

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

BIR/OOCT/OLR/2006/0112

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

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

Applicant: Ms. H.M. Lewis (leaseholder)

Respondent: Silhill Investments Limited (freeholder)

Subject property: 115 St Johns Close Knowle Solihull West Midlands B93  
ONL

Hearing: 26 January 2007

Appearances:

For the Applicant: Mr. G.A. Boardman MRICS

For the Respondent: Mr. A. P. Herbert FRICS

Members of the LVT: Mr. A .P. Bell MA LLB (Chair)  
Mr. S. Berg FRICS  
Mr. D. Underhill

Date of determination: - 2 FEB 2007

## **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 and also for the determination of the Respondent’s valuation fees and legal costs. The Applicant is Ms. H. M. Lewis, the leaseholder of the subject property. The Respondent is Silhill Investments 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 11 December 1964 for a term of 99 years from 25 March 1964 at a ground rent of £15 per year, having bought this with the benefit of an extended lease notice in July 2006. The unexpired term of the lease at the date of valuation (27 July 2006) was approximately 56½ years.
3. On 27 July 2006 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 her flat under the 1993 Act. On 29 September 2006 the Respondent gave a counter-notice under section 45 admitting the Applicant’s right. On 10 October 2006 the Applicant made the present application to the Leasehold Valuation Tribunal.

## **Subject property**

4. The first floor accommodation of the subject property comprises a landing, lounge, kitchen, two bedrooms, bathroom and separate wc. Access is via a side entrance hall and staircase in a two storey block of flats. There is a garden to the front and rear and a garage in a separate block. The property has been improved by the installation of gas fired central heating and partial double glazing.

## **Inspection and hearing**

5. The members of the Tribunal inspected the subject property on 26 January 2007 in the presence of the Applicant’s father and her surveyor, Mr. G. A. Boardman.
6. The subsequent hearing was attended by Mr. G. A. Boardman MRICS, representing the Applicant, and by Mr. A. P. Herbert FRICS, representing the Respondent.

## **Representations of the parties**

### Agreed matters

7. The following matters are agreed by the parties:
  - The date of valuation for the purposes of determining the premium payable for the extended lease is 27 July 2006.

- The unexpired term is 56½ years.
- The appropriate rate to be applied at all stages in calculating the diminution in the value of the freehold interest is 5%.
- The open market value of the existing lease is £150,000.

#### Matters in dispute

8. Since both parties have applied the same established formula to determine the premium payable for the extended lease, the one matter that remains that is in dispute between the parties and has been left to the Tribunal to determine is the open market value of the extended lease at the date of valuation, such values to be adjusted where necessary to take account of the statutory assumptions laid down in the 1993 Act.
9. Mr. Boardman, on behalf of the Applicant, valued the extended lease at the date of valuation at £165,000 while Mr. Herbert, on behalf of the Respondent, valued it at £175,000.

#### Evidence and submissions on behalf of the Applicant

10. Mr Boardman submitted that there was no reliable valuation evidence to apply in arriving at the value of the subject property with an extended lease at a peppercorn rent on the valuation date of 27 July 2006 with the consequence that the value of the subject property with an extended lease should be determined by applying an uplift of 10% on the value of £150,000 agreed by the parties for the existing lease. In support of such an uplift he referred to the schedule of agreements reached by Lawrence and Wightman with an uplift of 10% in respect of leases having unexpired terms of between 56 and 59 years and also a recent negotiation by him of an uplift of 10% with Mr. Plotnek for a similar ground floor maisonette at 88 Rowood Drive Solihull where the unexpired term was 58 years.
11. Mr. Boardman submitted that the evidence relied on by the Respondent of negotiated sales of 21 and 45 St Johns Close Knowle should be treated with some caution since in both cases the negotiated sales remained “subject to contract”. In respect of 21 St Johns Close his enquiries of the selling agents revealed that the prospective buyer was paying cash with the consequence that there was no evidence that the buyer had obtained a valuation as would have been the case if a mortgage was required. He had also been informed by the selling agent that, while the terms for an extended lease had been agreed, he had no information as what these terms were and, in particular, whether the buyer would be paying a ground rent. He said that his enquiries of the selling agent for 45 St Johns Close revealed that a similar situation existed there as he had been informed by the agent that a new 99 year lease was to be entered into, but again the sale had not had not been completed nor was he aware of the terms of the new lease.
12. Finally Mr. Boardman contended that the property market had moved upwards since July 2006 particularly in Knowle where there was a shortage of houses suitable for first time buyers. In support of this he referred to the Nationwide

House Price Calculator which showed a 1.52% increase in the value of properties in the West Midlands in the second half of 2006.

13. On the basis of his figures for the open market values of the existing lease (£150,000) and of the extended lease (£165,000) and the agreed figures detailed in paragraph 7 above Mr. Boardman submitted the following valuation:

Term:

Ground rent: £15 per year	
YP 57 years @ 5%: 18.73961	
Capitalised ground rent: £15 x 18.73961:	£ 281.09

Reversion:

Revert to market value:	£153,500	
Less tenants improvements		
double glazing and central heating:	<u>£3,500</u>	
	£150,000	
Uplift for extended lease + 10% :	£165,000	
PV £1 57 years @ 5%:	.0619741	<u>£10,225</u>
		£10,506

Marriage value

Extended lease value:	£165,000	
Less existing freehold:	£10,506	
Plus existing leasehold	<u>£150,000</u>	<u>£160,506</u>
		£4,494
Marriage value 50%		£2,247
Plus freehold		<u>£10,506</u>
		£12,753

Evidence and submissions on behalf of the Respondent

14. Mr. Herbert submitted that the method of arriving at the extended lease value by applying a percentage uplift to the existing lease value was not an accurate one and should not be used where there was, as in this case, market evidence to determine the difference in value between an existing lease and an extended one. In support of this he referred to a decision of a Midlands Leasehold Valuation Tribunal in respect of 52 Eldon Drive Sutton Coldfield (case reference OOCN/OLR/2005/0007).

15. The two comparables relied on by Mr. Herbert were two neighbouring maisonettes, 21 and 45 St Johns Close Knowle. As regards 21 St Johns Close this had been sold, subject to contract, for £181,000 and, adjusting this price to take account of improvements made to the subject property by the installation of gas fired central heating and partial double glazing, Mr. Herbert valued this for extended lease purposes at £175,500. As regards 45 St Johns Close this had been sold, subject to contract, for £179,950 with improvements by the installation of gas fired central heating, double glazing, a refitted bathroom and kitchen but with no garage and was valued by Mr. Herbert for extended lease purposes at £172,000.
16. Mr. Herbert disputed the claim by Mr. Boardman that house values had gone up since July 2006 by referring the Tribunal to the House Price Calculator of HBOS plc showing a reduction of 0.1% in house prices in the West Midlands in the second half of 2006.
17. On the basis of his figures for the open market values of the existing lease (£150,000) and of the extended lease (£175,000) and the agreed figures detailed in paragraph 7 above, Mr. Herbert submitted the following valuation:

Term:

Ground rent: £15 per year

YP: 56½% years @ 5%: 18.72990

Capitalised ground rent : £15 x 18.72990: £280.95

Reversion:

Open market value with extended lease: £175,000.00

PV £1 in 56 years @ 5%: 0.06350 £11,112.50

£11,393.45

Marriage value

Open market value with extended lease: £175,000.00

Less value of tenant's existing lease: £11,393.45

Plus value of landlord's current lease: £150,000.00 £161,393.45

£13,606.55

Share 50% £6,803.28

£18,196.72

**Determination of the Tribunal**

18. The Tribunal gave full consideration to the evidence and submissions on behalf of the parties. The Tribunal find that the Respondent's evidence in respect of the

negotiated sales of 21 and 45 St Johns Close cannot be relied upon as accurate comparables since in both cases contracts have not been exchanged, nor were the terms of the extended leases which have apparently been negotiated known to the Respondent so as to be capable of being disclosed to the Tribunal.

19. The Tribunal drew the attention of the parties at the hearing to two provisions in the Lease of the subject property dated 11 December 1964 containing covenants on the part of the tenant which required to be considered in determining the value of the extended lease. First paragraph 8 of Part 1V of the Second Schedule contains a covenant by the tenant of the subject property “not to use and occupy the demised premises for any purpose other than that of a private residence for the sole occupation of the Lessee and his family”, which has to be read in conjunction with clause 4(ii) of the Lease which obliges the landlord to enforce any covenant by the tenant of the subject property at the request of a tenant of the adjoining and adjacent maisonettes. The Tribunal find that the consequence of these covenants imposing, as they do, a significant restriction on the use and occupation of the subject property is to impact adversely on the value of the subject property by prohibiting a buyer sub-letting the property. Secondly paragraph 2 of Part 1V of the Second Schedule contains a covenant by the tenant of the subject property “to keep the roof and chimney stacks together with the gutters and rainwater down pipes over the demised premises in a proper state of repair”, subject to the proviso that the expense of doing so should be borne equally with the tenant of the ground floor maisonette. It is the conclusion of the Tribunal that, if repair work is required in respect of these items, the tenant of the subject property will find himself not only contractually but also in reality required to do the repair work in order to protect his first floor maisonette before facing the task of seeking to recover one half of the cost from the tenant of the ground floor. The Tribunal find that the operation of this covenant does have an adverse impact on the value of the subject property, although less so that the restriction on use and occupation referred to above.
20. The Tribunal, as mentioned above, have rejected both the rigid application of a fixed uplift of 10 % of the value of the existing lease sought by the Applicant and the reliability of the two comparables submitted by the Respondent to determine the value of the existing lease. However, while the Respondent’s evidence is not sufficiently reliable to be followed and adopted, it does, in the considered opinion of the Tribunal, demonstrate that similar maisonettes to the subject property are highly sought after having regard to their location within a very short walking distance from the centre of Knowle. The Tribunal, having weighed up the evidence of the parties and also used their own knowledge and experience as an expert tribunal (but not any special or secret knowledge), determine that the value of the extended lease at the relevant date of valuation of 27 July 2006 was £170,000
21. Applying the figures referred to above and the other factors agreed between the parties, the Tribunal calculates the premium payable as follows:
  - (i) Diminution in the freeholder’s interest
    - (a) Term:

Ground rent: £15 per year  
 YP: 56½ years @ 5% : 18.7295  
 Capitalised ground rent: £15 x 18.7295 £ 280.94

(b) Reversion

Open market value with extended lease: £170,000

P.V. £1 in 56½ years @ 5%: 0.0635234 £10,798.98  
 £11,079.92  
 Say £11,080

(ii) Marriage value

Open market value with extended lease; £170,000

Less value of tenant's existing lease : £150,000  
 Plus value of landlord's present interest: £11,080 £161,080  
 £8,920

(iii) Premium payable

Value of landlord's present interest: £11,080  
 Plus marriage value (£8,920) x 50%: £4,460  
 £15,540

22. The Tribunal determine that the reasonable legal costs incurred by the respondent amount to £400 (which was agreed by the parties) and £350 for the Respondent's surveyors figures which was the figure proposed by the Applicant.

**Summary**

23. Accordingly, the Tribunal determines the premium payable by the Applicant at £15,540 and the Respondent's costs in accordance with paragraph 22 above.

*A P Bell*

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**A. P. BELL**  
**CHAIRMAN**

**Dated - 2 FEB 2007**