

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/00HN/OCE/2007/0023

Re: Decision of the Leasehold Valuation Tribunal on an application under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993

Re: Regulation 18(7) of the Leasehold Valuation Tribunal Tribunals (Procedure)(England) Regulations 2003

Applicant(s):	Talbot Avenue No 24 Limited	
Respondent(s):	Warren Guy Welstead & Margaret Ann Haldane	
Re:	24 Talbot Avenue, Bournemouth BH3 7HY	
Date of Application	19 th April 2007	
Date of Inspection	20 th July 2007	
Date of Hearing	20 th July 2007	
Venue	Christchurch Town Hall	
Appearances for Applicant	Simon Brilliant of Counsel Geoffrey Bevans – FRICS – Valuer Paul Bennett LLB – Solicitor	
Appearances for Respondent	Tim O’Keeffe – Managing Director, Buy your Freehold Limited	
Members of the Leasehold Valuation Tribunal		
	M J Greenleaves M Ayres FRICS K Lyons FRICS	Chairman Valuer Member Valuer Member
Date of Tribunal's Decision:	12 th August 2007	

1. In accordance with the power granted by Regulation 18(7) of the Leasehold Valuation Tribunal Tribunals (Procedure)(England) Regulations 2003 (whereby the Tribunal has power to correct by certificate any clerical mistakes in the decision in this matter dated 12th August 2007), it is hereby certified that the decision and reasons dated 12th August 2007 are corrected as follows:

a. Paragraph h) 1) of the decision.

i. The words "The Respondents are entitled under Schedule 9 Part III paragraph 5 to a lease for 999 years at a peppercorn of

April Cottage (including the premises numbered 2 to 6 inclusive and edged blue on the plan attached to the Counter-Notice and otherwise in accordance with Section 36 and paragraph 7 of Schedule 9" shall be deleted

- ii. Those words shall be replaced with the words: "The Respondents are entitled under Schedule 9 Part III paragraph 5 to a lease for 999 years at a peppercorn of April Cottage and otherwise in accordance with Section 36 and paragraph 7 of Schedule 9."

b. Paragraph 18 a) iv) of the Reasons.

- i. The words "After further consideration Mr O'Keeffe conceded the issue and the Tribunal accordingly found that only the amenity land edged green and red on the Counter-Notice could be acquired under Section 1(3)(a)" shall be deleted.
- ii. Those words shall be replaced with the words: "After further consideration Mr O'Keeffe conceded the issue and the Tribunal accordingly found that only the amenity land edged green and the appurtenant property edged red on the Counter-Notice could be acquired under Section 1(3)(b) and (a) respectively"

Dated 4th September 2007



M J Greenleaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor

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Members of the Leasehold Valuation Tribunal		
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Decision

- a) References to "the Act" are to the Leasehold Reform Housing and Urban Development Act 1993
- b) References to a "Section" or to a "Schedule" (unless the context otherwise requires) are to the relevant Section of or Schedule to the Act as the case may be.
- c) Existing "No Act" unimproved values at the valuation date (12th December 2006 are:

The Willows	£148,912
The Pines	£194,037
The Cedars	£198,550
The Firs	£184,110

- d) The capitalisation rate is 6.5%
- e) The deferment rate is 5%
- f) The price payable is £43,000 calculated as follows:

Freehold (ignoring April Cottage)			
Ground rent		200	
YP 76.85 years @6.5%		<u>15.2629</u>	3,053
Reversion to Freehold			
	The Willows	165,000	
	The Pines	215,000	
	The Cedars	220,000	
	The Firs	204,000	804,000
PV £1 deferred 76.85 years @ 5%		<u>0.0235</u>	<u>18,894</u>
			21,947
Marriage Value			
Value of freehold in control of Participators			
Own flats	The Willows		165,000
	The Pines		215,000
	The Cedars		220,000
	The Firs		
Ground rent		50	
YP 76.85 @6.5%		<u>15.2629</u>	763
Reversion to freehold values			
	The Firs	204,000	
PV £1 deferred 76.85 years @ 5%		<u>0.0235</u>	<u>4,794</u>
			605,557

Deduct:			
Value of freehold prior	21,947		
Value of participators prior			
The Willows	148,912		
The Pines	194,037		
The Cedars	<u>198,550</u>	<u>563,446</u>	
Total marriage value		42,111	
	One half of marriage value		<u>21,056</u>
			<u>43,002</u>
	Total enfranchisement price, say		£43,000

g) Transfer.

- i) The terms of the transfer shall be agreed between the parties and in default either party has leave to apply to the Tribunal for determination of unagreed terms.
- ii) The Tribunal determined that the terms shall include:
 - (1) The terms set out in paragraph 8 of the Counter-Notice referred to below
 - (2) The rights reserved to the Respondent set out in Schedule A to the Counter-Notice save that in paragraphs 6 and 7 of that Schedule the word "green" shall be substituted for "red" wherever the latter appears.
 - (3) The provisions set out in Schedule B to the Counter-Notice

h) Leaseback.

- i) The Respondents are entitled under Schedule 9 Part III paragraph 5 to a lease for 999 years at a peppercorn of April Cottage (including the premises numbered 2 to 6 inclusive and edged blue on the plan attached to the Counter-Notice and otherwise in accordance with Section 36 and paragraph 7 of Schedule 9.
 - ii) The terms of the lease shall be agreed between the parties and in default either party has leave to apply to the Tribunal for determination of unagreed terms
- i) Respondents' costs.
- i) The Respondents' costs payable by the Applicant under Section 33 are:
 - (1) To date: £6,192.64 including VAT and disbursements
 - (2) Future costs: not assessed, but either party has leave to apply to the Tribunal for their determination in due course if not agreed

Reasons

Introduction

1. This was an application made under Section 24 for determination of terms in dispute relating to the enfranchisement of 24 Talbot Avenue, Bournemouth (the Property) under Section 1.
2. By Initial Notice dated 12th December 2006 given by the named participating qualifying tenants (the Tenants) to the Respondent, the Tenants proposed to acquire under the Act.
 - a) the freehold premises at the Property being the premises edged red and the premises edged green (excepting the section edged brown) on the plan annexed to that notice
3. By Counter-Notice dated 4th November 1993 the Respondent
 - a) Denied the validity of the notice
 - b) Denied that the Tenants were entitled to acquire the areas numbered 2 to 6 inclusive on the plan attached to the Counter-Notice
 - c) admitted that the Tenants were entitled to exercise the right to collective enfranchisement under the Act.
 - i) of the premises edged red on the Initial Notice; and
 - ii) the gardens of The Willows and The Cedars; and
 - iii) the gardens, drives and paths edged in green on the plan attached to the Counter-Notice
 - d) proposed instead to grant permanent rights over those areas edged in green on the plan attached to the Counter-Notice.
4. The Respondents subsequently withdrew their allegations as to the validity of the notice.
5. The parties had agreed certain aspects of the case as set out in the joint report at page 98 of the hearing bundle. Additionally the Applicants had since agreed the Freeholder's position there set out as to the Share of Freehold Values.
6. The issues remaining to be determined by the Tribunal were:
 - a) The extent of the freehold the Applicant is entitled to acquire
 - b) Whether the Respondents were entitled to a leaseback of April Cottage
 - c) The extent of the freehold property over which the Applicant is entitled to acquire permanent rights
 - d) What are those rights?

- e) What rights are to be sold with the land and to what burdens will the land conveyed be subject?
- f) the yield to be applied to the rental income;
- g) the deferment rate to be applied to the reversion.
- h) The existing "no Act world" unimproved values
- i) The Respondent's costs payable under Section 33.

Inspection

- 7. The Tribunal inspected the Property on 20th July 2007 in the presence of Mr Welstead, Mrs Haldane and Mr Bennett.
- 8. The property is in a good residential area of Bournemouth set back from Talbot Avenue. It appears to be in fair condition for its age and character.
- 9. The property, other than April Cottage was constructed as a detached house of brick under a tiled roof. In about 1984 it was converted into 4 residential units. In about 1988 April cottage was constructed as a house abutting on to the main building. All the units are served by a tarmac driveway.
- 10. The Tribunal was able to inspect internally: April Cottage, The Firs and The Pines; internal access to The Cedars and The Willows was not available but they were inspected from the outside through available windows and appeared to have been unoccupied for sometime.
- 11. April Cottage is a two bedroom house on two floors, with living room & conservatory, kitchen and bathroom. Externally it has its own garden, summerhouse, garage and carport.
- 12. The Firs is a First and Second Floor maisonette comprising three bedrooms, living room, kitchen and bathroom (both modernised by the tenant).
- 13. The Pines is a First Floor flat comprising two bedrooms, living room, kitchen, bathroom (both modernised by the tenant) and separate WC
- 14. The Cedars appeared to be a large flat with its own garden.
- 15. The Willows appeared to be a smaller flat with its own small garden.

Hearing

- 16. On the same day the Tribunal held a hearing which was attended by :
 - a) For the Applicant: Mr Tim O'Keeffe
 - b) For the Respondent: Mr Simon Brilliant of Counsel, Mr Bennett, Solicitor, Mr Bevans, Valuer, Mr Welstead and Mrs Haldane
- 17. Prior to the hearing, Counsel for the Respondents had submitted a skeleton argument.
- 18. Evidence and Submissions on the following issues:

- a) The extent of the freehold the Applicant is entitled to acquire
- i) Mr O’Keeffe submitted that all the land shown on the plan attached to the Counter-Notice, other than the two garages which are not coloured on it, should be transferred under the terms of Section 1 of the Act and that in relation to April Cottage’s amenity land it was to be included as falling within Section 1(3)(a) as being appurtenant land demised by a lease held by a qualifying tenant of a flat.
 - ii) Mr Brilliant submitted April Cottage is not a flat within the definition of Section 101(1) as neither the whole nor a material part of the property lay above or below another part of the building.
 - iii) The Tribunal’s inspection had shown that April Cottage was separated vertically from the rest of the building other than minor roof overhangs which in its view were not “material”.
 - iv) After further consideration Mr O’Keeffe conceded the issue and the Tribunal accordingly found that only the amenity land edged green and red on the Counter-Notice could be acquired under Section 1(3)(a)
- b) Whether the Respondents were entitled to a leaseback of April Cottage
- i) Mr O’Keeffe submitted that as the leaseholder is Mr Welstead only and the Freeholders are both he and Mrs Haldane, the leaseback provisions of Schedule 9 Paragraph 5 did not apply on the basis that the words “the freehold of the whole of it is owned by the same person” meant that the freeholder and the leaseholder had to be one and the same.
 - ii) Mr Brilliant argued to the contrary
 - iii) The Tribunal was satisfied that the expression means only that the freehold of the unit concerned all had to be in the same ownership; that is the case and therefore that a leaseback of April Cottage, having been required, must be granted.
- c) The extent of the freehold property over which the Applicant is entitled to acquire permanent rights
- i) Mr O’Keeffe acknowledged that the Applicant had to accept only permanent rights over the land edged green on the Counter-Notice plan.
 - ii) The Tribunal so found.
- d) What are those permanent rights?
- i) The rights proposed by the Respondents are set out at paragraph 8(2) of the Counter-Notice.
 - ii) Mr O’Keeffe argued that the words “or in future” should be omitted from 8 (2) (b), but otherwise accepted the terms
 - iii) Mr Bennett submitted those words should remain as they reflect the terms of the existing leases. He referred to the lease of The Pines, as an

example (all the leases being in the same terms) and to Paragraph 7 of the First Schedule shown at Page 219 of the bundle.

- iv) The Tribunal was satisfied that those words should remain as falling within the terms of Section 1(4)(a)
- e) What rights are to be sold with the land?
 - i) Mr O'Keeffe had no issue with the terms of Paragraph 8(1) of the Counter-Notice
 - ii) The Tribunal accordingly found that all the rights set out in Paragraph 8 as a whole should be sold with the land.
- f) To what burdens will the land conveyed be subject?
 - i) Mr O'Keeffe submitted in respect of
 - (1) Schedule A to the Counter-Notice :
 - (a) Paragraph 4 should not include the declaration concerning rights of light and air.
 - (b) Paragraph 5 should include from its ambit covenants restrictions or stipulations of which the land to be transferred has the benefit, but he could not be specific as to what he was referring to.
 - (c) Paragraphs 6 and 7 should be omitted entirely
 - (2) Schedule B to the Counter-Notice
 - (a) Sub-paragraphs (a) and (e) of paragraph 2 were acceptable but the other sub-paragraphs should not apply
 - ii) Mr Bennett submitted these as drawn were usual practice and did not detract from the present equivalent provisions in the lease so they should all remain.
 - iii) In reply to the Tribunal it was accepted that the references in Paragraphs 6 and 7 of Schedule A to "red" should in fact be "green".
 - iv) The Tribunal determined that with that amendment, all the provisions in the two Schedules to the Counter-Notice were appropriate and did not adversely affect the interests of Applicant so should be included in the Transfer
- g) the yield to be applied to the rental income
 - i) Mr O'Keeffe referred to section 4 of his report dated 17 June 2007, where he had reviewed LVT determinations proximate to the subject property. He considered the five cases he had found to be too old to be of any assistance, the most recent dating from 2001.
 - ii) Mr O'Keeffe quoted the recent Lands Tribunal case of Nicholson and Bunbury v Wilkes (LRA/29/2006) which cited some relevant factors when assessing capitalisation rates such as length of lease, security, ground

rent reserved, review provisions etc. He concluded that because of the relatively small ground rent with no review, it would not make a particularly attractive investment and therefore adopted a rate of 8%.

- iii) Mr Bevans had, for reasons set out in his Report dated 16th June 2007, concluded from his experience of other cases (and he produced a schedule of Tribunal decisions) that at present a rate of 6.5% should be adopted.
 - iv) The Tribunal considered all the evidence and submissions. It preferred the evidence from Mr Bevans and decided that 6.5% was the rate to be adopted in this case.
- h) the deferment rate to be applied to the reversion.
- i) Mr O'Keeffe referred to section 5.0 of his report where he considered, at length, the Lands tribunal decision in 'Sportelli'. His view was that as this referred to a property in the large Howard de Walden estate, the subject property was more likely to suffer from obsolescence and therefore an addition of 1% to the standard rate of 5% was appropriate thereby giving a deferment rate of 6%.
 - ii) Mr Bevans, referring to sections 4.21 to 4.23 of his report stated that he did not think there were any particular features in this case that warranted a departure from 5%.
 - iii) The Tribunal considered all the evidence and submissions, the terms of the present leases and also its inspection of the Property. The Tribunal was unable to find any special features such that the Lands Tribunal would consider departure from its rate of 5% would be appropriate. The Tribunal is not bound by the Sportelli decision but nevertheless accepts its guidance in this case and decided to apply 5% as the deferment rate.
- i) Value of freehold and leasehold values.
- i) As stated in 5 above, the parties had already agreed the freehold values set out in Mr Bevans report, therefore the points at issue were the existing use value and any 'no Act world deduction'.
 - ii) In section 3 of his report, Mr O'Keeffe had considered existing use values and relied on a recent sale of one of the flats in the subject property (the Pines) on 15/06/2006 for £185,000. Other transactions were dismissed as being so different to be of no use. During cross-examination Mr O'Keeffe agreed that the actual sale price was £194,950 as stated in Mr Bevans report.
 - iii) In section 6 Mr O'Keeffe then went on to consider relativity. His view, together with conversations with local estate agents gave him a 4% uplift on existing use value. He also conceded that a further 1% (total 5%) should be added to a long lease to get the freehold value because of the freeholders ability to change covenants etc.
 - iv) Mr Bevans, in his report had put the uplift figure at around 5% or in other words the relativity figure was at 95% so there was general agreement on this point. This was adopted by the tribunal.

- v) Mr O’Keeffe in 6.2 of his report stated there should be no extra discount to take effect of the ‘no Act world’ given that there was still nearly 77 years left on the lease and potential purchasers would not consider the lease expiry.
- vi) Mr Bevan, in his report had argued that a discount was appropriate. As no market evidence was available he had to rely on LVT decisions and he appended a list of decisions where a percentage had been deducted. He specifically cited 26 Cedar Manor agreed at a 5% discount and Flats 3,4 and 11 Cavendish Court where 10% was agreed. Mr Bevans adopted 7.5%.
- vii) Mr Bevans report at 4.29 outlined his findings on value in table form, and compared the relativity from a virtual freehold to a no Act world value giving him between 87.87% and 87.91%. He justified these figures by reference to the graph of graphs prepared by Beckett and Kay attached to his report, stating that they sit comfortably within the range. Mr O’Keeffe had considered the graph which he thought mainly represented central London and during cross-examination it did appear that Mr Bevans figures were towards the lower range.
- viii) Mr Bevans acknowledged that the ground rents in respect of the Cavendish Road flats were subject to an onerous and imminent rent review and that this was not directly comparable with the subject property where the ground rents were fixed throughout the term. The Tribunal considered a discount appropriate, but that figure should be 5%. The resulting values are used in the calculation set out in the decision.

The Respondent’s costs payable under Section 33 of the Act.

- i) Mr Bennett produced two costs schedules: Part I covering costs incurred to date within Section 33 and Part II setting out anticipated costs for conveyancing and leaseback.
- ii) He explained the work done to date, not least in relation to consideration of the terms of the Initial Notice. Its drafting and the nature of the Property had needed special consideration and resulted in the need to instruct Counsel and incur his fees. This had resulted in the initial challenge to the validity of the notice, which had been withdrawn for commercial reasons.
- iii) Mr O’Keeffe considered the Part I costs to be high because the Freeholders knew that they would be recoverable from the Applicant, but he did agree the valuer’s fee of £750 + VAT.
- iv) The Tribunal could only consider costs under Section 33 that had been incurred. Accordingly it declined to determine future costs but granted leave to apply for a determination if necessary.
- v) In respect of Part I costs, the Tribunal particularly took into account the terms of the Initial Notice and the nature of the Property. The Tribunal considered that had Mr O’Keeffe viewed the Property he would have been in a better position to draft an Initial Notice to suit the actual circumstances (for instance, he would have understood that April Cottage would not qualify as a flat under Section 101). As the Initial Notice was drafted, the Tribunal accepted it would inevitably increase the

Freeholders' costs to an extent which in its experience of other cases was wholly unusual.

- vi) Taking that into account in particular, the Tribunal was satisfied that the total costs incurred as set out in Part I were reasonable and payable by the Applicant under Section 33

19. The Tribunal made its decisions accordingly.

A handwritten signature in black ink, appearing to read 'M J Greenleaves', with a long horizontal flourish extending to the right.

M J Greenleaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor

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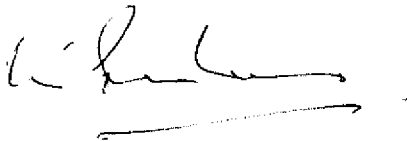
Application by the Respondent for leave to appeal the decision of the Tribunal

1. By letter dated 14th September 2007, Insley & Partners, Solicitors for the Respondents applied for leave to appeal the decision of the Tribunal to the extent, as they put it, “that the Tribunal had not been willing to address the question of the additional £2,500 for permanent rights in the correction certificate”.
2. The grounds for the application are set out in paragraph C of their letter dated 28th August 2007 which states “At paragraph 4.1 of his report Mr Bevans expressed the view that £2,500 should be paid for the granting of the permanent rights over the land edged green on the plan. This was not

challenged at the hearing. We would respectfully submit that the total enfranchisement price should be amended to £45,500."

3. It appears to the Tribunal that the Respondent considers that as evidence is not disputed, that evidence should automatically and specifically be referred to in the decision of the Tribunal.
4. In his Report for the Tribunal dated 16th June 2007 Mr Bevans refers to this aspect at paragraph 4.31, but nevertheless does not specifically include it in his valuation calculation in Appendix F.
5. In making its decision, the Tribunal took into account all the evidence before it and also using its expert knowledge and experience determined the price in accordance with Section 32 of the Commonhold and Leasehold Reform Act 2002 and Schedule 6 to that Act in the manner shown in the calculation in the decision
6. The Tribunal was and is satisfied that the price determined is correct and refuses this application for leave to appeal the decision.

Dated 24th September 2007

A handwritten signature in black ink, appearing to read 'M J Greenleaves', with a horizontal line underneath it.

M J Greenleaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor