UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2009] UKUT 172 (LC)
LT Case Number: LRA/150/2008
LRA/41/2009

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – houses – price – whether valuation to be carried out by the usual two-stage approach or in three stages including Haresign addition – held no objection in principle to three stages – appellant's valuer fails to justify use of Sportelli generic rate by following previous guidance from Tribunal – appeals dismissed – Leasehold Reform Act 1967 section 9(1).

IN THE MATTER OF TWO APPEALS AGAINST DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL

BY

FREEHOLD PROPERTIES LIMITED

Re: 42 Elmay Road
Sheldon
B26 2NG
and 7 other houses
in the West Midlands

Before: N J Rose FRICS

Sitting at 43-45 Bedford Square, London WC1B 3AS
on 7 September 2009

Anthony Radevsky, instructed by Olswang, solicitors of London for the appellant

The following cases are referred to in this decision:

Cadogan v Sportelli [2007] 1 EGLR 153
Cadogan v Sportelli [2008] 1 WLR 2142
Re Mansal Securities Ltd and others' appeals [2009] 20 EG 104
Haresign v St John's College, Oxford (1980) 255 EG 711
Re Mayfly (Corrib) Ltd's appeal LRA/29/2002, unreported
Re Marlodge (Monnow) Ltd's appeal LRA/28/2002, unreported

DECISION

Introduction

1. These are two appeals, heard together, against decisions of the Leasehold Valuation Tribunal for the Midland Rent Assessment Panel, involving valuations of properties in the West Midlands under section 9(1) of the Leasehold Reform Act 1967 (the 1967 Act). The first decision, dated 21 August 2008, related to seven properties and the second, dated 13 January 2009, related to one property, 35 Turnberry Road, Great Barr, B42 2HP.

2. Permission to appeal against the first decision was granted by the LVT on 23 October 2008. That permission was restricted to the issue of the deferment rate. On 4 February 2009 the President granted permission to appeal on the additional issue of the value of the landlord's ultimate reversion. 18 February 2009 the LVT granted permission to appeal against the second decision on both issues. The appellant in both appeals is the freeholder, Freehold Properties Limited. None of the leaseholders responded to the appeals. The eight houses which are the subject of these appeals, the respective leaseholders and the enfranchisement prices determined by the LVT are as follows:

Address	Leaseholder(s)	LVT determination
42 Elmay Road, Sheldon, B26 2NG	Mr V G Gilsenan	£10,567
69 Hollydale Road, Erdington, B24 9LS	Mr E R Billington	£10,615
152 Shady Lane, Great Barr, B44 9EP	Mr P J Thomas and Ms Y J Tooley	£5,461
68 Turnberry Road, Great Barr, B42 2HU	Mr M F Lawson and Ms J A Bailey	£9,154
224 Calshot Road, Great Barr, B42 2BX	Mr D A Trappett	£9,006
12 Kingshurst Road, Northfield, B31 2LN	Mr G Bate	£11,188
98 Kingshurst Road, Northfield, B31 2LH	Mr J A Hurlston and Mrs M M Hurslton	£12,441
35 Turnberry Road, Great Barr, B42 2HP	Miss P E Bennett	£11,124

3. Mr Anthony Radevsky of counsel appeared for the appellant. He called one expert witness, Mr John Geraint Evans BSc (Hons), MSt(Cantab), Dip Surv, MCIM, FRSA, FRICS of Bureau, a firm of property consultants based in Cardiff, which he founded in 1998 and which specialises in leasehold enfranchisement advice and valuations.

The appeal properties

4. Brief details of the appeal properties and their leases are as follows:

42 Elmay Road	A three bedroom semi-detached house with garage accessed from rear lane. Front garden laid as hard standing for motor vehicle and rear garden. 99 years from 24 June 1936.
69 Hollydale Road	A three bedroom semi-detached house with garage. Front garden laid as hard standing for motor vehicle and rear garden. 99 years from 24 June 1938.
152 Shady Lane	A three bedroom semi-detached house with garage partly converted into a utility room. Gardens front and rear. 99 years from 24 June 1949.
68 Turnberry Road	A three bedroom semi-detached house with small extension for kitchen. Gardens front and rear with latter benefiting from lane access. 99 years from 25 December 1937.
224 Calshot Road	A three bedroom mid-terrace (of four) house with gardens front and rear. 99 years from 24 June 1937.
12 Kingshurst Road	A three bedroom semi-detached house with front garden laid as parking area, rear garden and garage. 99 years from 24 June 1937.
98 Kingshurst Road	A three bedroom semi-detached house with small single storey extension set on an inside corner plot. Gardens front and rear. 99 years from 24 June 1937.
35 Turnberry Road	A three bedroom semi-detached house with garage accessed from rear lane. Front and rear gardens. 99 years from 25 December 1934.

The LVT decisions

5. The LVTs calculated the prices payable in two stages. They capitalised the existing ground rents for the term of the unexpired lease at 6.5% (7% for 35 Turnberry Road), and they capitalised the section 15 rents (based on 5.5% of the site value apportionment) in perpetuity, deferred for the unexpired term of the existing lease at 5.5%.

The appellants' evidence

6. Mr Evans considered that the valuation under section 9(1) should be carried out in three stages: capitalisation of the existing ground rent at the agreed rate of 6.5%; deferred capitalisation of the section 15 ground rent for 50 years and reversion to the standing house value. He said that, when he first undertook section 9(1) valuations in the early 1980s, it was common practice (in South Wales at least) to apply a substantially higher deferment rate when valuing the standing house reversion than that used for deferring the capitalised section 15 rent. An additional 1% or 2% was applied to the former to reflect a perceived increase in risk resulting from the more distant reversion.

7. The effect of compounding over lengthy periods was that relatively small changes in interest rates produced disproportionately large changes in value. It became common practice in the early 1980s to ignore the second reversion and to capitalise the section 15 rent in perpetuity instead. Since, in practice, it was usual to apply a higher deferment rate at the third stage, the difference between the two methods of valuation was marginal.

8. The decision of the Lands Tribunal in *Cadogan v Sportelli* [2007] 1 EGLR 153 had challenged the perceived wisdom that deferment rates differed when applied to reversions of, say, 25 and 75 years. In consequence, the separate valuation of the second reversion was no longer marginal. It now produced a substantially different capital sum from that resulting from the capitalisation of the section 15 rent in perpetuity.

9. Mr Evans referred to my recent decision in Re *Mansal Securities Limited and others' appeals* [2009] 20 EG 104, where I found that a reversion to site value was subject to more volatility and was more illiquid than a reversion to a standing house. He said that in those circumstances a hypothetical purchaser would pay a price which reflected the value of the standing house reversion. For the purposes of valuing the third stage (but not the second), Mr Evans reduced the entirety values below those he had agreed with the lessees' surveyor at the LVT, to reflect the fact that none of the appeal properties was entirely developed, as follows:

Address	Agreed entirety value	End lease value adopted
42 Elmay Road	£143,000	£130,000
69 Hollydale Road	£157,500	£145,000
152 Shady Lane	£150,000	£140,000
68 Turnberry Road	£145,000	£135,000
224 Calshot Road	£125,000	£115,000
12 Kingshurst Road	£157,500	£145,000
98 Kingshurst Road	£162,000	£145,000
35 Turnberry Road	£130,000	£120,000

10. In arriving at his valuations Mr Evans devalued the agreed site values (based on between 30% and 33⅓% of the agreed entirety values) at 5.5% and capitalised the resulting section 15 rents at 5.5% for 50 years. He deferred the capitalised value of each section 15 rent at 4.75% for the unexpired term of the existing lease. He also applied a deferment rate of 4.75% to the adopted end lease value of the standing house at the end of the lease, deferred for the existing unexpired term plus 50 years. He was aware that, in *Mansal,* the Tribunal had applied a deferment rate of 5%. In that case, however, the valuation evidence was to the effect that the reversion was to a capitalised modern ground rent in perpetuity. If the reversion were in fact to standing house value, Mr Evans felt that there was no justification for departing from the generic deferment rate of 4.75% established in *Sportelli*.

11. Shortly before the hearing, Mr Evans produced a further written report in which he provided details of the sale by auction in May 2007 of seven freehold ground rents secured on houses in South Wales. This information had previously been produced at the LVT hearings. He said that all the properties would have been valued under section 9(1) had a valid notice been served under the 1967 Act and that the prices paid supported his valuation approach.

Conclusions

12. I consider the last point first. In para 65 of *Sportelli* the Lands Tribunal concluded that "market evidence cannot be used as the basis for calculating the deferment rate." In the Court of Appeal judgment which upheld *Sportelli* [2008] 1 WLR 2142, Carnwath LJ said that, although it was appropriate for the Tribunal to offer guidance in that case, and to expect LVTs to follow generally that lead in the absence of statutory intervention (para 99), there was a distinction between properties within the Prime Central London area (PCL) with which *Sportelli* was concerned and those outside PCL. In para 102 Carnwath LJ said:

> "The judgment that the same deferment rate should apply outside the PCL area was made, and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with different areas. The deferment rate adopted by the Tribunal will no doubt be the starting point; and their conclusions on the methodology, including the limitations of market evidence are likely to remain valid."

In answer to a question from me Mr Evans made it clear that he was not seeking to disagree with the Court of Appeal. I see no reason to conclude that the market evidence is more helpful in this case than it was in *Sportelli*. I do not obtain assistance from it.

13. I turn to Mr Evans's opinion that the freehold interest should be valued in three stages, namely the existing ground rent for the remainder of the term, the section 15 ground rent for 50 years, and then the standing house value. The third stage was termed a "Haresign addition", after the Lands Tribunal decision (V G Wellings QC) in *Haresign v St John's College, Oxford* (1980) 255 EG 711. That case concerned the price payable under section 9(1) for the freehold interest in a late Victorian house in Oxford.

14. In *Haresign* the evidence of the landlord's surveyor, Mr Barnes, on the approach to the valuation was summarised by the Tribunal as follows:

> "Mr Barnes said that in the great majority of cases in which he prepared valuations for the college under the Leasehold Reform Act 1967, he valued on a two-stage basis only: that is to say, he capitalised the existing ground rent and the s15 rent also, but the latter on a perpetuity basis. These were cases where the residue of the contractual term was substantial. In such cases the advantages to the landlord in applying the three-stage basis adopted in the present case, which basis takes into account the value of the freehold reversion in possession at the end of the 50 years' extension, would be microscopically small. In the present case, where the residue of the contractual term was but three years, the three-stage basis resulted in a gain to the landlord of £349, which gain was material."

15. In reaching its conclusion that the price payable should be £6,600, the Tribunal in *Haresign* followed Mr Barnes's three stage approach, although it reduced his figures for site value and standing house value. I bear in mind that the Tribunal received no expert evidence on behalf of the lessee in that case. Nevertheless, its approach seems to me to be unimpeachable. The 1967 Act requires the valuer to assume that the freeholder will receive a revised modern ground rent for 50 years following the expiry of the existing lease, with a reversion thereafter to the house itself. It appears that in practice valuers have found that the figure which is arrived at by calculating the enfranchisement price in three stages is not materially different from that which results from valuing in two stages, capitalising the section 15 rent in perpetuity. If that were not the case, and the "three stage value" was significantly higher than the "two stage value", the former would be the appropriate figure, since no properly advised vendor would accept a lower price than one calculated in accordance with the statutory assumptions.

16. This conclusion is, in my view, not inconsistent with the decisions of the Lands Tribunal (P H Clarke FRICS) which rejected a *Haresign* approach in two cases dated 25 November 2002 (*Re Mayfly (Corrib) Ltd's Appeal* and *Re Marlodge (Monnow) Ltd's Appeal* LRA/28 and 29/2002, unreported). In these cases the Tribunal described the two stage approach as "the usual practice", exceptions to which must be warranted by the circumstances. I agree with Mr Evans that a significant reduction in the deferment rate commonly used by valuers could well be a circumstance which justifies a departure from the two stage approach.

17. I am not satisfied, however, that Mr Evans's three stage valuations in the present appeals are reliable. This is because, although he referred to *Mansal*, he did not follow the clear guidance given to valuers in that decision. In paras 32 and 33, I considered average price figures compiled by the Nationwide Building Society which

> "strongly suggest that, over a period of some 55 years, house price growth was significantly slower in the West Midlands than in Central London"

I continued:

> "I do not consider, however, that this information on its own is sufficient to justify an increase in the generic deferment rate for houses in the West Midlands. As the LVT pointed out, the Nationwide statistics had been derived from weighted figures and the weighting had been changed on four occasions. They also included dissimilar types of houses and studio flats. I do not have enough information to be able to decide whether these factors materially affect the conclusion to be drawn from the statistics.
>
> Moreover, before one could be drawn it would also be necessary to ascertain whether a different pattern emerged if one looked at movements over a 50 year period commencing in different years and in different quarters between, say, 1952 and 1957 (see *Hildron*, para 39).
>
> There is therefore insufficient evidence before me to displace the *Sportelli* rate of 4.75% on the grounds of location. I was told, however, that a significant number of other cases are awaiting the outcome of these appeals. In those circumstances it is appropriate for me to emphasise that the conclusions I have reached on this occasion have necessarily been arrived at without the benefit of expert evidence on behalf of the leaseholders. They have also been made with inadequate information about the Nationwide statistics and without knowing whether any other relevant statistics exist. Valuers who give evidence in similar cases in the future – whether before the LVT or the Lands Tribunal – will no doubt bear in mind their professional duty to investigate as fully as possible the matters to which I have referred before forming a conclusion as to whether the first impression that I have obtained from the Nationwide statistics fairly reflects past patterns of growth."

18. I put it to Mr Evans that he had not carried out the investigations which *Mansal* had suggested should be undertaken by independent experts giving valuation evidence in subsequent cases which raised the deferment rate on houses in the West Midlands. He replied:

> "With respect, I don't think we were appealing to displace the *Sportelli* rate or the rate set in *Mansal*."

When I pressed him on the point Mr Evans said that he had looked at the Nationwide and other statistics and had concluded that it was difficult to draw a common trend from them. I regret that I am not persuaded that Mr Evans has carried out an independent analysis of the available statistics, sufficient to show that the appropriate deferment rate in this case should not depart from the *Sportelli* deferment rate of 4.75 per cent, or that the values determined by the LVT were wrong. The appeals are therefore dismissed.

19. For completeness I add this. The LVT which considered 35 Turnberry Road – but not the LVT which dealt with the remaining seven cases before me – accepted the contention of the lessee's surveyor that *Haresign* should be disregarded, in part because of the subsequent passing of section 143 of the Commonhold and Leasehold Reform Act 2002, which gave tenants with already extended leases the opportunity to purchase the freehold during the period of extension. Unlike this Tribunal, and the LVT which considered the other seven cases, the 35 Turnberry Road LVT did not have the benefit of legal argument from counsel on behalf of the freeholder. Having considered Mr Radevsky's submissions, I am satisfied that he was right

to argue that the lessee's contention before the LVT was misconceived. This is because section 9(1)(a) of the 1967 Act provides that the tenant's right to acquire the freehold under the Act must be ignored in a section 9(1) valuation.

Dated 11 September 2009

N J Rose FRICS