

C-173

LON/NL/1989/03

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD
REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993**

Applicant: Mr Manuel Garcia (Tenant)

Respondent: Mr Bernard Hammer (Landlord)

RE: 25 Barnard Gardens, New Malden, Surrey

Application to Tribunal by The Tenant **dated** 14 May 2003

Heard: 2 September 2003

Appearances: Mrs J Branscombe FRICS of J Branscombe & Company,
Chartered Surveyors

for the tenant

Mr J Flynn FRICS of Messrs James Flynn, Chartered Surveyors

for the landlord

Members of the Leasehold Valuation Tribunal:

Mr L W G Robson LLB (Hons) MCI Arb (Chairman)

Mr J C Avery BSc FRICS

Mr C White FRICS

Tenant's section 42 notice dated: 13 January 2003

Landlord's section 45 counter-notice dated: 13 March 2003

Valuation date: 13 March 2003

Leasehold Valuation Tribunal's determination: £10,698

Date of Tribunal's decision 15 SEP 2003

LEASEHOLD VALUATION TRIBUNAL**LON/NL/1989/03****LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT
1993 (as amended)
SECTION 48**

Premises: 25 Barnard Gardens New Malden Surrey

Applicant: Mr Manuel Garcia

Reversioner: Mr Bernard Hammer

Tribunal: Mr L. W. G. Robson LLB(Hons) MCI Arb. (Chairman)
Mr J. C. Avery BSc FRICS
Mr C. White FRICS

Appearances:

For the Applicant: Mrs J. Branscombe FRICS

For the Reversioner: Mr J. Flynn FRICS

DECISION AND REASONS**BACKGROUND**

1. The leaseholder, Mr Garcia, served notice on 13th January 2003 to acquire a new lease under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). The landlord's counternotice was dated 13th March 2003. The leaseholder applied to this tribunal on 14th May 2003 for a determination of the price payable. As indicated below some terms of the lease have not been agreed. Thus the Tribunal should also determine terms of the lease, and also the landlord's legal and survey fees if required. A hearing was held on 2nd September 2003 and the Tribunal inspected the property on the same day. Mrs Branscombe and Mr Flynn, both appearing as expert witnesses, presented reports and gave oral evidence.

AGREED MATTERS

2. The valuation date of 13th March 2003 was agreed. The terms of the new lease were substantially agreed, save for three minor matters referred to in the Reversioner's counternotice. Neither representative had instructions on the outstanding matters, which may have been overlooked by the parties' legal advisers. To avoid unnecessary delay, the Tribunal decided to proceed on the assumption that the terms of the existing lease would apply save that the Reversioner would be entitled to insert a provision allowing him to charge a reasonable fee for registering notices of dealing with the new lease. At the hearing the parties agreed that for ease of calculation the Tribunal could use a 63 year period for the unexpired term.

THE PROPERTY and LEASE

3. Shortly described the property is a ground floor flat in a two storey terrace of eight flats built about 1965. The property has its own entrance, with small front and rear gardens. Tenant's improvements including double glazing, central heating refitted kitchen and bathroom and opening part of front garden for use as a parking space were ignored for the purposes of the statutory valuation. The construction is conventional; brick under a pitched tile roof. Barnard Gardens is a narrow residential cul-de-sac affected to some extent by traffic noise from the A3 Trunk Road. The property is convenient for shopping, transport facilities, central London and the A3. The nearest station is Motspur Park which is within half a mile. The property is held on a lease for a term of 99 years from 1st January 1967 at a current ground rent of £60 per annum for the next 30 years rising to £90 per annum for the rest of the term.

OUTLINE OF VALUATION ARGUMENTS

4. Mrs Branscombe gave evidence following her report dated 29th August 2003, arguing that the yield rate should be 12% per annum, the value of a new long leasehold interest should be £152,000, that the value of the existing lease was £133,500 and that the proportion of the marriage value due to the landlord should be 50%. Her valuation (reproduced as Appendix A hereto) was £9,564.
5. Mr Flynn gave evidence following his report dated 1st September 2003 arguing that the yield rate should be 7% per annum, the value of a new long leasehold interest should be £150,000, the value of the existing lease was £128,000 and that the proportion of the marriage value due to the landlord should be 50%. He considered that the value of the freehold reversion was relevant to the calculation and that the freehold was worth an additional 3%, making a total of £154,500. His valuation (reproduced as Appendix B hereto) was £12,554.

YIELD

6. Mr Flynn relied upon an analysis of yield rates decided in other decisions of the Leasehold Valuation Tribunal during the period 13th March 2002 – 21st July 2003 in arriving at his figure of 7%. He suggested that the Tribunal might be expected to arrive at a figure of 7.5 or 8%. He considered that yields were falling. His evidence was of a general nature, being drawn from the Internet, and it did not differentiate between different types of property, or location. He considered that this property is in a "high value above average location".
7. Mrs Branscombe relied upon her own general knowledge and experience, but referred to a LVT decision in 1997 relating to 25a Errol Gardens (an upper maisonette), LON/NL/182, in which she had been involved. There the Tribunal had decided upon a yield of 13%. She accepted that yield rates were falling, but argued that a 12% yield was appropriate. She considered that this was a low value outer London area.
8. The Tribunal notes that in this case the unexpired lease term is approximately 63 years at the agreed valuation date. The acid test is what investors would currently pay in the market for the freehold interest (excluding any element of marriage value at this stage). The evidence was not at all conclusive. Having considered all the

evidence on yield, the Tribunal concluded that the evidence at 25a Errol Gardens was too old, and that Mrs Branscombe's figure was too high, as it did not reflect the relatively low risk in the collection of residential ground rents and the current level of investment returns. It was also considerably higher than the Tribunal would expect to see, in the light of its own knowledge and experience. Mr Flynn's figure seemed too low, as he effectively admitted. He suggested that the property was in an above average area, but this was not borne out by inspection. Neither surveyor produced any evidence of recent market transactions of ground rents. Generally recent LVT decisions relating to similar property in similar locations suggest a bracket of 9-10%. The Tribunal concluded that it should use the figure of 9.5% as the yield rate.

EXISTING AND LONG LEASE VALUE

9. Mrs Branscombe arrived at a value for the existing leasehold interest of £133,500 in the light of an abortive sale relating to 23 Errol Gardens at £137,000 which she discounted by 2.5% to reflect the hypothetical "no Act" world to arrive at £133,500 for the existing lease. She produced a list briefly describing 15 property transactions in Barnard Gardens and Errol Gardens. The evidence had been collated from third parties. She admitted that the evidence was hard to interpret, but her view was that on the valuation date a long lease of the property was worth £160,000. She deducted £8,000 to discount the improvements to arrive at the figure of £152,000.

10. Relying upon a transaction at 11 Barnard gardens two weeks prior to the valuation date at a price of £145,00 for an improved property, and also the unimproved property at 23 Errol Gardens mentioned by Mrs Branscombe, Mr Flynn then discounted by 5% to reflect a "no Act" world to arrive at figures of £128,250 and £130,150 respectively. His short lease valuation was £128,000. Mr Flynn also analysed the comparables put forward by Mrs Branscombe, but he had been given different information in a number of cases, which cast doubt upon their accuracy. Relying upon a sale at 17a Errol Gardens (unmodernised) at £148,000, a month prior to the valuation date, and another sale at 15a Errol Gardens two weeks prior to the valuation date (relatively modernised) at £147,000 he concluded that the long lease value was £150,000. In his report he considered that the long lease value should be uplifted by 3% to £154,500 to reflect the freehold value, although at the hearing, after some discussion, he conceded that this point seemed invalid.

11. In the absence of any compelling or consistent evidence of comparable transactions, and the doubt about the condition and state of modernisation of the flats included in the lists of comparables, the Tribunal gave equal weight to the opinions of Mrs Branscombe and Mr Flynn, both as to the long and short lease valuations. Mrs Branscombe's opinion of the long lease value was £152,000. Mr Flynn's opinion was £150,000. The Tribunal therefore decided that the appropriate course was to adopt £151,000 as the long lease value. Mrs Branscombe's short lease valuation was 133,500. Mr Flynn adopted the figure of £128,000, although he used a different approach. Both approaches had merits, and they were well within the margins of difference that the Tribunal would have expected to see in valuations from two experienced valuers working with rather imprecise comparable evidence. The Tribunal decided upon a figure of £130,750.

TERMS OF NEW LEASE

12. In the absence of agreement the new lease is to be granted on substantially similar terms. In accordance with the provisions of the Act, the lease is to be for a further term of 90 years in addition to the existing term and is to be at a peppercorn rent. To ensure finality, either party may subsequently apply by letter for a determination if the terms of the lease cannot be agreed, and the matter shall be reserved to the members of this Tribunal.

REVERSIONER'S LEGAL AND SURVEY FEES

13. The Reversioner is entitled to payment of his surveyor's fee for his valuation, and certain necessary solicitor's fees in accordance with Section 60(1) of the Act. In the absence of agreement over those costs the parties may apply by letter for a further determination.

FINAL VALUATION AND DECISION

14. The Tribunal's valuation is attached as Appendix C. We decide that the yield rate is 9.5%, the long leasehold valuation is £151,000 excluding tenant's improvements, the value of the existing lease is £130,750 excluding tenant's improvements, and the marriage value attributable to the landlord is 50%, producing a final valuation of £10,698.
15. The attention of the parties is drawn to Sections 48(3) and 53 of the Act, which effectively requires the parties to complete the transaction within a specific period, otherwise the tenant's notice to extend the lease may be deemed as withdrawn.

Signed

Chairman

Dated

15th September 2003



Report of: James Flynn FRICS
Specialist Field: Valuation

4.0 VALUATION

- 4.1 My valuation of the premium for a lease extension under the Act, as at the date of valuation is as follows;

Ground Rent	60	
YP 7% 29.75%	<u>12.37625</u>	742

Ground Rent	90	
YP 7% 33 years	12754	
PV £1 7% 29.75 yrs	0.1313666	151

FH Reversion	154500	
PV £1 7% 63.75 yrs	0.0143336	<u>2215</u>
		3108

Marriage Value

Extended Lease	
FH	0
LH	<u>150,000</u>
	150,000

Existing Lease	
FH	3108
LH	<u>128000</u>
	131108

Difference	18892
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50%	<u>9446</u>
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Premium	<u>£12,554</u>
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Appendix C

Valuation of 25 Barnard Gardens, New Malden

Date of valuation	13-Mar-03
Expiry of lease	1-Jan-66
Term unexpired at date of valuation	62.81
Appropriate yield for term	9.5%
Appropriate yield for reversion	9.5%
Multiplier for 30 years (YP single rate)	9.8347
PV in 30 years	0.0657
Multiplier for 33 years (YP single rate)	9.9996
PV in 63 years	0.0033
Lessor's share of marriage value	50%
Current ground rent	£60
Revised ground rent	£90
Freehold Vacant Possession Value	£151,000
Value of existing lease	£130,750

Calculation

Freehold Vacant Possession Value	£151,000
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Lessee's interest

(a) Value of existing short leasehold interest	£130,750
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Freeholder's interests

Present ground rent	£60	
YP 30 9.5%	9.835	
	£590	

Revised ground rent	£90	
YP 33 9.5%	9.9996	
PV in 30 years	0.0657	
	£59	

(b) Value of term	£649
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Freehold Vacant Possession Value	£151,000	
PV in 63 9.5%	0.0033	
	£497	

(c) Value of reversion	£497
(d) Value of freeholder's interest (b) + (c)	£1,146

Marriage value

Deduct Total of existing interests (a) + (d)	£131,896
Marriage value	£19,104
Freeholder's share	50%
	£9,552
Add value of Freehold interest	£1,146

Enfranchisement price	£10,698
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