

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/21UC/OCE/2004/0049

Property: 21 Enys Road
Eastbourne
East Sussex

Applicant: Ms Catherine Leuty

Respondent: Mr. John Ernest Albert Sears

Date of Hearing: 25th October 2004

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. J.N. Cleverton FRICS
Ms. J.Dalal

Date decision Issued:

RE: 21 ENYS ROAD, EASTBOURNE, EAST SUSSEX

Background

1. An application has been made under the Leasehold Reform, Housing and Urban Development Act 1993 as amended ("the Act") in respect of the collective enfranchisement in relation to 21 Enys Road, Eastbourne, East Sussex ("the subject property"). Ms Catherine Leuty ("the Applicant") is the nominee purchaser and Mr. John Ernest Albert Sears ("the Respondent") is the freeholder of the subject property.
2. The Applicant's Initial Notice was served on the 4th April 2004 quoting a figure of £17,250 as the price to be paid for the freehold interest in the subject property.
3. The Respondent's Counter Notice was served on the 9th June 2004 acknowledging the tenant's right to enfranchise and that the subject property complies with the requirements under the legislation. The Counter Notice confirmed the Respondent's disagreement with the price offered for the freehold in the Initial Notice and valued the freehold interest at £65,274.

4. Mr. Andrew Priddell FRICS, represents the Applicant and Mr. Christopher Cobb MRICS of Tudors, Chartered Surveyors represented the Respondent but not at the hearing.

5. Mr. Priddell and Mr. Cobb had discussed the case on a 'without prejudice' basis to narrow the issues and those discussions culminated in a Statement of Agreed Facts, a copy of which had been supplied to the Tribunal. We were grateful to Mr. Priddell and Mr. Cobb for that. Mr. Priddell had prepared a report, a copy of which had been supplied to the Tribunal and to the Respondent before the hearing.

6. The following matters have been agreed.

- (a) The general description and situation of the subject property as set out in Mr. Priddell's report.
- (b) The tenure of the leases as set out in Mr. Priddell's report.
- (c) The date of valuation is the date of the Counter Notice: 9th June 2004.
- (d) The capitalisation of the ground rental income at £3,680

7. The Tribunal is to determine the sum to be paid for the freehold of the subject property.

8. Our determination appears at paragraphs 20 to 26 below.

Inspection

9. On the 25th October 2004, we inspected the exterior of the subject property, the common hallway and staircase, the front and rear gardens, the parking area and the interior of two of the flats. Mr. Priddell was present at the inspection.

10. The subject property is a mid terrace house with accommodation on three floors which has been converted into six flats.

The hearing

11. The hearing was attended by Mr. Priddell as expert witness and advocate for the Applicant. The Respondent appeared in person, unrepresented and did not call any witnesses.

12. The Respondent had prepared a bundle of documents and we were grateful to him for that. Included in the bundle was a proof of his evidence and a valuation made by Mr. Cobb of the price which he considered should be paid for the freehold of the subject property.

The case for the Applicant

13. Mr. Priddell stated that it had been difficult to produce an agreed statement of facts. He said that Mr. Cobb had never seen the subject property and that Mr. Cobb's valuation of the price to be paid for the freehold (which he had seen before the hearing) did not follow the method of valuation provided for in Schedule 6 of the Act.

14. Mr. Pridell gave evidence by reference to his report including his valuation which he stated did follow the method of valuation provided for in Schedule 6 of the Act. It was intended to compensate the freeholder for the loss of his investment.

15. In arriving at his valuation Mr. Pridell had reviewed comparable valuations. In his opinion in the area there had not been much change in prices from the end of 2003 to October 2004. These were not the most fashionable of flats. The valuation was on the assumption that both parties had complied with their repairing obligations. There was no comparable evidence from Mr. Cobb. All the flats except Flat 2 had gas fired central heating but Flat 2 had what Mr. Pridell described as a smart kitchen. He had not seen all the flats but some had replaced their windows. He considered there was on average a £3,000 uplift in value in respect of each flat resulting from improvements.

16. He had then used 4.5% to adjust to the freehold. This was based on recent determinations and had been agreed on many negotiated settlements. Surprisingly Mr. Cobb had used 3.625% which would result in a lower price for the freehold but he applied that percentage to a different figure with the result that a higher figure for marriage value was produced. Mr. Pridell had made calculations using a 7.5% yield which had been used in recent Tribunal decisions. Flats 5 and 6 are non participating. Mr. Pridell understands that the lease of Flat 6 was bought by the lessee of Flat 5 for £84,950 and that the lessee of Flats 5 and 6 wants to extend the flats upwards. The other lessees do not want that. The Respondent has now sold the roof spaces to the lessee of Flats 5 & 6 and she no longer wants to take part in this enfranchisement. When those flats were participating Mr. Pridell had included marriage value for them but as the freehold and leasehold interests would not be in the same hands there could be no marriage value in respect of those two flats. The Respondent accepts that he does not own other property nearby and Mr. Pridell could not see that the compensation provisions in Schedule 6 of the Act could apply.

17. The value of the freeholder's interest has two elements: the capitalisation of the ground rent, which was agreed at £3,680 and the value of the reversion, which was based on the value of the flats unimproved and discounted back 71 years; that being the unexpired term of the leases which Mr. Pridell valued at £3,825 giving a total of £7,505. Added to that was the marriage value which he calculated at £9,412.

The case for the Respondent

18. The Respondent gave evidence by reference to his bundle of documents. He argued that there should be included marriage value in respect of Flats 5 and 6 because if that were not included, the participating leaseholders could claim compensation for lease extensions from the nonparticipating leaseholders; effectively stepping into the landlord's shoes at no cost and benefiting from the financial compensation which would have been attributable to the landlord. He considered that the participating leaseholders were acquiring £9,000 or £10,000 of equity for nothing. The Respondent would like £26,000 to £30,000 for the whole freehold but would be happy with a figure in the low to mid twenty thousands.

19. The Respondent understands that it is not the case that the lessee of Flats 5 and 6 has chosen not to participate but that she has been cut out of the enfranchisement by the other lessees. The Respondent produced copy correspondence from that lessee in which she stated

that she had recently bought Flat 6 for £83,000, that she had renovated it and it was now worth £110,000 plus and that Flat 5 is worth in excess of £120,000.

The Determination

20. The figure for the capitalisation of the ground rent was agreed by the surveyors representing the parties.

21. Mr. Cobb did not produce a figure or calculation for the valuation of the reversion as such but in place of that produced a figure which he referred to as compensation for severance - loss of income. We were not provided with any authority for claiming such compensation. Paragraph 5 of Schedule 6 of the Act provides for compensation for loss resulting from enfranchisement but the paragraph applies only to any diminution in value of any interest of the freeholder in other property resulting from the acquisition of his interest in the specified premises and any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property. We were not persuaded that in the present case there could be a claim for compensation of this kind as the Respondent accepted he did not own any other property which could be affected.

22. We found the valuation of the improved long leasehold interests to be correct from the evidence produced by Mr. Pridell and from our own knowledge of property prices in the area. The correspondence from the lessee of Flats 5 and 6, produced by the Respondent, gave her valuation of those flats and taking into account the reference to the state of repair of Flat 6 and its renovation, those figures are not far removed from the valuation by Mr. Pridell.

23. We found that the use of a 7.5% yield was appropriate.

24. We found that there should be no marriage value in respect of Flats 5 and 6 as they are not participating and therefore in accordance with the legislation marriage value in respect of both these flats is excluded.

25. The way in which Mr. Pridell arrived at his figures for what he referred to as the current unimproved leasehold interests, the adjustment to freehold, the deduction for improvements and consequently the marriage value could have been done differently and we explored that possibility. However, we found that in the end it produced only a small difference from Mr. Pridell's final figure and had we substituted our calculation it would have resulted overall in a slightly lower price for the freehold. We therefore decided that Mr. Pridell's valuation should stand.

26. We determined that the price to be paid for the freehold of the subject property should be £16,900.



R. Norman
Chairman