

Decision of Leasehold Valuation Tribunal**Re: 64 Osborne Road, Sheffield, 11 – Leasehold Reform Act 1967**

Applicant: Mr P. D. Davison
Date of Hearing: Monday, 26 July, 2004
Members: Mr A. M. Baker, LL.B (Chairman)
Mr C. R. Wormald, F.R.I.C.S.
Mrs B. M. Mangles B.A.

A. Background

1. The subject property is held under a sub-lease dated 8 February 1952 for a term of 385 years from 29 September 1951 with a ground rent reserved of £6 per annum.
2. The sub-lease is itself granted out of a head-lease dated 8 October 1840 for a term of 500 years from 25 March 1840 with a ground rent reserved of £55.74 per annum which lease also comprises other land including 68 Osborne Road.
3. The Applicant duly served notice of enfranchisement on 14 June 2002 on his immediate Landlord who, like the Applicant, has been unable to trace the identity of the Freeholder for service of notices purposes.
4. An application made to Sheffield County Court under S.27 Leasehold Reform Act 1967 (as amended) resulted in an order thereout dated 12 February 2004 to the effect that the Applicant was entitled to acquire the freehold reversionary interest in 64 Osborne Road and that the court shall "be entitled to sign the required conveyancing documents on behalf of the freehold reversionary beneficiaries" with the sum to be assessed by the Leasehold Valuation Tribunal as being the appropriate price therefor, being first paid into court.
5. The law requires the Tribunal to arrive at the value of the appropriate price on the basis that the freehold reversion is being offered on the open market by a willing seller but with the Tenant not buying or seeking to buy same.

B. Submissions and Hearing

Mr Gruchot of Messrs Taylor & Emmott appeared on behalf of the Applicant, who was not present, and thus gave no evidence in person and no other witness gave evidence in person either. Rather, Mr Gruchot sought to rely on a letter dated 20 July 2004 from Mr G. A. Oldale, F.R.I.C.S. who, in very brief terms, took the view that the rent payable under the

1840 lease, should be apportioned on a 50/50 basis as between 64 and 68 Osborne Road so that the amount payable to the Freeholder in respect of the subject property equated to £27.87 p.a. He further opined that since the annual ground rent reserved by the 1952 under-lease was only £6 p.a., the intermediate leasehold in fact had a net negative value to the extent of £21.87 p.a. had the rental been collected by the Freeholder (it having been established satisfactorily that the rent under the 1952 under-lease had been paid by the Applicant up to date, unlike the rent due to the Freeholder). As such, it was contended that the value of the intermediate interest was nil, rather than 50/50 of the sums payable by the Applicant as was sought by such intermediate Landlord, The Residential Organisation Ltd., who was not represented at the hearing. Mr Oldale also submitted that in such circumstances, the positive value of the superior lease should be reduced until the negative value was extinguished. As such, he opined that the value of the freehold reversion for these purposes is calculated by capitalising the current annual ground rent of £6 by applying 20 year's purchase, resulting in a price of £120 – in doing so, he relied on two recent sales of ground rent portfolios in Sheffield referred to in an annexure where the ground rents were less than £20 and the unexpired terms over 760 years.

Mr Gruchot was unable to elaborate on Mr Oldale's letter or answer the Tribunal's questions thereupon and admitted being in some difficulty generally on why he initially felt that the intermediate Landlord should receive anything at all in view of the negative rent situation; why the £6 figure was relevant at all as it is the freehold interest which was the primary concern of his client's application and why the unpaid head-lease arrears should not also be payable by his client into court in addition to the calculated price (pursuant to the provisions of S.149 (2) of the Commonhold and Leasehold Reform Act 2002) However, Mr Gruchot did submit that notwithstanding the contention of his own expert, the year's purchase factor applicable should be rather lower than the figure of 20 as proposed.

C. Valuation and Considerations

The Tribunal reminded itself that it was concerned herein with the freehold interest and not with any intermediate leasehold interest, the rent levels for which had been in part at least affected by the intervening premium paid on the creation of such lease and so distorted the rental relationships. Accordingly, it came to the conclusion that what was relevant was the headline annual rental applicable to the property being 50% of that for the combined 64 and 68 Osborne Road, i.e. £27.87 p.a.

The Tribunal similarly concluded that the 20 years purchase comparable produced was not relevant as portfolios of residential property were not usually at the same rate at that generally applicable to an individual property but rather higher, such being for a wide variety of practical reasons. Accordingly, using its own experience and knowledge of similar cases in Sheffield and Yorkshire at large, the Tribunal determined that 9 years purchase was the appropriate factor to apply giving a total of £250.83 (but say £250).

The Tribunal similarly determined that none of such sum should be payable to any intermediate Landlord for as a result of the enfranchisement hereby achieved, they would be relieved by the Applicants of their own theoretical current negative rental responsibility, albeit that the arrears of past contributions would actually be paid for by the Applicant.

The Tribunal determined accordingly, that in addition to the sum payable of £250 as aforesaid, pursuant to S. 149 (2) as above, the precise sum of 6 years x £27.87 = £167.22 should also be payable. As the unexpired term of the current lease exceeds 80 years, no marriage value would be payable.

Since the Tribunal's directions to provide a draft of the proposed transfer of the freehold and a set of up-to-date office copy entries had not been complied with on behalf of the Applicant, the Tribunal was quite unable to approve same for the court's assistance but agreed to grant the Applicant future leave to apply.

D. Determination

The Tribunal determines that the price to be paid by the Applicants into court before the freehold reversionary interest is transferred together with the arrears of rental payable in respect of the subject property, shall be £417.22 with nothing payable to any intermediate Landlord.



A. M. Baker, L.I.B.
Chairman

Date: 28/7/ 2004