

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993:
SECTION 24

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No:	CHI/24UH/PCE/2004/0030
Property:	Pilot View 242 Southwood Road Hayling Island PO11 9RB
Applicant:	Pilot View Management Ltd c/o M Wilson of Daltons Solicitors Counsel G A Grant G E Bartholomew FRICS Derek J Kingaby Dip TP MRTPI
Respondent:	Wilsons of Hayling Ltd c/o Paul Graham, Hart Brown Solicitors Neil A Hawkins FRICS of Chandler Hawkins Mark Jackson BSc MA MRTPI
Date of Application:	16 April 2004
Directions issued:	17 May 2004 5 July 2004
Hearing:	9 September 2004
Reconvened in private:	5 October 2004
Members of the Tribunal:	Brenda Hindley LLB (Chairman) Helen Bowers MRICS Cynthia Newman JP
Date decision issued:	26 October 2004

- 1) This is an application made pursuant to Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 by Pilot View Management Ltd, the nominee purchaser, to determine the price payable for the freehold interest in Pilot View, 242 Southwood Road, Hayling Island, PO11 9RB.
- 2) Before the hearing the Tribunal inspected the subject premises. They found it to be a two storey, purpose built block of eight self contained flats with four garages and allocated parking spaces, including two visitor spaces. Six of the flats fronted the shingle beach and the sea, whilst two had views onto the parking spaces and roadway.
- 3) They noted that the subject premises were at the end of an unmade up road and immediately adjacent to a site of special scientific interest.
- 4) The Tribunal also inspected the interior of the block. The common parts, with exposed brick walls, provided access to the existing eight flats. The Tribunal also inspected Flat 8, which comprised a combined living and kitchen room with a small balcony, a double and single bedroom and a bathroom /wc. All the main rooms enjoyed excellent views of the sea or the nature reserve.
- 5) Having inspected the subject premises the Tribunal made a short walking tour of the immediate neighbourhood, walking initially along the promenade and returning via the roadway. They found a mix of residential accommodation of varying ages, heights and building styles.
- 6) With all the flats being held on identical 99 year leases from 29 September 1983, and an agreed valuation date of 26 August 2003, the parties had agreed the value of the term and the reversion, with no marriage value, at £14,250, but they had been unable to agree whether there was any hope value to be attached to the possible development, which the respondents maintained they had always intended to undertake, of two additional, two bedroom, flats in the roof space. However, the parties were agreed that if the flats were built their gross development value would be £265,000
- 7) Further, the respondents were also seeking compensation for loss of likely income relating to the granting of consents and lease variations.
- 8) At the commencement of the hearing the position of the parties was as set out below:-

	Applicants	Respondents
Profit element	Nil or 10% (£26,500)	£83,615
Hope value	Nil or 5% (£1,325)	£40,000 (48%)
Consent losses	Nil	£800

9) The issues of the likely availability of planning permission and the financial feasibility of carrying out the development were then addressed by both parties.

10) Mr Wilson, whose family company, Wilsons of Hayling Island Ltd, had built the subject premises, said that it had always been his intention to build in the roof space so the foundations had been laid to allow this and the leases had been drawn up with this in mind. However, he had not originally applied for planning of a three storey development because he had suspected that it would not then have been given. He said that since May 2000, with the promulgation of the better use of land guidance (PPG3), he had known that such an application was likely to be successful but he had been too busy. He added that he had two garages in another block of flats which he had also built, Cedar Lodge, across the road from the subject premises, and that these were unallocated and could be made available, if required.

11) Mr Wilson minimized the possible dangers of flooding saying that, in his experience, only the road had ever been flooded to a depth of 12 inches and the property itself had never experienced flooding. He maintained that access for emergency services would always be possible via either the promenade or by a helicopter landing on the adjacent site of scientific interest.

12) He explained that the construction of the new flats would involve no heavy machinery but scaffolding and roof covering would be necessary during the alterations, which would need to be done in fine weather, preferably in late spring, because the wind could be a particular problem during the winter months. The works would cause little disruption inside the building since most work could be done from outside.

13) He was aware that the works would need to be carefully planned so that the trades could follow each other in a coordinated programme, and he indicated that to ensure the smooth running of such a programme some compensation to the existing leaseholders might be available.

14) Mr Kingaby said that the proposed planning permission was unlikely to be obtained because it would be judged to be contrary to government and local planning policies for a number of reasons. Firstly, it would be an over development of the site resulting in excessive density in an area of predominantly low density development. Secondly, the proposed development was in an unsustainable location without access to good public transport or a wide range of facilities. Thirdly, there were serious risks of flooding as a result of coastal flooding and erosion and the beach immediately in front of it was continuously being replenished with imported sand and gravel to reduce the scouring effects of the sea. He saw this as a particularly significant impediment to the planned development.

15) Mr Kingaby considered that viewed from the south the subject premises had a wide and low aspect reflecting the character of properties along the Eastoke seafront. From Southwood Road, however, it already resembled a three storey

building. The proposed development would spoil the existing appearance of the coastline from the south and the adjoining nature reserve. Moreover, the existing leaseholders would suffer adverse effects from the loss of their already limited amenity space because of the necessity for the provision of further parking spaces.

16) The applicants also relied on a letter, dated 14 June 2004, from Mrs T. Pickup, a Development Control Planner at Havant Borough Council, to Mr A. Penfold, the leaseholder of Flat 5. Replying to queries concerning the possible grant of planning permission she rehearsed a number of difficulties such as the proposed height of the new development, the additional parking spaces required and the flood risk problems.

17) Mr Jackson emphasised the issue of PPG3 in March 2000 which, he said, had substantially changed the emphasis of planning policy and committed the government to using land efficiently to accommodate new housing within the urban area wherever possible. This had superceded various local policies. He considered the proposed increase in the ridgeline to be modest and pointed out that no windows would overlook adjacent properties and that there was 'ample' space at the rear to accommodate required additional parking spaces. He commented that there were a range of building forms and styles in the area of the subject premises with no particular form predominant and added that the sea wall defences were currently being extended along the sea front, thus providing additional protection from flooding and that, in any event, design solutions could be achieved to overcome Environment Agency concerns. He accepted that the density would increase but maintained that it was the site which provided the reference for the proposal which, in any event, was modest

18) All in all he was persuaded that there was a 75% chance of planning permission being obtained whereas the applicants saw, at best, only a 50% chance.

19) Both Mr Batholomew and Mr Hawkings defended their starting positions as set out at paragraph 8 above. Their respective calculations are set out below:-

Gross Development Value £265,000

	Applicants	Respondents
Less		
(1) Building/Conversion costs (178sqm) @£750	£133,500	@ £650 £115,700
(2) Temporary protection	£25,000	£25,000
(3) Finance	100% for 12 Mths+1% £6,000	50% for 4 Mths £1,500
(4) Fees		
Say 12% of Build Costs	£16,000	£13,885
	And 3% GDV £8,000	2% GDV £5,300
(5) Access to communal areas/ fire regulations	£20,000	£20,000
Total Costs	£208,500	£181,385

Profit	£56,500	£83,615
--------	---------	---------

20) Accordingly, Mr Bartholomew saw the scheme as not financially viable whilst Mr Hawkins saw hope value in the region of 48%

21) With regard to the loss of income from granting consents to leaseholders Mr Wilson admitted that none had to date been applied for but he maintained his request.

22) Having examined all of the evidence as well as inspecting the site and its immediate surroundings, the Tribunal found itself unable to rule out the possibility that, at some stage, planning permission for further development of the site would be forthcoming. Accordingly, and on this basis, they were of the opinion that some element of hope value must exist. However they were not persuaded that either 75% or 50% was an accurate prediction of the chances of success. They preferred to adopt 65%.

23) Looking at the respective calculations of the parties from the agreed development value of £265,000, (see paragraph 19 above) the Tribunal accepted Mr Hawkins' BCIS costings @ £650 per square metre as representing a more robust approach to the residual valuation than those of Mr Bartholomew at £750. However, they considered financing at 100% over 12 months, as proposed by Mr Bartholomew, a more realistic option. They also considered that Mr Bartholomew's adoption of 3% for fees more accurately reflected the issues involved and the expenses of bringing the project to fruition. With the other elements of the calculation agreed the Tribunal determined a potential profit figure of £76,415 (29% of GDR).

24) Doing their best, therefore, to evaluate the risk element of obtaining planning permission the Tribunal concluded that a potential purchaser would make a bid of 15% of the development value, which equates to £11,462.

25) The Tribunal was satisfied that the loss of income claim was not valid in that such monies represented actual costs and should not be seen as potential profit.

26) Accordingly, attached at Annex 1 is the Tribunal's valuation of the price, £25,712, payable for the freehold interest in Pilot View. 242 Southwood Road, Hayling Island, PO119RB

27) The parties had also been unable to agree the form of transfer. The Tribunal has deleted from the draft of Messrs Hart Brown the limitation on the use and size of the block because they consider that the applicants should not be inhibited in their enjoyment. However they have retained, as a matter of common sense, the provision allowing the respondent to reclaim reasonable costs for the repair and upkeep of the access road. The limitation of 80 years on the conducting media, proposed by the applicants, would appear to be without justification but a repairing obligation seems sensible. The ability to make new connections as well as to repair old connections also seems appropriate. The Tribunal found no reason or justification for the proposed expansion of the definition of 'access road' to

'neighbouring and adjoining land'. Accordingly, attached at Annex 2 is the draft of the Tribunal.

Chairman 

Date 25/10/04

ANNEX 1

VALUATION OF PILOTT VIEW, 242 SOUTHWOOD ROAD, HAYLING ISLAND

Term and Reversion (as agreed) **£14,250**

Hope Value

Gross Development Value £265,000

Less

Building Costs £115,700

Temporary Protection £25,000

Finance £6,000
100% of the Build Cost

Fees

@12% of Build Cost £13,885

@ 3% of GDV £8,000

Access to communal areas/

Fire regulations £20,000

£188,585 £188,585

Profit £76,415

Hope Value @15% £11,462 **£11,462**

Total Price to be paid for the Freehold Interest £25,712

DRAFT TRANSFER

Rights granted for the benefit of the Property

The Transferor hereby grants and conveys to the Transferee his successors in title and assigns the owners or occupiers of the Property for the time being (together called 'the Transferees') and all persons authorised by them (in common with all other persons entitled to share the same) as appurtenant to the Property the following easement rights and privileges namely:-

1. Full right and liberty for the Transferees at all times and with and without animals bicycles or motor vehicles to go pass and repass over and along the access road coloured blue on the attached plan (that being the plan attached to the Counter Notice) for all purposes connected with the use occupation and enjoyment of the Property subject to the Transferees paying a fair and reasonable proportion of all payments, costs and expenses incurred in relation to the maintenance and repair of the said access road.
2. The right to the free and uninterrupted passage and running of water, soil, gas, electricity and other services from and to the Property through the sewers, drains, cables, pipes, wires, ducts and other such conducting media which are now in under or passing through or over the said access road and which now serve the residential block of flats, subject to the Transferees paying a fair and reasonable proportion of all payments, costs and expenses incurred (other than by the Transferees) in relation to the maintenance and repair thereof.
3. Full right and liberty upon giving not less than 7 days notice in writing of his intention to do so (except in case of emergency) to enter into and upon the said access road at reasonable times for the purpose of maintaining, repairing and renewing the connections to the conducting media referred to and of making new connections thereto and for those purposes (so far as may be necessary) to break open the surface of the said access road, the Transferees or other person exercising such right causing as little damage as possible and forthwith making good any damage occasioned thereby.