

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Subject Property: 64 Birch Trees Road, Great Shelford, Cambridgeshire, CB2 5AW

Applicant: David Jennings Ward and Ingrid Irene Elisabet Ward,
82 Hinton Way, Great Shelford, Cambridgeshire, CB2 5AL

Applicant's Representative: JE Pocock FRICS, Pocock & Shaw, 55 Regent Street,
Cambridge, CB2 1AB

Respondents:

Freeholder & Landlord: Henry Sutton and Jean Lorraine Sutton, Marshcroft, Marsh Lane, Longton, Preston PR4 5ZL

Case Number: CAM/12UG/OLR/2006/0051

Application: 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

Tribunal: Mr JR Morris (Chairman)
Mr R Marshall FRICS FAAV
Mr EA Pennington FRICS

Valuation Date: 12th January 2006

Hearing Date: 1st December 2006

Attending Hearing:

Applicants: Mr JE Pocock FRICS

Respondents: Mr Henry Sutton

Premium determined by the Tribunal to be paid for the new lease: £8,043

STATEMENT OF REASONS

The Application

- 1 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.
2. An Initial Notice dated 12th January 2006 proposing a premium of £4,650 for a new lease was served by the Applicant who appears to be a "qualifying tenant" within the meaning of the Leasehold Reform Housing and Urban Development Act 1993.

3. A Counter Notice dated 24th February 2006 was served by the Respondent acknowledging the right of the Applicant to acquire a new lease but counter proposes a premium of £12,000 for a new lease.
4. The premium to be paid is identified as being in dispute

The Property and Inspection

5. The Subject Property is a purpose built ground floor maisonette built around 1972, in a two-storey block of four properties. The block is constructed of brick under a tile roof. The maisonette has the benefit of the rear and there is a brick built garage in a detached block of garages accessed over a shared drive. Each maisonette has a separate entrance. The accommodation comprises a hall, two bedrooms, living room, kitchen and bathroom.
6. The Subject Property is situated on in a cul-de-sac off Hinton Way, Great Shelford within half a mile of the railway station and local shops.
7. The Tribunal inspected the exterior and interior of the Subject Property on the 1st December 2006 in the presence of an employee from Tucker and Gardener who are letting agents for the Applicant. Externally the Subject Property was in fair condition and had double glazed upvc windows. The garage block was in generally poor condition. Internally there was a fitted kitchen, which was probably the original units and was now dated, and a modern bathroom. There were electric night storage heaters in the living room and one of the bedrooms and an electric heater in the bathroom. Water heating is by electric immersion heater. The block had mains drainage, water and electricity.

The Lease

8. The existing lease dated 28th February 1973 is for a term of 99 years commencing 1st November 1972 at a rent of £25 per annum for the first 33 years, £50 per annum for the next 33 years and £100 per annum for the remaining 33 years of the existing Lease.
9. There is no service charge provided for in the Lease Copies but under clauses 13 and 14 of Fourth Schedule the Lessee covenants to pay a fair proportion of the expense of maintaining any party walls, fences, sewers, drains, gutters, pipes and other things in common and jointly with other Lessees to maintain parking bays, footpaths and landscaped areas the Lessee contributing a due proportion of all expenses.

The Hearing

10. The Chairman referred the Parties to the recent Lands Tribunal case of *Cadogan v Sportelli* 15th September 2006 and said that the decision referred Parties and Tribunals to Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993 which sets out the method of calculation of the premium for lease extensions. The Lands Tribunal said that note should be taken when assessing the value of the landlord's interest and the landlord's share of the marriage value of each of the constituent parts of the calculation and the contribution each makes to the final figure. The constituent parts being:
 1. The yield rate for capitalisation of the ground rent
 2. The deferment rate
 3. The value of the leasehold without and with the extended lease

11. The Chairman said that the Lands Tribunal had determined, for reasons given in its decision, that the current deferment rate was 5% for flats and maisonettes and that parties would have to adduce very cogent evidence to vary this rate. The Lands Tribunal said that this rate applied irrespective of location because any variation in location would be reflected in the value of the leasehold with and without the lease extension.
12. The Parties agreed with the Chairman's statement in relation to the Lands Tribunal Decision and also agreed that neither of them had evidence as required by the Lands Tribunal to vary the current deferment rate of 5%. Therefore a deferment rate of 5% was agreed.
13. The Parties had agreed that the leasehold value without the extended lease on the 12th January 2006 was £146,000.
14. It was therefore agreed that argument would be limited to the yield rate for capitalisation and the value of the leasehold with the extended Lease.

Applicant's Case

15. The Applicant's Surveyor submitted a report and calculations (**Annex 1**). Two calculations were submitted the first prepared prior to the *Cadogan v Sportelli* decision with a deferment rate of 7.5% and the second prepared after the decision with a deferment rate of 5.5%.

Yield/Capitalisation

16. The Applicant's Surveyor stated in his report that he was conscious of the recent *Cadogan v Sportelli* decision of the Lands Tribunal with reference to deferment rates. He distinguished deferment rates from capitalisation rates for ground rent. He said that the expected gross return in the short letting market for the area was generally to be expected by investors to be around 5% with a probable net return of 4-4.5%. He added that major considerations for buy to let landlord are: the likely capital appreciation, probable increases in rent and the "hedge" against inflationary tendencies. In addition there is the comfort of knowing that the asset is likely to be readily saleable at a profit at any given time at short notice. However he said that with fixed ground rents in the market relating to long leases these factors are missing. He said that also there is time spent in collecting small sums, which can rarely be justified or economically viable. He submitted a buyer would want at least a 7% return.

Value with Extended Lease

17. The current leasehold value as at the valuation date was agreed to be £146,000.
18. The Applicant's Surveyor submitted in his written report and confirmed in oral evidence that a valuation for an extended lease could be made by reference to the sales of comparable properties which had long leases granted for 999 years. He provided details of a number of properties but made particular reference to properties in Glenmere Close and Rothleigh Road which he said were similar to the Subject Property. These properties have 999 year, leases, which are virtual freeholds, and so represent a good basis for a valuation of the extended lease and are therefore are good comparables. He went on to say that properties in Glenmere Close and Rothleigh Road achieve a price that is some 10.25% higher than that attained for

properties in Birch Trees Road. He contended that the difference in prices between properties in Glenmere Close and Rothleigh Road and Birch Trees Road was not merely attributable to the different length of leases but also to the location. His differential of 5% is attributed to location leaving 5% attributed to the length of the lease.

19. The Applicant's Surveyor referred to correspondence that he had received from three estate agents with a view to demonstrating a differential between properties Glenmere Close and Rothleigh Road and Birch Trees Road. Bradshaws had said that Glenmere Close properties would cost about 10-15% more than those in the Birch Trees Road area whereas Rooke, Wood and Miller put the difference at between 5 and 7.5%. Russell Residential were of the opinion that identical properties with the same unexpired lease and ground rent would achieve very similar figures in the open market. The Applicant's Surveyor submitted that the majority view was that the Glenmere Close and Rothleigh Road properties were more desirable.
20. A specific comparable was put forward of 14 Rothleigh Road which was agreed at £189,000 but was in exceptional condition as compared with the subject property. A deduction of £12,000 was made to take account for the difference in condition between this and the Subject Property, with a further 2/3% for date and another 5% for location, leaving a differential of 5% for the difference in lease length.
21. The Applicant's Surveyor referred to two local comparables which were 16 Birch Trees Road and 6 Granhams Court, De Freville Road, Great Shelford. 16 Birch Trees Road appears to be an identical maisonette, which had an asking price of £159,950 and had just been put on offer. However it is understood that this has an unextended lease. The Surveyor considered that in the light of this price it would not make more than £170,000 with an extended lease in today's market.
22. The Applicant's Surveyor stated that 6 Granhams Court, De Freville Road, Great Shelford, was sold for £155,000 in January 2006. Although the Applicant's Surveyor had not been able to carry out an internal inspection of this property, his firm had dealt with the sale of the same property some 15 years ago and so was able to provide the Tribunal with the old particulars. He had also spoken to the current occupier and was able to confirm its current internal condition. The property was described in the particulars as a two bedroom, first floor flat of a two-storey block with two balconies. The Lease was for 999 years at a ground rent of £50. At the time of the sale 15 years ago there were 984 years unexpired. The Surveyor said that it is similar although not identical to the Subject Property and appeared to be slightly larger than the Subject Property. Following a recent visit he had considered it to be in particularly attractive surroundings. The current occupier said that it had full gas fired central heating and all the windows had been replaced with sealed unit double-glazing.
23. The Applicant's Surveyor submitted that 6 Granhams Court, De Freville Road, Great Shelford was a good comparable to indicate the value of the leasehold of the Subject Property with an extended lease. However he said that adjustments should be made to take account of the double-glazing and central heating suggesting that these added value of £6,000 to £7000. He also considered the property to be in a more attractive better area than the Subject Property. He therefore was of the view that in January of 2006 the Subject Property with an extended Lease would not have been more than £150,000.
24. The Applicant's Surveyor used the figure of for the Subject Property with an extended Lease in both his sets of calculations.

25. The Respondent had submitted in his written report that ground floor flats and maisonettes achieved higher prices than upper floor flats and maisonettes. The Respondent recognised that sales occurred at different times and therefore a price increase could be attributable to changes in the market. He therefore sought to make allowance for this variation. The Applicant's Surveyors cross-examined the Respondent on this contention. He said that he did not consider the Respondent's method of trying to account for the variation in price caused by sales at different to be sound. He suggested that the Respondent was using isolated examples and that flats on the ground floor and on an upper floor that were sold at the same time and at the same price could have been included in his sample. He said that there could be many factors, which could be the cause of a difference in price, such as condition and not just that one flat is on the ground floor and another on the first floor.
26. The Applicant's Surveyor stated that in his experience a difference in price between one flat or maisonette and another could not be attributed to one being at ground floor flat and another being on an upper floor.

Respondent's Case

27. The Respondent submitted a report and calculations (**Annex 2**). Two calculations were submitted the first assessed a valuation of the Subject Property with an extended lease based upon comparable sales and the second base the value of the extended lease by carrying out a relativity exercise using previous Leasehold Valuation Tribunal decisions.

Yield/ Capitalisation

28. The Respondent considered that convention should be followed and that the capitalisation rate should be the same as the deferment rate. He disagreed with the Respondent's Surveyor's view that long leaseholds gave a poorer return than short leaseholds. He said that he only had to collect ground rent, which were particularly easy today with direct debit arrangements. Also in respect of the Subject Property he did not have any of the problems of maintenance associated with short leases. He added that there was good capital appreciation whereas other investments can go up and down. He also said that ground rent was a good hedge against inflation in that although fixed for set periods of time they were consistent and where there was provision for them to vary they always increased whereas open market rent could go down as well as up.
29. The Respondent said that the buoyancy of the ground rent market confirmed his view. Recently he had not been able to afford to purchase ground rents that met his particular specification because their value had been recognised.
30. The Respondent submitted that a yield rate of 5.5% should be applied.

Value with Extended Lease

31. The Respondent's Surveyor submitted two methods of assessing the extended lease value: by comparables or by relativity.
32. The Respondent stated that the difficulty in using comparables is the difficulty in finding properties with leases of extended length. In his report the Respondent reviewed the comparables put forward by the Applicant's Surveyor in Glenmere Close and Rothleigh Road. Whereas he agreed that the properties in Glenmere Close and

Rothleigh Road were very similar to the Subject Property nevertheless he disagreed with the Applicant's Surveyor's view that the Glenmere Close and Rothleigh Road estates were more attractive than the Birch Trees Road area and expressed the view that there was very little difference in the two. He said that he did not consider area to be a major factor in price and that the reason for choosing a particular location was subjective with matters such as proximity to work, family, friends, quiet neighbourhood etc. He said that many would consider Birch Trees Road to be more attractive as it is closer to the countryside with better access to road and rail. The Respondent said that the main reason for the difference in price between the two estates was that properties in Glenmere Close and Rothleigh Road were more expensive because they had a 999-year lease.

33. The Respondent went on to say that when comparing the sales of flats and maisonettes account should be taken of whether the comparable is a ground floor or upper floor property since he said that the prices indicated that ground floor properties achieved a higher value than upper floor flats and maisonettes. The Respondent provided the Tribunal with a list of properties similar to the Subject Property from the Nethouseprices Internet website in the Cambridge area including Birch Trees Road, Glenmere Close and Rothleigh Road. He referred the Tribunal to a number of flats however a particular problem with the exercise recognised by the Respondent was that sales occurred at different times and therefore a price increase could be attributable to changes in the market rather than the flat being at a particular level. The Respondent sought to make allowance for this variation in his calculations. The Respondent submitted that in Birch Trees Road the ground floor maisonettes were on average 10.4% more expensive than first floor maisonettes and in Glenmere Close ground floor maisonettes were 8.6% more expensive than those on the first floor.
34. Although in his initial report the Respondent stated that there were no ground floor maisonettes with an extended lease in the vicinity of Birch Trees Road however in a letter dated 27th October 2006 the Applicant's Surveyor referred the Respondent to 6 Granhams Court, De Freville Road, Great Shelford and in a letter in reply dated 30th October 2006 the Respondent accepted this as a good comparable. He went on to state that the sale price was in line with similar maisonettes in Glenmere, which the Applicant's Surveyor had contended were more expensive. The Respondent also stated that the price achieved for 6 Granhams Court would indicate that the price for the Subject Property should be £170,000 because he said that ground floor flats and maisonettes achieve higher prices than upper floor ones.
35. Based on comparable evidence the Respondent stated that the value for the Subject Property with an extended Lease at the date of valuation was £170,000.
36. With regard to the method of calculating by relativity the Respondent referred to six Leasehold Valuation Tribunal cases. He identified a case relating to a 1970 two-storey block of flats in Stotfield, Bedfordshire that used a relativity figure of 12.5%, which would give an extended lease value of £166,857.

Decision

37. The Tribunal accepted and applied in its own calculation of the valuation the agreed deferment rate of 5% and the agreed leasehold value without the extended lease of £146,000.

Yield/ Capitalisation

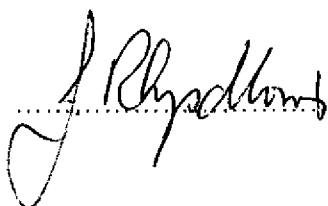
38. The Tribunal applied a yield of 7% as being consistent with market trends and being more appropriate to the type of property, location and terms of the lease than 5% used by the Respondent. The Tribunal did not consider that a comparison between short and long leasehold was appropriate in assessing return on investment as they were each very distinctive and generally attracted different types of investor. The Tribunal found that in relation to this particular lease there were few opportunities for increasing revenue through management or commission and therefore the only certain and consistent return was ground rent which was fixed. Notwithstanding the Respondent's comments on the ease of ground rent collection the Tribunal were of the opinion that there were costs involved for a relatively low return.

Value with Extended Lease

39. The Tribunal using the experience of its members was of the opinion that there was no difference between upper and lower maisonettes or flats. The evidence submitted by the Respondent was not sufficient to change the Tribunal's view. The research undertaken by the Respondent related to too small a sample over too short a period of time. The Tribunal agreed with the Applicant's Surveyor when he said that there are many reasons why prices may vary such as time of sale and condition of the property.
40. The Tribunal following guidance given by the Lands Tribunal in *Cadogan v Arbib* applied the evidence of comparables rather than the use of relativity where comparable evidence is available, as in the present case. In doing so the Tribunal found that 6 Granham Court, which was sold in January 2006 for £155,000 with a lease with 970 years unexpired, was a good comparable upon which to base a valuation for the extended leasehold value of the Subject Property. The subject Property had modern facilities with an adequate form of heating and upvc double-glazing. There was no evidence to indicate that the comparable was in a very much better condition than the Subject Property and so the Tribunal did not agree with the Applicant's Surveyor that there would be a differential of £6,000 between the two properties. The Tribunal taking an objective considered 6 Granham Court to be a very close comparable and could not in the circumstances justify making any minor adjustment. It therefore used £155,000 as an extended lease value for the Subject Property in its valuation.
41. 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 £8,043 in accordance with the valuation attached at Appendix 3.

Costs

42. 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 within 8 weeks of this Statement of Reasons.

 J.R. Morris (Chairman)

Appendices

Appendix 1

Applicant's Surveyor's Valuation

Appendix 2

Respondent's Surveyor's Valuation

Appendix 3

Tribunal's Valuation

Appendix 1

VALUATION FOR LEASE EXTENSION 64 BIRCH TREES ROAD GT SHELFORD

Original calculations using 7½% deferment and capitalisation rate

Current value (at 12th January 2006) £146,000

Value with extended lease £153,000

Value of Freehold Reversion

£153,000 deferred 66 years at 7½% £1224

Ground Rent £50 p.a for 33 years at 7½% £605

£100 p.a for 33 years at 7½% deferred for
33 years at 7½% £111

TOTAL £1940

Marriage Value

£153,000 - £146,000 = £7,000

£1,940 = £5,060

50% = £2530

VALUE OF LEASE EXTENSION £4470

Possible revised calculation assuming 5½% deferment rate and 7% capitalisation rate.

Current value (at 12th January 2006) £146,000

Value with extended lease £153,000

Value of freehold reversion

£153,000 deferred 66 years at 5½% £4437

Ground Rent £50 p.a for 33 years at 7% £637

£100 p.a for 33 years at 7% deferred for
33 years at 5½% £217

TOTAL £5291

Marriage Value

£153,000 - £146,000 = £7,000

£5,291 = £1,709

50% = £854

VALUE OF LEASE EXTENSION £6145

Appendix 2**H S 5 - Comparables Approach****Leasehold Reform Housing and Urban Development Act 1993 Valuation for**

Lease Extension

Property 64 Birchtrees Road Great Shelford Cambridge

Assume yield rate % of 5.00

Valuation Date is date of Tenants Notice ie 12 January 2006

Lease term 99 years from 01 11 1972 so Unexpired Term at Valuation Date 66 years

Value of freehold reversion, vacant possession, unimproved,

Current value 146,000 extended £ 170,000

1 Value of Freeholders current interest

Current groundrent (£)	50	
YP 33 years	<u>16.0025</u>	800.13
Groundrent (£) payable from 2038	100	
YP 33 years	<u>16.0025</u>	
deferred 33 years	0.1998725	<u>3.1984597</u>
		319.85

Reversion to freehold / extended lease with vacant possession

excluding tenants improvements

170,000

deferred 66 years

0.0399496.791

Value of Freeholders Interest

7,911

2 Marriage Value

Value after enfranchisement/extension

value of landlords interest

nil

value of leasehold interest

170.000

170,000

Less values before enfranchisement/extension

Freeholders current interest

7,911

Leaseholders current interest

146.000153.911

Gain in marriage

16,089

50% of marriage value attributed to lessor

8.044

15,956

3 Any other Loss

nil

TOTAL PRICE**15,956**

H S S - Relativity Approach

Leasehold Reform Housing and Urban Development Act 1993 Valuation for

Lease Extension

Property 64 Birchtrees Road Great Shelford Cambridge

Assume yield rate % of 5.00

Valuation Date is date of Tenants Notice ie 12 January 2006

Lease term 99 years from 01 11 1972 so Unexpired Term at Valuation Date 66 years

Value of freehold reversion, vacant possession, unimproved, relativity ' 87.5

Current value 146,000 so 166,857

1 Value of Freeholders current interest

Current groundrent (£)	50	
YP 33 years	<u>16.0025</u>	800.13

Groundrent (£) payable from	2038	100
YP 33 years	<u>16.0025</u>	
deferred 33 years	0.1998725	<u>3.1984597</u>
		319.85

Reversion to freehold / extended lease with vacant possession		
excluding tenants improvements	166,857	
deferred 66 years	<u>0.039949</u>	<u>6.666</u>

Value of Freeholders Interest 7,786

2 Marriage Value

Value after enfranchisement/extension		
value of landlords interest	nil	
value of leasehold interest	<u>166,857</u>	166,857

Less values before enfranchisement/extension		
Freeholders current interest	7,786	
Leaseholders current interest	<u>146,000</u>	<u>153,786</u>

Gain in marriage		13,071
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50% of marriage value attributed to lessor		<u>6.536</u>
		14,321

3 Any other Loss	nil	
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TOTAL PRICE		14,321
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APPENDIX 3

VALUATION FOR LEASE EXTENSION

Current lease: 66 years unexpired
Ground rent: 33 years at £50 and 33 years a £100

Extended lease: (66 years plus 90 years) 156 years
Ground Rent: Peppercorn

Current Value of Freehold Investment

Annual Ground Rent	£50		
YP @ 7% for 33 years	12.754	£638	
Annual Ground Rent	£100		
YP @ 7% for 33 years	12.754		
Deferred for 33 years at 5%	0.1998725	£255	£ 893
Reversion to Freehold			
Current Value	£146,000		
Value with new lease	£155,000		
Value of Freehold Reversion			
£155,000 deferred for 66 years @ 5 %	0.0399490		<u>£6,192</u>
Total			£ 7,085

Landlord's Share of Marriage Value

Value of Extended Lease	£155,000	
Less Value of Current Lease	<u>£146,000</u>	
	£ 9,000	
Less Value of Freehold Investment	<u>£ 7,085</u>	
	£ 1,915	
Marriage Value 50%		<u>£ 957.50</u>
Total		£8042.50
Premium		£8,043