

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL  
& LEASEHOLD VALUATION TRIBUNAL**

**LEASEHOLD REFORM ACT 1967**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Case No:** CHI/21UD/OLE/2004/0001

**Property:** 39 Paynton Road  
St. Leonards-on-Sea  
East Sussex

**Applicant:** Mr. E.G. Brabazon  
c/o Messrs. Young, Coles & Langdon  
Solicitors

**Respondent:** Mr. J. Stallwood

**Date of Hearing:** 23rd February 2005

**Members of the Tribunal:** Mr. R. Norman (Chairman)  
Mr. B.H.R. Simms FRICS MCI Arb  
Ms J. Dalal

**Date decision Issued:**

**RE: 39 PAYNTON ROAD, ST. LEONARDS-ON-SEA, EAST SUSSEX**

**Background**

1. The Applicant is the freeholder of the subject property and the Respondent is the leaseholder of that property. The lease has been extended and now expires on the 25th March 2029. The ground rent up to the 25th March 2004 was £224 per annum and the ground rent from the 25th March 2004 is subject to review as provided by the lease and Section 15 (2) of the Leasehold Reform Act 1967 ("the Act").
2. On the 15th July 2004 the Applicant applied to the Leasehold Valuation Tribunal to determine the ground rent payable from the 25th March 2004 for the remaining 25 years of the lease.
3. This matter was listed for a hearing on the 22nd October 2004 and on that date the Respondent gave evidence which raised a doubt as to whether he was the leaseholder of the whole of the subject property or of just the first floor flat. As a result the hearing was adjourned.

4. It is now clear and accepted by the parties that the Respondent is the leaseholder of the whole of the subject property but that his interest is subject to an underlease of the ground floor flat.

5. The Applicant's Solicitors in preparation for the hearing on the 22nd October 2004 had provided to the Tribunal a copy of the report of Mr. William Dexter MRICS and a copy of the lease. They have since provided a copy of a report and a supplementary report from Mr. Richard J. Inniss Bsc FRICS FCI Arb. The Respondent has received copies of these documents.

6. Our determination appears at paragraphs 28 to 36 below.

### **Inspection**

7. The subject property is a two storey terraced building which has been converted into two self contained flats. The ground floor flat is now known as No. 39 Paynton Road and the first floor flat is now known as No. 39a Paynton Road.

8. On the 23rd February 2005 we inspected the subject property. Present when we inspected the ground floor flat was Mrs. May the occupier and present when we inspected the first floor flat was the Respondent.

9. The subject property was described in Mr. Dexter's report. The Respondent agreed that he had received a copy of that report and that the description in the report was accurate.

10. We asked the Respondent if he had anything to draw to our attention. He pointed out the work he had carried out on the property; in particular to provide a bathroom. He produced:

- (i) a document ("the Respondent's submissions") signed by Mr. Marlow, Mr. Steward and himself in which was set out a detailed and reasoned calculation of the new ground rent which they considered should be determined;
  - (ii) a document signed by the Respondent and Mrs. Stallwood confirming that the subject property had been used as two self contained flats for at least the last thirty years, and
  - (iii) a letter from Messrs. Butters, David Grey & Co. Solicitors dated 17th February 2005.
- The Respondent had copies of these documents which he gave to Mr. Inniss at the start of the hearing.

### **The hearing**

11. The hearing was attended by Mr. Inniss (who explained that he was appearing as an expert witness and not as an advocate for the Applicant), the Respondent and Mr. Marlow and Mr. Steward, the sublessees of the ground floor flat.

12. Mr. Inniss gave evidence referring to his report. He gave details of his qualifications and experience and stated that he did work in Hastings and that he has a general knowledge of the housing market in Hastings.

13. He was challenging the approach of the Tribunal in earlier cases where the determinations had been limited by the evidence brought before the Tribunal and he asked us to look at this matter afresh.

14. He had intended to enclose with his report the sales particulars for the St. Margaret's Road site referred to in his report but the particulars had not been enclosed. However they were produced by Mr. Steward.

15. The valuation date of 25th March 2004 was agreed.

16. Mr. Inniss' evidence was that because the property consisted of just two small flats, whether it was occupied as a house or as two flats did not make any material difference for the purpose of determining the ground rent to be paid.

17. He had come to the conclusion that the entirety value of the subject property was £135,000 and considered that the details of sales of comparable properties contained in Mr. Dexter's report supported this.

18. As a check, Mr. Inniss had also approached the matter by looking at site value; evidence of which is not often available. However, in this case he had found a site in St. Margaret's Road which assisted him. This was a better site than the subject property and adjustments had to be made for the differences between that site and the subject property and for the differences in price between October 2002 when the St. Margaret's Road site had been purchased and the valuation date of the 25th March 2004.

19. If the entirety value approach was to be used it was necessary to decide the proportion of the entirety value of the subject property which should be attributed to the site value. He accepted that there could be enormous differences in the percentage to be adopted and that it was a matter of judgement but that in general, outside London, the proportion was about one third. When dealing with lower value properties or when house prices go down, the building costs stay the same so the percentage of site value must reduce. If prices rise then the percentage which is site value should increase. In South East London, Leasehold Valuation Tribunals had come to the conclusion that 40% was the correct proportion. In Perth Road in Hastings a figure of 20% had been agreed but that was at least four years ago when values of flats were about £48,000 and these flats would be worth twice that on the valuation date. Values in Hastings had substantially increased by the valuation date and when there are high resale values of properties the site value proportion would go up to 40%. In his judgement 35% was the correct proportion to attribute to site value on the valuation date.

20. As to the yield to be applied, Mr. Inniss submitted that this should be approached in the same way as in an enfranchisement case and referred to Tribunal decisions in support of that. Mostly in the case of the leaseholder of a very long lease wishing to purchase the freehold a yield of 6% or 7 % is applied and 6% had been adopted by Leasehold Valuation Tribunals in enfranchisement cases. Where a lessee is within the 50 year renewal situation then the question should be viewed from the point of view of an investor. It is more attractive as an investment to have 25 years to run to the reversion and with a higher ground rent than to have 50 years to run and with a nominal ground rent. Therefore that would justify a drop in the yield rate to 5.5%. He added that if too low a yield were adopted it would be disadvantageous to any lessees who in future sought enfranchisement.

21. Mr. Inniss submitted that taking the standing house value of the subject property as £135,000 and the site value as 35% gave a figure of £47,250 for the site value. Using the site value of the St. Margaret's Road site with adjustment, for size, location, date, etc. gave a figure for the site value at Paynton Road of £56,586. He then considered those figures and came to the conclusion that a site value of £50,000 should be adopted and applying a yield of 5.5% resulted in a ground rent of £2,750 per annum.

22. Mr. Inniss answered questions put to him by Mr. Marlow and by the Tribunal.

23. Mr. Marlow gave evidence and referred to the Respondent's submissions. He submitted that if there were no evidence of sales of land then that showed that there was no demand and therefore the rental figure would be likely to be zero and that the Commonhold and Leasehold Reform Act 2002 refers to a rent of a peppercorn.

24. As to the yield, Mr. Marlow proposed 4% on the basis that it ought to reflect the rates of interest one could expect to obtain from that investment. Bank rate was 4.75% having gone up from 3.75% or 3.5% at its lowest. 4% would be in line with current rates. He also felt that the rent should be based on the use to which the premises are put, namely two flats.

25. Mr. Steward stated that the Respondent's main disagreement was with the figure for the site value, which was dealt with in the Respondent's submissions.

26. Mr. Inniss submitted that the Respondent's submissions were not in line with what the Act said. Reference could not be made to the nominal ground rents charged on the grant of new leases. It would be a question of opinion on the percentage of standing house value and how one adjusts for the open market evidence. No-one in the market would be considering in terms of rental but would be considering capital values. As to yield, property yields had no proximity to bank rate. Commercial yields had nothing to do with the Act rates. If a lower rate were used in determining ground rent then if the lessees later sought enfranchisement they would pay dearly for it. When analysing the price for the St. Margaret's Road site, Mr. Inniss submitted that an estimate of flat values at the time of the purchase should be used rather than current sale prices.

27. Mr. Marlow stated that in Hastings prices went up when the university building was announced in December 2000. There had been a 30% increase in property prices in 3 months. Since then prices had increased at a more gentle rate. Mr. Inniss stated that prices had gone up but the cost of building had gone up considerably, partly because of the increase in the cost of oil.

### **The Determination**

28. We considered the evidence which had been given at the hearing, the documents produced by and on behalf of the parties, the lease and our inspection of the subject property. We also had regard to our knowledge of the property market in the locality.

29. The matters in dispute were the site value and the yield to be applied.

30. In order to arrive at the site value we considered the evidence of sales of comparable property. We found that there was no evidence that valuing the subject property as a house or as two flats would have any material effect for the purpose of determining site value. There was some justification for Mr. Inniss' figure of £135,000 but there was also evidence of a price of £128,000 where contracts were exchanged on 11th March 2004 and of a price of £130,000 where contracts were exchanged on 6th June 2004. That evidence suggested a slightly lower figure. There was other evidence but that was of different accommodation or where contracts had been exchanged at a later date. We found that the entirety value of the subject property for this purpose was £130,000 at the valuation date.

31. We then had to consider the proportion of that figure which should be attributed to the site. Figures ranging from 20% to 40% were mentioned by Mr. Inniss but we considered that the extremes should be ignored. The St. Margaret's Road site was comparable but adjustments had to be made both as to the differences in location and as to the effect of time on prices since the site was bought in 2002. Mr. Innis had referred to the Nationwide Property Price Index but that was of limited assistance to us as that Index is of house rather than land prices. Also we had no evidence of whether there were any particular difficulties with the development of the St. Margaret's Road site which might have affected the price paid for the site as it had formerly been a garage.

32. We found that a figure for the site value of between 30% and 35% of the total value would be justified and based our calculations on 32.5%.

33. We found that a yield of 5.5% would be appropriate as this represents a reasonable figure taking into account the investment risk and prevailing interest rates.

34. We understood the logic in the Respondent's submissions but we had to follow the Act and decisions made by the Lands Tribunal.

35. Our calculation was therefore that the value of the subject property on 25th March 2004 was £130,000, that the site value was 32.5% of that namely £42,250 and applying a yield of 5.5% produced a rental figure of £2,323.75.

36. We therefore determined that the ground rent for the subject property should be £2,324 per annum from 25th March 2004.



R. Norman  
Chairman