HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

Case reference: ME/LON/00AZ/OAF/2011/0015

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 21(1) AND SECTION 21(2) OF THE LEASEHOLD REFORM ACT 1967

Property:	**2 Cameron Road, Catford, London SE6 4DJ**
Applicants:	Keith Roy Taylor and Kathryn Lesley Taylor
Respondent:	David Maurice Betts
Date heard:	6 September 2011
Appearances:	Ivan Taylor BSc FRICS of Myleasehold Limited, instructed by Child & Child, solicitors, for the applicants The respondent in person
Tribunal:	Margaret Wilson Marina Krisko FRICS
Date of decision:	6 September 2011

Introduction and background

1. This decision is made on an application under section 21(1) of the Leasehold Reform Act 1967 ("the Act") to determine the price to be paid for the freehold of 2 Cameron Road, Catford, London SE6 and, under section 21(2) of the Act, to determine the terms of acquisition of that property.

2. 2 Cameron Road is a two storey terraced house, built in the 1930s, on a development of similar properties. It is subject to a lease dated 28 February 1938 for a term of 999 years at a ground rent of £7.75 per annum, fixed throughout the term. On or about 19 November 2009 the tenants gave notice of their desire to have the freehold, and that is the valuation date, on which some 927 years of the term remained unexpired. By a notice in reply dated 18 January 2010 the landlord said that he did not admit the tenants' right to have the freehold on the grounds that they were in breach of their lease. By an order dated 23 December 2010 a deputy district judge of the Bromley County Court ordered that the tenants were entitled to acquire the freehold on such terms as were agreed or determined by the tribunal and ordered the landlord to pay the tenants' costs, summarily assessed at £1941.88. Accordingly the tenants applied to the tribunal on 28 February 2011 for a determination of the price, the terms of transfer, and the landlord's recoverable costs. In their application they proposed a price for the freehold of £125.

3. By a letter to the tribunal dated 11 May 2011 the tenants' solicitors asked the tribunal to determine the application on the basis of written representations and without an oral hearing as is permitted by regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 ("the Procedure Regulations"). On 12 May 2011 a tribunal directed that the matter would be determined on the basis of written representations unless by 1 June 2011 either party objected to such a course. By an open letter dated 18 May 2011 the tenants offered a price of £200 for the freehold. By a letter dated 25 June 2011, seemingly, and in breach of the tribunal's directions, not copied to the tenants, the landlord said that he believed that the tenants'

intention was to "diminish the true facts of the case and the true value of the property, or to fail to disclose a marriage value, and certainly not any future development value ...".

4. Regulation 13 of the Procedure Regulations requires the tribunal to conduct an oral hearing if a party so requests at any time before the determination is made, and on 19 July 2011 directions were accordingly given for an oral hearing. The directions included warnings to the landlord that the tribunal might ignore any valuation evidence which he submitted less than three weeks before the hearing and that the tribunal had the power to award costs against a party found to have acted unreasonably in connection with the proceedings. On 3 August 2011 the hearing was listed to take place on 6 or 7 September 2011 under the block bookings system. The landlord failed to submit valuation or any evidence by 16 August, three weeks before the date fixed for the hearing, and on 22 August 2011 the tenants' solicitors again wrote to the tribunal asking for a determination on the basis of written representations. The landlord lodged written representations with the tribunal on 23 August 2011.

5. At the hearing on 6 September the tenants were represented by Ivan Taylor BSc FRICS of Myleasehold Limited and the tenants also attended. The landlord, David Betts, appeared in person. Notwithstanding that the landlord's representations had been submitted after the date allowed by the tribunal in its directions dated 19 July 2011 we permitted him to rely on his written representations in the interests of justice, and Mr Taylor did not object to such a course.

The issues

Value

6. It was not disputed that the property has a rateable value such that the valuation falls to be made under section 9(1) of the Act. Accordingly the

valuation excludes any element of marriage value, and the valuation is restricted to the investment value of the landlord's interest.

7. Mr Taylor submitted that the price to be paid on that basis was £129. He had applied a capitalisation rate of 6%, a deferment rate of 4.75%, a standing house value of £250,000 and a site value proportion of 35%. He said that he was satisfied from discussions with local agents that the entirety value of the house was £250,000, and that the tenants had tried to sell it for £279,000 on the basis that there was the potential to build a two storey side extension but it had attracted no interest in it at that price. He said that the length of the unexpired term was so great that there was no reversionary value, and that Mr Betts had provided no evidence to support his argument that there was substantial development potential. Even, he said, if there was such potential, its deferred value would be negligible, and that development potential was a form of hope value which was not permissible in section 9(1) cases.

8. Mr Betts said in his written submissions that the tenants' valuation was "fabricated to blight the true value and circumstances ...". He said that the property had considerable space for future development and that there was marriage value and development value, and he produced lists of auction results for freehold reversions, which, he submitted, gave "true values", on the basis of which the tribunal should "move away from past cases".

Decision

9. We are satisfied that the price to be paid for the freehold is £129 as Mr Taylor suggests, and determine that that is the price to be paid, in accordance with the valuation attached to this decision. Mr Betts's argument that there is marriage value is misconceived because there is no such value to be included in a price determined under section 9(1). We are satisfied that £250,000 or thereabouts represents the value of the house developed to its full potential, and that the value of the site is 35% of that sum as Mr Taylor submitted.

Even if the entirety value was considerably in excess of that sum, the reversionary value would remain negligible because of the long unexpired term. Mr Betts's auction results do not indicate the nature of the properties concerned and are not helpful.

Terms

10. The existing lease contains restrictive covenants against building without the vendor's consent, against using the building other than as a private dwelling with garage, and against permitting a nuisance on the property. Mr Betts had submitted a draft transfer to the tenants which included the words "restricted covenant [sic] will apply". He did not address the terms of transfer in his written representations or pursue the matter before us, save that he said that he wished to be indemnified against future breaches of restrictive covenants by the tenants.

11. We are satisfied that the restrictive covenants in the lease should not be included in the transfer. Condition 5(1) of the conditions laid down in Part 1 of Schedule 1 to the Leasehold Reform (Enfranchisement and Extension) Regulations 1967, as amended by SI 2002/1989, provides: *when or at any time after giving his notice in reply to the tenant's notice [of claim] the landlord may by notice in writing given to the tenant require him within 4 weeks to state what ... provisions concerning restrictive covenants he requires to be included in the conveyance.* Condition 5(5) provides that where no such notice is given, if the landlord *does not communicate to the tenant a statement of the rights and provisions he requires to be included in the conveyance ... the landlord shall be deemed to require no ... provisions concerning restrictive covenants to be included in the conveyance.*

12. We do not consider that the landlord gave the tenants sufficient or any notice of the restrictive covenants he required to be included in the transfer. Even if the position had been otherwise we would not have been satisfied that the continuation in the transfer of the restrictive covenants in the lease would

have fallen within subsection 10(4) or 10(5) of the Act or would have been justified on the facts. The landlord did not argue otherwise.

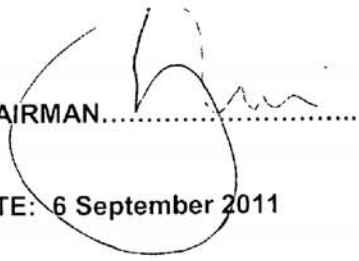
Costs

13. Mr Betts said that the landlord had not incurred, would not incur, and did not propose to claim any costs recoverable from the tenants under section 9(4) of the Act. We therefore order that no such costs are recoverable.

14. Mr Taylor asked for an order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 that the landlord should pay £500 towards the costs incurred by the tenants on the ground that he had acted *frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.* He submitted that his conduct in demanding an oral hearing, in refusing to negotiate with him or with the tenants' solicitors and in failing to produce evidence in time or to make an arguable case had caused the tenants considerable and unnecessary expense, well in excess of £500, and amounted to vexatious, disruptive and unreasonable conduct which eminently justified such an order. Mr Betts said that he had "followed procedure", that he had not wanted to bring the matter to the tribunal, and that the tenants' solicitor was unapproachable.

15. We have no doubt that an order under paragraph 10 of Schedule 12 is justified. The landlord refused a reasonable offer the acceptance of which would have saved the tenants considerable expense. Having asked, as was his right, for an oral hearing, he failed to comply in time with the tribunal's directions for the production of evidence, and, when he did produce evidence, it was unspecific and undirected and did not disclose an arguable case. He refused, as we are satisfied, to negotiate with the tenants' representatives but sought, contrary to their wishes and to their solicitors express request, to approach the tenants direct. We are satisfied that the tenants' costs occasioned by the landlord's unreasonable conduct have considerably

exceeded £500 and we order that he pay them £500 towards their costs, the maximum allowable under paragraph 10 of Schedule 12.



CHAIRMAN.....

DATE: 6 September 2011

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The tribunal's valuation

Present ground rent	£7.75 per annum	
YP @ 6%	16.6667	£129
Freehold Site value	£250,000	
35%	£87,500	
Decapitalised @ 6%	0.06	
Modern ground rent	£5250 per annum	
YP to a reversion in		
927 years @4.75 years	0	
Price payable for the freehold:		£129