

CHI/00ML/OAF/2008/0009
DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER SECTION 21 OF
THE LEASEHOLD REFORM ACT 1967

Address: 49 Roedean Crescent, Brighton, BN2 5RG

Applicants: (1) John Michael O'Hara
(2) Kathleen O'Hara

Respondent: Brighton and Hove City Council

Application: 23 September 2008

Inspection: 15 January 2009

Hearing: 15 January 2009

Reconvene: 29 January 2009

Appearances:

Tenants

Mr G. Holden FRICS Chartered Surveyor, Parsons Son & Basley
For the Applicants

Landlord

Mr A. Ford MRICS Chartered Surveyor, Cluttons
For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr A. Mackay FRICS
Mr M. Robinson FRICS

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/00ML/OAF/2008/0009

**IN THE MATTER OF SECTION 21 OF THE LEASEHOLD REFORM ACT
1967**

**AND IN THE MATTER OF 49 ROEDEAN CRESCENT, BRIGHTON, BN2
5RG**

BETWEEN:

**(1) JOHN MICHAEL O'HARA
(2) KATHLEEN O'HARA**

Applicants

-and-

BRIGHTON AND HOVE CITY COUNCIL

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application made by the Applicants pursuant to section 21 of the Leasehold Reform Act 1967 (as amended) ("the Act") for a determination of the price payable to acquire the freehold interest in the property known as 49 Roedean Crescent, Brighton, BN2 5RG (" the subject property").
2. The Applicants occupy the subject property by virtue of a lease dated 9 July 1963 granted by the Respondent to Charles Henry Sutton for a term of 99 years from the same date at a fixed ground rent of £225 per annum ("the lease"). The Tribunal was told that the Applicants took an assignment of the lease on or about 17 May 1984.

3. By a notice of claim dated 16 May 2008 served on the Respondent, the Applicants exercised their rights under Part 1 of the Act to acquire the freehold interest in the subject property. It was agreed by the parties that this was the relevant valuation date and that the unexpired term of the lease as at this date was 54.14 years. By a counter notice dated 8 July 2008, the Respondent admitted the Applicant's claim to enfranchise and proposed a purchase price of £116,500 plus legal fees of £500 and surveyors fees of £1,000 plus VAT stating that the valuation method should be in accord with Section 9(1A) of the Act. Apparently, the parties were unable to agree the purchase price for the freehold interest and, on 23 September 2008, the Applicants issued this application.

The Issues

4. The valuers instructed by the parties had, helpfully, prepared a joint statement of matters agreed and areas of dispute. Although the capitalisation rate was initially in issue, at the hearing this was agreed by the valuers at 6%. The agreed facts are set out in the schedule annexed to this Decision. The matters that fell to be determined were:
 - (a) the capital or freehold vacant possession value.
 - (b) relativity.

Basis of Valuation

5. It was a matter of common ground between the parties that the purchase price to be paid should be valued in accordance with section 9(1A) of the Act. Essentially, the purchase price is the amount, as at the valuation date, the property, if sold on the open market by a willing seller, might be expected to realise based on the statutory assumptions set out in section 9(1A)(a)-(f) of the Act. Section 9(1D) of the Act provides that where marriage value has to be taken into account the tenant is entitled to one half of it.

Inspection

6. The Tribunal inspected the subject property on 15 January 2009. The Tribunal also externally inspected several other comparable properties in Roedean Crescent relied upon by the parties. The subject property comprises a large detached house with brick elevations under a tiled roof. Originally built around 1965, it is understood that substantial internal refurbishment was undertaken when the applicants originally purchased the property including new UPVC windows, kitchen and swimming pool. The house would now benefit from further updating and repair, or remodelling as has been already undertaken to other properties in Roedean Crescent. One unusual feature is that the main entrance to the house is from the rear rather than the front. Whilst this is probably very practical given the exposed position of the property, it may not be considered a good feature by prospective purchasers.

Decision

7. The hearing in this matter also took place on 15 January 2009. The Applicants and the Respondent were represented by Mr Holden FRICS and Mr Ford MRICS respectively, both of whom are chartered surveyors. Mr Holden's valuation evidence was set out in his report dated 12 January 2009 and he contended for a purchase price of £73,127. Mr Ford's valuation evidence was set out in his report dated 13 January 2009 and he contended, having amended his valuation, for a purchase price of £116,500.

Capital Value

8. It was common ground between the parties that the subject property, in its present condition, was to be regarded as being unimproved because any "improvements" carried out by the Applicants had been done about 25 years ago and had no material effect on valuation. In other words, those improvements were to be regarded as having no real value and, therefore, no discount for these must be applied when valuing the Applicants existing leasehold interest.
9. Both valuers were of the opinion that the best evidence of capital value was to be obtained from open market transactions involving the subject property.

However, no such evidence existed because the property had been in the ownership of the Applicants for approximately 25 years. It was also common ground between them that the next best evidence was to be obtained from the sale of similar houses held on a leasehold basis but there was no evidence of sales of leasehold houses with a similar unexpired term either on the Roedean Estate or in the Brighton and Hove area. Therefore, both valuers used market value evidence of the sales of similar freehold houses in the area as comparable evidence.

10. As a general proposition, Mr Holden contended that those properties on the south side of Roedean Crescent had a greater value than those properties on the north side largely because of the sea views enjoyed by the former. This proposition was accepted by Mr Ford as being correct in principle. The subject property is located on the north side of Roedean Crescent. Mr Holden, therefore, limited his comparable evidence to those properties also situated on the north side of the road.
11. Mr Holden relied on the sale of six freehold properties in Roedean Crescent that took place between 25 June 2001 and 25 January 2008 at varying prices. These were 31, 33, 41, 43, 47 and 51 Roedean Crescent. In each instance, he distinguished the accommodation offered by each of those properties in relation to the subject property and discounted 31 Roedean Crescent because of its greater size and superior location. In order to try and compare the remaining properties with each other, Mr Holden indexed the selling prices to the approximate valuation date in 2008. He did so using three indices, namely, Nationwide Building Society, Halifax (HBOS) and HM Land Registry. Mr Holden then averaged these three indices and applied that average to the remaining comparable properties. Having done so, he also excluded 47 Roedean Crescent because this provided a far higher average because it was “much better” than the other comparable properties.
12. The average indexed price of the remaining four comparable properties produced a figure of approximately £700,000. Mr Holden then checked whether the subject property fell above or below that average. To do this, he

had regard to the sales particulars for 33, 41 and 43 Roedean Crescent. He stated that he had no additional information for 51 Roedean Crescent.

13. Mr Holden concluded that 33 Roedean Crescent was more valuable than the subject property because it was on a slightly wider site and had a better sea view. The average of the indexation suggested that the value of this property fell by 4.7% in the six months from November 2007 to May 2008. However, in his opinion, Mr Holden suggested that the fall in market values over this period was greater at approximately 10%. He then adjusted the sale price of £775,000 by adding £40,000 for a fourth bedroom, deducting £25,000 for the superior views, deducting 10% to reflect the fall in values and a further £50,000 for improvements required. This produced an adjusted valuation of £661,000 for the subject property.
14. Mr Holden also carried out a similar exercise for 41 and 43 Roedean Crescent. This produced adjusted valuations of £667,576 and £645,438 respectively. He concluded that both of these properties provided the best evidence of value because they appeared to be of a similar age and required similar expenditure on improvement and modernisation. In his opinion, Mr Holden valued the freehold interest of the subject property with vacant possession, as at the valuation date, as being £650,000 to take account of the fact that it had a north facing main entrance at the rear of the building and the oblique sea views.
15. Mr Ford's valuation approach of capital value was to also have regard to the sales of twelve freehold properties in Roedean Crescent that took place between 24 February 2006 and 22 August 2008. He then adjusted the sale prices to the valuation date by using the HBOS South East index which produced an overall average price of £844,791. Mr Ford accepted that making adjustment to sale prices using indices did not provide precise valuations. Nevertheless, he contended that they provided a good indication as to the likely value of the subject property. Having considered all the comparable evidence and having made the necessary adjustments for accommodation and condition in each instance, Mr Ford concluded that the freehold vacant

possession value of the subject property in an unimproved condition was £815,000.

16. The difficulty presented to the Tribunal in making a determination of the freehold vacant possession value of the subject property was the absence of any market evidence regarding the sales of leasehold houses either in Roedean Crescent or in Brighton and Hove generally. This difficulty was acknowledged by both valuers. The additional difficulty presented to the Tribunal was the fact that the comparable properties relied on by both valuers had not been inspected by either of them and various assumptions had been made, especially in relation to improvements (if any), size, accommodation and condition of these properties.
17. Both valuers had accepted, as a proposition, that the comparable properties on the south side of Roedean Crescent had higher capital values primarily because of the relatively uninterrupted sea views. Therefore, the Tribunal excluded these comparables from its consideration because the higher capital values would have undoubtedly distorted the valuation of the subject property, which was located on the north side of Roedean Crescent. Moreover, if the values of the properties located on the south side were taken into consideration, it would require a further adjustment to take account of the value for the sea views. This would be an entirely arbitrary exercise and would inevitably lead to greater uncertainty on capital values.
18. Therefore, the Tribunal limited consideration to those comparable properties located on the north side of Roedean Crescent. The Tribunal discounted 3 Roedean Crescent because this property was located at the western end of the road, which was generally regarded as a better location with higher capital values. It was also in a semi derelict condition. The Tribunal also discounted 47 Roedean Crescent because the transaction evidence too long before the valuation date and the use of indexation, having regard to changing market conditions in the interim, would lead to greater uncertainty in valuation. Indexation over such a long period of time would introduce greater uncertainty

than was necessary. In the Tribunal's view, any assistance provided by indices was over a shorter period of time.

19. The remaining comparable properties on the north side the Tribunal had regard to were 31, 33, 41, 43 and 51 Roedean Crescent. It took an average of the sale prices of these properties in an unimproved condition because 31, 41 and 43 Roedean Crescent had subsequently been altered after purchase. 33 and 51 Roedean Crescent appear to remain in an unaltered condition. The Tribunal then adjusted the sale prices to the valuation date using the respective indices adopted by both valuers in relation to these comparables. However, 33 Roedean Crescent was the only common comparable relied on by both valuers and their respective indices differed. In relation to this property, the Tribunal adopted the lower indexation used by Mr Ford. In this transaction, he had acted for the landlord and, no doubt, if he considered that a higher index ought to have been applied, he would have adopted this figure.
20. The average of the basket of comparables used by the Tribunal produced a figure of £706,548, but say £706,500 for the freehold vacant possession value of the subject property as at the valuation date. The Tribunal then considered Mr Holden's contention that there should be a further discount of 5% to reflect the "no Act" theoretical assumption that the tenant will have a statutory right to remain in possession at the end of the term lease. For the Respondent, Mr Ford stated that this was not necessary because the prospect was too remote. The Tribunal agreed with Mr Ford on this point.

Relativity - Existing Lease Value

21. Again, given the paucity of market evidence for leasehold houses, Mr Holden had to consider enfranchisement cases concerning flats under the Leasehold Reform, Housing and Urban Development Act 1993 on the issue of relativity.
22. Mr Holden considered a number of LVT decisions made last year involving flats with unexpired lease terms of plus or minus 8 years of the unexpired term of the subject property. Mr Holden also placed reliance on two settlements he had personally dealt with in April and June 2008. Ignoring the highest

relativity figure of 90%, the remaining matters produced a range of relativities from 88% (62 years) to 81.5% (33 years). Mr Holden also had regard to the Beckett and Kay graph of graphs and, in particular, to the graphs relating to mortgage and non-mortgage dependent flats. They suggested relativities of 72.5% to 87% and 78% to 87% respectively for a lease with unexpired term of 54.14 years. They confirmed the range of relativities produced by his comparables.

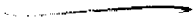
23. In addition, Mr Holden stated that the graph for "2004 St John's Wood Flats and Houses" showed a relativity for houses as being several points higher than for flats. In his opinion, this was entirely predictable because of a shortage in supply of houses relative to flats. Less choice for house buyers meant that they were willing to pay a higher percentage of the freehold value to acquire an equivalent long leasehold interest than a flat buyer. By analogy, this analysis also applied to Roedean, which is a desirable residential area. Therefore, in his opinion, the correct relativity to be applied was 85% to freehold vacant possession value.
24. On the issue of relativity, Mr Ford also sought assistance from the Beckett and Kay graph. The graph relating to all LVT determinations suggested a relativity of approximately 84% for an unexpired term of 54 years. The Gerald Eve 1996 and Savills 1992 graphs, which excluded settlements, suggested relativities of 73% and 77% respectively. The Cluttons 2005 The Hyde Park Estate graph related to "non Act" transactions compiled from settlement evidence, the majority of which Mr Ford stated that he had been responsible for negotiating over the last 20 years. In particular, Mr Ford relied on a schedule of the most recent transactions in Central London he had been negotiating with unexpired terms of around 52-54 years with relativities of approximately 76-78% of the freehold value, which was consistent with the Hyde Park graph.
25. Mr Ford accepted that relativity did vary significantly between Central London and the South Coast. A possible explanation was that settlements had not been driven by large landlords having a vested interest in pursuing lower

relativities in one particular area. He stated that the majority of transactions he had negotiated in the Brighton and Hove area had slightly longer unexpired terms of 66-70 years as at the valuation date. The relativity negotiated in these transactions was around 89-90%, being only 2% above the Hyde Park and Gerald Eve graphs and 6% below the graph of LVT determinations. Therefore, in his opinion, the correct relativity to be applied in the present case was 80% of the freehold vacant possession value.

26. The issue of relativity is a vexed and uncertain matter that is regularly argued before this and other Tribunals. Ideally, it should be based on market evidence of short values. The statutory assumption to be made under the Act is that a tenant has no right to enfranchise. However, the right to enfranchise has been widely extended generally, both in relation to houses and flats, and it has become increasingly difficult to find comparable market evidence in the "no Act" world. Relativity graphs are, therefore, invariably relied on by the parties and because they, like the settlement evidence relied on in the present case, are essentially subjective evidence and subject to the same criticisms. Nevertheless, this was the only evidence presented to the Tribunal in this matter. It found neither argument advanced by the parties particularly compelling on this issue and, therefore, determined that a relativity figure of 82.5% should be applied to the freehold vacant possession value.

27. Accordingly, the Tribunal determined that the premium to be paid by the Applicants to acquire the freehold interest in the subject property is **£92,250**. The Tribunal's valuation is annexed to this Decision.

Dated the 19 day of February 2009

CHAIRMAN.....*I Mohabir*.....
Mr I Mohabir LLB (Hons) 

49 ROEDEAN CRESCENT, BRIGHTON

VALUATION

AGREED FACTS

Unexpired lease term	54.14 years.
Ground Rent	£255 per annum
Capitalisation Rate	6%
Deferment/Reversionary Rent	4.75%
Landlord's share of marriage value	50%
Valuation Date:	16 May 2008

**49, ROEDEAN CRESCENT
BRIGHTON**

SECTION 9 (1A) VALUATION - THE FREEHOLDER'S INTEREST

Ground Rent	£225		
YP 54.14 yrs @ 6%	<u>15.9558</u>	£ 3,590.06	
Value of unimproved house	£706,500		
PV £1 in 54.14 yrs @ 4.75%	.08107yp	<u>£57,275.96</u>	
		£60,866.02	£60,866.00

MARRIAGE VALUE

Unencumbered freehold value disregarding improvements		£706,500	
Less: Existing LH @ 82.5% Relativity	£582,862		
Existing FH as above	<u>£ 60,866</u>	<u>£643,728</u>	
Marriage Value =		£ 62,772	
	Landlords share @ 50% thereof		<u>£31,386.00</u>
Price to be paid			<u>£92,252.00</u>