 2009, while recognising that only two of these had been sold, namely 113 Lyde Green sold for £88,000 in January 2007 with an unexpired term of 66 years and 110 Lyde Green sold for £83,000 in February 2009 with the benefit of an extended lease. Based on these comparables and information received from local agents he submitted that the extended lease value was £75,000, ignoring improvements.
17. Mr. Nesbitt, having arrived at the extended lease value of £75,000, applied a 89% relativity to establish the value of the existing lease with an unexpired term of 63.21 years. This calculation gave a value for the existing lease of £66,667.

Determination of the Tribunal

The deferment rate

18. The Tribunal determines that the appropriate deferment rate is 6% following the Upper Tribunal (Lands Chamber) decision in *Zuckerman and others v Calthorpe Estates (LRA/97/2008)*.

The values of the existing lease and the extended lease

19. The Tribunal has carefully considered the sales evidence of the parties and, having done so, finds that none of the comparables referred to by the parties provide reliable evidence as to the value of either the existing lease or of the extended lease at the valuation date. With no reliable evidence as to the market value of either the existing lease or the extended lease the Tribunal takes the view that the application of relativities is not an appropriate and proper way to proceed. The Tribunal concludes that in these circumstances the Tribunal, as an expert tribunal, has to rely on its own knowledge and experience of property values in the Midland area in making its determination as to the values both of the existing lease and the extended lease. Proceeding on this basis the Tribunal determines that the value of the existing lease is £61,000 and the value of the extended lease is £68,000.
20. Applying the figures referred to above and the other factors agreed between the parties, the Tribunal calculates the premium payable at a sum of **£4,716** as follows:

Term

Ground rent to second review: £45.00 per year

YP 30.2 years @ 7% : 12.4354

£560

Ground rent to reversion: £100 per year	
YP 33 years at 7%: 12.7538	
PV £1 deferred 30.2 years @7% : 0.1295	<u>£165</u>

£725

Reversion

Open market value with extended lease: £68,000	
P.V. £1 in 63.2 years @ 6% 0.0251	<u>£1,707</u>
	£2,432

Marriage value

Open market value with extended lease:	£68,000
--	---------

Less value of tenant's existing lease:	£61,000	
Plus value of landlord's existing lease	<u>£2,432</u>	<u>£63,422</u>
		£4,568

Premium payable

Value of landlord's present interest:	£2,432
Plus marriage value (£4,568) x 50%:	<u>£2,284</u>
	£4,716

Legal and Valuation Costs

21. At the hearing Mr. Nesbitt had not come prepared to address this issue of costs and accordingly the Tribunal allowed him 14 days to make a written submission in respect of legal and valuation costs.

Legal costs

22. In respect of the legal cost the solicitors of the Respondent, Chevalier & Co, made written submissions incorporating a statement of costs and a draft lease extending in total to 88 pages in support of their claim for legal costs of £1,924 exclusive of VAT. In these submissions Chevalier & Co. stated that they had been instructed by the respondent because they specialised in enfranchisements and new leases. Their charging rate was £240 per hour which they submitted was a reasonable charging rate. They expressed the view that the legal services required were complex in nature also they stated that since 1993 they had acted in respect of 1,500 lease extensions/enfranchisements. Chevalier & Co gave a breakdown of time for their work in respect of notice of claim amounting to 3

hours 40 minutes with added costs of £264 in respect of various letters out and telephone calls. In respect of the new lease they gave a breakdown of time for their work amounting to 2 hours 45 minutes with added costs of £120 in respect of five letters out.

23. Mr. Plotnek on behalf of the Applicant submitted that the proper approach was to determine whether the costs were “objectively reasonable”, while accepting that the cheapest cost was not necessarily the only reasonable option. He also submitted that the legal costs should be proportionate to the value of the interest of the Respondent, and he expressed the view that no landlord, if he were liable to meet the costs himself, would pay out as much in costs as he would receive for the value of his interest. He submitted that the legal costs should be fixed at 4 hours at £230 per hour giving a total figure of £920.

Valuation costs

24. Chevalier & Co, on behalf of the Respondent, placed the valuation costs at £650 exclusive of VAT.
25. Mr. Plotnek, on behalf of the Applicant, placed the valuation costs at £350 exclusive of VAT.

Determination as to costs

26. The Tribunal recognise that the law is complex for any lawyer who is not familiar with lease extensions and that there are pitfalls to be avoided. Clearly, however, Chevalier & Co are exceptionally experienced practitioners in this field, as evidenced by their written submissions and in particular the large number of matters that they have dealt with. The Tribunal for its part as an expert tribunal is fully aware of the steps that need to be taken and with this knowledge it is their considered view that the legal work in respect of the claim and notice is largely repetitive in each case and could reasonably being completed in a maximum of four hours by a firm so highly experienced as Chevalier & Co charging at a rate of £240 per hour, which the Tribunal consider can be justified in view of their expertise in this area. The Tribunal would expect a less experienced lawyer dealing with lease extensions to take longer than four hours if he did not deal with such matters on a regular basis but in those circumstances the Tribunal consider that reasonable charging rate would be very considerably less than £240 per hour. The Tribunal determine that a reasonable figure for the legal costs is **£960 exclusive of VAT** based on 4 hours work at an hourly charging rate of £240.
27. The Tribunal agree with Mr. Plotnek that a reasonable figure for the valuation costs of **£350 exclusive of VAT**.

Summary

28. Accordingly, the Tribunal determines the premium payable by the Applicant at **£4,716**, the legal costs payable by the Applicant are **£960 exclusive of VAT** and the valuation costs payable by the Applicant are **£350 exclusive of VAT**.

A. P. Bell
.....

A. P. Bell MA LLB

Chairman

Dated

18 MAR 2010