

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2009] UKUT 137 (LC)
LT Case Number: LRA/5/2008

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – flats – price – agreement before LVT that freehold worth 5.5% more than leasehold value – whether leasehold value relates to real world or no Act world – held real world value applies – appeal allowed

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE LEASEHOLD
VALUATION TRIBUNAL FOR THE SOUTHERN RENT ASSESSMENT PANEL

BETWEEN (1) JOHN JULIAN LIONEL GEORGE SHEFFIELD
(2) MARK HENRY ARMOUR
(Trustees of R G DRAX AMR 1987 SETTLEMENT TRUST) Appellants

and

KINGSBERE COURT MANAGEMENT
COMPANY LIMITED Respondent

Re: Kingsbere Court
3 Turberville Road
Bere Regis
Dorset BH20 7HA

Before: N J Rose FRICS

CASE DECIDED UPON WRITTEN REPRESENTATIONS

The following case is referred to in this decision:

Arrowdell Ltd v Coniston Court (North) Hove Ltd [2007] RVR 39

© CROWN COPYRIGHT 2009

DECISION

1. This is an appeal by the freeholders, Trustees of R G Drax AMR 1987 Settlement Trust, against the decision by the Leasehold Valuation Tribunal for the Southern Rent Assessment Panel, determining the price to be paid by the respondent nominee purchaser, Kingsbere Court Management Company Limited, for the freehold interest in a block of six self-contained flats and maisonettes known as Kingsbere Court, 3 Turberville Road, Bere Regis, Dorset BH20 7HA at £35,832.

2. Permission to appeal was granted by the President, limited to the question whether the LVT was right to apply the agreed marriage value uplift of 5.5% to the existing leasehold value in the no Act world, or whether the leasehold value in the real world should have been adopted. The review stage of the appeal was considered by His Honour Judge Huskinson. By decision dated 11 February 2009 Judge Huskinson allowed the appeal and directed that redetermination of the price payable be made by a valuer member of the Tribunal pursuant to the written representation procedure.

3. The redetermination of the price was assigned to me. By letter dated 2 March 2009 the respondent's solicitors, Messrs Howlett Clarke of Brighton, informed the Tribunal that their instructions were not to present any further submissions on behalf of their clients, who were "content to await the outcome of the appeal following submissions from the landlord." Written representations on behalf of the appellant were submitted by Mr G D Bevans FRICS, MCI Arb, C DipAF, FEWI.

4. Mr Bevans's submissions were as follows:

"Facts

- (ix) Neither valuer presented evidence of comparables to substantiate reversionary value as no direct comparables were found. However, either before or during the LVT hearing all figures were agreed other than as to the 'virtual freehold/freehold in reversion' figures.
- (x) As stated in the decision of His Honour Judge Huskinson neither valuer made any distinction between those figures and although I have made such distinction in subsequent cases I do not intend to resile from that effective agreement.
- (xi) In the joint statement of agreed facts and matters in dispute the valuers recorded at para B4 as follows:

Mr Holden says that the acquisition of the freehold interest will add approximately 5% to the existing leasehold value of each flat.

Mr Bevans says it will add approximately 6%.

- (xii) The LVT decision correctly records, at para 8.4, the valuers' agreement to an uplift of 5.5% (being the mid point of those figures).
- (xiii) Both valuers gave evidence to the Tribunal that the existing leasehold values (agreed during the hearing at a total of £830,000 (see 5.1 of decision) should be reduced by 5% to reflect the 'no Act world'... This gives an agreed 'no Act world' value of £790,000 (as stated at 8.3 of decision).

The issue in dispute

- (xiv) The issue now to be determined is whether the 5.5% uplift should be applied to the existing leasehold value of £830,000 or the 'no Act world' figure of £790,000. The alternative results are set out below

Agreed 'real world' value of flats	Agreed 'no Act' value of flats	Tribunal reversionary value	Applicant reversionary value
£830,000	£790,000	£833,450	£875,650

- (xv) My opinion is that the reversionary value should be £875,650 and my reasons follow.

Reasons for Opinion

- (xvi) The LVT referred in their decision to an extract from Hague and that extract is recited in the decision. In the both the First and Second Supplements to Hague the authors state that they have reconsidered their opinion and now believe that it is clear that the disregards and assumptions required to be applied to a valuation of the freehold interest under paragraph 3(1) of Schedule 6 to the 1993 Act apply throughout the calculation.
- (xvii) The LVT states that its decision is based upon a similar conclusion requiring consistency of assumptions.
- (xviii) I do not dispute that conclusion but I do dispute the apparent assumption that applying the provisions of paragraph 3(1) to the reversionary or virtual freehold interests will affect the value.
- (xix) In this case the agreed "no Act world" figure of £790,000 represents a discount of 5% from the agreed "real world" value of the property at £830,000. It is important to note that the "real world" figures as calculated by Mr Holden (valuer instructed by Kingsbere) and as stated in his expert evidence were originally £815,646 but that just before the hearing it was accepted that the addition of a room in a roof space was not a tenant's improvement and his figure was adjusted up to £825,646. I, as the valuer instructed by the Trustee freeholders, had adopted a figure of £835,000 excluding arbitrary tenants improvements and it was for that reason that the approximate mid point of £830,000 excluding improvements was agreed during cross examination of Mr Holden.

- (xx) The 5% discount therefore reflects all the paragraph 3(1) assumptions applicable to the leasehold interests other than improvements. It was therefore agreed that the value of rights under the Act was 5%.
- (xxi) Those other assumptions under para 3(1) are
- a. That the estate sold will include any leases that exist
 - b. That there are no 1993 Act rights of acquiring the freehold or extending an individual lease (although a section 42 Notice may be taken into account where it is given by a non-participator) and
 - c. That the property will be sold subject to any rights or burdens that would be included in the transfer.
- (xxii) However, although those same assumptions must be applied to the reversionary or virtual freehold values in my opinion they have no effect. The simple fact is that at reversion there are no leases and so no deduction has to be made to reflect the exclusion of leaseholders' rights under the Act.
- (xxiii) If the uplift of 5.5% is applied to the 'no Act world' figures, then that uplift will be being applied to a figure that has been reduced to reflect factors that will not exist in the reversionary, or virtual freehold situation.
- (xxiv) If the agreed uplift of 5.5% is applied to the 'real world' values then the reversionary or virtual freehold figure is not distorted. The uplift is being applied to an agreed figure that represent the existing value without exclusion of rights. This, in my opinion, is the correct approach.
- (xxv) It is also apparent that the LVT failed to distinguish between my expression 'uplift' and the expression 'relativity'. At para 8 of his decision His Honour Judge Huskinson refers to the *Arrowdell* decision [*Arrowdell Ltd v Coniston Court (North) Hove Ltd* [2007] RVR 39] and states that in this context relativity is being referred to as the proportion (expressed in percentage terms) that the value of a lease of x years (valued in the no - 1993 Act world) bears to the value of the freehold with vacant possession.
- (xxvi) In my evidence the starting point was the existing leasehold values and I 'uplifted' the existing leasehold values by 6% to reflect virtual freehold but agreed during the hearing that such uplift should be 5.5%. I had previously discounted the existing leasehold values by 5% (agreed) to reflect the 'no Act world'.
- (xxvii) The combined effect is that the relativity (in the context used in *Arrowdell*) between my 'no Act world' figures and the virtual freehold figures in 90.04% (95/105.5). In my original evidence I stated that my then relativity of 89.62% sat comfortably with the Beckett and Kay Graph of Graphs for a lease with just over 73 unexpired... and I consider that the same applies to the 90% relativity.

- (xxviii) The LVT decision does not appear to consider relativity – only uplift, which, it is clear from the original evidence, was not considered (at least on my part) to be the same as relativity.
- (xxix) The relativity of 90.04% referred to above can be compared with the relativity of 94.78% that can be calculated from the LVT decision (£790,000/£833,450). The latter relativity appears to sit outside the range of relativities given on the ‘Graph of Graphs’.
- (xxx) I do not know whether the LVT actually considered the figure of £833,450 in light of the agreement between the parties that the total existing (real world) values were £830,000. If they had they would have presumably identified that the increase in value of the flats due to the enfranchisement was only 0.004% or, in capital terms, an average of £575 per flat. This suggests that there was little, if any, point in instigating the enfranchisement process.
- (xxxi) In Mr Holden’s evidence to the Tribunal (prior to agreement on various matters) he gives his opinion at para 3.11 that the total existing value of the flats was £815,646 and his reversionary value was £819,000. This gives an increase in value of £3,352 in total (£558 per flat).
- (xxxii) My opinion of reversionary value is £875,560 (£830,000 x 1.055) and gives an increase in value of £47,560 (averaging £7,593 each unit). Although I accept that the adoption of such figure produces a total enfranchisement price of £57,526 it is, in my experience, not uncommon for leaseholders to pay something over the immediate enhancement price in order to secure the freehold. Part of the additional price does, of course, reflect the elimination of ground rent. In this case the agreed value of the rent is £4,748.
- (xxxiii) My experience and judgment tells me that the effect of increasing the term of a residential lease from just over 73 years to a virtual freehold and eliminating the ground rent will increase the value of the property by considerably more than 0.004%. Although I have not checked every case in which I have been involved I cannot recall any with an unexpired term of 75 years or less where the increase in ‘real world’ value has been less than 5.5%.
- (xxxiv) In my opinion neither the figures resulting from the LVT decision nor those from Mr Holden’s evidence can be correct.
- (xxxv) For the above reasons I remain of the opinion that the value of the freehold reversion is correctly stated at £875,650 and that the value of the participators’ interests after acquisition should be in a similar sum. In my opinion the resulting calculations are as set out in the attached calculations ...”

Conclusion

5. Mr Bevans’s submissions were clearly expressed and, in my view, entirely logical. In the absence of any valuation evidence from the respondent I accept Mr Bevans’s evidence in

its entirety. The appeal is allowed. I determine the price payable by the respondent for the freehold interest in the appeal property to be £57,526, as calculated in Appendix 1. I am not aware of any circumstances which would justify me in taking the unusual step of awarding costs in an appeal of this nature. I therefore make no order on the subject.

Dated 20 July 2009

N J Rose FRICS

**KINGSBERE COURT, 3 TURBERVILLE ROAD,
BERE REGIS, DORSET, BH20 7HA**

**VALUATION BY G D BEVANS
(accepted by Lands Tribunal)**

Freehold interest in Specified premises

	Years	Yield		
Ground rent reserved			£180.00	
Years purchase	14.13	6.50%	9.0658	£1,632
Reversion to			£300.00	
	YP 33.00	6.50%	13.4591	
	PV 14.13	6.50%	0.4107	£1,658
Reversion to			£450.00	
	YP 26.04	6.50%	12.3999	
	PV 47.13	6.50%	0.0514	£1,457
Reversion to freehold VP value			£875,650	
	PV 73.17	5.00%	0.0282	<u>£ 24,655</u>
Total excluding any marriage value				<u>£ 29,402</u>

Marriage value

Participators interest after acquisition		£875,650
Freehold Interest before	£ 29,403	
Participators previous interest	<u>£790,000</u>	<u>£819,403</u>
		£ 56,247
	50%	£ 28,124

Total Consideration

Price for freehold in specified premises	£ 29,402
Marriage value to freeholder in specified premises	<u>£ 28,124</u>

Total for freehold premises £ 57,526