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**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/29UL/OCE/2005/0068

Property: Flats 1, 2, 3 and 4
3 Castle Hill Avenue
Folkestone
Kent

Applicant: Mr. J.W. Kitson

Respondent: The Personal Representative of
Mr. A.A. Bonner, deceased

Date of Hearing: 19th October 2005

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. B.H.R. Simms FRICS, MCI Arb
Mr. M.G. Marshall FRICS

Date decision Issued:

RE: 3 CASTLE HILL AVENUE, FOLKESTONE, KENT

Background

1. No. 3 Castle Hill Avenue, Folkestone, Kent ("the subject property") comprises four flats. Mr. J.W. Kitson ("the Applicant") is the lessee of Flats 3 and 4 and the freehold is owned by the Personal Representative of Mr. A.A. Bonner deceased ("the Respondent")
2. Under the "rights of first refusal" provisions of Section 5 of the Landlord and Tenant Act 1987 the Respondent served a notice offering to sell to the lessees the freehold interest in the subject property for the sum of £440. The offer was not accepted.
3. The Applicant then served the initial notice under Section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") claiming to exercise the right to collective enfranchisement in respect of the subject property. In the initial notice the sum quoted as the price to be paid for the freehold interest was £440 and the Applicant was named as the nominee purchaser.
4. A counter notice was served admitting that the Applicant was at the date of giving the initial notice entitled to exercise the right to collective enfranchisement but rejecting the offer of £440 and valuing the freehold interest at £2,600.

5. An application has been made under the provisions of Section 24 of the Act for the Tribunal to determine the sum to be paid for the freehold of the subject property.

6. Our determination appears at paragraphs 22 to 36 below.

Inspection

7. On the 19th October 2005, Mr. Norman and Mr. Marshall inspected the exterior of the subject property, the hallway and staircase, the gardens and the interior of two of the flats. Present were the Applicant, Mrs. G. Wynn Green, Solicitor representing the Respondent and Mr. R.D. Baker BSc Est. Man. FRICS who had prepared a valuation on behalf of the Respondent. Mr. Simms was not able to be present at the inspection because he and Mr. Quinn the Clerk to the Tribunal were held up in traffic on the M20; part of which had been closed following a serious accident.

8. Had it been necessary to do so, Mr. Simms would have inspected the subject property later in the day but he did not do so because he was able to obtain sufficient detail of the subject property from the other two members of the Tribunal who had inspected. It is also right to say that an inspection of the interior of a property is of very limited assistance in valuing the freehold where the lease has over 900 years left to run.

9. At the inspection the Applicant drew attention to work which he had carried out and to work which he considered was required to be undertaken to put the subject property in good order.

The hearing

10. The hearing was attended by the Applicant, Mrs. G. Wynn Green and Mr. R.D. Baker.

11. As there were still traffic problems, the Applicant and Mrs. Wynn Green stated their willingness to have the matter dealt with by the two tribunal members who were present but shortly after that Mr. Simms and Mr. Quinn arrived and the hearing then commenced before the full tribunal.

12. We had received documents from the parties in advance of the hearing and we had considered them. At the hearing further documents were produced by the parties and those we also considered.

13. The Applicant gave evidence of the work he had carried out at the subject property and the money which he had saved the lessees by carrying out the work himself. He also gave evidence of the work he considered needed to be carried out at the subject property and explained that his motive for wanting to acquire the freehold was not to make money from it but to safeguard the subject property. He was concerned that if the freehold were owned by all the lessees then there would be problems in securing the agreement of all the freeholders to carry out works which were necessary. The Applicant considered that the price he should pay should take into account these matters and should be lower than the price which an investor who only wanted to make money from the acquisition should pay.

14. A statement was produced which had been made by Joanna and Caroline Bonner. In it they stated that it had been their wish that all the occupants of the subject property should own a share of the freehold (referred to incorrectly in the statement as the leasehold) and that they had served notices stating that they would be willing to sell the freehold for £440 but had received no counter notices in response. They complained that as a result of the Applicant's actions they had incurred costs which they could only recover by asking the market price for the freehold.

15. We explained that the matters mentioned in the preceding two paragraphs would be disregarded by us because they had no relevance to the price which we would determine should be paid for the freehold. Whether or not the Applicant had carried out work to the subject property and had saved the lessees money; whether or not his motive in purchasing the freehold was to safeguard the subject property and whether his conduct had been good or bad would have no bearing on our decision. Motive or good or bad behaviour would not assist us in making our decision. The valuation was a commercial matter. We had to determine the open market value of the freehold and that meant looking at the price prospective purchasers would be prepared to pay for it. No discount could be given because the Applicant did not want to make money from the purchase. We could not determine two figures: one to be paid by an investor wanting to make money and the other to be paid by someone wanting the freehold for altruistic reasons.

16. Mr. Baker stated the definition of market value as "The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion". He then gave evidence as to how he had arrived at his valuation.

(a) It was accepted that there could be no sum for marriage value in a lease with more than 900 year to run.

(b) Mr. Baker had calculated as part of the value of the freehold, the loss of the entitlement to receive the ground rent of £40 per annum over 955 years remaining on the leases. A simple multiple of the ground rent income of £40 per annum $\times 16.66 = \text{£}666$. This was based on a yield of 6%. He was aware that in a recent Lands Tribunal decision in respect of property in London a yield of $4\frac{1}{2}\%$ had been adopted but he was content to leave the yield at 6%.

(c) We explained to the Applicant that one way of looking at this calculation was to determine the sum of money which would need to be invested to provide an income of £40 per annum to compensate the freeholder for the loss of the ground rent income and that the use of a higher percentage was to the Applicant's advantage because the higher the interest rate used the smaller would be the sum needed to invest.

(d) We were told that there had been deeds of variation in respect of the leases of Flats 1, 3 and 4 but that the deed in respect of Flat 4 had provided that expenditure was to be limited to £140 per annum unless two or more tenants approved the expenditure and Mr. Baker was of the opinion that as a result the subject property could become unmanageable if two difficult leaseholders clubbed together to block the maintenance expenditure. A purchaser of the lease of a flat would want to know the subject property would be properly maintained and if

it were not going to be then the flat would be less valuable. A deed of variation would be required for Flat 2 and possibly a further deed of variation for Flat 4 in order to rectify these problems.

(e) If the lessee of Flat 2 wished to sell the lease it would be found that a prospective purchaser would have difficulty obtaining a mortgage. A deed of variation would be needed to satisfy the prospective mortgagee and progress the sale. The freeholder could make a charge for agreeing to enter into such a deed and would be in a strong position to make a high charge for his agreement. The questions were how much could be charged and how long would it be before the situation arose. Mr. Baker considered that a charge of £4,000 would be the highest figure obtainable. He had then looked at how often property might change hands and had come to the conclusion that on average this was every seven years. Again using 6% that would effectively halve the value of £4,000 in seven years and produce a figure of £2,000 which added to the £666 for loss of ground rent gave a total of approximately £2,600 (rounded down in favour of the Applicant).

(f) Asked by Mrs. Wynn Green about the freeholder being able under the terms of the leases to charge a supervision fee of 10% of works and bearing in mind that maintenance works were required, whether that would be attractive to a purchaser in an auction room, Mr. Baker considered that the freeholder could make money out of the situation but it could increase or decrease the price.

17. The Applicant drew our attention to the points he had listed in documents he had supplied.

(a) He was concerned that Mr. Baker's valuation was dated 22nd June 2005 but had not been received until 18th August 2005 and he asked why the price had changed to £2,600 only when he expressed an interest in purchasing the freehold himself.

(b) He stated that if he put a new roof on the subject property he as a lessee of two of the flats would have to pay half the cost. The freehold was of no value to him.

(c) He had been advised that the annual ground rent should be multiplied by ten to arrive at the purchase price but he accepted that the figures he had produced for five sales indicated a higher multiple in respect of four of them. He also accepted that those figures indicated the market value as a commercial proposition because the only people who bought freeholds at auction did so to make money but he stressed that he was not wanting to buy the freehold as a commercial investment to make money out of it. Mrs. Wynn Green pointed out that when the evidence produced by the Applicant of four out of five sales at more than ten times the ground rent is considered then Mr. Baker's figure is not so far from that.

(d) The Applicant stated that if the purchaser did not need to borrow money to buy the lease then there would be no need for a deed of variation but Mr. Baker pointed out that for the lessee to be able to sell only to a cash purchaser would seriously reduce the market and that a cash buyer properly advised would still want a deed of variation.

Costs

18. We had not been asked to determine the Respondent's costs which the Applicant should pay in respect of the purchase of the freehold but Mrs. Wynn Green had supplied to the Applicant details of the costs and we were provided with a copy. We received evidence from Mrs. Wynn Green and the Applicant in respect of the costs.

19. The Applicant considered the costs were excessive. In particular the charge of £17.50 per letter sent out. He had received only six letters and he thought he had sent only two. Perhaps he had not appreciated that costs were incurred in respect of letters sent and received in dealing with the matter, for example letters between the Solicitors and the Respondent, and not just correspondence between the Applicant and the Respondent's Solicitors. Perhaps he had also not appreciated that these were not costs he was being asked to pay in respect of work done for him but were the costs of the Respondent, including the cost of the valuation report, which the Act provided could be charged to him.

20. Mrs. Wynn Green agreed that the letters included her letter to Mr. Baker which was included in the figure of £189.58 and that therefore the number of letters out could be reduced by one. She also agreed that the sums of £175 and £350 for preparation for hearing and attendance at the inspection and hearing and Mr. Baker's fee of £250 for attendance at the hearing could not be included. However, the conveyancing costs of the actual transfer had not been included and to account for that a sum of £250 + VAT should be added. She explained that when the offer to sell for £440 was made and there was a much smaller sum for costs, the offer was made on the basis of a quick sale but the Applicant had not accepted that offer. He had invoked the Act, as he was entitled to do, but that had increased the costs considerably.

21. The Applicant stated that he may decide not to proceed with the purchase and we therefore pointed out to him that he should seek advice on the provisions made by the Act in respect of liability for the Respondent's costs where there is a notice of withdrawal or a deemed withdrawal of the initial notice.

Determination

22. We must determine the price which we consider to be the market value of the freehold.

23. As we explained during the hearing, whether the Applicant had carried out work to the subject property or not; whether his motive in purchasing the freehold was to safeguard the subject property or not and whether his conduct had been good or bad would have no bearing on our decision. Motive or good or bad behaviour by the parties would not assist us in making our decision. The valuation was a commercial matter. We had to determine the market value of the freehold and that meant looking at the price prospective purchasers would be prepared to pay for it. No discount could be given because the Applicant did not want to make money from the purchase. We could not determine two figures: one to be paid by an investor wanting to make money and the other to be paid by someone wanting the freehold for altruistic reasons.

24. The Applicant stated that he had been advised that the annual ground rent should be multiplied by ten to arrive at the purchase price but in the documents he had produced there was evidence of much higher multipliers being used. He accepted that the figures he had produced for four out of five sales indicated a higher multiplier. He also accepted that those figures indicated the market value as a commercial proposition because the only people who bought freeholds at auction did so to make money but he stressed that he was not wanting to buy the freehold as a commercial investment to make money out of it. The Applicant's objective may have a bearing on what the Applicant thinks he should pay for the freehold but it does not determine the price that could be obtained for it on the open market.

25. We found that the following would have no effect on our determination of the price to be paid for the freehold.

(a) Any delay in sending the valuation to the Applicant and the earlier suggestion of a figure of £440 under the right of first refusal provisions.

(b) The Applicant's statement that if he put a new roof on the subject property he as a lessee of two of the flats would have to pay half the cost and that the freehold was of no value to him.

(c) That if the purchaser of a lease did not need to borrow money to buy the lease then there would be no need for a deed of variation because for the lessee to be able to sell only to a cash purchaser would seriously reduce the market and a cash buyer properly advised would still want a deed of variation. We found that it would be unrealistic to make a calculation based on the assumption that a sale of a lease would be to a cash purchaser who was not concerned about a problem with the terms of the lease. The probability is that either there would be a prospective mortgagee who would require a deed of variation or a cash purchaser who would require a deed of variation.

26. The market value depends on what an investor would pay for the freehold. He would pay for the right to collect the ground rent and for any other return on his investment.

27. The ground rent could be collected for over 900 years but at only £40 per annum and with no provision for any increase there will come a time when the ground rent is of little value. We find that 16.66 years as a multiple of the ground rent is a reasonable figure to use based on a yield of 6%. It was used by Mr. Baker and although the Applicant disagreed with it, his own evidence of sales supported it. $£40 \times 16.66 = £666$.

28. As to other opportunities for making money from the investment there is the possibility of making a charge of 10% of the cost of works carried out to cover supervision of those works. Mr. Baker considered that this could either increase or decrease the value. We agree that some investors would consider this to be an opportunity to make money whereas others would not find the prospect of supervising works attractive and consequently we have not added or subtracted anything in respect of this.

29. There is the potential to make a charge for agreeing to a lease variation. Such a variation is required in respect of Flat 2. How much could be charged and when an opportunity to make such a charge would arise is not certain but we have to work on a balance of probabilities to arrive at a valuation. It may happen immediately or it may not

happen for many years. It is most likely to occur when the lessee of Flat 2 tries to sell the lease. How often is the lease of a flat sold? Mr. Baker took the view that on average a lease of a flat is sold every 7 years and that a charge of £4,000 could be made. He accepted that that figure was towards the top end of the scale. He could have argued that a similar charge could be made in a similar time scale in respect of Flat 4 but that is more speculative and he took the reasonable view and did not seek to argue for a further £4,000.

30. £4,000 in respect of a lease variation for Flat 2 in 7 years time and taking into account the present value of one pound to be received in 7 years time using tables at 6% gives a figure of £2,660. Had Mr. Baker used 4 ½ % then the figure would have been greater and he has rounded down the figures to the advantage of the Applicant. He accepts £4,000 as the highest figure likely to be obtained and we take that into account. He presumably considered this in deciding not to revise his figure upwards.

31. We find that a charge of £3,000 could reasonably be expected to be obtained and that such a charge could reasonably be expected to be obtained in 10 years time. Taking into account the present value of one pound in 10 years time at 6% produces a figure of £1,674.

32. Therefore adding £1,674 to £666 the appropriate sum to be paid for the Respondent's freehold interest in the subject property is £2,340.

33. As to costs, because by the application we were not asked to determine the sum which the Applicant should pay for the costs of the Respondent we have not made such a determination. However, in order to assist the parties and perhaps reduce the cost of making further applications, we have decided to deal with the question of costs in the following way.

We have considered the figures produced and the evidence given at the hearing and we would be minded to make an order that the costs should be as follows:

	£	
Letters in	74.13	
Letters out	192.50	
Perusal and consideration	78.75	
Drafting instructions to valuer	189.58	
Conveyancing costs	<u>250.00</u>	
	784.96	
VAT	<u>137.37</u>	922.33
Disbursements		
Office copy entry freehold title including filed plan	8.00	
Office copy entry 4 x leasehold titles	16.00	
Messrs. Fell Reynolds fees - valuation report	250.00	
VAT	<u>43.75</u>	<u>317.75</u>
		<u>1240.08</u>

34. In considering the question of costs we were mindful of the following.

- (a) Section 33 of the Act which provides that the nominee purchaser is liable for the reasonable costs of and incidental to certain matters.
- (b) That Section 33 (1)(d) makes specific provision for the payment for any valuation of any interest in the specified premises or other property.
- (c) That costs in respect of the right of first refusal procedure could not be included and Mrs. Wynn Green confirmed that no such costs had been included.
- (d) That the costs of preparation for and attendance at the hearing could not be included and Mrs. Wynn Green agreed that those should be removed from the assessment of costs.

35. We found that to arrive at a figure for the reasonable costs of and incidental to the matters mentioned in the Act the charge for telephone calls should be deducted and the charges for letters in and out should be reduced by half. We considered those charges together with the remaining charges resulted in a reasonable sum for the work for which the Applicant should pay. It may be that some or all of the costs which we would disallow could be charged to the Respondent by the Respondent's Solicitors but that is not a matter for this Tribunal.

36. If within 28 days from the date this decision is sent out to the parties either or both the parties wish to make written representations to us about these costs then we will consider them and then determine the sum which should be paid and issue a supplementary determination but if we receive no written representations within that time then the figure in paragraph 33 shall be the sum which the Applicant shall pay in respect of the costs on transfer to him of the freehold.



R. Norman
Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

APPLICATION FOR PERMISSION TO APPEAL

Case No: CHI/29UL/OCE/2005/0068

Property: Flats 1, 2, 3 and 4
3 Castle Hill Avenue
Folkestone
Kent

Applicant: Mr. J.W. Kitson

Respondent: The Personal Representative of
Mr. A.A. Bonner, deceased

RE: 3 CASTLE HILL AVENUE, FOLKESTONE, KENT

1. All the matters which Mr. Kitson raised both before and during the hearing were considered by the Tribunal, but it was made clear at the hearing and in the decision that some of the points made by him would have no effect on the Tribunal's determination of the price to be paid for the freehold.
2. As was recorded in paragraph 24 of the decision, Mr. Kitson stated that he had been advised that the annual ground rent should be multiplied by ten to arrive at the purchase price but in the documents he had produced there was evidence of much higher multipliers being used. He accepted that the figures he had produced for four out of five sales indicated a higher multiplier. He also accepted that those figures indicated the market value as a commercial proposition because the only people who bought freeholds at auction did so to make money.
3. Notwithstanding his acceptance of those matters, Mr. Kitson does not accept that the price he will have to pay for the freehold is the market value. He considers that his previous conduct and that he is not wanting to buy the freehold as a commercial investment to make money out of it should be taken into account and entitle him to purchase at a lower figure.

4. He has no such entitlement. As was stressed at the hearing and stated in paragraph 23 of the decision, the Tribunal could not determine two figures: one to be paid by an investor wanting to make money and the other to be paid by someone wanting the freehold for altruistic reasons.

5. There is no justification for an appeal and permission is refused.



R. Norman
Chairman