

**SOUTHERN RENT ASSESSMENT PANEL
AND LEASEHOLD VALUATION TRIBUNAL**

DECISION AND REASONS

**LEASEHOLD REFORM, HOUSING AND URBAN
DEVELOPMENT ACT 1993. SECTION 13**

Property: Flats 1 & 2 Forest House
3 Seaview Road
Highcliffe
Dorset
BH23 5QJ

Applicants: Enid Marjorie Cottle &
Doreen Elizabeth Shabner

Respondent: Shirley Josephine McMaster Nabbito

**Inspection &
Hearing Date:** Tuesday, 19th April 2005

Appearances:
For the Applicants: Mr. Colin Wetherall, B.Sc., FRICS, FNAEA
Mr. Stephen Wheatley, Solicitor

Also in attendance: Mr. & Mrs. Miller
Mr. Lord

For the Respondents: Mr. Andrew Pridell, FRICS

Tribunal: Mr. K. M. Lyons, FRICS
Mr. R. L. Sansbury
Mr. J. Mills

Date of Decision: 20th May 2005

Date of Issue: 7th June 2005

Decision

The following matters had been agreed by the parties surveyors:

- 1.1. Value of freehold excluding compensation £2,725.00.
- 1.2. Marriage value £18.00.
- 1.3. Date of valuation 25.5.2004.

The Tribunal determined

- 1.4. Compensation for loss of development value £750.00.
- 1.5. Costs determined in the sum of £1,942.28.

Reasons

2. Preliminary

- 2.1. The Southern Rent Assessment Panel and Leasehold Valuation Tribunal (LVT) received an application dated 19th November 2004 under Section 13 of the Leasehold Reform Housing and Urban Development Act 1993 ('the Act'). The application was made by Brook Oliver Solicitors for the lessees, Enid Marjorie Cottle (Flat 1 Forest House) and Doreen Elizabeth Shabner (Flat 2 Forest House). The application sought a determination of:

- (a) The date of valuation
- (b) The value of the freehold excluding compensation
- (c) Marriage value
- (d) The amount of compensation

- 2.2. Directions were issued on 7th January 2005 and the hearing of the application and inspection of the premises was listed for 19th April 2005. The Tribunal received an indexed bundle of documents from the Applicants shortly before the hearing. The Tribunal received a numbered and indexed bundle from the Respondents.

3. The Law:

- 3.1. Section 24 of the Act gives the Tribunal jurisdiction to determine the terms of acquisition as meaning the terms of the proposed acquisition by the nominee purchaser, whether relating to:

- (a) the interests to be acquired
- (b) the extent of the property to which those interests relate or the rights to be granted over any property
- (c) the amounts payable as the purchase price for such interests
- (d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or
- (e) the provisions to be contained in any conveyance

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of Section 1(4) or 21(4).

4. Inspection

- 4.1. The Tribunal inspected the property in the company of Mr. Colin Wetherall and Mr. Alan Pridell. The subject property comprises two self-contained flats known as Flats 1 and 2 Forest House which occupy part of a good sized plot accessed by an unmade road in a good semi rural residential area.

- 4.2. The flats form a two storey extension on the north west side of a substantial two storey building. The extension was constructed approximately 20 to 30 years ago. The ground floor flat (Flat 2) is accessed by its own front door (there being no common part hallway) and the first floor flat (Flat 1) is accessed via a timber external staircase. The original timber windows have been replaced with UPVC windows. The extension has a flat felt covered roof which it is understood is in need of repair. The external decorations are worn.
- 4.3. The accommodation of each flat is lounge, 2 bedrooms (one double and one small double) kitchen, bathroom and W.C. combined. The flats each have gas fired central heating. Each flat has a modest area of garden and a timber car port affording parking for two cars (1 per flat) is located at the front of the subject property. Vehicular and pedestrian access to the flats is by a right of way over the driveway of Forest House.

5. Construction of Leases

- 5.1. The Leases of both flats are understood to be in the same form:

The Lease provides for the reserved property to be maintained by the landlord and for each lessee to reimburse the landlord for 50% of the costs of maintenance and insurance incurred by the landlord.

The Sixth Schedule of the Lease includes mutually enforceable covenants as follows:

Clause 3: To observe covenants in respect of the Ground Floor Flat (*mutatis mutandis*) as are contained in Fifth Schedule hereto and in the event that the Lessor whilst retaining the freehold interest grants a Lease of the said Ground Floor Flat he shall in so doing impose such provisions therein consistent with the said Clauses of the Fifth Schedule hereto to the intent that the owner of the Premises shall be entitled to enforce compliance thereof

Clause 5: If reasonably required by the Lessee to enforce the covenants similar to those mentioned in the Fifth Schedule hereto and entered into by the tenant of the other flat provided that the Lessee shall indemnify the Lessors against all costs and expenses in respect of such enforcement and providing such security of costs and expenses as the Lessor may reasonably require.

Clause 1 of the Sixth Schedule requires:

That (subject to contribution and payment by the Lessee as hereinbefore provided) the Lessor will maintain repair and renew:

- (a) the parts of the Property referred to in Clause 2(a) hereinbefore provided
- (b) the external decorations of the Property (including the external faces of the front doors) whenever reasonably required

The Applicants' Case:

On the existence of a letting scheme

- 5.2. Mr. Wetherall contended that Clauses 3 and 5 of the Sixth Schedule created a letting scheme by means of mutually enforceable covenants. Furthermore he referred to Clauses 3 and 7 of the Fifth Schedule which requires each lessee to contribute one half of the lessors costs of insurance and maintenance of the reserved property. Mr. Wetherall referred the Tribunal to the decision of the Lands Tribunal in *Devonshire Reid Properties Ltd. v. Trenaman* (1997) 1(45) and included a report of the case in his bundle. Mr. Wetherall contended that the facts of the case were very similar to that of the subject property.

The Respondents Case:

On the existence of a letting scheme

- 5.3. Mr. Pridell sought to distinguish the facts of the subject case from the 'Trenaman' case in advising the Tribunal that the property in that case already had a pitched roof space which contained part of the plumbing for the 4 flats. He also advised that the Insurance Policy for Flats 1 and 2 had been amalgamated into one policy for the entire Forest House including the main building. He proposed that this indicated that a variation to the Lease had thereby taken place having regard to the Sixth Schedule, Clause 2, which required the lessor to insure the property in the joint names of the Lessor and the Lessee.

The Applicants' Case:

In regard to the landlords repairing covenants and alterations

- 5.4. Clause 1 of the Sixth Schedule requires that (subject to contribution and payment by the Lessee as hereinbefore provided) the Lessor will maintain repair and renew:

- (a) the parts of the Property referred to in Clause 2(a) hereinbefore provided
- (c) the external decorations of the Property (including the external faces of the front doors) whenever reasonably required

In response to questions by the Tribunal Mr. Wetherall referring to the report of the *Trenaman* case, confirmed that he concurred with the directions of Willis J. in the case of *Gange v. Lockwood* (1860) 2 F & F 115 where the tenant of certain rooms opened two doorways in the walls between the house and an adjoining house. Willis J. directed the jury that a covenant to repair, uphold and maintain or keep in good repair raises a duty not to destroy the demised premises and the pulling them down, wholly or partly, is a breach of such covenant. Judge Rich Q.C. as reported in the extract submitted by the Applicant stated "I take that citation from the judgement of Willis J. to be accurately recorded in this text book and I accept and adopt the direction of Willis J. as thus formulated. In my judgement, a covenant to repair and maintain varies a duty not to destroy wholly or partly and a proposal to be so is breach of such covenant."

The Respondents' Case:

In regard to the landlords repairing covenants and alterations

- 5.5. Mr. Pridell considered that he had distinguished the Trenaman Case from the subject case and advised that in the Tribunal case relating to 40 St. Albans Avenue, Hove, the dictum in Trenaman had not been followed. Furthermore in the matter of Conniston Court, Hove a mansard roof was proposed to be constructed although in cross examination Mr. Pridell agreed that this had been achieved by negotiation.

6. Valuation

- 6.1. Agreed facts:

Mr. Wetherall and Mr. Pridell submitted a statement of agreed facts including items

10. Date of valuation	25.5.2004	
12. Value of freehold excluding compensation		£2,725.00
Marriage value		<u>18.00</u>
Total		<u>£2,743.00</u>

- 6.2. No agreement had been reached in regard to Item 11 compensation.

- 6.3. The Applicants' case in regard to compensation:

Mr. Wetherall accepted that if there is development value to the roof top site, then it is referable to the freeholders retained land and accepted that in principle the land retained by the freeholder would be diminished in value following the enfranchisement because the development cannot now proceed. In his view, however, at the valuation date the diminution was de minimas.

At the valuation date there was no planning permission.

The lessees did not want a flat to be built on what would become the second storey and they did not wish to participate in its construction by negotiating with the landlord.

The letting scheme created by the leases enabled either of the lessees to veto development.

- 6.3. The cost of the proposed development for which a planning approval had been granted by Christchurch Borough Council (Application No. 8/04/0598) dated 29th October 2004 in accordance with drawing ref. SR576 sheet 2 revision O would be disproportionately high.
- 6.4. Mr. Wetherall considered the lessee of the first floor flat would need to be relocated during construction and that when completed the second floor flat would have no lift facility, no ensuite bathroom and sloping ceilings. The Tribunal noted that all windows were shown on the plan as velux type windows set into the slopes of the roof.

6.5. Mr. Wetherall used a sale price of £150,000.00 in his residual valuation. He allowed a build and sale period of nine months and construction costs at £1,000.00 per square metre with fees at 23%. Due to the nature of the construction works he allowed a contingency of 5%. Based on an estimated floor area of 95m² Mr. Wetherall assessed the residual value at £8,011.00.

6.6. He considered that at the date of valuation a purchaser hoping to obtain a planning permission and envisaging the possibility of involving the lessees of Flats 1 and 2 might pay £500.00 to £1,000.00 and he fixed his assessment at £750.00.

7. The Respondents' Case in regard to compensation:

7.1. During the inspection of the property Mr. Pridell pointed out the pedestrian access which would be created together with a very small area of garden ground which would be allocated to the additional flat all of which land formed part of the garden of the main house. Furthermore two sheds would be removed to provide a parking space for the new flat.

7.2. Mr. Pridell maintained that the landlord had contemplated development of the property for some time and that a previous application had been granted for the erection of a bungalow in the original area of the grounds.

7.3. Mr. Pridell advised that some subsidence had occurred to the main house and that remedial works would be incorporated in the proposed scheme. He considered that the construction of a pitched roof would greatly enhance the appearance of the presently unattractive extension. Furthermore and bearing in mind that repair works were currently required to the flat roof he considered constructing a new pitched roof would be in the best interest of the two lessees who would be relieved of the repair costs.

He also pointed out that future maintenance costs would be divided three ways instead of two and that in his opinion the value of the existing flats would be significantly improved. He also advised that neither lessee had objected to the landlord's planning application.

7.4. Mr. Pridell estimated the diminution in value of the existing house, due to the need to take part of the area of the kitchen on the ground floor and part of a bedroom on the first floor to construct the entrance hall and staircase to the second floor, would be £6,000.00.

7.5. Mr. Pridell in his bundle submitted a letter from Slades, Estate Agents, dated 18th November 2004 which estimated the sale value of the new flat at £250,000.00 giving a site value of £100,000.00. In cross examination Mr. Pridell advised the Tribunal that he was not aware of the basis of Slades valuation.

7.6. Mr. Pridell also submitted a letter from Fenwicks Estate Agents, dated 17th January 2005 making an offer of £100,000.00 subject to contract on behalf of developers, Drewsmith of Southampton. In cross examination Mr. Pridell confirmed that if he were asked to he would advise a prospective purchaser

to exercise an element of caution in assessing the development value and that he would advise taking legal advice. He did not, however, see any significant hurdles.

- 7.7. Mr. Pridell submitted a quotation dated 21st February 2005 from Build It (UK) an NHBC registered builder giving a budget cost of construction of £55,000.00 to £ 60,000.00 exclusive of VAT. Mr. Pridell advised that he could not say whether the full extent of Part E of the Building Regulations relating to insulation had been taken full account of in the builder's estimate.
- 7.8. Mr. Pridell included a letter in his bundle from Richard Harris and Associates Structural Engineering Consultants dated 9th February 2005 which confirmed the bearing adequacy of the foundations and confirmed that any remedial works in respect of underpinning could be carried out from the garden area. He estimated the cost of underpinning at £5,000.00 to £7,500.00.
- 7.9. Mr. Pridell's valuation in respect of compensation referred to Schedule 6 Part II paras (3) and (4) which specifies that compensation is payable to the freeholder for loss resulting from the enfranchisement -

Para (3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2) the kinds of loss falling within that paragraph include loss of development value in relation to the specified premises to the extent that it is referable as mentioned in that paragraph.

Para (4) in sub-paragraph (3) "development value in relation to the specified premises means any increase in the value of the freeholder's interest in the premises which is attributable to the possibility of demolishing, reconstructing or carrying out substantial works of construction or, the whole or a substantial part of the premises."

- 7.10. Mr. Pridell estimated the value of the finished flat in the region of £135,000.00. He confirmed the cost of underpinning at an estimated £5,000.00 to £7,500.00. He relied on the estimate from Build It (UK) of £55,000.00 to £60,000.00 plus VAT for construction. After consideration his estimate of construction costs was £70,000.00. His resultant valuation was:

Estimated sale value		£135,000.00
<u>Less</u>		
1. Cost of construction	£70,000.00	
2. Fees – say 5% (inc VAT)	3,500.00	
3. Local Authority charges	500.00	
4. Funding £70,000.00 for six months at 7%	2,450.00	
5. Sale commission	<u>2,379.00</u>	<u>78,329.00</u>
Residual site value		£56,671.00
		(Corrected from £56,171.00)

He concluded that allowing for the diminution of the value of the retained property the net development value was £50,000.00.

8. Tribunal's decision

8.1. In accordance with the agreed statement of facts the Tribunal found:

- | | |
|---|-----------|
| 1. Date of valuation | 25.5.2004 |
| 2. Value of freehold excluding compensation | £2,725.00 |
| 3. Marriage value | £18.00 |
| 4. Compensation - | |

The Tribunal preferred the value submitted by Mr. Pridell in the sum of £135,000.00 as the correct market value. In coming to this decision the Tribunal had regard to:

1. Its own investigations in the local market.
2. The relatively poor rear access to the proposed accommodation.
3. The lack of headroom in the areas of the sloping ceilings.
4. The lack of windows other than velux type windows in the roof slopes.
5. The very small second bedroom shown as being smaller in floor area than the bathroom.
6. The value estimated by Slades which although submitted by Mr. Pridell was entirely contrary to his own estimation.

8.2. The Tribunal rejected the estimate of construction costs of £55,000.00 to £60,000.00 as being unrealistic based on:

1. The Tribunal's own knowledge of construction costs.
2. Mr. Pridell's statement that he was not aware whether Part E of the Building Regulations in regards to insulation which the Tribunal considered would considerably increase costs had been taken into account.
3. The difficulties of construction including scaffolding costs and costs of temporary relocation.

8.3. The Tribunal estimates the compensation –

Sale value	£135,000.00
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Less

Build costs at £1,000.00/m ²	£95,400.00
Fees @ 12%	11,448.00
Interest @ 7.75% on	

£47,700.00 for 9 months	3,307.00	
Developers profit @ 15% in sale value	20,250.00	
Local Authority costs	500.00	
Sale commission	<u>2,379.00</u>	<u>133,284.00</u>
Net value		<u>£1,716.00</u>

This does not make allowance for the reduction in value of the retained premises and the Tribunal accepted Mr. Pridell's estimate in the sum of £6,000.00. The negative value is therefore £4,284.00.

8.4. Notwithstanding the above the Tribunal considers that the dictum in the case of Devonshire Reid Properties Ltd. versus Trenaman is applicable to the subject case both as regards the creation of a letting scheme and the application of the landlord's repairing covenants as not to permit destruction of the reserved property. The Tribunal therefore consider the compensation to be nil, but adopts the amount determined by the applicant in the sum of £750.00.

8.5. The Tribunal's determination of the freehold of the Property is therefore £3,493.00 plus reasonable costs.

9.0. **Costs of enfranchisement**

9.1. Application was made at the hearing by Pritchard Joyce & Hinds in respect of the costs for the Respondent.

9.2. The Tribunal directed that the parties be given 14 days in which to make representations in regard to the costs which were being claimed.

9.3. Section 33 of 'the Act' provides

(1) Where a notice is given under Section 13, then (subject to the provisions of this section and Sections 28(6), 29(7) and 31(5) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely

(a) any investigation reasonably undertaken

(i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or

(ii) of any other question arising out of that notice;

(b) deducing, evidencing and verifying the title to any such interest;

(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;

(d) any valuation of any interest in the specified premises or other property;

(e) any conveyance of any such interest;

but this sub-section shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(2) For the purposes of sub-section (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been incurred by him if the circumstances had been such that he was personally liable for all such costs.

(3) Where by virtue of any provision of this Chapter the initial notice ceases to have effect at any time, then (subject to sub-section (4)) the nominee purchaser's liability under this section for costs incurred by any person shall be a liability for costs incurred by him down to that time.

(4) The nominee purchaser shall not be liable for any costs under this section if the initial notice ceases to have effect by virtue of Section 23(4) or 30(4).

(5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before a Leasehold Valuation Tribunal incurs in connection with the proceedings.

(6) In this section references to the nominee purchaser include references to any person whose appointment has terminated in accordance with Section 15(3) or 16(1); but this section shall have effect in relation to such a person subject to Section 15(7).

(7) Where by virtue of this section, or of this section and Section 29(6) taken together, two or more persons are liable for any costs, they shall be jointly and severally liable for them.

9.4. No further representations have been received and the Tribunal therefore determines the costs be awarded to the Respondent payable by the Applicant as follows:

Payment to Pritchard Joyce & Hinds,
Solicitors, as per their invoice dated the
18th April 2005 in the sum of

£1,237.28 inc. VAT

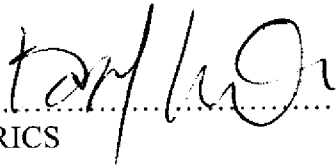
Payment to Mr. A. J. Pridell, Surveyor,
as per invoice dated 29th September 2004
in the sum of

£705.00 inc. VAT

The Tribunal determines the total award to the Respondent in respect of costs in the sum of £1,942.28.

- 9.5. The total of the Tribunal's determination of the freehold of the Property and costs is therefore £5,435.20.
- 10.0 The Tribunal acknowledges the assistance given by Mr. Wetherall and Mr. Pridell and for the agreement reached in the Statement of Agreed Facts.

Signed
K M Lyons, FRICS

A handwritten signature in black ink, appearing to read 'K M Lyons', is written over a dotted line.