

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00CT/OLR/2005/0056

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 48
OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT
ACT 1993 AS AMENDED

Applicant: Mr.C.J.Allen (leaseholder)

Respondent: Midland Freeholds Limited (freeholder)

Subject property: 161 Myton Drive Solihull West Midlands B90 1HF

Hearing: 13 December 2005

Appearances:

For the applicant: The applicant did not appear

For the respondent: Mr. M.A. Fell

Members of the LVT: Mr. A.P.Bell MA LLB (Chair)
Mr. P. E. Smith FRICS IRRV
Mrs. A. M. Bartram

Date of determination: 01 Feb 2006

Introduction

1. This is a decision on an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended (“the 1993 Act”) for the determination of the premium payable in respect of the grant of a 90 year extension of the lease of 161 Myton Drive Solihull West Midlands B90 1HF (“the subject property”) pursuant to Chapter II of Part I of the 1993 Act. The applicant is Mr. C.J. Allen, the leaseholder of the subject property. The respondent is Midland Freeholds Limited.
2. The respondent has owned the freehold reversion to the subject property at all material times. The applicant holds the subject property under a lease dated 8 February 1971 for a term of 99 years from 25 March 1969 at an initial ground rent of £30 per year which rose to £45 at the end of the thirty third year and then rises to £60 at the end of the sixty sixth year. The unexpired term of the lease at the date of valuation (17 February 2005) was approximately 63 years.
3. On 14 February 2005 the applicant’s predecessor in title served a tenant’s notice on the respondent under section 42 of the 1993 Act claiming the right to acquire a new lease of his flat under the 1993 Act. On 19 April 2005 the respondent gave a counter-notice under section 45 admitting the applicant’s right. On 6 October 2005 the applicant made the present application to the Leasehold Valuation Tribunal.

Subject property

4. The first floor accommodation of the subject property comprises an entrance lobby, landing, living room, kitchen, two bedrooms and bathroom/wc. There is a garage in a separate block. The subject property has no garden. The property has been improved by the tenant’s predecessor in title by installing gas fired central heating, double glazing, fitted wardrobes and a power shower.

Inspection and hearing

5. The members of the Tribunal inspected the subject property on 13 December 2005 in the presence of the applicant, Mr.C.J. Allen.
6. The subsequent hearing was attended by Mr.M.A.Fell, representing the respondent. The applicant did not appear nor was he represented.

Representations of the parties

Agreed matters

7. The following matters are agreed by the parties:
 - the date of valuation for the purposes of determining the premium payable for the extended lease is either 14 or 17 February 2005 (“the relevant date”), there being a

difference of view between the parties as to which is the appropriate date, which difference is, however, de minimis.

- the unexpired term is 63 years.

Matters in dispute

8. Since both parties apply the same established formula to determine the premium payable for the extended lease, the matters that remain in dispute between the parties are the three factors in that formula that have been left to the Tribunal to determine, namely:
 - the appropriate yield rate to be applied in calculating the premium payable for the extended lease
 - the open market value of the existing lease at the relevant date and
 - the open market value of the extended lease at the relevant date both the value of the existing lease and the value of the extended lease to be adjusted where necessary to take account of the statutory assumptions laid down in the 1993 Act.
9. Howell & Co, on behalf of the applicant, applied a yield rate of 7.5% and Mr. Fell, on behalf of the respondent, a rate of 5.75% in their calculations.
10. Howell & Co valued the existing lease at the relevant date at £106,360 while Mr. Fell valued it at £108,000.
11. Howell & Co valued the extended lease at the relevant date at £113,805 while Mr. Fell valued it at £117,950.

Evidence and submissions on behalf of the applicant leaseholder

12. Howell & Co submitted that a yield rate of 7.5% should be adopted as has been the practice of Midland Leasehold Valuation Tribunals for some time and, in particular, had been adopted in the recent decision in respect of 62 Mallaby Close Shirley (BIR/00CT/OLR/2005/0043). Howell & Co pointed out that recent decisions in the Cadogan Estate cases (“*Cadogan*”) (LRA/23/2004; LRA/62/2004; LRA/08/2005; LRA/87/2004, and LRA/18/2005) all concerned prime Central London properties having capital values of between two and thirteen million pounds.
13. Howell & Co submitted that the best evidence of the value of the subject property at the relevant date was the sale of the subject property itself at a price of £116,000, given that the agreement for sale was concluded some three weeks before the relevant date. From this figure a deduction was to be made to reflect the distortion this process introduces in trying to establish the value of the existing leasehold interest as contemplated by the 1993 Act. Howell & Co referred to four decisions of Midland Leasehold Valuation Tribunals where a deduction of 4% had been made in this respect. Applying this percentage deduction in this case resulted in the subject property being valued at £111,360. Howell & Co also deducted

£5,000 for the tenant's improvements referred to in paragraph 4 above. Finally they submitted that, in order to arrive at the value of the subject property with the benefit of the extended lease, an uplift of 7% should be made to the value of the existing lease and, in support of this, they attached to their submission an extract of a schedule of uplift percentages compiled by Mr. E. Rutledge from negotiated settlements and Leasehold Valuation decisions.

14. On the basis of their figures for the open market values of the existing lease (£113,805) and of the extended lease (£106,360) Howell & Co submitted the following valuation:

Term & Reversion:

| | | |
|---|----------|---------------|
| Ground rent: | £45 | |
| YP 30 years @ 7.5%: | 11.8104 | £531 |
| Ground rent: | £60 | |
| YP 33 years @ 7.5%: | 12.1074 | |
| PV £1 in 30 years @7.5%: | 0.11422 | 1.3829 |
| | | £ 83 |
| Reversion to extended leasehold value: | £111,360 | |
| PV £1 in 63 years at 7.5%: | 0.0105 | <u>£1,169</u> |
| Value of freeholder's present interest: | | £1,783 |

Marriage value:

| | | |
|-------------------------------------|----------|-----------------|
| Extended leasehold value: | £113,805 | |
| Less: | | |
| (a) Leaseholder's present interest: | £106,360 | |
| (b) Freeholder's present interest: | £ 1,783 | <u>£108,143</u> |
| Marriage Value: | £ 5,662 | |
| 50% | | <u>£2,831</u> |

Premium payable: £4,614

Evidence and submissions on behalf of the respondents

15. Mr. Fell in his submissions adopted a deferment and capitalisation rate of 5.75% following the recent Lands Tribunal decision in *Cadogan* (referred to in paragraph 11 above), having adjusted the rate upwards from 4.75% to 5.75% to reflect the location of the subject property by reference to a previously acceptable differential of 1% between prime London properties and regional properties. He valued the applicant's present leasehold interest at £108,00 based on a sale of 79 Myton Drive for £110,000 in March 2005 with a deduction of £2,000 for tenant's improvements. He submitted that there was direct

evidence of the extended leasehold value by virtue of the negotiated sale, subject to contract, of 81 Myton Drive for £119,950 (less £2,000 for improvements) and, in the light of this market evidence, he submitted that there was no need to apply an uplift percentage to the lower value of the existing lease to determine the higher value of the extended lease.

16. On the basis of his values of the existing lease (£108,000) and of the extended lease (£117,950), Mr. Fell submitted the following valuation, which the Tribunal have set out in the same format as in the submission of Howell & Co for ease of cross reference.

Term & Reversion:

| | | |
|---|-----------|------------------|
| Ground rent: | £45 | |
| YP 30 years @ 5.75%: | 14.1410 | £636.35 |
| Ground rent: | £60 | |
| YP 33 years @ 5.75%: | 14.643 | |
| | £878.57 | |
| PV £1 in 30 years @ 5.75: | 0.1868911 | £164.20 |
| Reversion to extended leasehold value: | £119,950 | |
| Less tenant's improvements: | £ 2,000 | |
| | £117,950 | |
| PV £1 in 63 years at 5.75%: | 0.027929 | <u>£3,350.08</u> |
| Value of freeholder's present interest: | | £4,150.63 |

Marriage value:

| | | |
|-------------------------------------|-------------------|--------------------|
| Extended leasehold value: | £117,950.00 | |
| Less: | | |
| (a) Leaseholder's present interest: | £108,000.00 | |
| (b) Freeholder's present interest: | <u>£ 4,150.63</u> | <u>£112,150.63</u> |
| Marriage Value: | £ 5,799.37 | |
| 50% | | <u>£2,899.69</u> |
| Premium payable: | | £7,050.31 |

Determination of the Tribunal

17. The Tribunal's decision in *Cadogan* does give a very clear ruling that the yield rate should not be established by convention, whether 6% in London or 7% (or any other rate) elsewhere. The Lands Tribunal point out in their decision that:

"The question of the appropriate deferment yield has continued to produce a significant number of applications for permission to appeal to this Tribunal and is clearly a matter of wide concern. It was felt that comprehensive consideration of this issue should be given by the Tribunal to reduce the number of appeals in the future."

The Lands Tribunal (paras 115 and 116) state that, while LVT decisions on questions of fact or opinion could be given little or no weight in other LVT proceedings and in proceedings of the Lands Tribunal, a decision of the Lands Tribunal "may be referred to when general guidance has been given on valuation principles or procedure". The decision in *Cadogan* should be regarded as such general guidance. For this reason the Tribunal, in determining the yield, have given the decision in *Cadogan* careful consideration. The starting point in *Cadogan* in calculating the yield rate was by reference to index-linked gilts yielding 2%, this representing a risk-free investment to which the Lands Tribunal added 1% to allow for the comparative illiquidity of an investment in a freehold reversion reflecting as it did the combined cost of purchase and sale of the reversion and some costs for delay (para 151). In addition, the Lands Tribunal added an additional 1½% for the costs of management of the investment, the fact that the asset might be destroyed and might be expensive to realise at the end of the term (para 152) making a total of 4½% as a yield rate to which the Lands Tribunal added in the case of a flat a further ¼ % to reflect that a higher rate of return would be expected by an investor buying a flat as opposed to a house.

18. The decision in *Cadogan* (para 148) recognises that it may be necessary to make further adjustments to have "regard to factors which make the investment particularly attractive or more risky than some notional norm". The Tribunal have carefully considered what these factors might be in the light of *Cadogan*, and conclude that these include the location of the property (para 154), the condition (para 156), the age of the property with the greater risk of obsolescence (para 185), the length of the unexpired term (paras 167 and 168), the size of the property (para 171) and finally the fact that the property in question is a flat (para 163).
19. The subject property is a flat in a good residential area in Birmingham. It is not, however, in any significant way, whether in its location, value or attractiveness, comparable to the properties in the prime central London residential area which were the subject of the *Cadogan* decisions. Having regard to the various factors referred to in paragraph 18 above the Tribunal consider that the appropriate adjustment to make in this case is to increase the yield rate of 4¾% (adopted for a flat in *Cadogan*) to 6¾% to reflect the difference between not only the value and quality but also the risk attaching to an investment in the subject property in Birmingham compared with an investment in the high class properties in the prime central London residential area which were the subject of the decisions in *Cadogan*. As an expert tribunal using its own knowledge and experience the Tribunal determine that the appropriate yield rate in this case is 6¾%.
20. With regard to the open market value of the existing lease the Tribunal agrees with Howell & Co that the best starting point is the price achieved on the sale of the subject

property some three weeks before the relevant date. This price of £116,000 has to be discounted to take into account the fact that, by virtue of paragraph 3(1)(b) of Schedule 13 of the 1993 Act, it has to be assumed that the tenant has no right to a new lease under the 1993 Act. The Tribunal, in line with other decisions of Midland Leasehold Valuation Tribunals, find that 4% is the appropriate percentage deduction to reflect the fact that the subject property is to be valued in the “no 1993 Act world” which reduction results in a figure of £111,360. Also, as both parties have recognised, the improvements made by the tenant’s predecessor in title have to be disregarded by virtue of paragraph 3(2) (c) of Schedule 13 of the 1993 Act. The installation of gas fired central heating and double glazing in particular have increased very substantially the value of the subject property, and the Tribunal find that £5,000 is the appropriate deduction to make for these improvements. The Tribunal accordingly determine the market value of the existing lease at £106,360.

21. Finally as regards the value of the extended lease the Tribunal consider that little weight can be attached to Mr. Fell’s evidence of a negotiated sale of 81 Myton Drive at a price of £119,500 since the sale was “subject to contract”. Howell & Co contend that there should be an uplift of 7% to reflect the benefit of the new lease. It is noted that the percentage difference between Mr. Fell’s existing lease value and extended lease value is, in fact, 9%. The Tribunal, taking into account that there is 63 years of the existing lease remaining, find the appropriate uplift is 7%; if the outstanding term of the existing lease had been considerably shorter a higher percentage might well have been appropriate. The Tribunal accordingly find that the value of the extended lease is £113,805.

22. Term & Reversion:

| | | |
|---|----------|------------------|
| Ground rent: | £45 | £572.71 |
| YP 30 years @ 6.75 %: | 12.727 | |
| Ground rent: | £60 | |
| YP 33 years @ 6.75 %: | 13.098 | |
| PV £1 in 30 years @ 6.75 % | 0.1409 | £110.73 |
| Reversion to extended leasehold value: | £113,805 | <u>£1,857.30</u> |
| PV £1 in 63 years at 6.75 %: | 0.01632 | |
| Value of freeholder’s present interest: | | £2,540.74 |

Marriage value:

| | | |
|-------------------------------------|------------------|-----------------|
| Extended leasehold value: | £113,805 | |
| Less: | | |
| (a) Leaseholder’s present interest: | £106,360 | |
| (b) Freeholder’s present interest: | <u>£2,540.74</u> | <u>£108,900</u> |
| Marriage Value: | | £4,904.26 |

50% of Marriage Value

£2,452.13

Premium payable:

£4,992.87

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

Summary

24. Accordingly, the Tribunal determines the premium payable by the applicant at **£4,992.87**.


.....
A. P. BELL
CHAIRMAN

Dated

01 FEB 2006

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| <u>Appearances:</u> | |
| For the applicant: | The applicant did not appear |
| For the respondent: | Mr. M.A. Fell |
| <u>Members of the LVT:</u> | Mr. A.P.Bell MA LLB (Chair) Mr. P. E. Smith FRICS IRRV Mrs. A. M. Bartram |
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| Marriage Value: | £ 5,662 | <u>£2,831</u> |
| 50% | | |
| Premium payable: | | £4,614 |

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18. The decision in *Cadogan* (para 148) recognises that it may be necessary to make further adjustments to have "regard to factors which make the investment particularly attractive or more risky than some notional norm". The Tribunal have carefully considered what these factors might be in the light of *Cadogan*, and conclude that these include the location of the property (para 154)), the condition (para 156)), the age of the property with the greater risk of obsolescence (para 185), the length of the unexpired term (paras 167 and 168), the size of the property (para 171) and finally the fact that the property in question is a flat (para 163).
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property some three weeks before the relevant date. This price of £116,000 has to be discounted to take into account the fact that, by virtue of paragraph 3(1)(b) of Schedule 13 of the 1993 Act, it has to be assumed that the tenant has no right to a new lease under the 1993 Act. The Tribunal, in line with other decisions of Midland Leasehold Valuation Tribunals, find that 4% is the appropriate percentage deduction to reflect the fact that the subject property is to be valued in the “no 1993 Act world” which reduction results in a figure of £111,360. Also, as both parties have recognised, the improvements made by the tenant’s predecessor in title have to be disregarded by virtue of paragraph 3(2) (c) of Schedule 13 of the 1993 Act. The installation of gas fired central heating and double glazing in particular have increased very substantially the value of the subject property, and the Tribunal find that £5,000 is the appropriate deduction to make for these improvements. The Tribunal accordingly determine the market value of the existing lease at £106,360.

21. Finally as regards the value of the extended lease the Tribunal consider that little weight can be attached to Mr. Fell’s evidence of a negotiated sale of 81 Myton Drive at a price of £119,500 since the sale was “subject to contract”. Howell & Co contend that there should be an uplift of 7% to reflect the benefit of the new lease. It is noted that the percentage difference between Mr. Fell’s existing lease value and extended lease value is, in fact, 9%. The Tribunal, taking into account that there is 63 years of the existing lease remaining, find the appropriate uplift is 7%; if the outstanding term of the existing lease had been considerably shorter a higher percentage might well have been appropriate. The Tribunal accordingly find that the value of the extended lease is £113,805.

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| (a) Leaseholder’s present interest: | £106,360 | |
| (b) Freeholder’s present interest: | <u>£2,540.74</u> | <u>£108,900</u> |
| Marriage Value: | | £4,904.26 |

50% of Marriage Value £2,452.13

Premium payable: **£4,992.87**

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

Summary

24. Accordingly, the Tribunal determines the premium payable by the applicant at **£4,992.87**.

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A. P. BELL
CHAIRMAN

Dated

01 FEB 2006

MIDLAND RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION BY THE RESPONDENT LANDLORD FOR PERMISSION TO
APPEAL

Ref: BIR/00CT/OLR/2005/0056

Premises: 161 Myton Drive Solihull West Midlands B90 1HF

Applicant: Mr.C.J.Allen (leaseholder)

Respondent: Midland Freeholds Limited (freeholder)

Date of application for permission to appeal: 21 February 2006

Members of the leasehold valuation tribunal:

Mr. A.P. Bell MA, LLB.

Mr. P. E. Smith FRICS IRRV

Mrs. A. M. Bartram

1. Fell Estates Limited have applied on behalf of the Respondent, Midland Freeholds Limited (the freeholder) under Section 175 of the Commonhold and Leasehold Act 2002 for permission to appeal to the Lands Tribunal from a decision of this Tribunal dated 1 February 2006.
2. The Tribunal rejects the submission that insufficient weight was given to the relevance of the Cadogan cases in calculating the premium as the Tribunal gave very careful consideration to the impact of this decision as is evidenced by paragraphs 17 to 19 inclusive of their decision.
3. The claim that the open market value of the existing lease is “wrong” is rejected. Fell Estates Limited in their written submission of 9 December 2005 did refer to the subject property being “sold for £113,000 in March 2005 with the benefit of a Notice of Claim”. However, Fell Estates Limited then stated that they had “discounted this sale from the comparables because the Notice of Claim has clearly affected the true value”. In fact, Fell Estates Limited relied on one comparable only to support their valuation of the existing lease at £108,000, namely 79 Myton Drive sold for £110,000 in March 2005 with a deduction of £2,000 for tenant’s improvements.

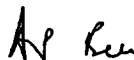
The Tribunal believe that it is relevant in considering the application by Fell Estates Limited for leave to appeal to point out that Fell Estates Limited’s submission was sent by post on 9 December 2005 but, as this had not reached the Tribunal office on 12 December 2005, this was sent by fax to the Tribunal office on 12 December 2005 (one day prior to the hearing) and in consequence only received by the members of the Tribunal immediately before the hearing. Also the Respondent’s solicitors, Howell & Co, would not have received the submission of Fell Estates Limited in time for them to have the opportunity to comment on the points made by Fell Estates Limited in their submission. The late receipt of the submission from Fell Estates Limited has to be seen in the context of the parties being required by Summons for Directions dated 13 October 2005 to lodge their submissions within 14 days of the date of the hearing, these Directions stating that “only in exceptional circumstances is it acceptable to introduce evidence at the hearing that neither the Tribunal nor the other party have had the opportunity to consider”. The Directions also contain the warning that “failure to provide evidence in good time as directed could result in the Tribunal ruling that you may not rely on such evidence at the hearing”. Further, a letter reminding Fell Estates Limited of the deadline for receipt of its submission was sent on 29 November 2005 with a repeat of the warnings given in the Summons for Directions.

The Applicant’s solicitors, Howell & Co, relied on three comparables in support of their valuation of the existing lease at £116,000. They submitted that the best evidence was an agreement for sale of the subject property entered into at a price of £116,000 some three weeks before the service of the Notice of Claim, the agreement being conditional on the vendor serving a Notice of Claim under Section 42 of the 1993 Act. It is quite possible that because of the conditional nature of the agreement or due to other circumstances unknown to the parties the price in the transfer was reduced to a figure of £113,000, which reduction the Tribunal recognised and accepted at

the hearing was recorded by the Land Registry in the Proprietorship Register of the subject property. Moreover, the submission of Howell & Co also relied on two other sales as comparables, the most helpful of which was 64 Myton Drive sold later in 2005 for £119,950 which Howell & Co claimed was consistent with the price at which they stated in their submission that the subject property had been sold.

In the light of conflicting evidence from the parties and differing views as to the valuation of the existing lease the Tribunal used its own general knowledge in reaching its determination of the valuation of the existing lease at £116,000 and no new evidence has been provided by Fell Estates Limited in its application for permission to appeal to undermine this determination.

4. The claim that the insufficient weight was given to the market evidence of the extended lease value is also rejected since the Tribunal as an expert tribunal considered all the evidence in arriving at the value of the extended lease, and in paragraph 21 of their decision set out the basis for its determination
5. For these reasons it is the view of the Tribunal that the Respondent has not produced any evidence to undermine the findings and determination of the Tribunal dated 1 February 2006. Therefore permission to appeal is refused, but the application may be renewed before the Lands Tribunal within 28 days of the date when this decision is sent to the Respondent in accordance with section 175 of the Commonhold and Leasehold Reform Act 2002 and the Lands Tribunal Rules 1996.



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A.P.Bell
Chairman

Dated **23 MAR 2006**