

FLAT 30 DOLPHIN COURT, CLIFF ROAD, EASTBOURNE

1. The Application

This is an application by the Mrs M Whymant-Morris, the leaseholder of Flat 30 under Section 48 of the Leasehold Reform, Housing and Urban Development Act 1993 ("The Act"), to determine the price to be paid on the acquisition of a new lease on the flat in accordance with the provisions of Chapter II of the Act. The respondents to the application are the landlords of Dolphin Court, Kenneth John Pettit and Jonathan John Eley Preston (The Trustees of Holders Trust).

2. The Inspection

We attended at Dolphin Court on 16th March 2004 but were not able to obtain access to Flat 30. Our inspection was therefore limited to seeing the block externally. We noted that it was a block, which appeared to have been built approximately forty years ago, situated close to the sea front and with views of the sea. We also noted the garages behind the block and the large tarmac areas where cars could be parked. The block provided accommodation on seven floors.

3. The Hearing

At the hearing, which took place at the International Lawn Tennis Centre, Eastbourne, immediately following the inspection, the applicant was represented by Mr Tom Hobson of Hobson and Latham, who had with him Mr David Green FRICS FCI Arb. The respondents were represented by Mr G P Holden FRICS.

4. Agreed Facts

At the outset of the hearing, it was established that the following facts had been agreed between the parties:-

- (a) The lease of the flat 30 was for a term of 99 years from the 29th September 1962.
- (b) The valuation date was 21st July 2003, with the result that the un-expired term of the lease for valuation purposes was 58 years 2 months.
- (c) The accommodation of flat 30 comprised an entrance hall, living room, 2 bedrooms, dining room, kitchen, bathroom and separate wc. Access to the second floor flat was by lift.
- (d) The leasehold interest in the flat had a value of £170,000.
- (e) No other property belonging to the respondents was adversely affected by the acquisition of the new lease and accordingly no compensation was payable on this account under Paragraph 5 of Schedule 13 to the Act
- (f) There were only two issues between the parties which the tribunal would have to decide. First, in considering the diminution in value of the respondents interest in the applicants flat, it was necessary to determine the yield. Mr Green put this at 9% and Mr Holden put it at 7%. Secondly for the purpose of assessing marriage value, it was necessary to determine what the uplift in value flowing from the

acquisition of the new lease should be. Mr Green put it at 10%, whereas Mr Holden put it at 12%.²

5. "The Yield"

5.1)

Mr Green put forward a schedule of seven properties where the Southern Leasehold Valuation Tribunal had determined yields which, varied between 8% and 10.5%. Two of the properties were in Southampton, two in Hove, one in Plymouth, one in Walton on Thames and one in Southbourne. No details were provided in relation to these properties, although details were available on a more comprehensive schedule provided by Mr Holden. Mr Green's main point was that a yield of 7% was only to be found in "classy estates" in West London. He did not consider that Dolphin Court was a prestigious block of flats and the rooms in flat 30 were rather small. In answer to questions, Mr Green said that Shortdean Place, Eastbourne, (where the tribunal had determined a yield of 7.5%) was different from Dolphin Court, it was a quieter situation away from the sea front and the harsher weather conditions which prevailed there. He accepted that the values of the flats there were lower than flats at Dolphin Court.

5.2)

Mr Holden said that there were four reasons why Dolphin Court was an attractive investment. Firstly, with 55 flats in the block, it was larger than average. There were benefits of scale in owning and managing large blocks. Secondly, it was in a high value location on the sea front where the average buyer was likely to be relatively well off and this in turn meant that there would be less difficulties in funding major works and there would be fewer arrears. Thirdly, the leases were short and there were likely to be regular

enquiries for lease extensions. Fourthly, there was no mutual enforcement clause in the leases and there were regular requests for deeds of variation. He produced a schedule which set out all the decisions made by the Southern Leasehold Valuation Tribunal on leasehold enfranchisement's and leasehold extensions since January 1999 (being the time when the Lands Tribunal decision in the case of Maryland Estates Limited v The Abbathure Flat Management Company Ltd became generally known to valuers and tribunal members). In analysing that schedule, he made the point that the most helpful comparables were to be found in decisions made in respect of large blocks in the East Sussex Area. In this context he referred to Balmoral Court, Hove (20 flats), Edward House, Hove (28 Flats), Drive Lodge, Hove (39 Flats) and Shortdean Place, Eastbourne (22 Flats). The yields determined were respectively 7% for the first three properties and 7.5% for Shortdean Place. He considered that, by applying the four criteria he had outlined for judging the attractiveness of the investment, Dolphin Court was more attractive than Shortdean Place and therefore likely to attract a higher yield. This had led him to the conclusion that the yield to be adopted should be 7% in line with the decisions on the three blocks in Hove. In answer to questions, Mr Holden said that he accepted that more prestigious blocks of flats and more highly priced flats were to be found about half a mile further into Eastbourne.

6. Marriage Value – The Uplift

6.1)

Mr Green maintained that the value of the leasehold interest would be increased by 10%, once the lease had been extended. He based this upon his own professional experience and he thought his opinion was in line with the views of other surveyors. He said that examples given on the Leasehold Advisory Services website for valuation of leasehold extensions used a figure of 8% for yield and 10% for uplift. The website

emphasized that the examples were for demonstration purposes. They were said to be typical of a flat with 68 years unexpired lease and with an existing market value (with existing lease) of £150,000.

6.2)

Mr Holden said that there was no actual evidence of sales of flats in the block where leases had been extended. Therefore he referred to the tribunal decisions set out in the schedule and isolated those decisions where leases had 50 to 60 years unexpired. There were six decisions but three of these were in Surrey, which reflected higher levels of uplift than prevailed in Sussex. The two decisions in Sussex related to 38 Arlington Road, Eastbourne and to White Hart Court, Horsham. In the former case, with leases having 60 years to run, the tribunal had determined an uplift of 10%. In the latter case with leases having 59 years to run, the tribunal had determined an uplift of 11%. In his view the increase in marriage value between 80 years and 60 years was fairly steady and could be measured at half a percent per annum. Where leases had less than sixty years to run, the rate would increase at about 1% per annum and he thought this was born out by his analysis of the Eastbourne and Horsham properties and also by the 11.5% uplift awarded in the case of Belle Vue Mansions, Southbourne (with 58 ½ years to run). He made the point that the Leasehold Advisory Services website did not support Mr Green's case because the figures given there related to a flat with 68 years unexpired.

7. Consideration

7.1)

We did not understand how Mr Green had arrived at his selection of 7 “comparables”, apart from the fact that they illustrated that in the past the Tribunal had determined yields of between 8% and 10.5%. His assertion that a figure of 7% would only be appropriate in

London was contradicted by the full schedule of Southern Leasehold Valuation Tribunal decisions prepared by Mr Holden, which indicated that there were four properties where the Tribunal had decided upon a 7% yield – Balmoral Court, Hove; Edward House, Hove; Drive Lodge, Hove; 24 Baldslow Road, Hastings. Mr Holden had prepared a full schedule and he gave the reason for picking out four properties on the schedule, namely that they were large blocks in the East Sussex area. Three of these, which we have referred to already, were situated in Hove. The fourth was Shortdean Place, Eastbourne. Mr Holden gave four reasons (set out above) why Dolphin Court was an attractive investment and Mr Green had accepted those reasons, although he made the point that Dolphin Court was not a prestigious block. Mr Holden appeared to have based his argument upon Shortdean Place, Eastbourne, being a less attractive investment than Dolphin Court and therefore Dolphin Court had to be equated with the three Hove properties.

However another way of interpreting the evidence was to treat the decision in Shortdean Place as simply inconsistent with the decisions in the case of the three Hove properties. Mr Holden had himself considered that the values of flats in blocks, which were situated on or near the sea front but closer to Eastbourne town centre, were higher than Dolphin Court. Bearing this concession in mind and the fact that in our view Hove was a more prestigious location than Shortdean Place, Eastbourne, we considered that the 7% yield

suggested by Mr Holden was too low. However there was no relevant evidence put forward that really supported the 9% yield suggested by Mr Green. This led us to the conclusion that the appropriate yield was 8%.

7.2)

We then considered the question of extend lease value. Mr Green simply asserted his opinion (which he claimed to be the opinion of other surveyors) that an uplift of 10% was appropriate. He did not cite any real evidence in support of this opinion but did refer to examples given on the Leasehold Advisory Services Website, where there was an uplift of 10%. However that hardly supported his case since that uplift was said to be typical of a flat with 68 years unexpired, whereas 30 Dolphin Court had an unexpired term of 58 years and 2 months. Mr Holden's position was that, having regard to the Tribunal's decisions, there was a slow and steady increase in extended lease value between 80 years and 60 years unexpired term but that the rate of increase in extended lease value rose more sharply when the unexpired term fell below 60 years. He relied on the Tribunal's decision in the case of 38 Arlington Road, Eastbourne (60 years unexpired, 10% uplift), White Hart Court, Horsham (59 years unexpired, 11% uplift) and 6 Bellevue Mansions, Southbourne (58 ½ years unexpired, 11.5% yield). In the absence of any real evidence to the contrary, we accepted Mr Holden's evidence and reasoning and we considered that 12% was an appropriate uplift.

8. Valuation

Applying a yield of 8% and an uplift of 12% (landlords share 50%) we calculated the premium payable to be £11,749, in accordance with the valuation set out in the schedule attached.

9. Decision

For the reasons given, we have determined that the sum payable by the applicant for the acquisition of the new lease is £11 749.

P B LANGFORD (CHAIRMAN)

DATED:

SCHEDULE

VALUATION

FLAT 30, DOLPHIN COURT,
EASTBOURNE.
DATE OF VALUATION 21.7.03

Diminution of value of the Landlord's interest.

Ground rent receivable	£75		
Y.P for 58 years 2 months @ 8%	<u>12.3578</u>	£926.84	
Reversion to	£190,400		
P.V £1 in 58 years 2 months @ 8%	<u>0.0114</u>	£2,170.56	£3,097

Marriage Value

Proposed interest		£190.400	
<u>LESS</u> Existing leasehold	£170.000		
Existing freehold	<u>£3.097</u>	<u>£173.097.</u>	
Marriage Value		£17,303	
50% Share			£8652
Compensation			NIL
	PREMIUM PAYABLE		<u>£11,749</u>