

EASTERN LEASEHOLD VALUATION TRIBUNAL

Decision of the Eastern Leasehold Valuation Tribunal on an application under s. 24 of the Leasehold Reform, Housing and Urban Development Act, 1993 in respect of Elizabeth House, 118, High Street, Stotfold, Bedfordshire

Tribunal; Mrs. J.H.Lancaster BA, Barrister at Law (Chairman)
 D.S. Brown FRICS, MCI Arb
 Miss M. Krisko BSc(Est Man), BA, FRICS

Applicant; Stephen Allan File - acting as Nominee Purchaser

Respondent David Thomas Chellew

Appearances John Hilditch FNAEA for the Respondent

Hearing date 20 January 2004

INTRODUCTION

1. This is an application by Mr. File, tenant of Flat 1 Elizabeth House, acting as nominee purchaser for the tenants of all the other flats in this building (see below) to the Leasehold Valuation Tribunal (LVT) for the determination of the price to be paid by the nominee purchaser for the freehold of Elizabeth House (the Property).

Flat 2 tenant Elaine Anne Munro
Flat 3 tenant John James Lillycrop
Flat 4 tenant Graham Eric Jarman
Flat 5 tenant Frederick Harry Goode
Flat 6 tenant Adele Anna Corney

THE PROPERTY

2. The Property comprises a 2-storey purpose-built (1970) block of 6 flats, all of which have similar accommodation; shared entrance hall, and in the case of the first floor flats, stairs and landing, leading to individual door to hall, sitting room, kitchen, double bedroom and bathroom. However, Flats 1 and 4 have larger kitchens than the others. An electric warm-air heating system, run on Economy 7, was provided when the flats were built, together with an immersion heater, and kitchen and bathroom fittings. The windows were single-glazed. Outside, each flat has its own small garden, and a garage.

THE INSPECTIONS

3. The Tribunal inspected Flat 1, (ground floor), 4 and 6 (first floor). Externally, the Property appears in need of some refurbishment, particularly to the paintwork. Internally, the flats inspected appeared to be in reasonable condition, and the Tribunal were able to see the original fittings and heating system. The Tribunal were told that the flats inspected were representative of all the flats.

THE HEARING

4. Two issues were raised by the Chairman at the beginning of the hearing;

a. Flat 5 - the Tribunal had been informed that the tenant, Mr. Goode, had died in December 2003. His sister-in-law was present at the hearing. She confirmed that she is the sole beneficiary and executor of Mr. Goode's will, and it was agreed by both parties that the Tribunal could proceed with the application regarding Flat 5 on the basis of the existing application

b. Terms of leases

- there appeared to be no covenant to repair any common parts. At the request of the Tribunal, a copy of the lease of Flat 4, a first floor flat was produced. This lease includes the stairs and first floor landing. Having read this lease, which the Tribunal was told by both parties is the same as all leases for first floor flats in the Property, together with the lease for Flat 1, (already produced to the Tribunal) which the Tribunal was told is the same as all leases for ground floor flats, the Tribunal concluded that there are no internal common parts within the Property, and both parties agreed that the Tribunal should proceed on this basis;

- it was not clear to the Tribunal whether the roof structure was included in the demised premises. It was agreed by both parties that the Tribunal should be asked to proceed on the basis of an implied demise, under Clause 3 (b) of the leases, with all tenants sharing equally the costs of maintenance, repair and renewal. The Tribunal agreed to proceed on this basis.

5. Mr. Hilditch said that, although he is not a member of the RICS, he understood the expert witness rules, and would abide by them.

6. Both parties had submitted full statements of case, and the Chairman asked that, as these had been read by the Tribunal members, evidence in chief be restricted to summary, and highlighting the principal points.

THE APPLICANTS CASE

7. Mr. File stated that this application for enfranchisement had been delayed by lengthy negotiations regarding the determination of a new ground rent under clause 2 of the leases, and this had eventually been resolved by an independent expert on 10 November 2003. As a result of the costs involved, the tenants were no longer able to afford to be represented at this Tribunal by a solicitor or surveyor.

8. The Notice under s.13 of the LRA 1968 was dated 22 April 2003, proposing a price of £20,000, based on the then ground rent of £5.00 p.a.. The Counter Notice, dated 16 April 2003, proposed a price of £187,759.00. If the Landlord had agreed the ground rent on the basis of the tenants offer of £125.00 p.a., the Respondent's calculation of the enfranchisement price would have been significantly lower, and Mr. File asked the Tribunal to set a valuation date after the date of the determination of the ground rent.

9. As a result of the determination of a new ground rent of £150.00 p.a. for 33 years payable from 29 September 2003, the Applicant has calculated a new price of £26,645.00. This calculation was made following guidance by a solicitor and surveyor and based on the method of calculation set out in the legislation.

10. Mr. File did not believe there is any evidence to support Mr. Hilditch's contention that the value of the existing leasehold interest should be 30% of the freehold value of the Property. It is a popular place for older tenants, as the profile of the present tenants demonstrates.

11. Recognising that the leases provide for a second ground rent review in 2036, Mr. File proposed a reduction in yield from 7% to 6% to take account of this, since interest rates are now at an all time low, and there is greater stability in the economy generally. The review in 2036 would therefore not produce such a large increase as the recent review. Mr. File's surveyor at the time had proposed the 1% reduction as appropriate, although in reply to a question from Mr. Hilditch, Mr. File stated that it was very difficult to establish what the situation would be in 33 years time.

12. Mr. File believes the price proposed by the Landlord's excessive, and the valuation on which it is based deeply flawed.

13. Mr. File agreed with Mr. Hilditch that the entirety value of the Property at the date of the Counter Notice would have been £535,000.

14. Replying to a question from the Tribunal, Mr. File said the entirety value on the date of the hearing would be about 2% higher, based on item 9H in his evidence.

15. Mr. Hilditch asked why Mr. File had proposed a discount of 6% to arrive at the value of the Property with the existing leases, assuming no right to buy the freehold or extend the leases. Mr. File said he had been told by local estate agents that this was the difference in value pre and post enfranchisement. In fact he believed this was a bit too much, and 5% would have been more accurate.

THE RESPONDENTS CASE

16. Mr. Hilditch stated that the Landlord had offered to agree a price for collective enfranchisement of £85,000.00, and was still prepared to accept this price.

17. The valuation date should be the date of the Counter Notice (16 April 2003). In reply to a question from the Tribunal, Mr. Hilditch agreed that the Application by the Nominee Purchaser (9 October 2003) stated that the price and "terms of transfer" were still in dispute, but that the issue which had to be agreed between the parties under Schedule 6 para 1 LRHUDA (definition of "the valuation date") i.e. what freehold interest is to be acquired, were agreed at the date of the Counter Notice because the freehold interest specified in the Applicant's Notice had not been disputed in any way in the Counter Notice. Mr. File said that it was his understanding that no terms of transfer had been agreed prior to the date of the Hearing.

18. Mr. Hilditch agreed with the 50/50 split of marriage value as proposed by the Applicant.

19. Mr. Hilditch had valued the Property in April 2003, inspecting all flats and analysing each on an individual basis. The resulting entirety value, £535,000.00 was agreed by the Applicant. In reply to a question from the Tribunal, Mr. Hilditch said that this figure should be increased by 10 - 11% if the valuation date were the date of the Hearing, though he had no evidence to present on this.

The calculation in the the Respondent's written submission

20. Mr. Hilditch said that he agreed with a yield of 7%, as supported by evidence relating to properties in Letchworth, but did not agree this should be discounted by 1% (see para 11 above). In his written submission Mr. Hilditch stated that the 2036 review is of a distant and speculative nature, which the market is not sophisticated enough to try and capitalise.

21. The ground rent figure used was £5.00 p.a. flat for 66 years.

22. With regard to the appropriate discount to arrive at the value of the Property with the existing leases, assuming no right to buy the freehold or extend the lease, Mr. Hilditch stated that at the valuation date (16 April 2003) the flats were virtually unsaleable because;

- the ground rent review was unresolved, and if the Independent Expert determined in favour of the Landlord, there would be a substantial reduction in the value of the Property;
- no lender was likely to make a mortgage offer in such circumstances. Mr. Hilditch submitted a letter he had written to an Open Plan Advisor at the Woolwich Building Society, stating that Mr. Hilditch understood that the Woolwich would be almost certain not to make a formal mortgage offer to a tenant of the Property whilst there was the outstanding dispute over the ground rent. The Advisor had countersigned the letter, stating it represented his considered opinion.
- interest in 'buying to let' has reduced as returns are dropping, and mortgage borrowing on a 'buy to let' basis is becoming more difficult as rental income projections fail to meet the percentage loan required;
- even the small number of 'cash buyers' want clean titles and no problems, especially older buyers, who might be more prepared to buy a short lease;
- older buyers want flats in popular, well-run developments, where they will be with other similar tenants, and Mr. Hilditch does not believe the Property is in this category;
- even if the ground rent review went in favour of the tenants, the prospect of a further review in 2036 would deter both buyers and lenders;
- fewer mortgage lenders are prepared to lend on properties with relatively short leases, in this case 66 years. Mr. Hilditch presented a number of cases to show that a property with a lease of this length is difficult to sell, in particular 33 Mayfield Court, a property with a lease of 68 years. He also submitted a letter from Mr. Simon Efford, who Mr. Hilditch told the Tribunal worked as an Independent Financial Advisor for Hertford Finance Management, stating that a 54 out of 150 mortgage lenders would consider providing a mortgage to a first time buyer with a deposit of £5,000.00, based on a 66

year lease. This would rise to 67 for a more mature purchaser with a deposit of £20,000.00.

23. As a result of these factors, the flats should be valued at 30% of their open market value at the valuation date, since they would only be of interest to a opportunist, speculative cash buyer, who would offer a nominal amount, and take a chance as to the outcome of the ground rent review, and future value of the flats. He admitted that he was uncertain how to discount the capital value in respect of the rent review, and accepted that other valuers might take a different view.

24. On this basis, the price for the collective enfranchisement of the Property is £188,759.00.

The Respondent's new calculation

25. Mr. Hilditch introduced a new calculation at the hearing, based on a discount of 25%, a ground rent of £150.00 p.a. per flat for 33 years until 2036, a ground rent from for 33 years from 2036 of 30 times the existing ground rent, altering the yield to 8% to reflect the uncertainty of the ground rent review in 2036, rather than keeping it at 7% for the remaining 66 years of the lease, and including a claim for compensation.

26. Mr. Hilditch stated that he had originally excluded a claim for compensation, as set out in Schedule 6 para 13 LRHUDA. This was because Mr. Hilditch considered an allowance (unspecified) had already been built in to his calculations to arrive at the 30% figure in para 22 above, he did not wish to add to the complexities of the valuation, and the extra cost to research and calculate the amount would be at the tenants expense. He was aware that there were already issues of affordability for the tenants.

27. However, at the hearing Mr. Hilditch stated he wished to introduce a claim for compensation into his new calculation, as he had reserved the right to do. Planning regulations have recently been relaxed to allow high-density development, and the site of the Property is large enough be re-developed with a building containing 10 flats, or even 12 if permission were sort under PPG3. The Landlord is therefore entitled to compensation for loss of development value at the end of the current leases. In reply to a question from the Tribunal, Mr. Hilditch said that he had not checked whether the Stotfold local plan would permit such development, but his general experience of the area led him to believe it would. He accepted that the 'hope value' of redevelopment in 66 years time is remote.

28. The discount figure of 25% was calculated on the basis of evidence submitted by Mr. Hilditch in the form of a graph, showing the decrease in the value of the leasehold interest as the lease runs down for properties in Letchworth, which showed an average discount for 66 years of 13%. Having adjusted this figure to take account of the issues set out in para 22 above relating to the remaining period of the lease, and the unresolved rent review at the valuation date, Mr. Hilditch had decided that a discount of 25% is appropriate, based on his long experience of selling similar properties in this area. In reply to a question from Mr. File, Mr. Hilditch agreed that the properties in Letchworth differed in character and price from those in Stotfold, but said that there is no graph for Stotfold, and so he had used what he thought the most appropriate.

29. Mr. Hilditch said that he was aware that the issue of the adjustment of the yield to take account of the ground rent review in 2036 was open to dispute, and that the 25% discount was a subjective view. He produced copies of a South and South Eastern Leasehold Valuation Tribunal decision, Salting Management Company Limited and Dolun Finance Limited, LR93/DT/71, as evidence of a case where the lease had contained a similar provision for ground rent review in 20 years time, and the future ground rent had been capitalised at 8%, and a 25% discount from the freehold value had been agreed. Mr. Hilditch said that it could however be argued that lower figures should apply, and for this reason he had made a lower offer to the Applicant. The Landlord would still be prepared to accept a price of £85,500.00. Mr. File replied that even £30,000.00 would be too much, in his view.

30. With regard to costs, Mr. Hilditch claimed £750.00 plus VAT. He said this was based approximately on the time taken to view the flats for valuation, for which he was accompanied by the Manager of his Baldock office, and to prepare and submit this valuation for his client. He estimated his hourly rate, including office charges and overheads, at £100.00 - £150.00.

DECISION

Having considered all the evidence presented by the parties, the Tribunal reached the following conclusions.

31. Valuation Date

Para 1(1) of Part 1 of Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993, (LRHUDA), defines the Valuation Date in the subject case as "the date when it is determined, either by agreement or by a leasehold valuation tribunal..., what freehold interest in the specified property is to be acquired by the nominee purchaser". In the application to the Leasehold Valuation Tribunal by the Mr File, dated 9 October 2003, nearly six months after the date of the Counter Notice, it was stated that "the "price" and "terms of transfer" were still in dispute. However, having listened to the evidence presented at the hearing, the Tribunal considered that the nature of the freehold interest was determined at the date of the Counter Notice, and that therefore this was the valuation date. The Tribunal does not have any discretion to set a later date, as requested by Mr. File.

32. Ground Rent

a) At the valuation date the passing ground rent was £5.00 p.a. per flat. The ground rent review had not been settled. The Tribunal considered how a purchaser would treat the question of the reviewed ground rent for valuation purposes. It concluded that a purchaser would compare the Property with similar blocks of flats on modern ground rents and would estimate that the reviewed ground rent would be settled or determined at a figure in the region of £150.00 p.a. per flat.

b) The Tribunal determined that no figure could be included in the price calculation relating to the next ground rent review in 2036, as this was too remote and uncertain to be quantifiable. This would be reflected in the yield percentage determined.

33. Compensation for loss under para 5 Schedule 6 LRHUDA

The Tribunal determined that no compensation was payable because:-

- there is no existing planning consent for development of the subject property
- insufficient evidence relating to the likelihood of planning permission being granted in 66 years time for development of the subject property was given to the Tribunal
- no evidence relating to the Local Plan for Stotfold was given
- no development would be possible until the end of the existing leases, in 66 years time, and this was too distant and remote to create any realistic "hope value".

34. Yield

This was agreed by both parties at 7%. The Tribunal considered this to be at the perimeter of the acceptable range, but it was prepared to accept a figure of 7% on the basis that it reflects the ground rent review in 2036, and the relative certainty which a purchaser would have of the reviewed ground rent being in the region of £150.00 p.a. per flat.

35. Current entirety value of subject property

Both parties informed the Tribunal on the date of the hearing that they had just agreed a figure of £535,000, and the Tribunal accepted this figure as reasonable, on the basis of the Tribunal's knowledge and experience.

36. Discount to arrive at value of subject property with existing leases

The Tribunal did not accept that a graph relating to properties in Letchworth was directly applicable to properties in Stotfold, as the Tribunal agrees with Mr. File that the property market in the two locations is significantly different. The Tribunal did not accept that Mr. Hilditch had provided adequate evidence to demonstrate that a further discount should be made to account for the uncertainty arising from the ground rent review in 2036; as Mr. Hilditch says on p.7 of his Summary of Evidence the 2036 review is "distant and of a

speculative nature - not one the market is sophisticated enough to try and capitalise". The Tribunal accepts that some mortgage companies might not be prepared to lend on a lease of 66 years, but Mr. Hilditch's own evidence shows that a significant number would, including to first time buyers. Therefore the Tribunal did not accept that Mr. Hilditch's arguments regarding older buyers were of great relevance, and further accepted Mr. File's point that a large number of the present tenants are in fact older people. The Tribunal did not accept that the proposal by Mr. File of a discount of 6% or lower was adequately supported by evidence on which the Tribunal could rely.

37. The Tribunal therefore relied on its knowledge and experience to determine a discount of 12.5%. The Tribunal then considered what adjustment a purchaser would make for the undecided ground rent review. This creates some uncertainty and an element of risk but the Tribunal does not accept that it is as serious as Mr. Hilditch contends nor that a reasonable purchaser would make the adjustment that Mr. Hilditch proposes. A purchaser, or his adviser, is likely to refer to other modern ground rents for similar blocks of flats and, in the Tribunal's view, would be likely to conclude that this ground rent would be settled at a figure in the range of £100.00 - £200.00 p.a. per flat. The Tribunal does not consider that most prospective purchasers or their advisers would interpret the ground rent review clause in the way Mr. Hilditch did, which was roundly rejected by the independent expert. There would be some discount required by a purchaser in respect of the uncertainty and the Tribunal considers that this would be in the region of 2.5% of the price which would otherwise be paid. The result is a 12.5% reduction for relativity, which gives a figure of £468,125.00 and a further 2.5% for the ground rent review uncertainty, giving a final figure of £456,422.00.

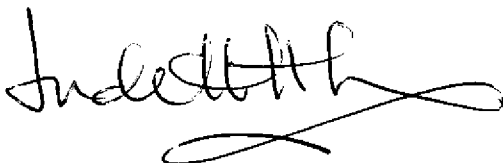
38. Determination of price to be paid

The Tribunal therefore determined that the price to be paid by the nominee purchaser for the freehold of the subject property under Schedule 6 of the LRHUDA is £48,404.00 as set out in the calculation in the Appendix hereto.

39. Costs

With regard to Mr Hilditch's claim for costs, the Tribunal considered the parties' representations, and the amount of work usually entailed, drawing on the experience of its members in many similar cases, and determined that costs of £750.00 plus VAT is a reasonable sum. The Tribunal therefore assesses the reasonable costs payable by the nominee purchaser to Mr. Hilditch under s.33 of the LRHUDA at £750.00 plus VAT.

Dated this 26 day of February 2004



Judith H. Lancaster BA Barrister at Law
Chairman

APPENDIX

Ground rent @ 7% for 6 months	£30 p.a. x 0.4673	= £ 14	
@7% for 66 years deferred for 6 months	£900 p.a. x 14.1246 x 0.965	= £ 12,264	
Reversion to In 66 1/2 years @ 7 x	£535,000 0.011123	= <u>£ 5,951</u>	£ 18,229

Marriage Value Proposed interests	Landlord Tenants	nil £535,000	£535,000
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Less Current leases	Landlord Tenants	£ 18,229 <u>£ 4556,422</u>	- <u>£474,651</u> £ 60,349 50%	<u>£30,175</u> £48,404
Marriage Value				