

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : Flat 3
Clifton Court
Marlow Road
High Wycombe
Bucks
HP11 1TE

Applicant : Gadwey Properties Limited

Respondent : Gladys Lilian Bates

Case number : CAM/11UF/OLR/2008/0062

Date of Application : 29th October 2008

Type of Application : To determine the premium for a lease extension of the property (Ss 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"))

The Tribunal : Mrs Joanne Oxlade (Lawyer chair)
Mr J. Raymond Humphrys FRICS
Mr Edward Pennington FRICS

Date of Hearing : 23rd February 2009

Venue : Marlow Suite, The Kings Hotel,
Oxford Road, Stokenchurch,
High Wycombe, Bucks, HP14 3TA

DECISION

The price payable by the Respondent to the Applicant for a new lease shall be £22,570.

REASONS

Introduction

1. Gladys Lilian Bates ("the Respondent") acquired the lease of Flat 3 Clifton Court, Marlow Road, High Wycombe, Bucks HP11 1TE ("the flat") for a term of 99 years from 24th June 1960, at a ground rent of £10 per annum. The garage ("the garage") adjacent to the premises, was let on a separate lease, for the same term and from the same date.
2. The Respondent sought to extend the length ("the term") of both leases on 12th June 2008, by service of two notices on the freeholder, Gadwey Properties Limited, ("the Applicant") pursuant to section 42 of the Leasehold Reform, Housing, and Urban Redevelopment Act 1993 ("the Act"). She proposed a premium of £10,000 for the flat, and £500 for the garage. At the date of the section 42 notice, the lease had just over 51 years left to run.
3. The Applicant served a counter-notice dated 13th August 2008, pursuant to section 45 of the Act, admitting the right to a new lease, proposing a premium of £24,450, agreeing a lease on the same terms save that the rent reserved under the lease be at a peppercorn rent. After an exchange of correspondence the parties agreed that there was no need for a counter notice to be served in respect of the garage, and that it would be included in the proceedings relating to the flat. Accordingly, there was no separate premium payable in respect of the garage proposed.
4. The parties were unable to reach an agreement on all matters, and so the Respondent made an application to the LVT dated 29th October 2008, for determination of the matter. In that application the Applicant indicated that the following matters were in dispute: the premium/consideration payable; whether the Respondent's improvements were to be taken into account; what method of valuation was to be applied; costs to be assessed.
5. Directions were issued on 31st October 2008, and pursuant to those Directions the parties filed an agreed statement of facts. This statement dated 5th December 2008 consisted of (i) an agreed description of the premises and its location (ii) an agreement that 12th June 2008 was the date of service of the notice, (iii) an agreement as to a capitalisation rate of 7%, and deferment rate of 5% (iv) that the addition of a statutory 90 year extension would create a term of 141 years (v) that the installation of gas CH and UPVC double-glazed windows were believed to have been installed by the Respondent or a predecessor in title. Additionally, the statement identified matters on which agreement had not been reached: namely, as at 12th June 2008 (a) the value of the

property held on a 141 year lease, (b) the value of the property subject to the current lease.

6. By letter dated 12th January 2009, Allan Janes Solicitors acting on behalf of the Respondent indicated that - although served out of time - the Respondent would not object to the costs of the Applicant's Solicitors or Valuer's fees. Accordingly, we were not asked to determine those costs incurred by the Applicant for which the Respondent would be statutorily liable.

Inspection

7. The members of the Tribunal inspected the premises, on the morning of the hearing in the presence of the Respondent's Surveyor, Mr K.P. Thompson FRICS, of Thompson Wilson, Chartered Surveyors.
8. They consist of a two bedroom, one reception room ground floor flat, in a development consisting of 2 3-storey blocks, comprised of 12 maisonettes on two floors and six flats on the ground floor. The block is set back from the road, with a communal garden and a block of garages to the rear with access to the flat at the front of the building. The flat is fitted with gas central heating, UPVC double glazing, and has a fitted 3 piece-bathroom and dated fitted kitchen.
9. The flat is in a residential area, a mile or so from the centre of High Wycombe, but a short distance from junction 4 of the M40 motorway, and within walking distance of Wycombe High School for girls and John Hampden Grammar School for boys.

The Hearing

10. The Applicant was represented by Mr David Buller, a Director of Gadwey Properties Limited and retired ex-Chartered Surveyor, who relied on the evidence of its expert witness, Mr G.R. Atkinson FRICS. Mr. K.P. Thomson FRICS, acted as both advocate and expert witness for the Respondent, who was not otherwise represented.

Preliminary Matters

11. At the outset we clarified whether any agreement had been reached as to the value of the garage, as neither expert specifically referred to the garage in their reports, nor in the agreed statement of facts - yet some of the comparable properties did include a garage. Both experts said that although not specifically referred to in their reports, each report was made on the basis that the garage was included in the assessment of value of the premises as a whole.
12. Further, both experts confirmed that they agreed that the property values had fallen by 10% between June 2007 and June 2008, and so any reliance placed on market evidence of values achieved in June

2007, would require an adjustment to ascertain the open market value of the subject premises at the date that the notice was served, namely 12th June 2008.

Evidence

13. We therefore received the following evidence:
 - (a) oral evidence from and witness statement of Mr David Buller made on 19th November 2008
 - (b) oral evidence from and written report of Mr G.R. Atkinson FRICS, made on 4th December 2008 and
 - (c) oral evidence from and written report of Mr. K.P. Thomson FRICS, made on 3rd December 2008.
14. Mr Buller and both experts updated their evidence, answered questions in cross-examination, and also answered questions asked by the Tribunal.
15. During the course of giving evidence, Mr Buller, sought to adduce documents evidencing a change in the property values of 24.5% from June 2007 to June 2008, which consisted of articles and statistical analysis. This had not been made available to Mr Thompson prior to the hearing, and he objected to its admission. We observed that this deviated considerably from the expert evidence on which the Applicant had hitherto sought to rely. Further, having regard to paragraph 16 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, we indicated that Mr Buller would either have to seek an adjournment or to proceed without relying on such evidence. He elected to do the latter. Accordingly, we proceeded in the absence of such evidence and put it out of our minds when considering the issues in this case.
16. During the course of giving evidence, Mr Thompson produced a letter from Owen White Solicitors dated 9th February 2009, confirming the terms of agreed lease extensions of 143,146,148, and 150 Carver Hill Road, as referred to in the penultimate paragraph of the report of Mr Thompson. Although this had not previously been seen by Mr Buller, or Mr Atkinson, it was admitted without objection on the basis that it fleshed out and explained the terms of the agreement previously referred to.
17. At the end of the hearing both parties made short submissions summarising their respective arguments.

Law

18. Section 91(2) of the Act provides the Leasehold Valuation Tribunal ("LVT") with jurisdiction to set the price payable, and schedule 13 part II provides that:

A. the premium payable shall be the aggregate of:

- (a) the diminution in value of the landlord's interest
- (b) the landlord's share of the marriage value
- (c) any compensation payable under paragraph 5.

B. the LVT shall disregard any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or a predecessor in title.

19. The Applicant did not argue that (c) applied, and so in this case, the premium must be the aggregate of (a) and (b).

Findings

20. Having considered all of the evidence filed, and submissions made, we make the following findings:

i. Value of flat with extended lease

21. Both experts approached this valuation in different ways.
22. Mr Atkinson relied on (i) market evidence of the sale of one flat with a long lease (Flat 10, Clifton Court), (ii) the price at which the subject flat was offered for sale in March 2008, (iii) other sales transactions which took place in 2008.
23. Mr. Thompson relied on (i) the sale of a flat with a short lease (Flat 8, Clifton Court) which took place in August 2007, (ii) then adjusted the price downwards by 10% to reflect a fall in the market between 2007 and 2008; (iii) then adjusted the value of the short lease downwards as a result of improvements made, and (iv) then used the differential of the selling prices of Flat 8 on a short lease and Flat 10 on a long lease (giving a relativity of 3 ½ %) to provide the value of the flat with a long lease.
24. In terms of method of approach, we favour that adopted by Mr Atkinson for the following reasons: (i) the value of a flat with an extended lease is readily discernable by reference to ample market evidence (ii) the 1993 Act requires that we assess the valuation of a short lease in a "No Act World", and so reliance on actual transactions of short leases (i.e. Flat 8) where both parties transact on the basis that Lessee has a right to extend, are not necessarily reliable.
25. Both experts produced evidence of comparable premises, from which we could assess the value of the subject premises with a long lease.
26. Mr Thompson relied on 6 transactions in 4 blocks of flats located in the High Wycombe area which were agreed between June and October

2007 and 6 transactions in the same blocks of flats which were agreed between June and August 2008. Mr Atkinson relied on 5 transactions in 5 blocks of flats which were agreed between March and August 2008

27. All were of use in giving a general overview. However, the most useful comparable transaction was the sale of 10 Clifton Court in June 2007 at £168,500 with the benefit of a long lease of 125 years. This ground floor flat had identical accommodation to the subject flat, and was located in the block adjacent to the subject premises. We note from the particulars drawn up by the selling agents Stuart Newmans, that the flat benefits from secondary double glazing (not UPVC double glazing) in much of the flat, has central heating, and is described as being a little "tired". In terms of advantage, Flat 10 has a better and quieter outlook with its front door, living and bedroom accommodation facing the communal gardens – whilst the subject flat faces a busy road and overlooks a petrol garage, as does its master bedroom and living room. Flat 3 has UPVC double glazing, but flat 10 has only secondary double glazing. In the round we consider that they are close comparables.
28. However, we note that the extended lease of Flat 10 is for 25 years, but that ground rent is £200 per annum, and doubling every 25 years. We consider that these are more onerous terms than those contained in the lease of the subject flat, and so will slightly adversely affect the sale price of Flat 10. Accordingly, we adjust the open market value.
29. We conclude from the market evidence referred to in paragraphs 26 and 27 that in June 2007 the subject flat had an open market value of £170,000.
30. The experts have agreed that between June 2007 and June 2008, property values dropped by 10%, and so we adjust the figure of £170,000 to £153,000.
31. Further, we are required by the Act to give consideration to adjusting the open market value by the increase in value caused by any improvements made by the Lessee or predecessor in title. Improvements are not defined in the Act, but Mr Buller and Mr Atkinson placed reliance on the dictum of Denning LJ in Morcom v Campbell-Johnson [1955] 3 AllER 264 in distinguishing an "improvement" from a "repair". Mr Buller conceded that taken to its logical conclusion, the dictum of Denning LJ means for example that only where premises have never had windows, can the installation of windows by a Lessee ever be regarded as an improvement. We consider that "improvement" in this context includes works by the Lessee over and above the obligations in the tenancy that add value to a proposed purchaser and which have a degree of permanence. Accordingly, we take into account the installation of UPVC double-glazing, gas fired central heating, and a modern but dated kitchen.

32. Although Mr Thompson calculated improvements made on a *cost* basis, we consider that the statute requires us to have regard to the increase in *value* of the flat as a result of the works done i.e. what would the buyer be prepared to pay for a flat with such items of improvement, as opposed to an unimproved flat. We take into account the condition of the kitchen, and that the improvements were made some time ago, and consider that the buyer would pay an additional £4,000 for all the improvements. This reflects our opinion of the effect on value, not the costs of making the improvements
33. Therefore, on the evidence before us we consider that the value of the subject premises with the benefit of a long lease and without improvements was **£149,000** as at 12th June 2008.

ii. Value of flat with the current lease

34. Mr Atkinson sought to place reliance on the evidence of lease extensions agreed by himself in respect of 3 flats in different locations in Surrey in 2006, 2007, and 2008 and those agreed by Mr Buller, particularly in relation to Clifton Court, where 3 had been agreed in 1998, 2006, and 2007. He said that he was also content to rely on relativity graphs, and in particular the Beckett and Kay graphs. However, the Tribunal understands that the "mortgage dependent" argument is one put forward by Messers Beckett and Kay, and is based on their opinion which is then reflected in the graphs. However, the other graphs in the table are not based on this opinion, and in our view the other graphs carry more weight. Mr Atkinson relied on his colleagues (Mr Goodchild's) initial valuation for Mr Buller, which we are told used a relativity rate of 78%.
35. Mr Thompson placed great emphasis on open market evidence of the sale of Flat 8, Clifton Court in August 2007, on a short lease of 52 years which flat was in poor condition, required modernisation, and had no central heating or double glazing. That gave a relativity figure of 3½%. He also relied on agreed lease extension figures referred to above at paragraph 16.
36. We do not consider that agreed lease extensions are always a reliable indicator of the value of the flat with the current lease. Often prices are agreed for reasons specific to both parties: the Lessee maybe keen to agree a price in order to proceed to sell the flat; the Lessor agrees to accept a price because he needs to have finance available; the terms of the lease may be varied (for example flat 10 Clifton Court) to that there is a lower premium paid in exchange for a higher ground rent. In any event they are clearly agreed in full knowledge of the 1993 Act, which changes the negotiating power of the Lessee. However, they do form part of the evidential backdrop, and so accord them some limited weight.

37. We do not consider that there is sufficient market evidence of sales of flats with short lease for us to place any reliance on the sale on the open market of Flat 8 Clifton Court. Further, Mr Buller gave evidence that there was a local belief that a lease extension would cost £5000; that an approach was made by the Respondent's Solicitors to the freeholders to acquire a lease extension of the subject flat at £5000; and that the buyer of Flat 8 appeared to have been informed that the costs of an extension would be £5000. We were surprised, having regard to his many years of experience, that alarm bells did not start to ring when it appeared that the sales evidence showed that sales of a long lease of 125 years and a short lease of 51 years were at almost the same price. In any event when evidence of short leases are used, then valuers need to adjust them to exclude the effect of the Act. That the sale of No 8 is an anomaly is further confirmed by cross-checking against the relativity graphs. A rate of 3 ½ %, does not accord with the graphs to which we will now turn.
38. We consider that this is the most difficult part of the calculation to ascertain, because we are required to assume that the valuation is made in a "No Act World" and all agreed or sales transactions take place in the full knowledge that an extension can take place because of the Act.
39. We have regard to the case of Arrowdell Limited v Coniston Court LRA/72/2005 in which it was said that "we consider that graphs of relativity are capable of providing the most useful guidance" and in respect of the subject premises, we consider that the relativity graphs are of considerable assistance. They support an argument that relativity for a 51 year lease is anywhere between 66% and 86%
40. Having considered all of the available evidence, the relativity graphs (but excluding the mortgage dependant graph), having made the assumptions that we are required by the Act, and having regard to our knowledge and experience, we conclude that the value of the subject premises with the current short lease is **£116,220**, being **78%** of the value of the subject premises with a long lease.

Conclusions

41. We therefore determine that the material component parts of the premium are as follows:
- (a) price of subject flat with extended lease £149,000
 - (b) price of subject flat with short lease of 51 years in a "no act world" £116,200
 - (c) a relativity rate of 78%

which produces a premium payable of **£22,570**.

42. We attach the Tribunal's valuation, as appendix 1.

A handwritten signature in black ink, appearing to read 'J. Oxlade', is written over a horizontal dotted line.

Joanne Oxlade
(Chairman)

2nd March 2009

Appendix 1

The Leasehold Valuation Tribunal's Valuation in accordance with the Leasehold Reform, Housing and Urban Development Act 1993 as amended

Property: 3 Clifton Court, Marlow Road, High Wycombe

Valuation Date: 12 June 2008
Capitalisation Rate: 7%
Deferment Rate: 5%
Unexpired Term: 51 years
Extended Lease and Freehold Value: £149,000
Existing Lease Value: £116,220
Relativity: 78%

Value of Landlord's Current Interest			
Term			
Ground Rent	10.00		
YP 51 years @ 7%	<u>13.8325</u>	138	
Reversions to Freehold	149,000		
PV of £1 in 51 years @ 5%	<u>0.0830512</u>	<u>12,375</u>	12,513
Less:			
Value of Landlord's Proposed Interest			
Freehold Value	149,000		
PV of £1 in 141 years @ 5%	<u>0.0010287</u>		<u>153</u>
Diminution in Value of Freehold Interest			12,360
Marriage Value			
Proposed Interests:			
Freehold	153		
Leasehold	<u>149,000</u>	149,153	
Less:			
Existing Interests:			
Freehold	12,513		
Leasehold	<u>116,220</u>	<u>128,733</u>	20,420
Landlord's Share @ 50%			10,210
Total Premium Payable			<u><u>£22,570</u></u>