

Ref LON/ENF/879/03

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM  
HOUSING AND URBAN DEVELOPMENT ACT 1993

Applicant: 20 Hook Road Ltd (Nominee Purchaser)

Respondent: Mr A Lawler (Landlord)

RE: 20 Hook Road, Surbiton, Surrey

Application to  
Tribunal by Morgan Cole dated 1 July 2003

Heard: Tuesday 28 October 2003

Appearances: Mr B Farrell (Tenant)  
Mr A Goodwin (Tenant)  
Mr C M Avery FRICS FAAV, Avery Associates  
for the nominee purchaser  
Mr A Lawler  
Mr S M Chandler FRICS, Castle Wildish  
for the landlord

Members of the Leasehold Valuation Tribunal:  
Mrs F R Burton LLB LLM MA (Chairman)  
Mr D L Edge FRICS  
Mr S E Carrott LLB

Nominee purchaser's section 13 notice dated: 8 January 2003

Landlord's section 21 counter-notice dated: 13 March 2003

Valuation date: 28 October 2003

Leasehold Valuation Tribunal's determination: £16,000

Date of Tribunal's decision: 15 December 2003

20 HOOK ROAD, SURBITON, SURREY KT6 5BH

**BACKGROUND**

1. This was an application by three qualifying lessees to acquire the freehold interest of the subject property pursuant to the provisions of the Leasehold Reform, Household and Urban Development Act 1993, as amended by the Commonhold and Leasehold Reform Act 2002. The three participating lessees duly served a s 13 notice pursuant to the 1993 Act on 8 January 2003 proposing a purchase price of £12,309 and on 13 March 2003 the freeholder served a counter notice, acknowledging their right to enfranchise, but stipulating the much higher price of £30,000, subsequent to which agreement on price had been reached. There were two other lessees of the premises who did not participate in the proceedings.
2. The Committee did not inspect the property prior to the hearing.

**HEARING**

3. On 28 October 2003 when the matter came before the Leasehold Valuation Tribunal, the parties and their respective advisers had agreed the current value of the landlord's interest (£3,600), the value of the insurance commission from which the landlord benefited under the terms of the leases (£500) and the aggregate values of the five flats after enfranchisement (£813,000). Still not agreed by the respective experts' reports were the current pre-enfranchisement value of the flats, the development value and the yield.

**THE CASE FOR THE LESSEES**

4. For the participating lessees, Mr Avery FRICS, the lessees' valuer, had prepared a detailed report, with supporting evidence, duly prefaced by a formal statement of his recognition of his duty to the tribunal as an expert. He said that both he and Mr Chandler of Castle Wildish, acting for the freeholder, had been appointed only 8 days prior to the hearing, so that it had not been possible in the timescale to prepare an agreed statement of facts. However Mr Chandler had accepted that the documents tendered in support of Mr Avery's report were "agreed documents", and the factual details in his report in respect of the five flats were "agreed facts". Moreover, the yield had in the meantime been agreed leaving only the pre-enfranchisement value of the flats and the development value to be determined by the Tribunal.
5. Mr Avery explained that the subject building was one half of a substantial 2 storey Edwardian house in a large plot set back about 8 metres from Hook Road, with lessees' parking in the front drive, and gardens at the rear, and that No 20 was situated on the west side of this very busy, noisy and heavily trafficked road about a mile from Surbiton Town Centre, which provided local shops and rail links. The property was built of brick under a slate roof and had been converted into four one bedroom flats and one of 2-3 bedrooms. The conversion (in his opinion rather poorly effected) had been achieved mainly by means of lightweight partitions, and there was

no insulation in the property although some lessees had installed central heating in their flats. The flats therefore suffered from noise from traffic congestion through not having modern amenities such as double glazing or other sound insulation. It was common ground that the freeholder had over the years fallen short of his repairing obligations, which included maintenance to the main elevations, the structure, the roof and the external decorations. Mr Avery also considered the access onto Hook Road to be potentially dangerous, with its fast traffic and congestion. He said that the prime reason for the enfranchisement was the backlog of necessary repairs and maintenance.

6. Mr Avery said he had researched the market locally in order to arrive at his valuation but that this had been quite difficult as most comparable flats were in modern purpose built blocks. He had measured all the flats in the subject building, which were held on leases having 73.66 years unexpired with stepped ground rents, had allowed for the freeholder's 50% share of the marriage value (pursuant to s. 127 of the 2002 Act) and a 95.5% relativity of leasehold to freehold, but nothing for development value as the existing five leaseholders had rights over the entirety of the curtilage, thus leaving no scope for the freeholder to develop the site further. He produced particulars of seven comparables, four with one bedroom and three with two bedrooms (which however he said were all situated much near Surbiton town centre than the subject property). His valuation was £12,360.

7. Questioned by the Tribunal as to his reasoning, Mr Avery said he had fixed on a 95.5% relativity figure because of the nature of the building, the limited capital value of the large flat (an awkward size in the area with no dedicated garden) the local demand for flats, and other LVT decisions, of which he pointed to two: 26/26A Bygrove Road, Colliers Wood, LON/ENF/775/02 where there had been 70 years unexpired and 94% relativity, and 42/42A Woodbury Avenue, Winchmore Hill, LON/ENF/413/99 where there had been 73 years unexpired and 95% relativity. He had not used Savills' or any similar graphs, because they were not useful for suburban properties, and he had not been able to find any actual sales, as flats in the area were usually purpose built in the 80s or early 90s, and/or they usually had a share of the freehold. He did have graphs of his own, but also had his own idea of where values should be pitched.

8. Mr Avery explained that he had allocated the marriage value only to the participating lessees in accordance with the precise wording of the Act, and had deducted the value of the freeholder's interest, arriving at a figure for marriage value of £16,515. He had allowed nothing for development value because at present he could see no development potential, either in the roof space or in the curtilage, although Mr Chandler had gone for a very substantial development value. The real obstacle to development was that all the lessees were entitled to the use of the whole of the curtilage, and the parking space was already inadequate, so that development could not take place without the consent of all the lessees, except possibly in the roof, which he thought unrealistic to pursue further because of the low pitch of the majority of the roof. He confirmed that he had taken some account of the impact on decisions of the passage of the 2002 Act, which had removed marriage value in cases where there were more than 80 years unexpired, as this might have had a half point effect on figures in relation to what lessees might now achieve if negotiations failed, since such legislation did have an impact on valuation as soon as it was announced, irrespective of when the new law was intended to come into force.

9. Cross examined by Mr Chandler, Mr Avery agreed that the figures would be different if all the tenants were participating instead of just 3 out of the 5, but did not agree that it would be fairer to the freeholder if marriage value was allocated to all of them at the enfranchisement stage. He said, first, that contrary to Mr Chandler's view, the non-participating lessees might never extend their leases, and secondly, the Act was explicit about allocation of marriage value to the participating lessees only. He also did not agree that the site was under developed, as although the attics might have been incorporated if the conversion had been done today, there was no realistic prospect of incorporating them now without spoiling the existing flats. He did not agree that the grounds could be used to increase the living space and the value, even if they were not already the subject of rights of the lessees for common use; this was due to the inadequate car parking besides which planning permission was unlikely to be given for another flat even without parking. He said the government balanced their drive to make better use of existing sites with guidance on keeping existing buildings which contribute to the "street scene".

### **THE CASE FOR THE FREEHOLDER**

10. Mr Chandler also produced a written report to which he spoke. This report did not contain the usual RICS statement of recognition of his duty as an expert and was couched in terms of submission which suggested that Mr Chandler was acting as an advocate rather than as an expert but Mr Chandler stated that the brevity of his documentation was necessitated by the shortness of time since he had been instructed, and that the content was nevertheless his professional opinion as an expert. He was insistent that the marriage value should apply to all five flats and that the relativity figure should be 94.28% which produced a marriage value of £46,504, half of which would give the freeholder £23,252. He said his relativity figure came from the valuation of a lease extension negotiated by Castle Wildish in February 2003 in respect of a property at 3 Limetrees, The Avenue, Surbiton, and his justification for including all 5 lessees in his marriage value calculation was that the value of the freehold interest is the same regardless of how many lessees are participating. Moreover he contended that the loss to the freeholder of future fees for registrations, approvals and consents etc. should be assessed at the nominal sum of £500, i.e. £100 per flat.

11. Mr Chandler further insisted that there must be development potential within the large pitched roof of the property, either for an additional flat, or for extension of the existing flats into the roof to provide additional accommodation. He was sure that planning permission could be obtained for a suitable project and pointed to three local buildings where such development had either been allowed or the height of the building was already similar to the three storeys which could be achieved at the subject property: The Shrubbery, adjoining 20 Hook Road, a purpose built block of three storeys, 15 Hook Road, a Victorian house directly opposite the subject property, with four floors including basement and attic, and 17 Hook Road, a similar house on four floors. With regard to the gardens, he pointed to Clause 3 of the leases, which did not demise the gardens to the lessees but retained them for the lessor, and to Clause 2(iv) which permitted the lessor to make regulations in relation to the grounds, which, he said, confirmed that the lessees did not have the exclusive use of the grounds. He therefore concluded that the lessor must be reimbursed for the loss of

this potential additional value, especially since once the lessees acquire the freehold they would be in a position to realise this additional value themselves. He valued a potential new flat in the roof at between £180,000 and £200,000, but he had placed a nominal £20,000 on the potential development value as planning permission had not actually been obtained.

12. Asked by the Tribunal to set out his experience of realisation of potential development value, Mr Chandler said that he had known a purpose built block where a refuse area had become a new flat, and a new refuse building had been provided in lieu. He added that lessees often agree to changes to avoid roof costs when a roof needs replacing. He had had experience at another block where an additional floor had been added to a two storey building, with an external lift shaft and improvements to the stairs, and another where a development had been realised at the side. He mentioned a further building where such changes were under discussion at present. He had had no time since being instructed so recently to draw up plans and to obtain a preliminary view from the local authority or he would have done so. He was not surprised that the freeholder had not thought of any of these ideas during the 17 years during which he had owned the property as he himself (who was an expert in realising development value which others might not see) had only just been instructed. He did not agree that his ideas were speculative and insisted that even if planning permission were not forthcoming for conversion of the attics, it would still be possible to extend or convert the large flat into two, thus releasing further value, or to wait for one of the first floor leases to come onto the market and to use it to facilitate development.

13. Asked about the very precise relativity figure of 94.28% , he said this was based on the Limetrees property already mentioned, that he did not regard the use of graphs as a useful science, and that in fact he and Mr Avery were not far apart on relativity. He added that the 2002 Act had had the result of making lessees with less than 80 years unexpired apply for extensions, as this was now an important factor in valuation, even for mortgage applications. Asked about the proposed compensation for loss of the right to give consents, Mr Chandler said that the freeholder in this case had only had a small number of such applications in 17 years as flats had not changed hands, but he nevertheless considered it was important to compensate him for all loss.

14. Cross examined by Mr Avery, Mr Chandler insisted that the freeholder had never lost control of the gardens, and that it was unrealistic to claim that development would breach the covenant for quiet enjoyment since repairs would do no more than was proposed. He agreed that there were water tanks in the attics but not that they were therefore necessarily part of the common parts within the meaning of paragraph 3 of the preamble to the lease, and he did not consider that to take back the attics would be derogation from the grant on the part of the freeholder.

## **SUMMARY OF THE PARTIES' CASES**

15. In summarising the case for the freeholder, Mr Chandler referred briefly to his earlier contentions, adding only that the freeholder had acquired the building for investment and only wanted to realise the maximum potential from his investment.

16. On behalf of the lessees, Mr Avery drew the Tribunal's attention to the fact that the flats were located in some extremely attractive and enjoyable grounds so that

the value of the flats reflects the amenity value of the gardens. He said that the price of such properties as the subject flats located in a building set within attractive gardens, was a component part of the marriage value, which benefits a freeholder on enfranchisement. In this case there was more benefit to the freeholder in the value of the flats with their garden access than in development of the roof space: he considered there was in this instance no practical development value in the roof in any case, while lack of availability of the gardens for development meant that in practice there was no development value there either. He added that the definition of marriage value is in Chapter 6 of the 1993 Act.

In view of the claim of development potential the Tribunal arranged to inspect the property immediately following the hearing.

## INSPECTION

17. The Tribunal inspected the subject property on the afternoon of 28 October 2003 and found it to be much smaller in reality than it had appeared in the photographs shown at the hearing. The driveway was shared with No 18, from which No 20 was semi detached, and the 5 cars present at the time of the inspection filled the available space. On site they were able fully to appreciate that the half of the building comprising No 20 was awkwardly L shaped, with the much narrower leg of the "L" extending at right angles back from the roadside façade having a lower pitched roof than the main building. This layout enclosed the garden area to the rear in the crook of the "L" in a manner which provided both an attractive aspect from the windows of the flats which looked out onto them, and a shield from the noise of the road.

18. Internally, the common parts were somewhat basic. The first floor was approached by a narrow cramped staircase, which had presumably been the main staircase of the original house. On this floor was the large 2-3 bedroom flat, and a small one bedroom flat which also had the benefit of an external cupboard for storage. The one bedroom flat was small and cramped and the living room and kitchen were open plan. From the landing between the two flats providing access to the attic, the Tribunal was able to ascertain that the roof space would provide very limited potential for development as the headroom achievable (only adequate under the centre area of the roof) would not permit spacious rooms. There would also be the problem of arranging suitable access as there was no obvious location for a new staircase.

19. The Tribunal visited two of the other three flats, which were accessed respectively from the side of the building, and from the rear. These flats were attractive as they each contained windows with views over the garden, as did the fifth flat to which internal access was not available: however an inspection of the gardens made it clear that there was no room for development without spoiling these, with the possible exception of construction of a small maisonette towards the rear boundary at the end of the "L", provided of course the lessees agreed to this reduction in the garden space available to them.

20. The Tribunal also inspected externally those of the comparables to which they had been referred which they considered might be of assistance to them in coming to their decision.

## DECISION

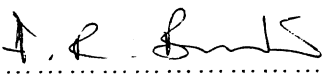
21. Following the hearing and their inspection, the Tribunal considered the potential for development in some detail. They were of the view that any attempt to extend the present large first floor flat into the roof space would not be cost effective. It would make an already large flat (already less saleable in the local area than the one bedroom units) even larger and the work would not be reflected in subsequent values. Similarly, adding on at the rear of the L shape, where the rooms were narrow, while it would achieve an extra room on the upper and lower floors, would not be cost effective either. To create an extra unit, such as a maisonette on the lower and upper floors at the end of the L would involve cutting down a large tree and would provide only very small rooms and windows only on the garden façade. The Tribunal considered that a small sum, perhaps a maximum of £1,000, could appropriately be added for this remote possibility.

22. Considering the marriage value in relation to the “hope” element claimed by the freeholder, the Tribunal weighed up the likelihood of one or both of the non-participating tenants wanting to extend their leases in the next 5-10 years. On the basis that the market is already reflecting the 2002 Act, which has removed marriage value where there remains more than 80 years unexpired on a lease and given lessees the right to manage their own buildings, while lessors retain the obligation to demand the ground rent, they recognised that this must make investment in freeholds less attractive, while lessees will be more concerned with the impact of the unexpired portion of their leases. In the present case, the current 73 year terms will be down to 68 which might possibly give the non-participating lessees cause for concern: on the other hand such a lease is still mortgageable. They considered that a nominal figure should be added to reflect this element, perhaps a further £1,000.

23. Considering the relativity figures which had been presented to them, the Tribunal were of the view that, based on other recent LVT decisions, 95% was not inappropriate as a round figure.

24. As the value of the loss of ground rent and loss of insurance commission had been agreed, it remained only for the Tribunal to put a price on the loss of revenue from consents. They were of the view that £500 was too much for this, as £100 per flat appeared excessive, preferring a total of £250 (£50 per flat).

25. The Tribunal therefore recalculated the valuation in accordance with paragraphs 3 and 4 of Schedule 6 of the Act, and determined the price payable in accordance with this valuation to be £15,980, rounded to £16,000. The Tribunal’s valuation is attached as an appendix.

CHAIRMAN.....

Date.....15.12.03

20 HOOK ROAD, SURBITON, SURREY KT6 5BH

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993 (as amended)  
PURCHASE PRICE PAYABLE BY NOMINEE PURCHASER IN ACCORDANCE WITH SCHEDULE 6

Valuation Date: 28 October 2003

All leases for 99 years from 24 June 1978

Unexpired Term at Valuation Date: approximately 73.66 years

Yield rate agreed @ 9%

Value of extended leases of all 5 flats agreed @ £813,000

Value of each flat as per lessee's valuer:-

| participating flats |                 | non-participating flats |                 |
|---------------------|-----------------|-------------------------|-----------------|
| Flat 2/20A          | £135,000        | Flat 1/20A              | £220,700        |
| Flat 20B            | £152,000        | Flat 20F                | £145,300        |
| Flat 20C            | <u>£160,000</u> |                         | <u>£366,000</u> |
|                     | £447,000        |                         |                 |

**20 HOOK ROAD (5 flats)****Freeholder's present interest in accordance with Paragraph 3.**

|                           |                |              |           |
|---------------------------|----------------|--------------|-----------|
| Term 1                    |                |              |           |
| Ground Rent               | 125            |              |           |
| YP 7.5 years @ 9%         | <u>5.284</u>   |              |           |
|                           |                | 661          |           |
| Term 2                    |                |              |           |
| Ground Rent               | 250            |              |           |
| YP 33 years @ 9%          |                |              |           |
| deferred 7.5 years        | <u>5.583</u>   |              |           |
|                           |                | 1,396        |           |
| Term 3                    |                |              |           |
| Ground Rent               | 375            |              |           |
| YP 33 years @ 9%          |                |              |           |
| deferred 40.5 years       | <u>0.319</u>   |              |           |
|                           |                | 120          |           |
| Reversion to              | £813,000       |              |           |
| Deferred 73.66 years @ 9% | <u>0.00175</u> |              |           |
|                           |                | <u>1,423</u> |           |
| Agreed between valuers at |                |              | 3,600     |
|                           |                |              | c/f 3,600 |
| :                         |                |              |           |



b/f 3,600

**Freeholder's share of marriage value in accordance with Paragraph 4.**

Proposed interest

Present Freehold value of 2  
non-participating flats

1,510

Proposed Leasehold values  
with 999 year leases:

447,000

448,510

Less

Present value of 3 participating  
flats @ 95% of £447,000

424,650

Present value of freehold

3,600

428,250

Gain on marriage

20,260

Freeholder's share @ 50%

10,130

c/f 13,730

b/f 13,730

Hope Value

For 2 non-participating flats

1,000

14,730

Other loss in accordance with Paragraph 5.

Insurance Value (agreed)

500

Loss of future payments for approvals & consents (£50 per flat)

250

Development value

500

15,980

say **£16,000**