

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL**

Leasehold Reform, Housing and Urban Development Act 1993 Section 24
LON/00BK/OCE/2007/0424

Applicant: Aldridge Road Villas Management Limited
(Nominee Purchaser)
Represented by : Mr A. Learmonth of Counsel
Mr I. Morrison, Ivor Morrison and Co. Solicitors

Respondent: Dr Greta Elizabeth Forster (Freeholder)

Represented by: Mr J. Bates of Counsel
Ms K. London, Kennard Wells, Solicitors

Re: 30 Aldridge Road Villas, London W11 1BW

Hearing: 3rd June 2008

Tribunal:
Mr L.W.G. Robson LLB(Hons) MCI Arb.
Mr L. Jarero BSc FRICS

Further Determination and Reasons relating to outstanding Valuation Matters

PRELIMINARY

1. The Applicant applied on or about 31st December 2007 for a determination under Section 24 of the Leasehold Reform, Housing & Urban Development Act 1993 (the Act), pursuant to a Notice of Claim under Section 13 of the Act. An oral hearing was held on 3rd June 2008, pursuant to which a written determination was issued on 27th June 2008. Paragraph 19 of the determination allowed the parties to make further written representations relating to the validity of the purported agreement on price made by the parties, and whether the price of the property should be determined by the Tribunal, in the light of the Tribunal's original decision that the Applicant was legally entitled to the roof space of the property, contrary to the Respondent's submission.
2. After receiving submissions, the Tribunal notified the parties that it had decided that it had jurisdiction to decide the price and invited more valuation evidence before finalising its determination and giving reasons. There has been some delay in finalising the determination, due to the fact that little valuation evidence was produced by the parties, and it was unclear to the Tribunal for some time whether a value for the roof space had subsequently been agreed by the parties. This matter has now been clarified.

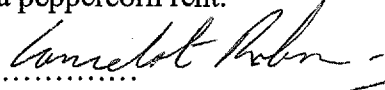
SUBMISSIONS

3. Mr Learmonth, in a written submission dated 11th July 2008 submitted on behalf of the Applicant that the Tribunal had no jurisdiction to determine the price since an express agreement on price had been made and recorded in the original application, The Respondent had not demurred from it. It was for the one of the parties to apply for the price to be determined. No such application had been made by the Respondent. No valuation evidence had been adduced on the point. The Respondent had applied solely for a determination as to whether the nominee purchaser was entitled to purchase the roof space. There would be further delay and expense. He submitted that reopening the question of price at this stage would allow the Respondent a "second bite of the cherry".
4. Mr Bates, in a written submission dated 15th July 2008 submitted on behalf of the Respondent that the Tribunal had jurisdiction to decide the price. The parties had not been ad idem on the price. The Applicant had always been of the view that the price was for the entire freehold. The Respondent had always been of the view that the price was for the freehold excluding the roof space. He referred to *Broomfield Freehold Management v Meadows Holdings Ltd LRA/148/2006*. He submitted that the situation there was very similar to this case, and the Leasehold Valuation Tribunal in that case had been upheld by the Lands Tribunal. Member HHJ Reid QC stated "[t]he answer to this problem... depends on whether the parties were ad idem as to what the price of £117,000 was for..." and then found that "whatever impression... may have been created..... the parties were in fact in dispute... [t]he LVT thus had and has jurisdiction to determine the price". Mr Bates noted that the Respondent's surveyor in his letter of 14th July 2008 confirmed that his revised valuation included the roof space. He valued the space at £5,000, and that thus the correct price to be paid for the entire freehold was £11,872.

DECISION

5. The Tribunal considered the submissions. Mr Learmonth offered no authority for his submission. Also the correspondence between the parties in our bundle did not suggest that there was a final agreement on the point. We decided that the delay did not give the Applicant a "second bite of the cherry". We preferred Mr Bates's submission as it was based on previous authority. After considering the *Broomfield* case we concluded that the factual situation there was very similar. The parties and their surveyors in the case before us did not appear to have applied their minds to the value of the roof space in the initial notices and correspondence, thus the purported agreement on the value was invalid.

6. The Tribunal records that after preliminary notification of the Tribunal's decision, the Applicant's solicitor indicated by letter dated 10th October 2008 that the Applicant accepted the Respondent's Valuer's valuation of £5,000 for the roof space and therefore the Tribunal determines that the price to be paid by the Applicant to the Respondent for the freehold of the subject property shall be the sum of £11,872, subject to the agreed grant to the Respondent by the Applicant of a variation of her existing lease, to extend the same to 999 years at a peppercorn rent.

Signed: 
Chairman

Dated: 21st October 2008