

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : **Tenby Court
13 Adelaide Crescent
Hove BN3 2JF**

Applicants : **Tenby Court Hove Ltd. as nominee purchaser for
the tenants of flats 1, 2, 3, 4, 5, 6, & 7 (although see
below as to Flat 2)**

Respondents : **Chapelgate Securities Ltd.**

Case number : **CAM/00KA/OCE/2004/020**

Applications : **Applications to determine matters in dispute in
connection with the applicants' request for
enfranchisement (Section 24 Leasehold Reform
Housing and Urban Development Act 1993 ("the
1993 Act"))**

**Applications to determine the level of the
respondents' costs payable by the applicants
(Section 33 of the 1993 Act)**

Tribunal : **Bruce Edgington, lawyer chair
David Brown JP, FRICS
Richard Marshall FRICS**

Representatives : **Mr. Andrew Pridell FRICS for the applicants
Mr. Peter Gunby MRICS for the respondents**

Date of Hearing : **10th December 2004**

DECISION

Introduction

1. The respondent accepts that the applicant is entitled to enfranchise pursuant to the 1993 Act following service of Section 13 Notices, and the only task of this Tribunal is to determine the price. Solicitors costs have been agreed but not the valuer's. The Tribunal has not been asked to adjudicate upon any other matters.

The Law

2. Schedule 6 to the 1993 Act sets out the correct method of calculation to be used. The price to be paid for the freehold interest shall be the aggregate of:-
 - (a) the value of the freeholder's interest on the open market with the leases
 - (b) the freeholder's share of marriage value and
 - (c) any amount of compensation payable (none in this case)
3. Section 33 of the same Act says that the freeholder is able to recover the reasonable costs of and incidental to any valuation of any interest in the premises.
4. Neither party is able to recover costs relating to the presentation of a case before a Tribunal unless such Tribunal finds that costs have been lost as a result of a party acting, e.g., frivolously, vexatiously or unreasonably.

The Properties

5. The Tribunal inspected the property in the presence of Mr. Pridell, Mr. Gunby having previously said that he was not going to be present at the inspection. Before the inspection the Tribunal had a look at the exterior of some of the comparables quoted by Mr. Pridell and Mr. Gunby namely 10 Brunswick Terrace, 57 Brunswick Square (there was no number 257 as stated by Mr. Gunby), 16 Lansdowne Place, 1, 28 and 23 Palmeira Square (again, there was no number 223 as mentioned by Mr. Gunby). Members also looked at the outside of 12 Adelaide Crescent which was the best comparable, being next door.
6. In looking at the flats themselves, they found that the basement (flat 7) had been extensively modernised and had been converted from a one bedroom flat to a two bedroom flat. Flat 1 had high airy rooms and a modern bathroom with a garden and access to the rear. No access could be obtained to flat 2 and a discussion between Mr. Pridell and the owner of flat 3 revealed that Flat 2 was apparently no longer participating. Flat 3 had been extensively modernised to the extent of having a new mezzanine floor by making use of

the high ceilings. Flat 4 had been gutted and was about to be refurbished with a new roof at the expense of the tenant. It was just possible to see that this flat had had a small galley kitchen and a small bathroom and bed/sitting room.

7. Flat 5 was probably in the most original state of the flats inspected. Flat 6 was reached by a further winding staircase and had lower ceilings. It had been modernised to a certain extent.
8. As far as flat 2 is concerned, it seemed that no-one was absolutely certain that this flat was participating and it will therefore be seen that the Tribunal has given a total valuation for the building and an individual valuation for flat 2 so that the parties can deal with the arithmetic depending on whether flat 2 is participating or not.

The Hearing

9. Mr. Pridell addressed the Tribunal. In addition to his qualifications and experience as set out in his report, he said that the firm Clifford Dann had 30 years experience in the local market. He said that he had tried to contact Mr. Gunby in order to discuss the issues as ordered by the Tribunal chair but his calls had not been returned.
10. He referred to a further Leasehold Valuation Tribunal ("LVT") decision which he had received during the previous week in respect of 21 Enys Road, Eastbourne, where the LVT had adopted his representations that the appropriate percentage uplift for marriage value should be 4.5% with an unexpired term of 71 years. He was arguing 3% for this property with 74 years unexpired.
11. He said that in Adelaide Crescent all the properties had originally been houses and all but 4 had now been converted to flats. The conversion of this building was "not bad". There was a problem with the exterior decoration in that the local authority had to approve the colour and type of covering used for this Grade II listed building in a conservation area. When the decoration was

last undertaken by the landlord it had been done in Sandtex. The local authority required this to be removed and the estimated cost is £14,000. A potential purchaser may be put off by this problem which could have an affect on value.

12. As far as yield is concerned he said that he would have agreed 7.25% or even 7% on a large block of flats but in view of the added responsibilities of management on a relatively small block he would argue for 7.5% on this property.
13. The main thrust of his evidence, however, was that he has vast experience of the local market to include the city of Brighton and towns along this part of the south coast. His opinion is that there is a difference between this market and both central and outer London. He criticised Mr. Gunby because he had little or no personal knowledge of this local market and there were basic errors in his report.
14. When challenged in cross examination by Mr. Gunby as to the validity of the Allsop auction figures, Mr. Pridell said that he was aware of 2 properties in Brunswick Terrace used by Allsop where there had been relativities of 9%.
15. Mr. Gunby then gave evidence. He said that he had just been involved in a transaction involving 7 flats in Woodford, Essex with over 100 years to run offering a 7% yield which he "snapped up".
16. He said that the suggestion that there was a different market on the south coast was a "red herring". He had dealt with properties from Birmingham to the south coast and, in his view, the same considerations applied all across the board. He thought that the College of Estate Management figures from 2000 showed that the relativity should be 94%.
17. He said that it was dangerous to take anything off for improvements despite what was in the legislation because the basic property had not really changed from the date of the leases. Having said that, he then conceded that the

installation of better central heating would make an impact and that he had made a deduction for flat 3 although he could not say what that was. He did not think that the conversion of flat 7 from 1 bedroom to 2 bedrooms would “make much difference”.

18. He did not know anything about the roof to flat 4 or the alleged problem over the Sandtex on the front of the building and said that, in his, view they were also “red herrings”.
19. On the question of yield he agreed that there may be different figures in, say, Birmingham as opposed to London and there may be unique situations on certain areas. However, his case is that relativity should be similar over the whole country i.e. the same in central London as in Brighton. He had no evidence to suggest that the figures quoted for Hove produced better evidence than the statistics he was using. He thought that a £5 million flat in Knightsbridge should produce the same relativity figures as the subject property.
20. He also said that he thought that the market was pushing yields down as opposed to LVT decisions which only relied upon past evidence.
21. In cross examination Mr. Gunby conceded that the facts he had given in respect of 23 Palmeira Square and the 2 properties in 1 Palmeira Square may not have been strictly accurate. He had recorded the information he said he had been given. He then conceded that improvements had to be taken into account.
22. On being questioned by the Tribunal, he agreed that his valuation of flats 2 and 4 was too high and should have been £118,000; that flat 7 should have been valued as a 1 bedroom flat. He could not say whether flat 6 was the same as the next door comparable.

23. He said that his valuation fee for the counter-notice was £100 plus VAT. His valuation fee for the full valuation in his report was £1,200 plus VAT because this involved him in a whole day out of his office travelling down to Hove.

The Decision

24. Any decision taken by an LVT must be based on the evidence brought before it and its' members knowledge and experience. Mr. Gunby should know that. His report left a lot to be desired. There were glaring errors in the arithmetic on page 78; he did not quote the correct street numbers of 2 comparables and it seems that there were inaccuracies in some of the facts given to support the comparables.
25. He did not cross examine Mr. Pridell on his evidence that he did not return telephone calls and the Tribunal can therefore only conclude that he made little or no attempt to comply with the Tribunal chair's order that the surveyors should try to narrow the issues and present a list of disputed/agreed facts and opinions. As such a failure did not, in the opinion of this Tribunal, materially affect the length of the hearing, no action will be taken on this occasion. However, Mr. Gunby would be well advised to comply with orders. The new powers given to an LVT to make costs orders in the event of someone acting unreasonably, are likely to be used in future where parties or their representatives act unreasonably to the extent that costs are wasted.
26. As far as yield is concerned, both surveyors produced some evidence to support their cases. None of it was conclusive and, in the Tribunal's view, neither is wrong. The Tribunal feels that in those circumstances, the only thing it can do is exercise the 'judgment of Solomon' and decide on 7.25% as being the yield figure.
27. As far as relativities are concerned, the Tribunal accepted Mr. Pridell's assertion that there is a different market on this part of the south coast. Even Mr. Gunby's evidence in the graph at page 89 of the bundle does actually show a difference between London and the provinces. Mr. Pridell has helpfully recorded previous LVT decisions at page 35 of the bundle. There is

one decision in respect of a property with 76 years unexpired (uplift 2%) and two decisions with 72 years (uplift 6%). The subject leases have 74 years and the decision of this Tribunal is that the correct figure for relativity is 96%.

28. This just leaves the valuation of the unimproved flats with long leases. The Tribunal's view is that the correct valuations, starting with the basement flat, are:-

flat 7 There is evidence of a 1 bedroom flat in Kingsway with a value of £169,950. In view of the extent of the improvements, the Tribunal felt that the only fair way of valuing was to simply imagine what this unimproved flat would look like and value accordingly. It was felt that as compared with Kingsway, this flat had the patio garden and is bigger and should be valued at £190,000

flat 1 The evidence of the flat in the adjoining property is helpful. Its value appears to be £245,000. The subject flat has the benefit of a reasonable garden and access to the rear. The decision is therefore that the appropriate value is £270,000 less £5,000 for improvements making a net figure of £265,000.

flat 2 The comparable studio flats are in Lansdowne Place (£94,950) and flat 1, 10 Brunswick Terrace (£99,950) which is larger. The decision is that the value of the subject flat is £95,000.


flat 3 The valuers agree that the improved value of this flat is £275,000. The improvements are extensive and include the installation of a new floor. The Tribunal consider that their decision in respect of flat 7 should be the starting point. This is a large one bedroom flat with a sea view but no garden. The correct valuation is therefore considered to be £185,000.

flat 4 This is valued at £95,000 i.e. the same as flat 2.

flat 5 This is valued in the same way as flat 3 but it is not as well laid out and has lower ceilings. The correct figure is therefore £180,000.

flat 6 The comparable here is in 12 Adelaide Crescent at £245,000. There have been some improvements such as central heating and a modern kitchen. It is considered that £240,000 is the correct figure.

29. Using these various figures, the value of the whole building is set out in Schedule 1 and the value of flat 2 is set out in Schedule 2.
30. As far as the freeholder's valuer's fee is concerned, the decision of the Tribunal is that the only fee recoverable is the £100 plus VAT for the valuation used for the counter notice. The other fee appears to this Tribunal to have been incurred solely for the purpose of this hearing and is therefore not recoverable.


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Bruce Edgington
Chair
12/12/04

SCHEDULE 1

Capital Values of Flats with Long Leases

Flat 1	£265,000
Flat 2	£95,000
Flat 3	£185,000
Flat 4	£95,000
Flat 5	£180,000
Flat 6	£240,000
Flat 7	<u>£190,000</u>
	£1,250,000

Capitalisation of Ground Rent Income

ground rent received	175		
y.p. @ 7¼% for 8 yrs	<u>5.9139</u>	£1,034.93	
ground rent received	350		
y.p. @ 7¼% for 33 yrs	<u>12.4236</u>		
p.v. @ 7¼% for 8 yrs	<u>0.571</u>	<u>7.0939</u>	£2,482.86
ground rent received	700		
y.p. @ 7¼% for 33 yrs	<u>12.4236</u>		
p.v. @ 7¼% for 41 yrs	<u>0.056</u>	<u>0.6957</u>	<u>£486.99</u>
			£4,004.78
capital value of entire freehold	£1,250,000		
p.v @ 7¼% for def. 74 years	<u>0.00563</u>		<u>£7,037.50</u>
value of freehold			£11,042.28
say,			£11,050.00

Marriage Value

Value of freehold with VP	£1,250,000	
<u>Less</u>		
1. value of existing unimproved leases, 96% relativity	£1,200,000	
2. value of existing freehold	<u>£11,050</u>	
		<u>£1,211,050</u>
marriage value	£38,950	
50% share		<u>£19,475.00</u>
		<u>£30,525.00</u>

SCHEDULE 2 – flat 2

Value of Freeholder's Interest

(i) Capitalisation of Ground Rental Income

Ground rent 2004 – 2012	£25	
YP 8 yrs @ 7¼%	<u>5.9139</u>	£148
Ground rent 2012 – 2045	£50	
(as per Schedule 1)	<u>7.0939</u>	£355
Ground rent 2045 – 2078	£100	
(as per Schedule 1)	<u>0.6957</u>	<u>£70</u>
		£573

(ii) Value of Reversion

Reversion to capital value	£95,000	
PV of £1 in 74 yrs @ 7¼%	<u>0.00563</u>	<u>£535</u>
Total value of freeholder's interest		£1,108

Marriage Value

Value of extended unimproved leasehold interest	£95,000	
<u>Less</u>		
1. Value of existing unimproved leasehold interest	£91,200	
2. Value of freeholder's interest	<u>£993</u>	<u>£92,193</u>
Total Marriage Value		£2,807
Freeholder's share at 50%		<u>£1,404</u>
		£2,512
Or, say	£2,500	