

2028

**EASTERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: CAM/22UE/OCE/2010/0012**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATION  
UNDER SECTION 24 OF THE LEASEHOLD REFORM, HOUSING & URBAN  
DEVELOPMENT ACT 1993**

Address: 32 Beech Road Hadleigh Benfleet SS7 2AZ  
Applicant: Ms J C Lee  
Respondent: Regis Group plc  
Application: 16 July 2010  
Inspection: 11 November 2010  
Hearing: 11 November 2010

Appearances

<u>Applicant</u>	Ms J C Lee Mr G Diep BA Leonard Peters Estate Agents Mr J Lord Nairnsey Conveyancer Fisher and Lewis (afternoon only)	In person
<u>Respondent</u>	Mr S Whybrow MIRPM Mr R Trivett AIRPM Pier Management Ltd	
<u>Tribunal</u>	Mrs Evelyn Flint DMS FRICS IRRV Mr Duncan T Robertson Mr Roland Thomas MRICS	Chairman

## DECISION

That price payable by the Applicant for the freehold of the subject property is £9,775.

The Respondent's costs payable by the Applicant under section 33 of the Act are legal costs of £936 exclusive of VAT plus disbursements of £55.25 and valuation costs of £600 exclusive of VAT.

No award is made under Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

### *Introduction*

1. This is an application under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to determine the price to be paid for the freehold interest in the property known as 32 Beech Road Hadleigh Benfleet SS7 2AZ("the property") and the costs payable to the Respondent under section 33 of the Act.
2. On 1 December 2009 the Applicant served an Initial Notice on Regis Group plc in accordance with S13 of the Act. On 28 January 2010 Regis served a Counter Notice without prejudice to its contention that the Initial Notice was invalid.
3. On 2 February 2010 the Applicant's agent served a revised Initial Notice on the Respondent. The proposed purchase price was £9,000.
4. A Counter Notice was served on 12 March 2010 admitting the Applicant's right to enfranchise and counter proposed a purchase price of £24,357 for the Specified premises and £100 for the additional Freeholds.
5. On 16 July 2010 an application was made to the Leasehold Valuation Tribunal for the determination of the terms of acquisition and costs of enfranchisement of the property. On 2 August 2010 the Applicant's solicitors sent to the Tribunal a copy of both the Initial and Counter Notices which had not been enclosed with the original application.
6. On 19 August 2010 Directions were issued setting out the timetable for the progress of the case. Neither side complied with the Directions. No negotiations took place between the parties' representatives and by the commencement of the hearing no bundles had been supplied to the Tribunal.

### *The Leases*

7. By a lease dated 6 September 2002 Regis Group plc demised the ground floor flat to Joanne Clare Lee for 99 years from 1 July 2002 at a rent of £150pa subject to review every 25 years to the higher of either the existing ground rent or the existing ground rent multiplied by the change in inflation during the intervening period.

8. By a lease dated 14 March 1990 David John Silk Lloyd demised the first floor flat to Mark William Deeble and Helen Julia Jones for 99 years from 1 July 1989 at £75 pa for the first 33 years, £150 pa for the next 33 years and £300 pa for the remainder of the term.

#### ***Matters Agreed***

9. At the commencement of the hearing it was confirmed that the following matters were agreed: the valuation date of 3 February 2010; the unexpired term in respect of the lease of the ground floor flat was 91.39 years; no marriage value was payable in respect of the ground floor; the unexpired term in respect of the lease of the first floor flat was 78.40 years; marriage value was payable in respect of the first floor flat as the unexpired term is less than 80 years.
10. During the course of the hearing the parties agreed that part of the premium relating to the first floor flat at £6,800.

#### ***Matters In Dispute***

11. The parties were not able to agree the capitalisation and deferment rates; the leasehold and virtual freehold value of the ground floor flat; the value of the Additional Freeholds (the pathway from the street providing access to the flats and the garden).

#### ***The Relevant Law***

12. The statutory assumptions to be applied when determining the premium to be paid for the freehold are set out in Schedule 6 of the Act.

#### ***Inspection***

13. The Tribunal inspected the property on 11 November. The property, which is situated in a residential area close to local amenities, is a two storey semi detached house built c1920 which has been converted into two flats. It is of traditional construction, with pebbledash rendered solid walls, a flat roof behind a parapet wall, a small flat roofed single storey extension has been added to the original back addition and there are gardens to the front and rear of the property.
14. Each flat comprises two rooms, kitchen and bathroom/wc. Most windows are pvc-u double glazed; the ground floor flat has gas fired central heating provided by the lessee; most of the electrical wiring is surface mounted; the first floor is unheated; the first floor kitchen has been modernised by the lessee. The layout of both flats is inconvenient.
15. The Tribunal noted that the property is in need of some repair and maintenance.

## Hearing

16. Ms Lee told the Tribunal that she wished the enfranchisement to proceed quickly.
17. Mr Diep presented his valuation to the Tribunal and explained that he had not carried out a traditional valuation because it was not possible to be certain what ground rent would be payable at review in respect of the ground floor.
18. He had valued the virtual freehold of both flats at £90,000. He referred to the sale on 10 September 2010 at £100,000 of a 3 roomed flat in Rosemary Court Rosemary Avenue Benfleet a superior modern purpose built block with on site car parking where the ground rent commenced at £50 pa to support his valuation. He discounted the virtual freehold value by 5% to reflect the unexpired term of 91.39 years.
19. He had adopted 6% capitalisation and deferment rates. He was of the opinion that the property would be obsolete before Kelton Court which was a 1960's block: this property was built, he thought, in the 1930's; no maintenance had been carried out for at least 8 years despite the lease providing for pre-payments; the flat roof covering was between 10 and 15 years old, the extension roof covering was probably a little less. He did not consider the rate of capital growth could be compared with prime central London; the area in which the property is situated is not prestigious and in his experience had experienced slow growth. He was of the opinion that capital growth would not exceed 4 – 5% pa in the long term.
20. Mr Diep confirmed that in his opinion the value of the additional freeholds was nominal.
21. He asked the Tribunal to determine a premium of £9,050.
22. Mr Whybrow presented to the Tribunal an unsigned valuation report by P J Holford BSc (Hons) MRICS of Morgan Sloane dated 22 January 2010 in which he proposed a premium of £19,486, which required adjustment to £19,330 following the agreement in respect of the 1<sup>st</sup> floor flat. Mr Holford had relied on several sources to arrive at the capital value of the freehold and leasehold interests, these included Rightmoveplus and local (unnamed) estate agents: bigger and better specified flats sold for £120,000 - £135,000; automated valuation models indicated a range of £87,000 – £100,000 and mortgage lenders house price indices supported a range of £96,000 - £102,000 per flat; he had adopted a capitalisation rate of 7% and a deferment rate of 5%, which he stated was based on the Lands Tribunal decision in *Cadogan v Sportelli*.
23. Mr Whybrow explained that Mr Holford had assumed an annual rate of inflation of 5% for the entire unexpired term of the lease in order to ascertain the ground rent payable at each review. Mr Whybrow conceded that the ground rent provisions may have a tendency to drive the price down and that it may have been appropriate to discount the freehold value by 1% to reflect the leasehold interest. However he was not a qualified valuer, he had

worked as an estate agent prior to becoming a property manager. He was of the opinion that the 0.25% addition made to the "Sportelli" rate in the Kelton Court case because there was no intermediate headlease was not appropriate here where there were only two flats, little common area and this was a completely different type of property. During cross examination he agreed that the subject property was not in the best of condition and that while lessees in prime central London were generally able to pay for repairs and maintenance the funds were not available to the same extent in Hadleigh. He did not know the condition of the flat roof or when any maintenance work had previously been carried out. He did not accept that in view of the poor maintenance in the past that the property was more likely to deteriorate sooner rather than later.

24. The additional freeholds were valued in the Counter Notice at £100; no addition had been made to the valuation to reflect this sum.

### **Decision**

25. The Tribunal noted that Mr Holford had valued both the current leasehold and freehold interests in the ground floor flat at £110,000 and did not appear to have made any adjustment for the rising ground rent which in his valuation increased from the current level of £150 pa to £533, £1806 and £6,116 at 25 yearly intervals. The Tribunal does not accept that the market would value the leasehold interest without regard to the unexpired term of 91.39 years or the potentially onerous ground rent provisions.
26. The sum of £110,000 was not supported by the various indices referred to or the sale prices achieved in respect of unspecified larger and better properties.
27. The Tribunal preferred the evidence of Mr Diep on this matter particularly since he attended the hearing so that he could present and be cross examined on his evidence. The Tribunal adopts a freehold value of £90,000 and a leasehold value of £85,500 representing a relativity of 95% based on its knowledge and experience, ignoring the lessee's improvements but taking into account the onerous ground rent provisions which may result in a ground rent being due which is at a much higher level than the norm for a property of this character and in this location.
28. The Tribunal has increased the initial ground rent by the increase in the RPI since the commencement of the term to the valuation date in order to arrive at the ground rent at review.
29. The Tribunal adopts a capitalisation rate of 7% which reflects the ground rent provisions and quality of the investment.
30. The flats at the property are much less valuable than those in Sportelli, therefore it would become uneconomic to carry out repairs at the subject premises more quickly than in Prime Central London (PCL) where capital values are significantly higher than similarly sized flats in this location. The Tribunal has taken into account the layout of the flats, structure of the

building and lack of repair in reaching its conclusion and determines that 0.25% should be added to the risk premium.

31. The Tribunal follows the decision in Kelton Court, where as in this case there was no headlease, and increases the risk premium by 0.25% to reflect the potential for increased management problems.
32. The Tribunal determines that the deferment rate to be adopted is 5.5%.
33. The Tribunal's valuation in the sum of £9,775 is at Appendix 1.

#### **Schedule 12 Costs**

34. The Commonhold and Leasehold Reform Act 2002 Schedule 12 Paragraph 10 provides that a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party where he has, in the opinion of the Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. The amount which a party may be ordered to pay is currently limited to £500.
35. Both parties made an application for the maximum award of £500 due to the abuse of process and unreasonable behaviour of the other side. The Tribunal considers that both parties have behaved in an unreasonable manner in particular in failing to comply with directions.
36. The Tribunal determines that no award is made under Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

#### **S33 Costs**

37. Section 33 of the Act sets out what costs may be recovered by a landlord and the test of reasonableness to be applied to those costs. It provides that:

*"(1) Where a notice is given under section 13... the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner... for the reasonable costs of and incidental to any of the following matters, namely-*

*(a) any investigation reasonably undertaken-*

*(i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or*

*(ii) of any other question arising out of that notice;*

*(b) deducing, evidencing and verifying the title to any such interest;*

*(c) making out and furnishing such abstracts and copies as the nominee purchaser may require;*

*(d) any valuation of any interest in the specified premises or other property;*

*(e) any conveyance of any such interest.....*

*(2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have been*

*incurred by him if the circumstances had been such that he was personally liable all such costs.*

38. The Respondent claimed valuation fees of £800 plus VAT on the basis of standard charges made by Morgan Sloane of £400 per flat. The Applicant considers that £600 exclusive of VAT should be awarded. The Tribunal noted that no representative of Morgan Sloane attended the hearing so their evidence could not be fully tested and their report was inadequate, in particular no comparables were provided.
39. The Tribunal determines that the fees of Morgan Sloane should be £600 exclusive of VAT.
40. Tolhurst Fisher LLP claim fees of £1458 plus VAT but the maths set out in their schedule of costs is incorrect.
41. The parties agree Tolhurst Fisher LLP should be allowed fees at £180 per hour calculated in units of 6 minutes for the work undertaken by Mr Plant. Both lawyers were requested to attend the hearing. Mr Plant of Tolhurst Fisher LLP sent a witness statement and Mr Lord of Nairnsey Fisher and Lewis attended in person and gave verbal evidence as to which fees he considered excessive. The representatives of the Respondent said they could not comment on the fees claimed of £1478 plus VAT other than offering a small reduction in the time spent by Tolhurst Fisher LLP.
42. The Tribunal consider that correspondence and phone calls prior to the application should be awarded 16 units and 10 units be awarded for projected work in this respect. Documents including notices and counternotices are awarded 15 units and projected documents work including that on the transfer, contract, completion statement and form DS1 are awarded 11 units.
43. Total units awarded are 52. The Tribunal determines that the fees of Tolhurst Fisher LLP should be £936 exclusive of VAT. In addition to fees disbursements totalling £55.25 are agreed by the parties.
44. VAT is only payable by the Applicant if the Respondent is not able to reclaim it.
45. The parties agreed that If the transfer was not agreed written submissions regarding the outstanding matters would be sent to the Tribunal within 28 days of the hearing. As no further submissions have been received the Tribunal assumes that the terms of the transfer are now agreed.

Dated 16th December 2010

CHAIRMAN.....  
Evelyn Flint DMS FRICS IRRV

32 BEECH ROAD BENFLEET ESSEX SS7 2AJ

Ground Floor flat

Value of unimproved extended Lease £90,000

Value of unimproved existing Lease £85,500

Relativity 95%

Unexpired term 91.39 years

Valuation date 3 February 2010

Term Yield 7%

Reversion Yield 5.5%

Ground Rent £150 p.a for 1<sup>st</sup> 25 years of term rising to £187 p.a for remainder of term based on increase in RPI to valuation date

No Marriage Value

#### 1. VALUE OF FREEHOLDERS EXISTING INTEREST

(1) Ground Rent	£150	
YP 17.40 years @7%	9.8816	£1,482
(2) Ground Rent	£187	
YP 74 years@7%	14.1901	
x PV of £1 @7% in 17.40 years	0.30829	£ 818

#### 2. VALUE OF FREEHOLD REVERSION

PV of £1 @ 5.5% in 91.39 years	0.007497	£ 675
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First Floor Flat agreed at £6,800

Premium £9,775