CHI/00ML/OCE/2006/0086

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27 OF THE LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

93/95 BEAR ROAD, BRIGHTON

Applicants:	Julia Mary Clay Michaela Shergold (Lessees and nominee purchasers)
Respondent:	William Louis Lewis (Missing landlord)
Dates of hearing:	15 December 2006
Date of inspection:	15 December 2006
Appearances:	Mr S Gray FRICS for the Applicant

Members of the Leasehold Valuation Tribunal:

Mr MA Loveday BA(Hons) MCIArb
Mr N Cleverton FRICS
Ms J Dalal

Background

1. This is an application under section 27 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") to determine the appropriate sum payable for the collective enfranchisement of two flats in Brighton where the landlord cannot be found. The subject premises are 93/95 Bear Road, Brighton. The matter was referred to the Tribunal by an order of Brighton County Court dated 5 September 2006.

2. The Tribunal inspected the subject premises before the hearing. They are located on a steeply sloping residential road close to the centre of Brighton and comprise a mid-terrace two storey house of brick under a pitched tile roof c.1890. The external condition is good. The house is divided into two purpose built maisonettes with separate street doors. Each comprises a small kitchen, bathroom/WC and three small living rooms. Both have been extensively improved by the lessees with new bathrooms, UPVC windows, kitchens and central heating.

3. The valuation date is 5 September 2006.

4. The applicant was represented at the hearing by Mr. S Gray FRICS. He relied on a valuation report dated 23 March 2006 and a supplementary valuation report dated 10 November 2006. The latter suggested an updated premium of £6,205 payable for the freehold.

5. The leases of the two properties were included in the application. The lease of the upper flat at 93 Bear Road dated 4 February 1980 is for a term of 99 years from 20 March 1980. The lease of the lower flat at 95 Bear Road dated 3 December 1987 is for a term of 99 years from 20 March 1980. The leases each provided for a ground rent of £30 per annum.

6. In his reports, Mr Gray relied on a capitalisation rate of 7%. With 73 years unexpired on the leases to reversion, Mr Gray valued the rental income from the leases at £851. The Tribunal accepts these figures.

7. As for the right to vacant possession on reversion, Mr Gray relied on a number of sales of properties in Bear Road, which were very similar to the subject premises. In his initial report, he referred to sales of flats at 85, 87, 109 and 117 Bear Road and in his second report he referred to subsequent sales of flats at 2, 119, 233, 245, 255 and 263 Bear Road. These suggested an open market sale price of £142,500 per flat. Mr Gray then deducted £1,500 per flat for tenant's improvements. He therefore adopted a freehold value of £282,000. To this, he applied a deferment rate of 7% to value the right to vacant possession at the end of the term as £2,019.

8. The Tribunal accepts Mr Gray's valuation of the freehold. There is ample evidence of sales of flats close to the subject premises. In particular, the sale of 109 Bear Road (first floor flat sold for £149,000 in December 2005) and 119 Bear Road (ground floor flat sold for £137,000 in February 2006) support a

valuation of £142,500. The extensive improvements by the tenants of each flat in this case are to be disregarded and a figure of £1,500 is appropriate.

9. However, the Tribunal does not accept that a deferment rate of 7% should be applied in this instance. Mr. Gray accepted there was no market evidence to support his yield figure, although a 7% yield rate has been used by valuers and Tribunals in the Brighton area for many years. He accepted that following the Lands Tribunal decision in ***Earl Cadogan v Sportelli and others*** LRA/50/2005, this Tribunal should adopt the standard deferment rate for houses of 5%.

10. Applying a 5% deferment rate, the right to vacant possession at the end of the term is valued at £8,005. The total value of the freeholder's interest is therefore £8,856.

11. As for marriage value, Mr. Gray adopted a relativity figure of 96.62% based on previous experience in the area. The Tribunal accepts that this is a reasonable figure, producing an unimproved value of £272,468. The freeholder's 50% share of marriage value is therefore £337.50.

12. Mr Gray made a final submission in relation to lack of management. The subject premises had been ignored by the landlord over the years. The lessees had carried out all repairs and management and no service charges had been demanded or paid. The lessees had replaced the roof and they had decorated the exterior, new windows had been installed and so on. Mr. Gray contended that this would be reflected in the market value of the freehold – in that a buyer of a reversion would pay less for a property with potential management problems, disputes over service charges and a possible liability to reimburse the lessees. He argued that a deduction of £1,000 should be made from the purchase price to reflect this.

13. When questioned by the Tribunal, Mr Gray frankly conceded he had no market evidence that an investor in a reversion would pay less for this kind of property with a history of non-management. He was aware of no other Tribunal decision where such a deduction had been made. The Tribunal rejects the argument that such a deduction should be made. It could equally be said that an investor might pay a premium for a reversion where the lessees informally self-managed, thus reducing the management costs. However, ultimately, an investor is taken to be aware of the terms of the lease and the mutual obligations of the parties over a long term – rather than a relatively short period of inactivity by the landlord. Absent any evidence that this factor affects the freehold value, the Tribunal is not prepared to make any further deduction from the purchase price.

14. The Tribunal therefore determines for the purposes of s.27 of the 1993 Act, that the appropriate sum to be paid into court by the nominee purchaser for a vesting transfer of the freehold interest is £9,193.50 (say £9,190). An explanatory copy of the Tribunal's valuation is attached as Appendix "A".

15. A draft form of transfer was included in the bundle of papers. The Tribunal carefully considered this and approved the form submitted.

Mark Loveday BA(Hons) MCI Arb
Chairman
Dated: 29 December 2006

VALUATION FOR A FREEHOLD ENFRANCHISEMENT

93/95 BEAR ROAD, BRIGHTON

Lease: 99 year leases from 1980		
Ground rent: £30 fixed per flat		
A. Freeholder's present interest		
Yield rate adopted	7.00%	
Ground rents at	£60.00	
YP at yield rate for	73 years	14.1834118
		£851.00
Reversion	£282,000.00	
PV of £1 at yield rate in	73 years	.02839
Yield rate adopted	5%	£8,005
Total value of freeholder's interest		£8,856
B. Marriage value	3.50%	
Relativity	96.62%	
Extended lease value	£282,000.00	
Unimproved value	£272,468	
Difference	£9,532	
Less value of freeholder's interest	£8,856	
Marriage value	£675	
One half marriage value	£337.50	£337.50
C. Compensation	Nil	
Enfranchisement price		£9,193.50
	Say	**£9,190**