

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

S.27 & Schedule 6 Leasehold Reform Housing & Urban Development
Act 1993

DECISION AND REASONS

Case Number: CHI/00ML/OCE/2008/0023

Brighton County Court Claim Number: 7BN01788

Property: 7 Sudeley Street
Brighton
East Sussex
BN2 1HE

Applicants: Paul Hook
Colin Twomey
Victoria Power

Represented by: Stewart Gray FRICS
Assisted by Rupert Greenlees

Respondent: Richard Andrew (Absent)

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr A O Mackay FRICS (Valuer Member)

Date of Hearing: 17 July 2008

Date of Decision: 23 September 2008

DECISION

The amount determined to be the price payable into Court for the interest to be acquired is **£8,808**. Other matters in respect of the terms of the transfer to be determined at a later date.

BACKGROUND

1. This is an application following the Order of District Judge Edwards in Brighton County Court dated 26 June 2007 vesting in the Applicant (Claimant) the property at 7 Sudeley Street, Brighton.
2. Directions for the conduct of the case were issued on 30 April 2008 and Mr Stewart Gray produced a report and valuation in respect of the property on behalf of the nominee purchaser.
3. The hearing was convened and held at Brighton Racecourse premises at which all documents relating to the case were made available and Mr Gray gave oral evidence to the tribunal.
4. Following the closure of the hearing the tribunal was unable to reconcile the calculation given by Mr Gray in evidence with its own calculation. Mr Gray subsequently provided written calculations.

INSPECTION

5. Prior to the hearing, the tribunal Members with Mr Gray and some of the Applicants inspected the property generally and the interior of the basement and top floor flats.
6. The property is as described in Mr Gray's report and comprises an inner-terrace house, built about one hundred years ago, converted in about 1985 into three self-contained flats. The building retains the original, double hung sash windows and is built of cement rendered brick under a pitched, tile covered roof.

LAW

7. The tribunal is requested to decide the appropriate sum, in accordance with S.27(3) Leasehold Reform, Housing and Urban Development Act 1993 (The Act), that is to be paid into Court, calculated in accordance with Schedule 6 of The Act as if the freehold interest were being acquired following a notice given under S.13 of The Act.
8. The statutory valuation provisions are contained in Schedule 6 to The Act, in particular paragraph 2 of Part 2 of Schedule 6 states, "*...the price payable by the nominee purchaser for the freehold of [the] premises shall be the aggregate of*
 - (a) *the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,*
 - (b) *the freeholder's share of the marriage value as determined in accordance with paragraph 4, and*
 - (c) *any amount of compensation payable to the freeholder under paragraph 5.*"
9. Paragraph 3 states, so far as is material:

3(i) *“... the value of the freeholder’s interest in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with neither the nominee purchaser, any tenant at the premises or any other owner is buying or seeking to buy) on various assumptions. ...”*

10. The valuation assumptions deal in detail with tenure, title and intermediate interests and the valuation being made in a “no act world”. There is also a general assumption that any increase in the value of any individual flat held by a participating tenant which is attributable to an improvement carried out at his own expense is to be disregarded.

EVIDENCE

11. Each of the Applicants which together comprise the nominee purchaser is a lessee of one of each of the three flats in the property.
12. The leases were available to the tribunal. The ground floor flat has a 99 year lease from 11 October 1985, the lower ground floor flat and garden has a lease of 99 years from 4 November 1985 and the first floor flat has a 99 year lease from 29 November 1985. In each case the ground rent is £50 for the first 33 years rising to £100 for the next 33 years and rising to £150 per annum for the final 33 years of the term.
13. The valuation date is the date of the vesting order being 26 June 2007 at which time approximately 77 years and 4 months remained unexpired in the leases.
14. Mr Gray had provided a detailed and comprehensive report including valuation evidence. During the course of his oral evidence Mr Gray made various adjustments to the details of his valuation. His original opinion was that the price payable based on a 6% deferment rate should be £8,638 but this was adjusted at the hearing to £8,792, being the price to which he gave evidence.
15. Mr Gray expanded at length upon various aspects of his report. He initially gave evidence of his opinion of the current market value of the flats at the valuation date. He used detailed comparables from his own knowledge and from estate agents he had consulted. There are differences between the flats and differences in the extent of improvements carried out by the lessees. He came to the conclusion that the lower ground floor flat, which is a one bedroom flat with a patio, had a value of £160,000. The ground floor flat, which is a one bedroom flat, had a value of £155,000 and the first floor flat, a one bedroom flat with a balcony, had a value of £155,000. These figures represented the values of the flats with long leases.
16. Mr Gray said little about the capitalisation rate on the ground rent but he said that he has consistently used 7% which is a common yield used in the locality. This yield takes account of the various risk elements for this part of the income.

17. When considering the value of the freeholder's interest, Mr Gray concentrated on the deferment rate to be applied to calculate the reversionary value of the long leasehold interest. He identified the main difficulty with valuations of this type which is that The Act requires the tribunal to consider a market which pretends that the effects of the legislation do not exist (the "no act world"). The nature of the investment is assumed to be a long term one, leading to the realisation of the freehold value at the end of the long lease terms, the reversionary value.
18. Mr Gray then addressed the tribunal in detail on the deferment rate. He referred to the continuing debate following the most recent Lands Tribunal decisions and subsequent Court of Appeal cases, known collectively as the Sportelli Cases (**Earl Cadogan and Cadogan Estates Ltd v Sportelli [LRA/50/2005]** and four related appeals **[2007] EWCA Civ 1042**) from which clear guidance is given to LVTs that the generic deferment rate should be at 5%. Further guidance arises from the appeal to the Lands Tribunal in **Hildron Finance Ltd and Greenhill Hampstead Ltd (LRA/120/2006)**. At this appeal, a number of arguments were put forward for departures from the Sportelli generic deferment rates and were dealt with in some detail, but rejected by the Lands Tribunal.
19. Mr Gray accepts that in the Sportelli cases, it was reasonable to reject market evidence on the grounds that a "no act" reversion is a different type of investment from one taking account of the effects of The Act; one could not be used as a direct comparable for the other. This, however, is a case peculiar to prime central London (PCL). He believes that outside PCL, comparable sales of ground rent investments is the most appropriate evidence available. He considers that if the Sportelli cases had been dealing with a provincial property in the Brighton area, the Lands Tribunal would have utilised market evidence to arrive at a higher deferment rate. In support of this, Mr Gray went into detail regarding the true position in the market both before and following Sportelli. He makes the general assumption that if Sportelli is followed the "no act world" valuation should be lower than the price achieved in the market place as the short term hope value would be excluded, but this is not the case. He believes that the investor who might be considered short term i.e. relying primarily for profit through the management of the building, insurance commission and in particular the hope of value in lease extensions would have been present in the Brighton area both in the pre and post Act markets. For this reason the price paid for these investments outside PCL is barely affected by The Act.
20. Mr Gray argues that the distinction made by Sportelli between the pre and post Act markets cannot be true outside PCL. PCL reversions have additional value to special investors identifying value for future generations of the same family with the importance, and the prestige of the London estates. No such additional value is attributable to provincial reversions. Mr Gray believes that outside PCL hope value is, and always has been, the main driving force in the market, even long before The Act.

21. In support of this contention Mr Gray looked at various recent sales of this type of investment in the locality and compared the actual sale price with a calculation of a Sportelli style of valuation, using the same facts. In each example the Sportelli figures were substantially higher. The analysed deferment rate for each sale ranged between 5.5% and 6%. Even if a modest (and, he believes, unrealistically conservative) 20% of hope value is stripped from the market sale price, the deferment rate is between 5.75% and 6.65%. He believes that in making these calculations he had exercised extreme caution, tending towards a lower yield. His valuation in the subject case is therefore constructed on the basis of a 6% deferment rate.
22. Turning now to the question of relativity and the long leasehold value. Mr Gray assesses the long leasehold value uplift at 2% or a relativity of 98.04%. This is based upon his extensive knowledge of the market place and is at a level at which he would regularly agree terms when negotiating with surveyors acting for landlords. This level also falls in line with the relativity used in a number of other cases which he has submitted to LVTs as an expert witness which have been confirmed by them.
23. Mr Gray is not aware of any adjoining property in the Respondent's ownership that might be adversely affected by the transfer and there is therefore nothing to add to the valuation for compensation.

DECISION

24. It is clear to the tribunal from the evidence before it and from its own inspection that it is reasonable to make adjustments in the values of the flats to take account of the tenants' improvements. Mr Gray has done this in his assessment of current market value and his opinion is based upon a substantial number of transactions, his extensive experience in the area and his consideration of evidence from local estate agents. For this reason the tribunal has no reason to depart from Mr Gray's opinion of the market values for the flats.
25. Mr Gray's evidence in respect of the capitalisation rate for the ground rent income and for relativity was compelling and his figures have been adopted by the tribunal.
26. It has been established that the deferment rate has little to do with the rate adopted for capitalisation **LT Nicholson v Wilkes (LRA29/2006)**.
27. The problem arises from the fact that the legislation requires the tribunal to consider a hypothetical market within which the effects of The Actual legislation are ignored. In the case of Sportelli this meant that the nature of the investment is necessarily long term leading to the realisation at the end of the lease of a freehold or equivalent value, not a short term investment based upon the hope or expectation that leaseholders would wish to extend their leases or enfranchise before the end of the term.

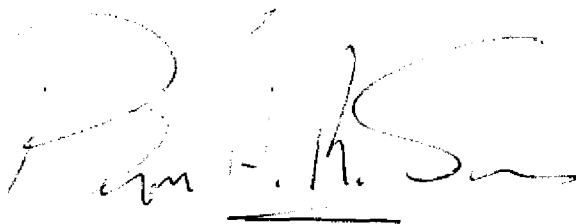
28. Mr Gray argued strongly that a market where an element of hope value already existed was in place outside Prime Central London even before The Act came into effect.
29. The guidance given in the Court of Appeal decision refers to the Lands Tribunal decision (para 94) to emphasise the steps that an LVT should take and quotes from para 123 *"The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate."*
30. When considering the deferment rate this tribunal is persuaded by Mr Gray's expert knowledge and his detailed analysis of the market place in Brighton, both before and after The Act. There are particular features giving rise to his view that investors in the Brighton area always took a short term view, even before The Act was introduced or even contemplated.
31. The Court of Appeal said (para 102) *"...The deferment rate adopted by the [Lands] Tribunal will no doubt be the starting point; and their conclusions on the methodology, including the limitations of market evidence, are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas. That will be a matter for those advising future parties, and for the tribunals, to consider as such issues arise"*. This tribunal considers that such evidence has been made available to us in this case.
32. The tribunal is given support in its view from the Lands Tribunal decision in **Ulterra Ltd and Glenbarr (RTE) Co. Ltd (LRA/149/2006)**. Although as always in these cases the circumstances are different, the Lands Tribunal in Ulterra did not accept the proposition that the Sportelli deferment rate must be adopted, regardless of any evidence before it (para 22). *"...The Lands Tribunal is being asked, notwithstanding the "possibility of further evidence being called by other parties in other cases directly concerned with different areas", to accept that because "the deferment rate adopted by the tribunal [is] no doubt the starting point" that must have been the correct finishing point in this case"...(para 23)..."**In my judgement the Lands Tribunal cannot properly do that by way of review....it is not receiving fresh evidence"*
33. In this tribunal's judgement and having considered the detailed evidence before it and for the reasons already stated, we determine that an appropriate deferment rate in this case is 6%.
34. The price to be paid into Court is £8,808. As he had made adjustments to his valuation during the course of his oral evidence and in response to questions from tribunal members, Mr Gray gave evidence to a figure of £8,792. Subsequently Mr Gray was asked to a written calculation in support of his final valuation.

35. The tribunal attaches a calculation which is derived from the evidence given by Mr Gray and shows how it has arrived at the price to be paid. The calculation is a little different as the tribunal has used the precise unexpired lease term.

ADJOURNMENT

36. This Application was in respect of the price to be paid for the new lease and no evidence was offered in respect of the terms of the transfer.
37. This Application and Hearing is adjourned to allow the nominee purchaser to submit a draft transfer for approval.
38. Should other matters remain outstanding, then an application to the tribunal may be made as a supplementary issue to the application hereby determined.

Dated 23 September 2008

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written over a horizontal line.

**Brandon H R Simms FRICS MCI Arb
Chairman**

Appendix: Leasehold Valuation Tribunal Calculation

Appendix: Leasehold Valuation Tribunal Calculation**Facts used**

| | | | | |
|---|----------|------------------------------------|----------|-----|
| Value of existing leases (unimproved) Relativity 98.04% | LGF | £156,863 | | |
| | Ground | £151,961 | | |
| | First | <u>£151,961</u> | £460,784 | |
| Value of long leases | LGF | £160,000 | | |
| | Ground | £155,000 | | |
| | First | <u>£155,000</u> | £470,000 | |
| Valuation date: | 26/06/07 | | | |
| yield: | 7.00% | | | |
| Deferrment rate: | 6.00% | | | |
| Unexpired term at valuation date: | 77.3333 | years (average length of 3 leases) | | |
| Ground Rent: | £150.00 | for | 11.3333 | yrs |
| increasing to: | £300.00 | for | 33 | yrs |
| increasing to: | £450.00 | for | 33 | yrs |

Value of landlord's interest

Capitalise ground rents for current term

| | | | | | | |
|------|-------|---------------|----------------|----------------|----------------|-----------|
| | | | Ground rent | £150.00 | | |
| YP | 7.00% | 11.3333 years | | <u>7.65001</u> | £1,147.50 | |
| | | | Increase to | £300.00 | | |
| YP | 7.00% | 33 years | | 12.75379 | | |
| x Pv | 7.00% | 11.3333 years | <u>0.46450</u> | <u>5.92412</u> | £1,777.24 | |
| | | | Increase to | £450.00 | | |
| YP | 7.00% | 33 years | | 12.75379 | | |
| x Pv | 7.00% | 44.3333 years | <u>0.04981</u> | <u>0.63527</u> | <u>£285.87</u> | £3,210.61 |

| | | | | |
|---|-------|---------------|-----------------|------------------|
| Plus Landord's reversion to freehold in possession | | £470,000 | | |
| x Pv | 6.00% | 77.3333 years | <u>0.011041</u> | <u>£5,189.34</u> |

Value of landlord's existing interest £8,400**Marriage value**

| | | | | |
|------------------------------|--------|-----------------|----------|--|
| Value of new extended leases | LGF | £160,000 | | |
| | Ground | £155,000 | | |
| | First | <u>£155,000</u> | £470,000 | |

Less

| | | | | |
|---|--------|-----------------|-----------------|--|
| Value of landlord's existing interest (see above) | | £8,400 | | |
| Value of existing leases | LGF | £156,863 | | |
| | Ground | £151,961 | | |
| | First | £151,961 | | |
| | Total | <u>£460,784</u> | <u>£469,184</u> | |

Marriage value £816

Landlord's share of marriage value at 50% £408Compensation nil**Price payable** £8,808

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



In the matter of an application under S.27(3)(b) of the Leasehold Reform
Housing & Urban Development Act 1993
(Application to approve the form of the Transfer)

DECISION of Terms of Transfer

Case Number: CHI/00ML/OCE/2008/0023

Brighton County Court Claim Number: 7BN01788

Property: 7 Sudeley Street
Brighton
East Sussex
BN2 1HE

Applicants: Paul Hook
Colin Twomey
Victoria Power

Represented by: Stewart Gray FRICS
Assisted by Rupert Greenlees

Respondent: Richard Andrew (Absent)

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr J B Tarling MCMI (Lawyer Member)

Date of Hearing: 17 July 2008

Date of First Decision: 23 September 2008

Date of This Decision: 7 November 2008

DECISION

The Tribunal approves the form of the draft transfer that is attached to this decision and signed by the Tribunal Chairman.

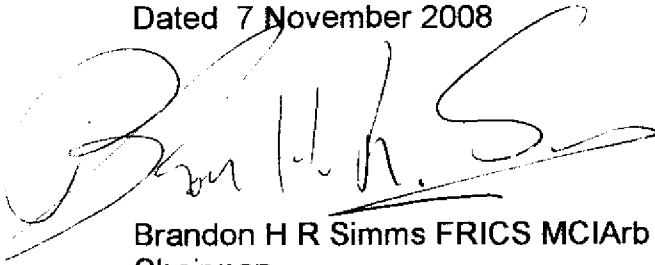
BACKGROUND

1. Following an application by Order of District Judge Edwards in Brighton County Court dated 26 June 2007, a hearing was held on 17 July 2008 to determine the price to be paid into Court for the interest to be acquired at 7 Sudeley Street, Brighton.
2. Further Directions were issued on 11 September 2008 giving notice under Regulation 13 of the Leasehold Valuation Tribunal's (Procedure)(England) Regulations 2003 that the remainder of the determination would take place on the basis only of written representations and without an oral hearing. No objections were received within the time limit and the case was therefore finally determined on this basis.
3. An opportunity was given for the Applicants to make further submissions.
4. Arscotts Solicitors on behalf of the Applicants had, on 18 July 2008, submitted a draft transfer (TR1) for the Tribunal's consideration and this was amended further by letter dated 17 October 2008.

CONSIDERATION

5. The Tribunal considered the terms of the proposed transfer but it failed to take account of the special circumstances in this case whereby there is an absentee landlord.
6. The Tribunal therefore approves the draft transfer submitted by Arscotts, subject to completion of Panel 11 as appropriate and subject to the following further alterations.
7. Panel 12 to be amended with the addition of a further paragraph:
"This transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform Housing & Urban Development Act 1993 and is in a form approved by the Southern Leasehold Valuation Tribunal on 7 November 2008 pursuant to Section 27(3)(b) of the said Act."
8. Panel 13, the transferor's execution, to be amended as follows:
"As a deed by ... on behalf of the transferor pursuant to an order of the Brighton County Court dated 26 June 2007 in proceedings under case number 7BNO1788"
9. The transferee's signature and witness spaces remain unaltered but with the addition of the parties full names.
10. The approved amended draft transfer is attached to this Decision and signed by the Tribunal Chairman.

Dated 7 November 2008

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written over a horizontal line.

Brandon H R Simms FRICS MCI Arb
Chairman

APPENDIX

Approved Draft Transfer (Signed by the Tribunal Chairman)

1. Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- It is certified that this instrument falls within category in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of
- It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title Number(s) of the Property *Leave blank if not yet registered.*

ESX103557

3. Property

7 SUDELEY STREET, BRIGHTON, EAST SUSSEX BN1 1HE

4. Date

5. Transferor *Give full name(s) and company's registered number, if any.*

RICHARD ANDREW

6. Transferee for entry on the register *Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.*

- (1) PAUL LAWRENCE GEORGE HOOK
(2) COLIN STEWART TWOMEY
(3) VICTORIA POWER

Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

7. Transferee's intended address(es) for service (including postcode) for entry on the register *You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.*

54 LANSDOWNE PLACE, HOVE, EAST SUSSEX BN3 1FG

8. The Transferor transfers the Property to the Transferee

9. Consideration *Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes applies, insert an appropriate memorandum in the additional provisions panel.*

- The Transferor has received from the Transferee for the Property the sum of *In words and figures.*
EIGHT THOUSAND EIGHT HUNDRED AND EIGHT POUNDS (£8,808.00)
- Insert other receipt as appropriate.*
- The transfer is not for money or anything which has a monetary value

10. The Transferor transfers with *Place "X" in the appropriate box and add any modifications.*

- full title guarantee
- limited title guarantee

11. Declaration of trust *Where there is more than one Transferee, place "X" in the appropriate box.*

- The Transferees are to hold the Property on trust for themselves as joint tenants
- The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares
- The Transferees are to hold the Property *Complete as necessary.*

12. Additional provisions *Insert here any required or permitted statements, certificates or applications and any agreed covenants, declarations, etc.*

The Transferee hereby covenants with the Transferor by way of indemnity to observe and perform the covenants referred to in the Charges Register of Title Number ESX103557 and contained in the Leases referred to in the Schedule of Notices of Leases to the aforesaid title and to indemnify and keep indemnified the Transferor in respect of any non-observance or non-performance thereof.

This transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform Housing & Urban Development Act 1993 and is in a form approved by the Southern Leasehold Valuation Tribunal on 7 November 2008 pursuant to Section 27(3)(b) of the said Act.

13. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferees (all of them, if there is more than one).*

Signed as a deed by (full name of individual) in the presence of:

| |
|-----------|
| Signature |
| SEE RIDER |

Signature of witness

Name (in BLOCK CAPITALS)

Address

Signed as a deed by (full name of individual) in the presence of: PAUL LAWRENCE GEORGE HOOK

| |
|-----------|
| Signature |
|-----------|

Signature of witness

Name (in BLOCK CAPITALS)

Address

Signed as a deed by (full name of individual) in the presence of: JOHN STEWART TWOMEY

| |
|-----------|
| Signature |
|-----------|

Signature of witness

Name (in BLOCK CAPITALS)

Address

1. Continued from Form TR1 - Hook Title number(s) ESX103557

2. Before each continuation, state panel to be continued, e.g. "Panel 12 continued".

Panel 13 continued

Signed as a deed by VICTORIA POWER
in the presence of:

Signature

RIDER

Executed as a deed by
on behalf of the transferor pursuant to Order of
the Brighton County Court dated 26 June 2007
in proceedings under Case No. 7BNO1788
in the presence of:

Signature

Signature of witness.....
Name (in BLOCK CAPITALS)
Address

Approved by Southern Leicestershire Valuation Tribunal

7 November 2008

Ben H. K. Sun

CHAIRMAN

Continuation sheet 1 of 1

Insert sheet number and total number of
continuation sheets e.g. "sheet 1 of 3"