

Eastern Rent Assessment Panel
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REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL
Leasehold Reform Housing & Urban Development Act 1993 Section 48

Premises: 16 Dugdale Hill Lane, Potters Bar, Herts EN6 2DW
Our ref: CAM/26UE/OLR/2005/0021

Hearing: 21 October 2005

Applicants: Lee Rodney Lewis and Sandra Ann Slinger
Represented by: Cree, Godfrey & Wood, Solicitors
Expert witness: Mr Nigel P Braham
of Braham Sears & Partners, Surveyors, Valuers & Estate Agents

Respondent: St Albans Diocesan Board of Finance
Represented by: Claytons, Solicitors
Expert witness: Mr David Linnell MA FRICS MEWI

Members of Tribunal:

Mr G M Jones - Chairman
Miss Marina Krisko BSc (Est Man) FRICS
Mrs S Redmond BSc (Hons) MRICS

0. BACKGROUND

The Property

- 0.1 This property is a ground floor flat comprising three rooms, kitchen, bathroom, garage and gardens, located in a residential suburban street about three-quarters of a mile from the town centre and railway station. It forms part of a small development of eight flats in two two-storey blocks of four built in about 1962. Construction is of brick with pitched tiled roofs, the elevations including tile-hung and rendered areas. Each flat has a small garden. The subject property has French windows opening onto the garden. The garages are in a block at the rear, which is approached by an uneven, unmetalled lane.
- 0.2 The block is generally in fair structural condition, though pointing, gutters and downpipes are in need of attention. The tenants have replaced the original wooden-framed windows in the block with UPVC double-glazed units. The subject property has a dated kitchen (recently gutted by fire) and bathroom (smoke damaged). Space heating is by two night storage heaters and the tenant's appliances. The garages have been neglected and are in poor decorative condition.

1. THE LEASE

1.1 The Applicants' lease is an underlease dated 28 October 1963 for a term of 99 years (less a day) from 14 August 1963 at a rent of twelve guineas (£12.60) per annum for the whole of the term. The reversion under the head lease dated 14 August 1963 has merged with the freehold. The Respondent freeholder and (now the Applicants' landlord) is the St Albans Diocesan Board of Finance, as trustee for the Parochial Church Council of St Charles the Martyr, South Mymms.

1.2 The underlease expressly provides that the roof forms part of the demise of the upper flat; but there is no express demise of the foundations. The tenant of the upper flat is responsible for repair of the roof; but there is no express provision for repair or maintenance of the foundations. Moreover, there is no provision of the underlease requiring either party to insure. The underlease provides that the tenant must reimburse the lessor for one eighth of any costs the lessor may (at his option) incur for insurance of the development. Presumably there were express provisions regarding responsibility for insurance contained in the head lease; but those provisions did not survive the merger of the reversion with the freehold.

2. THE ISSUES

2.1 On 22 November 2004 the Applicants gave notice to the Respondent pursuant to section 42 of the Leasehold Reform Housing and Urban Development Act 1993 seeking an extended lease pursuant to their rights under section 39 at a price of £11,000. The Respondent's counter notice dated 24 January 2005 admitted the Applicants' right to an extended lease but proposed a price of 20,758. By their application dated 22 June 2005 the Applicants asked the Tribunal to determine the price and also to make an order inserting appropriate terms as to insurance and repair, as explained in the witness statement of Mr Simon Nosworthy, solicitor.

2.2 The Respondent objected to the proposed variation of the lease on grounds set out in the witness statement of Mr Andrew Stovin, solicitor. He points out that the Diocesan Board never intended to undertake administrative responsibility for the development and has no resources for that purpose. Moreover, he says that the lease should not be varied unless all the leases of flats in the development are varied in the same way.

3. THE EVIDENCE

3.1 At the hearing the parties were represented by their respective valuation experts, who had each submitted a written report. They also gave evidence and were questioned by the Tribunal and by each other. It was slightly unfortunate that they had agreed a valuation date of 24 January 2005, whereas section 39(8) specifies as the "relevant date" the date of the tenant's section 42 notice (in this case 22 November 2004). In consequence the valuers were required to and did amend their evidence at the hearing. They were willing and able to do this, although it was an additional complication which they had not expected. The Tribunal made allowance for the fact that both experts were necessarily thinking on their feet to a greater extent than would be usual in this type of case.

3.2 **Mr Braham** is a very experienced estate agent who practised mainly in London; his experience of Potters Bar is relatively limited. His impression was that the market was flat but not falling. Prices had been fairly stable since November 2004. There had been a dip in the market in mid-2005; but this was corrected by the recent fall in interest rates. In his view the unsatisfactory lease terms might have some effect on the valuation. He

was able to update the references in his report to 10 Dugdale Hill Lane, a first floor flat in the same development which had a lease extension in 2004. This had been on the market for 2-3 months at £175,000 but had attracted little interest. The asking price was currently £169,950. As yet there were no takers. The last actual sale of a flat in this block was 7-8 years ago.

- 3.3 He told the Tribunal that he had inspected the interior of No 10, which was in similar condition to that of No 16 at the valuation date (i.e. before the fire). No 10 had gas-fired central heating and a slightly larger garden. His view was that the size of its garden had no significant effect on value. The garden of No 16 is more valuable as it is directly accessible from the ground floor flat. Some prospective purchasers prefer the convenience of a ground floor flat, while others prefer the security of an upper flat.
- 3.4 The property at Aberdale Gardens cited in his report has a 994-year lease. He did not consider that the length of the lease made a significant difference, as compared with a lease for 90 years. That property was actually sold at £195,000, the sale being completed in August 2005. Leaving aside the other differences between the two properties, he would make an adjustment of £10-15,000 to take account of the superior quality of fitting out. The property at Parkside is under offer at £170,000 with a long term remaining on the lease.
- 3.5 Looking at the evidence as a whole, in particular to the additional evidence available since the date of his report, he would make a downward adjustment of £10,000 in the value of the extended lease, to reach a figure of £165,000. He had used a yield of 9% for various reasons. He put forward a schedule of 5 LVT Decisions at 9-10%. The ground rent in this case is very low and the landlord has limited opportunities to profit from the investment in other ways until the end of the term in 2062. The tenants' statutory rights reduce the attraction for investors. The value of the existing lease has to be assessed by relativity because of the lack of direct evidence. He stood by his figure of 87% of the value of the extended lease.
- 3.6 **Mr Linnell** is a chartered surveyor who is very experienced in leasehold valuation. He practises as a consultant on his own account from an office in Potters Bar. He assumed that the tenant was responsible for repair and maintenance of the foundations. In his view, if that assumption was wrong, the valuation should be higher. However, in a well established building with no apparent settlement or subsidence problems, the obligation to repair the roof was more onerous and would tend to depress the value of the upper flats.
- 3.7 His view was the market locally had been falling since the summer of 2004. As a rule of thumb, current values were 5% lower than in January 2005 and a bit more than 5% lower than in November 2004. He had considered No 16 as basically unmodernised, apart from the UPVC double-glazing. The new windows add value, though not as much as the installation costs. The new evidence relating to No 10 implied a figure of £178,333 for an extended lease of No 16, less an adjustment because of the lack of central heating.
- 3.8 In any event, evidence of prices after the valuation date were of limited value because such evidence was, by its very nature, not available to the market at the relevant time. One should look at transactions in the period prior to the valuation date. He directed the attention of the Tribunal to his comparable evidence, which was of actual transactions in the second half of 2004. The available evidence was limited. He agreed with Mr Braham that the value of the existing lease must of necessity be ascertained by relativity, in which connection he drew attention to the two flats at Ritz Court mentioned in his report. Flat

4A sold in May 2005 for £138,000 with a 99 year lease. Flat 5A, with a 48 year lease, did not sell at an asking price of £121,950; the lessee subsequently paid a premium of £21,000 for a lease extension. The flats at Ritz Court were of poorer quality. Making appropriate adjustments in the light of his professional experience, he stood by his figure of 78% of the value of the extended lease.

- 3.9 In his experience freehold reversions in Potters Bar were nearly all owned by a small number of landlords. Tenants seeking extensions generally approached the exercise as a matter of negotiation, rather than applying to the LVT. Interest rates had fallen in recent years and there had been a strong market in investment property. This was a very secure investment. He considered that a yield of 8% was appropriate in this case. The Tribunal should not rely upon previous LVT Decisions: see the Decision of the Lands Tribunal in *Blendcrown Ltd –v- Church Commissioners for England* [2004] 1 EGLR 143.

4. THE LAW

Claim for an Extended Lease

- 4.1 Under section 42 of the **Leasehold Reform Housing & Urban Development Act 1993** a qualifying tenant of a flat may serve notice of his desire to acquire an extended lease of the flat. He must pay a premium in accordance with the provisions of Schedule 13 and the landlord's reasonable costs under section 60. Tenants' improvements are to be disregarded. In case of dispute, the tenant can apply to the LVT under section 48. By section 56(1) the new lease will be for a term extending to 90 years from the term date of the existing lease at a peppercorn rent. The property comprised in the new lease will be the flat, together with any garage, gardens etc. as defined in section 62(2).
- 4.2 The terms will be the same as in the existing lease, save that under section 57 the LVT may order such modifications as may be required or appropriate to take account of the omission of property included in the existing lease but not comprised in the flat; of alterations made to the property demised since the grant of the existing lease; or in certain cases where the existing lease derives from more than one separate leases, of their combined effect and of the differences (if any) in their terms. Where, during the continuance of the new lease, the landlord will be under any obligation for the provision of services, or for repairs, maintenance or insurance, the lease may also require due contribution to be made by the tenant and may provide for enforcement of such contributions as though they were rent.

Costs

- 4.3 The tenant is not liable under section 60 to pay costs incurred by the landlord in connection with the application, save to the extent that costs relating to valuation evidence may have been reasonably incurred for the purpose of fixing the premium, as provided by section 60(1). The Tribunal has only limited power to award inter-party costs of the application (limited to £500) in the event of misconduct by a party, or where costs have been wasted.

5. CONCLUSIONS

- 5.1 The Tribunal is satisfied that both valuation witnesses have genuine expertise in this field and have addressed the issues relevant to the valuation exercise in accordance with Schedule 13. The Tribunal bears in mind the guidance given by the High Court and the Lands Tribunal as cited in the article by Hazel Williamson QC referred to by Mr Linnell and, in particular the *Blendcrown* case.

- 5.2 It is, perhaps, a little simplistic to describe previous LVT decisions as valueless, given that they were generally reached in the light of expert evidence. A consistent body of such decisions is, in reality, good evidence of the views prevalent amongst expert valuers at the time. However, it is fair to say that valuation by precedent alone “would inevitably lag behind changes and perpetuate out-of-date values”. The Tribunal has been careful not to be led into error by the previous LVT decisions cited by both parties. The Tribunal also takes note of the dangers inherent in relying upon market evidence post-dating the valuation date.
- 5.3 The valuation date in accordance with the Act is 22 November 2004. At that date the lease had about 57.75 years to run. In deciding upon the rate of yield to be applied, the Tribunal was impressed by the evidence of Mr Braham. The lease has a lengthy period to run; the ground rent is very low; there is likely to be only modest capital growth; the landlord has limited opportunity to make any other form of profit. Secure or not, this is not a very attractive investment of its kind. Having regard also to current interest rates, the Tribunal adopts a figure of 9% per annum.
- 5.4 In valuing the extended leasehold interest, the Tribunal has been assisted by the comparable evidence cited by both valuers. The Tribunal was able to undertake drive-by inspections of most of the comparables cited. The property at Weston Close is a brand new block, no doubt with up-to-the-minute fittings; it is not a good comparable. Ritz Court is above shops on the corner of Darkes Lane and the flats are very small. Aberdale Gardens is a substantial subdivided house. Heathfield Close is in the up-market “village” of Little Heath. Parkside is in the busy High Street. Cringle Court is a similar property but perhaps a little smaller than the subject property. Nifon Court is a slightly older three storey block in Mimms Hall Road, a similar location to the subject property, though a little further from the town centre. A two bedroom first floor flat there with a full leasehold term but no garage sold for £165,000 in the summer of 2004, which is a useful indication of the local market at that time. The information about the interior of these properties is very limited.
- 5.5 The best comparable in size and character is 10 Dugdale Hill Lane, which was inspected internally by Mr Braham; but there is no evidence of any transaction relating to that property. The open market value of that centrally heated property in the summer of 2005 appears to have been less than £175,000 and its current value is probably not more than £169,950. These figures, however, are not 2004 prices and must be used with caution.
- 5.6 The Tribunal takes the view that the local market has been pretty flat and increasingly slow since November 2004 but that prices have not declined. In this location, a ground floor flat with direct access to its garden is preferable to a first floor flat. On the basis of his own evidence, Mr Linnell’s figure is too high. On balance, and having regard to the dated interior of the subject property, the Tribunal values the extended leasehold interest on the valuation date, disregarding the agreed tenants’ improvements, at £167,000. This is a little higher than Mr Braham’s revised figure of £165,000.
- 5.7 The Tribunal accepts that the value of the existing leasehold interest must, in the absence of other evidence, be assessed by relativity. In this respect the Ritz Court evidence is useful. No 4A was sold in February 2005 in good condition and with a 99-year term for £138,000. At about the same time the leaseholder of No 5A (which was in poor condition) paid £21,000 to extend his lease from 48 to 99 years. This implies a value of £117,000 or less for the existing leasehold interest; there should be some deduction for the poorer condition of No 5A. This gives a relative value of 84.8% or less for a 48-year term.

5.8 In the experience of the Tribunal mainstream mortgage lenders generally require a minimum term of 60 years. The difference in value between terms of 48 and 57.75 years is not likely to be very great. In the judgment of the Tribunal, Mr Braham's figure of 87% is too high. He may have fallen into error by relying on previous LVT decisions which are, in any event, not closely comparable with the present case. Mr Linnell's approach was flawed because, in his analysis of the Ritz Court evidence, he relied upon a figure (£129,000) which did not represent an actual transaction. On balance, the Tribunal concludes that the correct figure is 85%, giving a value of 141,950 for the existing leasehold interest.

5.9 **The price determined by the Tribunal is £13,170.**
The Tribunal's valuation is set out in the Schedule hereto.

Costs

5.10 The Tribunal makes no order as to costs, which fall to be dealt with under the provisions of section 60 (as to which see paragraph 4 above). In the event either party wishes the Tribunal to consider any issue relating to costs, the parties have permission to apply within two months from the date of this Decision.

Geraint M Jones MA LLM (Cantab)
Chairman
31 October 2005



SCHEDULE

VALUATION OF PREMIUM FOR NEW LEASE

16 Dugdale Hill Lane, Potters Bar EN6 2DW

Agreed:

Existing lease - 99 years less one day from 14/8/63

Ground rent - £12.60 p.a.

Determined:

Valuation date - date of Notice of Claim
22/11/04

Capitalisation and deferment rate - 9%

Value of extended lease, unimproved

£167,000

Value of existing lease at relativity of 85%

£141,950

Diminution in value of Freeholder's interest

£	£	£
Ground rent income	12.60	
YP 57.75 years @ 9% - multiplier	<u>11.034</u>	139
Reversion to freehold in possession	167,000	
Deferred 57.75 years @ 9%	<u>0.0069</u>	1,152
Less value of reversion when new lease is granted		<u>NIL</u>
Freeholders' interest		1,291

Calculation of Marriage Value

Value of proposed interests:

Landlords'

NIL

Tenant's

167,000 167,000

Less value of existing interests:

Landlords'

1,291

Tenant's

141,950 143,241

Marriage Value

23,759

50% marriage value attributed to landlord

say 11,879
13,170

TOTAL PREMIUM PAYABLE

£13,170