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**HM COURTS AND TRIBUNALS SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/24UJ/OCE/2010/0016

**Between:**

Mrs Cheryl Eve Martyn and Mr Robin Lee Cargill (Applicant/Tenant)

and

Mr Peter Alan Willis (Respondent/Landlord)

**In the Matter of:** Section 51 of The Leasehold Reform, Housing and Urban Development Act 1993 ('The Act')

**Premises:** 28c Princes Crescent, Lyndhurst, Hants, SO43 7BS

**Date of Hearing:** 27<sup>th</sup> February 2012

**Tribunal:** Mr A J Mellery-Pratt FRICS, Chairman  
Mr P Barber LL.B  
Miss R B E Bray BSc MRICS

**Introduction**

- 1.1 The Applicant/Tenant, wishing to claim a new Lease under The Act and having been unable to trace the Landlord, applied to the Court under the provisions of Section 50 of The Act.
- 1.2 By an order dated 12<sup>th</sup> August 2011, this matter was transferred to the Tribunal from the Southampton County Court, with instructions to determine :-
  - a) the appropriate premium and such other sums to be paid for a new Lease under Schedule 13 of The Act.
  - b) the terms of the new Lease.
- 1.3 On 30<sup>th</sup> November 2011, the Tribunal issued directions detailing the information required by the Tribunal and the timetable for dealing with the matter.
- 1.4 On 27<sup>th</sup> February 2012, the property was inspected and, following that inspection, a hearing was held at Best Western Forest Lodge Hotel, Pikes Hill, Lyndhurst.

- 1.5 At the hearing, further directions were issued concerning :-
- a) the terms of the proposed new Lease and a further date for submission of the new Lease.
  - b) further submissions in connection with the application by the Applicant/Tenant for costs.
- 1.6 The Tribunal consulted on the lack of further submissions on 13<sup>th</sup> April 2012 and 21<sup>st</sup> May 2012.

### **The Documents before the Tribunal**

- 2.1 The documents are :-
- a) The Court application and supporting papers.
  - b) The valuation report of Richard Galbraith.
  - c) The draft proposed Lease

### **The Inspection**

- 3.1 At 9.30 a.m. on 27<sup>th</sup> February 2012, the Tribunal inspected the property, accompanied by Mr I V Richards and Matthew Crampton (Morris Scott & Co, Solicitors for the Applicant/Tenant) and Richard Galbraith MRICS (Owen Grainger Associates).
- 3.2 The Tribunal noted that, internally, Flat C comprised :-
- An entrance hall, with an under stairs cupboard
- A large lounge, with a patio door to the rear garden, double glazed windows, 2 radiators and a hatch to the kitchen
- Bedroom 2, at the rear of the flat, being a double bedroom with a built-in cupboard, radiator and having a double glazed window
- Bedroom 1, at the front of the property, being a double bedroom with a built-in cupboard, radiator and having a double glazed window
- A kitchen with dual aspect double glazed windows, floor and wall cupboards, and extensive worktops, a hob, built-in oven and cooker hood/extractor. The walls were part tiled

The bathroom, which was fully tiled, comprised the bath with shower screen, wash basin, a radiator and extractor fan

A separate WC with wash basin

3.3 The property was generally in good decorative order and had appropriate floor coverings.

3.4 Externally, the Tribunal noted :-

The extensive parking forecourt, which is owned in strips by the tenants of the various parts of the building, and over which all tenants have mutual rights of access and parking.

There was quite a narrow footpath down the side of the property, leading to the rear garden, which was quite small. There was a timber bridge across a small stream, giving access to the common land of the New Forest.

3.5 Mr Galbraith advised that he had taken the opportunity that morning to measure the flat, which he had not been able to do on his previous visit, and that the size was 968 sq ft and not 940 sq ft, as he had estimated in his report.

### **The Hearing**

4.1 Initially, Mr Richards confirmed that the valuation date was 20<sup>th</sup> May 2011, that being the date of application to the Court.

4.2 Mr Galbraith then explained the basis of his valuation.

4.2.1 The state of the flat had to assume the original bathroom and kitchen and ignore the double glazing, although there would have been a central heating system. In considering an appropriate deduction to allow for this unimproved state, he would normally allow between 10 and 15 percent. However, although the actual costs of the improvements would be about £25,000, he felt that the added value was more fairly represented by £15,000, or approximately 8% of the value of the flat.

4.2.2 In considering the current market value of the flat, he considered the two main comparable properties included in his Valuation.

### Princes Court

This property had been well maintained and had a 999 year Lease. There was better security, and the building was a more defined block of flats. It had the advantage of a garage.

### Normanton

The accommodation provided 2 double bedrooms and a study, but a smaller lounge than the subject property - overall not as good.

### 28c Princes Crescent

Access to common land raised security issues.

- 4.2.3 As a result, he considered the value of the subject property in its present condition, but with an extended Lease, to be £190,000.

From this, he deducted £15,000 to allow for tenant's improvements, resulting in a value unimproved of £175,000.

- 4.3 He next considered the relativity, and had included in his valuation report the percentages produced by five different reports, each based on differing criteria and dealing with properties which were not in Prime Central London (PCL).
- 4.4 He considered those of S E Leasehold, Nesbitt and Pridell to be the most relevant, and they ranged from 84.29% to 90.26%. The average being 87% for a Lease with 61.29 years remaining.
- 4.5 When considering the deferment rate, he pointed the Tribunal to the Upper Tribunal case of Kelton Court and on the basis of that case determined a rate of 5.75%.
- 4.6 Using the various figures, his Valuation, in accordance with Schedule 13 of The Act, produced a figure of £13,468 but, say, £13,500.
- 4.7 The Tribunal heard from Mr Richards recommending the terms of the draft new Lease included in the papers.
- 4.8 The Tribunal was concerned that some of the provisions of the draft new Lease had the effect of changing the rights and obligations of the Tenant and therefore did not comply with Section 57(1) of The Act, which states :-

"1) Subject to the provisions of this Chapter (and in particular to the provisions as to rent and duration contained in section 56(1), the new lease to be granted to a tenant under section 56 shall be a lease on the same terms as those of the existing lease, as they apply on the relevant date, but with such modifications as may be required or appropriate to take account -

- a) of the omission from the new lease of property included in the existing lease but not comprised in the flat;
- b) of alterations made to the property demised since the grant of the existing lease; or

- c) in a case where the existing lease derives (in accordance with section 7(6) as it applies in accordance with section 39(3)) from more than one separate leases, of their combined effect and of the differences (if any) in their terms.”

4.9 The Tribunal therefore issued further directions to :-

- a) supply a revised draft Lease complying with The Act
- b) provide further argument on the Tribunal’s jurisdiction to award costs to the Applicant/Tenant
- c) produce these documents by 19<sup>th</sup> March 2012

4.10 On 13<sup>th</sup> April 2012 and 21<sup>st</sup> May 2012, the Tribunal consulted further, having received no further documents from the Applicant/Tenant or their Solicitors.

### **Consideration**

5.1 The relevant valuation date is 20<sup>th</sup> May 2011.

5.2 The Tribunal considered the comparable properties referred to by Mr Galbraith and considered that 2 Princes Court was a good comparable.

Whilst Normanton had similar accommodation, it is in a much busier position, being positioned in the main town centre ring road. Additionally, the property did not appear to have been well maintained externally.

The Tribunal disagreed that access to the New Forest from the subject property could provide security issues and felt that this was a positive factor in assessing value.

5.3 As a result of the external inspections of these comparable properties, the Tribunal considered that the value of the subject property with an extended Lease would be £200,000.

5.4 The Tribunal agreed with Mr Galbraith’s deduction of £15,000 to allow for tenant’s improvements.

5.5 The Tribunal agreed with Mr Galbraith’s figure for relativity of 87%.

5.6 The Tribunal agreed with Mr Galbraith’s deferment rate of 5.75%.

5.7 Valuation

The Tribunal's Valuation is therefore :-

Extended Lease value	£200,000	
Deduction for improvements	<u>£ 15,000</u>	
	£185,000	
Relativity %	87%	
Existing Lease (unimproved)	£160,950	
Ground rent receivable	£1.00	
Y.P.	4.000	4
Reversion to V.P	£185,000	
PV £1 - 61.29 years	.03249	6011
Less Reversion	£185,000	
	.000212	<u>-39</u>
		£5,976

Marriage value

Value with long Lease	£185,000	
Less F/H present interest	£5,976	
L/H present interest	£160,950	
	<u>£166,926</u>	
	£ 18,074	
50%	£ 9,037	<u>£ 9,037</u>
		<u>£15,013</u>

5.8 As no further documents had been received by the Tribunal following the further directions, the Tribunal determined that the new Lease should be exactly the same as the old Lease, save that :-

- the term should be extended by 90 years
- the ground rent should be reduced to a peppercorn
- a statement should be included to comply with Section 57(11) of The Act
- Prescribed lease clause provisions to comply with Land Registry requirements should be included

- e) other amendments should only be made to comply with the requirements of the Handbook of the Council for Mortgage Lenders
- 5.9 The Tribunal was not aware of any provision to allow it to award costs and therefore declined to make any award in this respect.

### **Determination**

The Tribunal determines that :-

- 6.1 The price paid for the new Lease shall be £15,013 (Fifteen thousand and thirteen pounds)
- 6.2 The new Lease shall be on the same terms and conditions as the existing Lease, save that :-
  - 6.2.1 The term shall be extended by 90 years.
  - 6.2.2 The ground rent shall be a peppercorn.
  - 6.2.3 A statement shall be included to comply with Section 57(11) of The Act.
  - 6.2.4 Prescribed lease clause provisions to comply with Land Registry requirements shall be included
  - 6.2.5 Other amendments may be permitted but only to comply with the requirements of the Handbook of the Council of Mortgage Lenders.
- 6.3 No award shall be made as to costs.

A J MELLERY-PRATT  
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**A J Mellery-Pratt FRICS**  
**Chairman**  
**A member of the Tribunal appointed**  
**by the Lord Chancellor**

Dated: 21<sup>st</sup> May 2012