

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/00ML/OCE/2003/31

Property: 20 Upper Rock Gardens
Brighton
East Sussex BN2 1QE

Applicants: 20 Upper Rock Gardens Limited
c/o Osler Donegan Taylor

Respondent: Mr Abdullah Sichikennia

Date of Application: 15 July 2003

Hearing: 9 September 2003

Members of the Tribunal: Mr P B Langford MA LLB (Chairman)
Mr A O Mackay FRICS
Mr B H R Simms FRICS MCI Arb

Date decision issued: 6 October 2003

20 UPPER ROCK GARDENS, BRIGHTON

1. The Reference

This case has been referred to us, following an Order by Brighton County Court dated 25 June 2003 in the following terms:-

- “1. The defendant do vest in the claimant his freehold interest in 20 Upper Rock Gardens, Brighton, Title No SX 131495 on terms to be fixed by the Leasehold Valuation Tribunal.
2. The defendant do pay the claimant’s costs assessed in the sum of £921.95 to be deducted from the future price of the freehold.”

The claimant in those proceedings was 20 Upper Rock Gardens Limited (“the Nominee Purchaser”), who had applied to the Court for a vesting order under Section 26 Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”) in respect of the freehold interest in 20 Upper Rock Gardens, Brighton. The defendant in the County Court proceedings was the freeholder of that property, Abdullah Sichikennia (“the Freeholder”). Pursuant to that order, the Nominee Purchaser now asks this Tribunal to determine the appropriate sum to be paid into Court and also to approve the terms of the transfer of the freehold interest in accordance with the provisions of Section 27(3) of the 1993 Act.

2. Inspection

We attended at the property on 9 September 2003 and inspected it in the presence of Mr Jak Woodward, the lessee of Flat 2 and a director of the Nominee Purchaser. We saw an end-terrace substantial house, situated on the west side of the road, which provided accommodation on the lower ground floor, ground floor and three upper floors. We were informed by the Nominee Purchaser’s expert witness that the house was Grade II listed and it had been converted into five self-contained flats. The property was situated close to the St James Street shopping area and to the sea front. The housing in the area

generally comprised hotels, small guest houses and houses converted into flats. We noted that the exterior of the house was in poor order and it seemed obvious that the outside of the house had been neglected for many years. We were given the opportunity of inspecting the lower ground floor flat and also the flat on the first floor. Both these flats were one bedroomed units. The first floor flat had a combined lounge/kitchen arrangement and the Nominee Purchaser's expert witness informed us in his report that this was also a feature of two other flats in the building.

3. **The Hearing**

At the hearing, the Nominee Purchaser was represented by Mr G P Holden FRICS the partner in charge of the Residential Valuation and Survey Department of Parsons Son & Basley. Mr Holden was accompanied by Mr Jak Woodward. The freeholder, whose whereabouts could not be established and who therefore had had no notice of the proceedings, was of course not present or represented.

4. Mr Holden then proceeded to go through his valuation report, copies of which had been supplied to the Tribunal at an earlier date. After giving details about his professional qualifications and experience, he then explained how he had arrived at his valuation of £7,225. He said that the valuation date was the date of the hearing because the price had not previously been agreed between the parties or determined by a Leasehold Valuation Tribunal. He then proceeded to deal with the three elements involved in the valuation, in accordance with the provisions of Schedule 6 of the 1993 Act. For the purpose of assessing the value of the freehold interest, he had capitalised the stream of ground rent income and the theoretical future reversion to vacant possession value at 7%. This rate was in line with the majority of recent Southern LVT decisions and he saw no reason for deviating from it. He had inspected four of the five leases (he assumed the fifth lease was in the same form) and these leases showed that the ground rent payable for the first 25 years (from 29 September 1985 to 28 September 2010) was £50 per year per flat. The annual ground rent then increased to £75 per flat for the next 25 years, then to £110 per flat

for the ensuing 25 years and finally to £175 per flat for the last 24 years of the term. For the purpose of valuing the reversion, he had considered the values of each of the individual five flats by reference to three “comparables”. The first of these was a ground floor flat in a converted period building – Flat 3, 49 Upper Rock Gardens, which he had ascertained was sold in March 2003 for £122,500. Then, again in the same road, he had received particulars regarding the sale of the top floor flat (Flat 5) in 37 Upper Rock Gardens at a price of £116,500 in July 2003. Finally he had received particulars regarding the sale of Flat 7, 43 Upper Rock Gardens, at the price of £135,500. With those local “comparables” in mind and applying his own knowledge and experience, he had arrived at the following existing values for the leasehold interests in the flats at 20 Upper Rock Gardens:-

Flat 1	£100,000
Flat 2	£100,000
Flat 3	£120,000
Flat 4	£110,000
Flat 5	<u>£100,000</u>
	£530,000

He pointed out that, so far as he was able to judge – having not seen inside any of the comparable flats – they were all better flats than those on 20 Upper Rock Gardens. The price for two of them (Flat 5, 37 Upper Rock Gardens and Flat 7, 43 Upper Rock Gardens) included a share of the freehold. In addition Flat 7, 43 Upper Rock Gardens was a two-bedroom unit.

5. Mr Holden then considered the question of marriage value. He said that as all the leases had in excess of 80 years unexpired, there was no marriage value.
6. Finally he considered the third element in the valuation, the issue of compensation for loss flowing from the enfranchisement. He did not believe that the freeholder owned any adjoining property and he knew of no circumstances under which the freeholder could claim compensation. He therefore arrived at the figure of £7,225, in accordance with his valuation which is attached as Appendix 1.

7. The Nominee Purchaser's solicitors, Messrs Osler Donegan Taylor, had been asked to submit a schedule of outstanding ground rents prior to the hearing. This they had done. Each of the five flats had changed ownership between March 2001 and August 2001 and the schedule submitted only gave details of the ground rent outstanding from that time up to the present. Neither Mr Holden nor Mr Woodward were able to offer any evidence as to what ground rent had been paid prior to those dates and what ground rent was outstanding at the dates of the respective purchases. Mr Woodward volunteered the information that, when he took assignments of the leases of Flat 2 and Flat 3 (the first in his own name and the second in the name of Melorgold Properties Ltd, a company of which he was the director) in August 2001, he had been unable to find out any information about the freeholder. Certainly neither he nor any of the other lessees were able to produce to us receipts for the last payment of ground rent and he, Mr Woodward, seemed to be under the impression that the freeholder had disappeared many years before his acquisition of the two flats.

8. **Consideration**

8.1 **The Law**

The main provisions affecting our jurisdiction in the case of a vesting order are to be found in Section 27(3) and Section 27(5) of the 1993 Act, as follows:-

(3) Where any interests are to be vested in any person or persons by virtue of a vesting order under Section 26(1), then on his or their paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which –

(a) is in a form approved by a leasehold valuation tribunal, and

(b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of Section 34 and Schedule 7;

and that conveyance shall be effective to vest in the person or persons to whom the conveyance is made the interests expressed to be conveyed, subject to and in accordance with the terms of the conveyance.

(5) The appropriate sum which in accordance with subsection (3) is to be paid into court in respect of any interest is the aggregate of –

- (a) such amount as may be determined by a leasehold valuation tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and*
- (b) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto)*

8.2 It will be seen that this Tribunal therefore has to determine “the appropriate sum”, which is to be paid into court and also to approve the form of conveyance or transfer which is to be used.

8.3 “The appropriate sum”

Under the terms of Section 27(5) of the 1993 Act, there are two elements to this. The first element is the Schedule 6 valuation of the price to be paid by the Nominee Purchaser. The second element is outstanding money due to the freeholder at the time of the transfer of the freehold interest.

8.4 We will deal first with the Schedule 6 valuation. With regard to the relevant date for valuation, this is defined in paragraph 1 of Part 1 to schedule 6 of the 1993 Act as “*the date when it is determined either by agreement or by a leasehold valuation tribunal under this chapter, what freehold interest in the specified premises is to be acquired by the nominee purchaser*”. Mr Holden’s argument was simply that the freehold interest had not been defined by agreement or by a leasehold valuation tribunal prior to the hearing and therefore the hearing before this Tribunal must be the relevant date. Obviously, the landlord having disappeared, there was no actual agreement reached with him. We have however considered whether, when the Court Order was made to transfer the freehold interest in title No SX 131495, there must be a deemed agreement between the parties. That interpretation we have

rejected in view of the terms of Section 27(2) of the 1993 Act which provides – *“If a leasehold valuation tribunal so determines in the case of a vesting order under Section 26(1), the order shall have effect in relation to interests which are less extensive than those specified in the application on which the order was made”*. Since therefore the Tribunal has a potential discretion to determine that a less extensive interest be transferred than that specified by the Court in its vesting order, it cannot be said that the extent of the freehold interest to be acquired has been finally determined until the Tribunal has decided to exercise or not to exercise its discretion at the hearing. Therefore an agreement cannot be deemed to have taken place before the hearing. We accept therefore Mr Holden’s contention that the valuation date is the date of the current hearing.

We accept that 7% was the appropriate yield to apply to the stream of ground rent rental income in capitalising it. So far as the calculations Mr Holden made regarding the reversionary interests, we again accept his figure of £530,000 for the aggregate value of the leasehold interests in the five flats. It is true that the comparables which he quoted showed higher figures, but for the reasons he gave we consider he was entitled to adjust those figures downwards to arrive at his current valuations of the subject property. We further accept that there can be no marriage value in view of the terms of Schedule 6 paragraph 4(2A) which specifically provides that there can be no marriage value where at the relevant date the unexpired term of the lease held by any of those participating members exceeds 80 years. Since there was no evidence before us that the freeholder owned any other property in the neighbourhood which might be diminished in value by the enfranchisement, there could be no claim for compensation.

We therefore accept and adopt the valuation put forward by Mr Holden and attached as Appendix 1.

- 8.5 We must now consider the second element of “the appropriate sum”, namely the amounts or estimated amounts due from leaseholders to the landlord at the time of execution of the conveyance/transfer. The Nominee Purchaser was unable to put before us the last receipt for ground rent from any of the current

leaseholders. It was clear that all existing leaseholders had had no dealings at all with the freeholder since their respective purchases of the leasehold interests in 2001. It seemed also fairly clear that at the time they took their respective assignments of the leasehold interests in the flats, their assignors were not in a position to furnish them with any information regarding the freeholder and his whereabouts. The leaseholders are liable for all outstanding rent, whether accrued during their own period of ownership of the leasehold interest, or prior to that time. In the normal way, an assignee of a leasehold interest will demand to see the last receipt for the ground rent signed by the landlords. If for any reason that is not available, then they would normally seek to protect themselves by obtaining an indemnity from the assignor of the leasehold interest. On the basis of the evidence before us, we consider that no ground rent was paid but we assume that the initial payment, being made in advance on the grant of the lease, would have been deducted by the freeholder's solicitors in the normal way and therefore all ground rent paid thereafter is outstanding. We have considered whether the calculation is affected by the operation of the Limitation Acts. The limitation period for a debt arising from a deed e.g., ground rent, is 12 years. Our calculations are carried out over a period of 17 years. However the effect of the Limitation Acts is not to make money which is contractually due from one party to another not due. It is to make such money irrecoverable by action through the Courts. If, as in this case, a landlord has no need to take action through the Courts to obtain the money, then the statutory bar is of no effect.

The leases for Flats 2, 4 and 5 are dated respectively 14 February 1986, 4 March 1986 and 14 February 1986. We consider that the first proportionate payment of ground rent payable in advance up to 24 June 1986 would have been collected by the freeholder's solicitors on the grant of those leases. Therefore the first unpaid instalment of ground rent amounting to £25 per flat would have been on 24 June 1986. In the case of Flats 1 and 3, these leases were completed on 10 December 1986 and 15 October 1986 respectively. The first unpaid instalments of ground rent would have been on 25 December 1986 at the rate of £25 per flat. There is no evidence of payment of ground rent from that time up to the instalment which fell due on 24 June 2003. We anticipate that the completion of the transfer of the freehold interest will take

place some time before the next instalment of ground rent falls due on 25 December 2003. Between 25 December 1986 and 24 June 2003 (both dates inclusive), 34 half-yearly instalments of £25 for each of the five flats have fallen due and not been paid. This amounts to £4,250. In addition to that, a further £25 each is due from Flats 2, 4 and 5 in respect of the unpaid instalment on 24 June 1986. This therefore produces a total figure of unpaid ground rent of £4,325. That must be added to the schedule 6 valuation figure of £7,225 to produce an “appropriate sum” for payment into court of £11,550.

8.6 **The form of transfer**

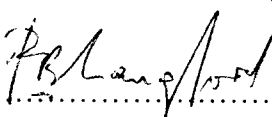
The Nominee Purchaser’s solicitors have submitted a form of transfer for our approval, which is attached at Appendix 2. The only point we cannot accept on that transfer is that at Clause 10 the transferor transfers with full title guarantee. We have had regard to Schedule 7 of the 1993 Act, which applies to the conveyance to a nominee purchaser on enfranchisement. Paragraph 2(2) provides that the freeholder shall not be bound “.....(b) to enter into any covenant for title beyond those implied under Part 1 of the Law of Property (miscellaneous provisions) Act 1994 in a case where a disposition is expressed to be made with limited title guarantee”.

That being the case, we consider that a conveyance to a nominee purchaser must be expressed to show that the freeholder transfers with limited title guarantee.

9. **Decision**

For the reasons we have given, we have determined that:-

- A. The appropriate sum to be paid into court shall be £11,550. (We have noted that Brighton County Court has made an Order that there shall be a deduction from this sum of £921.95).
- B. The form of transfer attached at Appendix 2 is approved, subject to only to the substitution of “*Limited title guarantee*” for the words “*Full title guarantee*” in Clause 10 of the transfer.

.......... P B LANGFORD (Chairman)

20 UPPER ROCK GARDENS
VALUATION OF FREEHOLD AS AT SEPTEMBER 09, 2003
UNEXPIRED LEASE TERM ABOUT 81YEARS

(A) FREEHOLD

Ground Rents		£250		
YP 7yrs @ 7%		5.3892894	1,347.32	
Increase to		£375		
YP 25yrs @ 7%	11.6535832			
PV £1 in 7yrs @ 7%	0.6227497	7.2572653	2,721.47	
Increase to		£550		
YP 25yrs @ 7%	11.6535832			
PV £1 in 32yrs @ 7%	0.1147411	1.3371449	735.43	
Increase to		£875		
YP 24yrs @ 7%	11.4693340			
PV £1 in 57yrs @ 7%	0.0211410	0.2424731	212.16	
Reversion to		£530,000		
PV £1 in 81yrs @ 7%		0.0041679	2,208.99	7,225.37

(B) MARRIAGE VALUE

Nil

(C) COMPENSATION

Nil

£7,225.00

TR1

1. Stamp Duty

Place "X" in the box that applies and complete the space in the appropriate certificate

☐ I/We certify that this instrument falls within category ☐ in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987

☒ It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £60,000.00

2. Title Number(s) of the Property SX 131495

3. Property 20 UPPER ROCK GARDENS BRIGHTON

4. Date

5. Transferor ABDULLAH SICHIKENNIA

6. Transferee for entry on the register *(Give full names and Company's Registered Number if any. for Scottish Co.Reg.Nos. use an SC Prefix. For foreign companies give territory in which incorporated)*

20 UPPER ROCK GARDENS LIMITED (REG NO 4545834)

Unless otherwise arranged with the Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England or Wales or Scotland under the Companies Acts

7. Transferee's intended address(es) for service in the U.K. *(including postcode)* for entry on the register

Holedean Farmhouse, Henfield Common South, Henfield, West Sussex

8. The Transferor transfers the property to the Transferee.

9.Consideration *(Place "X" in the box which applies. State clearly the currency unit if other than sterling. If none applies, insert an appropriate memorandum in the additional provisions panel)*

☒ The Transferor has received from the Transferee for the property the sum of

☐ The Transfer is not for money or anything which has a monetary value.

The Transferor transfers with (place "X" in the box which applies and add any modifications)

☒

full title guarantee

☐

limited title guarantee

11. Declaration of trust (where there is more than one transferee place "X" against which applies)

☐

The transferees are to hold the property on trust for themselves as joint tenants

☐

The transferees are to hold the property on trust for themselves as tenants in common in equal shares

☐

The transferees are to hold the property on trust for themselves as tenants in common in the shares set out in the attached Declaration of Trust

12. Additional Provision(s) Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations etc.

This Transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act (1993)

13. The Transferor and all other necessary parties should execute this transfer as a deed using the space below. Forms of execution are given in Schedule 3 to the Land Registration Rules 1925. If the transfer contains transferees' covenants or declarations or contains an application by them (e.g. for a restriction), it must also be executed by the Transferees.

Signed as a Deed by the said)
ABDULLAH SICHIKENNIA)
In the Presence of :-

Signed as a Deed by the said)
20 UPPER ROCK GARDENS LIMITED)
Acting by 2 Directors or by one)
Director and its Secretary :-).....
DIRECTOR

.....
DIRECTOR/SECRETARY