

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : Flats 8, 9, 14, 35, 36, 56, 60, 68, 71,
and 85, and Garages
Fountain Gardens
Osbourne Road
Windsor
Berkshire

Applicants : Brendan James Carter (8)
Peter Michael Brenton &
Lesley Irene Brenton (9)
Silver Crescent Estates Limited (14)
David Leader & Fenella Mary Leader (35)
Michael Patrick Shaw (36)
Ulrike Salome Richardson (56)
Robin Drewett &
Valerie Julia Mary Drewett (60)
Gilbert Scott Carswell &
Alison Linda Carswell (68)
Crestville Estates Limited (71)
Nicholas Mark Shaw &
Rachel Margaret Eaton-Shaw (85)

Respondents : (1) The Crown Estate Commissioners
(Landlord)
(2) Wates Built Homes (London) Limited
(Intermediate Landlord)

Case number : CAM/00ME/OLR/2009/0100

Type of Application : To determine the terms of acquisition
and costs of the new lease of the
property (Ss 42 and 60 of the Leasehold
Reform, Housing and Urban
Development Act 1993 ("the Act"))

The Tribunal :

Mrs. Joanne Oxlade	Lawyer Chairman
Mrs. Sarah Redmond MRICS	Valuer Member
Mrs. Helen C. Bowers MRICS	Valuer Member

Date of Hearing : 12th April 2010

DECISION

For the reasons given below the price payable to the Respondent for a new lease shall be:

- (a) £10,936 in respect of flats 35, 36, 56, 60, and 71
- (b) £15,227 in respect of flats 8, 9, 14, and 68
- (c) £18,248 in respect of flat 85

No order as to costs

REASONS

Introduction

1. The Applicants are all Lessees of flats located in Fountain Gardens, Osbourne Road, Windsor let from 5th April 1980, for a term of 99 years less one day.
2. They Applicants wanted to extend their leases, and so served notices on the Lessor on various dates from March to July 2009 pursuant to section 42 of the 1993 Act. These notices followed on from 21 lease extensions granted to other flats in the development in 2008, which were settled by agreement by Mr D.D. Chopping and Mr L.K. Tiplady, the experts who appear as witnesses in this case.
3. The Respondents served counter notices, from which it is apparent that the dispute relates to the premium payable.

The Application

4. The parties were unable to reach an agreement on all matters, and so the Applicants made an application to the LVT on 11th December 2009, for determination of the matter.
5. Directions were made on 4th January 2010 consolidating the applications, and setting out a timetable for the filing of evidence. This included a direction for expert evidence to be filed by 4pm 29th January 2010, and an experts' meeting by 12th February 2010, following which the experts were to file a record of the areas of agreement and dispute.
6. As soon as the Directions were made the Respondent's Solicitors sought an adjournment for 3 months, to attempt to achieve a settlement, but this was refused. The application was renewed, and

again refused with a clear warning that the parties must comply with the timetable to file evidence, or risk their evidence being excluded.

7. In the events that occurred the Applicants' expert, Mr Chopping, complied with the Directions and filed his report by the deadline. The Respondent failed to do so, and proceeded to a meeting of experts without having set out their position in a report. The meeting of experts did not achieve a settlement, but did result in the experts agreeing that:

- (a) the valuation date was 27th July 2009
- (b) the generic values for long leases at 1st July 2008 had been as £210,000 for type 1 leases, £290,000 for type 2, and £350,000 for type 3 with relativity at 90%,
- (c) the market since 1st July 2008 had seen major fluctuations,
- (d) there was a paucity of comparison data to substantiate their opinions

but they disagreed over

- (a) the timing and interpretation of market fluctuations
- (b) the relativity applicable to these values
- (c) the effect of the leases having dropped below 70 years.

8. On 10th March 2010 the Respondent's Solicitor made an application for the Tribunal to determine the matter on the papers, because a hearing would have cost consequences which were disproportionate to the competing values argued by either party. They proposed reliance on a joint valuers report. The application was refused, on the basis that as valuation was the issue, a joint valuers report would be of little assistance to the Tribunal in determining the points in issue. They were invited to file their experts' reports and then renew the application, but they did not do so. The report of Mr Tiplady was filed on 1st April 2010.

Hearing and Inspection

Inspection

9. The application was listed for hearing before us on 12th April 2010 at 11am, prior to which we undertook an external inspection of the development and internal inspection of flats 35 (as an example of type 1), 68 (as an example of Type 2), and flat 85 (as an example of type 3). In the earlier negotiations conducted between Mr Chopping and Mr Tiplady, flats were categorised into three broad types, whilst accepting that there would be some small differences in floor area and layout: type 1 (flats 35, 36, 56, 60, and 71) generally have 1 bedroom and an initial ground rent of £40; type 2 (flats 8, 9, 14, and 68) have 2 bedrooms and an initial ground rent of £70; type 3A (flat 85) have 2 larger bedrooms, with their own ground floor access, and an initial ground rent of £100.

10. Our inspections of the flats and development accorded with the descriptions found in the experts reports.
11. We also made an external inspection of the various developments referred to in the two experts' reports: Osbourne Court, Osbourne Road, Athalone Square, Chantry Close, Villiers Court and Chelmsford Court, having advised the experts that is what we proposed to do. They were all relatively modern developments to the west of the subject development, some closer to the centre of Windsor, but none with the advantage of proximity to Windsor Great Park that Fountain Gardens enjoyed, nor were any of them as well presented or maintained.

The Hearing

12. Both parties were represented at the hearing by their respective experts, who also attended to give evidence: Mr D.D. Chopping FRICS from Martin & Pole on behalf of the Applicant, and Mr D.L.K. Tiplady BA FRICS DipBldgCons of Savills on behalf of the Respondent.

Preliminary Matters

13. At the outset and pursuant to section 88(2) of the 1993 Act the parties agreed that the Tribunal would have jurisdiction of the dispute, and that as the terms of the lease and costs had been agreed the only issue related to long lease values and relativity.
14. We invited Mr Tiplady to explain why the Tribunal should exercise its discretion to admit his report which was filed late, to which he replied that he was not an expert on procedure, that he had only been instructed a month or two before, and had not been alerted to the fact that his report was late. In reply Mr Chopping said that he rather felt that Mr Tiplady's report had been prepared as a response to his own, to which he had not had the right of reply, that he had some trouble in getting the Respondent to identify the joint experts statement of agreed and disagreed facts, but that he had received the report on Maundy Thursday and so had the opportunity to consider it. He was unable to point to any specific prejudice suffered by the Applicants.
15. After a short adjournment we indicated that we would admit the report of Mr Tiplady, but that further directions would be made for the Respondents to explain why they should not pay costs under Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

Evidence

16. We therefore received the following evidence:
 - (a) oral evidence from and written report of Mr D.D. Chopping FRICS made on 29th January 2010, and

- (b) oral evidence from and written report of Mr D.L.K. Tiplady BA FRICS DipBldgCons, made on 29th March 2010.
17. Both experts updated their evidence, answered questions in cross-examination, and also answered questions asked by the Tribunal.
18. At the end of the hearing both representatives made short submissions summarising their respective arguments.

Law

19. Section 91(2) of the Act provides the Leasehold Valuation Tribunal ("LVT") with jurisdiction to set the premium 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.
20. The Applicants did not argue that (c) applied, and so in this case, the premium must be the aggregate of (a) and (b) having allowed for the disregards in B.

Findings

21. Having considered all of the documentary evidence filed, the oral evidence given, and submissions made, we make the following findings:

i. Value of flat with extended lease

18. Both experts approached the valuation in similar ways: ascertaining the value of a flat with an extended lease; then applying a relativity figure, in the absence of any market transactions of flats on short leases.
19. Mr Chopping referred to the agreement reached in respect of the first 21 flats as at 1st July 2008: type 1 flats had an agreed long-lease value of £210,000; type 2 had a long lease value of £290,000; type 3 had a long lease value of £350,000. Relativity had been agreed at 90%. However, since that time the market had substantially altered, prices have fallen, although opinions as to percentages vary, some say as much as 20%. He did not consider that a lease length of 69.68 years (the subject leases) made much difference to value as opposed to 70 years (the leases subject to extensions in 2008), as the figures agreed

- in respect of 70 years anticipated the drop in the term, and that many purchasers in Fountain Gardens were downsizing without the need for a mortgage and so not really worried about the length of the remaining lease – although he could not say what percentage fell into that category. He thought that the sale of 81 (a type 3A unit) which completed on 4th July 2008 at £321,500 had rather skewed the negotiations in 2008, and that it was not truly reflective of the market, when looking with the benefit of hindsight. None of the extended leases had been subsequently sold and so the market had not been tested.
20. To evidence a change in the market he substantially relied on sales transactions in Osborne Court, which is close in proximity to the subject flats, and although there were anomalies in the data he concluded that there had been an 11-16% drop from the summer of 2008 to base level of the market in March 2009. He accepted that this was not such a good development as Fountain Gardens. However, he said that there had been relatively few sales transactions in Windsor Town in the past 18 months.
 21. He also opined that there was resistance to buying at just above the stamp duty threshold, and so there tended to be offers with something of a margin around £250,000. He had adjusted the figures that he arrived at for improvements. He concluded that type 1 flats had a value of £180,000, type 2 £250,000, and type 3 £295,000.
 22. In oral evidence he emphasised the point that there were a paucity of comparable sales at the relevant time.
 23. Mr. Tiplady placed reliance on the agreement negotiated in 2008 for the 21 leases, and applied the same methodology to the current valuations, acknowledging that there was market movement between July 2008 and July 2009, and impact of relativity. He had undertaken an assessment of the market in that period, and relied on various sales transactions relating to the 3 different types of property under discussion. He said that 31 Fountain Gardens had completed in December 2009 for £180,000 with a lease of 69 years, but was unable to say when the price was agreed, and used other market data to double check that this accurately reflected the market. He referred to sales by agents in Hatton Court, Athalone Square, Chantry Close, Villiers Court, Chelmsford Court all on long lease and all between July and September 2009. He relied on Savills own data and thought that from the summer of 2008 to 2009 there was a drop in value of 10%, but acknowledged that there was no specific comparable data.
 24. In oral evidence he said that this recession is far worse than that experienced in 1992/1993, and was possibly the worst since the war. He considered that prices in Windsor had dropped by 10%, and there was a greater resistance to buying poorer quality property. Valuation was ultimately an art not a science, and although he had gone to great lengths to obtain comparables it came down to a feeling rather than

hard facts. The comparables used by Mr Chopping – of Osborne Court - were not good comparables as they were inferior properties, but he also agreed that his comparable sale transactions were of equally inferior stock, and were he to strip out all that was not directly comparable then there would be nothing left in his report by way of comparables. He said that he had made deductions for improvements, although his workings were not disclosed. He had not inspected any of the interiors of the subject flats and so made assumptions about the kitchens and bathrooms, namely that they were as originally fitted. Location was a far weightier factor when assessing the values of these flats, with their proximity to the Park and Town Centre, and some have views of the Castle.

ii. Value of flat with the current lease

25. Mr. Chopping said that there had been so few transactions that he derived his relativity figure from settlements that he had made in respect of flats in the wider locality where he had agreed 90-92.5 % without difficulty, and also the graphs. He had seen the most recent graphs published by the RICS, in response to the comments made in the case of **Arrowdell**. However, although he was aware that the RICS's figure for Greater London and the Rest of England suggested 92.8% at 69 years, which accorded with his own experience, he found himself in a difficult position – having agreed a relativity figure of 90% in respect of the previous 21 flats within the development. The decision to use a figure of 90% relativity in 2008, was partly driven by the Lessees' anxiety to avoid a hearing and to reach a settlement, and he was reluctant to use the words "agreed relativity", saying that 90% was Mr Tiplady's figure, which he accepted but did not agree. He disagreed with Mr. Tiplady's analysis of relativity dropping when a lease falls below 70 years, saying that he thought that a drop of 2% was unheard of.
26. Mr. Tiplady looked at relativity but said that there was no comparable market data of sales of flats in Fountain Gardens or the locality in that timeframe with a lease of under 70 years. He said that one flat was being marketed and as it was (just) under 70 years, buyers would not touch it in the prevailing market conditions, and this was the general opinion of Agents at the time. He said that a significant discount must be given to properties with a shorter lease to reflect the exceptional market. In difficult trading conditions short leases will suffer in terms of attractiveness and value.
27. He had considered relativity tables, particularly Beckett and Kay, and that the 70 year range varies from 83% to 93%, with the median position being 88%. He acknowledged that there was a dearth of available market data. He was aware of the RICS relativity figures, but said that they were published in October 2009 and so post-dated the valuation date. He would have been happy to agree relativity at 92% at 70 years, as the RICS graphs suggests – but the market evidence of

the 21 earlier transactions suggests that the graphs are not the whole story. He thought that the RICS graphs suggested out of London flats had a greater relativity, and had no comment when it was pointed out that in fact the graphs suggested otherwise.

Submissions

28. In closing submissions Mr Chopping said that the previous settlement at 90% relativity was chiefly because a lot of the Lessees wanted to avoid litigation; the 2% drop promoted by Mr Tiplady is unprecedented for a lease length dropping from 70 to 69 years; that Mr Tiplady's report does not read as though he has taken into account improvements.
29. In closing submissions Mr Tiplady said that the previous agreements set a massive precedent, and so has set a trend: an agreement at 90% relativity then with a large number is a good indication of the market; the RICS graphs do not help, and strict adherence is pointless when it does not reflect what are known facts. Realistically the Applicants cannot argue for 90% when they have leases of 69 years, having agreed 90% for 70 years.
30. At the end of the hearing we indicated that we would make our determination on valuation, but not issue the decision until we had also considered the issue of costs under Schedule 12.

Further Directions

31. The parties were advised that a set of fresh directions would be issued, so that costs could be considered as indicated at the beginning of the hearing. Further Directions were issued and sent to the parties that day.

Decision

Value with an extended lease

32. It was apparent from the reports filed, market data produced, and oral evidence, that the experts have struggled to obtain suitable comparables from which to derive a market value of these flats with extended leases - such that neither asserted that they had reliable comparable evidence. Neither advanced their comparables as good comparables. We accept that they were doing their best in difficult circumstances. Having seen the comparables on paper, and from the exterior, it is apparent that none of the developments comes close to Fountain Gardens in terms of location, or presentations.
33. Their best estimates are between 2% and 3% apart, and we consider that it is difficult, to say the least, to value with such precision, without offering to the market for a decision to be made.

34. We considered carefully the point made by Mr Chopping – that Mr. Tiplady's valuations do not appear to have taken into account improvements. On balance we were not satisfied that he had fully allowed for this factor.
35. Doing the best that we can with the available evidence, and ensuring that improvements are properly discounted from the figures, we consider that the values with extended leases are as follows: £185,000 for type 1 flats, £255,000 for type 2 flats, and £302,500 for type 3 flats.

Relativity

36. We, unlike the experts, are not overly influenced by the settlements achieved by them in respect of the 21 earlier extended leases. We heard evidence from Mr. Chopping that some of the Lessees wanted to settle for the sake of having a certain answer and not incurring costs unnecessarily, when the outcome could have been uncertain – whilst he himself thought that 92% was the right figure. This is a clear example of the "Delaforce effect" of which mention is often made, and which informs that we place limited reliance on settlements reached. Further, such settlements pay no heed to the statutory presumption of assessing values in a "No Act World".
37. We have regard to the views expressed in the case of Arrowdell Limited v Coniston Court LRA/72/2005 that "we consider that graphs of relativity are capable of providing the most useful guidance". The RICS has now published data - as encouraged by the Court - which supports a view that for leases of 70 years in Greater London/ England relativity is at 92.55%. We reject the suggestion made by Mr Tiplady that as it was published in October 2009 it is not applicable to the current period which we are analysing. We do observe that the experts in this case relied on the graph of graphs (Beckett and Kaye) which in fact rely on prime central London figures, and so are less relevant in this case.
38. There was no evidence adduced by Mr Tiplady to support his assertion that in tough market conditions, relativity drops. That one flat on the estate with a lease of less than 70 years failed to sell in Windsor, does not create any clear picture. At best the theory advanced is based on anecdotal evidence. We also accept Mr Chopping's observation that a drop of 2% (90% to 88%) would be unprecedented.
39. Having considered all of the available evidence and giving it appropriate weight, and having taken into account our knowledge and experience as an expert Tribunal we have therefore concluded that the appropriate relativity for the subject flats is 92%.

Costs

40. Paragraphs 5 to 8 above explain the background facts which led to the Tribunal making further Directions for the Respondent to file an

explanation as to why the Directions had not been complied with, and for the Applicant to respond. The parties did file representations on 21st April and 4th May 2010, respectively.

41. The basic point made by Pemberton Greenish on behalf of the Respondent is that they genuinely believed that settlement had a reasonable prospect of success, and it was only apparent in emails received on 2nd March 2010 that this was no longer possible. They say that they were mindful of costs being unnecessarily incurred, and dispute that they behaved frivolously, vexatiously, abusively, or disruptively.
42. On behalf of the Respondents attempts made by Mr Chopping to discuss the matter with Mr Tiplady were chronicled which lack of substantive response led to a feeling of having been "brushed aside", as was the timing of receipt of the report of Mr Tiplady. The Respondent disputes that the impression which may have been given was not their intention.

Decision on costs

43. Paragraph 10(2)(a) to Schedule 12 of the 2002 Act provides that where a party has acted in the opinion of the LVT "frivolously, vexatiously, abusively, disruptively, or otherwise unreasonably in connection with proceedings" the LVT may determine that a party pays the costs incurred by another party. The statute is not clear as to whether or not the costs must have been incurred as a result of the behaviour of the other party, and neither party addressed this point in argument.
44. The bottom line is that it is not for a party or the parties to unilaterally vary the terms of Directions made. There seems to be a dispute about whether or not the parties were *actively* attempting to settle the matter (as opposed to merely hoping). However, irrespective of the prospect of settling, the parties must comply with an order. This was repeatedly made clear by the Tribunal in correspondence with the Respondent's Solicitors, whose applications to vary the terms were rejected on more than one occasion. The experience of the Tribunal is that putting your cards on the table, by production of a report, actually aids rather than hinders settlement.
45. There appears to be something of a trend emerging where Lessors are unwilling to file their reports on time, despite the Tribunal's Directions. The motive appears to be brinkmanship – hoping the Lessees will lose their nerve, or not knowing whether the margins are likely to be large enough to make fighting a case worthwhile. Had we found that this was so in this case then we would, without hesitation, made a costs order.
46. The legislation is designed to impose a penalty, and by definition, the threshold is quite high. Mr Chopping was gracious in accepting that the late filing of the report did not affect his preparation, and there was no

evidence that the Lessees were put to any greater expense or trouble by the late filing of the report. Accordingly, having considered all of the evidence in the round in this particular case, we are not quite satisfied that the threshold is met, and so we make no order for costs.

Conclusions

47. We therefore determine that the material component parts of the premium are as follows:


(a) price of subject flats with extended lease:

£185,000 for type 1 flats,
£255,000 for type 2 flats, and
£302,500 for type 3 flats.

(b) a relativity rate of 92%

Thus producing premiums payable of £10,936 in respect of flats 35, 36, 56, 60, and 71, £15,227 in respect of flats 8, 9, 14, and 68, and £18,248 in respect of flat 85.

48. We attach the Tribunal's valuations, as appendix 1.

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Joanne Oxlade
(Chairman)

24th May 2010

Leasehold Valuation Tribunal Valuation

Re: Fountain Gardens, Windsor - Type 1

Date of valuation:	27/07/2009
Unexpired term:	69.69
Extended Lease Value	£185,000
Existing Lease Value	£170,200
Relativity	92.00%
Capilisation rate	7.00%
Reversion rate	5%

Present Interest

Term 1

Loss of Rent	£40.00	
YP 3.6877 years @7%	<u>3.1489</u>	£126

Term 2

Loss of Rent	£60.00	
YP 33 years @7%	12.754	
PV 3.6877 years @7%	<u>0.7796</u>	
	9.94	£596

Term 3

Loss of Rent	£90.00	
YP 33 years @7%	12.754	
PV 36.6877 years @7%	<u>0.0836</u>	
	1.07	£96

Reversion

Long Lease Value	£185,000	
PV 69.69 years @ 5%	<u>0.033379</u>	£6,175
		£6,993

Proposed Interest

Reversion

Long Lease Value	£185,000	
PV 159.69 years @5%	<u>0.000414</u>	£77

Marriage Value

Proposed	Value of Extended Lease	£185,000	
	Value of Reversion	<u>£77</u>	
		£185,077	
	less		
	Value of Existing Lease	£170,200	

Value of FH Interest	<u>£6,993</u>		
		<u>£177,193</u>	
Marriage Value		<u>£7,884</u>	
	50% share		<u>£3,942</u>
			£10,935

Leasehold Valuation Tribunal Valuation

Re: Fountain Gardens, Windsor - Type 2

Date of valuation:	27/07/2009
Unexpired term:	69.69
Extended Lease Value	£255,000
Existing Lease Value	£234,600
Relativity	92.00%
Capilisation rate	7.00%
Reversion rate	5%

Present Interest

Term 1

Loss of Rent	£70.00	
YP 3.6877 years @7%	<u>3.1489</u>	£220

Term 2

Loss of Rent	£105.00	
YP 33 years @7%	12.754	
PV 3.6877 years @7%	<u>0.7796</u>	
	9.94	£1,044

Term 3

Loss of Rent	£160.00	
YP 33 years @7%	12.754	
PV 36.6877 years @7%	<u>0.0836</u>	
	1.07	£171

Reversion

Long Lease Value	£255,000	
PV 69.69 years @ 5%	<u>0.033379</u>	<u>£8,512</u>
		£9,947

Proposed Interest

Reversion

Long Lease Value	£255,000	
PV 159.69 years @5%	<u>0.000414</u>	£106

Marriage Value

Proposed

Value of Extended Lease		£255,000
Value of Reversion		<u>£106</u>
		£255,106
	less	
Value of Existing Lease		£234,600

Value of FH Interest	<u>£9,947</u>		
Marriage Value		<u>£244,547</u>	
Premium	50% share	<u>£10,559</u>	<u>£5,280</u>
			£15,227

Leasehold Valuation Tribunal Valuation

Re: Fountain Gardens, Windsor - Type 3

Date of valuation:	27/07/2009
Unexpired term:	69.69
Extended Lease Value	£302,500
Existing Lease Value	£278,300
Relativity	92.00%
Capilisation rate	7.00%
Reversion rate	5%

Present Interest

Term 1

Loss of Rent	£100.00	
YP 3.6877 years @7%	<u>3.1489</u>	£315

Term 2

Loss of Rent	£150.00	
YP 33 years @7%	12.754	
PV 3.6877 years @7%	<u>0.7796</u>	
	9.94	£1,491

Term 3

Loss of Rent	£250.00	
YP 33 years @7%	12.754	
PV 36.6877 years @7%	<u>0.0836</u>	
	1.07	£268

Reversion

Long Lease Value	£302,500	
PV 69.69 years @ 5%	<u>0.033379</u>	£10,097
		£12,171

Proposed Interest

Reversion

Long Lease Value	£302,500	
PV 159.69 years @5%	<u>0.000414</u>	£125

Marriage Value

Proposed

Value of Extended Lease	£302,500	
Value of Reversion	<u>£125</u>	
	£302,625	
	less	
Value of Existing Lease	£278,300	

Value of FH Interest	<u>£12,171</u>		
		<u>£290,471</u>	
Marriage Value		<u>£12,154</u>	
	50% share		<u>£6,077</u>
Premium			£18,248