

EASTERN LEASEHOLD VALUATION TRIBUNAL

DECISION AND STATEMENT OF REASONS OF THE TRIBUNAL, WHICH MET ON THE 6th JUNE 2003 ON AN APPLICATION UNDER, SECTION 48 LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Reference No: CAM/26UE/OLR/2003/0001

Applicant: Miss Lynn Walsh (Tenant)

Representatives:

Solicitor: Ms Emma Holden, Clegg Manuel Solicitors
26-27 Great Sutton St., London EC1V 0DS

Surveyor: Mr GDC Leach of Leach & Co PO Box 63, Bushey, Herts.,
WD23 2ZX

Respondent: Miss Claire Styles (Freeholder/Reversioner)

Representatives:

Solicitor: Goldwater Sender,
899 – 901 Finchley Road, Golders Green, London NW1 7PE

Surveyor: Mr Ian McMellin of John Whiteman & Co, 53 High Road,
Bushey Heath, Herts., WD23 1EE

Property: 2B, Bourne Road, Bushey, Hertfordshire, WD23 3NH

Appearances:

For Applicant: The Applicant
Mr Fraser McLeod

For Respondent: The Respondent
Surveyor: Mr Ian McMellin
Counsel: Mr Andrew Gifford*

Tribunal: Mr JR Morris LLM (Chairman)
Miss M Krisko BSc(Est Man) BA FRICS
Mr GJ Dinwiddy FRICS

Notice dated: 10th December 2002

Counter Notice dated: 7th February 2003

Valuation Date: 7th February 2003

*Mr Gifford was unable to attend until the end of the Hearing but was able confirm that he had no particular legal submissions to make.

Introduction

1. The Application

- 1.2 This is an application to the Tribunal under Section 48 of the Leasehold Reform Housing and Urban Development Act 1993 to determine the premium to be paid for a lease extension.
- 1.3 An Initial Notice dated 10th December 2002 was served on the Respondent who appears to be a "qualifying tenant" within the meaning of the Leasehold Reform Housing and Urban Development Act 1993.
- 1.4 A Counter Notice dated 7th February 2003 was served by the Respondent that acknowledged the right of the Applicant to acquire a new lease but expressed an intention to apply to the court for possession under sections 17 and 18 of the 1993 Act.

2. The Property

- 2.1 The subject property is part of a purpose built two-storey block of two maisonettes, one on each floor, constructed in the 1960s of brick under a tile roof. The subject property is on the ground floor. The grounds at the rear of the block are subdivided into gardens for each maisonette. The maisonette has a brick built garage in a detached block of two accessed over a shared drive. Each maisonette has a separate entrance and the accommodation comprises a hall, two bedrooms, living room, kitchen and bathroom. The block has all main services. Water and space heating are by a combination gas fired boiler.
- 2.2 The subject property is situated on Bourne Road about half a mile from the nearest shops in Bushey.
- 2.3 The Tribunal inspected the exterior and interior of the subject property on the 6th June in the presence of the Applicant. The Tribunal noted the tenant's improvements as:
- The installation of a central heating and hot water system,
 - The fitting of upvc double-glazed windows,
 - The replacement of the kitchen and bathroom, the original fittings apparently being somewhat dated, and
 - The laying of new floor coverings.

3. The Lease

- 3.1 The existing lease dated 26th October 1967 is for a term of 99 years commencing 1st October 1967. The Lease had been varied twice. The first was by deed of variation dated the 27th May 1968 and makes the tenant of the subject property (the lower maisonette responsible for the foundations the tenant of the upper maisonette being responsible for the roof. The second is by deed of variation dated 17th January 1974 and releases to the tenant of the upper maisonette a part of the right of way around the subject property to enable the tenant of the upper maisonette to erect a porch over the front door of the upper maisonette.

- 3.2 Copies of the Lease and Counterpart together with the variations were provided. The Lease appeared to be in fairly standard terms requiring the tenant to be responsible for internal and external decorations, for all repairs to the demised premises including the foundations, to insure the demised premises and to pay a proportion of the costs of maintaining the common parts. There were no particularly onerous covenants.

4. The Hearing

- 4.1 The Chairman asked Respondent's Surveyor whether he was acting as an expert witness or an advocate and he replied that he was acting as an advocate.
- 4.2 The Applicant was unrepresented and commented that she had had only a week in which to consider the Respondent's written submission but did not wish to have an adjournment when asked on two occasions during the hearing. She said that she did not feel disadvantaged with the absence of Mr Leech her surveyor and that she had confidence in the tribunal.
- 4.3 The Chairmen stated that the Application is made under section 48 of the 1993 Act for an extension of the Lease. In the correspondence between the parties it had been stated that the term of the lease and amount of the ground rent were in dispute. The Chairman stated that, in the absence of agreement between the parties, the legislation only enabled the Tribunal to extend the current term of the Lease of 63.5 years by a further term of 90 years at a peppercorn rent for the whole period from the valuation date.
- 4.4 The Chairman therefore submitted to the parties that in effect the terms of the lease had been agreed by the date of the counter notice except the premium. The parties agreed that the only matter in dispute was the premium. The valuation date was therefore the 7th February 2003, which is the date of the counter notice.
- 4.5 The Chairman outlined the method of calculation of the premium by reference to Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993.

5 Applicant's Case

- 5.1 The Applicant submitted her Surveyor's report and calculations (**Annex 1**) although acknowledged that there were some arithmetical errors. The valuation was twelve months prior to the valuation date and although the report referred to comparables these was not detailed.
- 5.2 The Applicant considered the comparables submitted by the Respondent's Surveyor were not the same as the subject property but accepted that they covered a range of similar properties.
- 5.3 She considered that the subject property let on its current unextended lease in its unimproved state was worth more than the £142,500 expressed as its value in the Respondent's Surveyor's calculations. However she did not feel able to comment on the figure of £167,500 quoted by the Respondent's Surveyor for the subject property

with an extended lease. The Applicant made a rough estimate that her improvements increased the value of the subject property by some £10,000 to £15,000.

6 Respondent's Case

- 6.1 The Respondent's Surveyor took the Tribunal through his calculations (**Annex 2**). He stated that he adopted a yield of 9%, which resulted in a value for the freehold of £1,011. He was of the opinion that, disregarding the improvements, the market value for the subject property was £167,500 with a lease of the current unexpired term extended by a further term of 90 years, and that the market value with its present lease of 63 years unexpired term only was £142,500.
- 6.2 The Respondent's Surveyor submitted a re-working of the Applicant's Surveyor's figures and advised why he considered their respective figures differed.
- 6.3 The Respondent's Surveyor submitted the following comparables from which he had made his valuation (a map was provided showing the location of the properties):
- 19 Little Grove is an ex-local authority purpose built flat situated in a less desirable part of Bushey. The property comprises two bedrooms, gas central heating double glazed windows, no parking but with private gardens. A sale price of £157,000 for a 90 year unexpired lease as agreed in April 2003
 - 38 Coldharbour Lane is situated on a busy road and therefore less desirable than the subject property. The property comprises a two bedroom top floor flat with garage and parking space. Currently under offer at £160,000 for a 120 year unexpired lease as agreed in April 2003
 - 9 Parkland on Chiltern Avenue is a duplex maisonette in a more desirable block and location than the subject property. The property comprises two bedrooms, one reception room and bathroom with communal parking and garden. Currently under offer at £175,000 with a share of the freehold interest
 - 5 Parkland is a maisonette with two bedrooms private parking and gardens and sold in March 2003 for £180,000 with a share of the freehold interest
 - 8 Parkland is a duplex maisonette with two bedrooms with garage and parking facilities and sold in February 2003 for £185,000 with a share of the freehold interest
 - 8 Hollygrove is a two-bedroom maisonette. The property was sold in February 2003 for £179,000 with a 59 year unexpired lease. A new lease for 101 years was granted at a premium of £14,000 and with this lease the maisonette would have a market value of £210,00. The Respondent's Surveyor commented that the premium of £14,000 should be viewed with a caution, as the sum was not a surveyor's valuation.


- 1 Valerie Court is a maisonette comprising two bedrooms, one reception room, basic kitchen and bathroom with central heating and communal garden. Currently for sale at £148,000 for an unexpired lease term of 52 years
- 2 Valerie Court is a maisonette in good order comprising two bedrooms, one reception room, kitchen and bathroom with central heating, double-glazing and communal garden. Currently under offer at £173,000 for an unexpired lease term of 189 years

7 Decision

- 7.1 The Tribunal were of the opinion that 19 Little Grove, 5, 8 and 9 Parkland and 8 Hollygrove merely served as a floor and ceiling to the level of value. Only Coldharbour Lane and Valerie Court were comparable. After careful consideration of the comparables provided by the Respondent's Surveyor the Tribunal were of the opinion that the subject property in its present condition with an extended lease has a value of £175,000. However, the Tribunal decided that, disregarding the improvements, the market value for the subject property was £165,000 with a lease of the current unexpired term of 63.5 years extended by a further term of 90 years, and that the market value with its present lease of 63.5 years unexpired term alone was £146,000.
- 7.2 The yield applied to the valuation of 9% by the Respondent's Surveyor was accepted by the Tribunal as being consistent with market trends and being more appropriate to the type of property, location and terms of the lease than 6% used by the Applicant's surveyor in his calculations.
- 7.3 The Tribunal made allowance for the sale prices as they may be in a "no Act" world.
- 7.4 **The Tribunal calculates that the premium to be paid for the new lease under the provisions of Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993 shall be £9,984 in accordance with the valuation attached at Appendix 3.**

8 Costs

The parties did not apply to the Tribunal for a determination of the reasonableness of costs under s 60(1) of the Leasehold Reform Housing and Urban Development Act 1993 Should the parties be unable to agree these costs the Tribunal grants permission to make reference back.



.....JR Morris (Chairman)

APPENDIX 1

APPLICANT'S SURVEYOR'S VALUATION

LEASE EXTENSION VALUATION as at: Valuation Date February 2002. Expiry Date 30/9/2066.

Landlord's present interest:

Ground rent per annum	£ 25	
Years purchase for 64.5 years at 6%.	<u>14.76</u>	369
Reversion to full value repaired but unimproved		
Leasehold with vacant possession	130,000	
Present value of £1 after 48 years at 6% <u>0.023328</u>		
Present capital value of reversion		<u>3033</u>
Open market value of landlord's present interest		<u>£3402</u>

Deduct landlord's proposed interest: Valuation Date February 2002. Expiry date 29/9/2156

Term value say ground rent increased to £100 pa.		
YP in perp @ 6%	<u>16.6667</u>	1667
Reversion to full value as above	130000	
Present value of £1 after 155 years at 6% <u>0.00043</u>		<u>56</u>
Open market value of landlord's proposed interest		<u>1723</u>
So Diminution in landlord's interest £3402		
Less <u>1723</u>		<u>£1679</u>

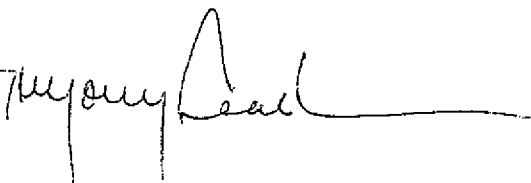
Marriage Calculation

Freeholders' proposed interest	1723	
Plus lessee's proposed interest of 95% of long lease value <u>123500</u>		
Combined proposed interests	125223	
Less Landlord's present interest £3402		
And lessee's present interest (88%) <u>115,000</u>		
Combined present interests	<u>118402</u>	
Total Marriage value	<u>£6821</u>	
Landlord's share @ 50%		<u>£3410</u>
Thus lease extension price exclusive of costs		<u>£5089</u>

I should caution you there are a number of factors in this valuation which are open to criticism and argument if better information and evidence is put forward. For example the 6% yield. Looking at evidence of auction results could substantiate the open market may be paying less results in a higher percentage. A 12 or 13% yield will affect the figures. Likewise the value of the flat in repair but unmodernised is heavily influenced by comparables of which there are few. Nonetheless I have made the best I can of the evidence I have found to enable you and your solicitor to move forward.

Yours faithfully

Mr G D C Leach FRICS
Encl



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Bourne Road

1.Valuation of Existing Freehold Interest

Term				
Flat 2B	Lease for term of	99 years from 01 October 1967 having	63 years unexpired.	
	Ground Rent		£25 pa	
	Years Purchase for	63 years @ 9.0%	x 11.06237	
		Sub Total		277
Freehold Reversion				
Flat 2B	Open Market Value		£167,500	
	Present Value £1 for	63 years @ 9.0%	x 0.004387	735
		Total		1,011

2. Calculation of Marriage Value

Proposed new interests

(i) New Freehold	£0
(ii) New Leasehold (153 year term peppercorn Ground Rent) - Flat 2B	£167,500
Aggregate A	£167,500

Existing interests

(i) Freehold	£ 1,011	
(ii) Existing leasehold – Flat 2B	£142,500	
		<u>£143,511</u>
Aggregate A less Aggregate B		<u>£ 23,989</u>

Freeholders share at 50% £11,994

3. Compensation £0

Premium Payable	£13,006
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APPENDIX 3

TRIBUNAL'S VALUATION FOR LEASE EXTENSION

Current lease: 63.5 years

Ground rent: £25 pa

Extended lease: (63.5 years plus 90 years) 153.5 years

Ground Rent: Peppercorn

Diminution in Value of Landlord's Interest

Annual Ground Rent	£25	
YP @ 9% for 63.5 years	<u>x 11.0644</u>	£ 276
Reversion to Value with new lease	£165,000	
PV of £1 in 63.5 years @ 9%	<u>x 0.004205</u>	<u>£ 693</u>
Total		£ 969

Landlord's Share of Marriage Value

Value of Tenant's interest under extended lease	£165,000	
Value of Landlord's interest under extended lease	<u>----nil----</u>	£165,000
Less		
Value of Tenant's interest under existing lease	£146,000	
Value of Landlord's interest under existing lease	<u>£ 969</u>	<u>£ 18,031</u>
Marriage Value 50%	£ 9,015	<u>£9,015</u>
Premium		<u>£9,984</u>