

1138

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN RENT ASSESSMENT PANEL

Case Number: CHI/43UH/OLR/2005/0048

Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")

In the matter of: 5 Roxeth Court, Feltham Hill Road, Ashford, TW15 2DJ.

Parties: Linda Beaton White Applicant
Alan Matthey Respondent

Representatives:

Mr Anthony Davis BSc(Est Man) FRICS for the Applicant

Mr Laurence Nesbitt BSc(Hons) FRICS MCI Arb for the Respondent

Hearing Date: 31st January 2006.

Tribunal members:

**Mrs H Bowers MRICS
Mr M Marshall FRICS
Mr D Agnew LLB LLM**

Decision Date: 7th March 2006

1. Introduction

- 1.1 This matter relates to 5 Roxeth Court, Ashford (the subject property) and an application pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
- 1.2 On 9th February 2005, Linda Beaton White served a notice on Michael John Layley and Pamela Ann Layley under section 42 of the Act. The premium proposed in the initial notice was £12,000. A counter-notice was served on 13th April 2005 by Alan Matthey, as the reversioner that recognised the Applicant's right to acquire a new lease and proposing a premium of £21,200. An application was made on the 5th October 2005 to the Tribunal to determine the terms of acquisition that were in dispute between the parties.
- 1.3 No evidence or representations were made in respect of other matters raised in the application and in particular the new lease. These matters are therefore adjourned until 31st March 2006. Unless an application is made by either party for a hearing date to dispose of all outstanding issues by that date, the application relating to those issues will stand dismissed.

2. The Law

- 2.1 Chapter II of the Act sets out the provisions for the grant of a new lease and in particular Section 56 provides for a new lease of a flat to be granted for a term expiring 90 years after the expiry of the current lease and at a peppercorn rent. Schedule 13 of the Act sets out the provisions for the calculation of the premium that is payable in respect of the grant of a new lease.

3. Inspection

- 3.1 Shortly prior to the hearing the Tribunal had the opportunity to carry out an inspection of the interior and exterior of the subject property. The property is a ground floor maisonette situated in a purpose built block of maisonettes. The two storey block is of brick and tiled construction and possibly dates from the late 1950's. The accommodation comprises a kitchen, living room, two

bedrooms and a bathroom. There have various improvements to the property including the refurbishment of the kitchen, double glazing and the installation of night storage heater, fitted wardrobes, upgraded electrical system, security lights and fencing.

- 3.2 Externally there is a small rear garden that is included in the lease with the maisonette. There is a small access road from Feltham Hill Road and that passes in front of the block of maisonettes and then gives access to a block of six garages. The garages are of brick construction with a flat roof. One of the garages is included in the lease with the subject property.

4. The Lease

- 4.1 In the papers submitted to the Tribunal, there was a copy of the lease. The lease is dated 12th December 1961 and is between G F Falconer and Son Limited, as the Lessor and Linda Beaton White as the Lessee. The lease is for a term of 99 years from 24th June 1960 at an annual rent of £15, without review. The lease is fairly standard and there are no unusual clauses that may have an impact upon the calculation of the premium for a new lease.

5. Agreed Matters

- 5.1 Mr Davis and Mr Nesbit, the Valuers representing Ms White and Mr Matthey respectively, provided an agreed statement of facts in which amongst other issues, the following matters have been agreed:

- i) The date of valuation, 9th February 2005.
- ii) The unexpired lease term of 54.4 years.
- iii) The ground rent of £15 per annum, fixed for the current term.
- iv) A description of the subject property and various improvements carried out by the Lessee.
- v) The value of the extended lease value at £160,000.

6. Matters in Dispute

6.1 The following issues are still unresolved and were brought to the Tribunal for our consideration:

- i) The yield rate for the capitalization of the ground rent and the discount rate.
- ii) The un-extended lease value
- iii) Accordingly the premium to be paid for the acquisition of a new lease.

7 Hearing

7.1 A hearing was held on 31st January 2006 at the Elmbridge Borough Council Civic Centre in Esher.

Applicant's Case

7.2 Yield

Mr Davis produced a schedule to the Tribunal which provided details of settlements negotiated with agents for cases in the locality of the subject property and for the period of 2001 up to the present time. The yields ranged from 7.5% up to 11%, with the majority at the 9% and 10% level. A second schedule was produced to show an analysis of LVT decisions in the Greater London and Surrey postal area for the period 1994 to 2005. This was a mixture of collective enfranchisement and lease extension cases and the yields ranged from 7.25% to 16%. It was argued that 8% would be adopted in a case where it was perceived that the investment was "exciting". The present case is an unexciting investment with a small and fixed ground rent. We were provided with a copy of a LVT decision for a case relating to 134D Feltham Road, Ashford, a property similar to the subject property and in close proximity. This case was considered in 2004 and a yield of 8% was determined. In this case the ground rent was higher and with stepped increases. Mr Davis made a distinction between this case and the subject property in relation to the attractiveness of the investment. In respect of market evidence, Mr Davis considered that there was very little useful evidence from auction sales in the area. Evidence from other locations would not be as useful as they would necessitate some adjustments. However Mr

Davis did produce details of a yield on a house sold at auction in Eton Wick in 2002 which analysed to produce a yield of 7.25% for a term of 95 years unexpired. The ground rent for this property was £850 per annum and as such is a more exciting investment. Mr Davis also acknowledged that as there appeared to be some provisions to increase the ground rent then the analysed yield may be lower. The problem with the lack of obtaining evidence has meant a reliance on secondary evidence. By using these sources of information, Mr Davis was of the opinion that the yield to be adopted in this case should be 9%.

7.3 Existing Lease Value

The extended long lease value has been agreed between the parties at £160,000. There is a problem deriving the short lease value as there is no market evidence of leases with only 54.4 years remaining. Most lending institutions do not consider lending against such short interest leases. In these circumstances it is necessary to look at tables and graphs to identify the relationship between short and long lease values. The second schedule provided by Mr Davis showed the uplift between short and long lease interests. In the LVT case in Feltham Road a 5.3% uplift was adopted for a term with 67 years unexpired. From the figures given in the Schedule and from the previous LVT decision, Mr Davis considered that the uplift in the current case should be 17.5%. By applying these factors into his valuation Mr Davis calculated that the premium to be paid for a new lease would be £12,500. The valuation is reproduced in Appendix 1.

Respondent's Case

7.4 Yield

Mr Nesbitt used a yield of 7%. This yield was based upon the analysis of market evidence. Sales from one auction on 27th October 2004 were examined in relation to the ground rents and capital values and an average yield of 6.6% was derived. Additionally a sale in July 2005 of a block of 43 flats was analysed to produce a yield of 6.9%. Mr Nesbitt also made reference to the Arbib case. It was argued that a term of 55 years would have some element of hope value for the landlord in expectation of potential premiums for the

extension of the lease. The comparable evidence produced to the Tribunal were for transactions for periods in excess of 80 years, therefore there would be some argument to suggest that a lower yield may be used to reflect that element of hope value. Accordingly the highest yield to be adopted would be 7%.

7.5 Existing Lease Value.

In order to derive the short lease value Mr Nesbitt relied upon a number of agreements made under the provisions of the Act, for leases with an unexpired term of about 54 years. A schedule was produced that showed relativity ranging from 72% to 83%. Additionally the LVT decision for 66 Courtlands Crescent, Banstead was produced, which was a case for a lease extension with 55 years unexpired. This decision was based upon evidence within the development of long and short lease transactions, but adjusted to reflect the "No Act World" assumption. Using this evidence and the LVT decision Mr Nesbitt adopted a relativity of 80%. Mr Nesbitt's valuation produced a premium of £18,100 and this is shown in Appendix 2.

8. **Determination**

8.1 The first issue to be determined by the Tribunal was the appropriate yield that was to be applied to both the term and the reversion. Mr Davis produced details of both LVT decisions and negotiated settlements. There is always a preference for open market transactions, although we do recognise the problems associated in obtaining a good analysis without any unknown factors having an influence on the figures produced. We considered that the analysis produced by Mr Nesbitt was of assistance. Mr Davis also produced open market evidence which suggested a yield of 7.25%. We have determined a yield of 7.5% in this case. We mainly relied upon the open market evidence that was produced by both sides and we made a slight adjustment upwards to reflect that this is a fixed income investment at a very low rent for a period of 54 years and as such would not be viewed by the market as being as attractive as the other evidence that was produced.

8.2 Now we turn our attention to the uplift or relativity figure in order to determine the short lease value. Although the LVT decision of 134d Feltham Road is in close proximity to the subject property, what is more relevant is the period of the lease that is unexpired. As such it is possible to look at a wider geographical area as the attitude to short leases in relation to long leases is not an immediate locality issue. The length of the lease in this case is relatively short and we recognise that lenders would be reluctant to lend against this sort of asset. Using the evidence produced by Mr Davis from previous LVT decisions, there are three cases with 54 and 55 years unexpired and these have uplifts of 16%, 25% and 20.4%. Using this approach we have adopted an uplift of 20.5% and this produces a short lease values of £132,780, this is equivalent of a relativity of approximately 83%. This figure is within the range of evidence that was produced by Mr Nesbitt. By applying the yield and the short lease value into the valuation with the agreed factors, we calculate that the premium will be £15,274. The Tribunal's valuation is shown in Appendix 3.

9. Decision

- 9.1 The yield to be adopted for both the term and the deferment is 7.5%.
- 9.2 The unextended lease value of the subject maisonette is £132,780.
- 9.3 Accordingly the premium for the acquisition of a new lease is £15,274. The Tribunal's valuation is shown in Appendix 3.



Chairman

Helen C Bowers

Date 7/3/06

Appendix 1

Applicant's Valuation

Valuation of 5 Roxeth Court

Freeholder's Current Interest

Ground Rent	£15 per annum		
YP for 54.4 yrs @ 9%	<u>11.01</u>	£165	
Reversion to	£160,000		
PV of £1 in 54.4 yrs @9%	<u>0.0092</u>	<u>£1,472</u>	
			£1,637

Marriage Value

Landlord's Proposed Interest Nil

Value of Extended Lease £160,000
£160,000

Landlord's Current Interest £1,637

Lessee's Current Interest £136,500
£138,137

Marriage Value £21,863

50% of Marriage Value £10,931

£12,568

Premium Payable for a New Lease £12,500

Appendix 2

Respondent's Valuation

Valuation of 5 Roxeth Court

Freeholder's Current Interest

Ground Rent	£15 per annum		
YP for 54.4 yrs @ 7%	<u>13.9256</u>	£209	
Reversion to	£160,000		
PV of £1 in 54.4 yrs @ 7%	<u>0.025207</u>	£4,033	
			£4,242

Marriage Value

Landlord's Proposed Interest Nil

Value of Extended Lease	<u>£160,000</u>	£160,000	
Landlord's Current Interest	£4,242		
Lessee's Current Interest	<u>£128,000</u>	<u>£132,242</u>	
Marriage Value		£27,758	
50% of Marriage Value			<u>£13,879</u>
			£18,121
Premium Payable for a New Lease			£18,100

Appendix 3

Leasehold Valuation Tribunal's Valuation

Valuation of 5 Roxeth Court

Freeholder's Current Interest

Ground Rent	£15 per annum		
YP for 54.4 yrs @ 7.5%	<u>13.072</u>	£196	
Reversion to	£160,000		
PV of £1 in 54.4 yrs @7.5%	<u>0.019573</u>	<u>£3,132</u>	
			£3,328

Marriage Value

Landlord's Proposed Interest Nil

Value of Extended Lease £160,000
£160,000

Landlord's Current Interest £3,328

Lessee's Current Interest £132,780
£136,108

Marriage Value £23,892

50% of Marriage Value £11,946

£15,274

Premium Payable for a New Lease £15,274