

## **RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL**

**Properties** : Nos. 1, 2, 9, 10, 11, 18, 19, 21 & 22  
Belle Vue Mansions  
Bournemouth, Dorset

**Applicants** : Mr. J.A.W. Denton and Ms. E.C. Denton (No.1)  
Messrs. E.A. & A.R. Newton and Ms's K.E. Newton  
and H. Ward (No.2)  
Ms. M.H. Walkey (No.9)  
Ms. C.M. Halls (No.10)  
Mr. J.C. Lawson (No.11)  
Messrs. P. Oliver, T. Hyde and Ms. J. Hyde (No.18)  
Ms. A.J. Alcock (No. 19)  
Ms. J. Wetherill (No. 21)  
Mr. K. Punshon and Ms. D. Punshon (No.22)

**Respondents** : Messrs. D., S., and A. Matthey

**Case number** : CAM/11/EU/OLR/2004/16

**Applications** : Applications to determine matters in dispute in  
connection with the applicants' request for new  
leases (Section 48 Leasehold Reform Housing and  
Urban Development Act 1993 ("the 1993 Act"))  
  
Applications to determine the level of the  
respondents' costs payable by the applicants  
(Section 60 of the 1993 Act)

**Tribunal** : Bruce Edgington, lawyer chair  
David Brown JP, FRICS  
J Raymond Humphrys FRICS

**Representatives** : Mr. B. Denyer-Green of counsel for the applicants  
Mr. E. Price of counsel for the respondents

**Date of Hearing** : 9<sup>th</sup> December 2004

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**DECISION**

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## **Introduction**

1. The respondents accept that the applicants are all entitled to lease extensions pursuant to the 1993 Act following service of Section 42 Notices, and the only task of this Tribunal is to determine the terms and level of costs.
2. It was confirmed that the only matters which the parties wanted the Tribunal to adjudicate upon at this hearing were the difference in values of the flats with their existing leases and their values with new leases, sometimes referred to as the relativity. Adjudicating on the relativity will enable the parties to calculate the final price because all other elements in the calculation are agreed.
3. As no evidence or representations were made in respect of the other issues raised in the application, those issues are adjourned. An application was made by the applicant to adjourn generally, but this is not agreed by the Tribunal. These issues will be adjourned until 9<sup>th</sup> February 2005. Unless an application is made by either party for a hearing date to dispose of all outstanding issues by that date, the application relating to those issues will stand dismissed.

## **The Law**

4. Schedule 13 to the 1993 Act sets out the correct method of calculation to be used. The price to be paid for the lease extension shall be the aggregate of:-
  - (a) the diminution of the landlord's interest in each flat
  - (b) the landlord's share of the marriage value and
  - (c) compensation for loss arising out of the granting of the new lease
5. The main item of dispute is item (a) which, in turn, affects (b)

## **The Properties**

6. Belle Vue Mansions is a 3 storey purpose built block of flats on the north side of Belle Vue Road, Bournemouth at its junction with Seafield Road within easy reach of shopping facilities in the centre of Southbourne. It is in a

predominantly residential area within a short distance of the sea front on a bus route and about a mile from Christchurch station.

7. The building is of a block/brick construction, part rendered, under a flat roof. There are 6 separate sets of common parts with a small communal garden area to the front and a courtyard to the rear with blocks of garages. It is said that the property was built in 2 stages and all the flats which are the subject of this application are in the original section. Flats 28-36 were said to be added at a subsequent date. The Tribunal was not able to verify those matters and they are not relevant to this decision. The current leases were for terms of 99 years from various dates between 1960 and 1962.
8. The Tribunal inspected the building in the presence of a representative of the applicants' solicitors and the applicants' expert, Mr. Stephen Higley BSc, FRICS. The Tribunal waited until after the due time for inspection, but no-one from the respondents' side arrived. The general state of decorative repair of the blocks appeared to be excellent on a brief inspection. Obviously the inspection only lasted a few minutes and was not a detailed structural survey.
9. As the applicants' expert made submissions as to the anticipated deduction for tenant's improvements in respect of flat 21, the Tribunal carried out an internal inspection of that flat only. It was double glazed, the kitchen was estimated to be about 8/10 years old and the bathroom was fairly old and basic. It was the Tribunal's view that the tenant's improvements would not reflect a deduction of £10,000 on the open market as suggested by Mr. Higley. It would be more like £5/6,000.
10. The Tribunal then drove to the quoted comparable Woodlands Court and viewed it from the outside. Mr. Higley said that he would try to bring some photographic evidence of other comparables to the hearing.

### **The hearing**


11. The respondents instructed Mr. Laurence Nesbitt BSc, FRICS, MCI Arb as an expert witness. As usually happens when experts are ordered to discuss issues, a high level of agreement was reached and a helpful statement and schedule of agreed matters is in the trial bundle at pages 240-243.
12. The Tribunal had the benefit of seeing this statement and schedule together with the reports of both experts and all other relevant papers before the hearing. It is clear that the only issue between the experts was as described above. Although this is a relatively small issue it does represent a considerable monetary value as between the parties.
13. The unexpired terms of the leases in question range between 55¾ years and 57¼ years and the ground rent reserved is £15.75 per annum with a slight and insignificant variation as set out in the statement of agreed facts.
14. Both Mr. Higley and Mr. Nesbitt gave evidence and were cross examined by counsel and questioned by the Tribunal. Their evidence did not really change from the paper evidence although Mr. Higley did change his evidence to the extent of saying that the price obtained for 25 Aspen Place, New Milton was £157,500 and not £154,000. He also produced 2 suggested calculations to account for the £9,750 premium agreed and paid for 12A Belle Vue Mansions reflected in the agreement recorded by an LVT at page 314 of the bundle.
15. Mr. Nesbitt did not agree with either of these calculations but preferred his own calculation at page 254, paragraph 7.6 of his report.
16. Mr. Higley's case was based upon market evidence including Woodlands Court (see above inspected by the Tribunal), Aspen Place and Belle Vue Mansions; statistical information provided by the College of Estate Management and a Leasehold Valuation Tribunal (LVT) decision in respect of flat 6 Belle Vue Mansions which happens to have been chaired by Mr. Brown of this Tribunal.

17. Mr. Nesbitt says in his report at page 251 that, in his view, there is no relevant market evidence based on recent sales. He says that he has “drawn assistance” from four LVT decisions in 2002 and one in 2003 all of which relate to properties in and around London. He then refers to some settlement evidence and says that he applies the Nationwide Building Society House Price Index.
18. At the end of his evidence, he was pressed by the Tribunal. It was put to him that on the LEASE website there were nine LVT cases decided since late 2003 in respect of leases with unexpired terms between 53 and 58 years. He was asked why he had not referred to these bearing in mind his duty to the Tribunal as an expert witness as set out on page 247 in the bundle. At first he said that he must have overlooked them.
19. He was pressed further and eventually agreed that he just did not agree with LVT decisions in respect of cases on the south coast including Bournemouth and Brighton. He did agree, under some pressure, that these LVT decisions must have been based upon the evidence put before the Tribunals in each case. He did not agree with surveyors in the south coast resorts who did not apply the proper valuation levels in these circumstances. He graphically described this by saying that if you contact any local agent they will all say the same. They are all “singing from the same hymn sheet” and, according to Mr. Nesbitt, they are wrong.
20. For these reasons, Mr. Nesbitt had decided not to place any reliance on local LVT decisions or local evidence. He has given evidence before members of this Tribunal on several occasions in the past and had built a reputation for being someone of experience and skill. Thus, on this occasion, the Tribunal simply reminds him of his duty to draw the Tribunal’s attention to **any** matter which would affect the validity of his opinion. In this case, he is not an advocate for his client with a duty to put his client’s case in the best possible light. He is an expert witness with a duty assist the Tribunal.

## **Decision**

21. Some of Mr. Nesbitt's evidence defies logic. Two examples of this are:-
  - (a) In respect of flat 21 there is clear evidence of a value in 2001 of £92,150 and his evidence is that the current value is £110,025 i.e. an increase of 19.4%. However, he relies on the Nationwide figures which show that the price should have increased by 79%. Even allowing for improvements (see 9 above), this does not make sense.
  - (b) In respect of flat 24, there is direct evidence of a sale price in March 2003 of £141,000. Mr. Higley adjusted this for improvements by £15,000 i.e. a net figure of £126,000. And yet Mr. Nesbitt's valuation for the nearest equivalent flat i.e. 22 is £108,395 (page 258).
22. The Tribunal does not accept Mr. Nesbitt's view as to the lack of a local market. It accepts the evidence supplied by Mr. Higley that south coast towns do have a different market from London. The reasons for this are unclear. A suggestion has been made that the proportion of cash buyers in Bournemouth who are not too concerned about the length of unexpired leases is greater than other areas. This could increase the value of shorter leases. There is no direct evidence of this.
23. Mr. Nesbitt should understand that the Tribunal can only make its decision based on the evidence presented to it and by using its own knowledge and experience. The evidence is that there appears to be a different market in these south coast towns and city. If Mr. Nesbitt wants to change the trend he so clearly disagrees with, he will have to present the relevant market evidence to a Tribunal.
24. As a guideline, the Tribunal adopts the relativity figure decided by the Tribunal in the decision relating to 6 Belle Vue i.e. 89.7% in March 2002 with an unexpired lease of 58½ years. Applying that figure to the present flats results, in the opinion of this Tribunal, in relativities as follows:-
  - (a) flats with 57¼ years to run – 89%
  - (b) flats with 56¼ years to run – 88%
  - (c) flats with 55¾ years to run – 87.5%

25. The market evidence supplied by Mr. Higley at Woodlands Court, Aspden Place and in Belle Vue Mansions when adjusted for the effect of the Act supports this decision and clearly demonstrates that there is still an active market for short leases, although the Tribunal accepts that these were not sales in a “no Act” world.
26. Thus the relativity figures in paragraph 24 are the decision of the Tribunal. As this is the only issue upon which the parties ask for a decision, the parties will now be able to calculate all the figures needed to complete these transactions.



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**Bruce Edgington**  
**Chair**  
**16.12.04**