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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HP/OCE/2009/0031

Case No. CHI/00HP/OCE/2009/0032

REASONS

Application : Sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended ("the 1993 Act")

Applicant/Leaseholders : Ms Suzanne Caroline Greeves (Flat 1, 20A), Mr Ryan Robert Lewis (Flat 2, 20A), Mr Dean Terrence Hoyland and Mrs Kelly Jane Hoyland (Flat 3, 20A), Mr Christopher Robert Aldred and Ms Helen Margaret Nicholson (Flat 4, 20A), Mr Martin Lee Clarke and Mrs Anna Louise Clarke (Flat 5, 20A), Ms Bernadette Priscilla Tai Tenquee (Flat 1, 20B), Mr Robert Leslie Clymo (Flat 2, 20B), Mr Karl Duke Austin (Flat 3, 20B), Mr Robert James Alexander (Flat 4, 20B), and Mr Christopher John Haynes (Flat 5, 20B)

Respondent/Landlord : Finn Properties Limited

Buildings : 20A ("20A") and 20B ("20B") Approach Road, Lower Parkstone, Poole, Dorset, BH14 8BH

Flats : the flats in the Buildings

Leases : the leases of the Flats

Date of Applications to Court : 28 January 2009

Date of Court Orders : 21 July 2009

Date of Tribunal's Directions : 31 July 2009

Date of Hearing : 30 September 2009

Venue : Express by Holiday Inn, Walking Field Lane, Poole, Dorset, BH15 1RZ

Appearances for Applicant/Leaseholders : Ms K Scruby, of HGW Solicitors, and Mr S A Higley BSc FRICS, of Smith Robinson Higley, Chartered Surveyors

Also in attendance : Ms M Goodbody, of HGW Solicitors, and Ms Tai (Flat 1, 20B)

Appearances for Respondent/Landlord: no attendance or representation

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr K Lyons FRICS, and Mr A J Mellery Pratt FRICS,

Date of Tribunal's Reasons : 5 October 2009

Introduction

1. The Applicant/Leaseholders applied to Poole County Court on the 28 January 2009 for orders under section 26 (1)(a) of the 1993 Act for vesting the Respondent/Landlord's interests in the Buildings to Approach 2000 Management Company Ltd on such terms as might be determined by a Leasehold Valuation Tribunal under section 27 and schedule 6 of the 1993 Act by way of a conveyance in a form to be approved by a Leasehold Valuation Tribunal
2. The grounds for the applications were that :
 - a. the Buildings were premises to which Chapter 1 of the 1993 Act applied
 - b. the Flats were all let on leases held by the Applicant/Leaseholders as qualifying tenants
 - c. the Applicant/Leaseholders desired to make a claim to exercise the right to collective enfranchisement of the Buildings
 - d. it was not proposed to acquire any interests other than the freehold of the Buildings or any other interests of the Respondent/Landlord, so that section 9(1) of the 1993 Act applied
 - e. the Respondent/Landlord could not be found
3. On 21 July 2009 the Poole County Court, under claim numbers 9PH 00337 and 9PH 00338, made orders accordingly

Schedule 6 of the 1993 Act

4. Paragraph 2 of schedule 6 of the 1993 Act provides that the price payable by the Applicant/Leaseholders shall be the aggregate of :
 - a. the value of the Respondent/Landlord's interest in the Building as determined in accordance with paragraph 3 of schedule 6
 - b. the Respondent/Landlord's share of the marriage value as determined in accordance with paragraph 4 of schedule 6
 - c. any compensation payable to the Respondent/Landlord under paragraph 5 of schedule 6
5. Paragraph 3 of Schedule 6 of the 1993 Act provides that , subject to the assumptions and other provisions set out, the value of the Respondent/Landlord's interest in the Building shall be the amount which that interest might be expected to realise if sold on the open market by a willing seller with the Applicant/Leaseholders not seeking to buy and on the assumption that the 1993 Act conferred no right of acquisition

Documents

6. The documents before the Tribunal are those comprising pages 1 to 148 in the Tribunal's bundle

relating to 20A, pages 1 to 175 in the Tribunal's bundle relating to 20B, supplemental bundles in each case, and Land Registry entries relating to 18, 20, and 20A Wessex Road produced by Ms Scruby at the hearing

7. References in these reasons to page numbers are, unless the context requires otherwise, to page numbers in the Tribunal's bundle
8. References in these reasons to Appendices are to the appendices to these reasons

Mr Higley's report 7 September 2009

9. Mr Higley set out his qualifications and experience
10. He stated that the Respondent/Landlord had been struck off the companies register before the Buildings could be transferred to the leaseholders as envisaged by the leases
11. The Applicant/Leaseholders had applied for a court order to enable the freehold to be transferred to them as if they had served notice under section 13 of the 1993 Act. He had prepared his valuation evidence using the 3 February 2009 [sic] as his valuation date in accordance with the court order
12. He described the Buildings as each comprising a purpose-built block of five flats. They were situated in small communal grounds with a parking area to the rear accessed from Wessex Road. The access road into the car park was shared with the owners of three houses facing Wessex Road and with a block of flats adjacent, known as 22 Wessex Road. The Buildings were of brick and imitation slate construction, and apparently dated from about 2001. Photographs of front and rear elevations were attached to Mr Higley's report
13. Mr Higley had visited the site. In each Building there were two flats at ground floor level, two at first floor level, and one at second floor level. He had inspected Flat 4, 20B, internally. It comprised a hall, a lounge, a kitchen, bedroom 1 with en suite, bedroom 2, and a bathroom/WC. Enquiries of the local planning authority revealed that each of the eight flats on the ground and first floors offered broadly similar 2 bedroom accommodation. The first-floor flats were marginally larger than the ground floor ones as the kitchens projected over the common parts. The second floor flats offered similar accommodation, but were larger
14. Mr Higley summarised the leases. In the case of 20A, three of the Flats had leases whose terms expired in 2120, whilst the leases of the other two flats expired in 2125. Each of the leases reserved a peppercorn ground rent. In the case of 20B, each of the five flats was let on a term expiring in June 2120. Each of the leases reserved a peppercorn ground rent. Mr Higley had seen a sample lease namely that relating to Flat 1, 20A. The lease included an exclusive right for the leaseholder to park on a designated parking space. He understood that similar rights existed for each of the other nine leases
15. Mr Higley stated that at the rear of 20B [sic] there were eight parking spaces, of which one was

for one of the houses on Wessex Road, and the other seven were for the five flats. That meant that there were two visitors' spaces. Behind 20B [sic] there were 10 spaces of which two were allocated to houses on Wessex Road, leaving eight between the five flats and therefore three visitors' spaces. The driveway across the grounds was subject to rights in favour of the adjoining block of flats at 22 Wessex Road as set out in a deed of grant dated 6 August 2001 between the Respondent/Landlord and DLJ Wells

16. Mr Higley had calculated the price for enfranchisement in accordance with schedule 6 of the 1993 Act. His calculations are attached to these reasons as Appendix 1 and Appendix 2

17. Mr Higley stated that there was no ground rent income so that the term was of no value. He had calculated the value of the reversions by estimating the total value of the individual flats and deferring at 5%, in the absence of any strong evidence to the contrary, in accordance with the decision in **Sportelli**. In arriving at his valuations for the individual flats on the ground and first floors he had obtained details of sales from HM Land Registry (attached to these reasons as Appendix 3), including the following :

Flat 3, 20A	£155,000	1 September 2006
Flat 4, 20A	£148,000	21 April 2006

18. Adjusting those figures to the valuation date by reference to HM Land Registry Price Index for Poole (attached to these reasons as Appendix 4) gave figures of about £150,000 and £136,500. He had adopted £140,000

19. In relation to the two second floor flats he noted that the last sale was in December 2003 for £153,000. This, by reference to the same index, would equate to about £162,000 in February 2009. He had adopted £165,000

20. The difference between the values he had adopted for the top floor flats and the others, namely almost 18%, was almost identical to the percentage difference when the flats were originally sold

21. Mr Higley considered that any value attributable to the grounds, as opposed to the two buildings themselves, was already accounted for in the vacant possession values ascribed to the individual flats. The grounds were subject to a right of way in favour of 22 Wessex Road and parking spaces not allocated to individual flats or houses were subject to rights for the flat owners and others to use as visitors spaces and could not therefore be sold or let

22. Mr Higley's conclusion that the enfranchisement prices payable under the statutory basis set out in schedule 6 of the 1993 Act on the valuation date of the 3 February 2009 were :

20A	£3,050
20B	£3,330

The leases

23. The Tribunal's bundles contain copies of the leases for each of the Flats, except the lease for Flat 2, 20A. Page 9 of the lease for Flat 2, 20B is missing from the Tribunal's bundles
24. The leases appear to be in materially similar terms, with provisions for maintenance and insurance by Approach 2000 Management Company Ltd as management company, and for service charge payments by the leaseholders
25. However, in relation to those service charge payments, the provisions in each lease include the following :
- a. a definition of "the Estate" as meaning "..... the land now or formerly comprised within [Land Registry title number DT 268087] and consisting of 10 flats and three houses together with the garden and grounds car parking spaces dustbin and drying areas (if any) and access ways....."
 - b. a definition of "the Building" as meaning "..... the block or blocks in which the 10 flats are situated and known or intended to be known as 20A and 20B....."
 - c. a covenant in clause 4(i) "to contribute and pay the proportions or shares mentioned in parts I and II of the eighth schedule hereto of the costs and expenses of the provision of the services and performance of the works mentioned in the seventh schedule hereto for the benefit respectively of the Building in which the Flat is situated and the Estate"
 - d. an obligation in the eighth schedule part I for the leaseholder to "pay one tenth part of the cost of establishing a sinking fund for the Flats comprised in the Building and also in respect of the undermentioned costs and services :
 - o cleaning of the common parts of the Building
 - o communal electricity in the Building
 - o window cleaning
 - o management fees relating solely to the Building"
 - e. an obligation in the eighth schedule part II for the leaseholder to "pay one thirteenth part of the cost of establishing a sinking fund for the external common parts of the Estate and also in respect of the undermentioned services and costs :
 - o public liability insurance for the common parts
 - o gardening
 - o audit fee
 - o filing fee
 - o external electricity
 - o any additional management fees incurred in connection with the above"
26. The lease terms are respectively 125 years from 24 June 2000 (Flats 1, and 4, 20A) and 120 years from 20 June 2000 (Flats 2, 3, and 5, 20A, and Flats 1, 2, 3, 4, and 5, 20B), with a ground rent of one peppercorn in each case
27. Each lease also contains a recital numbered (4) in the following terms : "[Approach 2000 Management Company Ltd] has been formed for the purpose of managing maintaining and controlling the Estate and the freeholder shall be vested in it following completion of the last lease therein"

Agreement (“the Agreement”)

28. An unsigned agreement bearing a blank date in 2001 between the Respondent/Landlord (1), Approach 2000 Management Company Ltd (2), Murrayfield Investments Ltd (3) and an unnamed buyer (4) provided, amongst other provisions, that :
- a. the Respondent/Landlord’s title was registered at the Land Registry with absolute freehold title number DT 268087
 - b. the buyer would purchase a lease of Flat 1, 20B, for £99,950
 - c. on completion of the development the Respondent/Landlord would transfer the freehold interest to Approach 2000 Management Company Ltd

Land Registry entries for title number DT 268087

29. The entries showed :
- a. the freehold land comprised in the title as the Buildings, parking spaces at the rear, and the access away from Wessex Road, but with the properties 18, 20, and 20A Wessex Road, with one parking space each, as now excluded from the title
 - b. the Respondent/Landlord as registered proprietor
 - c. each of the leases to the Applicant/Leaseholders
 - d. a “unilateral notice” registered on 12 February 2007 “in respect of an option to purchase the freehold reversion contained in clause (4) of the leases.....”

Inspection

30. The Tribunal inspected the Buildings on the morning of the hearing on the 30 September 2009. Also present were Ms Scruby, Ms Goodbody, Mr Higley, and Ms Tai
31. The Tribunal adopts the helpful description of the Buildings and the grounds set out in Mr Higley’s report
32. The Tribunal also inspected the interior of Flat 2, 20A, and Flat 1, 20B, both on the ground floor of their respective Buildings. Both comprised the accommodation set out in the helpful description in Mr Higley’s report. Bedroom 2 in Flat 2, 20A, appeared to be used for storage. Bedroom 2 in Flat 1, 20B, appeared to be used as an office

Valuation

33. The comments of Ms Scruby and Mr Higley at the hearing in relation to each element of the valuation, and the findings by the Tribunal in each case, are set out in the following paragraphs of this determination

The Agreement

34. Ms Scruby submitted that the Applicant/Leaseholders were entitled to have the freehold Land Registry title number DT 268087 transferred to Approach 2000 Management Company Ltd

without payment because of the combined effect of :

- a. the provision in the Agreement that on completion of the development the Respondent/Landlord would transfer the freehold interest to Approach 2000 Management Company Ltd
- b. recital numbered (4) in each lease in the following terms : “[Approach 2000 Management Company Ltd] has been formed for the purpose of managing maintaining and controlling the Estate and the freeholder shall be vested in it following completion of the last lease therein”
- c. the “unilateral notice” registered against the Land Registry title on 12 February 2007 “in respect of an option to purchase the freehold reversion contained in clause (4) of the leases.....”

35. Ms Scruby further submitted that these were matters which the Tribunal could take into account, despite not being referred to in the referral from the court, or in sections 26 or 27 or schedule 6 of the 1993 Act, by virtue of the decision, of which Ms Scruby did not have a copy for the Tribunal, in **R on the application of Ford v Leasehold Valuation Tribunal** (2005) PLS CS 43 (Collins J). The Tribunal should therefore fix the enfranchisement prices of the Buildings as nil in each case

36. The Tribunal's findings

37. As indicated at the hearing, the Tribunal finds that the Tribunal's jurisdiction in this case is limited to the matters referred to the Tribunal by the Poole County Court, namely, under sections 26 and 27 of the 1993 Act, to determine a price in accordance with the provisions of schedule 6 of the 1993 Act and to determine the terms of the conveyance. In doing so the Tribunal would not be able to take into account the provisions of the Agreement, which was unsigned and undated, or the effect, if any, of the Agreement, or the effect, if any, of recital numbered (4) in each lease, or the effect, if any, of the “unilateral notice” registered against the Land Registry title, which were all matters for the Applicant/Leaseholders, if so advised, to refer to the court

Valuation date and number of years unexpired at valuation date

38. In answer to questions from the Tribunal, Ms Scruby and Mr Higley agreed that the valuation date in each case was the date of the court application, , namely 28 January 2009, rather than 5 February 2009 as suggested in Mr Higley's report, but that the difference was of no material significance from a valuation point of view

39. As stated in Mr Higley's report, the lease terms of Flat 1, 20A, and Flat 4, 20A, were 125 years from 24 June 2000. The lease terms of all the other eight flats were 120 years from 24 June 2000

Starting point for the valuation of the Respondent/Landlord's interest in the Buildings

40. Ms Scruby and Mr Higley submitted that :

- a. in the light of the peppercorn rent reserved under each lease the value of the

Respondent/Landlord's interest in the Buildings would not include the capitalisation of any rent

- b. in the light of the large number of years left unexpired under each lease any marriage value should be ignored
- c. the starting point for calculating the value of the Respondent/Landlord's interest, namely the amount which a buyer would pay for that interest, should accordingly be the combined values of the leasehold interests at the valuation date, deferred to the respective expiry dates of the terms
- d. the deferment rate should be 5%, in accordance with the guidance in **Sportelli**
- e. the Buildings and the Flats had been built recently, in about 2000, and neither Ms Scruby nor Mr Higley aware of any relevant tenants' improvements
- f. there was no "hope value" in this case as the Applicant/Leaseholders comprised all the leaseholders in the Buildings
- g. the starting point for the calculation of the enfranchisement prices should therefore be the figures set out in Mr Higley's report, namely:

20A	£3,050
20B	£3,330

41. *The Tribunal's findings*

42. The Tribunal accepts as persuasive :

- a. the submissions of Ms Scruby and Mr Higley in each respect
- b. the calculations of the figures of £3,050 for 20A and £3,330 for 20B, set out in Mr Higley's report, for the reasons given by Mr Higley, as the starting point for the valuation of the Respondent/Landlord's interest in the Buildings

Impact on the valuation of the Respondent/Landlord's interest in the Buildings of the service charge provisions in the leases

43. The Tribunal indicated that part II of the eighth schedule to each lease, when read in the context of the definition of "the Estate", appeared to contemplate the Respondent/Landlord recovering one thirteenth of the expenses relating to the Estate from each of the three owners of 18, 20, and 20A Wessex Road, as well as from each of the ten Applicant/Leaseholders. The Tribunal adjourned the hearing over lunch to enable Ms Scruby to produce Land Registry entries relating to 18, 20, and 20A Wessex Road and to enable Mr Higley to consider submissions about the impact, if any, on the valuation of the Respondent/Landlord's interest in the Buildings of a buyer contemplating the prospect of trying to recover one thirteenth of the expenses relating to the Estate from each of the three owners of 18, 20, and 20A Wessex Road

44. *Ms Scruby's submissions*

45. After the adjournment, Ms Scruby produced Land Registry entries relating to 18, 20, and 20A Wessex Road, which indicated that each owner of those properties had rights of way over the drive way at the rear of the Buildings, together with a right to use the visitor car parking spaces and had an obligation to "contribute a fair proportion of the cost of maintenance of the same

when called upon to do so by the [Respondent/Landlord] or its successors in title”

46. *Mr Higley's submissions*

47. Mr Higley’s subsequent submissions were as follows :

- a. he had reviewed the last service charge accounts for the Buildings, copies of which were not before the Tribunal
- b. the expenses which were relevant to part II of the eighth schedule to each lease were as follows :

○ repairs and maintenance	£200
○ public liability insurance	
(£850, but only £150	
attributable to the Estate)	£150
○ gardening	£800
○ accountants	£350
○ filing fee	£90
○ electricity for external lighting	£50
○ management charge	
(£1400, but only £140	
attributable to the Estate)	<u>£140</u>
	£1780
- c. the owners of 18, 20, and 20A Wessex Road were liable, according to the Land Registry entries, to pay a fair proportion only of the cost of maintenance of the driveway and visitor car parking spaces at the rear of the Buildings, not of the cost of maintenance of the whole Estate as defined in each of the Applicant/Leaseholders’ leases
- d. the driveway and visitor car parking spaces at the rear of the Buildings was about 25% of the area of the whole Estate
- e. it was therefore likely that the “fair proportion” of the maintenance costs for which each of the owners of 18, 20, and 20A Wessex Road might be liable, according to the Land Registry entries, would be one thirteenth of about 25% of those items in the Applicant/Leaseholders’ service charge accounts which related to the driveway, but 0% for those items which did not
- f. it followed that :
 - in relation to that proportion ie 25%, of those items in the Applicant/Leaseholders’ service charge accounts which related to the driveway and the rest of the Estate, and for which each of the three owners of 18, 20, and 20A Wessex Road would be liable according to the Land Registry entries, a buyer of the Respondent/Landlord’s interest in the Buildings would have the right to recover three thirteenths from each of the three owners of 18, 20, and 20A Wessex Road, and the right to recover the remaining ten thirteenths from the Applicant/Leaseholders under part II of the eighth schedule to each lease
 - in relation to that proportion, ie 75%, of those items in the Applicant/Leaseholders’ service charge accounts which related to the driveway and the rest of the Estate, and for which each of the three owners of 18, 20, and 20A Wessex Road would not be

- liable according to the Land Registry entries, a buyer of the Respondent/Landlord's interest in the Buildings would have the right to recover nothing from each of the three owners of 18, 20, and 20A Wessex Road, and the right to recover only ten thirteenths from the Applicant/Leaseholders under part II of the eighth schedule to each lease
- in relation to those items in the Applicant/Leaseholders' service charge accounts which related to the rest of the Estate but not to the driveway, a buyer of the Respondent/Landlord's interest in the Buildings would have the right to recover nothing from each of the three owners of 18, 20, and 20A Wessex Road, and the right to recover only ten thirteenths from the Applicant/Leaseholders under part II of the eighth schedule to each lease
 - in other words, a buyer of the Respondent/Landlord's interest in the Buildings would expect to have a shortfall each year of three thirteenths of the cost of those items in the Applicant/Leaseholders' service charge accounts which did not relate solely to the driveway
- g. Mr Higley submitted that a fair apportionment between the Applicant/Leaseholders and the three owners of 18, 20, and 20A Wessex Road of liability for the expenses shown in the last service charge accounts for the Buildings which were relevant to part II of the eighth schedule to each lease was accordingly as follows :
- | | | |
|-----------------------------------|---|-------|
| ○ repairs and maintenance | £200 : 75% to Applicant/Leaseholders : | £150 |
| ○ public liability insurance | £150 : 100% to Applicant/Leaseholders : | £150 |
| ○ gardening | £800 : 75% to Applicant/Leaseholders : | £600 |
| ○ accountants | £350 : 100% to Applicant/Leaseholders : | £350 |
| ○ filing fee | £90 : 100% to Applicant/Leaseholders : | £90 |
| ○ electricity (external lighting) | £50 : 75% to Applicant/Leaseholders, say : | £40 |
| ○ management charge | £140 : 75% to Applicant/Leaseholders, say : | £110 |
| | | £1415 |
- h. the difference between that figure and the total figure of £1,780 for the expenses shown in the last service charge accounts for the Buildings which were relevant to part II of the eighth schedule to each lease was £365
 - i. a buyer of the Respondent/Landlord's interest in the Buildings would therefore have the right to recover :
 - three thirteenths of £365 from the owners of 18, 20, and 20A Wessex Road according to the Land Registry entries
 - ten thirteenths of £365 from the Applicant/Leaseholders under part II of the eighth schedule of the leases
 - ten thirteenths of £1,415 from the Applicant/Leaseholders under part II of the eighth schedule of the leases
 - j. a buyer of the Respondent/Landlord's interest in the Buildings would therefore expect to have a shortfall of three thirteenths of £1,415, namely £326
 - k. the buyer would capitalise that sum over 10 years, and deduct £3,260 from the price the buyer would otherwise pay for the Respondent/Landlord's interest in the Buildings
 - l. the enfranchisement price should be reduced accordingly

48. *Ms Tai's evidence*

49. Ms Tai stated that the owners of 18, 20, and 20A Wessex Road had been asked for contributions to expenses to the driveway in the past, but, so far as she was aware, nothing had actually been paid

50. *Mr Higley's subsequent submissions*

51. Mr Higley submitted that a buyer of the Respondent/Landlord's interest in the Buildings would therefore also take account of the difficulties in collection of any sums from the owners of 18, 20, and 20A Wessex Road, and of the cost of investigating the difficulties in construing part II of the eighth schedule of the leases, and there would be a point, which it was difficult to identify, where a buyer might well say that the uncertainties were out of proportion to the price for the freehold which the buyer might otherwise have been willing to pay, particularly as there was no ground rent, and that the buyer was therefore no longer interested

52. *The Tribunal's findings*

53. The Tribunal accepts as persuasive, for the reasons given by Mr Higley :

- a. Mr Higley's evidence about the figures in the Applicant/Leaseholders' service charge accounts which relate to the Estate as defined in the leases
- b. Mr Higley's submission that a "fair proportion" of the maintenance costs for which each of the owners of 18, 20, and 20A Wessex Road might be liable, according to the Land Registry entries, would be one thirteenth of about 25% of those items in the Applicant/Leaseholders' service charge accounts which related to the driveway, but 0% for those items which did not
- c. Mr Higley's figures for the apportionment between the Applicant/Leaseholders and the three owners of 18, 20, and 20A Wessex Road of liability for the expenses shown in the last service charge accounts for the Buildings which were relevant to part II of the eighth schedule to each lease
- d. Mr Higley's calculations of the shortfall in the amounts which a buyer of the Respondent/Landlord's interest in the Buildings would have the right to recover
- e. Mr Higley's submission that the buyer would capitalise that shortfall and deduct £3,260 from the price the buyer would otherwise pay for the Respondent/Landlord's interest in the Buildings

54. The Tribunal has also taken account of Ms Tai's evidence about the lack of actual recovery from the owners of 18, 20, and 20A Wessex Road in the past, and of Mr Higley's subsequent submissions, and finds that :

- a. a buyer of the Respondent/Landlord's interest in the Buildings would make a further reduction in the price offered, to reflect :
 - o the legal costs of investigating the recoverability of expenses relating to the Estate as defined in the leases
 - o the annual difficulty and cost of recovering contributions from the owners of 18, 20, and 20A Wessex Road
 - o the legal costs of making an application to a leasehold valuation tribunal for

variation of the service charge provisions in part II of the eighth schedule of the leases on the grounds of the potential annual shortfall in recoverability

- o the fact of there being no ground rent to offset any shortfall or any costs
- o the fact that the Tribunal cannot take account of the possibility of the Applicant/Leaseholders being the buyer of the Respondent/Landlord's interest in the Buildings or of the possibility of them then entering into variations of their leases, because the provisions of schedule 6 of the 1993 Act require the Tribunal to value the enfranchisement price payable in a "no-Act world"
- o the fact that in due course potentially significant costs would be incurred when the driveway needed resurfacing
- b. the buyer would calculate that further reduction by :
 - o assuming that in relation that part of the Applicant/Leaseholders' service charge accounts in respect of which the owners of 18, 20, and 20A Wessex Road were liable for three thirteenths, namely, for reasons already given, £365, their three thirteenths contribution, namely £84.23 was, for practical purposes, in fact irrecoverable
 - o capitalising that figure of, say, £84 over 10 years, namely £840

55. The Tribunal finds that :

- a. the total deductions from the price which a buyer would otherwise have offered are therefore £3,260 and £840, totalling £4,100
- b. that deduction of £4,100 should, in all the circumstances, be split equally between the prices for 20A and 20B, ie £2,050 in each case
- c. the enfranchisement prices payable under the statutory basis set out in schedule 6 of the 1993 Act are accordingly :

20A	£3,050 less £2,050 = £1,000
20B	£3,330 less £2,050 = £1,280

Compensation

56. Ms Scruby and Mr Higley were not aware of any factors to indicate that any compensation was payable in this case

57. *The Tribunal's findings*

58. The Tribunal finds that no compensation is payable in this case

Total price payable

59. The Tribunal finds that the total prices payable are accordingly :

20A	£1,000
20B	£1,280

Form of Transfer

60. Ms Scruby submitted that :

- a. there should be one form of Transfer for both 20A and 20B, rather than a separate transfer for each, because they were both at present registered together at the Land register under one title number, and they were both being transferred to the same transferee, namely Approach 2000 Management Company Ltd
- b. there were no unusual provisions to include
- c. the form of the transfer should be in accordance with the draft in the Tribunal's bundle

61. *The Tribunal's findings*

62. The Tribunal accepts as persuasive Ms Scruby's submissions, and finds, for the reasons given by her, that the form of transfer should be in accordance with the draft in the Tribunal's bundle, copied as Appendix 5 to these reasons, subject only to the inclusion of the total of the enfranchisement prices in clause 8

Reference back to the Poole County Court

63. The Tribunal refers the matter back to the Poole County Court accordingly

64. If the Applicant/Leaseholders are advised to apply to the court for an order for specific performance of the Agreement, the court may wish to take account of the comments by the Tribunal in that respect set out earlier in these reasons

Dated the 5 October 2009



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

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Applicant/Leaseholders : Ms Suzanne Caroline Greeves (Flat 1, 20A), Mr Ryan
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and Mr Christopher John Haynes (Flat 5, 20B)

Buildings : 20A ("20A") and 20B ("20B") Approach Road, Lower Parkstone, Poole,
Dorset, BH14 8BH

Appendix 1

Mr Higley's valuation 20A

20a Approach Road, Parkstone

Appendix II

Val date 03-Feb-09

		Flats 2,3,5	Flats 1,4
Term to		2120	2125
Unexpired term		110y 8m	115y 8m

Term GR 0
Val of term 0

Reversion

2120	No of flats	Value	total
	2	140000	280000
	1	165000	<u>165000</u>
		Total	445000
	110yr 8m	5%	
PV 100 y	0.0076		
PV 10y 8m	<u>0.60417</u>		<u>0.004592</u>
			2043.303

2125	No of flats	value	Total
	2	140000	280000
	115y 8m	5%	
PV 100 y	0.0076		
PV 15y 8m	0.47337		<u>0.003598</u>
			1007.331

Total price 3050.634
say **£3,050**

S.A.Higley Bsc FRICS
Smith Robinson Higley Ltd

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00HP/OCE/2009/0031

Case No. CHI/00HP/OCE/2009/0032

Application : Sections 26 and 27 of the Leasehold Reform, Housing and Urban
Development Act 1993 as amended (“the 1993 Act”)

Applicant/Leaseholders : Ms Suzanne Caroline Greeves (Flat 1, 20A), Mr Ryan
Robert Lewis (Flat 2, 20A), Mr Dean Terrence Hoyland and Mrs Kelly Jane Hoyland
(Flat 3, 20A), Mr Christopher Robert Aldred and Ms Helen Margaret Nichiolson (Flat
4, 20A), Mr Martin Lee Clarke and Mrs Anna Louise Clarke (Flat 5, 20A), Ms
Bernadette Priscilla Tai Tenquee (Flat 1, 20B), Mr Robert |Leslie Clymo (Flat 2,
20B), Mr Karl Duke Austin (Flat 3, 20B), Mr Robert James Alexander (Flat 4, 20B),
and Mr Christopher John Haynes (Flat 5, 20B)

Buildings : 20A (“20A”) and 20B (“20B”) Approach Road, Lower Parkstone, Poole,
Dorset, BH14 8BH

Appendix 2

Mr Higley’s valuation 20B

20b Approach Road, Parkstone

Appendix III

Val date 03-Feb-09

Term to 2120
Unexpired term 110y 8m

Term
GR 0
Val of term 0

Reversion

2120	No of flats	Value	total
	4	140000	560000
	1	165000	<u>165000</u>

Total 725000

110yr 8m 5%

PV 100 y 0.0076

PV 10y 8m 0.60417

0.004592

3328.977

Total price

3328.977

say

£3,330

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Smith Robinson Higley Ltd

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Buildings : 20A (“20A”) and 20B (“20B”) Approach Road, Lower Parkstone, Poole, Dorset, BH14 8BH

Appendix 3

Mr Higley’s details of sales from HM Land Registry

Appendix IV

**Sale Prices at 20A & 20B Approach Road
From Rightmove/HM Land Registry Sources**



House prices for Approach Road, Poole (England & Wales)

31 properties found

Deed Date	Address	Type	Tenure	Price
05 May 2006	6 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£231,500
21 Apr 2006	Flat 4 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£148,000
01 Sep 2005	Flat 3 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£155,000
06 Feb 2004	4 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£180,000
23 Dec 2003	Flat 5 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£153,000
19 Dec 2003	Flat 1 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£141,250
10 Dec 2003	Flat 2 20b, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£134,000
22 Aug 2003	4 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£157,500
08 Aug 2003	Flat 5 20b, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£145,500
27 Jun 2003	6 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£188,000
30 May 2003	2 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£225,000
08 Nov 2002	10 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£175,000
11 Oct 2002	22 Approach Road, Poole, Poole BH14 8BH	Detached	Freehold	£236,000
19 Jul 2002	Flat 2 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£110,000
05 Jul 2002	Flat 3 20b, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£124,000
03 May 2002	Flat 4 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£120,000
28 Mar 2002	6 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£147,000
29 Jun 2001	Flat 5 20b, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£118,000
07 Jun 2001	Flat 2 20b, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£99,995

House prices for Approach Road, Poole (England & Wales)

Deed Date	Address	Type	Tenure	Price
01 Jun 2001	Flat 1 20b, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£99,950
29 May 2001	18 Approach Road, Poole, Poole BH14 8BH	Terraced	Freehold	£107,500
24 May 2001	Flat 4 20b, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£100,000
27 Apr 2001	2 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£128,000
02 Apr 2001	Flat 2 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£105,000
02 Apr 2001	Flat 3 20a, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£105,000

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House prices for Approach Road, Poole (England & Wales)

31 properties found

Deed Date	Address	Type	Tenure	Price
23 Feb 2001	Flat 5 20a, Approach Road, Poole, Poole BH14 8BH	Flat	Leasehold	£125,000
08 Nov 2000	Flat 3 20b, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£105,000
27 Oct 2000	Flat 1 20a, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£105,000
20 Oct 2000	Flat 4 20a, Approach Road, Poole, Poole BH14 8BH	Flat (New Build)	Leasehold	£105,000
29 Sep 2000	6 Approach Road, Poole, Poole BH14 8BH	Semi-Detached	Freehold	£119,950
10 Mar 2000	12 Approach Road, Poole, Poole BH14 8BH	Terraced	Freehold	£119,950

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Bernadette Priscilla Tai Tenquee (Flat 1, 20B), Mr Robert [Leslie Clymo (Flat 2,
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and Mr Christopher John Haynes (Flat 5, 20B)

Buildings : 20A (“20A”) and 20B (“20B”) Approach Road, Lower Parkstone, Poole,
Dorset, BH14 8BH

Appendix 4

HM Land Registry Price Index for Poole

Appendix V

HM Land Registry House Price Index For Poole

Land Registry
Cymraeg



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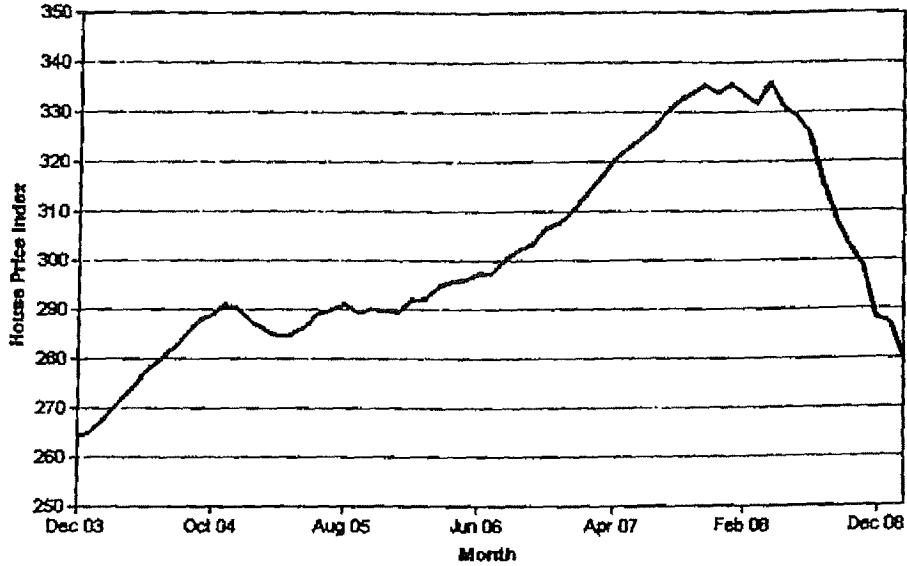
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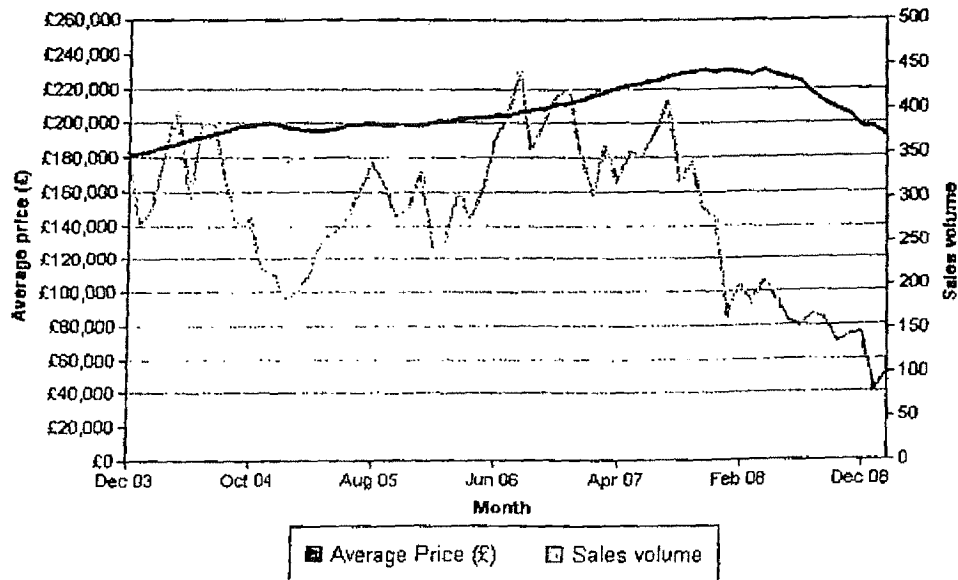
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House Price Index - Poole Council



House price and sales volume - Poole Council



Data for the two most recent months are not used as comparisons due to the lag in the registration of

sold properties.

**House Price Index report - Poole Council
(December 2003 - February 2009)**

Month	Index	Average Price (£)	Monthly Change (%)	Annual Change (%)	Sales Volume
December 2003	264.3	182,013	1.0	14.3	356
January 2004	265.1	182,577	0.3	12.1	270
February 2004	266.2	184,700	1.2	10.8	289
March 2004	271.1	186,724	1.1	10.4	353
April 2004	273.9	188,604	1.0	9.7	402
May 2004	277.4	191,070	1.3	10.7	300
June 2004	279.5	192,459	0.7	11.3	385
July 2004	281.8	194,099	0.9	11.0	384
August 2004	284.8	196,004	1.0	11.1	316
September 2004	287.7	198,152	1.1	11.4	266
October 2004	289	199,018	0.4	10.9	278
November 2004	291.1	200,455	0.7	11.3	220
December 2004	290.3	199,929	-0.3	9.8	215
January 2005	287.6	198,070	-0.9	8.5	187
February 2005	286.1	196,997	-0.5	6.7	190
March 2005	284.8	196,126	-0.4	5.0	216
April 2005	285	196,245	0.1	4.1	256
May 2005	286.5	197,336	0.6	3.3	263
June 2005	289.3	199,206	0.9	3.5	279
July 2005	290.1	199,753	0.3	2.9	309
August 2005	291.3	200,595	0.4	2.3	340
September 2005	289.5	199,371	-0.6	0.6	318
October 2005	290.2	199,877	0.3	0.4	280
November 2005	289.9	199,622	-0.1	-0.4	289
December 2005	289.6	199,456	-0.1	-0.2	332
January 2006	292.1	201,152	0.9	1.6	243
February 2006	292.3	201,289	0.1	2.2	251
March 2006	294.7	202,962	0.8	3.5	310
April 2006	295.8	203,710	0.4	3.8	277
May 2006	296	203,841	0.1	3.3	311
June 2006	297.3	204,768	0.5	2.8	368
July 2006	297.5	204,907	0.1	2.6	391
August 2006	300.2	206,742	0.9	3.1	445
September 2006	302.2	208,118	0.7	4.4	356
October 2006	303.3	208,879	0.4	4.5	383
November 2006	306.6	211,157	1.1	5.8	415

December 2006	307.8	211,942	0.4	6.3	423
January 2007	310.3	213,721	0.8	6.2	354
February 2007	313.9	216,175	1.1	7.4	303
March 2007	317	218,320	1.0	7.6	362
April 2007	320.7	220,868	1.2	8.4	317
May 2007	322.7	222,250	0.6	9.0	354
June 2007	324.9	223,765	0.7	9.3	350
July 2007	326.9	225,155	0.6	9.9	376
August 2007	330.3	227,434	1.0	10.0	411
September 2007	332.5	228,968	0.7	10.0	318
October 2007	334	230,049	0.5	10.1	343
November 2007	335.7	231,174	0.5	9.5	289
December 2007	334.1	230,104	-0.5	8.6	278
January 2008	335.9	231,307	0.5	8.2	163
February 2008	333.9	229,978	-0.6	6.4	204
March 2008	332	228,618	-0.6	4.7	177
April 2008	336.2	231,553	1.3	4.8	208
May 2008	331.4	228,229	-1.4	2.7	186
June 2008	329.4	226,863	-0.6	1.4	159
July 2008	326	224,482	-1.1	-0.3	154
August 2008	316	217,634	-3.1	-4.3	167
September 2008	308.4	212,400	-2.4	-7.2	161
October 2008	302.9	208,627	-1.8	-9.3	135
November 2008	298.8	205,764	-1.4	-11.0	142
December 2008	288.3	198,573	-3.5	-13.7	146
January 2009	287.4	197,934	-0.3	-14.4	80
February 2009	280.5	193,155	-2.4	-16.0	99

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Buildings : 20A (“20A”) and 20B (“20B”) Approach Road, Lower Parkstone, Poole,
Dorset, BH14 8BH

Appendix 5

Form of Transfer

Land Registry Transfer of whole of registered title(s)

TR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies

Add any modifications

	<p>1 Title number(s) of the property: DT268087</p>
	<p>2 Property: 20A and 20B Approach Road Poole Dorset BH14 8BH</p>
	<p>3 Date:</p>
	<p>4 Transferor: Finn Properties Limited</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation: British Virgin Islands (b) Registered number in England and Wales including any prefix: Company No. BVI 340323</p>
	<p>5 Transferee for entry in the register: Approach 2000 Management Company Limited</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: Company No. 04022109 <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:</p>
	<p>6 Transferee's intended address(es) for service for entry in the register: 5A NEW ORCHARD POOLE DORSET BH15 1LY</p>
	<p>7 The transferor transfers the property to the transferee</p>
	<p>8 Consideration</p> <p><input checked="" type="checkbox"/> The transferor has received from the transferee for the property the following sum (in words and figures):</p> <p><input type="checkbox"/> The transfer is not for money or anything that has a monetary value</p> <p><input type="checkbox"/> Insert other receipt as appropriate:</p>
	<p>9 The transferor transfers with</p> <p><input type="checkbox"/> full title guarantee</p> <p><input checked="" type="checkbox"/> limited title guarantee</p>

Where the transferee is more than one person, place 'X' in the appropriate box.

10 Declaration of trust. The transferee is more than one person and

they are to hold the property on trust for themselves as joint tenants

they are to hold the property on trust for themselves as tenants in common in equal shares

they are to hold the property on trust:

Complete as necessary.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

11 Additional provisions

1. This Transfer is executed for the purposes of Chapter I of Part I of the Leasehold Reform, Housing and Urban Development Act 1993.

2. The Transferee covenants with the Transferor from now on to observe and perform the covenants referred to in Entries Numbered 1 to 4 of the Charges register and to indemnify the Transferor against liability for any future breach or non-observance of these covenants.

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

12 Execution

Signed as a deed on behalf of: Finn Properties Limited, a company incorporated in British Virgin Islands, acting by District Judge [], in pursuance of a vesting order of Deputy District Judge Murphy sitting at Poole County Court dated 21 July 2009.

Signature.....

WARNING

~~If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.~~

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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