

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S24 OF THE LEASEHOLD REFORM, HOUSING
AND URBAN DEVELOPMENT ACT 1993**

Property: 38 Selborne Road, Ilford, Essex IG1 3AJ

Applicant: Ioanna Hanis and Steven John Roberts (nominee purchaser)

Respondent: Contractreal Limited

Date of hearing: 21 September 2005

Date of inspection: 24 October 2005

Appearances: Mr John Dye (counsel) instructed by Roulla Georgiou, solicitors
Mr S P Barrable FRICS of Hull & Company, chartered surveyors
Mr S J Roberts, leaseholder

for the applicant

Mr S Church, director of Contractreal Limited for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr D D Banfield FRICS

Date of the tribunal's decision:

28 November 2005

Background

1. This is an application under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) to determine the price to be paid for the freehold of 38 Selborne Road Ilford. The property is a double fronted terraced house on two storeys built in the early part of the twentieth century and converted in about 1981 into four flats. Flat A, which is on the ground floor, has two bedrooms, a living room, kitchen and bathroom. Flat B, also on the ground floor, and Flats C and D on the first floor, each have one bedroom, kitchen and bathroom. The two ground floor flats each have one off-street parking space on the front forecourt. The small front garden is apparently demised with Flat B, and the rear garden is divided between the two ground floor flats. The roof spaces over Flats C and D are each demised with the flat beneath, and the sub-tenant of Flat C has, without the landlord’s consent or the District Surveyor’s approval, converted the roof space over the flat and, to a small extent, over the roof space over the first floor landing, into living space. All the flats are held on leases for terms of 99 years from 1 February 1981 at annual ground rents of £40, rising to £80 after 33 years and then to £160. At the valuation date, which is agreed to be 12 July 2004, the date of the landlord’s counter-notice, approximately 75.5 years remained unexpired on the leases. The leaseholders of Flats C and D participate in the enfranchisement.

Hearing and inspection

2. On 19 September 2005, when the application was listed for hearing, Mr Church, a director of the landlord company, appeared and asked for the hearing to be adjourned on the ground that he had been unaware of the hearing date until the previous week and had had insufficient time to prepare his evidence. We were satisfied that his solicitors had been notified of the hearing date but agreed to give him until the next day to prepare his case. Mr Church had also asked in

his written statement for the nominee purchaser's case to be struck out, but did not proceed with that application.

3. At the hearing on 20 September the nominee purchaser was represented by Mr John Dye of counsel, instructed by Roulla Georgiou, solicitors. Mr Dye called Mr S P Barrable FRICS of Hull & Company, chartered surveyors, to give expert evidence. Mr S Church appeared for the landlord and gave evidence. The hearing occupied the whole day. On 24 October 2005 the tribunal inspected the property, and internally inspected Flats A, B and D, in the presence of Mr Richard Irish FRICS of Hull & Company. We established that Flat A has a larger floor area than Flat B. Although access to Flat C was refused by its occupant, we were able to inspect the roof space over the first floor landing through an inspection hatch on the first floor landing, and to establish that the new wall erected by the sub-tenant of Flat C does encroach to a small extent, which we estimated at 75 cm, over the common parts, the significance of which was an issue in the proceedings and is discussed below. Unaccompanied, we externally inspected the properties in which comparable transactions had been relied on by Mr Barrable and/or by Mr Church.

4. It was agreed by the parties that the appropriate rate for deferment and capitalisation was 7%, although Mr Barrable considered that such a rate allowed for any hope value in respect of future lease extensions outside the Act, and Mr Church considered that it did not.

5. The issues were the values of the existing leases, the value of the virtual freehold, hope value, and whether any additional sum and, if so, what sum should be paid to the freeholder in respect of the unauthorised trespass by the sub-tenant of Flat C over the common parts,

Issue 1: the values of the existing leases

The nominee purchaser's case

6. Mr Barrable, who has 30 years' experience in the valuation of residential property in Ilford, East London and the Home Counties, proposed values for the existing 75.5 year leases as follows: £146,000 for Flat A, £121,000 for Flat B, and £119,000 for Flats C and D. For the value of Flat A he relied on its sale for £146,000 on 9 October 2003, which he adjusted upwards for time and downwards for the shorter lease length and concluded that its value at the valuation date remained the same. He said that for his other values he had relied mainly on settlements of other collective enfranchisement cases in which he had been involved at 22 Mansfield Road Ilford, 10a Mayfair Avenue Ilford, 19 Northbrook Road Ilford, and on the settlement of a lease extension claim in relation to Flat 3, Grove Hill, South Woodford E18. He referred to Flat 2, 4 Mansfield Road, Ilford, a first floor one bedroomed flat in poor condition, under offer at £117,500, and to 62b Seymour Gardens, Ilford, sold in May 2002 on a 71 year lease for £86,000, which he updated (to May 2004) to £122,000.

7. Mr Barrable said that there were many converted flats in Ilford, and their value, when compared to purpose built flats, was relatively low. The first floor flats in the property were of the smallest type available, but the ground floor flats were larger and more valuable. He did not consider that the existing lease lengths significantly affected value, particularly in view of the transient nature of owner/occupiers of this type of property. He said that from his local knowledge he was aware that there was a "ceiling" on prices for flats in the area, and considered Mr Church's proposed values to be above it.

8. Mr Barrable said that he did not consider that the unauthorised conversion of the roof space over Flat C had added any value to the flat. He said had inspected the flat during the course of the works and had discussed the proposed works with Mr Akram, the sub-tenant, who appeared to be carrying out the work himself. From what he had seen and discussed, he considered that

the loft room would not be habitable because it had been converted without planning permission and would not comply with Building Regulations. In his opinion it detracted from rather than added to the value of the flat.

9. Cross-examined by Mr Church, he said that he considered the value of a parking space to be £2000. He said he had not been selective in his choice of comparables, and he had not relied on Flat 2, 44 Selborne Road (referred to below) only because he had been unaware of it. He said that he did not believe that there had been much market movement in the area between October 2003 and July 2004. He agreed that there had been a healthy demand for flats at the valuation date, but said that there had also been a healthy supply. He said that he considered that the effect of rights under the Act on flats in the area was marginal, particularly since buy-to-let investors who purchased such flats were more interested in income than in capital growth.

10. He agreed that a number of properties in the vicinity had loft conversions. He agreed that a loft conversion, properly carried out with the appropriate consents, might add about £10,500 to the value of the flat, but considered that it would cost more than that to do the works.

The landlord's case

11. Mr Church proposed values of £155,000 for Flat A, £110,900 for Flat B, £150,000 for Flat C and £105,900 for Flat D. He said that if the sale price of Flat A was adjusted to the valuation date via the Nationwide House Price Index its value would be £155,000. The only other recent sale in the immediate area was, he said, the sale of Flat 2, 44 Selborne Road, a one bedroomed flat sold at £127,000 in August 2004. He did not know whether it had a parking space. He had obtained details of flats for sale in June 2004 in the immediate area. One bedroomed flats with parking spaces were available for between £138,000 and £145,000 and two bedroomed flats with

parking spaces at between £195,000 and £199,995. He considered that these asking prices should be discounted by 10% to arrive at realistic values, and that a further discount of £5000 was appropriate to reflect the likely improved condition of the flats offered for sale. He considered that the value of a parking space was £5000. He said that the condition of the subject property was only fair, but that should not prejudice the landlord's position.

12. Mr Church produced a report from a firm of chartered surveyors which he had obtained in July 2004, but said that he did not rely on the valuation it contained because it had valued Flat C as a one bedroomed flat whereas he considered that it should be valued as a two bedroomed flat.

13. He said that he particularly relied on a settlement he had achieved in relation to 125 Balfour Road, Ilford, a property some 600 yards from the subject property, comprising two flats with 79 years unexpired, where the tenant of the first floor flat had extended the flat into the roof space without the landlord's permission. He said that it was agreed between the tenants, who were professionally represented, and himself, that the extension had added about £30,000 in value and that the price for the freehold, including approximately £5000 for the unauthorised appropriation of the roof space, was £16,000.

The tribunal's decision

14. We have concluded that the values of the existing leases are: Flat A, £155,000; Flat B, £124,000; Flats C and D, £122,000. In arriving at these values we found the sale of Flat 38A in October 2003 to be of most assistance. We accept Mr Church's proposed uplift for passage of time to £155,000 via the Nationwide Index. We accept from Mr Barrable that, in the local market, Act rights make very little, if any, difference in value where leases are of this length.

We were also assisted by the sale of Flat 2, 44 Selborne Road relied on by Mr Church, although we were not told whether this was a ground floor flat or whether it had a parking space, but we have observed that a page from the “Nethouseprices” website (at the third page of Mr Church’s Appendix 10) also shows that Flat 4, 44 Selborne Road is recorded as having been sold on 20 September 2004 for £109,000. Neither Mr Church nor Mr Barrable referred to this sale, and it is fair to say that we know only what is recorded in this extract. Nevertheless we think it tends to show that the sales evidence is inconsistent, and the whole of the evidence made available to us suggests to us that, as we would expect at the lower end of the market, condition is the driver on price. Taking into account all the evidence, and starting from the sale of Flat A within the subject building, we have deducted 20% from our valuation of Flat A to arrive at the value of Flat B at £124,000, from which we deducted £2000, which in our view fairly represents the value of a parking space, to arrive at £122,000 as the value of Flats C and D. We derive some support for these valuations from the proposed sale of Flat 2, 4 Mansfield Road, under offer at £117,500 in very poor condition, although we bear in mind that it has a longer lease. We have not taken into account in our valuation the condition of the property, which is not good, since this appears to be the tenants’ responsibility, and we have assumed that they have performed their duties to maintain the property. We were not assisted by the settlement evidence put forward by Mr Barrable as evidence of capital values because we were given little information about the condition of the properties which, as we have said, we consider to be of critical importance in this market.

15. We are satisfied that the unauthorised conversion of the loft above Flat C has not added value and accept Mr Barrable’s evidence that an amateurish loft conversion without planning consent or approval under the Building Regulations is more likely to detract from than add to the value of the flat.

Issue 2: The value of the virtual freehold

The nominee purchaser's case

16. Mr Barrable proposed an uplift from the existing lease values of around 3%, equivalent to a relativity of around 96%, to give virtual freehold values for each flat as follows: Flat A: £150,000, Flat B £125,000, and Flats C and D £123,000. He said that he considered that the length of the leases did not significantly affect value in this market, and he relied on settlements relating to local properties in which he had been involved, and which showed uplifts of around 5% for leases with 67.5 years unexpired. He said that if Mr Church had in his analysis of 125 Balfour Road used the correct lease length of 79 years, rather than 75 years, which was incorrect, that transaction would have showed an uplift of about 3% from the agreed value of the 79 year lease to the agreed virtual freehold value.

The landlord's case

17. Mr Church's proposed virtual freehold values were £170,500 for Flat A, £122,000 for Flat B, £165,000 for Flat C and £117,000 for Flat D, equivalent to uplifts of just under 10%, or relativities of around 91%. He said that he had based his relativities on a settlement in relation to 35 Mansfield Road, which the landlord had also owned, and which was held on an almost identical lease, and he referred to a recent decision of a London leasehold valuation tribunal which had applied an uplift of 11% to a 75 year lease.

The tribunal's decision

18. Neither valuer produced compelling evidence to support his proposed uplift. We accept that, even in the no Act world in which we are required to value, lease length would have comparatively little impact on value in this market and have arrived at virtual freehold values of £158,000 for Flat A, £130,500 for Flat B, and £128,500 for Flats C and D, based on relativities of approximately 95% of the freehold to existing lease values, which we consider to be appropriate to this lease length for properties at the lower end of the market.

Issue 3: Hope value

The nominee purchaser's case

19. Mr Barrable considered that the agreed deferment rate was an all-risks yield which made ample allowance for hope value arising from the early release of marriage value outside the Act. He considered that the underlying yield, excluding such hope value, would be 8 - 9%.

The landlord's case

20. Mr Church said that there should be a separate allowance for hope value in respect to the two flats held by non-participating tenants. He said that this should be by means of an additional sum, added to the freeholder's interest, either of 15% of the likely marriage value, or of the present value of the total marriage value in 20 years' time, which was, he considered, the maximum period during which the non-participating tenants would be likely to apply for lease extensions.

The tribunal's decision

21. We are satisfied that the agreed deferment rate of 7% makes adequate allowance for the prospect of the early release of marriage value. We do not consider that the concept of hope value in respect of non-participating flats is correct in law, since, in a no Act world, it is impossible to distinguish between participating and non-participating tenants, all of whom are assumed to have no rights under the Act. Applying the principles set out by the Lands Tribunal in *Arbib v Cadogan* (LRA/23/2004) we consider that an all risks deferment rate of 7% is adequate to reflect the risks and attractions of this investments in its outer London location.

Issue 4: compensation for conversion of the roof space and for unauthorised trespass

The landlord's case

22. Mr Church said that the inclusion within Flat C of the roof space over it and over part of the common parts was carried out without the landlord's consent and encroached on space previously owned by the landlord. He considered that compensation was payable comprising first, the fees that the landlord would normally charge for giving permission for alterations and, second, compensation for the encroachment of the attic room into space which was not demised to the tenant. He proposed a figure of £6615 to cover both aspects, which he considered to be 15% of the additional value released by the extension.

The nominee purchaser's case

23. Mr Barrable did not consider that any such compensation was payable for the works, which,

as set out above, he considered to have detracted from the value of the property.

The tribunal's decision

24. Clause 3(h) of the lease of Flat C contains a tenant's covenant not to make structural alterations to the flat without the landlord's written approval and to pay the landlord's surveyor's reasonable fees and disbursements for approval of the plans for any such alterations. In this case, the landlord has incurred no surveyor's fees and, since the lease does not entitle the landlord to make a profit on such fees and disbursements, we see no scope for compensation for loss of such fees. It is the case that the new attic room appears to encroach to a small extent over the area of room space which is not demised (see paragraph 3 above), but we are satisfied that it does not justify any compensation to the landlord because the encroachment is capable of the simple remedy of moving the new wall back to its former position, which is what, in our view, would happen if the landlord had demanded a financial penalty for the encroachment.

Determination

25. Accordingly, the price to be paid for the freehold is £12,150, in accordance with our valuation which is attached to this decision.

CHAIRMAN.....

DATE..... 25 November 2005

Leasehold Reform and Urban Development Act 1993

Schedule 6

Appendix A

38 Selborne Road, Ilford, Essex

Agreed matters

Valuation Date	13/07/2004
Lease term	99yrs from 1/2/1981
Ground rent	4 x £40pa £160 pa doubling every 33 yrs
Participants	C+D
Marriage	50%

Determined by tribunal

	<u>Existing lease value</u>	<u>Freehold values</u>
Freehold		
A	£155,000	£163,150
B	£124,000	£130,500
C	£122,000	£128,500
D	<u>£122,000</u>	<u>£128,500</u>
Total	<u>£523,000</u>	<u>£550,650</u>

Freeholder's existing interest

Rent reserved			£160	
YP	9.5 yrs	7 %	6.77	£1,084
Reversion to			£320	
YP	33 yrs	7 %	12.75	
x PV	9.5 yrs	7 %	0.53	£2,146
Reversion to			£640	
YP	33 yrs	7 %	12.75	
x PV	42.5 yrs	7 %	0.06	<u>£460</u>
				£3,690
Reversion to OMV				
Flats A+B			£293,650	
x PV	75.5 yrs	7 %	0.01	£1,776
Flats C+D			£257,000	
x PV	75.5 yrs	7 %	0.01	<u>£1,554</u>
Freehold value of Flats A-D				<u>£7,340</u>

Marriage Value of participating flats (C+D)

Proposed freehold values (C+D)	£257,000
Less existing freehold (C+D)	£3,399
Less Existing Leasehold (C+D)	<u>£244,000</u>
Marriage value	£9,601
Freeholder's share @	50% £4,800

Total payable £12,140

Say £12,150