

RESIDENTIAL PROPERTY TRIBUNAL SERVICELEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANELCASE NUMBER: CAM/11UF/OLR/2008/0066

IN THE MATTER OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 Section 48

IN THE MATTER 109a, Carrington Road, High Wycombe, Bucks HP12 3HT

Parties	Darren George Scrivens and Nicola Grace Harris	Applicant
	Holding & Management (Solitaire) Limited	Respondent

Appearances: For the Applicants - Mr J Taylor BSc MRICS
For the Respondents - Mr I Asbury BSc(Hons)MRICS

Date of Application : 28th November 2008

Date of Directions : 22nd December 2008

Tribunal Members : Mr A A Dutton
Miss M Krisko BSc (Est Man) FRICS
Mr G R C Petty FRICS

Date of Hearing : 28th April 2009

Decision Date : 11th May 2009

REASONS/DECISION

A. BACKGROUND

1. This matter came before us on 28th April 2009 following an application to the Tribunal by Mr Scrivens and Miss Harris for an extension to their lease of the property 109A Carrington Road, High Wycombe ("the Premises") pursuant to section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").
2. Presently the Premises are held under a lease for 99 years commencing on 24th June 1982 with a rising ground rent. The lease contains onerous repairing obligations on the part of the lessees which includes the upkeep of the structure including roof and foundations with contributions from the three other maisonette owners.
3. In an initial notice served under the provisions of section 42 of the Act the Applicants suggested a premium of £6,500. The Respondent landlord, Holding & Management (Solitaire) Limited, admitted the Applicants right to an extension but proposed a premium of £12,750 with a contribution towards legal fees of £695 plus any valuation costs.
4. The counter proposal was rejected by the Applicants and application was made to the Tribunal dated 28th November 2008 indicating that the matters in dispute related to the purchase price, the terms of the new lease and the costs payable under the Act.
5. Certain matters were agreed both prior to the hearing of the matter on 28th April 2009 and during the course of the hearing. Prior to the hearing it was agreed that the valuation date was 11th April 2008, the date upon which the notice under section 42 was received by the Respondent. During the course of the hearing the lease length was agreed at 73.21 years unexpired and the relativity at 93%.
6. There was little between the parties on the value of the existing lease and extended lease. The main areas of disagreement centred around the deferment rate and the capitalisation rate for the ground rent.

B.

EVIDENCE

7. On behalf of the Applicants we heard from Mr Jeremy Taylor who had also provided a report dated 23rd April 2009. As with the report of Mr Asbury this was delivered late to the Tribunal notwithstanding the directions issued in December 2008 which required the experts to have met and produced an agreed memorandum of facts by 13th February 2009 and to ensure that the reports were provided to the Tribunal at least 10 days before the hearing of the matter. As both parties have the reports we will not set out in detail the matters contained therein. Mr Taylor described the Premises, the location and the lease terms. As to the capitalisation rate he argued that the lease provided for the rent to be capped at £160 being 2/3rds of the rateable value of the Premises, which was £240. This he felt was a low ground rent and taking all factors into account led him to conclude that the rate for this element should be 7.5%
8. On the question of the deferment rate he argued that we should depart from the guidelines in the Sportelli case as this was not Prime Central London (PCL) and that we were not bound by the rates set in the Lands Tribunal and the Court of Appeal. Relying on arguments as to obsolescence and long term values, contrasting properties in Kensington & Chelsea and Westminster with Buckinghamshire properties by reference to Land Registry data, he concluded that a rate of 6.5% should apply, using a risk premium of 6.25%.
9. On capital values there really was very little between the experts. Mr Taylor valued the existing lease, unimproved, at £176,900 with a relativity initially at 94% but subsequently agreed at 93%. This change came about as a result of the existing lease length being agreed at 73.21 years and not rounded up to 74 years as Mr Taylor had done. His final assessment gave a premium of £6,350
10. Mr Asbury for the Respondent Landlord also described the property and the location. He did not think there was any allowance for improvements. He put a value on the extended lease of £188,100, uplifted by 1% to £190,000 for a notional freehold. With a relativity of 93% he concluded that the existing lease value was £176,700, only £200 from the figure suggested by Mr Taylor.
11. On the question of the capitalisation of the ground rent he argued for a figure of 6%. This was because he felt that the rateable value cap as set out in the lease did not apply and that the ground rent could rise to £1,162 at the final review.

12. On the question of the deferment rate he was of the view that there was no reason to depart from the rate set down in Sportelli of 5%. With these factors in mind he concluded that the price payable for the lease extension was £10,700

C. INSPECTION

13. The Premises comprise a maisonette in a 1960's built two/three storey property on a steeply sloping site. To the front, which comprised two levels were four garages, one for each maisonette and at each end a door leading to the upper maisonettes. Pedestrian access to the Premises was down some 16 steps, with further steps down to a small rear garden in the sole occupancy of the Applicants. Internally the Premises comprised a good sized living room with pleasant views, and a small kitchen and at first floor level a bathroom with a full suite, a single bedroom and a double bedroom. The maisonette had storage cupboards on both floor levels. The Premises were centrally heated and had the benefit of UPVC double glazing throughout.

D. THE LAW

14. Section 48 of the Act sets out the provisions for dealing with disputes where the parties have not reached an agreement and Schedule 13 of the Act sets out the valuing basis. Both have been borne in mind by us when reaching our decision in this case and do not appear to be in dispute.

E. DECISION

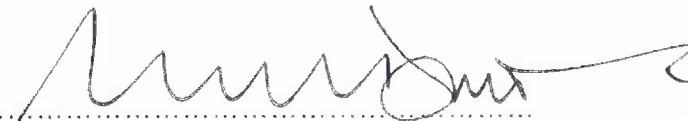
15. We propose to deal firstly with the more straightforward elements of the evidence we received and our findings in relation thereto.
16. The agreed lease length is now 73.21 years and that as a result Mr Taylor agreed in the course of the hearing that a relativity of 93% could be applied.
17. There really is little between the two parties on existing unimproved lease value. £200. It seems to us therefore not unreasonable to split the difference between them and we therefore assess the existing lease on an unimproved basis at £176,800. So far as the improvements are concerned there is no evidence that the Applicants or their predecessors in title installed the central heating. It may be that the double glazing was installed at some time in the past but that really has little value and does not in our view affect the capital values of the property that we need to consider.

18. Applying a relativity of 93% to that existing lease value gives an extended lease value of £190,000. We really can see no need to make any uplift in connection with the conversion to freehold. This is a lease of one maisonette in a block for four. There are already onerous repairing obligations on the lessees and there seems to be little value therefore in an uplift to freehold value.
19. We now turn to the question of capitalisation of the ground rent. The issue here seems to rest with the terms of the lease. It is appropriate to quote the relevant clause which states *“to hold same unto the tenant from the 24th day of June one thousand nine hundred and eighty two for a term of ninety nine years yielding and paying for any fraction of a year thirty pounds (£30) for the first ten years of the term forty five pounds (£45) for the second ten years and so on rising by fifty percent (50) (calculated to the pound (£) above) each ten years but so that the rent in being so increased shall never exceed two-thirds of the rateable value of the demised premises at that time such rent to be paid in advance....”*.
20. The issue here is the abolition of rateable values. Mr Asbury argued that as those had been abolished in 1991 there was therefore no cap to the ground rent provisions of the lease and that accordingly it could rise to the figures we have quoted above of some £1,162 per annum.
21. It seems to us we have to consider the background that led to the formation of the lease. That is to say the meaning it would convey to a reasonable man. The use of the rateable limit in our view was to ensure that the tenancy did not at any anytime acquire any protection under the Rent Act 1977. It is reasonable therefore it seems to us to consider how that Act has dealt with the question of rateable values. At s25 (4) it states; *“where after the date which is the appropriate day in relation to any dwelling house the valuation list is altered so as to vary the rateable value of the hereditament of which the dwelling house consists or forms part and the alteration has effect from a date not later than the appropriate day the rateable value of the dwelling house on the appropriate day shall be ascertained as if the value shown on the valuation list on the appropriate day had been the value shown in the list altered.”* The definition of “appropriate day” is contained at s25 (3) and in respect of a flat it states as follows; *“25(3)(b) in relation to any other dwelling house means the date on which such a value is or was first shown in the valuation list.”*

22. Our finding is that the rateable value for the property does still exist. These days it is perhaps used more to deal with the assessment of water rates but nonetheless a rateable value did exist in 1988 and it appears to be common ground, was set at £240. The lease on the face of it is quite clear. The ground rent is limited to two-thirds of the rateable value. The fact that rateable values may no longer be applied for the assessment of local authority taxes does not mean in our finding that it should be ignored for the purposes of assessing the ground rent levels particularly bearing in mind the intention to avoid security of tenure. In those circumstances therefore we find that Mr Taylor's argument is the more compelling one and that the ground rent is limited to two-thirds of the rateable value, namely £160 per annum. This has an impact on the capitalisation rate for the ground rent. Mr Asbury in his report thought that if there were not this rising ground rent a figure of 7% would be acceptable. We do not seek to depart from the view put forward by Mr Taylor and for the reasons he stated in the report a capitalisation rate for the ground rent of 7.5% in these circumstances is reasonable.
23. We turn then the question of the deferment rate. Mr Taylor's assertion that a deferment rate above the Sportelli level was applicable was based upon obsolescence and capital values. Whilst we accept that the Court of Appeal has not ruled out the possibility of adopting a deferment rate above that set in Sportelli it is quite clear that we have to have compelling evidence to depart from that determination.
24. On the question of obsolescence we were not convinced this property had a design life of 80 years when built in the 1960's which was an assertion made by Mr Taylor. Indeed it does not seem to sit easily with his own clients wish to seek a lease extension. There were apparently no particular problems associated with this property that would give one cause to believe that there was obsolescence.
25. Turning to the long term values Mr Taylor relied on Land Registry data comparing the London Boroughs of Kensington and Chelsea and Westminster with Buckinghamshire. However when one looked at the graphs that were produced there was a close proximity to the two growth patterns between the London Boroughs and Buckinghamshire save only for perhaps the last two years where there was a hike in prices in PCL reflecting also a more dramatic fall since the recession than had affected Buckinghamshire. We would say that the period

covered by the graphs, of some fourteen years, is too short to assess the capital value point. Furthermore to rely on the last two or three years to support the difference between Buckinghamshire and the London Boroughs is to give a false reflection of what has happened from January 1995 to sometime in 2005 where the graphs appear to have increased on an equal basis. Furthermore Mr Taylor's comment that he thought an increase to the risk premium of 1.5% brought back the deferment rate to the levels prior to Sportelli was not compelling evidence. In those circumstances therefore we find there is no evidence to enable us to depart from the deferment rate fixed by the Lands Tribunal and the Court of Appeal and accordingly a 5% figure is adopted.

26. **Taking those factors into account we find that the price to paid for the premium to extend the lease of the subject premise is £9,935.00 the details of which are set out on the attached Schedule.**



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Andrew Dutton Chair

Date 11th May 2009

LVT VALUATION

109A CARRINGTON ROAD, HIGH WYCOMBE, HP12 3HT

Date of Valuation	11 April 2009
Lease	99 yrs. From 24 June 1982
Unexpired Term	73.21 yrs.
Existing lease value	£176800
Extended lease value	£190000
Relativity	93% (agreed by parties)
Yields	7.5% and 5%

Ground Rent	68	
Y.P. 4.21 yrs.@ 7%	3.4677	236
Loss of G.R. receivable	102	
Y.P. 10 yrs. @7.5%	6.8641	
P.V. £1 4.21 yrs. @ 7.5%	.73830	515
Loss of G.R. receivable	153	
Y.P. 10 yrs. @ 7.5%	6.8641	
P.V. £1 14.21 yrs. @7.5%	.35821	375
Loss of G.R. receivable	160	
Y.P. 10 yrs. @ 7.5%	6.8641	
P.V. £1 24.21 yrs.@ 7.5%	.17384	190
Loss of G.R. receivable	160	
Y.P. 10 yrs. @ 7.5%	6.8641	
P.V. £1 34.21 yrs.@7.5%	.08433	92
Loss of G.R. receivable	160	
Y.P. 10 yrs.@ 7.5%	6.8641	
P.V. £1 44.21 yrs. @ 7.5%	.04091	44
Loss of G.R. receivable	160	
Y.P. 10 yrs. @ 7.5%	6.8641	
P.V. £1 54.21 yrs. @ 7.5%	.01985	22
Loss of G.R. receivable	160	
Y.P. 10 yrs.@ 7.5%	6.8641	
P.V.£1 64.21 yrs.@ 7.5%	.0096	11
<u>Reversion to Capital Value</u>	190000	
P.V.£1 73.21 yrs.@ 5%	.027284	5184

		6669

Landlord's Interest c/f 6669

Marriage Value

Extended Lease Value 190000
Less Existing Lease Value 176800
Less Landlord's Interest 6669

6531

50%

3265

£9935