

S.48 Leasehold Reform Housing & Urban Development Act 1993

DECISION AND REASONS

Case Number: CHI/45UB/OLR/2008/0012

Property: First Floor Flat & Garage
111 Ingleside Crescent
Lancing
BN15 8ER

Applicant: Ms V Richards & Ms C Bowsher

Respondent: Sidewalk Properties Ltd

Appearances: For the Applicant – Mr Michael J Tims FNAEA and
For the Respondent – Mr Nick Plotnek LLB

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr N I Robinson FRICS (Valuer Member)
Ms T Wong (Lay Member)

Date of Hearing: Tuesday 3 June 2008

Date of Decision: 20 June 2008

DECISION

The price to be paid for the new lease of first floor flat & garage, 111 Ingleside Crescent Lancing, West Sussex, BN15 8ER is £18,155

BACKGROUND

1. This is an application brought under S.48 of the Leasehold Reform Housing and Urban Development Act 1993 (the Act) for the Tribunal to determine the price to be paid by the Applicants for a new lease of the property following a Notice served under S.42 of the Act.
2. Directions were issued on 20 February 2008 which required, amongst other matters, the valuers to meet and identify valuation issues that remained in contention between the parties. In spite of several attempts the valuer for the Applicant Mr Tims was unable to meet with the Valuer for the Respondent and in fact no valuation or proof of evidence was produced by Mr Plotnek, either to the Tribunal or to Mr Tims, until the day before the Hearing.
3. The Hearing was convened and held at the Tribunal Offices, Market Avenue, Chichester at which all documents were made available.

INSPECTION

4. Prior to the Hearing the Tribunal Members with Mr Tims, and Mr Plotnek inspected the property and were shown round by Ms Richards. This was the first occasion that Mr Plotnek had seen the property.
5. 111 Ingleside Crescent is a purpose built first floor flat situated on a bend at the southern end of Ingleside Crescent close to its junction with Penhill Road. The property would appear to have been constructed in about 1960 and comprises the first floor of a purpose built block of four flats approached by its own ground floor entrance lobby and staircase. The accommodation comprises of entrance hall, living room, kitchen, two bedrooms, and bathroom with WC.
6. In an adjoining compound there is a single garage in a terrace.

THE LAW

7. The Tribunal is requested to decide the price to be paid for the grant of the new lease under S.56 of the Act. The statutory valuation provisions are contained in Schedule 13 to the Act. In particular paragraph 2 of Part II of Schedule 13 states:-
8. The statutory valuation provisions are contained in Schedule 13 to the Act. In particular, paragraph 2 of Part II of Schedule 13 states:

The premium payable by the tenant in respect of the grant of the new lease shall be the aggregate of:

(a) the diminution in value of the landlord's interest in the tenant's flat as determined in accordance with paragraph 3,

(b) the landlord's share of marriage value as determined in accordance with paragraph 4, and

(c) any amount of compensation payable to the landlord under paragraph 5.

Paragraph 3 states, so far as material:

3(1) The diminution in value of the landlord's interest is the difference between –

(a) the value of the landlord's interest in the tenant's flat prior to the grant of the new lease; and

(b) the value of his interest in the flat once the new lease is granted.

(2) Subject to the provisions of this paragraph, the value of any such interest of the landlord as is mentioned in sub-paragraph (1)(a) or (b) is the amount which at the [valuation] date that interest might be expected to realise if sold on the open market by a willing seller (with neither the tenant nor any owner of an intermediate leasehold interest buying or seeking to buy) on the following assumptions ... [and there follows certain valuation assumptions dealing with tenure, title, and the valuation being made in a "no Act world" and] on the assumption that any increase in the value of the flat which is attributable to an improvement carried out at his own expense by the tenant or by any predecessor in title is to be disregarded.

EVIDENCE

9. Mr Tims was concerned that there had been no opportunity for an earlier meeting with Mr Plotnek and he had only received Mr Plotnek's statement and proof late on the previous day. The Tribunal had seen Mr Plotnek's papers only on the morning of the hearing. With the consent of the parties an opportunity was given, prior to the hearing, for them to discuss the documentation presented which also gave time for Tribunal members to review the new documents.
10. At the commencement of the hearing the parties' representatives were able to report on the results of their meeting. There was no dispute regarding the factual matters relating to the description of the property, its condition, and situation.
11. Various other factual matters had been agreed between the parties as follows:-
 1. As there was some doubt about the date of the Counter Notice it was agreed that the valuation date should be 27 August 2007. This leaves an unexpired term of the existing lease at 52.83 year.
 2. The price to be paid for the ground rent income of £11 per year is agreed at £144.
 3. The tenant's improvements are valued at £5,000.
 4. The marriage value is agreed at 50% for each party.

12. Mr Tims had produced a proof of evidence for the Tribunal and this included his opinion of value as an Expert Witness. He also made submissions on behalf of the Applicant.
13. Initially Mr Tims addressed the question of the value of the existing lease. In support of this value Mr Tims used the method of direct comparison with properties sold with similar lease terms. He relied in particular on the sale of a nearby property at 117 Ingleside Crescent, which was sold in May 2007 on a similar lease term of approximately 53 years for £145,000. Subsequently Mr Plotnek produced Land Registry Entries showing the sale was registered in July 2007 on the basis of a 99 year lease from June 1961.
14. There was also 115 Ingleside Crescent, an identical flat sold on 21 September 2006 at £149,950 on a similar lease to the subject property.
15. In support he mentioned 35 Grove Court in Hove, a two bedroom purpose built flat sold on a 42 year lease for £210,000. A similar flat, on a higher floor, with a longer lease, recently exchanged contracts at £225,000.
16. Another comparable put forward was Flat 1 at 74 Broadwater Road sold on a 71 year lease for £110,000.
17. Having considered these comparables Mr Tims concluded that the relativity to be used would be 85% and in his valuation he showed an existing short lease value of £151,096.
18. Mr Tims then considered the value of the property with a new extended lease which would add 90 years to the existing term resulting in a lease of just less than 143 years. He referred to 46 Milford Court, Brighton Road, Lancing, a sixth floor flat with two bedrooms, sold in good order in February 2007 for £175,000 on a 125 year lease. Mr Tims considered Milford Court to be in a better location than Ingleside Crescent. He referred also to 39 Milford Court on the fourth floor sold in June 2007 at £160,000.
19. In the case of Milford Court Mr Tims made adjustments for time and also adjusted for an additional value attributed to the lessees having a controlling share in the freehold interest. He believed this added 1% to the price paid.
20. Mr Tims concluded that the value of the subject property with an extended lease would therefore be £171,700.
21. In further support he referred to a flat above a shop at 10 Crabtree Lane sold in May 2008 at £172,500. He also gave details of a ground floor flat at 92 Penhill Road sold earlier in 2008 at £170,000.
22. As Mr Plotnek would be referring to the asking price for the subject flat, Mr Tims gave some background information regarding the marketing of the subject property. It was originally placed on the market in January 2007 at £165,000. There was a transaction agreed at that time at £160,000 but this eventually fell through. There were no offers or viewings based on the flat with the original shorter lease.

23. Following the application to the Tribunal for a new longer lease the property was placed back on the market with the benefit of a longer lease in January 2008 originally at £189,950, subsequently reduced to £184,950. Since January 2008 there have been no viewings or offers.
24. Mr Tims referred also to the Beckett & Kay leasehold relativity graph in mortgage dependent markets. This graph, he says, shows a minimum relativity of 75% and a maximum relativity of 87%. Mr Plotnek would be introducing the "graph of graphs". Mr Tims believed that the graphs are only useful for guidance. They cover a wide geographical area and do not take account of the specific market in Lancing which has a high population of retirement purchasers whose need for mortgage finance is less. Although he accepted that these graphs are of some assistance, he believed that the best evidence is that of sales of such properties on short leases.
25. Mr Plotnek outlined the dangers of using the comparables of actual sales as the Act required adjustments to take account of the "no Act world". The market values of shorter leases will inevitably reflect the likely marriage value to be achieved in the actual world and adjustments need to be made for this. He referred specifically to the relevant parts of Schedule 13 to emphasise this requirement. He chose to make a 1% deduction from the unimproved market value of the existing lease to reflect the "no Act world".
26. Mr Plotnek could not see any justification for another 1% adjustment made by Mr Tims to take account of the value of lessees owning a share of the freehold. In any case he argued that the Milford Court evidence was flawed as the properties were much closer to the sea and of better quality. Adjustments would need to be made for these differences.
27. Having regard to the comparables produced by Mr Tims and the Beckett & Kay graphs Mr Plotnek came to the conclusion that the short lease value of the subject property would be £138,600 (117 Ingleside @ £145,000 less £5,000 improvements and less 1% for the "no act world").
28. His extended lease valuation took into account the comparables but also the asking price being quoted for the subject property. Mr Plotnek also referred to a recently agreed sale of 17 Milford Court at £177,000. He mentioned the opinion of a negotiator at Jacobs Steel Estate Agents in Lancing that the value of long lease flats in Milford Court and Ingleside Crescent towards the end of 2007 was approximately £185,000. No evidence of this opinion was before the Tribunal. This drew him to the conclusion that the extended lease value of the subject property should be £180,000 (£185,000 less £5,000 for improvements).
29. He concluded that his valuation accorded closely with the Beckett and Kay graphs at a relativity of 77%.
30. Mr Tims was concerned that Mr Plotnek had not seen the property before the day of the Hearing. Mr Plotnek believed that it was quite possible for him to carry out a valuation using the evidence presented.
31. The parties then addressed the rate to be used to defer the long lease value.

32. The Tribunal was told that the most relevant recent Lands Tribunal cases known collectively together as the *Sportelli* cases give guidance to LVTs that the generic deferment rate should be at 5%. The recent Lands Tribunal decision in *Ulterra Ltd v Glenbar (RTE Company) Ltd 2007* provides authority for the proposition that the Sportelli decision was a starting point as to the deferment rate but it was open to Leasehold Valuation Tribunals to decide the rate on the evidence in each case.
33. Mr Tims believed that there is little to attract an investor to this property as there is no opportunity for additional value to be obtained from insurance commission, management fees, etc. His assessment of the appropriate deferment rate was 7%.
34. Mr Plotnek submits that the deferment rate of 5% should be used generally unless compelling evidence to the contrary is adduced. He considered that this generic deferment rate takes account of the risk elements that exist in all residential property and it is only when there is a specific difference that there should be an exception to this. He considered that the age, physical condition, design and construction, of the subject property is such as not to constitute an exception to the general rule and that 5% is the appropriate deferment rate.

DECISION

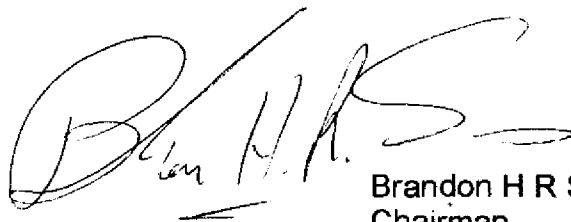
35. It is clear to the Tribunal from the evidence before it and from its own inspection that there is a need for adjustments to be made to take account of tenant's improvements which will apply equally to the subject property and in the comparables. In the absence of any evidence to the contrary and with the agreement of the parties an amount of £5,000 has been assessed to reflect any improved market value attributable to improvements.
36. In coming to the values of the flat either with a long lease or with the current short lease Mr Plotnek relies heavily on relativity derived from the graphs and Mr Tims preferred an adjusted open market value approach.
37. In this case the Tribunal had good evidence of nearby flats at 115 and 117 Ingleside Crescent. The terms of the lease of 117 Ingleside Crescent were disputed with Mr Tims assuming a lease of the same duration of the subject premises and Mr Plotnek advising that the lease was for 99 years. Both representatives agree the price achieved to be £145,000.
38. An adjustment of £5,000 was agreed to be made to allow for tenant's improvements. The relevant figure for the short lease should therefore be £140,000. However, this figure does not reflect the "no Act world" as required in accordance with Schedule 13. Any adjustment of this sort is bound to be arbitrary as there will be no evidence available on which to base an opinion. Mr Tims makes no adjustment in his valuation, but Mr Plotnek suggests 1%. The Tribunal believes that this is the minimum adjustment that is needed to reflect the Act's requirement and therefore make a further 1% deduction to arrive at a short lease of value for the flat of £138,600.

39. Turning now to the value of the new longer lease Mr Tims provided much of the evidence in this regard. There was no evidence of the sale of long leases available in Ingleside Crescent but other evidence in Lancing was produced by Mr Tims. Mr Plotnek produced no valuation evidence but made submissions. The Tribunal considered the evidence and submissions of both parties and Mr Tims was able to provide more relevant evidence in support of his opinion. The tribunal determines the long leasehold value at £170,000. There was no evidence to support a further adjustment of 1% to reflect the benefit of a share in the freehold.
40. The Tribunal considered the submissions of both parties and concludes that the deferment rate of 5% set in *Sportelli* is not appropriate in this case. The type of property, management structure, and in particular the age and obsolescence of the building, identified by the Applicant, provides compelling evidence that the risk, and accordingly the deferment rate, would be greater. The Tribunal agrees with Mr Tims that 7% is appropriate.
41. These figures show a relativity of 81.5% which falls within the range of the two Beckett and Kay graph lines for non mortgage-dependent and mortgage-dependent markets. The range is about 76% to 87% for a length of lease of just under 53 years. This relativity also falls within the range of the "graph of graphs" produced in evidence by Mr Plotnek at 71% to 87%.
42. From the Tribunal's assessment of the evidence before it and for the reasons stated above the Tribunal determines that the premium to be paid on the grant of the new lease of the property is £18,155. A calculation is attached showing how the Tribunal reached this figure.

ADJOURNMENT

43. The application was in respect of the price to be paid for the new lease. Although a draft lease was included in the bundle of documents before the Tribunal the terms of that draft have not been considered at this Hearing.
44. This application and Hearing is adjourned to allow the parties to complete a lease in accordance with S.57 of the Act and to agree the costs in connection with the new lease to be paid by the tenant in accordance with S.60 of the Act. The Tribunal is to be advised within 14 days of the completion of the new lease at which time this Hearing and application will be concluded.
45. Should other matters remain outstanding then an application to the Tribunal may be made as a supplementary issue to the application hereby determined.

Dated 20 June 2008



Brandon H R Simms FRICS MCI Arb
Chairman

APPENDIX 1 - Leasehold Valuation Tribunal Calculation**Address 111 Ingleside Crescent Lancing****Facts used**

Value of new very long lease (unimproved)	£170,000
Value of existing lease (unimproved)	£138,600
Valuation date	27/08/07
Deferral rate	7.00%
Unexpired term at valuation date	52.83 years

	£	£	£
<u>Value of landlord's interest</u>			
Capitalise ground rent for current term			
Agreed at		144.00	
plus landlord's reversion to new lease			
Capital value of new long lease	170,000		
x Pv 7.00% 52.83 years		<u>0.028032</u>	<u>4,765.45</u>
			Value of landlord's existing interest lost
			4,909.45
<u>Landlord's share of marriage value</u>			
Capital value of new extended lease	170,000		
Value of landlord's interest after grant of new lease	<u>nil</u>	170,000	
Less			
Capital value of existing lease	138,600		
Value of landlord's interest lost	<u>4,909</u>	<u>143,509</u>	
			Marriage value
			<u>26,491</u>
			Landlord's share of marriage value at 50%
			13,245
			Compensation
			<u>nil</u>
			Price payable
			<u>£ 18,155</u>

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



Regulation 20, Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
(S.48 Leasehold Reform Housing & Urban Development Act 1993)

APPLICATION FOR PERMISSION TO APPEAL.

DECISION AND REASONS

Case Number: CHI/45UB/OLR/2008/0012

Property: First Floor Flat & Garage
111 Ingleside Crescent
Lancing
BN15 8ER

Applicant: Ms V Richards & Ms C Bowsher

Respondent: Sidewalk Properties Ltd

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr N I Robinson FRICS (Valuer Member)
Ms T Wong (Lay Member)

Date of Original Hearing: Tuesday 3 June 2008

Date of Original Decision: 20 June 2008

DECISION

Permission to appeal is refused.

1. On 30 June within 21 days of the date when the Tribunal's decision was sent to the parties, the Respondent's representative applied for permission to appeal.
2. The Tribunal refuses permission to appeal to the Lands Tribunal for the following reasons in response to the Respondent's ground for appeal.
3. The ground for appeal is ***that the deferment rate adopted by the Tribunal, 7%, is incorrect insofar as it is too high and not in accordance with decisions of the Lands Tribunal/Court of Appeal in Spotelli [LRA/50/2005] & [2007 EWCA Civ 1042], The Holt [LRA/133/2006] and Hildron Finance [LRA/120/2006].***

Reason for refusal:

4. The Tribunal carefully considered the evidence before it relating to the Lands Tribunal and Court of Appeal decisions known collectively together as the *Sportelli* cases and also considered *Ulterra Ltd* (see paragraphs 32 – 34 of the Decision). Having considered the evidence and evaluating it using its own general expertise and knowledge the Tribunal agreed that the deferment rate of 7% put forward by the Applicant's representative was correct.
5. *Ulterra* provides authority for the proposition that the *Sportelli* decisions were a starting point as to the deferment rate but it was open to Leasehold Valuation Tribunals to decide the rate on the evidence in each case. This Tribunal determined that the deferment rate to be used in this case is 7%.

Dated 11 July 2008



Brandon H R Simms FRICS MCI Arb
Chairman