

LEASEHOLD VALUATION TRIBUNAL

CAM/22UN/OLR/2005/0003



Address of Property : 7 Woodside, Walton on the Naze, Essex

Application : Determination of the terms, including premium, upon which he may be granted an extended lease [LRHUDA 1993, ss. 48 & 56]

Applicant Tenant : David Michael Jones, Flat 7, The Grand, 6 Esplanade, Frinton-on-Sea, Essex

Respondent Landlord : R M Bridgeman t/a R M Bridgeman Property Development, 105 Thorpe Road, Kirby Cross, Frinton-on-Sea, Essex

Tribunal : G K Sinclair, R W Marshall FRICS, E A Pennington FRICS

Hearing date : 18th May 2005

THE DECISION OF THE TRIBUNAL

Handed down 26th May 2005

- Preliminary paras 1 - 5
- Inspection, hearing and evidence paras 6 - 16
- Applicable law paras 17 - 21
- Findings & decision paras 22 - 31
- Calculation of premium payable Schedule

Preliminary

1. By an application dated 11th January 2005, pursuant to section 48 of the Leasehold Reform, Housing & Urban Development Act 1993, the Applicant tenant asks the tribunal to determine the terms upon which he may exercise his right to be granted an extended lease under section 39, and in particular the amount of the premium payable.
2. The lease in question is dated 2nd January 1964, for term of 99 years at a fixed annual ground rent of £13. Adequate provision is made for insurance, maintenance and repair, and the collection of service charges. Mr Jones is a qualifying tenant and gave notice to

the landlord under section 40 by Notice dated 21st August 2004, in which he proposed a premium of £250. The landlord's counter notice is dated 24th August 2004, and it proposes the grant of a new lease at a premium of £10,000 plus costs, plus a revised ground rent (increasing every 25 yrs) :-

£100 per year to 2062; £180 to 2087; £360 to 2112; £540 to 2137; & £720 to 2161.¹

3. Neither the tenant's notice nor the landlord's counter notice referred to the other terms proposed for the lease, but both parties agreed at the hearing to waive these failings and that (subject to the question of the premium and the substitution of a peppercorn rent for that proposed by the landlord, and the names of the current parties for those mentioned in the 1964 lease) the existing terms of the lease should continue to apply.
4. Neither party was able to assist with details of the landlord's legal costs to be sought from the applicant, so (in the unlikely event that they are not agreed) this issue shall be reserved and, if required, dealt with later by the tribunal upon receipt of further written submissions from the parties.
5. The focus of the tribunal's task, in what proved to be a most unusual market in the Walton and Frinton area, was therefore the determination of the correct premium.

Inspection, hearing and evidence

6. In the presence of Mr Bridgeman, but not Mr Jones, the tribunal inspected the demised premises, a first floor 2-bedroom flat in a block of four flats built by Mr Bridgeman in 1963. The premises had been sub-let and the occupiers, who said that they had moved in only three months earlier, were present. The bedrooms are both quite large and well-lit, as is the living room. The only other rooms are the kitchen and bathroom, both of which retain their original 1960s fittings. In the case of the kitchen in particular this looked extremely dated and would not assist a sale. The only heating in the flat is an electric fire in the living room and two oil-filled electric radiators – one in the child's bedroom and the other in the hall. The only improvements to the flat are the new double glazed PVCu windows which had been fitted by the landlord, in his role as a

¹ If this new term expired on 1st January 2162 it would constitute a 99 year extension, 9 years longer than the statute provides for

building contractor, and paid for by the tenant.

7. The subject premises are in one of two such small blocks of flats in a residential estate (also built by Mr Bridgeman at the same time) comprising a mixture of semi-detached houses – closest to the flats – and a majority of bungalows in an adjoining road. The estate lies just to the seaward side of the main Walton Road, about equidistant between the towns of Walton and Frinton and their respective railway stations. The area was described as being neither one nor the other.
8. In his written submissions Mr Bridgeman referred to a number of new extended leases which he had granted recently in the Frinton area and the tribunal viewed all the flats externally. All were of similar vintage but more attractive and much closer to the sea than the subject premises – Garden Court being right on the Esplanade – and all “within the gates.”² The tribunal and the parties considered them to be more desirable and more valuable than the subject premises, with the flat at Garden Court, Frinton being perhaps twice the value. In most cases, however, Mr Bridgeman had settled on the same premium of £10,000 – but with different stepped ground rents.
9. The tribunal was concerned that the evidence adduced by Mr Bridgeman was not very helpful because the new leases which he has granted were non-statutory and agreed usually when a problem arose during a sale, and in particular :
 - a. He extended each lease by 99 years, whereas the statute provides a right to a 90 year extension only
 - b. The premium in each case was chosen by him very much by feel, and without any attempt to calculate it in accordance with Schedule 13
 - c. The statute does not allow for anything more than a peppercorn ground rent.
10. The hearing was therefore adjourned by an hour while the two valuer members of the tribunal sought more detailed evidence from local estate agents, including details of flats currently on the market. Their findings were reported to all present during the hearing, the parties commenting and both being in agreement with them.

² A reference to the railway crossing gates by Frinton station; the railway line serving to cut the town off from its less desirable hinterland

11. Mr Jones gave evidence that he had put the premises on the market for sale at the beginning of the year for about three months, through Bairstow Eves, at the suggested asking price of £110,000. Although there were a few enquiries no firm offers resulted. He said that he had obtained an estimate of £15,000 for putting in a new kitchen, bathroom and central heating, but was reluctant to spend that and not be able to sell. He said that he had been advised by Bairstow Eves to do that work, and that he could then put it on the market at £120,000, but he feared there was a gap between what he was going to spend and the increment he would get back. However, he said that the agents were confident that he could have sold at £100,000 in the property's present condition. There are some flats on the market, and £100,000 is at the bottom end for a flat of that type; but the market is hardening, and buyers are not interested.
12. On the subject of the increase in value attributable to the grant of a lease extension Mr Jones produced a copy of *Property Trader*, a free advertising publication showing what is on the market in this locality. He pointed out that the advertisements just say "leasehold", not the number of years left, and said that valuers had told him that length makes very little difference. When asked about the value with a longer lease local agents can't tell. They get nervous under 60 yrs because they know that solicitors get nervous. He said that he was on that cusp, at 58 yrs. Solicitors know there is this cost of this further transaction, yet there was no evidence in the market that this effort and expense would yield any higher price. This accorded with the evidence obtained by the valuer members of the tribunal, who had spoken with agents Rouses and Ian Smith in Frinton, and had collected a number of sales particulars as comparables.
13. Mr Bridgeman discussed the increased capital values achieved for flats in recent years in this area, but said that when flats with 199 year leases come up they are treated the same – no different from those with shorter leases. He also added that such longer leases were worth nothing to the owner, whose interest was merely in the ground rent and management fees, and expressed surprise when informed that under the Act the new extended lease was to have only a peppercorn ground rent – not the increased, and escalating, structure that he had adopted in recent transactions.

14. On the question of the appropriate premium Mr Bridgeman said that he was one of the few that still owns and manages quite a few, and that both he and the owner of Esplanade Court do the same thing on lease extensions, viz they charge £10,000. This, said Mr Jones, could not be right. If one looked at prices inside the gates, and on the front, which is twice the value of Woodside, the premium sought is the same, and that could not be right. Despite that, all enquirers get from landlords such as Mr Bridgeman is a standard form letter, at £10,000 plus an escalating ground rent.
15. Both gentlemen approached each other and the tribunal's task with courtesy and a high level of agreement between them, regarding this issue as a problem with which the tribunal could assist in finding a solution, perhaps also providing guidance for the local housing market and property professionals working within it.
16. They both agreed :
- a. That £100,000 was a fair value for Mr Jones' flat in its present, slightly improved condition
 - b. That the local property market was driven largely by elderly purchasers buying with cash, rather than on mortgage
 - c. That the vast bulk of the flats available in the area (many built by Mr Bridgeman) were built in the 1960s or later, on 99 year leases, so they tended to have about 60 years left unexpired
 - d. That flats are advertised on the local market simply as "leasehold", and without any reference to the length of the unexpired term
 - e. That with predominantly elderly buyers the difference between the current lengths of unexpired term and an extended term did not seem to influence the market price, a fact confirmed by local agents
 - f. That the only ones concerned with the current length of such terms seemed to be conveyancing solicitors (perhaps with at least one eye on their professional indemnity insurance).

Applicable law

17. Section 56(1) & (3) of the Leasehold Reform, Housing & Urban Development Act 1993

provide as follows :

- (1) Where a qualifying tenant of a flat has under this Chapter a right to acquire a new lease of the flat and gives notice of his claim in accordance with section 42, then except as provided by this Chapter the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept-
- (a) in substitution for the existing lease, and
 - (b) on payment of the premium payable under Schedule 13 in respect of the grant,
- a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.

...

- (3) A tenant shall not be entitled to require the execution of any such new lease otherwise than on tendering to the landlord, in addition to the amount of any such premium and any other amounts payable by virtue of Schedule 13, the amount so far as ascertained –
- (a) of any sums payable by him by way of rent or recoverable from him as rent in respect of the flat up to the date of tender;
 - (b) of any sums for which at that date the tenant is liable under section 60 in respect of costs incurred by any relevant person (within the meaning of that section); and
 - (c) of any other sums due and payable by him to any such person under or in respect of the existing lease;
- and, if the amount of any such sums is not or may not be fully ascertained, on offering reasonable security for the payment of such amount as may afterwards be found to be payable in respect of them.

18. By paragraph 2 of Schedule 13 to the Act :

The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of –

- (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,
- (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and
- (c) any amount of compensation payable to the landlord under paragraph 5.

19. The diminution in value of the landlord's interest, as defined by paragraph 3, is the difference between :

- a. the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and
- b. the value of his interest in the flat once the new lease is granted.

20. In the context of the instant case it is the assessment of the marriage value which proves

to be the most unusual, and most fundamental. Paragraph 4(1), (2) & (2A) state :

- (1) The marriage value is the amount referred to in sub-paragraph (2), and the landlord's share of the marriage value is 50 per cent of that amount.
- (2) Subject to sub-paragraph (2A), the marriage value is the difference between the following amounts, namely –
 - (a) the aggregate of –
 - (i) the value of the interest of the tenant under his existing lease,³
 - (ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, and
 - (iii) the values prior to the grant of that lease of all intermediate leasehold interests (if any); and
 - (b) the aggregate of –
 - (i) the value of the interest to be held by the tenant under the new lease,
 - (ii) the value of the landlord's interest in the tenant's flat once the new lease is granted, and
 - (iii) the values of all intermediate leasehold interests (if any) once that lease is granted.
- (2A) Where at the relevant date the unexpired term of the tenant's existing lease exceeds eighty years, the marriage value shall be taken to be nil.

21. In the instant case there are no intermediate interests to be considered, and the question of landlord's compensation for matters referred to in paragraph 5 does not arise.

Findings & decision

22. The tribunal had no direct evidence of any change in market conditions since the relevant date⁴ but, after considering the evidence of both the applicant tenant and the respondent landlord (who were in agreement) and that gleaned from local agents and the available sales particulars,⁵ determined that the market value of the subject flat in its current condition and with its existing lease was £100,000. From that figure should be deducted the value of the new PVCu double glazing to all the windows, paid for by the tenant,⁶ and which the tribunal assesses at £2,500. The net figure is therefore £97,500.

³ The assumptions to be applied when assessing the open market value of the tenant's interest under the existing and new leases are set out in paragraphs 4A & 4B in the Schedule

⁴ 21st August 2004

⁵ Both loose, picked up from visiting agents, and as listed in Mr Jones' copy of *Property Trader*

⁶ See Sch 13, para 4A(1)(c)

23. The tribunal then went on to consider the value of the extended lease, which plays an important part in the calculation of the marriage value. Although greatly troubled by the thought of reaching a conclusion which appears to defy common sense, the tribunal considers that it would be wholly unjust to the tenant to attribute to the extended lease a value which on all the available evidence it plainly could not achieve in these most exceptional circumstances prevailing in the local market for leasehold flats.
24. It would appear that the reasons why the market does not differentiate between flats with existing and extended leases are :
- a. That the flats on the market have nearly all been built since about 1960 and thus tend to have an unexpired term of about 60 years or more
 - b. The purchasers buy for cash, do not require mortgages and therefore do not need to satisfy lenders' security criteria
 - c. Frinton and Walton, particularly the former, are popular retirement areas for the elderly, and purchasers appear to be content that their property investment will at present comfortably outlast them
 - d. Markets do not always behave rationally.
25. One could also add that the local estate agents have in the circumstances developed no knowledge of dealing with flats with very short unexpired terms, or of advising tenants on statutory lease extensions. The market has yet to mature, and one would expect that as unexpired terms become shorter purchasers will begin to realise that a short-term investment cannot be as valuable as a long-term one.
26. The tribunal therefore accepted the available evidence and determined that, with the statutory disregards, the value of both the existing and proposed leases are the same, at £97,500.
27. Applying paragraph 4 of the Schedule this produces a marriage value calculation which cannot have been in the contemplation of Parliament, viz a negative value. Until forced to accept the evidence presented to it, and actively sought out, this tribunal would not have contemplated that the open market value of one leasehold interest 90 years longer

than another was exactly the same. The tribunal notes that for an unexpired term of 80 years or more the marriage value is deemed to be nil,⁷ but the purpose of that provision was to avoid the trouble and expense of arguing about a very small amount of marriage value when the existing lease is lengthy.⁸ The tribunal does not consider that nil is the minimum applicable value in any circumstances, as it would be most unjust to require the tenant to pay more than necessary upon the basis of an artificial distortion of real market values.

28. In calculating the premium in accordance with Schedule 13 to the Act the tribunal has to consider the question of yield, upon which neither of the parties could offer any assistance.. The tribunal notes that there are a large number of sets of Tables in use which are regularly submitted to Leasehold Valuation Tribunals in lease extension and enfranchisement cases. As is well known to practitioners in this field, the decisions in these cases are all published on the web site of the Leasehold Advisory Service. They tend to support a percentage uplift of between 8% and 16%. In a recent article in the *Estates Gazette*⁹ Hazel Williamson QC commented that the judgment, verdict or award of another tribunal has been ruled inadmissible as evidence to prove a fact in issue, or relevant to an issue, in other proceedings between other parties,¹⁰ and that as a result “rent reviews improved for being decided upon the quality of transactional evidence, rather than upon the quantity of decisions that could be gathered in.” Although the author had met with no success when relying upon *Land Securities* before an LVT she noted that in 2004 the Lands Tribunal had “rejected the proposition that previous LVT decisions carried any weight as evidence of yields.”¹¹
29. This tribunal has therefore chosen to base its decision on the appropriate rate of yield upon its own collective experience, and taking into account that ordinarily tax would be payable by the landlord upon any ground rent income received. Net of tax, the tribunal considers that an appropriate yield for a single leasehold flat would be in the order of

⁷ Sch 13, para 4(2A)

⁸ See *Hague : Leasehold Enfranchisement* (4th ed – 2003) at 33–05

⁹ “Tribunals perpetuate illusions of evidence “, 2nd April 2005, at page 129

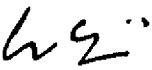
¹⁰ *Land Securities plc v Westminster City Council* [1992] 44 EG 153, per Hoffman J

¹¹ *Blendcrown Ltd v Church Commissioners for England* [2004] 1 EGLR 143

7%. Taking the unexpired term to be 58 years that produces a YP figure of 14.003 and a PV of 0.019758.

30. For the reasons set out above, and as calculated in the Schedule annexed, the tribunal determines that the premium payable by the tenant for a new lease is £1,054, to which must be added the landlord's reasonable costs allowable under section 60.
31. The tribunal has every expectation that the amount of such costs will be agreed between the parties, but it will reserve consideration and make a further determination on this point if required. The issue of costs is therefore adjourned generally with liberty to restore, and if no application is made to restore within 28 days of receipt of this decision then the application as far as the outstanding matters are concerned will be dismissed.

Dated 26th May 2005


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Graham K Sinclair, Chairman
for the Leasehold Valuation Tribunal

SCHEDULE

Valuation of Premium for new lease

7 Woodside, Walton on the Naze, Essex

Date of valuation is date of Notice – 21.08.04

Lease of 99 years from 02/01/1964 at £13 pa

Expiry date of existing lease – 01/01/2063

Expiry date of extended lease – 01/01/2153

Unexpired period of existing lease – 58.5 years

| | |
|---|--------|
| Yield (YP) – assessed at 7% single rate | 14.003 |
|---|--------|

| | |
|---|--------|
| Value of term = £182.04 (£13pa x 58 x YP) | 182.04 |
|---|--------|

| | |
|--|------|
| Value of tenant's improvements (new d/g windows) | 2500 |
|--|------|

| | |
|--|-------|
| Long Lease value (net of improvements) : | 97500 |
|--|-------|

| | |
|---|-------|
| Short Lease value (net of improvements) : | 97500 |
|---|-------|

Diminution in value of Freeholder's interest –

Sch 13, para 3

| | | | |
|--|----------|---------------|--------|
| Value of Term | | £182 | |
| Reversion to freehold in possession | 97500 | | |
| deferred 58 years @ 7% (PV) | 0.019758 | <u>£1,926</u> | |
| Diminution in value of Freeholder's interest | | £2,108 | £2,108 |

Calculation of Marriage Value – Sch 13, para 4

Value of proposed interests (VPI):

| | | |
|--|-------|---------|
| Value of freehold interest after extension of lease | nil | |
| Value of leasehold interest after extension of lease | 97500 | £97,500 |

Less value of existing interests (VEI):

| | | |
|---|-------|----------------|
| Value of freehold interest before extension of lease | 2108 | |
| Value of leasehold interest before extension of lease | 97500 | <u>£99,608</u> |
| Marriage value (VPI - VEI): | | £-2,108 |

| | | |
|---|---------|---------|
| 50% marriage value attributed to landlord | £-1,054 | £-1,054 |
|---|---------|---------|

Compensation payable under Sch 13, para 5

| | |
|-----|-----------|
| nil | <u>£0</u> |
| | £1,054 |

PREMIUM PAYABLE