

**LEASEHOLD VALUATION TRIBUNAL FOR**  
**SOUTHERN RENT ASSESSMENT PANEL**

Case No: CH/18UB/OLR/2004/0045

**Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")**  
**Re: Flat 3, The Knoll, 36 Douglas Avenue, Exmouth, Devon, EX8 2HB**

**DECISION**

**Applicant/Leaseholders**

Mr and Mrs W Weston

Flat 3, The Knoll

Represented by: Andrew Eaton Hart (Counsel)  
Vine Orchards (Solicitors)

Expert witness: P Hannah MRICS of Meadows Surveyors

**Respondent/Freeholder**

Mr W J Davey

Represented by: Every's (Solicitors)

Expert witness: P W Muzzlewhite FRICS of Whitton and Laing

**Date of Inspection and Hearing: 2 November 2004**

Tribunal Members: T C Clark (Barrister at Law) Chairman  
E G Harrison FRICS  
P J R Michelmores FRICS

**Introduction**

1. This matter arises from an Application made by Mr and Mrs Weston, who seek a lease extension in respect of their flat at No 3, The Knoll (as above).
2. Following a dispute as to the appropriate sum payable to the freeholder for such an extension, the Tribunal were asked to determine the matter.
3. Directions were issued for the parties on 6 August 2004, followed by amended directions on 3 September 2004.

4. The parties' respective valuers/experts were able to meet and agree a valuation report (dated 1 October 2004), which set out the property details and concluded that the open market value of the subject flat with its new lease was £190,000.

The proposed terms of the extended lease were also agreed, save for the management fee, which was settled after the hearing at 15% of expenditure plus VAT, payable by each leaseholder in the proportion of service charge set out in the lease.

5. The only issue remaining for the Tribunal to determine was therefore the price payable by the tenants for the lease extension, and the percentage uplift applicable in calculating the same.

Both parties made both written and oral representations in respect of their case.

#### Relevant Law

1. Section 39 of the Act gives the tenants the right to acquire a new lease upon payment of a premium calculated in accordance with the provisions of Schedule 13, i.e. the aggregate of:-

- a) the diminution in value of the landlord's interest in the tenant's flat once the new lease is granted,
- b) the landlord's share of the marriage value, and
- c) any amount of compensation payable to the landlord in respect of any other property (under Paragraph 5).

2. Provided that the necessary requirements of the Act (as to Applications, Notices etc) have been complied with, Section 48 provides for determination by a Leasehold Valuation Tribunal of any matters in dispute.

3. Section 56 obliges the landlord to grant a new lease at a peppercorn rent for a term expiring 90 years after the expiry of the current lease.

#### The Premises

1. Flat 3 is a spacious first-floor flat in the large brick building known as "The Knoll", which now consists of 7 self-contained residential units.

2. The Tribunal inspected the property on 2 November as aforementioned, and confirmed that the property details are as described in the agreed Valuation Report of Messrs Hannah and Muzzlewhite.

### **The Lease**

1. A copy of the relevant Lease for Flat 3, originally granted between Stanley James Callaway and John Satchell Everett on 5 July 1960 for a term of 99 years, was provided to the Tribunal.

### **The Applicant's Case**

1. Mr Eaton Hart, on behalf of the leaseholders, proposed that the correct figure for the value of the lessee's unexpired interest should be £170,000, and that the appropriate sum payable for the lease extension should therefore be £12,076 (calculated in accordance with the Schedule/Calculation attached).

2. Mr P Hannah, the Applicant's expert, considered that an uplift of 11.75% was applicable in this case, and gave details of comparable properties where leaseholders had purchased either a leasehold extension or a freehold interest in the recent past.

All the four comparables were situated in Exmouth and within two-thirds mile of the subject property, and Mr Hannah had prepared a schedule showing that the values of the lease extensions or freehold purchases ranged from £4,722 to £12,500, with corresponding percentage uplifts from 5% to 13.3%, depending upon the circumstances.

3. Mr Hannah gave evidence that Exmouth was a popular retirement area, and that people did not necessarily see property as a long-term investment. He considered that, in his experience, there was very little difference between valuation figures for purchase of freehold interest and valuation for lease extension. In many cases, it was said, proposed lease extensions become freehold purchases, with the value remaining the same, and sometimes negotiations for lease extension started after a sale of the property had been agreed, with prices inflated as a result.

4. In Mr Hannah's experience, many sales go through with only 55-65 years left to run on the lease, and "no questions are asked". He stated that only 30-40% of those purchasing require mortgages.

5. The case of Flat 3, 17 Victoria Park Road, Exeter, was distinguished on the grounds that the two parties did their own "deal" in the particular circumstances, and that the resulting valuation should be given little weight.

6. The comparable property at 27B Salterton Road, Exmouth, was put forward as the best evidence in support of the Applicant's case.

### **The Respondent's Case**

1. It was argued on behalf of the freeholder that the value of the lessee's unexpired interest should be £146,152, and that the premium for lease extension should be £24,000 (as per the Calculation attached).

2. The Respondent's expert, Mr P Muzzelwhite, considered that an uplift of 32% was appropriate, and cited comparables including the case at Victoria Park Road, Exeter, and the Eastern Tribunal's decisions in respect of Collier Close, Maidenhead, Berkshire in April 2004.

3. Mr Muzzelwhite considered that there was a substantial difference in value between freehold purchases and lease extensions, and that the 10-15% uplifts often found in cases of the former were not appropriate in the latter, which should have "at least" 30% uplift.

4. The comparable at Victoria Park Road, with an uplift of 61%, was (it was conceded) unusual on its particular facts, where it was said that the Landlord was "tougher" than the tenant. Mr Muzzelwhite gave evidence that he had advised the tenant not to pay more than £15,000 for the lease extension, but that the parties preferred to negotiate between themselves, and £20,035 was the final figure.

5. Mr Muzzlewhite accepted that he had not visited the subject flat prior to the freeholder's Notice of 25 May 2004, which proposed a premium of £28,000 for the lease extension.

6. In arriving at his valuation of the lessees' unexpired interest, Mr Muzzlewhite stated that he had relied upon "Valuer's gut feeling", because there are very few cases for comparison outside the London area, and there are insufficient cases to identify a pattern: there seems to be a wide discrepancy between the approach used in individual cases.

7. Mr Muzzlewhite agreed that the only really comparable case on the facts was that of 27B Salterton Road as aforementioned.

### **Conclusion and Decision**

1. Having carefully considered all the evidence, and in all the circumstances of the case, the Tribunal found that the only truly comparable transaction was that in respect of 27B Salterton Road.

2. In that case, there were 58½ years left to run on the lease (slightly more than the 55 years remaining in the subject case), and the value of the unexpired lease was said to be £203,500. An uplift of 8.1% was applied.

3. The Tribunal considered and determined that the valuation and figures put forward on behalf of the Applicants were appropriate, and therefore found as follows:-

i)	The value of the lessee's unexpired interest	=	£170,000
ii)	The premium to be paid for extension	=	£ 12,076



.....T C CLARK (Chairman)

**FLAT 3, 36 DOUGLAS AVENUE, EXMOUTH**

ITEM	P W MUZZLEWHITE WHITTON & LAING	P HANNAH MEADOWS
Freeholders Interest:		
Ground Rent 55 years @ 7%	£7.50	£7.50
	13.94	13.94
	105	105
Reversion to Vacant Possession Value:		
PV of £1 in 55 years 7.25%	£190,000	£190,000
	0.0213	0.0213
	<u>4,047</u>	<u>4,047</u>
<b>Total (Diminution in value of Freeholders interest)</b>	<b>4,152</b>	<b>4,152</b>
Value of leasehold interest after Extension of lease	<b>190,000</b>	<b>190,000</b>
Less:		
Value of freeholders interest before extension of lease	4,152	4,152
Value of leasehold interest Before extension of lease	<u>146,152</u>	<u>170,000</u>
	<b>150,304</b>	<b>174,152</b>
Marriage Value:	39,696	15,848
Divide by 2	19,848	7,924
Add back Freeholders Interest	4,152	4,152
Value for lease extension	<b>£24,000</b>	<b>£12,076</b>