



**LEASEHOLD VALUATION TRIBUNAL
EASTERN REGION**

Case Reference: CAM/26UE/OLR/2012/0101

Premises: 20 Hermitage Court, Potters Bar, Hertfordshire, EN6 5D

**DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 48 LEASEHOLD REFORM ACT,
HOUSING AND URBAN DEVELOPMENT ACT 1993 (the 'the Act')**

Applicant	Mrs J. Langham (leaseholder)
Representation	In person
Respondents	Kingstar UK Limited (landlord)
Representation	Mr A. Meyers, solicitor (partner with Churchills, solicitors) with Mr A. Cohen MRICS of Talbots Surveying Services Limited (chartered surveyors)
Pre-trial review	Directions were given on 30 October 2012.
Hearing and inspection	The tribunal inspected the property on 24 January 2013 and the hearing took place later that day.
The Tribunal	Professor J. Driscoll, solicitor (Lawyer chair), Mrs E. Flint DMS, FRICS, IRRV and Mr N. Martindale FRICS
The Decisions Summarised	<ol style="list-style-type: none"> 1. The premium payable for the grant of new lease is the sum of £33,947 (thirty-three thousand, nine hundred and forty-seven pounds) 2. The landlord's legal costs are determined as the sum of £ 612.50 (exclusive of VAT) 3. The landlord's valuer costs are determined as the sum of £450 (exclusive of VAT)

Date of decision	6 February 2013
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Introduction

Our decisions on the premium payable and the landlord's recoverable costs are summarised above. In the remainder of this decision we:

- a. summarise the background to the application,**
- b. describe our inspection of the premises,**
- c. summarise the evidence and the submissions made at the hearing, and**
- d. give the reasons in full for our decisions on the premium payable and the costs payable**

Background

1. This application is made under section 48 of the Act. It is made by the leaseholder of the subject premises which is a maisonette built circa 1960. The respondent to the application is the owner of the freehold and the landlord under the lease.
2. The leaseholder gave the landlord a notice under section 42 of the Act dated 23 February 2012 seeking the grant of a new lease and proposing a premium of £16,725. In a counter-notice dated 24 April 2012 the landlord admitted that the leaseholder is entitled to a new lease. The landlord also accepted the leaseholder's proposals for the terms of the new lease, namely that it will be for a term 90 years from the expiry of the current term, at a nominal rent and otherwise on the same terms as the existing lease. The landlord proposed that the premium payable should be the sum of £42,500.
3. As the parties could not agree on the premium to be paid (nor payment of the landlord's costs under section 60 of the Act), she made her application on 17 October 2012.
4. Directions were given on 30 October 2012.
5. Originally the leaseholder had both legal and valuation advice but later she decided to represent herself. The landlords are advised by solicitors and valuers.
6. We inspected the subject property on the morning of 24 January 2013 when the leaseholder was present. The hearing took place later that day.

7. In accordance with the directions the leaseholder prepared a bundle of documents. This was well prepared and of considerable assistance to the tribunal and our determinations.

The inspection

8. The property is situated on the east side of the cul-de-sac Hermitage Court a turning off Southgate Road in Potters Bar. The property forms part of a short purpose built two storey terrace of pairs of similar flats on ground and first floors, built in the late 1950s /early 1960s of what appeared to be traditional construction with brick walls, tiled double pitched roof and suspended timber floors. This flat is at the end of the terrace on the first floor and has its own small side garden area. The flat has its own ground floor front door. The accommodation comprises, living room, kitchen, bathroom and two double bedrooms. Leaseholder improvements included central heating, double glazing, a modernised kitchen and bathroom.

The hearing

9. At the start of the hearing we raised issues with the parties over complaints that the landlords had failed to comply with the directions given on 30 October 2012. Mrs Langham contended that the landlord had failed to comply with the directions and she had a particular complaint at the late service of the landlord's valuers report. Under the directions this should have been served by 16 November 2012 but it was not served until 15 January 2013. Mr Cohen, the author of the report told us that he had misunderstood that aspect of the directions and that he did not consider that the leaseholder had been disadvantaged as a result of the late service. However, Mrs Langham complained that the late service had left her insufficient time to respond. She submitted that the tribunal should exercise its discretion to exclude the valuation evidence. Not surprisingly those advising the landlord opposed this submission.
10. After adjourning to consider the leaseholder's submission we told the parties that we had decided to exclude the landlord's valuation evidence. We did this for several reasons. First, there is a general concern that parties do not always take tribunal directions as seriously as they should. This is often, in our experience, coupled with an assumption that the tribunal will invariably overlook non-compliance. Second, the directions made it clear that failure to comply can result in a 'serious detriment' to the party in default which includes a refusal to hear all or part of that party's case. Third, those advising the landlord knew that the leaseholder was no longer being advised by either a solicitor or a valuer. Fourth, the valuation report was served on the leaseholder weeks after the due date (16 November 2012) and it gave her insufficient time to respond. Fifth, as a result she suffered prejudice to the preparation of her case. Sixth, when the leaseholder gives her evidence on valuation she can be asked questions by those advising the landlord. Seventh, the tribunal can rely on its own knowledge and experience in dealing with such technical valuation issues as the appropriate deferment and capitalisation rates and the application of 'relativity' to the value of the flat.

11. Excluding expert evidence is clearly a serious step to take and not one that should be taken lightly. However, for all the reasons given in the previous paragraph we decided that the landlord cannot rely on the expert report it has commissioned.
12. The leaseholder then gave her evidence on the value of the flat at the valuation date (that is 23 February 2012). She relies on the valuation of her flat by Andrew Ward, estate agents who proposed marketing the sale of the flat at between £140,000 and £150,000 and adding that if a new lease was granted a sale price of £180,000 would be the appropriate asking price (letter to her dated 27 April 2012). She also included in the bundle of documents a letter from Auckland Estates who recommended an asking price of £150,000 for the current short lease. Also produced were sales details of similar flats with asking prices from £160,000 to in excess of £180,000 with the highest prices being in respect of flats with longer leases.
13. She also included her attempt at a valuation on which she has had informal advice. This is based on the flat having a value of £150,000 at the valuation date, that the value with a new lease would be £180,000. A capitalisation of the ground rent which is £12.50 for the whole term of the lease which had 45.42 years unexpired at the valuation date based on a yield of 6.6%. No deferment rate or relativity was proposed in the valuation.
14. The leaseholder answered questions put to her by Mr Meyers and the tribunal. In the course of her evidence she told us that when she and her former husband purchased the flat in April 2009 it had been empty for two years and it was virtually uninhabitable. It was purchased as an investment and she and her former husband undertook a series of works and improvements by fitting a new kitchen, a new bathroom, double glazing to the windows, new internal doors and by re-wiring the whole of the flat. She estimates that they spent £800 on the kitchen, £500 on the bathroom, £700 on the double glazing, £1,500 on installing central heating and £150 on the new doors.
15. Mr Meyers addressed us on costs. His statement on costs is included in the bundle. He claims £1,440.82 (exclusive of VAT) for his work in dealing with the claim and the new lease. His hourly rate is £175 per hour. Mr Meyers told us that he is very experienced with 1993 Act claims and he agreed that there was little that could be described as complex in this particular claim.
16. He added that the valuer's fee (Mr Cohen) is the sum of £796.00 based on an hourly rate of £200 and £100 for the time involved in travelling to and from the flat to carry out his inspection.
17. The leaseholder submits that these charges are too high for a relatively simple claim.

Reasons for our decisions

The premium

18. We deal first with the premium. On the basis of the evidence before us and our inspection of the flat we have concluded that at the valuation date the market value of the flat was £170,000. From this has to be deducted the value of the leaseholder's improvements which we estimate at £3,500 which produces a net figure of £166,500. As to the deferment rate we see no reason why the generic 5% rate approved by the Upper Tribunal in the *Sportelli v Cadogan* case should not apply in this case.
19. On the issue of relativity, the tribunal considered the comparable evidence supplied by the leaseholder which related to sales of long leasehold interests and one short leasehold interest of 79 years in similar flats and the informal valuations of the subject premises by both Andrew Ward and Paul Twitchet, local estate agents. In the absence of any sales evidence of similar short leasehold interests the tribunal, doing the best it could with the limited, untested evidence and its own knowledge and experience of the graphs of relativity and general market evidence the tribunal adopted a relativity of 70% for the short leasehold interest.
20. As to the ground rent we conclude on the basis of our knowledge and experience that a capitalisation rate of 8% should be applied to the case. The rent is very small and there is no provision for it to be increased during the term of the lease.

Costs

21. Turning to costs we start by noting that under section 60 of the Act the leaseholder must pay the reasonable costs of and incidental to any investigation of the right to a new lease, undertaking a valuation and the grant of a new lease (section 60(1)). There is an important qualification to this in section 60(2) which states: *for the purposes of subsection (1) any costs incurred by a relevant person in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.*
22. We consider that the hourly rate charge by Mr Meyers is certainly reasonable (and unusually in our experience less than the hourly rate charge by the valuer) but we are surprised at the size of the charges. We estimate that he is claiming to have spent over 8 hours in advising the landlord on this claim for a new lease. This is in our view a very straight forward case where the leaseholder is clearly entitled to be granted a new lease, where a simple counter-notice was prepared on behalf of the landlord and where the terms of the new lease were agreed at an early stage of the claim. It is common ground that the leaseholder is not required to pay the landlord's costs of the hearing (see section 60(5)).

23. Applying the principle in section 60(2) of the Act we do not think that the landlord would agree to pay for over 8 hours legal work in a case such as this where there are no complexities. Having considered the notices and other papers we consider that the leaseholder should not have to bear more than 3.5 hours of legal work. Accordingly we determine that the reasonable legal costs comes to the sum of £612.50 (exclusive of VAT).

24. As to the valuation fees the leaseholder produced an estimate sent by Mr Cohen's firm dated 17 December 2012 of £450 for an inspection and a full valuation report. At the hearing Mr Cohen told us that this quote was provided by his father who is a valuer and a member of his firm. He also suggested that the hourly rate charged by Mr Meyers is too low.

25. Given the relative simplicity of the valuation in this case we consider that the reasonable fee is £450 (exclusive of VAT).

Summary

26. The premium payable for the enfranchisement of the subject premises is the sum of £33,947.00.

27. We also determine that the leaseholder must pay a total of £1,062.50 plus VAT at 20% to the landlord which comes to £212.50 producing a total figure for the costs of £1,275.

28. Our valuation is appended to this decision.

James Driscoll

James Driscoll (Lawyer Chair)

6 February 2013

20 Hermitage Court Potters Bar EN10 5DX

Date of valuation 27-Feb-12

Lease expiry date 28-Sep-57

Unexpired term 45.58

Capitalisation Rate 8%

Deferment Rate 5%

Landlord's Present Interest

Ground rent receivable	£12.60	
YP 45.58 years at 8%	12.1255	£ 153
Reversion to freehold with VP	£166,500	
x PV of £1 for 45.58 years at 5%	0.1082	<u>18015</u>
Landlord's present interest		£ 18,168

less

Reversion to freehold with VP	£166,500	
x PV £1 for 135.58 years at 5%	0.00134	<u>£ 223</u>

Diminution in value of landlord's interest £ 17,945

Marriage Value

Landlord's proposed interest	£223	
Tenant's proposed interest	<u>£166,500</u>	£ 166,723
less		

Landlord's existing interest	£18,168	
Tenant's existing interest	<u>£116,550</u>	<u>£ 134,718</u>

Marriage Value £ 32,005

Landlord's share of marriage value 50% £ 16,002

Premium payable £ 33,947