

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

**LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT
1993**

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/21UG/OCE/2004/0073

Property: 3 Park Road
Bexhill-on-Sea
East Sussex TN39 8HY

Applicant: Graham Humphrey, Ruth Turton and
Caroline De'Ridder

Respondent: J S & B Englander

Members of the Tribunal: Mrs F J S Silverman LLM
Mr J N Cleverton FRICS
Mr R P Long LLB

Date decision issued: 26th July 2005

DECISION

The price payable to acquire the freehold under the Leasehold Reform Housing and Urban Development Act 1993 is £23,500.

The Landlord's commission on the insurance premium is not a matter to be taken into account when calculating the price payable on enfranchisement.

The Landlord's application for costs under s 33 Leasehold Reform Housing and Urban Development Act 1993 does not succeed..

REASONS

1 BACKGROUND

The Landlords had acquired the freehold of the property in April 2003. Subsequent negotiations between the Landlords and the Tenants for the purchase by the latter of the freehold failed to achieve a satisfactory solution and on 2 March 2004 the Tenants served a section 13 notice on the landlords. A counter notice was served by the landlords on 4 May 2004. The Tenants maintained that the counter-notice was defective and commenced proceedings for a declaration in the county court. Those proceedings were later discontinued and the majority of issues between the parties have been agreed. The outstanding issues for determination by the Tribunal are summarised in paragraph 1 above.

2 THE HEARING

A hearing was held on 30 June 2005 at which the Tenant Applicants were represented by Mr Crews, Solicitor and the Landlord Respondent by Mr Miles FRICS, Chartered Surveyor. References to page numbers in this document relate to the agreed bundle of documents which was presented to the Tribunal for the hearing.

3 THE ISSUES

The Tenants made an application under the Leasehold Reform Housing and Urban Development Act 1993 asking the Tribunal to determine the price payable for the acquisition of the freehold of the property known as 3 Park Road Bexhill on Sea East Sussex TN39 3HY (the property).

The Tribunal was also asked to determine whether or not the landlord's commission on the insurance premium for the property should be considered in assessing the value of the reversion and whether or not specific items of the landlord's costs under s 33 of the Act were allowable. These were three discrete areas in which the parties had failed to reach agreement. All other matters had already been agreed between the parties prior to the hearing (see page 65).

4 THE PROPERTY

The property comprises a mid-terrace house which has been converted into four flats. The property is situated in a residential area where many of the surrounding properties have undergone similar conversions. The Tribunal did not inspect the property, the parties having agreed that such an inspection was in the particular circumstances of this case unnecessary.

5 INSURANCE

The Tribunal was asked to determine whether, in assessing the value of the freehold, an additional allowance should be made for the commission payable to the landlord arising out of the insurance policy taken out by the landlord. When the freehold was acquired by the leaseholders, the landlord would lose the benefit of this commission. Mr Miles said that the landlord should therefore be compensated for this loss of income as part of the price paid by the leaseholders for the freehold. Mr Holden disagreed with this contention. The Tribunal was directed to a number of authorities relating to this point from which it appeared that recent Tribunal decisions had taken the view that such premiums should not be taken into account in assessing compensation. Having considered them we conclude that the insurance commission is not to be taken into account when valuing the freehold reversion. In reaching this conclusion we considered section 32 and Schedule 6 of the Leasehold Reform Housing and Urban Development Act 1993 which does not suggest that the ability to earn an insurance an insurance commission should form any part of the calculation of the price. This view is supported by Hague (at paragraph 27.06 Fourth ed) and agrees with the view expressed by the Tribunal in 35 Dennington Park Rd Management Ltd v Maryland Estates Ltd [LON/ENF/102] that the insurance commission is earned not by virtue of the landlord's interest as a freeholder, but because he carries out the work of an insurance agent, and by the decision in the Welbeck Mansions case (LON/ENF/1036/04).

6 PRICE

The price for Flat B had already been agreed by the parties. The Tribunal was asked only to determine the price for Flats A, C and D. The parties had recently agreed a value of £250,000 as representing the existing leasehold interest. We considered the reports of Mr Holden (for the Applicants, pages 10-49) and Mr Miles (for the Respondents, pages 50-62) and their joint statement (pages 63-68). We read Mr Miles' proof of evidence (pages 69-85). We also heard oral representations from Mr Miles and Mr Holden who were both present at the hearing. This material included comparative evidence showing properties very similar to the subject property and in the same road. This latter evidence was however confined to the freehold sales values of individual flats and did not deal with reversionary values on enfranchisement. The only evidence of the value of the reversion was the price that the landlords had paid for the property when they bought at auction in April 2003. The Tenants asserted that the purchase price (£15,000) was a true reflection of the value of the property at that time; the Landlords did not agree with this view.

The Tenants suggested that the appropriate marriage value for a lease with 57 years unexpired (as here) was 13% (assessing a 60 year lease at 10% and allowing a 1% increase for each year below 60 years). To support this contention Mr Holden had produced a schedule of previous Leasehold Valuation Tribunal decisions (pages 27-28). We were unable to place great reliance on this schedule because it showed such a diverse range of properties, in terms of location, type of property, and length of residue that it was not possible to draw any firm analogies from it. We had similar difficulties with the schedule produced by Mr Miles which again comprised a large and diverse range of property the majority of which was outside Sussex. Mr Miles, on his own admission was not familiar with the property market in Sussex which, in our experience is not the same as that in other areas of the country.

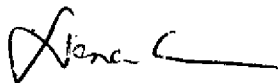
Having taken into account the representations as above together with the Tribunal's own knowledge and experience of property in the Bexhill and Hastings area the Tribunal considers that the appropriate figure for marriage value is 14% and bases its calculations (see Schedule attached) on that percentage giving a combined price for Flats A, C and D of £22,064.50. We consider this figure appropriate because in our experience a freeholder is able to strike a harder bargain with his tenants where the leases have less than 60 years unexpired than is the case where the reversions exceed that figure. Adding

to that figure the parties' agreed price for Flat B of £1430 gives a total of £23,494.50 .
We therefore find that the aggregate price to be paid for the freehold is £23,500.

7 COSTS

Mr Miles, on behalf of the landlords made an application that his costs under section 33 Leasehold Reform Housing and Urban Development Act 1993. This application was opposed by the tenants. The costs in question related to Mr Miles's valuation report and the subsequent joint report which had been prepared in connection with the previous court proceedings (pages 102- 103).

The costs for which a nominee purchaser (the tenants) may be liable under section 33 do not include the items claimed by the landlords in this case . The only costs claimable under this section are those incurred between the date of the initial notice and the later date of the application to the Leasehold Valuation Tribunal. Mr Miles report (page 50) was served in December 2004, some months after the commencement of the proceedings before the Tribunal (29 October 2004) and the joint report was dated 28 January 2005 (page 66) . Section 33 specifically precludes costs incurred in connection with Leasehold Valuation Tribunal Proceedings . In any event it may be argued that since both reports were initially prepared for submission in county court proceedings, their costs should have been claimed as part of those proceedings and not in this forum. We find therefore that the costs for which a nominee purchaser (the tenants) may be liable under section 33 do not include the items claimed by the landlords in this case and their application does not succeed.



Frances Silverman

Chairman

A Member of the Leasehold Valuation Tribunal appointed by the Lord Chancellor

SCHEDULE

Calculation of freehold value 3 Park Road Bexhill

Flats A,C , and D

1 FREEHOLD

Ground Rents £32.40

YP 57 yrs @ 8%	12.3493965	400.12
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Reversion to £287,600

PV £1 in 57 yrs 5m @8% 0.0120483	3,465.09
	3865.21 say £3865

2 MARRIAGE VALUE

Proposed	£287,600
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Existing leasehold £247,336

Freehold	3,865	£251,201
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Marriage value = £36,399

50% =	£18,199.50
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TOTAL for Flats A,C,D £3865+ £18,199.50 = 22,064.50

Flat B

Agreed value £1430

TOTAL for flats A,B,C,D = £22,064.50 + 1430 = £23,494.50 say £23,500.