

LON/LVT/1765/04

LEASEHOLD VALUATION TRIBUNAL FOR THE RESIDENTIAL PROPERTY
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

APPLICANT: Mr P J Brice

RESPONDENT: Mr R K Jassi

PROPERTY: 26 Kingsthorpe Road, Sydenham, SE6 4PG

APPLICATION DATE: 27 May 2004

HEARING DATE: 18 January 2005

INSPECTION DATE: 19 January 2005

APPEARANCES:

Mr M Buckpitt of Counsel
Mr A Raby, Solicitor, Thackray Williams
Miss A Robinson, Trainee Solicitor, Thackray
Williams
Mr R J Inniss BSc FRICS FCI Arb, South East
Surveys Ltd
for the Applicant

Mr R K Jassi
Mr P K Solomon BSc MSc FRICS FCI Arb, PK
Solomon & Co
for the Respondent

MEMBERS OF THE LVT:

Mrs J Goulden JP
Mrs J McGrandle BSc MRICS MRTPI
Mr P Tobin FRICS MCI Arb

LON/LVT/1765/04

PROPERTY: 26 KINGSTHORPE ROAD, SYDENHAM, LONDON, SE26 4PG

BACKGROUND

1. The Tribunal was dealing with an application by the Applicant tenant, Mr P J Brice (as executor of the late Mrs L E Rix), to determine the price payable to the Respondent landlord, Mr R K Jassi, for the freehold of 26 Kingsthorpe Road, Sydenham, London SE26 4PG (hereinafter referred to as "the subject property") under Section 9(1C) of the Leasehold Reform Act 1967 (hereinafter referred to as "the Act").

2. The subject property is held under a lease dated 1 March 1905 and made between James Edmondson (1) and Ernest Arthur Sneath (2) for a term of 99 years from 24 June 1902 at a fixed rent of £9 per annum.

3. By way of background, there had been an Order of Lambeth County Court dated 23 December 2003 determining that the Applicant was entitled to acquire the freehold of the subject property.

4. The following matters were agreed :-

- (a) The site value was 40% of the standing house value.
- (b) Yield was at 6%

5. The Tribunal was provided with an unsigned statement of agreed facts containing some manuscript amendments which indicated that a number of items were not, however, agreed.

6. The issues which therefore remained in issue and required the determination of the Tribunal were as follows:-

- (a) The value of the subject property improved and unimproved**
- (b) The premium payable**

7. The Applicant's expert contended for an enfranchisement price of £106,000 and his valuation is attached to this Decision as Appendix B. No valuation or other evidence was provided on behalf of the Respondent.

HEARING

8. The Hearing took place on 18 January 2005.

9. The Applicant, Mr P J Brice, did not appear, but was represented by Mr M Buckpitt of Counsel, together with Mr A Raby, Solicitor and Miss A Robinson, Trainee Solicitor, both of Thackray Williams. Expert evidence was given by Mr R J Inniss BSc FRICS FCI Arb of South East Surveys Ltd, Chartered Surveyors.

10. The Respondent, Mr R K Jassi appeared in person and was represented by Mr PK

Solomon BSc MSc FRICS FCI Arb of PK Solomon & Co. Mr Solomon said that he appeared to represent Mr Jassi only, and was not putting himself forward as an expert Valuer. No valuation evidence was therefore provided, and Mr Solomon's role was limited to one of advocacy on behalf of the Respondent.

11. Although Mr Solomon was invited by the Tribunal to prepare a valuation, if necessary overnight, he was of the view that it was too short notice to find comparables some three/four years earlier. In connection with the role of Mr Solomon, the Tribunal was provided with a copy of a letter written by Mr Inniss to Mr Solomon and dated 5 January 2005. This letter stated, inter alia, "*..we could as experts produce alternative valuations for the benefit of the Tribunal. These alternatives could be reflected in the Statement of Agreed Facts and Matters of Dispute. You did however advise me that you would be unable to act as an expert in this matter if it was the case that the valuation date was 19 March 2001.*"

PRELIMINARY ISSUES

12. Before hearing arguments as to the substantive matters before the Tribunal, the Tribunal was requested to make determinations on the following preliminary issues:-

(a) Had an agreement been made between the parties as to an enfranchisement price of £125,000

(b) The appropriate valuation date

13. The first issue, namely whether there had been an agreement as to price between the parties, impacted on the second issue, namely the appropriate valuation date. It was only if the Tribunal found that there had been no agreement between the parties that the question of the valuation date was in issue.

14. Mr Solomon argued that the price had been agreed at £125,000, based on an offer made in the Applicant's solicitors' letter of 10 May 2004. Mr Jassi had replied by telephone and had formally accepted the price on 13 January 2005. It was "*too late to say a mistake had been made*".

15. Mr Buckpitt argued that there had been no agreement between the parties. He referred to the letter dated 10 May 2004 sent by the Applicant's solicitors to the Respondent and which, he said, contained "*a seven day offer*". This had not been accepted by the Respondent within that period or, in the alternative, within a reasonable period of time. The offer had been withdrawn by a letter dated 26 August 2004 sent by the Applicant's valuer to Mr Solomon, namely before the offer was purported to have been accepted by the Respondent on 13 January 2005.

16. As to the valuation date, Mr Solomon agreed that the relevant date would be the date of the Initial Notice, 19 March 2001, "*if the procedures had been followed*". Mr Jassi's advisers had not considered the March 2001 Notice to be valid. He queried why a second Notice had been served if the Applicant had been satisfied with the validity of the first Notice. It had not been clear which Notice had been relied on by the County Court. The court proceedings had taken place without the presence of Mr Jassi (although he conceded that Mr Jassi had known of the hearing date at the county court and had submitted a statement). Mr Solomon said "*the*

correct interpretation (of the valuation date) is the date of the court order, 23 December 2003".

17. Mr Buckpitt said that under S9(1) of the Act, the valuation date must be the date of service of the Initial Notice namely 19 March 2001. The Applicant's solicitor could attest to the first Notice. The second Notice dated 8 June 2002 was served, but without prejudice, and only because Mr Jassi's solicitors had questioned the validity of the first Notice. There had been no response from the Respondent to either Notice. The valuation date could not be, as Mr Solomon had suggested, the date of the court order, namely 23 December 2003.

DETERMINATION OF THE TRIBUNAL IN RESPECT OF PRELIMINARY ISSUES

18. The Tribunal adjourned in order to consider carefully the arguments presented, and announced its determination to the parties at the Hearing after such adjournment.

19. Under S21 of the Act

The following matters shall, in default of agreement, be determined.....namely

(a) the price payable for a house and premises under section 9 above;

21. The question for the Tribunal therefore is whether or not there was an agreement between the parties.

22. The Tribunal has considered the letter from the Applicant's solicitors to the Respondent dated 10 May 2004, and is of the view that this should be set out in its entirety:

"We refer to the above action and the order of Lambeth County Court dated 23 December 2003. We are now in a position to make an application to the Leasehold Valuation Tribunal for a determination of the price to be paid for the freehold of the above premises.

We have obtained a valuation of the premises from a surveyor qualified to give a valuation pursuant to the provisions of the Leasehold Reform Act 1967.

We can confirm that our client is prepared to purchase the premises at the figure our client's surveyor states is the appropriate valuation. Therefore, our client is prepared to pay the sum of £125,000.

If we can agree these terms, then we can arrange for the appropriate documentation to be drawn up and to be forwarded to you to allow the transfer to proceed. We would therefore be grateful if you would contact the writer, Mr Raby, within seven days of the date of this letter. We have had no direct contact with you during the course of this matter to date. We will therefore make an application to the Leasehold Valuation Tribunal if we do not now hear from you within seven days of the date of this letter."

23. There was no response to the above letter either within the time specified or within a reasonable time. Further the Tribunal accepts that by Mr Inniss' letter to Mr Solomon of 26 August 2004 which set out an adjusted valuation figure, the offer in the letter of 10 May 2004 had been withdrawn.

24. The Tribunal determines that, in the circumstances of this case, there was no agreement between the parties.

25. The Tribunal then went on to consider the appropriate valuation date.

26. The Tribunal cannot go behind a County Court Order but in any event, this Tribunal is satisfied, from the documentation presented to it, that the District Judge was fully aware that he was dealing with, and making an adjudication in respect of, the Initial Notice of 19 March 2001.

27. The application to the Leasehold Valuation Tribunal had been made in May 2004 and had referred to the date of the original March 2001 Notice and a copy of that original Notice had been attached. However, the objection to the valuation date had not been raised until January 2005.

28. The valuation date is, in accordance with statute, the date on which the Initial Notice was given, namely 19 March 2001

EVIDENCE IN RESPECT OF SUBSTANTIVE ISSUES

29. The salient points of the evidence in respect of the substantive issues are set out under the appropriate heads below.

(a) The value of the subject property improved and unimproved

30. Mr Inniss, for the Applicant, said that he had made an error in his original valuation of £125,000 which had only been appreciated when he had received a letter in August 2004 from Mr Solomon which had quoted £143,000. At that stage he realised that he had made an error in that his valuation had been based on the valuation date in the second Notice, namely 8 June 2002. Mr Solomon's figure had been based, correctly, on the valuation date in the Initial Notice, namely 19 March 2001. Mr Inniss said that his error had been corrected "*within 48 hours*".

31. Mr Inniss said that his amended valuation was based on a standing house value of £250,000 (repaired and improved) and an existing valuation of £210,000 (unimproved). He relied on the comparables below, brief details of which are as follows:-

Address	Date of Sale	Sale Price
19 Kingsthorpe Road	August 2000	£325,000
6 Dukesthorpe Road	April 2001	£193,500
38 Earlsthorpe Road	August 2001	£282,500
9 Kingsthorpe Road	July 2003	£335,000

32. The Tribunal was advised that 19 Kingsthorpe Road, a semi detached property, was larger than the subject; 9 Dukesthorpe Road, a mid terrace property, was somewhat smaller than the

subject; 38 Earlsthorpe Road was larger than the subject and 9 Kingsthorpe Road was similar in size to the subject property. This last property had originally been on the market in April 2000 at an asking price of £275,000, but had been withdrawn with no offers having been received.

33. No sales particulars, floor areas or any adjustments for differences between the subject property and the comparables, such as adjustments for passage of time, were provided.

34. As to the reversionary value, Mr Innis deducted £40,000 as the appropriate sum to improve the subject property to a condition which would achieve £250,000. This gave an existing or reversionary value of £210,000, which he said was a subjective assessment. He said that Mr Solomon had suggested the appropriate sum was £43,000.

35. Mr Solomon, in his cross examination of Mr Inniss, said that Mr Inniss had made no adjustment for differences between the comparables and the subject property. All four comparables were "*weak*", and the information obtained from local agents had been unsubstantiated in that there were no sales particulars. Mr Inniss conceded that the comparables he had used were less than comprehensive.

36. Mr Inniss was also challenged as to his failure to adjust for passage of time, but in his view, the market in Sydenham had been flat and with very little activity around the March 2001 valuation date, and it did not start to take off, in line with national trends, till late 2002/early 2003.

INSPECTION

37. The Tribunal made its inspection on 19 January 2005, following the end of the Hearing.

38. The subject property was a linked terrace two storey house c 1905, in a residential area. Kingsthorpe Road was one of a number of similar streets forming part of an estate with family sized houses set in pleasant small gardens and containing attractive period details, such as leaded lights and decorative ridge tiles. The subject property was of good size, with a small garden to the front and a medium sized garden to the rear. The accommodation was as described by Mr Inniss. The subject property had well proportioned rooms and a number of original features. It was sound, but dated and in poor decorative order, with partial central heating only. It lacked a modern kitchen and bathroom and needed general upgrading.

39. The Tribunal inspected the exteriors of the Applicant's comparables and, in addition, inspected the exteriors of 15 Princethorpe Road and 16 Kingsthorpe Road.

DETERMINATION OF THE TRIBUNAL IN RESPECT OF SUBSTANTIVE ISSUES

(a) The value of the subject property improved and unimproved

40. It is unfortunate that no proof or valuation was provided on behalf of the Respondent landlord, particular since Mr Solomon appeared to have been instructed since approximately May 2004, and had been in negotiations with Mr Inniss since Summer 2004.

41. The Tribunal therefore only had the evidence of Mr Inniss before it. This proof was considered by the Tribunal to be thin, vague in parts and certainly lacking in the detail necessary for an enfranchisement valuation which would have been expected by, and which would have assisted, the Tribunal.

42. Of the four comparables referred to by Mr Inniss, one was discounted because it was not a sales transaction, and the other three were either not directly comparable to the subject property or were considered too remote in time from the valuation date. No adjustments had been made by either side.

43. The Tribunal is somewhat surprised of the paucity of evidence in view of the fact that the subject property is in a sizeable residential area of properties of similar styles and age, where the Tribunal is of the view that is an active market in sales and purchases.

44. The Tribunal is not persuaded by Mr Inniss' standing house figure of £250,000. This was considered to be on the low side. In the absence of any evidence from the Respondent, the Tribunal determines that a figure of £265,000 is appropriate.

45. The Tribunal accepts Mr Inniss' figure of £40,000 to bring the subject property up to a fully improved standard.

(b) The premium payable

46. The Tribunal determines that the premium payable for the subject property is £112,450 and its valuation is attached to this Decision as Appendix A

LANDLORD'S VALUATION FEES UNDER S 9(4)(e) OF THE ACT

47. At the end of the Hearing a further outstanding matter was brought to the attention of the Tribunal, on which a determination was sought, and this was in respect of the valuation fees of Mr Solomon in the sum of £450 plus VAT.

48. Mr Solomon claimed that he was entitled to this sum in accordance with the provisions of S9(4) of the Act which provides:-

Where a person gives notices of his desire to have the freehold of a house and premises....there shall be borne by him...the reasonable costs of or incidental to any of the following matters.....

(e) any valuation of the house and premises

49. Mr Solomon advised the Tribunal that his inspection and valuation had been carried out on 25 May 2004, following his instructions by Mr Jassi to do so on 12 May 2004.

50. Mr Buckpitt said that there was a bar on costs incurred in connection with a reference to the Leasehold Valuation Tribunal. In this case, the Applicant's solicitors had written to Mr Solomon on 10 May 2004. This letter had made it clear that if no response was received from the Respondent within seven days of the date of that letter, an application would be made to

the Leasehold Valuation Tribunal. Mr Buckpitt contended that it was this fact alone which prompted the Respondent's valuation to be carried out. He said that otherwise there would have been no reason to value the subject property in May 2004, following an Initial Notice which had been dated March 2001. He pointed out that a request to carry out the inspection had not been made until 17 May 2004. In support, Mr Buckpitt cited a Court of Appeal judgment in the case of **Covent Garden Group Ltd and another v Naiva (1994)**.

51. Mr Solomon accepted that a letter was written to him on 10 May 2004 in the terms as stated, but that had only given him seven days to inspect and prepare a valuation of the subject property.

DETERMINATION OF THE TRIBUNAL IN RESPECT OF LANDLORD'S VALUATION FEES UNDER S9(4)(e) OF THE ACT

52. Para 5 of Schedule 22 of the Housing Act 1980 provides that:

The costs which a person may be required to bear under Section 9(4)...of the 1967 Act (matters the costs of which are to be borne by the person giving notice of his desire to have the freehold or an extended lease) do not include costs incurred by a landlord in connection with a reference to a Leasehold Valuation Tribunal

53. Para 5 of Schedule 22 to the Housing Act 1980 is primary legislation. The words must be given their ordinary meaning and effect. It expressly refers to S9(4) of the Act and is an exclusionary provision. The judgment in the case of **Covent Garden Group Ltd and another v Naiva** makes it clear that it matters not that the costs were incurred before the reference to the Leasehold Valuation Tribunal. The wording is clear and general.

54. There was no evidence presented to the Tribunal that the landlord had obtained any valuation advice between March 2001 and May 2004.

55. A letter from Mr Solomon to the Applicant's solicitors dated 17 May 2004 confirmed his instructions to prepare a valuation.

56. By a letter dated 24 May 2004, the Applicant's valuer wrote to Mr Solomon acknowledging that Mr Solomon had been instructed. This letter also stated *"this is a case where your client first failed to serve a Notice in Reply, and therefore my clients had to obtain an order from the county court. He had previously failed to respond to correspondence in regard to the question of a valuer, and therefore I have prepared a draft report on the assumption that your client was not going to be represented. I understand that you are carrying out your inspection on 25 May..."*

57. A letter from the Applicant's solicitors to Mr Solomon dated 11 January 2005 stated *"the letter of 10 May 2004 was sent to Mr Jassi in an attempt to settle the matter and...we set a deadline within which Mr Jassi was to respond to the proposal. Although we spoke with Mr Jassi on the telephone for the first time on 14 May 2004, when he contacted us in response to the letter, he did not at any time respond to the proposal and therefore this current application was made to the Tribunal"*.

58. The Tribunal concludes that the reason why a valuation was only carried out in May 2004 was the notification of the clear intention to make an application to the Leasehold Valuation Tribunal. This, in the view of the Tribunal, falls within the provisions of para 5 of Schedule 22 of the Housing Act.

59. Accordingly the Tribunal determines that the valuation fee of £450 plus VAT is irrecoverable by virtue of para 5 of Schedule 22 to the Housing Act 1980. The landlord is not entitled to the fee under S9(4)(e) of the Leasehold Reform Act 1967.

CHAIRMAN.....



DATE.....

1 February 2005

APPENDIX A

LEASEHOLD REFORM ACT 1967
 26 KINGSTHORPE ROAD LONDON SE26
 PRICE PAYABLE FOR FREEHOLD INTEREST
 TRIBUNAL'S VALUATION

VALUATION DATE: 19th March 2001
 (Lease expired on 24th June 2001).

Value of house with vacant possession, repaired and improved: £265,000

Site value as agreed between parties @ 40%: £106,000

Modern ground rent as agreed between parties @ 6% of site value: £6,360

Years' purchase for 50 years @ 6% 15.762 £100,246

Reversion to: £265,000

Less amount for improvement (assuming house in good repair) 40,000

225,000

Present value of £1 after 50 years @ 6% 0.0543 12,218

ENFRANCHISEMENT PRICE £112,464, say £112,450

APPENDIX B

26 Kingsthorpe Road, Sydenham, SE26

Assessment of price to be paid for freehold interest in accordance with Section 9(1) of the Leasehold Reform Act 1967 as amended.

Lease expired: 24th June 2001. Nominal Ground Rent

Valuation Date; 19th March 2001

Review to Modern Ground Rent

Standing House value	£250,000		
Proportion as site value	<u>@ 40%</u>		
	£100,000		
Rental	<u>@ 6%</u>		
	£6,000		
Y.P. for 50 years @ 6%	<u>15.76</u>	94,572	
Reversion to	£210,000		
P.V. £1 50 years @ 6%	<u>0.0549</u>	<u>11,403</u>	<u>£105,975</u>
Price to be paid		Say	£106,000