

2014

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

CAM/OOKF/OLR/2010/0065 CAM/OOKF/OLR/2010/0063

Property : (1) Flat A 19 Argyll Road Westcliff-on-Sea
Essex
(2) 58a Genesta Road Westcliff-on-Sea Essex

Applicant(s) : Inkberrow Limited

Respondent(s) : Forcelux Limited

Date of Application : 28 July 2010

Date of Hearing : 8 October 2010

Type of Application : Section 48, Leasehold Reform, Housing and
Urban Development Act – to determine the
Premium and the terms of acquisition of an
extended lease.

Appearance : Landlord: Mr J C Gibb BSc MRICS
Tenant: Mr M J V Dedman MA BSc

Tribunal : M. Graham Wilson, J. R. Humphreys FRICS,
Richard Marshall FRICS FAAV

DECISION

Applications

1. These were applications under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 to determine the premium payable for, the terms of acquisition of, and the cost of enfranchisement.
2. Both properties involve the same Applicant and same Respondent, were similar and were within a short distance of one another. It was convenient to record the Tribunal's decision in one document.

Property Descriptions and the Inspections: Existing Lease Terms

3. Both properties were ground floor flats in converted semi-detached Edwardian houses. The houses were of brick construction under tiled roofs and both had been converted during the 1980's. Argyll Road had been converted into three small flats and a maisonette and Genesta Road into four small flats.
4. Argyll Road was a ground floor flat. The accommodation included a living room with a kitchen area incorporated into it, a separate shower room/WC and a bedroom. There was a parking space for one car on a shared forecourt area.
5. The Argyll Road Lease was dated 4 July 1988 and had 77.4 years unexpired at the date of the initial notice, dated 8 February 2010. The ground rent was £100 for the first 25 years of the Lease, £200 for the next 25 years, £400 for the next 25 and £800 for the last 24 years of the Lease. The property was managed by the freeholder pursuant to the terms of the Lease.
6. The Genesta Road lease was dated 22nd July 1987 and had 76.3 years unexpired at the date of the initial notice, 8th February 2010. The ground rent was £100 per annum for the first 33 years, £200 for the following 33 years and £400 per annum for the remainder of the term. Again, there was space to park a car on the shared forecourt (though there were four flats the forecourt contained space for only three cars).
7. In contrast to the Argyll Road Lease, the Genesta Road Lease had created a "self-managing" arrangement among the tenants of the four flats.
8. The properties were inspected in the presence of the Applicant's agent and the Respondent's valuer. The initial inspection of Argyll Road was delayed by the failure of the Applicant to arrange access. More disturbingly, the undertenant was in occupation and had not been warned of the inspection. Such disregard of the occupier was lamentable.
9. The Tribunal observed that both properties had gas fired central heating. Argyll Road was a dark property, with evidence of damp. It had UPVC windows, but externally the property was in poor condition.
10. In contrast Genesta Road was light and airy but the bedroom was small and partly single-storey with a poor outlook. The external condition was poor.

Hearing

11. Both Mr Gibbs and Mr Dedman had prepared Reports to which their valuation calculations were attached. Essentially, Mr Dedman argued for premium values of £3,143 (Genesta Road) and £4,595 (Argyll Road) and Mr Gibb for £7,275 and £8,700 respectively.
12. A Hearing Bundle had been prepared, but it rapidly became apparent that the Bundle was incomplete and contained neither evidence of comparables nor a schedule of agreed (or otherwise) facts, as directed. In fact, it seemed that the preparation of the Hearing Bundle had been as controversial as the application itself. As a result, the Hearings were prolonged and, equally importantly, neither party was able to do full justice to its case. The directions had spelt out that the preparation of the Hearing Bundle was a co-operative exercise, but the direction was aimed principally at parties without expertise. In this case, solicitors and experts had been engaged on both sides and it was difficult to understand why a properly composed Hearing Bundle was not available.
13. At the beginning of the Hearing, the Tribunal were informed that there were matters still in dispute as far as the new Lease of Argyll Road was concerned (apart, that is, from the premium). The two issues were whether the new Lease should contain the existing prohibition against underletting, and whether it should include enhanced provision for an enhanced notice fee.
14. Mr. Dedman said that the clause against underletting was unnecessarily restrictive. Mr. Gibb argued that only "necessary" changes should be made to the original Lease. Mr. Gibb commented that he "did not feel strongly" about the notice fee.
15. At the Tribunal's invitation, and albeit late in the day, the representatives were asked to produce a schedule of agreed facts. In the event, they were able fairly quickly to agree the property descriptions, their dimensions, their condition (fair) and the Lease periods unexpired. They also agreed the ground rent. The remainder of the schedule was as follows:

Mr. Dedman

Mr. Gibb

Argyll Road		
Reversion:	£75,000	£90-100,000
Relativity:	96%	94%
Capitalisation Rate:	7.5%	5%
Deferment Rate:	5.5%	5%
Genesta Road		
Reversion:	£70,000	£90-102,000
Relativity:	95%	94%
Capitalisation Rate:	7.5%	5%
Deferment Rate:	5.5%	5%

Mr. Gibb's figures, he said, took account of the ground rent payable.

16. Both parties' representatives gave evidence of the value of the freehold of both properties. The evidence in respect of both properties was given consecutively and each expert afforded the opportunity of cross-examining the other. Sadly, because the comparable evidence had not been included in the Hearing Bundle the process was both slow and tortuous. For his part, Mr. Gibb complained stridently that he had not been accorded the level of co-operation to which he was entitled. However, whether or not that was the case, in the modern litigation environment a party faced with such alleged lack of co-operation should file its own evidence and, unless some injustice would be worked, serve the evidence unilaterally.

In fairness, to both Mr. Gibb and Mr. Dedman, it appeared to be the case that the preparation of the Hearing Bundle had been dealt with, at the last moment, by the parties' solicitors. Neither parties' comparables were included in the Hearing Bundle. That appeared to be the fault of neither expert, but the fault of the solicitors. Further, the Bundle was not paginated, which served to add to the length and complexity of the Hearing.

17. On the day of the Hearing, Mr. Dedman produced a schedule of what he submitted were 8 comparable properties. The schedule gave details, prices obtained at auction and by private treaty. In general, it gave details of the tenure, the situation and the accommodation

offered. It was to be hoped that in future both experts would think fit to include such comparable evidence in their reports.

In any event, Mr. Dedman's prices, so to speak, ranged from £55,000 for a property requiring renovation, up to £80,000 (for a property in Grosvenor Road, Southend).

18. Mr. Gibb produced a long list of house and flat prices, and he too did so on the day of the Hearing. Mr. Gibb's approach was to demonstrate what he called "the tone of the asking prices". The Tribunal found Mr. Gibb's schedules unhelpful because there was insufficient descriptive detail of the flats mentioned. Further, Mr. Gibb could not provide details of the leases or of the condition of the properties.
19. Mr. Gibb then referred to short particulars of about 14 properties. Unfortunately, he provided only one copy of the particulars, and the progress of the hearing slowed still further. Mr. Gibb's prices ranged from £64,000 to about £125,000.
20. The parties' representatives were unable to satisfy the Tribunal (whether in evidence or by cross-examination) whether the comparables were in good repair. It seemed that neither representative had inspected the properties to which they referred. Mr. Gibb's evidence was characterised by uncertainty. Although he produced numerous property addresses and sales details going back many years, sufficient detail for the Tribunal's purposes was not forthcoming.
21. Both parties summarised and emphasised what they had written in their Reports.

Relativity

Mr. Dedman's evidence was related to previous LVT Decisions, and agreements reached, outside London. He thought the London-based graphs unhelpful. Mr. Gibb thought the contrary and adopted a percentage of 94% - however, in his view, all such relativity graphs needed to take account of ground rents. If they did not, a negative marriage value would be arrived at in these cases – which would, in his view, be wrong.

Capitalisation

Mr. Dedman proposed 7% and Mr. Gibb 5%. Mr. Gibb argued for 5% because this figure should be related to the capital market and not the property market (as in *Sportelli*). Mr. Gibb thought 5% a poor return on a risk-free investment. The Tribunal considered with both valuers the question of the capitalisation of ground rent income and its relation to the property market.

Deferment Rate

In respect of the Argyll Road property, Mr. Dedman's view was that the decision in the *Zuckerman* case (.25% for obsolescence, .25% resulting from increased management) should be adopted. That produced a deferment rate of 5.5%. Mr. Gibb's view was that *Zuckerman* was wrongly decided and there was no such thing as "obsolescence" and that the alleged "management difficulties" were belied by the numbers wanting to join the market. He argued for the *Sportelli* rate of 5%.

Decision

- 22.1 The Tribunal's decision was that the premium payable for Flat A. 19 Argyll Road was £4,894.
- 22.2 The Tribunal's decision was that the premium payable for 58A Genesta Road was £4,135.
- 22.3 As to the two areas of controversy in respect of the Argyll Road Lease, the Tribunal's decision was that the prohibition against underletting appeared in the existing Lease and that it was not "necessary" to alter the provision (however unreasonable it may thought to be). In view of Mr Gibb's concession in respect of the notice fee, no alteration would be ordered in that respect.
- 22.4 The Tribunal decided that no costs should be payable by either party.

These decisions were made for the following reasons.

Valuation

23. The Tribunal preferred the valuation evidence of Mr. Dedman in both cases because his comparables provided comprehensive descriptions and details which enabled the Tribunal to value both subject properties at the valuation date. The Tribunal decided that the value of the reversion of Argyll Road was £75,000. The Tribunal decided that the reversion of the Genesta Road was worth £67,500 because of the full repairing and insuring nature of the Lease (the difficulties of which, the Tribunal thought, were reflected in the poor external condition of the property) and would reduce the leasehold value by 10% (on the assumption, that is, that the property is in good repair but so as to allow for the unusual repairing obligations and the prospect if disrepair in the future). Until the hearing, it appeared to the Tribunal that neither valuer had given proper consideration to this point and to its effect on value.
24. The Committee's decision in respect of each of the valuation ingredients noted above was as follows:

Relativity

As far as the Tribunal was concerned, the question of relativity was not an exact science and it was disappointing that agreement had not been reached prior to the Hearing. The Tribunal adopted a percentage of 94%, but would make no adjustment for ground rent.

Capitalisation

The Tribunal's knowledge and experience of this issue led it to conclude that the appropriate figure was 6.5%.

Deferment Rate

Having given this aspect careful consideration, and taking account of the decision of *Zuckerman*, it was the Tribunal's view that with the Argyll Road property there should be no allowance for obsolescence because it was likely that the property would be standing for many years. However, landlords' responsibilities for a property of this type in this location have indeed increased and a 0.25% would be added to 5% to give a total deferment rate of 5.25%.

As far as Genesta Road was concerned, whilst the Landlord is not responsible for repair and insurance and management the problems associated with the individual tenants being responsible for their own repairs and insurance was in itself a problem for landlords and investors. The lack of repair and possibility of increased obsolescence was obvious. Accordingly, the Tribunal adopt 5% as in *Sportelli* but for slightly different reasons as explained above.

The Tribunal's Calculations

25. **Flat A, 19 Argyll Road, Westliff on Sea, Essex SSO 7HL**

Matters Determined

Date of Valuation 8th February 2010

	£	£	£
Long Lease	75,000		
Reversion 101% of Long Lease*	75,750		
Deferment Rate	6.5%		
Relativity	5.25%		
	94%		

Diminution of Landlord's Interest

Ground rent	100		
Y.P. 3 years @ 6.5%	<u>2.6485</u>	265	
Ground rent	200		

	£	£	£
Y.P. 25 years @6.5%	2.1979		
Defered 3 years @ 6.5%	<u>0.8278</u>	2,019	
Ground rent	400		
Y.P. 25 years	12.1979		
Defered 28 years @6.5%	<u>0.1715</u>	837	
Ground rent	800		
Y.P. 24 years @ 6.5%	11.9907		
Defered 53 years @ 6.5%	<u>0.0355</u>	341	
Reversion	75.750		
Deferred 77.4 years @ 5.25%	0.0191	1,447	
Landlord's future interest	75,750		
Defered 167.4 years @5.25%	<u>0.0002</u>	<u>-15</u>	
			4,894

Marriage Value

Extended Lease			
Landlord's future interest	15		
Tenant's interest	<u>75,000</u>	75,015	
Landlord's current interest	4,894		
Present value	<u>71,205</u>	<u>76,099</u>	
		- 1,084	
Negative value not allowed			<u>0</u>
PREMIUM PAYABLE			<u>£4,894</u>

*a figure adopted by the Tribunal as a reflection of the increase in value of the extended leasehold interest

58a Genesta Road Westcliff on Sea Essex

Matters Determined

Date of valuation	8 th February 2010
Long Lease	67,500
Reversion 101% of Long Lease*	68,175
Capitalisation Rate	6.5%
Deferment Rate	5%
Relativity	94%

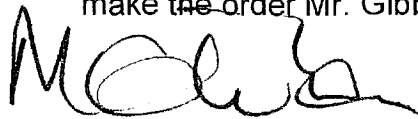
Diminution of Landlord's Interest

Ground rent	100	
Y.P. 10 years @ 6.5%	<u>7.1888</u>	719

	£	£	£
Ground rent	200		
Y.P. 33 years @ 6.5%	13.4591 <u>0.5327</u>	1,434	
Ground rent	400		
Y.P. 33 years @ 6.5%	13.4591		
Deferred 43 years @ 6.5%	<u>0.0667</u>	359	
Reversion	68,175		
Deferred 76.4% years @ 5%	0.0241	1,643	
Landlord's future interest	68.175		
166.4 years deferred @ 5%	0.0003	<u>-20</u>	
			4,135
Marriage Value			
Landlord's future interest	20		
Tenant's interest	<u>67,500</u>	67,520	
Landlord's current interest	4,135		
Present value	<u>64,084</u>	<u>68,219</u>	
		-699	
Negative value not allowed			<u>0</u>
PREMIUM PAYABLE			£4,135

Costs

26. Mr. Gibb sought to persuade the Tribunal to make an award of costs against the Applicant under Schedule 2 paragraph 10(2)(b) of the Commonhold and Leasehold Reform Act 2007 (the "acting unreasonably" provision") because of the way in which either the Applicant, or its valuer or its solicitors, had prepared for the Hearing. However, it was the Tribunal's view that the shortcomings identified were to be laid at the doors of both parties. It was not appropriate to make the order Mr. Gibb argued for.



.....
M. GRAHAM WILSON
Chairman

Dated: 28th October 2010.