

LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL WHICH

MET ON TUESDAY 1ST NOVEMBER 2005 TO DETERMINE

THE PREMIUM PAYABLE FOR AN EXTENSION OF THE

LEASE ON 887A OXFORDROAD, READING

BERKSHIRE, RG306TR.

APPLICANT: MR SEAN MARSHALL

APPLICANTS REPRESENTATIVE: MR CHRISTOPHER MOORE FRICS OF HASLAM'S

LANDLORD: Mr ERIC WARNER

Members of the Committee: CAROLINE MCKEON Chairman
DAVID BROWN FRICS MCI ARB
SARAH REDMOND BSC ECON MRICS

INTRODUCTION

1. The property is a self contained flat above a retail unit as described in Mr Moore's report. Oxford Road is a busy major road on the outskirts of Reading.

2. The Chairman of the committee inspected the exterior of the property, Mr Brown and Mrs Redmond inspected the interior and exterior. The Tribunal saw the tenant's improvements and in accordance with the Act excluded the improved value due to the central heating and double glazed window units. The Lease allows a parking space within the rear land but on inspection it was clear that approach is difficult due to poorly maintained service road and it appears that parking does not take place there.

3. The Notice of Claim was served on 31st January 2005.

4. The counter notice was received by the Leaseholder 6th April 2005.

5. The lease is dated 21st July 1987 and runs for a period of 99 years from 25th December 1986. The unexpired term at the date of application is 80 years and 11 months. Under paragraph 4(2A) of Schedule B of the Act, as inserted by section 136(3) of The Leasehold Reform Act 2002, marriage value is not payable where the existing lease term exceeds 80 years.

6. In his Notice of Claim the Leaseholder proposes a figure of £360 to be the appropriate sum for a new term of 90 years beyond 24/12/2085, new ground rent of peppercorn, other terms as existing lease.

7. In his Counternotice the Landlord makes a counter-proposal of £5,000.

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EVIDENCE

8. Mr Marshall attended the Hearing represented by Mr Christopher Moore of Haslams.
9. Mr Moore appeared as Advocate and as expert. At the start of the tribunal he indicated his two roles. Mr Moore provided a bundle including all the relevant papers.
10. Mr Warner did not attend and did not provide any written representations. However, in his Statement by way of reply in a letter dated 7/9/2005 the he proposes a premium of £5,000 but does not provide a written calculation or other explanation as to his arrival at that figure.
11. Mr Moore told the Tribunal that he believed he had been generous to the Landlord in making his calculation. He said that given the current state of the market and the position and condition of the property £120,000 may be ambitious as a current value. Any valuation for the purposes of this Tribunal should disregard Tenants improvements .He told the Tribunal that he identified a number of comparable properties in the area and that he sets those out on pages 10 and 11 of his Witness Statement , pages 29 and 30 of the bundle. He used the single rate of 7.5% to capitalise the ground rent and defer the reversion. This he based on his analysis of previous settlements in the relevant area which show yields between 7 and 8%. He also referred to previous LVT decisions which he found showed a range of 6-9%. He said in evidence that it could be argued that there was a negative value attributable to the ground rent which remained at £1 per annum for the whole term and would cost far more than this to collect. Mr Moore said that he had not applied any discount for the Tenant's security of tenure in view of the length of the unexpired term. He was not fully aware of the extent of the Landlord's ownership within the terrace but knew that he did not own the shop and flat at the other end or the Chinese takeaway. He said that in reality the value of the rent is nil because it costs more to collect than it is worth but he had capitalised it on the standard basis.

LAW

Claim for an extended Lease

12. Under section 42 of the Leasehold Reform Housing and Urban Development Act 1993 a qualifying Tenant of a flat may serve notice of his desire to acquire an extended Lease of the flat. He must pay a premium in accordance with the provisions of Schedule 13 and the Landlord's reasonable costs under section 60. Tenant's improvements are to be disregarded. In the case of dispute the Tenant can apply to the Leasehold Valuation Tribunal under section 48. By section 56(1) the new lease will be for 90 years from the term date at a peppercorn rent. The extent of the property to be included in the new lease is set out in section 62(2).
13. The terms will be the same as the existing lease unless section 57 requires the Tribunal to make any modifications, which are not necessary in this case.

DECISION

- 14. The Tribunal is satisfied that Mr Moore has relevant expertise and has addressed the issues relevant to the valuation exercise.**
- 15. The valuation date is 31 January 2005. The Tribunal was impressed by the evidence of Mr Moore. They agreed that the Lease has a lengthy period to run, the ground rent is**

very low, there is likely to be only modest capital growth, the landlord has little or no opportunity to make any other form of profit. The Tribunal noted that Mr Moore's valuation had been at the upper end of the range and that such a valuation favoured the Landlord. In valuing the extended lease, the Tribunal has been assisted by the particularised valuation supplied by Mr Moore in which he has adopted a yield of 7.5% for the capitalisation of the ground rent and for the valuation of the reversion to £120,000 the resulting premium is £360. The Tribunal considers that 7.5% is an appropriate yield in this case and that the figure arrived at by Mr Moore is a fair and reasonable premium calculated in accordance with the provisions of Schedule 13 of the Act.

16. The premium determined by the Tribunal is £360.

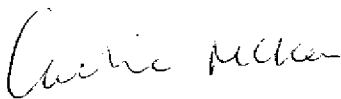
COSTS

17. Mr Moore asked the Tribunal to consider an order for costs under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. This provides that the Tribunal may determine that a party to the proceedings shall pay the costs incurred by another party in connection with the proceedings in certain circumstances, including where the party has, in the opinion of the Tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The amount which can be ordered is subject to a maximum of £500.

18. Mr Moore pointed out that Mr Warner had not only refused to enter into any negotiations but he had also failed to comply with the Directions for these proceedings. In particular, he had not filed a statement of reply to the application and in the absence of this or any form of calculation of his claimed premium of £5,000, Mr Moore had been obliged to produce a fuller bundle of documents than might otherwise have been required. Had Mr Warner complied with the Directions it is possible that negotiations could have taken place to resolve the issue prior to the hearing. Mr Moore estimated the costs associated with the hearing to be 7 or 8 hours work, amounting to £1,200. He accepted that if negotiations had taken place this would have entailed time input from him and suggested that the additional costs were in the region of £500-750.

18. The Tribunal is of the opinion that Mr Warner has acted unreasonably in connection with these proceedings and that this has caused additional costs to be incurred by the Applicant. However, it is not satisfied that the additional costs in connection with the proceedings amount to the figures suggested by Mr Moore. It does not consider that full costs should be ordered (up to the maximum of £500) because it is likely that Mr Moore's attendance would have been required in any event, as the likelihood of a negotiated settlement was remote.

19. The Tribunal orders that Mr Warner shall pay to Mr Marshall the sum of £250 towards the costs of these proceedings.



Caroline Mckean
Chair
7 December 2005.

