

SOUTHERN RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Ref: CHI/45UF/OCE/2003/0008

Re: White Hart Court, North Parade, Horsham RH12 2DG
("The Property")

In the matter of: the Leasehold Reform, Housing and Urban Development Act
1993

Between:-

White Hart Court Freeholders Ltd
C/o Paul Davidson Taylor
("the Tenant/Applicant")

And

Sinclair Garden Investments (Kensington) Ltd
C/o P Chevalier & Co
("the Landlord/Respondent")

DECISION OF THE TRIBUNAL

Appearances:

Mr G Holden, FRICS, for the tenant
Mr L Nesbitt, FRICS, for the landlord

Hearing: 25 June 2003

Tribunal: Ms J A Talbot MA (Chairman)
Mr R A Wilkey FRICS FICPD
Mr D J Myers FRICS

Date of Issue: 05 September 2003

Introduction

1. This is an application pursuant to Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 ("The Act") by the Nominee Purchaser (the Tenant/Applicant) for a determination of the price to be paid for the freehold interest in the Property, namely, White Hart Court, North Parade, Horsham, West Sussex. The provisions relating to the calculation of the price to be paid are set out in Schedule 6 to the Act.
2. In the summer of 2002, an undated Notice of Claim pursuant to Section 13 of the Act was served by the participating tenants on the Landlord, Sinclair Garden Investments (Kensington) Ltd. The purpose of the Notice was to exercise the participating tenants' claimed right of collective enfranchisement of the Property. The Notice nominated White Hart Court Freeholders Ltd to be the Nominee Purchaser on behalf of the participating tenants.
3. The claim to collective enfranchisement was admitted by counter Notice dated 23 August 2002. The matter was subsequently referred to the Leasehold Valuation Tribunal for us to determine the purchase price payable for the freehold interest in the Property.

Inspection

4. The members of the Tribunal inspected the Property before the hearing. We were accompanied during our inspection by Mrs Holiwell, the owner of Flat 9, and by Mr Nesbitt, the landlord's valuer. The Property consisted of a four-storey modern purpose built block of 28 maisonettes, built approximately 40 years ago, of brick construction under a pitched roof clad with interlocking tiles. The maisonettes were arranged either on ground and first floors or second and third floors. The accommodation of each was identical and comprised, on the lower floor, a hall, living room and kitchen, and on the upper floor, a landing, three bedrooms, and bathroom with WC. Each maisonette has a garage in a separate block. The Property is about one mile north of Horsham town centre, situated in a cul-de-sac approached by road from North Parade with a pedestrian access westwards into Trafalgar Road.

The Hearing

5. The hearing took place at Horsham Civic Offices on 25 June 2003. It was attended by Mr G Holden FRICS, the valuer instructed by the Nominee Purchaser, and by Mr L Nesbitt FRICS, the valuer instructed by the Landlord. There were no representatives from the qualifying tenants or the Landlord company.

6. At a pre-trial review on 19 March 2003, Directions were given requiring the parties to exchange valuers' reports, then for the valuers to meet and produce a joint report setting out those matters upon which they were able to agree and identifying all of the issues remaining in dispute. As a result, a Statement of Agreed Facts and Areas in Dispute was supplied to us in advance of the hearing along with the report on behalf of the Nominee Purchaser. Regrettably the report on behalf of the Landlord was not available to us until the day of the hearing, necessitating a brief adjournment for that material to be considered.

The Agreed Matters

7. We first confirmed the items that had been agreed. In summary, these were:
 - a. All the flats were sold on long leases. A new lease had been granted for flat 29 but the remaining 27 were on the original lease;
 - b. The original lease term was 99 years from 24 June 1963 at a fixed ground rent of £20 p.a. The lease for flat 29 was 99 years from 02 July 2001 at a ground rent of £150pa with reviews on 29 September 2011 and every 21 years thereafter to 1/400th of open market value;
 - c. The valuation date was agreed at **23 August 2002**, the date of the Landlord's counter Notice;
 - d. The unexpired lease term as at the valuation date was approximately **59 years 10 months**;
 - e. The marriage value was to be divided equally, and no marriage value was to apply to flat 29;
 - f. There were **22 participating tenants** in the Property;
 - g. An allowance for marriage value was agreed for the non-participating flats;
 - h. The value of the freeholder's interest was agreed at **£36,000**;
 - i. The value of the flats with the benefit of the freehold disregarding any improvements carried out by the tenants was agreed at **£133,200**;
 - j. **Rights of way** had been granted to 10 owners of properties in nearby West Parade to provide rear access for car parking. All the rights of way were for a term of 99 years from 24 June 1963. 9 of these were granted at a rent of 1s (5p) pa. The remaining right was granted on 29 September 1989 at an initial rent of £100pa subject to review linked to the retail price index every 10 years. The current rent was £149.60pa. It was agreed that, as at the valuation date, the index-linked rent had increased to £159.45pa.

The Issues

8. The items remaining in dispute, upon which we would be required to decide, were:

- a. The value of the flats with existing leases. Mr Holden and Mr Nesbitt were unable to agree the market value of the leasehold interest as at the valuation date;
- b. The value of the rights of way. Mr Holden and Mr Nesbitt were unable to agree how the value of the current and potential future income should be valued.

Both issues were dealt with separately.

9. The reports provided by the valuers both bore statements indicating that they complied with the requirements of expert witnesses as set out in the RICS Practice Statement for Surveyors acting as Expert Witnesses. Each report contained appendices of information and copies of documents separated by numbered dividers. In this note a reference to "tab" followed by a number refers to the numbered appendix to the report in question. Although we have not set out the contents of the reports, nor indeed the oral evidence given to us, in detail, we have of course given due weight to all of it in reaching our decision. In this Statement is described what appeared to us to be the salient points of both evidence and argument.

The Evidence

10. Mr Holden opened the case for the applicant, and gave evidence in accordance with his written report. His calculation of the price to be paid for the freehold interest was £197,056.
11. Mr Holden dealt first with the issue of the valuation of the flats with existing leases. He adopted a value of £120,000 per flat for the existing leasehold interest. His method of valuation for producing this figure was straightforward. He considered that open market value evidence was the best evidence. He had looked at evidence of the only sales of flats in the block, namely 2 flats, numbers 18 and 20, on the open market during 2002. Flat 20 was sold on 20 June 2002 for £118,000. Flat 18 was sold on 18 October 2002 for £129,000. These straddled the agreed valuation date of 23 August 2002. Prospective sales of flats 4 and 13, on the market as at June 2002, had not proceeded. The average selling price was £123,500, from which he had made a nominal deduction of £3,500 for tenants' improvements, to produce the figure of £120,000.
12. When considering the appropriate deduction to be made to reflect the improvements, Mr Holden sought an average figure to apply to all the flats in the block. He drew our attention to a previous LVT enfranchisement decision (tab GH6) for a block of flats in Eastbourne, where the tribunal had preferred an average figure of £1,000 per flat and had rejected a valuation approach based on capital expenditure. As the Eastbourne property was a more

modern block, Mr Holden considered a higher deduction was appropriate for the subject Property.

13. Mr Holden had applied a marriage value uplift of 11% to reach the notional freehold value of the flats of £133,200. As already noted, this figure was agreed by Mr Nesbitt, even though he did not concur with Mr Holden's method of calculating it. Mr Holden explained that as there was rarely market evidence available for uplift figures, and he had looked at the general "tone" of uplift being awarded by the southern LVT in other collective enfranchisement decisions.
14. At tab GH8 he produced an analysis of the outcome of the decisions by southern county, and at tab GH7, a table showing the uplift amount compared to the unexpired lease term. There was no direct comparable evidence for West Sussex, but decisions in East Sussex had produced 10% in 2 cases where the unexpired terms were 60 and 54 years. He preferred these comparables to Surrey, where uplifts were higher, but where different local economic conditions would apply thus affecting open market prices. He stressed that a clear and unsurprising pattern emerged of uplift increasing as the unexpired term diminished. He considered that location was the most significant factor when looking at open market value. His conclusion was that 10% was a reasonable point for the subject Property, and he had then added 1%, making 11%, to take into account the fact that the unexpired term in this case was just under 60 years.
15. Mr Nesbitt presented the case for the respondent and gave evidence in accordance with his written report. His calculation for the price to be paid for the freehold was £316,725.
16. Whilst Mr Nesbitt accepted that open market value evidence was the best evidence, he considered that the open market comparables had to be adjusted to take into account not only the value of tenants' improvements, but also other elements, in particular, a discount to allow for the enhanced value attributable to the statutory right of enfranchisement under the 1993 Act – the so-called "no Act world". Mr Nesbitt referred to the statutory basis for this principle in paragraph 3(1)(b) of Schedule 6 to the 1993 Act. He considered a deduction on 5% to be appropriate, in view of the unexpired lease term.
17. Dealing first with the value of the tenants' improvements, Mr Nesbitt preferred the capital cost approach. It was necessary to adopt the position of a prospective purchaser considering the expenditure required on a flat. Instead of estimating an overall average cost, he took the purchase prices of flats 18 and 20 as his starting point and valued the improvements separately. He then took an average of the unimproved value of these 2 flats to achieve his valuation of the existing leasehold interest, which was £114,750.

18. His adjustment for improvements was calculated by the average cost of the amenity. For flat 20 – sale price £118,000 – his deductions totalled £5000: £3,500 for central heating and £1,500 for a fitted kitchen with integral appliances, giving a net unimproved value of £113,000. For flat 18 – sale price £129,000 – his deductions totalled £12,500: £6,000 for central heating and kitchen as before, plus £2,500 for double glazing, £3,000 for a bathroom fully tiled with mixer taps and shower, and £1,000 for wooden flooring and fitted wardrobes, giving a net unimproved value of £116,500.
19. The average unimproved value after deductions for improvements was therefore £114,750. To this figure Mr Nesbitt applied a 5% “no Act world” discount, which he regarded as reasonable in view of the unexpired leasehold term of under 60 years, to give an adjusted value of £109,012. Although he could not produce any market evidence to support the 5% figure, he used his skill and judgment to arrive at it.
20. In addition to sales evidence, Mr Nesbitt further refined his valuation by reference to 3 other sources: agreements for leasehold extensions on nearby similar flats, general agreements for enfranchisement on flats with similar leasehold term unexpired, and a recent LVT decision involving a lease extension on a flat with similar leasehold term unexpired.
21. The leasehold extension settlement evidence concerned 2 flats at Lynwood Court, a similar block of 2 bedroom flats in Horsham. In his analysis of the premiums, shown at tabs LAN4 and LAN5, Mr Nesbitt had applied a yield of 8.5% and an extended lease value of £133,200, derived from the agreed value at White Hart Court, and found that the respective percentage relativity was 84.5% and 83.7%.
22. The general settlement evidence for lease extensions on flats with similar length unexpired, concerned properties in New Barnet and Harrow. Mr Nesbitt had calculated the percentage relativity between the notional freehold of the lease, and the existing lease, was 81.26% for the New Barnet property, where the lease had 55.5 years unexpired, and 86% for the Harrow property, where the leases for a pair of flats had 63.75 years unexpired. Mr Nesbitt had again been involved in the negotiations. He produced at tab LH6 a letter and calculation from the surveyor acting for the tenants of the New Barnet property, and at tab LH7, a letter from the surveyor acting for the tenants of the Harrow property proposing settlement terms. He did not however produce his own valuation calculations.
23. In the recent LVT leasehold extension determination concerning the Crystal Palace property, Mr Nesbitt had given evidence for the landlord. He produced a copy of the decision at tab LH8. The subject flat had 58 years unexpired at the date of valuation and the tribunal decided the premium based on a relativity of 79%.

24. In terms of the actual values applying relative percentages, these comparables produced values ranging from £105,228 to £111,888. Drawing from all the sources, Mr Nesbitt applied a figure of 83.5% to the agreed notional freehold value for the Property of £133,200. This produced an existing lease value of £111,250 and this was the figure he used in the freehold valuation calculation.
25. Mr Nesbitt saw no reason why the relative value of a flat in Horsham should be any different to that of a flat in New Barnet or Harrow. He defended his analyses and valuation methods under cross-examination, preferring a valuation approach based on relativity values rather than open market values of similar sized flats. He considered location to be less important than relativity. However, he accepted that open market value evidence in the form of actual sales evidence, where available, was the best evidence, and also that some of the flats in his settlement evidence were not only in different locations but also of different size and character to those at White Hart Court.
26. Turning to the rights of way, Mr Holden's valuation of £1,711 appeared at tab GH3. He attributed no value to the income of 5p pa for 9 of the rights on the basis that it would be uneconomic to collect such a minimal sum. With regard to the remaining 10th right, the issue was the valuation of the current and future income. The index-linked rental value as at the valuation date was agreed at £159.45. Mr Holden had valued the right until expiry, but had not valued the reversion on the basis that there was no certainty that there would be any demand for the rights to continue. Neither was there any hope value for further grants to the 4 other owners of properties in West Parade, 3 of which, according to the plan, were detached houses with their own garages. He applied a yield of 9% to the unexpired term of 51y9m, producing the valuation figure of £1,711.
27. Mr Nesbitt's valuation was £2,400 including hope value. He had capitalised the annual rent at 8.5% and added hope value of £500 on the basis that the other 4 properties may potentially benefit from a future grant. An enquiry had been received in August 2002 from the owner of No.8 and a price of £4,000 as a one-off payment had been proposed, but this had not been pursued.
28. Turning to the calculation for the price of the freehold, after some discussion Mr Holden and Mr Nesbitt agreed that the value of the right of way for calculation purposes was not part of the freehold value, because it did not fall within the definition of the "specified premises" within the meaning of paragraph 3(1) of Schedule 6 to the 1993 Act. The value of the right of way figure would therefore be added on after the freehold and marriage value.

Further evidence

29. After the hearing, we wrote to the parties asking for their further representations on the calculation of the marriage value. The issue that arose was why both surveyors had based their calculations for the enhanced leasehold valuation on the total number of flats in the block, namely 27 (being 28, less flat 29 with a new lease, excluded by agreement) instead of the number of participating tenants in the block, namely 22. We asked this question in the light of the provisions of paragraph 4(2) to Schedule 6 of the Act, containing the definition of marriage value, which refers to the interests of the participating tenants only.
30. In his written response, Mr Nesbitt explained that the value of the non-participating tenants' flats had been treated, by agreement, as hope value, reflecting the potential of the nominee purchasers to grant new leases to the non-participants at some time in the future. He submitted that this principle had been considered and approved in the Lands Tribunal case of *Re: Shulem B Association Ltd* [2001]11EG175. Mr Holden indicated, in writing, his agreement to this analysis.

The Decision

31. We agreed with all of the issues that were identified as not being in dispute, and listed in paragraph 7 above. This list includes, at 7(f), an allowance for the value of the interests in the non-participating flats. Having considered the written representations discussed in paragraph 30 above, we do not seek to disturb the agreement between the parties on their treatment of the non-participating flats as reflecting hope value, and it is therefore not necessary for us to comment further on the appropriateness of their approach.
32. We considered all the written evidence and the representations made at the hearing by the valuers for both parties, in relation to the items still in dispute.

The value of the existing leasehold interest

33. There was a conflict between the open market evidence relied upon by Mr Holden and the settlement evidence relied upon by Mr Nesbitt. On balance on the present facts we preferred the open market evidence. This had the merit of being based on evidence of actual sales achieved at the Property. The 2 sales of flats 18 and 20 were close enough to the valuation date to be the best available evidence. We saw no reason to depart from Mr Holden's method of taking the average of the two sales figures as a starting point. We considered this approach to be straightforward and practical. The starting point figure was therefore £123,500.
34. We considered the settlement evidence, both of leasehold extensions and general enfranchisement, to be less helpful. It was based largely on

properties in locations in greater London where open market conditions would be different from Horsham, namely, New Barnet and Harrow. The evidence before us did not contain valuation calculations by Mr Nesbitt, but simply letters from other surveyors presenting either preliminary calculations or ongoing negotiations. It is likely that there were factors at work between the parties in those cases, which would be specific to those facts and would affect the outcome.

35. In relation to the comparables in Lynwood Court, Horsham, there was no evidence before us of the actual sale price achieved. We attached limited weight to Mr Nesbitt's analysis because he had made assumptions, such as using £133,200 as the value of the extended leases, which we considered could not be substantiated.
36. We had some concerns that Mr Nesbitt's reliance on his analysis of the relativity figures. It appeared to us that to apply a relativity percentage to the agreed enhanced freehold value, to produce an existing leasehold value, was unsatisfactory, as essentially it involved "working backwards" to achieve, in this case, an artificially low result. Relativity, in our view, rather than being a starting point to calculate an existing leasehold value, is the resulting figure, showing simply the percentage difference arising from the existing and near freehold valuations once they are known.
37. We then considered what would be an appropriate deduction to reflect the value of tenants' improvements. We preferred Mr Holden's across the board approach of an average figure for all the flats. We considered Mr Nesbitt's capital cost approach to Flats 18 and 20 less satisfactory. Logically, each flat would have to be separately inspected and assessed for this approach and plainly this was not realistic or within the spirit of the 1993 Act. The question of a replacement kitchen and bathroom, for example, was highly subjective and would depend upon the individual taste of a prospective purchaser. The amounts Mr Nesbitt had allowed for specific improvements were, in our view, too high and resulted in an excessive overall deduction of £12,500. However, we considered that Mr Holden's average figure of £3,500 was on the low side for the Property and preferred the sum of £5,000 as a reasonable average figure, taking into account the age, character and construction of the subject Property which is somewhat utilitarian in style and appearance.
38. Turning to whether there should be a further quantified deduction to reflect the "no Act world", we were not persuaded by Mr Nesbitt's argument that a further discount of 5% was fair or justified on these facts. In our collective experience and judgment we regarded this approach as rather unorthodox and were not aware of any precedent to support it.
39. In carrying out our valuation we therefore took the existing leasehold value to be £118,500 – that is, £123,500 less £5,000.

The value of the Right of Way

40. Turning to the value of the right of way, we considered the hope value attributed by Mr Nesbitt to be speculative and we ruled it out. We noted from our inspection and from the plan, that of the 4 remaining properties in West Parade, 3 were detached and had their own parking. No rights had been granted since 1989 and an enquiry in August 2002 from the last remaining potential grantee had not been pursued. We noted the basic difference between the approach of Mr Holden and Mr Nesbitt to be whether to value the right as at the expiry of the leases, or in perpetuity. Once the hope value was taken out, the difference in their respective valuations was minimal - between £1711 and £1900. We therefore took a pragmatic view and concluded with a compromise a figure of £1800 for the right of way.

Conclusion

41. We therefore concluded, and hereby order, that the amount payable by the tenants' nominee purchaser to the landlords for the freehold interest in the Property, is **£218,250**. Our valuation appears as Appendix 1 to this Statement of Reasons.

Dated 05 September 2003



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Ms Jane Talbot MA
Chairman

**White Hart Court
North Parade
Horsham
West Sussex**

Freehold	27 Flats on original leases 1 Flat on extended lease Value agreed at		£ 36,000
Marriage Value			
Proposed interest (27 Flats @ £133.200)		£3,596,400	
Existing interest			
LH (27 Flats @ £118,500	£3,199,500		
FH (agreed)	£ 36,000	£3,235,500	
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		MV = £ 360,900	
	Landlord's share @ 50%	=	£180,450
Compensation			Nil
Right of Way			£ 1,800
			<hr/>
			£218,250
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