

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

S.24 Leasehold Reform, Housing & Urban Development Act 1993

DECISION & REASONS

Case Number: CHI/21UC/OCE/2005/0114

Property: Amberley
32 Grange Road
Eastbourne
East Sussex
BN21 4HF

Applicant
(Nominee Purchaser): Amberley (Eastbourne) Ltd

Respondent (Reversioner): Michel Grove Properties Ltd

Date of Application: 24 November 2005

Date of Hearing: 25 April 2006

Appearances: For the Applicant – Andrew Pridell FRICS, Andrew Pridell Associates Ltd
For the Respondent – Mr Laurence A Nesbitt BSc(Hons) FRICS MCI Arb, Nesbitt & Co, Chartered Surveyors

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr R T A Wilson (Legal Member)
Mr J N Cleverton FRICS (Valuer Member)

Date of Decision: 19 May 2006

Summary of Decision

The valuation date is determined as the date of the initial notice, 16 December 2004. The price to be paid is determined at £56,850.

BACKGROUND

1. This is an application on behalf of the nominee purchaser for a determination of the purchase price to be paid for the enfranchisement of this property. Provisional Directions were issued dated 2 December 2005, requiring the exchange of valuations and experts' reports.
2. The valuers had met and had been able to narrow the issues and a further agreement had been reached at the inspection on the morning of the hearing.
3. The issues outstanding in respect of the valuation were:
 - i) The valuation date and consequently the number of years unexpired on the leases, and
 - ii) The uplift in the value of the flats to take account of the assumed grant of long leases following enfranchisement.
4. The Tribunal was advised that all other matters relating to the transfer of the freehold interest had now been agreed, although should any disputes arise relating to the details of the transfer or S.33 costs, then the Tribunal will deal with these under this application.

RELEVANT LAW

5. S.24 Leasehold Reform, Housing and Urban Development Act 1993 (the Act) sets out the process whereby the nominee purchaser can fix any disputed matters following admission by the Respondent of the participating tenants' right to collective enfranchisement. A formal Counter Notice under S.21 was served by the reversioner, dated 17 June 2005.
6. The only outstanding matter is the question of valuation and price payable. Schedule 6 of the Act sets out in detail the valuation principles to be followed when calculating the price to be paid.

INSPECTION

7. Prior to the hearing, the Tribunal members inspected the property in company with Mr Pridell and Mr Nesbitt and various lessees.
8. The property comprises a detached block of purpose built flats constructed about 25 years ago, having cavity brick elevations under a pitched and tile covered roof. There are seven flats, each approached via a communal entrance with lift and staircase access to the upper floors.
9. The six flats on the ground, first and second floors are virtually identical and comprise a living room, kitchen, two bedrooms and bathroom with WC. The Tribunal was able to inspect flats 2 and 4 which were examples of these flats.
10. Flat 7 is on the top floor of the building and is larger in floor area and comprises a living room, kitchen, cloakroom, two bedrooms, shower room with shower and wash basin and bathroom with WC. The Tribunal also inspected this flat.

11. There are communal grounds to the front and rear and each flat is allocated a garage located in a small compound at the rear of the site.

VALUATION COMPONENTS AGREED

12. Prior to the hearing, the valuers presented a statement of facts agreed and confirmed the general description of the property, tenure and ground rents as set out in the valuers' respective reports. The yield to be applied to the capitalisation of the ground rent income and the discount rate to apply to the landlord's reversion is agreed at 7%.
13. It was agreed that there would be no compensation payable.
14. The value of each of flats 1 to 6 was agreed at £170,000, and prior to the hearing, the valuers were able to agree the value of flat 7 at £210,000.

VALUATION COMPONENTS NOT AGREED

15. The date of the valuation and the consequent unexpired lease term.
16. The uplift to be applied to the value of the flats when calculating marriage value.

EVIDENCE

17. The Tribunal had a bundle of papers which it considered in addition to the oral evidence given to it at the hearing.

The Case for the Applicant

18. Mr Pridell spoke to his proof of evidence and valuation report and briefly described the building which the Tribunal had inspected. He confirmed the various agreements that had been reached between the valuers and these are recorded in this Decision.
19. The date of the valuation is in dispute although it is accepted that the amendment made by the Commonhold & Leasehold Reform Act 2002 fixes the valuation date at the date of the initial notice. Which date to be used is however unclear.
20. The initial notice by the participating tenants is dated 16 December 2004. The counter notice to that initial notice did not admit the claim to collective enfranchisement on the grounds that the premises specified in the notice include areas of land which were not premises capable of being acquired.
21. By Order of the Eastbourne County Court dated 24 May 2005 by Consent the tenant's initial notice was permitted to be amended.
22. A further initial notice amended in accordance with the Court Order was served, still dated 16 December 2004. This gave rise to a counter notice by the reversioner admitting the participating tenant's entitlement to exercise the right to enfranchisement. This counter notice was dated 17 June 2005.
23. Mr Pridell argues that the amended initial notice, was still deemed to have been made on 16 December 2004 and this should be the valuation date.

24. Mr Pridell seeks an adjustment uplift of 6% on the existing lease values to take account of the improved value acquired by the lessees in consequence of the freehold being acquired by the nominee purchasers.
25. In support he produced evidence of various Tribunal decisions and also cases where the price to be paid had been negotiated between the parties' respective valuers. He argues that prices agreed between valuers are just as valid as LVT determinations as the valuers would have been fully aware of the available evidence and facts before coming to an agreement.
26. Cases agreed included Wilbury Grange, Hove at 9% for a 61 year term, Astra House, Brighton at 9.5% for a 61 year term and Arundel Lodge, Worthing at 6% for 69 years. Details of these decisions were given. In addition, determinations by the LVT at Priory Court, Eastbourne at 7% for a 62 year term, Enys Road, Eastbourne at 4.5% for 71 years and Adelaide Crescent, Hove at 4.2% for a 74 year term were cited and details provided. Mr Pridell particularly emphasised the Priory Court, Eastbourne decision as this was a property in a similar location to the subject property. The low uplift at Enys Road was because one of the party's valuers was not based locally and consequently provided poor quality evidence. Equally poor quality evidence was presented in the Adelaide Crescent case.
27. Mr Pridell's analysis of these decisions and from his own experience gave him 6% as a reasonable uplift.
28. Under questioning, Mr Pridell confirmed that there was a general rule of thumb that there should be half percent per year uplift for each year of the unexpired lease that was less than 80 years. He had, however, not used this method when coming to his conclusion, although he agreed that it had been discussed between valuers when concluding negotiations in some other cases.
29. He suggested that often the age profile of the likely purchaser of the flat in question could influence the uplift applied. Older people were generally less concerned with the ability to raise mortgages and were therefore less concerned about the length of lease remaining. They would therefore be prepared to accept a flat with a shorter lease or would be prepared to pay a lower premium for a flat with a long lease.
30. The Case for the Respondent

Mr Nesbitt had produced his valuation rather late, although it had been available to the Tribunal in earlier papers submitted to it. Mr Pridell had had an opportunity of considering the contents. Mr Nesbitt confirmed the agreements reached between the valuers including the value of flat 7 at £210,000.
31. Mr Nesbitt argued for an uplift on the existing leasehold values of 10%. This was based upon his own personal experience, and in his opinion supported by decisions of the Tribunal and negotiated settlements.

32. He provided a schedule of evidence including Lancaster Court, Hove at an uplift of 8% for a 68 year term, Ventnor Villas, Brighton at 9.9%, Lushington Road, Eastbourne at 8.7% for a 67 year term, Arlington Road, Eastbourne at 15.6%, Ashford Road, Eastbourne at 15.3% and The Lawns, Eastbourne at 25%. The Arlington Road, Eastbourne was a premium for a lease and Ashford Road, Eastbourne and The Lawns, Eastbourne were settlements he had reached with a local valuer.
33. With regard to the age profile of the lessees and its effect on prices, Mr Nesbitt drew attention to the popularity of equity release schemes. He stated that older lessees could now raise funds from the equity in their properties and in these cases similar criteria were imposed by the equity release companies as were imposed by mortgagees. Older lessees, therefore, still required a sensible length of lease term and this should be reflected in a higher value for the long leasehold interest.

CONSIDERATION

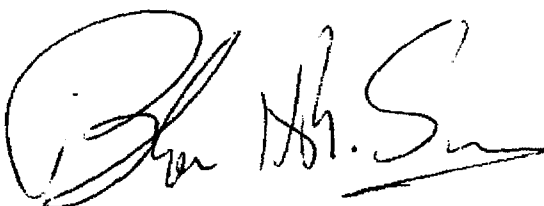
34. Firstly the Tribunal considered the valuation date. The Order of Eastbourne County Court allowed the amendment of the initial notice dated 16 December 2004 to redefine the premises to be acquired. The time limit for the amendment of the initial notice was given as 24 May 2005. The defendant (Respondent) was required to serve a further counter notice by 21 June 2005. In the Tribunal's view, the effect of the Order of the Eastbourne County Court was not to withdraw the initial notice dated 16 December 2004 but simply to allow it to be amended.
35. The initial notice is therefore dated 16 December 2004 and that is the date of the valuation in accordance with the Commonhold & Leasehold Reform Act 2002.
36. Consequently the unexpired lease term is 68 years. It follows therefore that, as the yield of 7% has been agreed between the parties and we have fixed the valuation date used by Mr Pridell, the initial part of the valuation relating to the capitalisation of ground rental income is the same as that provided by Mr Pridell. This produces £8,192 for this part of the valuation.
37. Turning now to the percentage uplift, the Tribunal was presented with a range of percentages from as low as 4.2% for 74 years unexpired, to a high of 25% for 58 years unexpired. The valuers were unable to show any direct correlation between the wide varieties of figures. We concluded that in each case the specific circumstances were directly relevant to the uplift applied. Lease length was not the only criteria to be used.
38. Where evidence of agreements is to be considered, the respective strength or weakness of the negotiating position of the parties will directly influence the agreement reached. In many cases, a commercial decision will be made to accept or reject a particular agreement based upon circumstances not directly related to valuation principles. In one of the cases of an agreement identified by Mr Nesbitt (Lushington Road) the parties had stated when reaching their agreement that the conclusion and analysis should not be used in support of any other valuation.

39. It was disappointing that the expert witnesses did not both speak to the same list of comparables used in evidence. Those identified by each valuer tended to support their own particular case and had apparently been selected for that purpose.
40. The agreements reached on Ashford Road and The Lawns, Eastbourne, seemed sufficiently out of step with other agreements to be of no benefit to us and were given little weight. Arlington Road, Eastbourne was an agreement on a premium for a converted flat and was therefore given little weight.
41. Lancaster Court, Hove was an agreed settlement at 8% with a 68 year lease term. The parties' representatives in that case were the same as the surveyors as in this case. We found this evidence of assistance. We noted however that the flats were of a higher value than the subject flats.
42. Granville Road, Eastbourne was a useful comparable because of its similar location to the subject property. However, the unexpired term was only 62 years but the uplift was 7%. This does not sit well with Mr Pridell's assessment of 6% for a 68 year unexpired term. Wilbury Grange, Hove, agreed at 9% for a 61 year term, did not sit well in the pattern.
43. The Lushington Road, Eastbourne settlement at 8.7% was a special case and was given little weight.
44. Taking all the evidence into account and applying its own knowledge and experience, the Tribunal determines that a reasonable uplift in this case is 7½% and we have valued accordingly.

DECISION

45. The valuation date is determined at the date of the amended initial notice, namely 16 December 2004.
46. The price to be paid for the freehold interest by the nominee purchaser is £56,850 in accordance with the detailed valuation attached as an appendix to this Decision.

Dated 19 May 2006



Brandon H R Simms FRICS MCI Arb
Chairman

