

Reception

Ref LON/NL/3110/04

3111/04

3112/04

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

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

Applicants	(1) Alison Passey (2) Donald Brook (3) Sally Caroline Loud
Respondent:	Premier Properties (London) Limited
Re:	4 and 5 The Elms and 4 The Oaks Croydon Road Wallington Surrey SM6 7LE
Date of Tenant's notice:	(1) 30 th January 2004 (2) 29 th January 2004 (3) 2 nd February 2004
Date of Counter Notice:	19 th April 2004
Application date:	12 th October 2004
Hearing date:	9 th June 2005
Valuation date:	Agreed by the parties as 30 th January 2004 in all cases
Appearances:	For the Applicants: Mr M Palfrey Counsel instructed by Carpenter & Co Mr R J Weston FRICS For the Respondent: Mr L Nesbitt B Sc (Hons) FRICS MCI Arb
Members of the Leasehold Valuation Tribunal:	
Mr P L Leighton LLB (Hons) Mrs J McGrandle B Sc. (Est Man) MRICS MRTPI	
Date of Tribunal's decision:	16 th June 2005

Introduction

- 1 This is an application by the leaseholders of 4 and 5 The Elms and 5 The Oaks, Croydon Road Wallington for extensions to their leases under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993. Initial notices were served under Section 42 on 29th; 30th January and 2nd February 2004. The Respondent's counter notice in each case was dated 19th April 2004
- 2 The Applicants issued applications to the Tribunal on 12th October 2004 and directions in each case were issued on 24th January 2005. The original hearing fixed for 19th April 2005 was adjourned by agreement to 9th June 2005
- 3 At the hearing the Applicants were each represented by Mr M Palfrey of counsel instructed by Carpenter & Co Solicitors who called Mr Roger Weston as his expert witness. Mr L Nesbitt of Nesbitt and Mire appeared for the Respondent

The Properties

- 4 As there was only one issue in dispute namely the relativity which the existing lease in each case bore to the extended lease it was agreed by the parties and decided by the Tribunal that an inspection was not necessary
- 5 The properties were to be found in two separate blocks of 6 units each which consisted of flats on the ground floor and maisonettes at first floor level. The 2 blocks in question were built in the early 1960s and there were 24 garages on the site, which were let separately from the flats. 4 The Oaks and 4 The Elms which were maisonettes each had a garage and it was agreed that the garages would form part of the extended lease. Flat 5 The Elms which was a flat did not have a garage.
- 6 There were no photographs of the subject properties but there was a plan annexed to the leases and a photograph of 2 The Elms, which was relied upon by Mr Nesbitt as one of his comparables. The Tribunal was therefore able to form a good impression of the layout and nature of the properties.
- 7 Each of the properties was let on a lease of 99 years from 25th December 1961 expiring on 24th December 2060 at a fixed ground rent of £12.60 per annum.

The lessee of 4 The Oaks has a lease of garage 21 for 99 years from 25th December 1961 expiring on the same date as her lease. The rent for the garage commenced at £5 per annum for 33 years, rising to £10 per annum for the next 33 years and thereafter to £20 per annum for the remainder of the lease. 4 The Elms has a lease of garage 4 on similar terms

Agreed Facts

- 8 The experts agreed that the value of the unimproved extended leases in each case amounted to £152,000 for 4 The Oaks and 4 The Elms and £150,000 for 5 The Elms. This was based on an open market valuation of the units at £170,000 with £20,000 discounted for improvements and an extra £2000 allowed for the garages in respect of the maisonettes. They also agreed that a yield of 9% should be applied in each case in respect of capitalisation of the ground rent and for the deferment of the reversion
- 9 They also agreed that there was no compensation payable under Paragraph 2 (c) of Schedule 13 of the Act and that a valuation fee of £400 plus VAT was payable in each case. The parties agreed that the valuation date for each lease should be 30th January 2004 giving an unexpired term of 56 years 11 months at that date. The only issue outstanding between the parties was the value of the existing lease, the Applicant contending for a relativity of 88% and the Respondent for a relativity of 78%. As a result Mr Weston valued the lease extensions at 4 The Elms and 4 The Oaks as £9,750 and the lease at 5 The Elms at £9,625. Mr Nesbitt valued the two maisonettes at £17,352 and the flat No 5 at £17,125. It was noted by the Tribunal that the valuers had omitted to include the ground rents for the garages where relevant in their valuations.

The Evidence

- 10 Mr Weston relied in his report on two decisions of the Leasehold Valuation Tribunal outside London namely **Belle Vue Mansions Bournemouth CAM11/EU/OLR/2004/16** and **76 Marlborough Road Watford CAM/2GUL/OCE/2004/13**. In the case of the former property the Tribunal adopted relativities of 87.5% and 89% for unexpired leases of 57.5 years and 59 years respectively based on evidence called before it, namely that there was an active market in short leases on the south coast in contrast to London. The

second Tribunal fixed a relativity of 87.5% on an unexpired term of 59 years in an absent landlord case where the Tribunal relied upon uncontested evidence on behalf of the Applicants. Mr Weston also relied upon a recent decision of the London Tribunal in respect of **1-11 Rutherford Close Sutton Surrey LON ENF/843/03** where on an unexpired term of 61 years the Tribunal fixed a relativity of 88% after considering a number of settlements and other decisions some of which related to cases where the landlord had not served valid counter notices and hence where relativity would tend to be higher than average. .

- 11 Mr Weston also relied upon a graph produced from a document called “The Residential Handbook” edited by Osborne, which was based on national decisions of the Leasehold Valuation Tribunal. He also sought to rely upon Appendix J of the report of College of Estate Management dated 2000 based on a review of all national decisions which showed a relativity for an unexpired term of 57 years of 89 % for all LVT cases.
- 12 Mr Nesbitt relied upon two decisions of the LVT namely **12 Enderley House Sylvan Road London SE19 LON NL/1378/01** where the tribunal on an unexpired term of 58 years fixed a relativity of 77.8%
- 13 He also relied upon a decision of the Southern LVT **66 Courtlands Crescent Banstead Surrey (No752)** where the Tribunal on a lease of 55.44 years unexpired set a relativity figure of 80%. He also produced a schedule of settlements in London in 2002 and 2003 in which for leases between 51 and 59 years unexpired, relativities between 73% and 82.5% had been agreed.
- 14 He specifically relied upon a settlement which he had made in respect of 2 The Elms in January 2004 where the leaseholder had agreed a sum of £16,750 on an unexpired term of 57.5 years. Mr Nesbitt produced correspondence from the solicitors and valuers acting for the leaseholder. The tenant originally offered £6,750 . The landlord demanded £18,000 and the tenant made a further offer of £15,000, which was rejected. He finally agreed to settle at £16,750 which represented a relativity of about 76%
- 15 Finally he relied upon the graph produced by Beckett and Kay (2005 revision) “The Graph of Graphs” which covered a range of settlements by valuers in the Inner London area showing a range of between 74 and 84% for 57 years unexpired with most curves closest to 76%

The Tribunal's Decision

- 16 The Tribunal did not feel that it was assisted by the decision relating to Bournemouth where the market was quite different. The Watford decision was also of limited value as it related to an absent landlord outside London.
- 17 The Tribunal was also of the opinion that the College of Estate Management report and the Residential Handbook graphs related to national statistics of LVT decisions and as such were of limited value.
- 18 The Tribunal was of the opinion that the Enderley House decision, the Courtland Crescent decision and the Rutherford Close decision were of greater value, and that although criticism could be made of the "Graph of Graphs" it was London based and Mr Nesbitt made the point that leases in Central London were generally more marketable than those in the suburbs. so that one would expect to find the value of an existing lease in areas such as Wallington to be lower relative to Central London.
- 19 Mr Nesbitt conceded that on the basis of the Courtland Crescent decision a figure in excess of 80% would be justified and the Tribunal considered that Rutherford Close would produce a figure in excess of 80% , though not as high as 88%
- 20 The Tribunal accepted in the case of the settlement at 2 The Elms that the tenant may have been influenced by the costs of pursuing an application to the Tribunal and was acting alone unlike the Applicants in the present applications. However, the Tribunal could not ignore the fact that he was represented by solicitors and valuers and the figure offered was nearer that demanded by the landlord than was being offered by the tenants in the current applications.
- 21 In weighing all these factors the Tribunal concluded that an appropriate figure for relativity would be 82% of the extended leases which would produce existing lease values of £124,640 each for 4 The Oaks and 4 The Elms and £123,000 for 5 The Elms

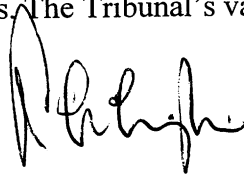
Conclusion

- 22 Accordingly the Tribunal has assessed the premium payable for 4 The Oaks and 4 The Elms at £15,060 each and for 5 The Elms in the sum of £14,742.

The Tribunal has made the necessary adjustment to include the ground rents for the garages. The Tribunal's valuations are set out at Appendix 1 attached

Peter Leighton

16th June 2005

A handwritten signature in black ink, appearing to read 'P. Leighton', written over the printed name.

Appendix 1

4, 5 The Elms, 4 The Oaks, Croydon Road, Wallington - LON/NL/3110/3111/3112/04)

The Tribunal's Valuation

1) 4 The Elms and 4 The Oaks

A. Landlord's existing interest			
Ground rent receivable	£22.60		
YP for 24 years at 9%	9.7066	£219	
Ground rent receivable	£32.60		
YP for 33 years at 9%	10.4644		
Defd 24 years	0.1264049	£43	
Reversion to	£152,000		
Defd 57 years at 9%	0.007356	£1,118	£1,380
B. Marriage value			
Extended lease	£152,000		
Less value of existing lease	£124,640		
Gain on marriage	£27,360		
Split 50:50			£13,680
Premium payable (per unit)			£15,060

2) 5 The Elms

A. Landlord's existing interest			
Ground rent receivable	£12.60		
YP for 57 years at 9%	£11.0294	£139	
Reversion to	£150,000		
Defd 57 years at 9%	0.007356	£1,103	£1,242
B. Marriage value			
Extended lease	£150,000		
Less value of existing lease	£123,000		
Gain on marriage	£27,000		
Split 50:50			£13,500
Premium payable			£14,742