

Southern Rent Assessment Panel & Leasehold Valuation Tribunal

Case No.CHI/45UH/OCE/2003/0045

**Re: 22 Shakespeare Road, Worthing, West Sussex BN11 4AR
(the Property)**

Between

Mrs I Saxby, Mr R Whall and Ms V Whall (the applicants)

And

Peter Robinson (the respondent)

DECISION OF THE TRIBUNAL

Appearances:

Mr Andrew Pridell, FRICS, for the applicants

The Respondent was not present and was not represented

Hearing:

14 November 2003

Tribunal:

Ms J A Talbot MA Cantab. (Chairman)
Lady J Davies FRICS
Mr D Myers FRICS

Date of Issue:

16 December 2003

Introduction

1. This is an application pursuant to Section 26(1) of the Leasehold Reform Housing and Urban Development Act 1993 ("The 1993 Act"). On 10/03/2003 the applicants applied to Worthing County Court, in claim number WG300992, for an order vesting the freehold interest of the ground floor of 22 Shakespeare Road, Worthing, in the applicants. Such application is appropriate when the person who owns the freehold of the premises, in this case a Mr Peter Robinson, cannot be found.
2. On 12/09/2003 the District Judge made the vesting order as sought. Paragraph 3 of the Order provides that the applicants "do make a referral to the Leasehold Valuation Tribunal (LVT) to determine the terms on which they will acquire the freehold to include the extent of the premises, the purchase price and all other relevant terms and for the LVT to approve a draft form of Transfer". The District Judge also dispensed with service of the initial Notice under Section 13 of the Act on the basis that the whereabouts of the respondent could not be ascertained. Once this Tribunal has made its determination, the matter is then to be referred back to the County Court.
3. The law is to be found in the 1993 Act. Section 27 deals in detail with the Tribunal's role in relation to a vesting order. The provisions relating to the calculation of the price to be paid for the freehold are set out in Schedule 6.

Inspection

4. The members of the Tribunal inspected the property before the hearing. We were accompanied by Mr Pridell, the applicants' valuer. The property consists of a substantial two-storey detached house built in the 1930's, situated on level ground in a pleasant residential area of Worthing. The property is of brick construction under a plain tiled roof, with a tile hung bay and porch. It has been converted to form three flats, two on the ground floor and one on the first floor. There is a front garden and separate garage included in the demise to Flat 2. There is a side pathway giving access to the rear garden, included in the demise to the rear ground floor flat.
5. We viewed all the flats internally. The front ground floor flat is accessed from a front door to the left of the entrance lobby. It comprises a front room with a bay window, one rear bedroom, a small galley-style kitchen and small interior bathroom. The rear ground floor flat is accessed from a door at the side of the house. It has a larger living room at the rear with French doors opening on to the back garden, one bedroom, a very small kitchen, and narrow interior bathroom with fitted cupboard. Both flats have central heating.
6. We inspected the first floor flat as a courtesy to the applicant, Mrs Saxby, and to get a complete idea of the property, although this flat does not fall to be considered for valuation purposes. This flat, known as Flat 2, is accessed from a separate front door to the right of the entrance lobby and up a flight of stairs. It comprises the whole of the first floor, with a large landing area now used as a dining room, four other rooms of varying sizes, kitchen, bathroom and separate W.C. It too has central heating.

The Hearing

7. The tenants' valuer, Mr Pridell, gave evidence on behalf of the applicants. The respondent obviously did not attend. Mr Pridell confirmed that his evidence was contained in his valuation report, which was undated but prepared in April 2003. A copy was supplied to the tribunal.
8. It was first necessary to identify the extent of the premises to be valued. This was the whole of the ground floor. Mr Pridell explained by way of background that the freehold of the ground

floor had been acquired by Mr Robinson, who was a builder. He had converted the ground floor into the two existing flats, and in 1990, sold them on long leases. Both these leases were granted for a term of 99 years from 24/06/1990. Mrs Saxby bought the lease to the front flat, which is now occupied by a sub tenant. She could not afford to buy the lease to the rear flat, which is now held by Mr R Whall and Ms V Whall as owner occupiers.

9. There was some confusion about the leases and the numbering of the ground floor flats. The front flat is described in the lease as Flat 1B, but commonly known as Flat 1A. Conversely, the rear flat is described in the lease as Flat 1A, to include the rear garden, but is commonly known as Flat 1B. Also, we noted that in the copy leases supplied to us, the lease of Flat 1A did not contain a site Plan B showing the ground floor layout, while the copy lease for Flat 1B showed the rear flat edged red instead of the front flat. This may just have been a photocopying error, or there may be an error in the leases themselves. To avoid further confusion, in this Decision the flats will from now on described as the front and rear flats, rather than 1A or 1B.
10. Mr Pridell first dealt with the valuation date. He contended that under the Commonhold and Leasehold Reform Act 2002, partly enacted, the date of the valuation would be determined as the date of the initial Notice under Section 13. This part of the 2002 Act, Section 126, was not yet in force so he proposed his inspection date of 21/03/2003.
11. We asked Mr Pridell whether in view of the fact that the 2002 Act was not yet in force, the provisions of Schedule 6.1(1) should apply, namely, that the valuation date should be the date of the Tribunal's determination, 14/11/2003. He stated that his comparable evidence for the valuation of the existing leasehold interests was accurate as at 21/03/2003, but that in his view the market had been relatively flat between March and November.
12. An alternative approach was to adopt the date of the tenants' application to the County Court. Section 27(1)(b) of the 1993 Act provides that the deemed date of what would have been the Section 13 Notice, is to be the date of that application, which in this case was 10/03/2003. Mr Pridell concurred with this approach.
13. Turning to the valuation of the existing leasehold interests, Mr Pridell confirmed that he had valued the front flat at £87,500 and the rear flat at £93,500. He drew our attention to the comparables mentioned in his report. The closest of these was Flat 3, 34 Shakespeare Road, a one bedroom flat with a smaller garden converted about 6 years earlier, on the market at £92,500. Under questioning from the Tribunal, he explained that the £6,000 difference was attributable to the added amenity of the garden enjoyed by the rear flat. He had valued the rear flat at £1,000 higher than the nearest comparable to reflect the fact that the garden of the comparable was a smaller courtyard garden, whereas the garden at the subject property was larger. Both gardens were east facing and therefore of similar aspect. Mr Pridell considered the premium of £1,000 for the larger garden was justified.
14. Mr Pridell explained that there were no relevant tenants' improvements and therefore nothing to warrant any deduction under Schedule 6.
15. On the question of the value of the freehold interest, Mr Pridell had adopted a yield figure of 7.5% on the capitalisation of the ground rent income. He considered this to be appropriate as in his experience the majority of cases he dealt with, settled at this figure. However, in relation to the value of the reversion, he adopted a higher yield rate of 8%. In response to questioning from the Tribunal he explained that he made this adjustment to reflect the fact that in his view the value of the reversion was less secure, being further away in time. He did not have any reported LVT cases to support his view that 8%, rather than 7.5%, was correct.
16. Mr Pridell confirmed that there was no marriage value or compensation to be considered in this case, as the leases had in excess of 80 years unexpired.

17. Mr Pridell set out his calculations resulting in an Enfranchisement Price of £1,664, rounded to £1,650. He did not think there were any other matters for us to determine.

The Decision

18. We first considered what was the correct valuation date. Section 126 of the 2002 Act has not yet been brought into force. For the reasons set out in paragraph 12 above, we concluded that the valuation date should be 10/03/2003, the date of the tenants' application to the County Court, and the deemed date of what would have been the Section 13 Notice. This had the advantage of being close to the date on which Mr Pridell inspected the property for his valuation, on 21/03/2003, and obtained his comparables. It also follows the intention of S.126 of the 2002 Act.
19. We next considered the value of the existing leasehold interests in the two ground floor flats. We decided that Mr Pridell's valuations of £93,500 for the rear flat and £87,500 for the front flat were fair and reasonable. We believed that he had fairly applied the comparable evidence, particularly in relation to the closest comparable, Flat 3, 34 Shakespeare Road, where this was a similar property with the same aspect and similar leasehold term unexpired, by making appropriate adjustments to reflect the difference the size of the garden. We also accepted the £6,000 differential between the two subject flats as fairly reflecting the added value attributable to the garden.
20. We did not fully concur with Mr Pridell on the question of the yield rates. We saw no reason why the yield should not be the same for both the capitalisation of ground rent and value of the reversion. We did not accept Mr Pridell's adoption of 8% for the value of the reversion. We were not convinced by reasoning that the value of the reversion was less secure because of the time factor, as in our view there was no lack of certainty, and a potential purchaser would not be deterred by this. We therefore decided to adopt a rate of 7.5% and to apply it to both elements of the calculation.
21. We agreed that marriage value and compensation did not apply in this case.
22. We had to proceed on the basis that there were no onerous covenants or encumbrances of which we were unaware.
23. We then made the calculation as required by Sections 27, 32 and Schedule 6 of the 1993 Act, that appears as Appendix One to this Decision.
24. We decided that the Enfranchisement Price would be £1,790.
25. We did not consider that there were any other terms to be included the in draft Transfer document provided to us, save that the applicants would be required to indemnify the existing freeholder for any breaches of covenant on the part of the applicant after the date of the conveyance. However, the draft Transfer does contain an error at paragraph 3, in that the property is described as "Ground Floor Flat". In fact, of course, there are now two flats on the ground floor, and the freehold interest to be acquired is of the whole of the ground floor, registered under the title number WS42508, as stated in paragraph 1 of the County Court Order dated 12/09/2003. The leasehold interests in the two ground floor flats subsequently created after the conversion, are registered under separate title numbers, according to the Office Copy Entry of the freehold interest (appearing at pages 5 to 10 in the bundle of papers prepared for the Tribunal). We approve the draft Transfer subject to these points.


Conclusion

26. The terms for the acquisition by the applicant of the freehold title to 22 Shakespeare Road, Worthing, West Sussex subject to the existing leases are as follows:

- (i) that the consideration for the acquisition of the freehold subject to the existing leases is to be £1,790.
- (ii) that the transferee will indemnify the previous freehold owner against any breach of covenant on the part of the transferee as landlord in respect of the existing leases as from the date of transfer
- (iii) that the Deed of Transfer will be amended to show the description of the property at paragraph 3 to read "Ground Floor of 22 Shakespeare Road, Worthing, West Sussex BN11 4AR".

Dated 16 December 2003

Signed


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**Ms Jane Talbot
Chairman**

Appendix One

Calculation of Enfranchisement Price

(i) Capitalisation of the Ground Rental Income

Ground rent 2003 - 2023		£100	
YP 20 yrs @ 7.5%		<u>10.1945</u>	£1,019
Ground rent 2023-2056		£130	
YP 33 yrs @ 7.5%	12.1074		
PV of £1 in 20 yrs	<u>0.2354</u>	<u>2.85</u>	£ 370
Ground rent 2056 – 2089		£160	
YP 33 yrs @ 7.5%	12.1074		
PV of £1 in 53 yrs @ 7.5%	<u>0.0216</u>	<u>0.2615</u>	<u>£ 40</u>
			£1,429

(ii) Value of Reversion

Reversion to capital value	£181,000	
PV of £1 in 86 yrs @ 7.5%	<u>0.00199</u>	<u>£ 360</u>
Total value of Freeholder's Interest		<u>£1,789</u>
	Say	<u>£1,790</u>