

MIDLAND RENT  
ASSESSMENT PANEL

No. BIR/00CN/OLR/2006/0101

LEASEHOLD VALUATION  
TRIBUNAL

Sections 48 and 91 of the Leasehold Reform, Housing & Urban  
Development Act 1993

Property:- 22, Lordswood Square, Birmingham B17 9BS

Landlord:- City & Country Properties (Midlands) Limited  
(Highdorn Limited)

Tenant:- Edem Dzakpasu

TRIBUNAL MEMBERS

Mr A.J.ENGEL MA (Hons.) (Chairman)  
Mr V. CHADHA MRICS MCI Arb FCIH MBA  
Mrs K.BENTLEY

**DECISION**

The appropriate Uplift is 8.33%.

**DIRECTIONS**

- A. In the absence of agreement on the costs issue, either party is at liberty to apply to the Clerk to the Tribunal in writing for a determination of this issue.
- B. The application (which must be copied to the other party) should give full particulars of the matters in dispute and set out (in full) that party's (the Applicant's) written representations thereon.

- C. The application should indicate whether a hearing is required or whether a paper determination is acceptable.
- D. Within 21 days of receipt of the application, the other party (the Respondent) shall serve on the Tribunal (and copy to the Applicant) a statement in writing which sets out full particulars of the Respondent's case and the Respondent's written representations.
- E. The Respondent's statement should indicate whether a hearing is required or whether a paper determination is acceptable.
- F. The costs issue will then be determined by a Leasehold Valuation Tribunal – which may be differently constituted from this Tribunal (although it would be desirable if as many members of this Tribunal as are available are members of the Tribunal which determines the costs issue).
- G. The parties have liberty to apply to the Clerk to the Tribunal in writing (giving full particulars and copied to the other party) for the Tribunal to consider aspects of the premium – other than the Uplift.

## **REASONS**

### **Background**

1. There are 2 applications before the Tribunal. The First concerned the premium payable for the extended lease of the property (a flat) pursuant to Section 56(1)(b) of the Leasehold Reform, Housing & Urban Development Act 1993 (the Act) and the second the reasonable costs payable by the Tenant pursuant to Section 60 of the Act.
2. The Landlord appears to have changed name (but not address) from City & Country Properties (Midlands) Limited to Highdorn Limited but nothing turns on this change.

3. The Landlord is represented by Wallace LLP (Solicitors) and Bigwood (Chartered Surveyors)

4. The Tenant is represented by Curry Popeck (Solicitors) and Lawrence & Wightman (Chartered Surveyors).

### **Costs**

5. The parties agreed that the costs application should be postponed. On 2<sup>nd</sup> November 2006, the Tribunal agreed to the postponement and we now give the Directions set out above.

### **Premium – the Law**

6. The relevant part of Section 91 of the Act provides:-

“(1) Any question arising in relation to any of the matters specified in subsection (2) shall, in default of agreement, be determined by a leasehold valuation tribunal.

(2) Those matters are-

(a) the terms of acquisition relating to-

(i)....., or

(ii) any new lease which is to be granted to a tenant in pursuance of Chapter II, including in particular any matter which needs to be determined for the purposes of any provision of Schedule.....or 13.”

(Schedule 13 specifies how the premium is to be calculated.)

## **The issue**

7. The parties agreed that the only question arising, which had not been agreed, was the percentage uplift to be applied to the (agreed) market value of the property (excluding tenant's improvements) subject to the existing lease in order to arrive at the market value of the property with the extended lease.

## **Agreed matters**

8. The parties agreed that:-
  - a. The valuation date was 3<sup>rd</sup> February 2006.
  - b. The unexpired term of the existing lease was 63 ½ years.
  - c. The market value of the existing lease was £120,000 (excluding £5,000 for tenant's improvements).
  - d. The appropriate deferment rate was 5%.
  - e. The ground rent is £30 per annum.

## **Inspection**

9. The Tribunal inspected the property on 2<sup>nd</sup> November 2006.

## **Written Representations**

10. The Tribunal considered written reports from Mr Shepherd (of Bigwood) and Mr Rutledge (of Lawrence & Wightman) and further documents produced at the hearing.

## **Hearing**

11. A hearing took place on 2<sup>nd</sup> November 2006 at the Panel Offices in Birmingham (after the inspection). Mr Shepherd appeared on behalf of the Landlord and Mr Rutledge appeared on behalf of the Tenant.
12. Both Mr Shepherd and Mr Rutledge made oral representations in support of their (respective) written reports and each was cross-examined by the other.
13. Mr Shepherd submitted that an uplift of 11% was appropriate.
14. Mr Rutledge submitted that an uplift of 7% was appropriate.

## **Mr Shepherd's representations**

15. Mr Shepherd referred the Tribunal to the decision of another Leasehold Valuation Tribunal (LVT) in the case of Falstaff Court, Stratford-on-Avon (BIR/44UE/OCE/2005/05), decided in January 2006, where the Tribunal had applied an uplift of 11% to an lease with 65 years outstanding.
16. We considered that the decision in Falstaff Court was of (only) marginal assistance to us. As the Tribunal in that case observed:-

“In any event, we hold that findings of fact (as valuations) by a previous tribunal are not persuasive evidence of the uplift; save that, if a pattern emerges from a large number of decisions which the market would take into account, the evidence becomes more persuasive.”

17. Further, we accept Mr Rutledge's evidence that the 11% Uplift applied in the Falstaff Court case differs from the percentage uplifts applied by other Tribunals in other cases where the outstanding term was similar.
18. Mr Shepherd gave evidence (which we accepted) that the (unextended) leasehold interest in 23, Lordswood Square – a flat above the property we are dealing with and of similar dimensions – was recently sold (subject to contract) for £132,500 .
19. However, 23 Lordswood Square is described (in the particulars of sale produced to us by Mr Shepherd at the hearing) as being recently upgraded and modernised and Mr Shepherd declined the Tribunal's invitation to apply to withdraw the agreement he had made concerning the market value of the existing lease of the property we are dealing with (£120,000 excluding tenant's improvements).
20. Thus, the evidence concerning 23,Lordswood Square did not assist us in deciding the issue before us.

### **Mr Rutledge's Representations**

- 21.Mr Rutledge produced to the Tribunal an extract from a table which he has compiled of Tribunal decisions and settlements in respect of extended lease cases in which he has been involved. The extract produced shows uplifts ranging from 5.26% to 8% in respect of unexpired terms of 62 and 63 years.
22. Mr Shepherd criticised the table pointing out that a number of variables (e.g. the level of service charges and tenant's improvements) would affect the position.
23. The Tribunal considers that there is force in Mr Shepherd's observations on the table. Further, we note that the difference between 5.26% and 8% is 2.74% - which is over 50% of 5.26%.

24. We considered the table to be of (only) marginal assistance to the Tribunal in deciding the issue before us.
25. Mr Rutledge also produced to the Tribunal a letter, dated 26<sup>th</sup> October 2006 from Mr Powell MRICS concerning recent sales of flats in The Regents, Norfolk Road, Edgbaston, Birmingham.
26. Whilst we accept the factual content of Mr Powell's letter, we reject his conclusion that it appears "that the market takes little if any notice of the unexpired term" – which is contrary to our general knowledge and experience and, indeed, Mr Rutledge's table and overall submission to the Tribunal (that 7% is the appropriate uplift in this case).
27. Mr Rutledge also adduced evidence concerning flats in Binley Close from which he deduced figures showing uplifts of between 1.43% and 6.5%.
28. This difference (between 1.43% and 6.5%) shows, in our view, the difficulty of trying to establish a pattern based on other transactions and again, we found this evidence to be of (only) marginal assistance to the Tribunal.
29. Mr Rutledge referred the Tribunal to the decision of a differently constituted LVT in the case of 55, Overton Road (BIR/00CN/OLR/2006/ 0078) – in which the Tribunal had decided that an uplift of 5.45% was appropriate for a lease with an unexpired term of 62 years.
30. Again, for the reasons referred to at Paragraphs 16 and 17 above, we considered that the Tribunal's decision in the case of 55, Overton Road was of (only) marginal assistance to us.

31. Further the differences in the uplifts applied in the 2 cases produced to us (Falstaff Court -11% and 55, Overton Road – 5.45%) underlines the difficulty referred to in Paragraph 28 above.
32. Finally, Mr Rutledge referred us to a settlement he had negotiated in respect of 10, Ramsden Close, Selly Oak, Birmingham where an 11 ½ % uplift had been agreed in respect of a lease with an unexpired term of 56 years.
33. Mr Rutledge explained that the difference between the 11 ½ % he agreed in respect of 10, Ramsden Close and the 7% he was suggesting for this case was due to the difference in the unexpired terms (56 years and 63 ½ years). He also told us that, in his opinion, an unexpired term of 50 years would justify an uplift of 15-16%.
34. We reject this analysis. Based on our general knowledge and experience, we do not agree that the difference between an unexpired term of 56 years and 63 ½ years is such that a 4 ½ % differential in the uplift is justified.
35. In our experience, there are psychological barriers at 70 years and 50 years – but the difference between 56 years and 63 ½ years is not so significant that a 4 ½ % differential is appropriate.
36. Further, Mr Rutledge's analysis produces figures as follows:-

63 ½ years – 7%

56 years – 11 ½ %

50 years – 15 ½ %

This shows an increase of 4 to 4 ½ % each 6 to 7 ½ years, whilst our general knowledge and experience indicates to us that the increase would be at a less uniform rate.



37. Thus, we did not find the evidence concerning 10, Ramsden Close to be of assistance to us.

### **Determination**

38. When we deliberated after the hearing, our sum of general knowledge had been increased by the evidence referred to above - save in so far as we found such evidence to be of no assistance.

39. However, as indicated above, we considered the other evidence (which was of assistance) to be of only marginal assistance and it is unlikely that our determination would have differed in the absence of such evidence.

40. Based on our general knowledge and experience, we considered, that on the valuation date - 3<sup>rd</sup> February 2006 - and ignoring tenant's improvements, the market value of the property with an extended lease would have been £10,000 more than its market value with the existing lease.

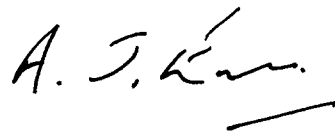
41. As both parties have presented the case on the basis of percentage uplifts, we translate this figure into an 8.33% uplift.

### **Conclusion**

42. The appropriate uplift is 8.33%.

43. We have not carried out a full valuation – in view of the wording of Section 6(1) of the Act; however, if this causes a problem, either party may apply to the Tribunal in writing (giving full particulars and copying the letter to the other party) and the Tribunal will consider the matter further.

**SIGNED**

A handwritten signature in black ink, appearing to read 'A. J. Engel', with a horizontal line drawn underneath the signature.

( A.J.ENGEL - Chairman)

**DATED**

13<sup>th</sup> November 2006