

BIR/47UD/OLR/2005/0011

Decision

**of the Leasehold Valuation Tribunal
in respect of an application for:**

**a determination of the premium payable upon the grant of an extended lease
under Section 48 of the Leasehold Reform, Housing and Urban Development
Act 1993 ('the Act').**

Property: 108 Southcrest Road, Redditch, B98 7HZ

DEREK VERNON MILLS

(Applicant)

and

COOLRACE LIMITED

(Respondent)

DETERMINED:

**That the price to be payable by the Applicant to the Respondent as a premium in
respect of the grant of a 90 year extension to lease of the Property under Chapter 2
of Part 1 of the Act is £5960.00.**

Date of Decision: 4th July 2005

REASONS FOR THE TRIBUNAL'S DECISION

BACKGROUND

1. The Property is held under a lease ('the Lease') dated 4th April 1962 for a term of 99 years from 25th March 1960 at a ground rent of £16.00 per annum.
2. On 11th October 2004 the Applicant as Personal Representative of Ethel Vashti Mills deceased served a Notice of Claim under Section 42 of the Act upon the Respondent proposing a premium of £4,000.00.
3. On 7th December 2004 the Respondent served a Counter-notice in reply to the Applicant's Notice stating that the Respondent admitted the Applicant's right to acquire a new lease but proposing a premium of £8000.00.
4. On 23rd February 2005 the Applicant made the present application to the Tribunal under Section 24 of the Act for a determination of the premium payable.

INSPECTION

1. The Tribunal inspected the property on 4th July 2005 in the presence of the Applicant. The property comprises a ground floor maisonette in the town of Redditch and is on an estate of properties of a similar age and character. There are two bedrooms, a kitchen, living room and bathroom. There is a good sized rear garden and a front garden with drive.
2. The property benefits from UPVC double glazed windows and cavity wall insulation, which were installed by the Applicant's mother. Other improvements consist of a gas convector heater, sink unit, kitchen cupboard, new toilet and wash hand basin, shower and garden sheds.
3. The Tribunal also inspected externally numbers 50 and 76 Southcrest Road, which are two bed roomed maisonettes currently on the market. Number 50 is a first floor maisonette for sale at £99,950 with 54 ½ years remaining on its lease. It has double glazing and storage heaters. Number 76 is a ground floor inner terraced apartment for sale at £95,950.

REPRESENTATIONS AND HEARING

1. Both parties were represented, the Applicant by Mr. D. Coleman M.R.I.C.S of Hollier Browne, Chartered Surveyors of Kings Norton and the Respondent by Mr. M. Fell of Fell Estates Ltd., a company in the same group as Coolrace Ltd.

2. The parties also provided written submissions which were professionally prepared and most helpful to the Tribunal. However, the Tribunal note that both submissions were presented closer to the hearing date than is desirable and as required by the Directions of the Tribunal dated 3rd March 2005. The Respondent's submissions were not presented until the hearing, but with Mr. Coleman's consent were permitted to be introduced by the Tribunal.

3. It was clear from the submissions and preliminary discussions at the hearing that the following matters were agreed:

- The date of valuation for the purpose of determining the premium is the date of Applicant's Notice of Claim i.e. 11th October 2004.
- The accommodation is as listed in heading 1 under Inspection above.
- There are almost exactly 54 ½ years remaining under the Lease
- The value of the property subject to the existing lease and having deducted the value of the Tenants improvements is £78,000.
- The appropriate rate for the capitalisation of the ground rent and for deferring the capital value is 7 ½ per cent

- The marriage value as defined by paragraph 4 of Schedule 13 to the Act is to be divided equally between the parties.

4. The only matter in dispute is therefore the value of the maisonette with the benefit of the extended lease under the Act from which the marriage value can be calculated in accordance with the provisions of Schedule 13 of the Act.

5. Mr. Coleman explained that the property had been put on the market with the benefit of the existing lease at an asking price of £83,950. A purchaser was found but he withdrew because of the short lease. Mr. Coleman thought that if the Applicant had persevered he would have obtained £83,000. However, for the purpose of the current valuation he had used the figure of £80,000, from which he had deducted the sum of £2000 in respect of the Tenant's improvements. There are very few sales of this type of property which have come on to the market with the benefit of an extended lease. For this reason it has been the practice to apply an uplift which varies according to the term remaining, but in the present case is calculated by Mr. Coleman at 10%.

6. Based upon the above Mr. Coleman was of the opinion that the appropriate valuation is as follows:

Ground Rent £16	
YP 54 ½ years @ 7 ½ % = 13.48885	£ 215.82

Reversion

Market Value with existing lease	£80,000
Less Tenant's improvements	<u>2,000</u>
Net Market Value	78,000
Uplift 10%	<u>7,800</u>
Market value with extended lease	85,800

PV £1 in 54 ½ years @ 7 ½ %	
.0194322 x £85,800	<u>£1667.28</u>
Diminution in value of Freehold	<u>£1883.10</u>

Marriage Value

Extended Lease value	£85,800.00
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Less Existing Lease value	£78,000	
Plus Diminution in value	<u>1883.10</u>	<u>79883.10</u>
Marriage Value		5916.90
X 50%		2958.45
Plus Diminution of Value		<u>1883.10</u>
Premium		£4841.55

7. Mr. Fell was of the opinion that it was incorrect to rely solely on a table of uplifts to arrive at a market value with the lease extension. He thought that market evidence where available was of more importance although other Tribunal decisions could be useful as a cross check. He produced a table of sales evidence in Southcrest Road showing sales in the range of £95,000 to £99,950 for extended lease sales, although many of the examples were with agreed new leases of 99 years with ground rents. The only property on the table with a statutory extension was Number 56 Southcrest Road, which is currently being marketed at £95,000. He knew this had been extended because his company had agreed the terms.

8. Mr. Fell also produced a list of agreed premiums for recent lease extensions in the area. Some of these are for new leases of 99 years at ground rents between £80 and £100 per annum. The premiums of these vary from £5,000 to £10,000. The only two statutory extensions on the list are Number 110 which was agreed in June 2003 at £5,700 and Number 56 which has recently been agreed at £6,500.

9. Finally Mr. Fell referred the Tribunal to a list of uplifts throughout the country which he had extracted from the Lease-advice.org website. This list showed a wide variation in uplifts, from 5.5% to as high as 33%. However, those applicable to the Midland area were all between 9 and 11 %. It was Mr. Fell's submission, based on his evidence that the figure of £95,000 should be used as the value of the property with the benefit of the lease extension, and his calculation of the premium was therefore as follows:

Ground rent £16 YP 54.5 years @ 7.5%	13.075	£209.20
Market value with extension £95,000		
PV £1 after 54.5 years	0.0194322	

x £95,000

£1846.06
£2,055.26

Value of flat after extension	£95,000
Less freehold value	<u>2,055</u>
	92,945

Less leasehold value	78,000
Marriage value	<u>14,945</u>

50% of Marriage value	<u>£ 7472.50</u>
Cost of extension	£ 9527.76

DETERMINATION

1. Paragraph 2 of Schedule 13 to the Act states:

'2. The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of-

- (a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,*
- (b) the landlord's share of the marriage value as determined in accordance with paragraph 4, and*
- (c) any amount of compensation payable to the landlord under paragraph 5.'*

2. Paragraph 3 of Schedule 13 defines the diminution in value of the landlord's interest as the difference in value of the landlord's interest prior to the grant of the new lease and the value of his interest after the lease is granted. The method of establishing this is common ground between the parties and the Tribunal endorse their approach. In essence the ground rent is capitalised using a rate of 7 ½ % for the remainder of the lease and to the resulting sum is added the product of the present value of £1 at the end of the existing term times the value of the flat with the benefit of the extended lease. In the present case the actual figures differ because Mr. Fell applies a figure for the extended value of £95,000 and Mr. Coleman of £85,800. In addition Mr. Coleman has applied a different 'years purchase' multiplier to the value of the unexpired term. The Tribunal

checked the figures and find that Mr. Fell's valuation of the ground rent is correct at £209.20.

3. Paragraph 4 (2) of Schedule 13 defines the marriage value as

'the difference between the following amounts, namely-

(a) the aggregate of-

(i) the value of the interest of the tenant under the existing lease (and)

(ii) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease, ...; and

(b) the aggregate of-

(i) the value of the interest held by the tenant under the new lease (and)

(ii) the value of the landlord's interest in the tenant's flat once the new lease is granted'.

4. The Tribunal in the present case find that as a starting point the evidence of actual sales of similar flats at or near the valuation date must be the correct approach for ascertaining the value of the flat with the benefit of an extended lease. However, the closest evidence is only of an asking price at No. 56 Southcrest Road of £95,000. Mr. Fell has used this figure in his valuation. Further, he has not deducted for the value of the tenant's improvements as required by Paragraph 4B(c) of Schedule 13 of the Act. The subject flat requires some modernisation, although it is not an inner terraced property as Number 56. In addition to the market evidence of No. 56, there are also the current asking prices of other properties cited by Mr. Fell with agreed lease extensions. The only evidence of completed sales are Number 98 Southcrest Road sold for £73,000 in June 2003 and Number 98 Crabtree Close sold for £81,950 in September 2003. The Tribunal do not find that there is any significant change in the market between the valuation date and the present, but there was clearly upward movement between September 2003 and October 2004. In all the circumstances, including the current over-supply of similar maisonettes on the market, the Tribunal determine the market value of the subject flat at the valuation date, in it current condition at £90,000.

5. The Tribunal therefore calculate the premium payable in accordance with Schedule 13 of the Act as follows:

(i) Diminution of landlord's interest per para 3(1):

(a) value before grant of new lease

Term	
Ground rent	£16
Year purchase 54.5 years 7.5%	<u>13.075</u>

Reversion		£	209
Long Leasehold Flat value	£90,000		
Less value of tenant's improvements	<u>2,000</u>		
	88,000		
PV of £1 in 54.5 years at 7 ½%	0.019432		
Existing freehold value			<u>£1710</u>
			£1919
Less value when new lease granted			<u>nil</u>
Diminution in Value			£1919

(ii) Landlord's share of Marriage value per para 4(2):

Value of tenant's interest after new lease		£88,000
Value of Landlord's interest after new lease	+	<u>nil</u>
		£88,000

Less		
Value of Tenant's interest before new lease		£78,000
Value of Landlord's interest before new lease	+	<u>1,919</u>
		£79,919

Marriage Value		£ 8,108
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Landlord's share		<u>£4,040</u>
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Compensation payable to Landlord		£5,919
say		£5,960
Plus costs and any outstanding rent and service charge		

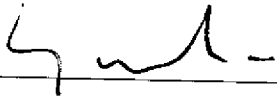
(iii) No claim for compensation under Schedule 13 para. 5

7. The Tribunal have reached their valuation of the flat with the benefit of the extended lease at the valuation date on the basis of the market evidence available to them, and have therefore not applied an uplift percentage to the lower value to determine the

higher value as suggested by Mr. Coleman. However, in doing so the Tribunal recognise that such an approach might be appropriate where market evidence is not available.

8. In reaching their determination the Tribunal had regard to the relevant law, their inspection of the subject property and the relevant comparables, the representations of the parties' advocates and their own knowledge and experience as an expert tribunal but not any special or secret knowledge.

Signed



(W. J. Martin – Chairman)

Dated ^{20th} July 2005

Members of the Tribunal:

**W. J. Martin
I.D Humphries F.R.I.C.S.
Mrs A. Bartram**