

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No. CHI/43UH/OLR/2004/0014

Re: 134D Feltham Road, Ashford, Middlesex, TW15 1AD

Between:

Mrs Celia Gwendoline Thomas
("the Applicant")
and
Chartgreen Limited
("the Respondent")

Members of the Tribunal: Mr J.B. Tarling, Solicitor, MCMI (Chairman)
Mr B.H.R. Simms FRICS, MCI Arb
Mr R.A. Wilkey FRICS, FICPD

Hearing: 11th October 2004

DECISION OF THE TRIBUNAL
IN THE MATTER OF AN APPLICATION UNDER SCHEDULE 13
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT
1993 TO DETERMINE THE PREMIUM PAYABLE IN RESPECT OF A
GRANT OF A NEW LEASE

Appearances: Mrs C.G. Thomas (Applicant)
Mr D.W. Brett FRICS (Applicant's Valuer)
Mr R. Cohen (Director of Respondent Company)
Miss J.G. Alpert MRICS (Respondent's Valuer)

Background to the Application

- (a) The Applicant/Tenant wished to apply for a lease extension under Section 42 of the Leasehold Reform, Housing and Urban Development Act 1993 (The 1993 Act) and served on the Respondent/Landlord a Notice of Claim on 15th November 2004 specifying a price of £2,500 for the Lease extension. The Notice of Claim gave the Landlord until 26th January 2004 to serve a Counter Notice.
- (b) The Landlord served a Counter Notice on the Tenant on 12th January 2004 admitting the Tenants claim for an extended Lease but specified a premium of £10,155.
- (c) The Tenant made an Application to the Leasehold Valuation Tribunal under Section 48 of the 1993 Act for a determination of the items in dispute.
- (d) On 26th March 2004 the Tribunal gave Provisional Directions requiring the respective Valuers to exchange reports and meet and issue a joint report on those items which could not be agreed.
- (e) On 21st April 2004 the Landlords purported to serve an amended Counter Notice which specified an increased premium of £11,283 for the Lease extension

- (f) By letter dated 28th April 2004 the Tenants Solicitors objected to the service of the amended Counter Notice and applied to the Tribunal to determine the matter.
- (g) The Tribunal held a Preliminary Hearing on 24th June 2004 and after receiving written representations from both parties the Tribunal decided it had no power to make any judgement on the matter at that Hearing. Directions were given for the further progress of the case.

Inspection

The Tribunal inspected the premises on 11th October 2004, immediately before the Hearing. The subject Flat is on the first floor of a purpose-built block of six Flats built in the early 1970s. The building is constructed of brick with a tiled pitched roof. There are gardens at the front and rear with parking spaces. In the rear garden is a block of six garages and these are approached along a tarmac driveway from the road at the front of the property. Feltham Road is a main road with heavy traffic. Opposite the property are some local shops. There are more shops in Ashford town centre about a mile away. The subject Flat has two bedrooms, a living room, kitchen and bathroom/wc. There are two electric storage heaters supported with other electric convector heaters. The windows are single-glazed. The Lease of the flat includes one of the garages in the block at the rear of the property.

Hearing

1. The Tribunal had given Directions requiring the parties Valuers to prepare Valuation Reports, exchange them and meet to agree matters. The Landlord's Valuer had produced a one-page letter dated 29th September 2004 accompanied by some calculations, but had not produced a formal Report. It was unclear to the Tribunal whether those papers were offered as expert evidence, or merely in support of the Landlords case. Some of the calculations in the letter and accompanying enclosure were incorrect. The Tribunal has corrected the figures and the corrected figures are set out in Schedule 1 to this Decision. The Landlord was asking for a premium for the New Lease of £11,000.
2. The Tenant's Valuer had produced a Valuation Report dated 5th October and this was received by the Tribunal barely a few days before the Hearing. Neither the Landlord nor its Valuer had seen it before the Hearing, so the Tribunal adjourned for a short while to enable them to consider that Report. Some of the calculations in that report were also incorrect and the Tenants proposals as corrected by the Tribunal are set out in Schedule 2 of this Decision. The Tenant suggested a premium of £4,300.
3. The following matters had been agreed between the Valuers:
 - The extent of the Premises, its location and the accommodation
 - The Lease was dated 27th October 1972 and it was for a term of 99 years from 25th March 1972, expiring on 25th March 2071. The unexpired term was 67.36 years.
 - The Valuation Date was to be 15th November 2003
 - The Tenant's improvements were new kitchen worktops, floor coverings and additional 3" roof insulation

4. The following matters were not agreed:
 - Yield. The Landlord suggested 9%. The Tenant suggested 8%.
 - Value of the Flat with the extended Lease
 - Value of the Flat with the existing Lease
 - Relativity

5. The Tenants Valuer, Mr Brett gave evidence first and outlined his Report and the reasons for his calculations. In Appendix E of his Report he had prepared a Schedule of Comparables. These included 3 other Flats in the same Building. These were numbers 134, 134A and 134B Feltham Road. There were all on the ground floor of the Building. Despite all three flats having been marketed at various times over the past two years or so, none of them had sold. In his Report Mr Brett had referred to the Landlords proposal to construct two or three additional Flats in the roof space, immediately over the subject flat. A Planning Application had been made in 2003. This was refused by the Local Authority and the Landlords appealed that Decision. The Appeal was subsequently refused. At the Valuation Date, the 15th November 2003 the initial Planning Application had been refused but the Landlord either had, or was imminently proposing to Appeal. Mr Brett argued on behalf of his Client that this background had caused all the Flats in the Block to be blighted by the possibility of the proposed works being carried out. He took the view that the evidence he had produced of the comparable Flats in the same Block not having sold was evidence which might suggest that their respective asking prices indicated a “ceiling” of possible prices which the Tribunal should have regard to in reaching a decision on the value of the flat at the Valuation Date. He was suggesting the value of the flat was £135,375. The Landlord was suggesting a value at £155,000.
 Mr Brett had included a number of other comparables of similar Flats in the Ashford area.
 448a Staines Road had a 67 year lease and terms had been agreed for a sale at £169,950 on the basis that the freeholder would receive £6,000 for a Lease extension. However, on examination by the Tribunal, Mr Brett was unable to tell them the terms of the Lease extension, how long a term, what ground rents or what other terms had been agreed.
 11b Junction Road, Ashford had a 62 year lease and had sold to a cash buyer at the price of £157,950 in April 2004.
 Flat 6 Charles Court, 132 Feltham Road, Ashford was in the Block immediately adjacent to the subject Flat. That Flat had recently sold on an 86 year term remaining at a price of £168,500 The Block was slightly better in quality than the subject property.
 21 The Crescent, Ashford had a term of 59 years unexpired and terms had been agreed for a sale at £180,000. The freeholder had quoted a premium of £5,000 for an extended lease of 84 years. No details of the terms of such lease extension were available.
 83 Chertsey Road, Ashford had a lease length of 61 or 62 years and an additional premium of £6,000 was to be paid for a lease extension to 97 years. No further details of the terms of such lease extension were available.
6. Following Mr Brett’s evidence Mr Cohen made submissions about the alleged “Blight” caused by the Planning application. He disputed that such Blight existed. He maintained that the proposed works would have modernised the

Block and made it more attractive and aesthetically pleasing. The service charges would have been reduced as they would have been divided between more Lessees. The Building would have had the benefit of a new roof without any of the Lessees having to contribute to it. He maintained that whilst the building works would only have taken less than a year, the values to be determined should be based on a longer period.

7. Miss Alpert, the Landlord's Valuer gave evidence and outlined the reasons for her calculations. She agreed with Mr Cohen that Blight should not be considered. She reminded the tribunal that the tenant still wished to proceed with her application for a Lease Extension. Any disturbance would only have been for a relatively short time, whilst the Lease was being extended for a considerable number of years. She had no other comparables to place before the Tribunal.
8. Prior to the conclusion of the Hearing Mr Cohen offered to produce a copy of the freehold Land Certificate which would confirm the length of the Lease terms of the other Flats in the Building so that the Tribunal could base their Decision on the confirmed facts. He also produced a Statement of costs in respect of Solicitors and Valuers fees payable by the Applicant/Tenant pursuant to Section 60 (1) of the 1993 Act. As these had not been produced prior to the Hearing it was reasonable to allow the Applicant and her own Solicitor to consider these before the Tribunal made any decision on the amount. Directions were given providing for these matters to be dealt with before the Tribunal made its final Decision. The Landlords costs were subsequently agreed between the parties.
9. Consideration
First of all the Tribunal considered the matter of the current value of the subject Flat. It reviewed the evidence of comparables supplied by the parties. The evidence of values of the other Flats in the same Building was the obvious starting point. Whilst the evidence in Mr Brett's Report was to some extent helpful to give a rough idea of what such flats might fetch in the open market, no actual sales had taken place. The Tribunal took the view that there might be many factors which might influence the asking price of a particular Flat. One Estate Agent may differ from another in his opinion. Different sellers may have different views as to the value of their respective properties. The Tribunal's view was that the only real evidence of a value of a property was the price at which a sale is actually completed. Accordingly the evidence supplied as to asking prices was of limited use in establishing the value of the subject Flat at the Valuation Date.
10. The values placed on the subject Flat with an extended Lease were £142,500 by the tenant and £155,00 by the landlord. The tenant had started at the value of £150,000 but had deducted £7,500 for "minimum 5% blight" caused by the uncertainty regarding the landlords proposed roof works. The figures of £150,000 and £155,000 were very close and in valuation terms it was difficult to be precise. On balance, using the Tribunal's expert knowledge and experience it chose the figure of £155,000 as being the value of the subject Flat with an extended lease at the Valuation Date. The Tribunal then considered whether this alleged blight was in fact realistic. It considered the arguments put forward by both sides. There was evidence that two of the other flats in the building had been on the market for sale and had not sold at times when there was no current planning application or appeal in existence. Clearly

there was no blight at that time as there was nothing in existence to blight the value. The Tribunal did not agree with Mr Cohen's view that the proposed addition of another floor to the Building would necessarily modernise the block and make it more attractive, and hence make the flats more valuable, because this seemed to be a very subjective view. Some people may wish to live on the top floor of a Building as there would be no-one living above them. Other people may not wish to live immediately below a roof in case there was any risk of the roof leaking. Other prospective buyers might be more likely to consider the value of any improvements such as a new kitchen, or bathroom than which floor of the Building the flat was on. After careful consideration the Tribunal came to the conclusion that any such blight on the value of the subject flat was either non-existent or minimal. Accordingly the Tribunal rejected Mr Brett's argument that such blight existed at the Valuation Date.

11. The Tribunal then went on to consider the effect that the current short Lease (67 years) might have on the value of the subject flat. There was clear evidence from previous LVT Decisions that generally people pay less for shorter leases than for longer ones. The length of a lease sometimes affects the ability to raise a mortgage and hence can have an effect on value. In the Tribunal's experience leases for less than 70 years can be difficult to sell, particularly when the market is slow. In reviewing the comparables the most helpful one was 11b Junction Road where a 62 year lease had sold for £157,950 in April 2004. The buyer had apparently paid cash. No further details about the transaction were available. There may have been a special reason for the buyer purchasing it, or the seller selling it. It might have been an Executors sale or a sale by a mortgagee. However it did give an indication of the level of price at which a flat with a short lease in the locality might sell. In respect of 448a Staines Road an amount of £6,000 seems to have been agreed as a premium to be paid to the landlord for a Lease extension. In respect of 21 The Crescent a figure of £5,000 had been quoted for a lease extension. In respect of 83 Chertsey Road a sum of £6,000 was paid by the buyer for a lease extension. These figures were also a helpful guide as to the premium that was being paid in the open market for a lease extension.
12. After reviewing all the evidence and taking into account the Tribunal's expert knowledge and experience, and for the reasons given above, the Tribunal decided that a deduction of 5% was the appropriate amount to be made to give a valuation of the subject flat before the lease was extended. Accordingly the figure of £155,000 decided above for the value with an extended Lease was to be reduced by 5% (£7,750) to make a value of £147,250 as the value of the existing Lease before it was extended. These calculations concluded that **the price payable for the Lease Extension was £4,675**. The Tribunal's calculations are set out in Schedule 3 of this Decision.
13. Landlords costs
The parties had agreed the amount of the Landlords costs which were payable by the Tenant, and accordingly the Tribunal was not asked to make a determination on the amount.

SCHEDULE 1 – Landlord's calculations

Address 134D Feltham Road Ashford
Landlord's Calculations (Corrected by Tribunal)

Facts used

Value of extended lease (unimproved)	£155,000		
Value of existing lease (unimproved)	£134,850		
Valuation date	15-Nov-03		
Unexpired term at valuation date	67.36 years		
Ground Rent	£50		
increasing to	£75	after 25 years	
increasing to	£100	after 25 years	

£ £ £ £

Value of landlord's interest

Capitalise ground rent for current term

			Ground rent	50.00		
YP	9.00%	18.36 years		<u>8.82758</u>	441.379	
			Increase to	75.00		
YP	9.00%	25 years		9.8226		
x Pv	9.00%	18.36 years		<u>0.2055</u>	<u>2.01872</u>	151.404
			Increase to	100.00		
YP	9.00%	24 years		9.7066		
x Pv	9.00%	43.36 years		<u>0.0238</u>	<u>0.23134</u>	<u>23.134</u>

615.92

plus Landord's reversion to new lease

			Capital value of new lease	155,000	
x Pv	9.00%	67.36 years		<u>0.00301</u>	<u>466.96</u>

Value of landlord's interest 1,082.88

Landlord's share of marriage value

	Capital value of new extended lease	155,000	
	Value of landlord's interest after grant of new lease	<u>nil</u>	155,000

Less	Capital value of existing lease	£134,850	
	Value of landlord's interest lost	<u>1,083</u>	<u>135,933</u>
	Marriage value		<u>19,067</u>

Landlord's share of marriage value at 50%	9,534
Compensation	<u>nil</u>
Price payable	<u>£10,616</u>
Rounded	<u>£11,000</u>

SCHEDULE 2 – Tenant's Calculations

Address 134D Feltham Road Ashford
Tenant's Calculations (Corrected by Tribunal)

Facts used

Value of extended lease (unimproved)	£142,500		
Value of existing lease (unimproved)	£135,375		
Valuation date	15-Nov-03		
Unexpired term at valuation date	67 years		
Ground Rent	£50		
increasing to	£75	after 25 years	
increasing to	£100	after 25 years	

£ £ £ £

Value of landlord's interest

Capitalise ground rent for current term

			Ground rent	50.00		
YP	8.00%	18 years		<u>9.37189</u>	468.594	
			Increase to	75.00		
YP	8.00%	25 years		10.6748		
x Pv	8.00%	18 years		<u>0.2502</u>	<u>2.67135</u>	200.351
			Increase to	100.00		
YP	8.00%	24 years		10.5288		
x Pv	8.00%	43 years		<u>0.0365</u>	<u>0.38473</u>	<u>38.473</u>
						707.42

plus Landord's reversion to new lease

			Capital value of new lease	142,500		
x Pv	8.00%	67 years		<u>0.00576</u>	<u>821.15</u>	
						1,528.57

Landlord's share of marriage value

	Capital value of new extended lease	142,500	
	Value of landlord's interest after grant of new lease	<u>nil</u>	142,500

Less	Capital value of existing lease	£135,375	
	Value of landlord's interest lost	<u>1,529</u>	<u>136,904</u>
	Marriage value		<u>5,596</u>

	Landlord's share of marriage value at 50%	2,798
	Compensation	<u>nil</u>
	Price payable	£ 4,327

SCHEDULE 3 – The Tribunal's calculations

Address 134D Feltham Road Ashford

Facts used

Value of extended lease (unimproved)	£155,000			
Value of existing lease (unimproved)	£147,250			
Valuation date	15-Nov-03			
Unexpired term at valuation date	67 years			
Ground Rent	£50			
increasing to	£75	after 25 years		
increasing to	£100	after 25 years		

£ £ £ £

Value of landlord's interest

Capitalise ground rent for current term

			Ground rent	50.00			
YP	8.00%	18 years		<u>9.37189</u>	468.59		
			Increase to	75.00			
YP	8.00%	25 years	10.6748				
x Pv	8.00%	18 years	<u>0.2502</u>	<u>2.67135</u>	200.35		
			Increase to	100.00			
YP	8.00%	24 years	10.5288				
x Pv	8.00%	43 years	<u>0.0365</u>	<u>0.38473</u>	<u>38.47</u>	707.42	

plus Landord's reversion to new lease

			Capital value of new lease	155,000			
x Pv	8.00%	67 years		<u>0.00576</u>	<u>893.18</u>		
					Value of landlord's interest		1,601

Landlord's share of marriage value

			Capital value of new extended lease	155,000			
			Value of landlord's interest after grant of new lease	<u>nil</u>	155,000		
Less			Capital value of existing lease	£147,250			
			Value of landlord's interest lost	<u>1,601</u>	<u>148,851</u>		
			Marriage value		<u>6,149</u>		

		Landlord's share of marriage value at 50%	3,075
		Compensation	<u>nil</u>
		Price payable	£ 4,675

Dated this 8th December 2004

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John B. Tarling, Solicitor, MCMI
(Chairman)
 2004LVT134DfelthamrdDECISION