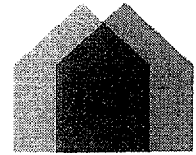


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**LEASEHOLD REFORM ACT 1967: SECTION 21
HOUSING ACT 1980: SECTION 142 AND SCHEDULE 22**



**Residential
Property
TRIBUNAL SERVICE**

Reference: Lon/LVT/1680/03

HEARING ON: TUESDAY 15 JUNE 2004

Premises: 16 Brunner Close, London, NW11

Tribunal Members: Mrs J Charles LLB
Mrs J McGrandle BSc (EstMan) MRICS MRPTI
Mr P M J Casey MRICS

Applicant Tenant: Hanover Securities Ltd

Represented by: Mr K Munro – of Counsel
Mr C Hobson – Messrs Kanter Jules
M L Nesbitt BSc (Hons) FRICS MCI Arb of
Messrs Nesbitt & Mire

Respondent Landlord: Adam Taylor & Lauren Taylor

Represented by: Mr A Radevsky of Counsel
Mr A Taylor of CKFT Solicitors
Mr E Shapiro FRICS IRRV FCI Arb of Messrs Moss Kaye
Mr B Berman – Interested party

Clerk: Mr Nigel Thompson

Decision

This was an application by the tenant to determine the price to be paid on the enfranchisement of the freehold interest under Section 9(1) Leasehold Reform Act 1967.

The section 9(1) basis of valuation requires an assumption that at the expiration of the existing lease term the tenant would exercise his rights under section 15 of the Act to take a new lease for a term of 50 years at a "modern" ground rent with a rent review after 25 years. The modern ground rent shall represent the letting value of the site without including anything for the value of the buildings on the site for the uses to which the house and premises have been put since the commencement of the existing tenancy.

The subject property is a two storey 4 bedroom detached house built about 1970 set back from the pavement by a driveway with pedestrian access to a large rear garden. It is described in some detail in both experts' reports.

The interest is derived from a lease dated 14 April 1927 for a term of 99 years from 24 June 1922 at a fixed rent of £12 per annum on standard full repairing and insuring terms. Thus 17.81 years remain outstanding on that lease, the valuation date having been agreed as 2 September 2003.

Neither party's expert produced direct evidence based on open market transactions of the rental value of the site or indeed its capital value from which a rental value could be derived. Both adopted (with Mr Shapiro putting forward a further approach) what has become known as the "standing house approach". This approach involved the ascertainment of the value of the property on the site and then ascribed a percentage of that usually freehold with vacant possession value as being the capital value of the site exclusive of any value attached to the buildings erected thereon ie the cleared site value. The parties differed as to whether the standing house should be valued as it actually existed or as it would exist had the site been developed to its optimal potential. They also differed in their views as to the value of the property as it actually existed, the proportion of the "standing house" value to be attributed to the "cleared site" value, the appropriate yield to be adopted to decapitalise that capital value to arrive at the section 15 rent, the yield rate to be adopted to capitalise that rent and to defer

the reversion and whether or not that reversion should be to the existing property or to a cleared site.

Mr Shapiro also offered a variant on the standing house approach which he referred to as “new for old”.

Mr Nesbitt for the applicant in his final valuation sought an enfranchisement price of £89,500 and Mr Shapiro for the respondent, again after adjustments made in the course of the hearing on the standing house approach, spoke to a sum of £313,901 or alternatively on his “new for old” basis, sought £347,403 preferring the latter to the former.

Neither expert had complained with the Directions of the Tribunal in respect of the exchange of reports, or the preparation of a statement of agreed facts and of the issues in dispute.

The Tribunal established at the commencement of the hearing with the aid of counsel for both parties that the issues were as follows:-

1. Standing house value
2. Appropriate site value proportion.
3. The yield
4. Landlord’s reversion

1. Standing house value

The valuation that Mr Nesbitt included in his report to the Tribunal which was dated 7 June 2004 and exchanged on that day was £725,000. He had sought to support that valuation by referring to the marketing of three properties, two of which were said to be under offer but not sold, the third having been withdrawn from the market.

On 10 June 2004, having had sight of Mr Shapiro’s report, he submitted an amended valuation report to the Tribunal in which he revised his valuation of the existing property to £925,000, apparently to take account of some post-valuation date unauthorised works carried out to the property by the applicant

in the autumn of 2003 but also in the light of the comparable evidence put forward by Mr Shapiro.

Mr Nesbitt considered that the property offered little scope for further development bearing in mind its situation within the Hampstead Garden Suburb conservation area, particularly in the light of the Trust's objections and the planning authority's threat of enforcement action in respect of the unauthorised works carried out last year.

Under cross-examination, Mr Nesbitt accepted that his valuation in the report dated 7 June 2004 had been prepared in November 2003 for the purposes of opening negotiations with the respondent's representatives.

Mr Shapiro took the view that the property was unique in the area given the size of the plot it enjoyed. He did not think that as it existed now, the property had been developed to its full potential. He referred to the case of Cadogan Estate v Hows and Hock (1989) 2EGLR 216 LT and HA Pattern v Wenrose Investments Ltd (1976) IEGLR 175 LT to support the proposition that the standing house value is to be the value of the property in good condition and fully developed to realise the potential of its site, such potential being realistic and not fanciful. Based on a meeting between his client's father-in-law and the architect for the Hampstead Garden Suburb Trust, he believed that the property offered potential for development on both its north-east and south-west sides. He accepted this meeting that this meeting had been a preliminary meeting with no sketches or plans having been tabled. He also admitted that no approach had been made to the local planning authority. He had, though not admitting to be an architect or planner, formed a view that the existing property's floor space could be increased by some 50% through such extensions, consent for which he regarded as a mere formality. The property as thus extended would in his view have a value of £1,400,000. His opinion of the value of the freehold interest in its present configuration was £1,250,000. He arrived at this figure on the basis of considering "a large basket of comparables" involving eleven properties although only four of these were completed transactions. There was some minor dispute between

him and Mr Nesbitt as to the actual sale prices of two of the completed transactions.

Neither Mr Shapiro nor Mr Nesbitt, when eventually considering this basket of transactions, had made specific adjustments either for the passage of time, differences in size and amenities (including garden size), location or degree of detachment, but had simply formed a view.

The Tribunal found little of assistance in Mr Nesbitt's original report and felt that, even in his supplementary report, he had had insufficient regard to the fact that this detached house enjoyed a significantly larger garden than is normal in the locality. He had also, wrongly in the Tribunal's view, taken no account of the fact that as it existed, the property was to some extent an underdevelopment of the site.

The Tribunal, having viewed the subject property and externally only the four completed transaction comparables, was however of the opinion that Mr Shapiro had failed to reflect the fact that the subject property was already the best house in a road of otherwise modest properties. The nondescript approach up Brunner Close, the siting of the property at the end of the cul-de-sac and its rather plain design combined to reduce its "street impact" in comparison with similar sized properties on nearby higher value roads. In the Tribunal's opinion, the property as it existed as at the valuation date was worth £1,000,000.

The Tribunal however agreed with Mr Shapiro that the site was to some extent under-developed, but could see no evidence to justify his leap from a house with development potential to the certainty of a 50% increase in the size of the existing dwelling. The sort of modest extensions that the Tribunal thought likely to be permitted would add no more than 500 ft² at the very outside to the existing property bearing in mind the planning constraints of thus Article 4 Conservation Area. The freehold interest in the property as so extended would in the Tribunal's opinion have had a value of £1,250,000 as at the valuation date.

For these reasons, the Tribunal could see no justification for Mr Shapiro's "fanciful" notion that a new 4000 ft² house would be permitted on a notionally cleared site and accordingly derived no assistance for what he referred to as his "new for old" approach to the capital value of the site.

2. Site value proportion

Mr Nesbitt's original report in which he argued that the appropriate percentage of the standing house value attributable to the cleared site was 35%, gave no supporting evidence for this opinion. In his supplementary report he gave evidence of two settlements in NW8 and N13 where he had agreed 36.5% but in cross examination conceded that these were in less valuable locations than Hampstead Garden Suburb.

Mr Shapiro gave as his opinion that the appropriate proportion attributable to the site on his standing house approach was 50%. He gave no settlement evidence in support of that figure but justified it by stating that Hampstead Garden Suburb was a special area and that the subject property had a particularly large site area. He was not able to produce any comparable evidence of sales or settlements either within the Garden Suburb area or elsewhere to support his opinion but sought support by referring the Tribunal to a Leasehold Valuation Tribunal decision in respect of a property at 66 Pavilion Road, SW3 a small mews property in a prime central London location. That decision had been made entirely on the facts and evidence provided in that case and was not a precedent in law or in valuation practice. As such it had no evidential weight in this case.

A surveyor, however eminent, who proposes a significant departure from established valuation norms, must provide good evidence in support of his opinion if he expects to succeed before a Leasehold Valuation Tribunal.

Mr Nesbitt is patently wrong on his own supporting evidence. Mr Radevsky in his closing address for the respondent invited us to find for at least the well

established figure, in such circumstances, of 40%. The Tribunal agreed that 40% was the appropriate proportion to adopt in this case.

3. The Yield

Neither valuer differentiated in the rate to be applied to decapitalise site value to arrive at the Section 15 rent, to capitalise that rent and to defer the reversion.

They however differed significantly in the rates they had adopted. Mr Nesbitt sought to justify his 7.5% by reference to a Leasehold Valuation Tribunal decision in respect of a property in East Barnet.

In cross examination he accepted that in the two settlements referred to earlier to support his proportion of standing house values he had agreed 7% in respect of what he reluctantly conceded were inferior investments. Whilst the LVT decision has little evidential weight in this case, that too was in respect of a significantly inferior investment.

Mr Shapiro argued for a rate of 5%. Again he had no evidence to support that figure but referred to a recent Lands Tribunal decision in respect of 57 Shawfield Street, SW3. The Tribunal's comments in the previous section of this decision apply equally to departures from well established yield patterns as they do to site percentages.

The Tribunal decision referred to involved a prime central London property where the yield was determined at 5¼% based on the circumstances of that appeal. It is difficult to see how Mr Shapiro can advance an even lower rate as being appropriate here, a location which he suggested was as good as St John's Wood.

Mr Nesbitt is patently too high, Mr Shapiro too low. In the Tribunal's opinion the appropriate yield to be adopted is 6.5% bearing in mind that the vast majority of enfranchisement and lease extension cases in prime central

London locations have been consistently settled or determined at 6% and that this is not such a good investment.

4. Landlord's Reversion

Mr Nesbitt in his valuation had capitalised the Section 15 rent in perpetuity. Mr Shapiro in his valuation had valued the landlord's reversion to the existing house at the end of the 50 year lease extension.

In the Tribunal's opinion, Mr Shapiro was right to do this, the existing house being significantly more valuable than its site at the valuation date and there being no evidence that that would change in the future on, the correct assumption that the property continues to be property maintained.

Decision

The price to be paid on the acquisition of the freehold interest in 16 Brunner Close, SW11 is £170,170 as per the Tribunal's valuation attached.

CHAIRMAN.....

Platt

DATE.....

8.7.04

LON/LVT/1680/03

LEASEHOLD REFORM ACT 1967

Determination by the Leasehold Valuation Tribunal
Price payable for the Freehold Interest in 16 Brunner Close, London NW11

Valuation as at 2 September 2003

1.	Ground Rent payable under existing lease	£	12 pa	
	Capitalized at 6.5% for 17.81 years YP 10.36			£124
2.	Modern GR on 50 year lease extension			
	Value of standing house as extended	£1,250,000		
	Proportion attributed to site value 40%			
	Cleared site value	<u>£ 500,000</u>		
	Decapitalized to give GR @ 6.5%			
	Modern GR	<u>£ 32,500 pa</u>		
	Capitalized 50 years @ 6.5%			
	Deferred 17.81 years	YP	4.8017	£156,055
3.	Reversion at end of existing lease			
	Freehold value of existing house	£1000,000		
	Deferred 67.81 yrs @ 6.5% V £1	<u>0.01399</u>		<u>£ 13,990</u>
				£170,169
			Say	£170,170