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Residential
Property
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Case reference: LON/00AE/OLR/2008/0895

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Property: 5a Mount Pleasant, Alperton, Middlesex HA0 1TS

Applicant: Arti Gidvani

Respondent: Haynes Estates Limited

Date heard: 20 January 2009

Appearances: The applicant, assisted by P Malkani
Laurence Carr and C Leigh-Pemberton, directors,
for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr D L Edge FRICS

Date of the tribunal's decision: 21 January 2009

Background

1. This is an application under section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the price to be paid for a new lease of 5a Mount Pleasant, Alperton, Middlesex, which is a flat on the first floor of a purpose-built two storey block of four flats in a development of three similar blocks of four flats built in the late 1950s. The flat has three living rooms, a kitchen, bathroom and wc, and a small area of garden at the side of the property is let with it. The flat is subject to a lease dated 28 March 1958 for a term of 99 years from 25 December 1957 at a fixed ground rent of £10 per annum. At the valuation date, which is 4 February 2008, 48.9 years of the term remained unexpired.

2. At the hearing on 20 January 2009 the applicant tenant appeared in person, accompanied by a friend, Mr Malkani. The respondent landlord was represented by its directors, Mr Carr and Mr Leigh-Pemberton. We inspected the flat in the presence of the tenant after the hearing.

3. There was no dispute that the appropriate deferment rate was 5%. The issues were the value of the new lease, the value of the existing lease and the appropriate capitalisation rate. It was agreed that the value of the new lease and the value of the virtual freehold were the same. The landlord's representatives asked us also determine the amount of the landlord's recoverable legal costs and to make an order against the tenant under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 because she had failed to lodge a bundle of documents as previously directed by the tribunal, and we made directions for us to determine those issues on the basis of written representations, the parties having agreed to such a method of disposal.

The issues

i. The value of the new lease and of the virtual freehold

4. The tenant submitted that the value of the new lease and of the virtual freehold was £170,000 and Mr Carr for the landlord contended that their value was £198,900.

5. The tenant considered that the value of 5a was, both at the valuation date and at the date of the hearing, seriously adversely affected by the erection, without planning permission, prior to the valuation date of a shed and Portakabin in the rear garden of the neighbouring property, 7/7a Mount Pleasant, and by the unauthorised commercial use of 7/7a (7 and 7a being in common ownership) for the sale of alcohol and other goods. She produced copies of two letters to her from the planning authority, one dated 7 November 2006 confirming that the structures in the garden of 7/7a appeared to be in breach of planning regulations, and the other dated 21 July 2008 enclosing a copy of an enforcement notice (not attached) apparently requiring removal of the illegal structures. She also produced details of a limited company incorporated on 27 February 2004 said to be trading as a retail business at 7a Mount Pleasant. She agreed that the details of the landlord's market comparable were factually correct, and she also agreed that a leasehold valuation tribunal had, in a decision dated 28 May 2005 (LON/ENF/1219/04) relating to the collective enfranchisement of 3 and 3a Mount Pleasant in the same development, recorded that, at the valuation date of 10 March 2004, the agreed vacant possession value of each flat was £176,000, but she did not accept the landlord's proposition that values in the immediate neighbourhood or the value of the flat itself had increased since that time. In her opinion the immediate area had become noisier and less desirable since 2004 and values had fallen, whatever may have been the position in Brent as a whole. She produced a valuation of the new lease given to her by a chartered surveyor, who did not give evidence, which showed a freehold value of £155,000.

5. Mr Carr for the landlord relied on the sale on 23 May 2008 for £200,000 of a lease of 7 Mount Pleasant with about 90 years unexpired and a ground rent of £100 per annum. This sum he adjusted upwards by £3900 to allow for the absence of ground rent, but downwards by £5000 to allow for assumed tenant's improvements, producing £198,900, although £198,800 was the figure given in the landlord's valuation. He said that he had looked at the Land Registry website for the borough of Brent which had revealed that sale prices for the average flat and maisonette in the borough had risen by approximately 24% between March 2004 and February 2008, and he said that although he did not directly rely on the tribunal's decision in respect of 3 and 3a, the Land Registry statistics as applied to the agreed values recorded in that decision tended to show that the tenant's valuation was much too low. He did not agree that the illegal user and structures at 7/7a had any significant effect on the value of the subject flat. He said that in August 2008 he had discussed the valuation of the subject flat with the surveyor formerly instructed by the tenant who had told him that he had been unaware of the transaction relating to the comparable when he arrived at his valuation.

Decision

6. In our view the value of the new lease and of the virtual freehold is £196,500. We have based this on sale price of 7 Mount Pleasant adjusted, first, by £1500 to allow for the absence of a ground rent. We do not accept that the capitalised value of an annual ground rent of £100 would attract an increase of £3900 in the price. We have then reduced the resulting figure of £201,500 by £5000 to allow for tenant's improvements as the landlord suggested, resulting in our final figure of £196,500. We do not accept that the unlawful use of No 7 would have any effect on the value of the new lease of 5a. The outlook from the rear window of 5a is poor in any event, and we do not accept that the presence of the, possibly temporary, shed and Portakabin would have any adverse effect on value, nor, in our view, would any commercial user of the property in a such a mixed use area.

ii. The value of the existing lease

7. The tenant submitted that the value of the existing lease was £120,900, equivalent to a relativity of 78% to her proposed freehold value, and the landlord proposed a value of £142,341, equivalent to a relativity of 71.6%.

8. The tenant had no market or other evidence to support this element of the valuation, but she accepted the factual accuracy of the transaction on which the landlord relied as a comparable, which was the sale on 9 April 2008 for £150,000 of a 99 year lease, for a term commencing on December 1957, of 1a Mount Pleasant, in the same development as the subject flat. In the tenant's opinion the subject flat was, because of its proximity to 7 and 7a, inferior to 1a.

9. The landlord's valuation was based on the sale of 1a, adjusted by about 5% for Act rights. Mr Carr said that he believed that the resulting relativity was consistent with the commonly used graphs.

Decision

10. We consider that the value of the existing lease is £141,500, equivalent to a relativity of approximately 72%. This figure is consistent with the market evidence, adjusted for Act rights, and, on the basis of our own knowledge and experience to which, as an expert tribunal, we are entitled to have regard, we believe it to be realistic. We find no support for the tenant's proposed relativity.

iii. Capitalisation rate

11. The tenant said that the capitalisation rate should be 8% and the landlord 7%. In our view 7% is the appropriate rate for this small fixed ground rent.

Determination

12. Accordingly the price to be paid for the new lease is £36,608, in accordance with the valuation which is attached to this decision.

CHAIRMAN.....

A handwritten signature in black ink is written over a dotted line. The signature is cursive and somewhat stylized, starting with a large loop and ending with a series of smaller, connected loops.

DATE: 21 January 2009

5a, MOUNT PLEASANT, ALPERTON, MIDDLESEX HA0 1TS

VALUATION OF PREMIUM FOR NEW LEASE
IN ACCORDANCE WITH SCHEDULE 13 TO THE
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

Valuation date: 4 February 2008 (date of Notice)

Lease: 99 years from 25 December 1957.
Unexpired term 48.9 years
Ground rent £10.00 p.a. fixed

Values used: Freehold value: £196,500
Long lease value: £196,500
Short lease value: £141,500
(relativity 72 %)

Capitalisation rate: 7%

Deferment rate: 5%

Freeholder's existing interest

i) <u>Ground rent</u>	10	
YP 48.9 years @ 7%	<u>13.763</u>	138
ii) <u>Reversion to f/h v.p.value</u>	196,500	
PV £1 @ 5% def 48.9 years	<u>0.0920</u>	18,078

Value of Freeholder's existing interest 18,216

Marriage value

Value of reversion	196,500
<u>Less</u>	
Freeholder's existing interest	18,216
Lessee's existing interest @ 72% fhvp	<u>141,500</u>
	<u>159,716</u>
Marriage value	36,784

Freeholder's share of marriage value @ 50% 18,392
36,608

Premium payable for 90 year extension to existing lease **£36,608**