

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993:
SECTION 48**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/21UD/OLR/2004/0039

Property: **Flat 2
98 Marina
St Leonards-on-Sea
East Sussex TN38 0BP**

Applicant: Neil Brown

Respondent: Westone Properties Ltd

Date of Application: 17 June 2004

Directions issued: 6 July 2004

Hearing: 22 September 2004

Members of the Tribunal: Mr P B Langford MA LLB (Chairman).
Mr B H R Simms FRICS MCLArb
Mr T W Sennett MA MCIEH

Date decision issued: 26/10/2004

FLAT 2, 98 MARINA, ST LEONARDS-ON-SEA

1. The Application and its background

This is an application by Mr N Brown under Section 48 Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) to determine the price to be paid for acquiring a new lease of his flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease, as provided for in Section 56 of the 1993 Act. In the application Mr Brown also asked for the “updating of the lease according to council of mortgage lenders”. He had proposed an acquisition price of £3,180 in his initial notice served under Section 42 of the 1993 Act. The Respondents to the application and the Landlords of 98 Marina, Westone Properties Ltd, had in their counter notice admitted the right of Mr Brown to an extended lease under the 1993 Act but proposed a premium of £8,700 and made it clear that they would not accept any amendments to the form of lease.

2. Inspection

We attended at the property on 22 September 2004 and inspected it in the presence of Mr Brown. 98 Marina formed part of a terrace of houses built, we thought, in the second half of the 19th century and probably converted in the 1960s to provide six self-contained residential flats. The building appeared to be in poor condition. The rainwater goods, external rendering/stone finishes, external metalwork including fire escapes and balconies were very poor. The roof was in need of attention, as was all external joinery and timberwork. The approach to Flat 2, situated on the first floor of the house, was shabby and it was clear that considerable work was required to the internal common parts. Flat 2 provided accommodation of a kitchen, dining room, living room and two bedrooms. Both bedrooms had mezzanine sleeping areas. Because of the slope of the land, there was access direct from the dining room of the flat to the rear garden of the property and access to this garden was obtainable only from Flat 2 with the result that the Applicant had the exclusive use of this rear garden.

Decking had been laid between the windows of the dining room to provide a smooth access to the garden. The flat was equipped with gas fired central heating and the interior of the flat had been well maintained by the tenant.

3. The Hearing

At the hearing at the Horntye Park Sports Centre, Bohemia Road, Hastings, which followed immediately after the inspection, Mr Brown was present in person. The Respondent Landlords were not present or represented.

Mr Brown, in taking us round his flat, had pointed out the several improvements he had effected. We therefore invited him at the opening of the hearing to list those improvements. He said that he had completely refitted the kitchen. He had installed a new floor in the dining area of the kitchen. He had refitted the bathroom and wc and tiled the walls. He had installed the central heating system and had rewired the flat. He had provided the decking into the garden. Although his balcony in fact formed part of the "common parts" and was not included in his lease, nevertheless his flat alone had access to it and he had tiled the balcony himself to prevent water from entering it and affecting the flat below. He himself had also provided mezzanine sleeping accommodation in the two bedrooms. This was made possible by the height of the ceilings in the bedrooms. He said that the Residents Association had obtained a quotation for necessary repairs to the structure of the house and the common parts and this indicated that some £76,000 needed to be spent to return the building to reasonable condition and to prevent further deterioration.

With regard to the values of leasehold flats in the vicinity, he said that Flat 5 on the top floor of 98 Marina had been put up for sale at auction on 13 September 2004 and failed to reach its reserve price, which he believed to be in the region of £60,000-£70,000. That flat had two bedrooms and similar accommodation to his own, but did not have the use of a garden. At 96 Marina, a two bedroom flat on the fourth floor held on a 99 year lease commencing in 1986, had been sold for £70,000. He thought that there was less maintenance work needing to be done at 96 Marina. A third floor flat, Flat 4, at 98 Marina had been sold at auction by Clive Emson about 18 months ago for £68,000. This was a two bedroom flat. In the light of the information he had

obtained about these sales, he considered that his own flat was probably worth between £68,000 and £70,000 at the present time having allowed for the improvements he had carried out. With the benefit of the extended lease, he considered the value would increase to between £73,000-£75,000. A ground rent of £15 per year was payable for his own flat but some of the flats had a lower ground rent of £12 per year. He believed that the total ground rents for the six flats was between £80 and £90 per year. Four of the flats were occupied by long leaseholders but the top two flats were rented out. He was aware that the house was on the Borough Council's list for fire precautions but the Council were so busy that they had not yet got round to dealing with 98 Marina.

With regard to the terms of the lease, he had seen a case on the internet where a lessee was apparently successful in having the terms altered so as to comply with the terms acceptable to the Council of Mortgage Lenders. He had therefore used the same wording in his application. He submitted an internet printout of the report on the case for our consideration.

Finally he referred us to correspondence which was already in our bundle regarding the bullying attitude of the Landlords and their apparent efforts to intimidate him.

4. Consideration

(1) Compliance with directions

The Tribunal had given provisional directions in this case on 6 July 2004. There had been complete disregard of these directions by both parties. They had been ordered to exchange Valuers Reports by 28 July 2004 and supply copies to the Tribunal. That had not been done. The Respective Valuers were directed to meet by 11 October 2004 and to produce and forward to the Tribunal by 1 September 2004 a joint report setting out the matters upon which they were able to agree and identifying all of the issues that remained in contention between the parties. That had not been done. Each party had been directed to supply a written skeleton argument to the Tribunal by 8 September 2004 dealing with each aspect of the matters then remaining in dispute. That had not been done. The Landlord's surveyor, Mr Lawrence Nesbitt BSc FRICS MCI Arb of Messrs Nesbitt & Mire, had at least supplied a valuation to the Tribunal.

The valuation dated 3 February 2004 supplied to the Tribunal by Mr Colin Stutely FRICS, the Applicant's surveyor, did not contain any calculations but simply the conclusion that the figure for the acquisition of the extended lease should be £3,178. The Clerk to the Tribunal was unable at the hearing to contact Mr Stutely on the telephone (apparently on holiday) but was able to contact Mr Nesbitt who kindly sent by fax Mr Stutely's calculations, so that these were ultimately available for the Tribunal's consideration at the hearing. However neither surveyor advanced their respective client's cases or assisted the Tribunal by giving any evidence in support of their respective calculations.

(2) General

We have therefore had to rely largely on our own knowledge and experience in assessing the current leasehold value of the flat, the yield to apply to the stream of rental income and the uplift to apply to the existing value of the leasehold interest to arrive at its value with the benefit of the extension. We have been assisted by Mr Brown's evidence of values. In arriving at our valuation, we have accepted Mr Brown's unchallenged evidence as to the improvements which he himself has effected to the flat and which must therefore be disregarded. With current low interest rates and a well-secured ground rent income, we have decided that the yield to be applied to the rental income should be 7% and not 7.5% as suggested by Mr Stutely or 9% as suggested by Mr Nesbitt. We decided that the valuation date was the date of hearing and consequently we have found that the lease has 55¼ years unexpired, whereas Mr Stutely worked to 55 years and Mr Nesbitt to 55.88 years. We have also determined that the existing leasehold value is £65,000 as at the valuation date and with the benefit of the lease extension, the value will be £75,000. Upon these findings, we have concluded that the sum to be paid will be £6,000. The Tribunal's detailed calculations are set out in the schedule.

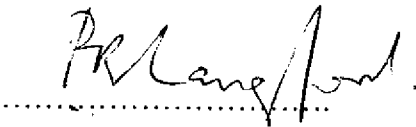
(3) The wording of the new Lease

The Applicant had failed to supply us with drafts of the clauses which he proposed should be included in the lease. It was for him to do this, if he wished us to take matters further. The case report from the internet which he supplied to us indicated that the alterations in the lease in that case to meet the requirements of the Mortgage Lenders Association had been agreed outside the Tribunal and were not in issue

before the Tribunal. Mr Brown was unable to suggest to us what terms he precisely had in mind and whether these terms would fall within the Tribunal's limited jurisdiction to make alterations, as set out in Section 57 of the 1993 Act. In those circumstances we must say that the terms of the extended lease will remain as before, except to the extent that they are altered by the provisions of Section 56 of the 1993 Act.

5. Decision

For the reasons we have given, we have determined that the premium to be paid by the Applicant to the Respondent Landlords shall be £6,000. The other terms of the lease will remain as before.

A handwritten signature in black ink, appearing to read 'P B Langford', is written over a horizontal dotted line.

P B LANGFORD (Chairman)

SCHEDULE

VALUATION

Ground rent income	£ 15		
YP 55¼ years @ 7%	<u>13.9457</u>	£ 209	
Reversion to VP Value	£75,000		
PV 7% 55¼ years	<u>0.0238</u>	£ <u>1,785</u>	£1,994
<u>Freeholders share of marriage value</u>			
Existing unimproved value	£65,000		
Value of freehold interest	£ <u>1,994</u>	<u>£66,994</u>	
Value of flat with extended lease		£75,000	
Less		<u>£66,994</u>	
		£ 8,006	
Freeholders share at 50%		<u>£4,003</u>	
	Premium payable	<u>£5,997</u>	
	But say:	£6,000	

ADDENDUM

**The following refers to the reasoned determination reference: 4.
Consideration, 4. (1) Compliance with directions.**

Mr Colin Stutely has now notified the Tribunal that he did send his valuation report containing his calculations to the Tribunal under cover of his letter dated 26 August 2004. Although this letter has never been traced in the Tribunal Office the Tribunal is happy to accept the fact that Mr Stutely did post his valuation to the Leasehold Valuation Tribunal on 26 August 2004.

The Tribunal's decision remains unaffected by this acknowledgement because Mr Stutely's calculations were available to it before the Tribunal made its decision.