1716

Ref LON/00BF/OLR/2008/0572

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION UNDER SECTION 48 OF THE LEASEHOLD REFORM, HOUSINGAND URBAN DEVELOPMENT) ACT 1993

Applicants — **Anne Elizabeth Teather**

Respondent: — **The Halliard Property company Limited**

Re: — **17 The Maisonettes Alberta Avenue Cheam SM1 2LQ**

Date of Tenant's notice: — **23rd September 2007**

Date of Counter Notice: — **27th November2007**

Application date: — **19th May 2008**

Hearing date: — **23rd September 2008**

Valuation date: — **23rd September 2007**

Appearances: — **For the Applicants :**
Mr Roger Weston FRICS of Symingtons

For the Respondent
Mr Eric Shapiro BSc (Est Man) FRICs

Members of the Leasehold Valuation Tribunal:

Mr P L Leighton LLB(Hons)
Ms M Krisko FRICS

Date of Tribunal's decision: **24th September 2008**

INTRODUCTION

1 By an application dated 19th May 2008 the Applicant Anne Elizabeth Teather applied to the Tribunal for a determination of the premium payable for a lease extension in respect of the property known as 17 The Maisonettes, Alberta Avenue, Cheam, SM1 2LQ ("The Property") under Section 48 of the Leasehold Reform (Housing and Urban Development) Act 1993 ("the Act")

2 .Directions were given for the conduct of the application and it became before the Tribunal on 23rd September 2008 when Mr Roger Weston FRICS of Symingtons appeared for the Applicant and Mr Eric Shapiro FRICS of Chestertons appeared for the Respondent.

THE PROPERTY

3 The property comprises a ground floor flat forming part of a purpose built block constructed on the ground and one upper floor in part red facing brickwork and rendered finish beneath a pitched tiled roof and built during the inter war period. It is situated in a residential street in the vicinity of West Sutton and Cheam railway stations and close to a shopping area.

4 As the parties had agreed most aspects of the valuation including the extended lease value, the only remaining issue was the relationship between the existing lease value and the extended lease, the Tribunal did not consider it necessary to inspect the property and the parties did not request that it should do so.

THE LEASE

5 The flat is held on a lease for a term of 99 years from 29th September 1974 thus expiring on 23rd September 2073 and having 66.02 years unexpired as at the valuation date (23rd September 2007). The current ground rent of the flat is £60 per annum until 28th September 2040 and thereafter £90 per annum for the remainder of the term.

AGREED FACTS

6 The parties agreed the valuation date as 23rd September 2007, the capitalisation rate at 7% per annum and the deferment rate on the reversion at 5% per annum in accordance with the principles laid down by the Court of Appeal in **Sportelli –v- Earl Cadogan**. The unimproved extended lease value was finally agreed in the sum of £183,500, there having been correspondence between the valuers prior to the hearing. Although Mr Weston originally wished to resile from that figure in favour of the figure of £177,000 in his original report, he agreed that the compromise between himself and Mr Shapiro should stand.

THE ISSUES

7 The only remaining issue between the parties was the value of the existing lease, its relativity to the extended lease and the amount of the premium. Mr Weston contended for a premium figure of £12,829 and Mr Shapiro for a figure of £18,741.

THE EVIDENCE

8 Mr Weston based his conclusions on sales of comparable properties within the block and deduced the value of the existing lease on the basis of an extended lease value off £183,500 as £165,965, producing a relativity of 90.44 per cent.

9 Mr Weston further thought to justify his figure of relativity of 90% based on previous decisions of the Leasehold Valuation Tribunal which he referred to in his report but gave few details of the facts in relation to those decisions. He did not give the dates of the various decisions but simply the numbers. The relativity figures within those decisions varied from 83% to 94%, from which he has deduced an average of 90%.

10 He has also considered the latest 2008 graph from Members Beckett and Kay and appears to have taken the higher values from this graph to support his figure of 90%. He maintained that the higher values confirmed his view of the transactional evidence which he had given.

11 In considered comparable evidence from transactions involving other flats within the block, namely No 7, 14, 16, 21, 30 and Flat 4. From those comparables he made adjustments in respect of improvements and for time based on the House Prices Index of the London Borough of Sutton, and index with which Mr Shapiro in his analysis also agreed.

12 As a result he arrived at a result of a figure of £165,965 for the subject flat, although this does not appear to have been his original figure based on his original extended lease

value of £177,000. However, for the purposes of these proceedings he agreed that that would be the proper figure

13 .In cross examination, however, he admitted he had made no allowance in respect of the rights of the leaseholder under the 1993 Act, on the basis, as he said, that any tenants and purchasers did not take this fact into account. He accepted, however, that the well-informed purchaser being correctly advised would make such an allowance and he agreed with Mr Shapiro that the proper figure which should be allowed would be of the order of 10%. He accepted that would have produced a figure of £149,369.

14 Mr Shapiro in his analysis (at EFS3) had completed a detailed analysis of Flats 14, 20, 21 and 4. In that analysis it made a deduction for improvements in two of the flats in the sum of £7,500 each, but made no deductions in respects of Flat 4 and 14 for improvements.

15 In addition he also made deductions for Rights under the Act at 10% in respect of each of the four flats and adjusted for time on the same basis as Mr Weston. The four flats in question each had unexpired terms of between 65.28 years and 66.73 years so that they were roughly comparable to the subject flat.

16 The results of Mr Shapiro's analysis were £149,128 for Flat 14, £153,771 for Flat 20, £154, 003 for Flat 21 and £148,031 for Flat 4. He assessed the existing lease value of the subject flat in the sum of £154,140 which he stated was 84% of the extended lease value.

17 He also considered the latest Becket and Kay graph but excluded from consideration two of the lines on the graph namely the Becket and Kay non-mortgaged dependent and the Becket and Kay mortgaged dependent lines, since he

considered that they were unrepresentative and distorted the general picture. By taking an average of the remaining line on the graph he maintained that his figure of 84% was supported.

18 Mr Shapiro referred in detail to the decision of **Arrowdell Ltd, the Coniston Port (North) Hove Ltd, LRA /72/2005** in which the Lands Tribunal had given guidance in respect of evidence relating to relativity derived from decisions of Leasehold Valuation Tribunals. In paragraph 57 of the decision the President stated: - *"The likelihood is that decisions (of LVT) will be varied and inconsistent, while if local perceptions of relativities are built up as the result of decisions and settlements it is improbable that these will properly reflect no act values. Against this background we consider graphs of relativity are capable of providing the most useful guidance. While it may be that relativities may vary between one type of property and another and from area to area we think that there is little doubt that the predominant factor is the length of the term. It ought we believe to be possible to produce standard graphs distinguishing between mortgage dependent market and those that are no so dependent, on the basis of a survey of assessment made by experienced valuers addressing themselves properly to the hypothetical no Act world"*.

19 Mr Shapiro concluded from this that the decisions referred to by Mr Weston were of no evidential value and should be disregarded without further evidence of the underlying reasons for the decisions, and he concluded that the evidence produced from the graphs was more reliable. He maintained, however, that the graphs actually supported his transactional evidence as shown as EFS3.

THE TRIBUNAL'S CONCLUSION

20 The Tribunal concluded that the failure of Mr Weston to include calculations based on the no act world were an omission which undoubtedly distorted his calculations. In fact he admitted as much in cross examination and was prepared to accept that an adjustment of the order of 10% in those circumstances would be reasonable.

21 The Tribunal considered analysis of Flats 20 and 21 as set out in Mr Shapiro's EFS3 and considered that they were particularly useful comparables (a) because they included a sum for improvements and (b) because the Applicant herself in one of the appendices to Mr Weston's reports stated that Flat 21 was one of the closest comparables to her own.

22 The Tribunal considered that an allowance of £7,500 for improvements was probably excessive for a block of this kind. Bearing in mind that Mr Weston had taken a figure of £5,000 and there was no strong evidence that Flat 20 and 21 had been improved to a significantly higher standard, The Tribunal considered that a figure of £5,000 in respect of improvements would have been more appropriate.

23 Adopting a figure of £5,000 on Mr Shapiro's analysis produces adjusted existing lease values for Flats 20 and 21 in the sum of £156,366 and £156,465.The Tribunal considered that the existing lease value would be roughly equivalent to the values in those cases.

24 In order to seek confirmation of the appropriate relativity the Tribunal considered the Beckett and Kay graphs, from which it deduced that the range of values for leases of

66.02 years would fall between 81% and 91%, so that an average figure would amount to 86%. The Tribunal having considered the transactional evidence concluded therefore, that the appropriate relativity in this case should be set at 85.5% which would produce an existing lease value of £156,892 which would sit comfortably with the adjusted figures for Flats 20 and 21.

Conclusion

25 Applying the figures as adjusted the Tribunal concluded therefore that the appropriate existing lease value should be set at £156,892 and that the premium payable in respect of the extension should be £17,410. A valuation is appended to the decision at Appendix I.

Chairman: Peter Leighton

Date: 24th September 2008

LVT VALUATION
17 THE MAISONETTES, ALBERTA AVENUE, CHEAM, SURREY

Extended lease value agreed			£183,500
Existing lease value		£156,892	
Relativity	85.5%		

Freeholder's interest agreed		£ 8,213

Marriage Value:

Extended lease value	£183,500	
Less existing lease value	£156,892	
Less freeholder's value	£ 8,213	
	£ 18,395	
50%		£ 9,197

Premium payable for 90 year lease extension	£17,410