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LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00CN/OLR/2008/0060

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: Ms. C.L. Simpson (leaseholder)

Respondent: New Brook Developments (Yardley) Limited (freeholder)

Subject property: 34 Whittington Grove, Stetchford, Birmingham, West
Midlands, B33 8HE

Hearing: 11 September 2008

Appearances:

For the Applicant: Mr. E. J. Rutledge FRICS

For the Respondent: Mr. K.F. Davis FRICS

Members of the LVT: Mr. A .P. Bell MA LLB (Chair)
Mr. R. Cooper FRICS
Mr. C. Goodall LLB MBA

Date of determination: 16 SEP 2008

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 the subject property pursuant to Chapter II of Part I of the 1993 Act. The Applicant is Ms. C.L. Simpson, the leaseholder of the subject property. The Respondent is New Brook Developments (Yardley) Limited, the freehold owner of the subject property.
2. The Respondent has owned the freehold reversion to the subject property at all material times. The Applicant holds the subject property under a lease dated 1 December 1967 for a term of 99 years from 25 March 1967 at a ground rent of £27.50 per year.
3. On 25 September 2007 the Applicant gave a tenant’s notice to 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 20 November 2007 the Respondent gave a counter-notice under section 45 admitting the Applicant’s right. On 13 May 2007 the Applicant made the present application to the Leasehold Valuation Tribunal.

Subject property

4. The subject property is a ground floor maisonette in a two storey block and the accommodation comprises an entrance hall, living-room, kitchen, two bedrooms and a combined bathroom/wc.

Inspection and hearing

5. The members of the Tribunal inspected the subject property on 11 September 2008.
6. The subsequent hearing was attended by Mr. E.J. Rutledge FRICS representing the Applicant, and by Mr. K. F. Davis FRICS, representing the Respondent.

Representations of the parties

Agreed matters

7. The following matters are agreed by the parties:
 - The valuation date is 25 September 2007
 - The unexpired term at the valuation date is 58.5 years
 - The marriage value is shared equally
 - The yield rate to be applied in capitalising the ground rent is 5.5%
 - The open market value of the extended lease at the date of valuation is £97,500

Matters in dispute

8. Since both parties have applied the same established formula to determine the premium payable for the extended lease, the two matters that remain in dispute between the parties and which have been left to the Tribunal to determine are the appropriate deferment rate to be applied in calculating the value of the landlord's reversion and the value of the existing lease at the date of valuation.
9. Mr. Rutledge, on behalf of the Applicant, claimed that deferment rate to be applied in calculating the value of the landlord's reversion should be 6.5% and he valued the open market value of the existing lease at the date of valuation at £89,500, while Mr. Davis, on behalf of the Respondent, claimed that the appropriate yield rate for capitalising the ground rent should be 5 % and he valued the open market value of the existing lease at the date of valuation at £85,800.

Evidence and submissions on behalf of the Applicant

10. Mr. Rutledge applied a deferment rate of 6.5% and sought to demonstrate that an investor in freehold reversions outside the Prime Central London area, and particularly in Birmingham, cannot be as confident of achieving the same long term rate of growth of 2% as the Lands Tribunal adopted in *Cadogan v Sportelli* (LRA/50/2005) with the consequence that the risk premium should be adjusted upwards. He identified three matters that he considered relevant to the risk premium for the subject property and for the Birmingham area generally compared with the Prime Central London area, namely the lower long term growth prospects, the history of obsolescence and deterioration that is general in Birmingham and in areas such as the subject property and the greater volatility of the property market in such areas.
11. As regards Mr. Rutledge's claim that the subject property had lower growth prospects he put forward a graph and statistical information seeking to demonstrate the long term difference between Prime Central London and other parts of the United Kingdom, this being the evidence that he had put forward to a Midlands Leasehold Valuation Tribunal in the case of flats at Kelton Court Edgbaston (Ref BIR/00CN/OLR/2008/0013,0020,0022,0023,0032) plus the additional information available from the Knight Frank Prime Central London Index. He submitted there was sufficient long term reliable evidence to show that other parts of the country were significantly different from Prime Central London in a way that was not fully reflected in the vacant possession value of the property. He also drew the attention of the Tribunal to four decisions where deferment rates above 5% had been awarded, while nevertheless he recognised that the majority of tribunal decisions have determined a deferment rate of 5%.
12. As regards his claim that there was a greater risk of obsolescence and deterioration in the Birmingham area Mr. Rutledge put forward evidence seeking to show that Prime Central London does not have the history of obsolescence and deterioration that he claims is general in Birmingham and in areas such as the subject property.

13. Mr. Rutledge also submitted that volatility is a more serious problem in the West Midlands than it is in the Prime Central London area so as to justify an adjustment to the generic rate of 5% in this case.
14. In support of his claim that the open market value of the existing lease at the date of valuation was £89,500 Mr. Rutledge referred to three comparable sales of unextended leases in Whittington Grove at prices between £80,000 and £100,000 between January 2007 and April 2008, but he recognised that these might well have been improved which made them unreliable comparables. He contended that in line with his firm's table of relativities reflecting many hundreds of negotiated settlements and tribunal decisions the appropriate relativity was 91.79% giving an existing lease value of £89,500, or and uplift of 9% to reach the agreed value of the extended lease.
15. Mr. Rutledge drew the attention of the Tribunal to the fact that he had made an error in using the wrong rate in capitalising the ground rent where a rate of 5% had been agreed and, after making the necessary correction to his calculation, he arrived at a premium of £5,464 as compared with £5,432 in his written submission.

Evidence and submissions on behalf of the Respondent

16. Mr. Davis in his brief submission in support of his contention that the appropriate deferment rate was 5% relied on two Land Tribunal decisions, namely *Daejan Investments Ltd v The Holt (Freehold) Ltd* (LRA/133/2006) and *Lippecik v Kiritkumar Bhanjibhai Chavda and Others* (LRA/111/2007) and two Midland Leasehold Valuation Tribunal decisions, namely *Clare Howson v Omaswar Investments Ltd* (BIR/44UF/OLR/2008/0006) and *DN Zuckerman and Others v the Trustees of the Calthorpe Edgbaston Estate* (BIR/OOCN/OLR/0013, 0020,0022,0023,0032).
17. As regards the open market value of the existing lease at the date of valuation, Mr. Davis submitted that the valuation evidence of sales in Whittington Grove provided no clear comparable evidence and that it was therefore appropriate to have regard to the Beckett & Kay's graphs of relativity in respect of "LEASE: LVT determinations 1994-2007" which had been favoured by a Midlands Leasehold Valuation Tribunal in *Clare Howson v Omaswar Investments Ltd* (BIR/44UF/OLR/2008/0006). This indicated that the appropriate relativity was 88% of the agreed extended lease value of £97,500, giving a value of £85,600, or to put it another way, the existing lease value required an uplift of 13.6% to the agreed open market value of the extended lease.

Determination of the Tribunal

The deferment rate

18. The Tribunal gave full consideration to the evidence and submissions on behalf of the parties. In support of his argument relating to lower growth prospects, Mr Rutledge produced a graph and a large amount of statistical information in seeking to show that property prices in Prime Central London had risen more sharply than elsewhere in the country. The Tribunal were not persuaded that this graph established the conclusion Mr. Rutledge sought from it. In particular:-

- The Graph did not distinguish between regions
- It did not provide a sufficiently long period of data to show conclusive evidence of the long term movement of residential values
- It did not distinguish between types of property

In the view of the Tribunal, no compelling evidence was produced by Mr. Rutledge to show that there is a trend for lower growth outside Prime Central London which has resulted in investors outside Prime Central London, and in particular in the area of the subject property in Birmingham, being concerned that they would not achieve a real growth of 2%. Indeed Saville's Prime Market Bulletin (Appendix M of Mr. Rutledge's written submission) states that "the global credit crunch has taken its toll on prime central London and downside risks are increasing".

19. Similarly no compelling evidence has been produced by Mr. Rutledge to show that properties in the Birmingham area are more likely to face obsolescence and deterioration than those in Prime Central London. It is no doubt true that the proportion of cost in absolute terms spent on repair will be higher when the property value is lower, but the Tribunal were not persuaded that this would affect the rate of return demanded by an investor, particularly as repair obligations were generally imposed on tenants not landlord investors, and that the subject property was itself in good condition.

20. Then, finally, no sufficiently compelling evidence was presented that there is a greater volatility in the property market in the Birmingham area as compared with Prime Central London. Mr. Rutledge sought to rely upon prime market bulletins from Savills dated Winter 2007/08 and Spring 2008. His task was in effect to establish that volatility in Prime Central London was significantly different from volatility elsewhere, and particularly in Birmingham. In the view of the Tribunal, this conclusion was simply not discernible from the articles presented.

21. It does seem probable to the Tribunal that compelling evidence will be difficult to find so as to justify a departure from the deferment rate in Sportelli, especially if it can successfully be argued that the three factors identified by Mr. Rutledge (referred to in paragraph 10 above) can be and are reflected in the vacant possession value. In *Daejan Investments Ltd v The Holt (Freehold) Ltd* (LRA/50/2005) Mr. Asbury on behalf of the landlord in that case argued that there were no factors that would justify a departure from the deferment rate of

5% on the basis that factors such as location, quality, repair, condition, growth and obsolescence were all reflected in the vacant possession value with the consequence that to adjust the deferment rate as well would be double counting (paragraph 47).

In Sportelli the Tribunal said:

“The application of the deferment rate of 5% for flats..... that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate” (paragraph 123).

If evidence could be produced that the price volatility was greater in the Birmingham area than in Prime Central London or that the values of properties in the Birmingham area were falling faster and staying down longer than in Prime Central London when there is a recession, then this might support an argument that the risk premium should be higher in the Birmingham area. As it is the Tribunal is not satisfied on the evidence that Mr. Rutledge has submitted that he has discharged the evidential burden imposed on him by producing the compelling evidence that is required if the Tribunal is to adjust the generic rate of 5% determined by the Lands Tribunal in Sportelli by increasing the risk premium element of this.

The value of the existing lease

22. The comparables introduced by Mr. Rutledge did not provide reliable evidence of the value of the existing lease at the valuation date as was recognised by the parties' representatives. Mr. Rutledge considered that a realistic value would be £89,500 on the basis of an uplift of 9% which was in line with his firm's table of relativities, reflecting as it did many hundreds of negotiated settlements and Tribunal decisions, whereas Mr. Davis adopted the “LEASE; LVT determinations 1994-2007” on Beckett and Kay's Graphs of Graphs. The Tribunal determines that the LEASE graph is the only independent evidence since it is not based on settlement evidence which results in the settlement evidence being of little value due to the Delaforce effect. The Tribunal therefore agrees with Mr. Davis that the appropriate relativity is 88% giving an existing lease value at the valuation date of £85,800 with a consequential uplift of 13.6% to the agreed open market value of the extended lease.
23. Applying the figures referred to above and the other factors agreed between the parties, the Tribunal calculates the premium payable as follows:

Term

Ground rent: £27.50 per year
YP 58.5 years @ 5.5% : 17.344

£447

Reversion

Open market value with extended lease: £97,500

P.V. £1 in 58.5 years @ 5%:	0.057618	<u>£ 5,618</u>
		£6,095

Marriage value

Open market value with extended lease:	£97,500
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Less value of tenant's existing lease:	£85,800	
Plus value of landlord's existing lease	<u>£6,095</u>	<u>£91,895</u>
		£5,605

Premium payable

Value of landlord's present interest:	£6,095
Plus marriage value (£5,605) x 50%:	<u>£2,802</u>
	£8,897

Summary

24. Accordingly, the Tribunal determines the premium payable by the Applicant at **£8,897.**


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A. P. BELL
CHAIRMAN

Dated 16 SEP 2008

