

**RESIDENTIAL PROPERTY TRIBUNAL
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/00HN/OLR/2005/0034

Re: Flat 4 & Garage 3 Warwick Court, 136 Richmond Road, Bournemouth, Dorset,
BH8 8TP

Between:

Mr John Gulliver
("the Applicant")
and
Westleigh Properties Limited
("the Respondent")

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Chairman)
Mr J.S.McAllister FRICS
Mr T.E. Dickinson BSc FRICS

Hearing: 20th September 2005

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

**IN THE MATTER OF AN APPLICATION UNDER SCHEDULE 13
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT
1993 TO DETERMINE THE PREMIUM PAYABLE IN RESPECT OF A
GRANT OF A NEW LEASE**

Appearances: Mr J. Gulliver (Applicant)
Mr Laurence A. Nesbitt BSc (Hons) FRICS MCI Arb
(Respondent's Valuer)

Background to the Application

- (a) The Applicant wished to apply for a lease extension under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (The 1993 Act) and had commenced informal negotiations with the Respondent. Subsequently the Applicant served on the Respondent a Notice of Claim on 21st July 2005 specifying a price of £3,000 for the Lease extension. The Notice of Claim gave the Respondent until 22nd September 2005 to serve a Counter Notice.
- (b) The Respondent served a Counter Notice on the Tenant on 30th August 2005 admitting the Tenants claim for an extended Lease but specified a premium of £10,236.
- (c) The Tenant made an Application to the Leasehold Valuation Tribunal under Section 48 of the 1993 Act for a determination of the items in dispute.
- (d) On 15th July 2005 the Tribunal gave Provisional Directions requiring the respective Valuers to exchange reports and meet and issue a joint report on those items, which could not be agreed.

- (e) On 22nd July 2005 Further Directions were issued when the question of the validity of the Initial Notice seemed in doubt, but in the event the Initial Notice was subsequently accepted as valid and the matter proceeded to a hearing.

Inspection

The Tribunal inspected the premises on 20th September 2005, immediately before the Hearing. The subject Flat is on the ground floor of a purpose-built block of 16 Flats built in the 1960s. The building is constructed of brick with a pitched tiled roof. There are gardens at the front and rear with parking spaces. To the rear is a block of garages and these are approached along a tarmac driveway from the road at the front of the property. The access road forms a U shape and it is possible to drive around the Building. There is also ample room to park vehicles in front of the garages. Richmond Park Road is a main road (A3049) with heavy traffic. There are local shops at the local suburb of Charminster, which is a short distance away and there is a regular bus service into the town centre of Bournemouth, which is within easy reach. The subject Flat has one bedroom, a living room, kitchen and bathroom/wc. The Applicant had made a number of improvements such as the installation of electric heaters and double-glazed windows throughout the Flat. The Applicant also owns one of the garages in the block at the rear of the property. The garage is a concrete prefabricated one with a corrugated asbestos sheet roof. There is no water or power supply to the garage. The Tribunal noted a number of cracks in mortar joints in the main walls of the building. These were at various places around the building.

Hearing

1. The Tribunal had given Directions requiring the parties Valuers to prepare Valuation Reports, exchange them and meet to agree matters. This had not happened as the Applicant had failed to instruct a Valuer to represent him or prepare a detailed Report giving calculations. The Applicant had obtained valuation advice from a number of other sources. These included letters from two local estate agents and a Valuation Report from Connells dated 25th August 2005. That valuation failed to give any comparable valuation evidence or calculations or methodology showing how the conclusions in the valuation had been reached.
2. The Respondent's Valuer Mr Nesbitt had produced a formal Expert Witness Valuation Report with detailed calculations dated 22nd August 2005. Those calculations are set out in Appendix A to this Decision.
3. The following matters had been agreed between the parties:
 - The extent of the Premises, its location and the accommodation
 - The two Leases of the Flat and Garage both expire on 14th June 2061 and they both had 55.9 years to run.
 - The Relevant Date for valuation was to be 21st July 2005, which was the date of the Initial Notice
 - The Applicant's improvements were the double glazed windows, installation of the electric heaters, updated kitchen and bathroom. The Applicant had also carried out other works, such as rewiring and decorations, which the Respondent regarded more as repairs and decorations than improvements.

During the course of the hearing both parties agreed that the effect of those Tenant's Improvements on the value of the property was in the region of £10,000.

4. The following matters were not agreed:
 - Yield.
 - Value of the Flat with the extended Lease
 - Value of the flat with the existing Lease
 - Relativity
 - Landlords costs
5. The Hearing commenced by the Chairman explaining to the Applicant the statutory provisions relating to Lease extensions in that the term was being extended by 90 years from the existing term date and the form of the New Lease would be in accordance with the current Leases but the Ground Rent would in future be a peppercorn. The Applicant's previous attempts to agree matters by negotiation had failed and the Tribunal was now being asked to make a decision on the premium to be paid and any further outstanding matters.
6. First of all the Tribunal invited both parties to make their comments on the matter of the cracks that were seen on the main walls of the Building and whether these were likely to have any affect on the values. The Applicant, Mr Gulliver, said had been in residence for 3 ½ years and during that time there had apparently been two Inspections, although he did not know by whom and with what result. He said they were probably minor initial settlement cracks and he had been told they had been there for 30 years or so. He understood there were no current proposals to carry out any repairs. No inspections had been carried out by the Local Authority, and he was not aware of any Structural Engineers or Building Surveyors reports. He thought some repointing had been done and did not think there had been any recent cracking in the mortar. So far as any affect on value of the Flats was concerned, Mr Gulliver did not think they had any affect at all. A number of the Flats had sold in recent years and he was unaware of anyone having been refused a mortgage due to the cracks.
7. Mr Nesbitt on behalf of the Respondent said he thought the cracks could have an affect on the value. Even if there were no signs of any structural defects, it was likely the appearance of the cracks may have an affect on the value. Initially he was unable to put a percentage on the amount of any such reduction of value, but later in the hearing he suggested a figure of between 5 and 10% might apply. He compared the subject Block with the newly built Block of Flats at Stirling Court, in the same road, which seemed more modern, and more attractive and did not have cracks in the building. He thought a Flat in Warwick Court, which had cracks, would be less saleable than a flat in Stirling Court.
8. The Tribunal then turned its attention to the various Valuations provided by the parties and the comparable evidence of sales of other similar properties, which had been suggested in support. The Applicant, Mr Gulliver relied upon the Valuation Report dated 25th August 2005 provided by Connells. This was prepared by Mr M. White, FRICS and gave a value of the existing (short) Lease at £130,000 and the value of the property with an extended Lease at £135,000. The difference being £5,000, which Mr White had suggested was

the marriage value and one half of which was payable by the Applicant, namely £2,500. Mr White was not present at the Hearing and could not be questioned by the Tribunal or Mr Nesbitt. The Valuation Report was not supported by any comparable valuation evidence nor any calculations.

9. Mr Gulliver had, shortly before the Hearing, produced some evidence he had obtained from the Internet relating to actual sales of similar properties in the area. These included the following:

Property	Sale price	Date
Flat 7, Stirling Court	£137,000	8 th July 2004
Flat 2, Warwick Court	£110,000	16 th October 2003
Flat 5 Warwick Court	£69,500	30 th May 2002
Ditto	£95,000	14 th March 2003
Ditto	£112,000	10 th October 2004

The same Flat, 5 Warwick Court had changed hands again on 13th May 2005 for the price of £126,000 and evidence of that transaction was provided by a copy of Land Registry entries of that title. Flats 7 Stirling Court and 2 Warwick court had two bedrooms, but Flat 5 Warwick Court was exactly the same size as the subject flat, Flat 4, and had one bedroom.

10. Mr Gulliver drew to the Tribunal's attention the abundance of evidence of the sales of Flats 2 and 5 in the same Building in support of his claim that there were no problems selling the Flats. He referred to the fact that the Land Registry entries indicated that the latest owner of Flat 5 Warwick Court had obtained a mortgage and he also produced a letter from Connells (undated), which confirmed that they could arrange a mortgage on a flat, which had a 55-year lease with a number of lenders.
11. In summary Mr Gulliver stood by the valuations supplied by Connells at £130,000 for the value of the property without the Lease extension and £135,000 for it with the Lease extension. In reply to questions from Mr Nesbitt, Mr Gulliver said he thought Warwick Court was a better environment than Stirling Court because Warwick Court had a U shaped drive, which allowed easier access, there was more room for car parking and it had larger communal grounds.
12. Mr Nesbitt then gave evidence in accordance with his written Report. He had annexed to his Report copies of three Tribunal Decisions at The Cherries, West Wittering (CHI/45UD/OCE/2004/0060) dated 27th January 2005 and 66 Courtlands Crescent, Banstead (CHI/43UF/OLR/2004/0043) dated 23rd December 2004 and Belle Vue Mansions, Bournemouth (CAM/11/EU/OLR/2004/16). In the former two cases the Tribunal had decided the Yield Rate at 8%. In the case of Belle Vue Mansions the Tribunal had decided a relativity of 87.5% with a Lease with 55 $\frac{3}{4}$ years to run.
13. Mr Nesbitt then took the Tribunal through his written Report and outlined the main points. He had started with the evidence produced by the Applicant from the two Estate Agents. Allens Estate Agents had written to the Applicant on 9th June 2005 who said they had an offer of £87,000 for the property from an investment buyer. In a letter from Roberts Estate Agents dated 23rd June 2005 an offer of £85,000 had been received from a cash buyer. Mr Nesbitt had regarded these as evidence of the value of the property with the current short Lease. He said he had had difficulty in finding any firm evidence of actual sales of one-bedroom properties in Bournemouth. Most of the sales had been of two bedroom Flats. He doubted whether the latest sale of Flat 5 Warwick

- Court was a true arms-length transaction, which should be relied upon. He was unable to say why he took that view but thought it was unusual for such a property to change hands so many times in a short time.
14. Mr Nesbitt also challenged the valuations provided by Mr White of Connells. Mr White had not attended the Hearing and was not available for cross-examination. Mr Nesbitt asked the Tribunal not to place any weight on his valuations. Mr White had not included in his Report any evidence on which he had based his valuations and had not prepared any calculations in support. Mr Nesbitt also referred in passing to a Flat at 11 Pinelands Court (a one bedroom Flat in a Block nearby) where the asking price was £129,950 and that property had not sold at that price. He thought that might indicate that the actual value might be less than that quoted. As this evidence was incomplete and inconclusive and no sale had been achieved, the Tribunal did not place any weight on the value of this evidence in reaching their decision.
 15. Following conclusion of the Hearing the Tribunal retired to consider their Decision. First of all it considered the calculations and methodology contained in the Report prepared by Mr Nesbitt. The Applicant, Mr Gulliver, had not prepared his own Report or calculations, but had merely obtained valuation evidence. Mr Gulliver had not sought to challenge the calculations or methodology, merely the valuations. To that extent the Tribunal accepted the methodology used by Mr Nesbitt but not the valuations.
 16. As far as the first element of Mr Nesbitt's Valuation is concerned Mr Gulliver had challenged it. The Tribunal therefore calculated the diminution in value of the Freeholders interest in the sum of £1,726. In doing so the tribunal accepted Mr Nesbitt's yield of 8% but did not agree with his valuation of the extended Lease i.e. £95,000.
 17. In respect of agreed matters, both parties had accepted a reduction of about £10,000 to take into account the improvements carried out by the Applicant. Mr Nesbitt had also appeared to have accepted a reduction of between 5 and 10% in the value of the property, in respect of the cracks in the Building. Whilst Warwick Court did have the advantages outlined by Mr Gulliver (large plot, plenty of car parking, U shaped drive) it was nevertheless an older Block than some of the others in the same road.
 18. In respect of a starting point for the marriage value element valuations there was plenty of evidence from sales of Flats in Warwick Court as set out above. This was a "basket" of evidence, which the Tribunal considered carefully. The best evidence seemed to be of the sales of Flat 5, which was the same size and location as Flat 4. Flat 5 did not have a garage, but Flat 4 did. In respect of the two offers for Flat 4 from the two local estate agents, the Tribunal did not place any great weight on that evidence. No attempt had been made to market the property before those offers were received. One potential buyer was an investor and the other was cash buyer. In the case of Mr White's valuation the stated gross external floor area of 43 square metres seemed rather small, compared with its actual gross internal floor area of about 55 square metres.
 19. The Tribunal then went on to consider the effect that the current short Lease (55.9 years) might have on the value of the subject flat. There was clear evidence from previous LVT Decisions that generally people pay less for shorter leases than for longer ones. The length of a lease sometimes affects the ability to raise a mortgage and hence can have an effect on value. In the

- Tribunal's experience leases for less than 70 years can be difficult to sell, particularly when the market is slow.
20. Starting from the best reliable evidence available, being the sale of Flat 5 in March 2005, a few months prior to the Relevant Date, this gave a value of £126,000 for the same size one bedroom flat. According to the information supplied to the Tribunal by Mr Gulliver, this flat had also changed hands at £112,000 during October 2004. This flat may have been modernised and improved at the dates of the sales but Mr Gulliver confirmed that he had not carried out an internal inspection. The Tribunal did not accept that the evidence of the sales was suspect as Mr Nesbitt had suggested. He had produced no firm evidence on which to base that contention.
 21. The Tribunal also considered the available market evidence for the sale of Flat 2 Warwick Court (a two bedroom Flat with a garage) at £110,000 in October 2003, after making allowance of £10,000 for the tenants improvements (making £100,000), and adding on say 10% for an adjustment for a rising market between 2003 and 2004, this brought the value of that Flat to around £110,000. Comparing this evidence with the Flat at Stirling Court (with a long lease) at £137,000 in July 2004, less improvements of £10,000 and a reduction for modern built and the additional bedroom, this might bring the value down to the same figure of around £110,000.
 22. After reviewing all the evidence and taking into account the Tribunal's expert knowledge and experience, and for the reasons given above, the Tribunal decided that the correct valuation figure should be £110,000 for the value of the property with an extended Lease. So far as relativity is concerned the Tribunal considered the appropriate figure should be 87.5% for a Lease having 55 $\frac{3}{4}$ years to run, following the Tribunal's decision in the Belle Vue Mansions case. They did not accept Mr Nesbitt's "differential" (relativity rate) which he produced from the Tribunal Decision in Banstead Surrey, referred to in paragraph 12 above). The Tribunal preferred to accept the view that the market in Bournemouth is different to that in London. This gave a value of the current Lease at £96,250. This gave a final Premium payable for the New Lease to be £7,738.

THE PREMIUM PAYABLE FOR THE NEW LEASE SHALL BE £7,738

The Tribunal's calculations are set out in Appendix B of this Decision.

23. Landlords costs

In accordance with Section 33 of the 1993 Act, the Applicant is responsible for the Landlords costs as set out in that Section. At the date of the hearing the amount of those costs are not known and that aspect of the application IS HEREBY ADJOURNED for a period of Three Months from the date hereof during which the parties shall attempt to agree the costs. In the event of the amount of the costs not being agreed, then either party may WITHIN THE SAID PERIOD OF THREE MONTHS FROM THE DATE HEREOF, make a further Application to the Tribunal for the costs to be assessed. It is proposed that such Application shall be dealt without on paper representations from both sides, without the need for a Hearing. In the event of no further Application being made within Three months from the date hereof the remaining matters shall be deemed to have been withdrawn and this Application shall be automatically concluded.

APPENDIX A – The Respondent/Landlord's Calculations

Lease Details

Reversionary rate %	8.00%
Capitalisation rate %	8.00%
Unexpired term	55.9 years
Rent receivable by landlord	£15.05

Values

Extended lease value	£95,000	
LHVP	£76,000	80.00% Differential

Diminution in value of freeholders interest

Term	Loss of rent	£15.05	
	X YP 55.90 years @ 8.00%	12.3308	
			£186
Reversion	FHVP	£95,000	
	X YP 55.90 years @ 8.00%	0.014	
			£1,286

			£1,472
Less value of Freeholders proposed interest		£0	
	X PV 145.90 years @ 8.00%	0.000	
	(existing term plus 90 years)		£0.00
			£1,472
		Lessor's Interest	
<u>Calculation of Marriage Value</u>			
	Tenant's extended Lease Value	£95,000	
	Landlord's Extended Lease Value	£0	
	Sum of Proposed Extended Lease Interests		£95,000
Less			
	Landlord's Present Interests	£1,472	
	Tenant's Present Interest	£76,000	

		£77,472	£77,472

	Marriage Value		£17,528
	Take 50% Marriage Value		£8,764

Premium Payable to Freeholder

	Diminution in freehold Interest	£1,472
Plus	Freeholder's Share of Marriage Value	£8,764

	TOTAL	£10,236

APPENDIX B – The Tribunal’s Calculations

Lease Details

Reversionary rate %	8.00%
Capitalisation rate %	8.00%
Unexpired term	55.9 years
Rent receivable by landlord	£15.05

Values

Extended lease value	£110,000	
LHVP	£96,250	87.5% Differential

Diminution in value of freeholders interest

Term	Loss of rent	£15.05 p.a.	
	X YP 55.90 years @ 8.00%	12.3308	
			£186
Reversion	FHVP	£110,000	
	X YP 55.90 years @ 8.00%	0.014	
			£1,540

			£1,726
Less value of Freeholders proposed interest		£0	
	X PV 145.90 years @ 8.00%	0.000	
	(existing term plus 90 years)		£0.00

			£1,726

Loss in value of Lessor’s Interest

Calculation of Marriage Value

	Tenant’s extended Lease Value	£110,000	
	Landlord’s Extended Lease Value	£0	
	Sum of Proposed Extended Lease Interests		£110,000
Less			
	Landlord’s Present Interests	£1,726	
	Tenant’s Present Interest		
	(87.5% of £110,000)	£96,250	

		£97,976	£97,976

	Marriage Value		£12,024
	50% Marriage Value		£6,012

Premium Payable to Freeholder

	Diminution in freehold Interest	£1,726	
Plus	Freeholder’s Share of Marriage Value	£6,012	

	TOTAL	£7,738	

Dated this 30th day of September 2005



.....
John B. Tarling, MCMI
(Chairman)