

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

In the matter of Applications under Section 27 of
the Leasehold Reform, Housing and Urban Development Act 1993
(Enfranchisement – Absent Landlord)

Case No. CHI/21UF/OCE/2008/0048

Property: 42 Brighton Road, Newhaven, East Sussex, BN9 9NB

Between:

Ms Emilie Scriven (Ground & First Floor Maisonette)
Peter Lamkin (Lower Ground Floor Flat)
("the Applicants")

and

Alan Brownsea Bonfield (Absent)
("the Respondent")

Members of the Tribunal: Mr J.B. Tarling, MCMI, Lawyer/Chairman
Mr R.Athow, FRICS MIRPM

Date of the Decision: 8th January 2009

**THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL**

1. The Tribunal determines

- (a) under Section 27(1)(b) of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") that the price to be paid by the Applicants for the freehold interest in the property shall be £4,574.00**
- (b) under Section 27 (3) (a) that the form of the Land Registry Transfer shall be in the form attached to this Decision**

REASONS FOR THE TRIBUNAL'S DECISION

1. Background to the Application

On 6th September 2008 the Brighton County Court made a Vesting Order under the provisions of Section 26 of the 1993 Act in Case Number 8BN02543 and ordered that "The action shall be transferred to the Leasehold Valuation Tribunal for a determination of the terms of the transfer." It also provided that the Tribunal shall determine the purchase price for the freehold.

- 2. The Tribunal made Directions as to the preparation of various documents with a view to preparing for the matter to be determined by the Tribunal as a paper determination without an oral Hearing. The Applicants had instructed Mr Stuart Gray FRICS of Austin Gray, Chartered Surveyors of Hove to prepare a

Valuation Report (“Mr Gray’s Report”) and copies had been forwarded to the Tribunal prior to the determination.

INSPECTION

3. The Tribunal carried out an Inspection of the Property on the morning of 9th December 2008. They inspected the Upper Maisonette in the presence of the Lessee, Ms Scriven and the Lower Ground Floor Flat in the presence of the Lessee, Mr Lamkin. The Building in which the two units were situated was a brick-built terraced property situated on rising ground on the main road leading from Newhaven to Brighton. It was near the town centre of Newhaven and in a residential area. At the rear of the property was an accessway leading to the rear of the houses in the terrace.
4. The two units were as described in Mr Gray’s Report. The Upper Maisonette was approached by steps leading off the street. The lower Flat also had some steep steps leading off the street, but the occupier used the access at the rear of the property as the front access was rather steep. Both units had their own self-contained entrances. The accommodation in each case was as described in Mr Gray’s Report.

5. THE STATUTORY PROVISIONS

The provisions of Section 27 of the 1993 Act apply where the Landlord cannot be found and the County Court has made a Vesting Order under the provisions of Section 26 of the 1993 Act. Section 27 (1)(b) of the 1993 Act provides for the vesting of any such interests “on such terms as may be determined by a leasehold valuation tribunal” Section 27 (3)(a) of the 1993 Act provides that the conveyance shall be “in a form approved by a leasehold valuation tribunal.”

6. DETERMINATION AS TO PRICE

- (a) The Tribunal read through Mr Gray’s Report. It set out the full details of the two Leases of the two units. Both Leases were for terms of 99 years from 31st January 1985. The ground rents in both cases were £50 pa rising (every 33 years) to £75 pa and £125 pa. The valuation date was the date of the vesting order, namely 11th August 2008. There were 75.47 years remaining on each of the lease terms. Mr Gray valued the existing units as follows:

Upper Maisonette £130,000

Lower Flat £90,000

- (b) Mr Gray had set out some helpful comparable evidence upon which he relied in support of his submissions. These were as follows:

(For the Upper Maisonette)

28 South Road, Newhaven Maisonette sold in February 2008 for £145,000

A 3 Bedroom Flat in Meeching Hill Newhaven under offer at £130,000

(For the Lower Flat) He was unable to find any reliable comparable evidence although he had found a flat in Meeching Road, Newhaven which was on the market (but unsold) at the price of £119,950. That property had been modernised and had a car space, which the subject Lower Flat did not have. There was also another similar Flat in Harpers Road Newhaven which was on the market (but unsold at the price of £99,950.

- (c) Mr Gray then sent on to set out his calculations which are contained in the Schedule to this Decision. He had prepared two valuations. The first valuation follows the Decision of the Lands Tribunal in the case of *Sportelli*, and adopts a 5% deferment rate. The second valuation represented Mr Gray's own opinion and uses a 6% deferment rate. The *Sportelli* Decision was subsequently referred to the Court of Appeal and that Decision disagreed with the Lands Tribunal when it said that there was no distinction between the Prime Central London (PCL) area and the remainder of the country. The Court of Appeal said that although the PCL deferment rate of 5% should be the starting point in deciding the deferment rate, it is possible that further and different evidence could be called in other areas of the country.
- (d) Mr Gray then set out his reasoning as to why had had adopted a 6% deferment rate in support of his calculations. He had added a 1% "risk premium" to the 5% norm. He also drew the Tribunal's attention to a similar case recently decided by the Tribunal in the case of 7 Sudeley Street, Brighton (Case Number CHI/OOML/OCE/2008/0023) where he had advanced the same argument and that tribunal had agreed to adopt the 6% deferment rate on a very similar property to the subject property. He went on to say that the weaker the location of the subject property and the current economic situation supports that a 6% yield is appropriate. The difference between the two percentages produced a significantly large difference in the enfranchisement price. If a 5% yield is applied the enfranchisement price is £7,393, but if a 6% yield is applied the price is £4,574. In support of his position, Mr Gray produced various tables of actual sale prices of Freehold reversions which he was aware of. In those cases the actual yield in a "no-Act world" ranged from 5.5% to 6.05%.
- (e) Mr Gray outlined in his report his analysis of how the market for Freehold reversions works and identified various types of investors who might be in the market for such reversions. In particular he had considerable experience in this market as his Firm handled regular auction sales of Freehold reversions locally. He distinguished between the PCL market and the local market conditions in Sussex and the surrounding counties. He took the view that there is no such thing as a long term investor buyer outside PCL who would be willing to pay 25 to 70% more than a short term buyer. He said that in his experience the current buyers of these investments are short-term and hope value investors. Those same buyers were present in a "pre-Act world".
- (f) For the above reasons Mr Gray submitted that the correct deferment rate should be 6% and this resulted in his calculation of the enfranchisement price shall be £4,574

7. DETERMINATION AS TO PRICE

The Tribunal reviewed the evidence and made careful note of the arguments set out in Mr Gray's Report. Using their local knowledge and experience the Tribunal agreed with Mr Gray's views that the correct deferment rate in this particular case should be 6%. The Tribunal also took note of the comparable evidence of actual sales of Freehold reversions and agreed with Mr Gray's calculations. The

Tribunal confirmed the price to be paid for the Freehold reversion at £4,574.

8. DETERMINATION AS TO THE FORM OF THE TRANSFER

Included with the papers before the Tribunal was a draft Land Registry Transfer prepared by the Applicants Solicitors Osler Donegan Taylor of Brighton. The Tribunal hereby approves the form of the Transfer and the approved draft Transfer is attached to this Decision and signed by the Tribunal Chairman.

THE SCHEDULE

The calculations adopted by the Tribunal from Mr Gray's Report

valuation for a leasehold enfranchisement

42 Brighton Road Newhaven- at 6% sportelli yield

LGFF

Lease term:	99 years	
From:	31 January 1985	
Valuation Date:	11 August 2008	
Years remaining:	75.47 years	
Ground rent:	£50 rising every 33 years	
Yield rate adopted	7%	
Ground rents at	£50	
YP at yield rate for	9.47 years	6.75974287
Ground rents at	£75	
YP at yield rate for	33 years	12.75379002
PV of £1 at yield rate in	9.47 years	0.526817999
		6.718926137
Ground rents at	£120	
YP at yield rate for	33 years	12.75379002
PV of £1 in	42.47 years	0.056493169
		0.720602021
Total value of ground rents		£928.37
Yield rate adopted	6%	
PV of £1 at yield rate in	75.47 years	0.01230657
		£1,108
Relativity	98.04%	
Extended lease value	£90,000	
Short lease value	£88,235	
Difference	£1,765	
Less value of freeholder's interest	£2,036	
Marriage value	£0.00	

**Transfer of whole
of registered title(s)**

Land Registry

TR1

If you need more room than is provided for in a panel, use continuation sheet CS and attach to this form.

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.*

3. Property

ALL THAT FREEHOLD PROPERTY KNOWN AS 42 BRIGHTON ROAD, NEWHAVEN BN9 9NB AS IS FURTHER DESCRIBED IN THE CONTINUATION SHEET HERETO

4. Date

5. Transferor *Give full names and company's registered number if any.*

ALAN BROWNSA BONFIELD

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.*

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.*

42 BRIGHTON ROAD, NEWHAVEN BN9 9NB

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.*
£ (POUNDS)
- Insert other receipt as appropriate.*
- The transfer is not for money or anything which has a monetary value

Continuation sheet
for use with
application and
disposition forms

Land Registry

CS

1. Continued from Form TR1 Title number(s) (FR)

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

(PANEL 3 CONTINUED)

THE PROPERTY IS ALL THAT UNREGISTERED FREEHOLD PROPERTY KNOWN AS 42 BRIGHTON ROAD, NEWHAVEN BN9 9NB AS IS SHOWN EDGED RED ON THE PLAN ANNEXED HERETO AND SUBJECT TO:

A LEASE OF THE LOWER GROUND FLOOR FLAT DATED 31 JANUARY 1985 AND MADE BETWEEN (1) ALAN BROWNSEA BONFIELD AND (2) PAULINE MOULAND, AS REGISTERED UNDER TITLE NUMBER ESX107182; AND

A LEASE OF THE GROUND AND FIRST FLOOR FLAT DATED 5 JUNE 1987 AND MADE BETWEEN (1) ALAN BROWNSEA BONFIELD AND (2) AARON RIDLEY AND LISA JOAN BATCHELOR, AS REGISTERED UNDER TITLE NUMBER ESX134720

Approved by the Southern Leasehold Valuation
Tribunal 8th January 2009

J. V. FARLING
(CHAIRMAN)

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

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ORDNANCE SURVEY
PLAN REFERENCE

TQ 4401

SECTION K

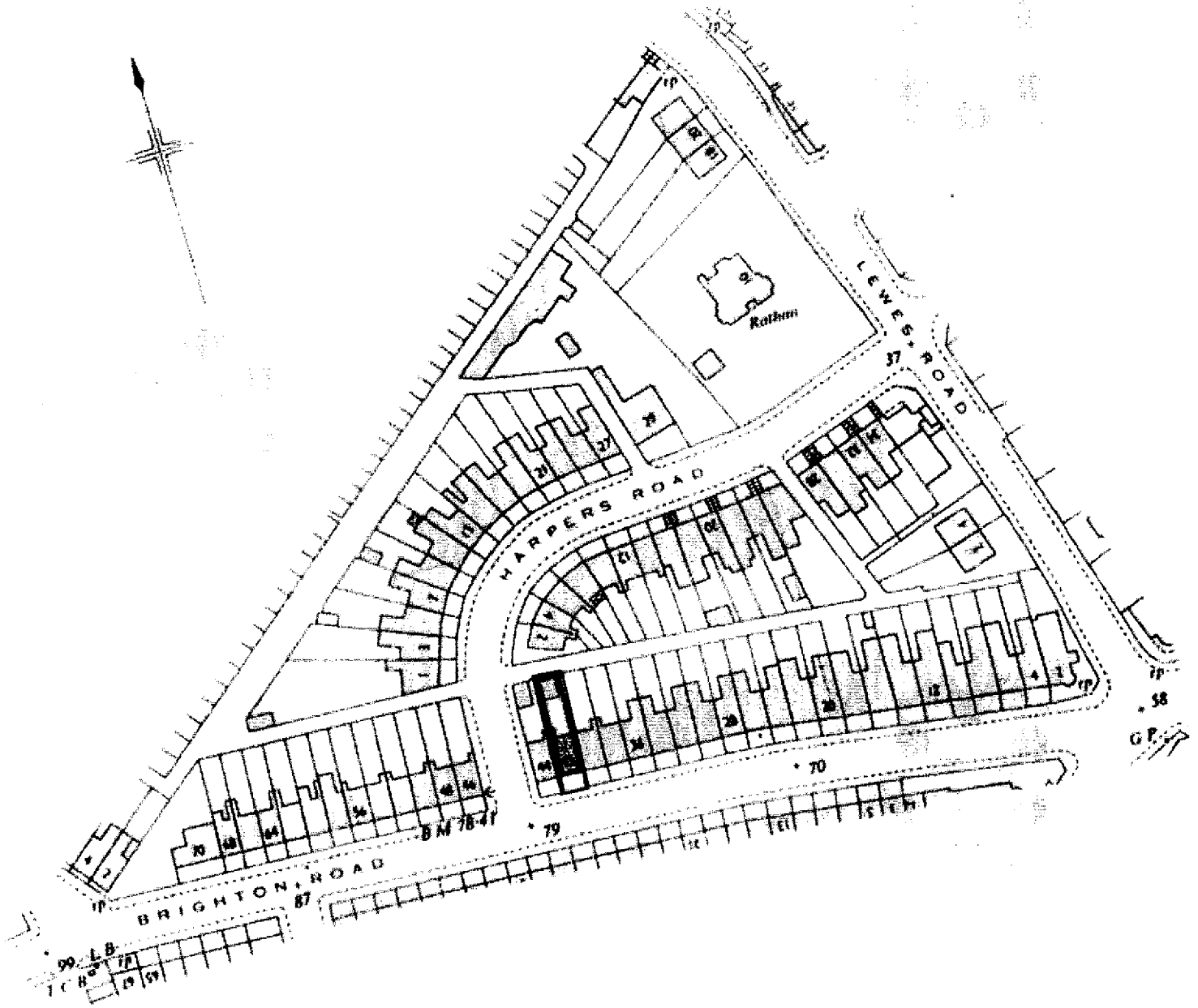
Scale
1/1250

COUNTY EAST SUSSEX

DISTRICT LEWES

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NEWHAVEN PARISH



Dated this 8th day of January 2009

J.B. Tarling 

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John B. Tarling, MCMI Lawyer/Chairman
A member of the Panel appointed by the Lord Chancellor