

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00CR/OLR/2006/0008

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. P Egginton and Mrs. J.M. Egginton (leaseholders)

Respondent: Sinclair Gardens Investments (Kensington) Ltd (freeholder)

Subject property: 26 Grange Crescent
Grange Road
Halesowen
West Midlands
B63 3ED

Hearing: 31 May 2006

Appearances:

For the Applicants: Mr S.T. Lee CBE FRICS FRVA

For the Respondent: The Respondent did not appear

Members of the LVT: Mr. A.P.Bell MA LLB (Chair)
Mr. J. E. Ravenhill FRICS
Mr. D. Underhill

Date of determination: **19 JUN 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 26 Grange Crescent, Grange Road, Halesowen, West Midlands B63 3ED (“the subject property”) pursuant to Chapter II of Part I of the 1993 Act. The Applicants are Mr. P.Egginton and Mrs. J.M. Egginton, the leaseholders of the subject property. The Respondent is Sinclair Gardens Investments (Kensington) Limited.
2. The Respondent has owned the freehold reversion to the subject property at all material times. The Applicants hold the subject property under a lease dated 23 November 1962 for a term of 99 years from 25 March 1961 at a ground rent of £15 per year. The unexpired term of the lease is 54.34 years.
3. On 9 November 2005 the Applicants 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 18 January 2006 the Respondent gave a counter-notice under section 45 admitting the Applicants’ right. On 4 February 2006 the Applicants applied to the Leasehold Valuation Tribunal for the determination of the Respondent’s costs and then on 8 February 2006 applied for the determination of the amount payable for the renewal of the lease.

Subject property

4. The ground floor accommodation of the subject property comprises a hall, lounge, dining-room, bedroom, kitchen and a combined bathroom and wc. There is a garage in a separate block. The subject property has a smallish garden to the front and rear of the subject property. The property has been improved by the Applicants refitting the kitchen and bathroom, installing central heating and replacing the garage.

Inspection and hearing

5. The members of the Tribunal inspected the subject property on 31 May 2006 in the presence of Mr. P. Egginton, one of the Applicants.
6. The subsequent hearing was attended by Mr. S.T. Lee representing the Applicants. The Respondent did not appear nor were they 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 9 November 2005 (“the relevant date”).

- the appropriate yield rate to be applied at all stages in calculating the premium payable for the extended lease is 7%
- the open market value of the existing lease at the relevant date is £70,000
- the unexpired term of the existing lease is 54.34 years

Matters in dispute

8. Since both parties apply the same established formula to determine the premium payable for the extended lease, the only matter that remains in dispute between the parties is the open market value of the extended lease at the relevant date.
9. Mr. S.T. Lee, representing the Applicants, valued the extended lease at the relevant date at £77,875 while Mr. Nesbitt, representing the Respondent, valued it at £87,500.

Evidence and submissions on behalf of the Applicants

10. Mr. Lee, on behalf of the Applicants, arrived at the value of the extended lease by applying an uplift of 11.25% based on five decisions of Midlands Leasehold Valuation Tribunals in respect of properties in the West Midlands with unexpired terms of between 55 and 59 years and uplifts on the value of the existing leases varying between 9% and 15.5%. He argued that comparisons in London were not directly relevant and should not be given the same weight as those in a similar catchment area to the subject property. He considered that the uplift of 11.25% used in his valuation was supported by the weight and tone of the evidence he had provided to the Tribunal.
11. Mr Lee submitted that, taking into account of what he regarded as a comparatively straight forward case, the appropriate figure for the Respondent's legal costs was in the region of £450 and he also queried whether all of the costs that had been incurred were recoverable under section 60 of the 1993 Act. He submitted that the appropriate figure for the valuation costs was £350 plus VAT.

Evidence and submissions on behalf of the Respondent

12. Mr. Nesbitt in his written submissions on behalf of the Respondent accepted that there was no relevant sales evidence of extended leases and accordingly he had applied to the agreed value of the existing lease an uplift of 25% which he contended was the appropriate percentage in this case. In support of this percentage he had had regard to

eight comparables all in the area of London and the South East, details of which were provided to the Tribunal. In addition he relied upon a Leasehold Valuation Tribunal decision in respect of 66 Courtlands Crescent Banstead Surrey (CH1/43UF/OLR/2004/0043) where the unexpired term was 55 years and the Tribunal determined that the appropriate uplift was 25%.

13. Mr. P Chevalier, the Respondent's solicitor, made written submissions as to the Respondent's legal costs. He gave a very detailed breakdown of the work he had undertaken between November 2005 and January 2006 (totalling two hours 55 minutes) and also the estimated time for costs incurred or to be incurred from 1 May 2006 onwards in respect of the grant of the new lease (totalling two hours 45 minutes) at an hourly charging rate of £210.
14. Mr. Chevalier referred to the Respondent's valuer's fee of £634.50 "as per the attached invoice". However, no invoice was received by the Tribunal with the papers but this has subsequently been received following a request from the Tribunal.

Determination of the Tribunal

15. While the Tribunal would prefer to use the evidence of sale prices actually achieved in the open market in valuing flats with an extended lease rather than having to resort to a percentage uplift awarded in previous decisions, neither party in this case was able to produce evidence of sales of comparable properties with extended leases. Having considered the evidence of both parties the Tribunal conclude that the most compelling evidence of the appropriate percentage uplift is to found in the determinations by other tribunals in the West Midlands and that of these the best comparable is the determination in respect of 15 Middlefield Gardens Hurst Green Road Halesowen West Midlands (BIR/OOCR/2004/0019) where an uplift was 15.5% was made in respect of a property which like the subject property was in a two storey block and included a garage in a nearby block with an unexpired term of 57 years. Based on this evidence of what is a closely comparable property in the same locality as the subject property and using its own knowledge and experience the Tribunal determine that the appropriate uplift in this case is 15% which places a value of £80,500 on the extended lease.
16. Applying the value of the extended lease at the figure of £80,500 and the other factors agreed between the parties, the Tribunal calculates the premium payable as follows:

1. Diminution in the value of the landlord's interest

Ground rent:	£15	
YP 54.34 years @ 7%:	13.919594	£209
Reversion to extended leasehold value:	£80,500	

PV £1 in 54.34 years @ 7%:	0.0264577	<u>£2,130</u>
Value of freeholder's present interest:		£2,339

2. Landlord's share of marriage value

Extended leasehold value:	£80,500	
Less:		
(a) Value of tenant's interest (existing lease):	£70,000	
(b) Value of landlord's interest (existing lease):	£ 2,339	<u>£72,339</u>
Marriage Value:	£8,161	
50% of marriage value		<u>£4,080</u>
Premium payable:		£6,419

17. In respect of the legal costs of the Respondent the Tribunal have considered very carefully the submission of Mr. Chevalier and the authorities that he has referred to in support of his claim for costs. The Tribunal find that Mr. Chevalier in his written submission has both identified the questions that needed to be addressed by him and given a detailed breakdown of the work carried out by him and the time engaged in doing so. Mr. Chevalier has clearly demonstrated that he is a specialist in this field and is very aware of the care required to avoid the pitfalls that await the unwary solicitor. The Tribunal agree with the statement in the pamphlet of the Zurich Insurance referred to by Mr. Chevalier that "obtaining a new lease is an extremely complex task with numerous procedural requirements and time limits to get to grips with". The Tribunal find that all the work done by Mr. Chevalier was incurred in pursuance of the tenant's notice "of and incidental to" the matters referred to in section 60(1)(a) and (c) of the 1993 Act. In consequence the Tribunal find that Mr. Chevalier's written submission and the authorities that he has referred to make a completely compelling argument that his legal costs should be recoverable in full. Accordingly the Tribunal determine that the Respondent's reasonable legal costs are £1,916.42 inclusive of VAT
18. As regards the valuer's costs the Tribunal recognise that, while there is likely to have been more travelling time involved for the valuer in this case, the actual valuation appears to have been straightforward with no more complexity than the norm and to reflect these factors, in the absence of any further information, the Tribunal determine that the reasonable costs of the valuer amount to £400 plus VAT (if applicable).
19. 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

20. Accordingly, the Tribunal determines that the premium payable by the Applicants is £6,419, the reasonable legal costs of the Respondent are £1,916.42 inclusive of VAT and the reasonable valuation costs are £400 plus VAT (if applicable).



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A. P. BELL
CHAIRMAN

Dated 19 JUN 2006