

1139

Northern Rent Assessment Panel

LEASEHOLD VALUATION TRIBUNAL

Ref Man/16UD/OLR/2005/0001

LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

DETERMINATION OF THE TERMS OF NEW LEASES PURSUANT TO AN ORDER OF
CARLISLE COUNTY COURT DATED 27 JULY 2005

PROPERTY: 4, 1, 2, 3, 5, 6 EDEN COURT, STANWIX, CARLISLE

APPLICANTS: Anne Thom (Administrator of the Estate of Doris Whitfield Deceased)
Grace Mable Carruthers
Andrea Louise Preston
Alexandrina Henshaw
John Harrison
Miss S R Davidson

DATE OF HEARING: 28 November 2005

MEMBERS OF TRIBUNAL: A Robertson JP FRICS
J N Morris FRICS
J Platt BSc Est Man FIRPM MNAEA

1. The Court Order

An Order ("the Court Order") was made in the Carlisle County Court on 27 July 2005 on the application of the Applicants that:-

- 1. The Claimants be granted a new Lease of their property as set out in the Schedule on such terms as may be determined by a Leasehold Valuation Tribunal to be appropriate, pursuant to Section 50(1) of the Leasehold Reform Housing and Urban Development Act 1993.

Schedule

Anne Thom	4 Eden Court, Stanwix, Carlisle
Grace Mabel Carruthers	1 Eden Court, Stanwix, Carlisle
Andrea Louise Preston (formerly Kirkpatrick)	2 Eden Court, Stanwix, Carlisle
Alexandrina Henshaw	3 Eden Court, Stanwix, Carlisle
John Harrison	5 Eden Court, Stanwix, Carlisle
Sheila Robinson Davidson	6 Eden Court, Stanwix, Carlisle

- 2. There shall be executed a Lease in respect of each property set out in the above Schedule which:-
(a) is in a form approved by a Leasehold Valuation Tribunal; and
(b) contains such provisions as may be approved for the purpose of giving effect so far as possible to Section 56(1) and Section 57 of the said Act.

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4. The issues under paragraphs (1) and (2) of this Order be transferred to a Leasehold Valuation Tribunal for determination.

2. The Properties

- 2.1 On the morning of 28 November 2005 the Tribunal inspected the properties internally and externally.
- 2.2 They comprise a two-storey terrace, brick built with pitched tiled roof, of 6 self contained, purpose built flats, 3 lower and 3 upper, all built about 1960. There are shared gardens to the front and rear of the terrace. Some of the brickwork was rendered.
- 2.3 The accommodation in each flat comprised a living room, two bedrooms, kitchen and bathroom. In two flats (Nos 3 and 6) the second bedroom was used as a second living room. Some flats had been improved by the installation of central heating, double glazing, replacement kitchen-fitting and/or bathroom suites.
- 2.4 Each flat had all mains services.
- 2.5 There was slight cracking in the rear elevation. Generally the properties were in adequate, but not good, condition.
- 2.6 The properties are in an established residential area adjacent to an open field and some 1½ miles north of Carlisle city centre.

3. The Law

- 3.1 The Leasehold Reform Housing and Urban Development Act 1993 (the Act) Section 51(3) provides that the execution of a new lease under Section 50(1) is conditional upon the payment into court of the appropriate sum and Section 51(5) defines the appropriate sum as the aggregate of –
 - (a) such amount as may be determined by a Leasehold Valuation Tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease;
 - (b) such other amount or amounts (if any) as may be determined by such a Tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and
 - (c) any amounts or estimated amounts determined by such a Tribunal as being, at the time of execution of that lease, due to the landlord from the tenant
- 3.2 Section 56 of the Act provides that:-
 - (1) Where a qualifying tenant of a flat has a right to acquire a new lease of the flat the landlord shall be bound to grant to the tenant, and the tenant shall be bound to accept –

- (a) in substitution for the existing lease, and
 - (b) on payment of the premium payable under Schedule 13 in respect of the grant, a new lease of the flat at a peppercorn rent for a term expiring 90 years after the term date of the existing lease.
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3.3 Section 57 of the Act provides that 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 subject to the provisions of Chapter II of the Act, particularly regarding rent and duration contained in Section 56(1).

3.4 Schedule 13, Part II of the Act provides in paragraph 2 that the premium payable by the tenant 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.

3.5 Paragraph 3 provides:-

- (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.

3.6 Sub-paragraph (2) of paragraph 3 defines the value of such interest as the amount 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 interest] buying or seeking to buy) on various assumptions.

3.7 Paragraph 4 defines the marriage value as the difference between the aggregate values of both landlords and tenants' interests before and after the new lease and that the landlord's share of the marriage value is 50 per cent.

3.8 Paragraph 5 refers to compensation in the event of the landlord suffering loss or damage (mainly to other properties owned by the landlord, the value of which may be adversely affected by lease extension).

4. The Hearing

4.1 A hearing was held in the Morton Community Centre, Carlisle at 12.15pm on 28 November 2005. The applicants were represented by Mr Emery of Atkinson Ritson, solicitors.

- 4.2 No evidence as to consideration was produced save for sales particulars of 4 Eden Court which had been offered for sale at "offers over £60,000" in June 2004. Mr Emery advised the Tribunal that an agreed sale at £60,000 aborted because of the short lease. The vendors would have accepted £57,000 but no such offer was forthcoming. An offer of less than £50,000 was rejected.
- 4.3 It was agreed that the relevant date for the purpose of calculating values would be the date of the original court application of Anne Thom, to which the other five owners had been adjoined, viz 8 October 2004.

5. Directions

- 5.1 Following the hearing, directions were issued on 30 November 2005 requiring the Applicants to lodge –
- (a) A draft specimen lease in respect of No 4 Eden Court which can be used with appropriate amendments for each of the other flats (Nos 1, 2, 3, 5, 6) which contains such provisions as may be approved for the purpose of giving effect as far as possible to Section 56(1) and Section 57 of the Leasehold Reform and Urban Development Act 1993.
 - (b) Statements as to the date on which each of the tenants last paid ground rent.

6. The New Lease

- 6.1 Following the directions, the Applicants' solicitors submitted a draft lease to the Tribunal, attached to these reasons and decision as schedule A.
- 6.2 The Tribunal are satisfied that this draft contains such provisions as give effect so far as possible to Section 56(1) and Section 57 of the Act.

7. The Appropriate Sum – Section 51(3) and (5)

- 7.1 In order to determine the sums payable as consideration for the extended lease in accordance with Schedule 13, the Tribunal must first determine the value of each flat on the basis of (1) freehold with possession; (2) with extended lease; and (3) with the present unexpired term.
- 7.2 Evidence was scant and the Tribunal were obliged to rely substantially upon their own knowledge and experience. They did have regard to the figures quoted in the unsuccessful marketing exercise of No 4 Eden Court in 2004. The Tribunal also had regard to the assumptions listed (a) to (d) in paragraph 3(2) of Schedule 13 of the Act, particularly that of 3(2)(c) which requires value attributable to tenants' improvements to be ignored.
- 7.3 Given that improvements were to be disregarded, and the similarity of age, type, size, accommodation and location of each flat, the Tribunal decided that the values of each flat on each basis would be similar.
- 7.4 The Tribunal determined that the current leasehold value of each flat in accordance with paragraph 3(1)(a) of Schedule 13 of the Act is £55,000.

- 7.5 The Tribunal determined that the leasehold value of each flat once the new lease is granted in accordance with paragraph 3(1)(b) of Schedule 13 is £62,000.
- 7.6 In the absence of evidence to the contrary the Tribunal were of the view that the value of each flat freehold in possession is no different from that of the extended lease, namely £62,000.
- 7.7 Having regard to interest rates prevailing nationally at the relevant date, particularly as adopted in valuations of freehold reversions by Tribunals, albeit not in Carlisle, the Tribunal is of the view that the appropriate rate is 7% both for the purpose of capitalising rent and for calculating present values of future capital sums.
- 7.8 The Tribunal determined that no compensation is payable to the freeholder under paragraph 5 of Schedule 13 of the Act.
- 7.9 The Tribunal determines that the premium payable by each tenant in respect of a new lease in accordance with paragraph 2 of Schedule 13 of the Act is £4270 (Four thousand, two hundred and seventy pounds). Details of the Tribunal's calculations are attached as Schedule B.
- 7.10 Section 51(5)(c) of the Act requires that the "appropriate sum" includes any amounts or estimated amounts as being, at the time of execution of the new lease, due to the landlord from the tenant. The applicants admit having last paid ground rents as follows:- No 1 1998; No 2 1999; No 3 1995; No 4 1989; No 5 1997; No 6 1997. No precise dates or receipts have been produced, the sums are relatively minor and the Limitations Act 1980 section 19 provides that rent shall be irrecoverable by action after 6 years from the date that it becomes due. Further, the Commonhold and Leasehold Reform Act 2002 section 166 requires since 28 February 2005 the service of a notice by the landlord in order to recover ground rent. No such notice has been served and the rent payable on 5 April 2005 is not therefore "due". The Tribunal therefore determines that the amounts payable by each tenant in respect of unpaid ground rents shall be £15 (i.e. 5 years).

8. The Tribunal's Decision

- 8.1 The Tribunal determines that the appropriate sum for each claimant to pay into Court is £4285.
- 8.2 The lease in Schedule A is in a form approved by the Tribunal.



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A Robertson
Chairman

By section 175 of the Commonhold and Leasehold Reform Act 2002 a party to these proceedings before the Leasehold Valuation Tribunal (LVT) may appeal to the Lands Tribunal from the decision of the LVT.

In order to appeal a party must obtain permission to do so. An application for permission must first be made to the LVT. The application must be made within 21 days of the LVT decision being sent to that party. Any application for extension of that 21 day period must state the reasons and be made before expiry of the period. (Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 (S.I.2003 No.2099, regulations 20 and 24).

If permission to appeal is refused by the LVT an application for permission may be made to the Lands Tribunal within 28 days of that refusal. (The Lands Tribunals Rules 1996 (S.I.1996 No.1022) as amended).

SCHEDULE 'A'

THIS LEASE made the _____ day of _____ 2005
between :-

- (1) [_____] of [_____]
(hereinafter called "the Lessor"); and
- (2) ANNE THOM of Number 4 Eden Court, Stanwix, Carlisle (hereinafter called "the Lessee").

IN WITNESS THAT :-

1. IN consideration of the sum of [£ _____] paid by the Lessee to the Lessor (the receipt whereof the Lessor hereby acknowledges) and of the restrictions and covenants hereinafter reserved and contained and on the part of the Lessee to be paid observed and performed the Lessor HEREBY DEMISES unto the Lessee WITH NO TITLE GUARANTEE ALL THOSE pieces of land shown on the plan annexed hereto and thereon coloured pink and green TOGETHER with the ground floor flat erected thereon including the foundations thereof but excluding the upper flat above the doorway entrance hall and stairs leading to such upper flat TOGETHER with the gate and path leading to the said flat ALL which property hereby demised (hereinafter referred to as "the demised premises") is known or intended to be known as No. 4 Eden Court, Stanwix, Carlisle AND TOGETHER ALSO with the rights specified in the First Schedule hereto BUT EXCEPT AND RESERVING unto the Lessor the rights and benefits specified in the Second Schedule hereto TO HOLD the demised property UNTO the Lessee from the fifth day of August 1959 and expiring on 4th August 2149 ~~W~~EILDING & PAYING therefore the yearly rent of a peppercorn on the 5th April in each year of such term.
2. The Lessee HEREBY COVENANTS with the Lessor to observe and perform the covenants specified in the Third Schedule hereto.
3. The Lessor HEREBY COVENANTS with the Lessee to observe and perform the covenants specified in the Fourth Schedule hereto.
4. PROVIDED ALWAYS and it is hereby agreed and declared that :-
 - (a) If any covenant on the part of the Lessee herein contained shall not be performed or observed then it shall be lawful for the Lessor at any time thereafter to re-enter upon the demised premises or any part thereof in the name of the whole and therefore this demise shall absolutely determine but without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the Lessee's covenants or the conditions herein contained.
 - (b) The external entrance door is the property of the Lessee and is included in the demised property.
 - (c) Subject as aforesaid all walls, floors and ceilings horizontally and vertically dividing the lower from the upper and adjoining flats shall be

party walls floors and ceilings and all garden fences dividing the garden of the said flats shall be party fences in accordance with S.38 of the Law of Property Act 1925 and shall hereafter be used repaired and maintained as such.

5. IN this Lease the expression "the Lessor" includes the person for the time being entitled to the reversion immediately expectant on the determination of the term hereby created and the expression "the Lessee" includes her successors in title and in this Lease words importing the masculine gender shall extend to the feminine the singular may cover the plural and covenants by two or more purchasers shall be deemed to be given jointly and severally.

EXECUTED by the parties as a Deed and delivered on the date hereof.

FIRST SCHEDULE

Rights passing with the Flat

1. THE right to the subjacent and lateral support and to shelter and protection for the demised premises from other flats above below or adjoining the demised premises (including such parts of the site foundation and roof as are not included in this demise).
2. THE free and uninterrupted passage and running of water and soil gas electricity smoke and fumes from and to the demised premises through the sewers drains and watercourses cable pipes wire chimneys and flues leading to and from or serving the demised premises which now are or may at any time hereafter be in under or passing through any adjoining or neighbouring flats premises or land.
3. THE right of the Lessee with servants workmen and others at all reasonable times on notice (except in the case of emergency) to enter into and upon any such adjoining or neighbouring flats premises or land for the purpose of repairing maintaining renewing altering rebuilding or clearing the demised premises or entrance hall and staircase or any part of the lower flat giving protection or support to the demised premises entrance hall and staircase and any such sewers drains and watercourses cables pipes wires chimneys and flues as aforesaid and of laying down or constructing any new sewers drains and watercourses cable pipes wires chimneys or flues causing as little damage as possible and making good any damage caused.
4. THE right to pass and repass over the paths surrounding Eden Court to gain access to the garden included in the demised premises Subject to bearing a fair and proper share of the cost of maintenance and repair of such paths to be settled in case of dispute by reference to the Lessor's Surveyor in manner provided by clause 3 of the Third Schedule hereto.

5. THE right for the Lessee of a lower flat to erect or install and to support on any suitable wall walls chimney stack or chimney stacks of the upper flat or in the loft thereof any aerials for the purpose of television or radio reception and to affix (as unobtrusively as possible) any necessary wires or cables in connection therewith in or upon the upper flat and for the purposes aforesaid and also for the purpose of inspecting repairing replacing or altering any such installation upon notice to enter with or without workmen and others into and upon the upper flats however that the work of the installation inspections repairs or alterations shall be done with all dispatch causing as little disturbance as possible and that the Lessee shall make good all damage done in carrying out such works inspections repairs or alterations or by any such aerial wires or cables to the upper flat and to all decorations fixtures and moveable chattels therein.
6. THE benefit so far as the Lessor can grant the same of the covenants and obligations entered into by Lessees of other flats in Eden Court.
7. This Lease is granted under Section 56 of The Leasehold Reform Housing and Urban Development Act 1993 ("The 1993 Act").
8. In accordance with Section 59(3) of The 1993 Act no "long lease" (as defined by section 7 of the 1993 Act) created immediately or derivatively by way of sub-demise under this Lease shall confer on the sub-tenant as against the Landlord of This Lease any rights under the 1993 Act to acquire a new lease.

SECOND SCHEDULE

Exceptions and Reservations

1. THE right of protection shelter and support to other parts of Eden Court from the demised premises (including such parts of the site foundations and roof as are hereby demised).
2. THE right for the Lessor with servants workmen and others at all reasonable times on notice (except in the case of emergency) to enter into and upon the demised premises for the purpose of repairing maintaining renewing altering rebuilding or cleaning any flat below above or adjoining giving protection shelter and support or access to the demised premises and the service and other pipes wires cables chimneys and flues causing as little damage as possible.
3. The right to make an application to the Court to terminate this Lease on the grounds that the Lessor intends to redevelop the demised premises and such redevelopment satisfies the criteria set out in Section 6(1) of the 1993 Act such application only to be made during the period of 12 months ending on 4th day of August 1059 and/or during the period of five years ending on 4th August 2149 and if the lease is determined following such applications then

compensation shall be payable by the Lessor to the Lessee in accordance with Section 14 of the 1993 Act.

THIRD SCHEDULE

Lessee's Covenants

1. Not to use the demised premises nor permit the same to be used for any purpose whatsoever other than as a private dwellinghouse in the occupation of one family only.
2. NOT to decorate the exterior of the demised premises otherwise than in a colour and manner agreed with the Lessees for the time being of the flats below above or adjoining the demised premises or (failing such agreement) in the colour and manner (as near as may be) in which the same is now or was last previously decorated.
3. TO repair and maintain jointly or pay a fair and proper proportion of the expense of repairing and maintaining all party walls fences and hedges and other party structures and all drains gutters pipes cables chimneys flues or other things or any parts thereof belonging to or used by or provided for the demised premises jointly or in common with other flats forming part of Eden Court PROVIDED ALWAYS that if any dispute shall arise between two or more Lessees as to their joint liability under the foregoing provisions or any proportion payable thereunder the same may be decided by the Lessor's Surveyor whose decision shall be final and binding upon the parties.
4. TO keep the demised premises in good repair and condition (including the walls of the entrance hall and staircase) and in particular so as to give protection shelter and support to the flats above below and adjoining.
5. TO insure and keep insured the demised premises against loss or damage by fire in the full replacement value thereof from time to time in the names of the Lessee and the Lessor with an Insurance Company approved by the Lessor and whenever required produce to the Lessor the policy or policies of such insurances and the receipt for the last premium for the same and in the event of the demised premises being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance monies in the repair rebuilding or reinstatement of the demised premises.
6. TO permit the Lessor to erect or install and to support on any suitable wall walls chimney stack or chimney stacks of the upper flat or in the loft thereof any aerial or aerials for the purpose of television or radio reception and to affix (as unobtrusively as possible) any necessary wires or cables in connection therewith in or upon the upper flat for the purposes aforesaid and also for the purpose of inspecting repairing replacing or altering any such installation upon notice to enter with or without workmen and others into and upon the upper flat so however that the work of installation inspections repairs or alterations shall be done with all dispatch causing as little disturbance as possible and that

the Lessee shall make good all damage done in carrying out such wires inspections repairs or alterations or by any such aerials wires or cables to the upper flat and to all decorations fixtures and moveable chattels therein.

FOURTH SCHEDULE

Lessor's Covenants

1. THE Lessor will enforce at the reasonable request and at the cost of the Lessee the obligations entered into by other Lessees of other flats comprising Eden Court, Stanwix so far as may be necessary to give effect to the rights and obligations hereby conferred and undertaken.
2. THAT the Lessee paying the rent hereby reserved and performing and observing the covenants on its part hereinbefore contained shall peaceably hold and enjoy the demised property during the said term without any interruption by the Lessor or any person rightfully claiming under or in trust for it.

EXECUTED as a Deed for and on behalf
of
acting by :-

EXECUTED as a Deed by
ANNE THOM
in the presence of :-

Schedule B

Valuation of Appropriate Sum (LRHUDA 1993 s 51(5) for each flat Nos 4, 1, 2, 3, 5, 6 Eden Court, Stanwix, Carlisle

Valuation Date: 8.10.2004

Lease Details:

Date of commencement of lease: 5.8.1959
 Term: 100 years
 Expiry date: 4.8.2059
 Unexpired Term: 55 years
 Ground Rent per annum (fixed): £3.00

Assumed Values

Freehold with possession: £62,000
 Extended lease: £62,000
 Unexpired lease: £55,000

Diminution in Value of Freeholder's Interest

	£	£	£	£
Freeholder's present interest				
TERM		3		
Ground Rent		13.94		
x YP 55 years @ 7%			42	
REVERSION to Freehold in Possession		62000		
x PV 55 years @ 7%		0.0242		
			1500	
Freeholder's interest after grant of lease				1542
				0

Calculation of Marriage Value

Value of flat with lease extension		62000		
Less values of				
Existing lessee's interest	55000			
Total of freeholder's existing interest	<u>1542</u>			
		<u>56542</u>		
Marriage value			5458	
50% of marriage value				<u>2729</u>
			Total	4271
			Say	4270