

**RESIDENTIAL TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT  
PANEL**

**LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 (as  
amended) SECTION 48**

**CASE NUMBER LON/NL/2577/04**

**Premises : Flat 3 Peterborough Mansions New Kings Road  
London SW6 4SF**

**Tenant : Douglas Anthony Gee (Applicant)**

**Landlord : Oakfern Properties (Respondent)**

**Representation:**

**Applicant :  
Mr John Spencer-Silver BSc Messrs Rooks Rider Solicitors  
Mr J Gambles TD BSc MRICS (Friend and Falke)**

**Respondent:  
Mr G P Gay BSc FRICS**

**Committee: Mr A A Dutton Chair  
Mr J R Humphrys FRICS  
Mrs L Walter MA (Hon)**

**Hearing : 10 November 2004**

**Decision : 23rd November 2004**

**A. BACKGROUND:**

1. This Application dated 14 May 2004 was made pursuant to Section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") by Mr Douglas Anthony Gee the tenant of Flat 3 Peterborough Mansions New Kings Road London SW6 4SF ("the Premises").
2. By a Notice dated 5 September 2003 ("the valuation date") Mr Gee sought to acquire a new lease of the premises on the same terms (save as to the rent) as the existing lease upon payment of a premium of £5,500.00.
3. By a Counter-Notice, dated 19 November 2003, the Respondent, Oakfern Properties Limited, admitted Mr Gee's right to acquire a new lease of 90 years after the expiry of the existing lease on the same terms save as to rent but at a premium of £27,560.00.
4. Mr Gee occupies the premises under the terms of a lease dated 3 June 1977 for a term of 99 years from 24 June 1976. Accordingly at the valuation date there are some 71 years and 10 months of the term unexpired.
5. The following matters are in dispute:
  - The yield rate applicable both initially and to the reversion;
  - The relativity between the short lease and the extended lease values;
  - The values of the existing extended leases
  - The premium payable

Those matters that are agreed are the valuation date and the terms of the extended lease, a draft of which had been included with the papers.

## **B. EVIDENCE**

6. On behalf of Mr Gee, Mr J E J Gambles presented to us a written report dated 25 October 2004 which contained a statement indicating the report complied with the RICS Practise Statement and Guidance Notes relating to Expert Witnesses. In addition to this report Mr Gambles had submitted a counter-submission to a statement presented by the Landlord's witness, Mr G P Gay. At the hearing on 10 November 2004, Mr Gay submitted his own counter-proposal which was objected to by Mr Spencer-Silver, a partner with Rooks Rider, solicitors for Mr Gee. The objection by Mr Spencer-Silver was to the effect that the counter-submission by Mr Gay was submitted too late and prejudiced Mr Gee. We heard all that was said but agreed to allow the report by Mr Gay to be taken as evidence. The earlier submission by Mr Gambles had only been delivered late on 8 November 2004 and we allowed Mr Gambles some time to review the additional report by Mr Gay. In the circumstances we did not believe that Mr Gee's position was prejudiced.
7. Mr Gambles responded orally to the late submission by Mr Gay and in particular to the matters of yield and relativity. He did not believe that anything in this report from Mr Gay changed his view on the valuation he proposed.
8. In essence Mr Gambles evidence was that the best comparable for the short lease value of the premises was a comparable sale at 8 Peterborough Court which took place in February 2004 at a price of £287,500.00. This flat was on the top (fourth) floor of the building but of a similar size and with the same lease terms. To compare with the subject premises he made an addition of 7.5% for the different floor levels, based on his knowledge of the market and a reduction of £15,000.00 in respect of the improvements to the subject premises. This gave a short lease value of £285,315.00.

9. To obtain the long lease value Mr Gambles applied the relativity of 95% obtained by reference to a graph, prepared by a colleague, of other LVT Decisions and three LVT Decisions within the locality of SW6 over the period 2000-2003. He told us these were the only ones that he had been able to find and gave an extended lease value of £300,322.00.
10. As to yield, again relying on LVT Decisions, he had concluded that a figure of 8% was appropriate both for the initial yield applicable to the ground rent which was £25.00 per annum and the reversion. He had included a nominal sum in respect of the Landlord's interest in the extended lease of £1.19 but this was only apparent from the premium calculation he submitted. This showed a price payable for the lease extension of £8,260.00.
11. On behalf of the Landlord, Mr Gay submitted a statement and the aforementioned counter-submission. Mr Gay told us that whilst he was not a director of the Landlord company he had very close business associations with them and indeed was a director of other companies of which directors of the Landlord company were involved. He did not submit his evidence as an independent expert.
12. We can perhaps sum up Mr Gay's evidence this way. It did not consist of any valuation evidence in accordance with the Act. He relied upon the Landlords dealings with the grant of lease extensions which, without exception, had been "negotiated" with the tenant. He gave us a list of properties which had been the subject of lease extensions, variations of leases or sales of freeholds. They showed that it was not unusual for the sum of £15,000.00 to be paid for a lease extension and indeed sums greater than that had been obtained. It is right to note however, that from the list that was produced there appeared to be 14 lease extensions of which only some 35% were represented by valuers, the rest having been dealt with by the tenant direct with the Landlord. We will comment in more detail on this evidence in the Decision element of this document.

13. As to yield rates, he had fixed on a figure of 6% for no particular reason, it appeared, other than if he had gone for a higher figure than that, there was a likelihood that the Tribunal would themselves go higher and he thought therefore by starting low, this would encourage us to keep the yield rates in that area. He appeared to admit the same argument for the relativity figure of 90%.
14. There was not a great deal of difference between Mr Gay and Mr Gambles on the flat's value although Mr Gay challenged the difference of 7.5% for the floor levels and the £15,000.00 that had been allowed for by Mr Gambles for improvement. Mr Gay's calculation of the premium payable for the Lease extension was £17,252.10, based on an existing lease value of £290,000.00 and an extended Lease value of £319,000.00.

#### **C. INSPECTION**

15. We were able to inspect the subject premises on the 10 November. The flat was on the second floor of a five-storey terraced property and included commercial properties at ground floor level. Externally the property appeared to be in reasonable order and we noticed that some tenants had replaced their windows with what appeared to be double glazed units and others had not. It was in a busy popular area overlooking a park. The common parts were quite poor, needing redecoration and repairs to some cracking. The climb to the subject premises was not noticeable but we did go to the top of the property and certainly the climb to the top floor would have increased one's heart rate. The flat itself was well maintained, presently used on the basis of three bedrooms, kitchen, living room and a bathroom. We noted the state of repair of the property which had a basic range of kitchen units and a somewhat dated bathroom. It had the benefit of central heating and was a pleasant unit of accommodation.

#### **D. DECISION:**

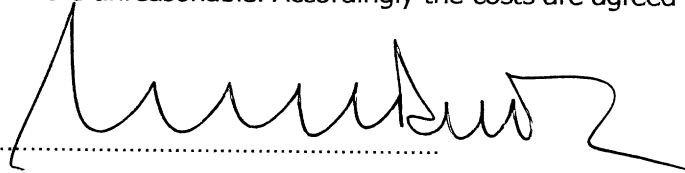
16. We will deal firstly with the evidence we received from Mr Gay. As we have indicated Mr Gay's evidence was essentially that in the market he had been entering into "deals" for lease extensions for some time and that in his view a lease valued at around £300,000.00 would result in a premium of approximately £20,000.00 being paid for a Lease extension. Whilst Mr Gay's evidence of his dealings in the market was of interest, we of course have to deal with the calculation of the premium by reference to Schedule 13 of the Act. This requires us to determine certain elements to enable a calculation to be undertaken with regard to the price payable. Mr Gay did not really give us any evidence that would make up those elements of the calculation required to determine the premium payable. In the counter-submission to Mr Gambles further submission he came closer to touching upon the elements making up the information needed to undertake a valuing exercise under the Act but still maintained that the evidence of sales was most compelling and should be relied upon by us.
17. As we have indicated, amongst the papers was a schedule showing the "deals" that had been struck over a period January 2001 to October 2004 by Oakfern Properties. These included lease extensions, freehold sale and variations to leases. Mr Gay candidly admitted that Oakfern would seek to get as much money as they could for any of these transactions and that if for example the tenant could not afford to pay the figure initially asked then they would negotiate and perhaps accept a smaller premium in return for an increased ground rent.
18. It may well be that some of the settlements that were relied upon by Mr Gay were calculated by reference to the provisions of the Act. We have no way of knowing. What we do know from questions asked of Mr Gay that only some 35% of the tenants were represented by a Valuer and indeed the majority of those that were represented were by a Mr Toogood. It may well be the case that some of the settlements were achieved as a result of ignorance of the law on the part of the tenant. Alternatively there may have been concern on

the part of the tenants at the perceived costs of disputing the Landlord's Counter Notice or indeed the need to do a deal because of an impending sale of their flat. None of the above factors were clear from the details that Mr Gay provided and indeed, in at least one of the transactions the new lease contained an enforcement covenant by the Landlord which Mr Gay openly conceded would have resulted in a sum being sought by the Landlord over and above the premium payable for the lease extension. Accordingly, whilst Mr Gay's evidence was given honestly and openly, it did not assist us in reaching a conclusion on the correct price payable for the lease extension of this particular property.

19. Mr Gambles evidence had however been given in the more usual format. He had addressed those relevant parts of the calculation needed to be considered and we found his evidence given honestly and in accordance with the independent expert code.
20. On the question of yield, from our own knowledge and experience, we would agree that the figure put forward by Mr Gambles of 8% is acceptable. This is a yield rate that we have had put to us for other properties in this locality and is certainly to our mind in keeping with the level of yield rates applicable for this type of property in this locality.
21. As to the question of relativity we would not find fault with the evidence given to us by Mr Gambles in this regard. Our own knowledge and experience would suggest that a percentage of around 95% is appropriate and indeed sits with the graph produced by Mr Gambles and the other evidence he put to us.
22. We would however differ slightly with Mr Gambles on the short Lease and long Lease values of the property. There is clearly good evidence in the property at Flat 8 Peterborough Mansions which was sold in February 2004 for £287,500.00. Whilst we accept there may be some difference for floor

levels, a figure of 7.5% seems to us to be on the high side. We would make an allowance of £10,000.00. On the question of improvements, having inspected the subject premises we believe the figure of £15,000.00 is too high. The value of the improvements to the subject premises as they stand is not that great. We would allow a figure of £5000.00. Accordingly starting at the figure of £287,500.00 we conclude that the short lease value for the subject premises should be £292,500.00. Applying the relativity to that of 95% gives a long lease value of say £308,000.00. We make a minor allowance in respect of the Landlords future interest of £1.00 and that therefore gives rise to a figure of £8,522.00 as being the premium payable for the Lease extension of the subject premises. The attached schedule sets out the calculations leading to the premium payable.

23. During the course of the hearing Mr Gay had put forward the costs of dealing with the lease extension as provided for at section 60 of the Act. He suggested a figure of £750.00 for the Surveyors costs and £750.00 plus VAT for the legal costs. Mr Gambles on behalf of Mr Gee did not think those costs were unreasonable. Accordingly the costs are agreed between the parties.



Andrew Dutton Chair

Dated..... 23<sup>rd</sup> November 2004



## RESIDENTIAL PROPERTY TRIBUNAL SERVICE

### LEASEHOLD VALUATION TRIBUNAL'S VALUATION UNDER LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 (as amended) schedule 13

**Flat 3, Peterborough Mansions, New King's Road, London SW6**

Yield applicable throughout 8%

Relativity 95%

#### **Term**

Ground rent	£25	
	<u>12.4503</u>	£311

#### **Reversion**

£308,000		
VP Value	0.0040	<u>£1232</u>

Value of Landlord's existing interest		£1543
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Value of Landlord's proposed interest say	<u>£1.00</u>	
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#### **Marriage Value**

Value of Proposed interests

Landlord's	£1.00	
Tenant's	<u>£308,000</u>	£308,001

#### **Less**

Value of existing interests

Landlord's	£1543	
Tenant's	<u>£292,500</u>	<u>£294,043</u>

<b>Marriage value</b>		£13958
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50% of marriage value		<u>£6979</u>
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<b><u>Premium payable for lease extension</u></b>		<b><u>£8522</u></b>
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