



**HM Courts  
& Tribunals  
Service**

**LEASEHOLD VALUATION TRIBUNAL  
Case no. CAM/00KF/OCE/2012/0003**

**Property** : **3 Cossington Road,  
Westcliff-on-Sea,  
Essex SS0 7NJ**

**Applicant** : **Gregory Stuart May, Lisa Steel, John  
Adrian Gee and Rosemary Phyliss Gee**

**Respondent** : **Regisport Ltd.**

**Date of Application** : **10<sup>th</sup> January 2012**

**Type of Application** : **To determine the terms of acquisition  
and costs of the enfranchisement of the  
property**

**Tribunal** : **Bruce Edgington (lawyer chair)  
Stephen Moll FRICS  
Roland Thomas MRICS**

**Date and place  
of hearing** : **21<sup>st</sup> March 2012 at Southend Magistrates'  
Court, 80 Victoria Avenue,  
Southend-on-Sea, Essex SS2 6EU**

**Counsel:** **Jamal Demachkie (Paul Robinson & Co.) for Applicant  
Robert Plant – solicitor – for Respondent**

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## **DECISION**

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**UPON** the parties having agreed the terms of the 'conveyance' in form TR1 at pages 235-238 in the hearing bundle save as to the amount of the consideration

**AND UPON** the parties having agreed the price for the collective enfranchisement of the property excluding the front garden in the sum of £34,452.84

**AND UPON** the parties having agreed the legal costs and valuation fee

**THE TRIBUNAL'S DECISION** on the remaining issue is that the additional amount payable by the Applicants for the Respondent's freehold interest in the front garden at the property is £7,500.00.

## Reasons

### Introduction

1. This case relates to the collective enfranchisement of the property and all matters were said by the parties to have been agreed save for the price to be paid for the Respondent's freehold interest in the front garden. The Tribunal is grateful to the parties and their representatives for the work undertaken to achieve settlement on the other matters which were in dispute when the application was made.
2. On the valuation issue, it was agreed that all the Applicants had was a right of way across the front garden to the building and that it could be developed and used for parking. Whether the land would actually be used for anything other than as a garden, and the price for such 'hope' value was in dispute.

### The Inspection

3. The members of the Tribunal inspected the front of the property on a bright sunny spring morning. The garden was laid to lawn with a crescent shaped path from each end of the frontage to the front door. Many properties in Cossington Road have front gardens upon which cars can park. On one side of this property was a house with a slightly longer frontage and 6 car parking spaces in place of the front garden. On the other side, the front garden of the house was still laid out as a garden. Two and possibly three cars could park outside the subject property on the road.
4. Of relevance was that a member of the Tribunal and some of those attending the inspection could not park in Cossington Road but were able to find parking in adjoining roads.
5. Cossington Road is a road running parallel to and within easy walking distance of Hamlet Court Road which is the main shopping centre for Westcliff. Within easy walking distance also is a main line railway station with trains to London and to Southend town centre.

### The Hearing

6. The Tribunal was assisted by seeing, in advance, the written reports of the valuers for each side. Counsel for the Applicants also provided a helpful skeleton argument.
7. Mr. D. Plaskow FRICS gave evidence for the Applicants. He practices with a local firm of chartered surveyors. He confirmed his view that this front garden would not be developed into a parking area and he thought that the amenity value was no more than £3,000.00. If any potential for parking were to be calculated, then the value was £5,150.00 made up as follows:-

Market price of 4 car parking spaces

£20,000

Cost of laying parking area to concrete	£7,000	
Drop kerb(s)	£1,500	
Cost of obtaining planning consent	£1,200	(£9,700)
Value assuming planning permission		£10,300
Risk of not obtaining planning permission 50%		(£5,150)
Net value		£5,150

8. He was then able to give some assistance to the Tribunal on the issue of the value of garages in the locality. A block of 4 lock up garages with a parking space in front of each in Elderton Road, Westcliff sold at auction in February 2010 for £30,000. One in Bellhouse Lane, Eastwood sold in July 2011 for £8,000 and one in Marine Avenue, Leigh is in an auction in March 2012 with a guide price of £8,500.
9. His value for the conversion works had come from the BCIS dilapidations handbook although he accepted that in the 'real world' the work could well be done cheaper.
10. Paul Holford BSc(Hons), MRICS then gave evidence on behalf of the Respondent. He practices in central London but has undertaken work in Essex for several years. His view remained that the front garden could be developed into a car park with 6 parking spaces. Let at £30 per week each, they would raise £9,360 per annum. In the case of 158 West Hill (LON/00BJ/OCE/2010/0113) 5YP was allowed but as this property is close to a main line rail station, 10YP is more realistic which would give a value of £93,360.00.
11. In the bundle, he had provided copies of 3 estimates he had obtained to do the conversion works except the drop kerbs ranging from £2,940 to £3,600. He also provided copies of pages from a website advertising car parking spaces for rent to support his case that a car parking space could achieve £30 per week in revenue. Interestingly, none of these advertisements disclosed the address of the property where the car parking space was but merely said that it would be disclosed "on booking completion".
12. Mr. Holford admitted that if the front garden were to be sold on the open market as it stood, he would advertise it at £10,000 with a view to obtaining something less than that figure. When asked by one of the Tribunal if planning permission was granted for, say, 4 or 5 parking spaces, what affect did he feel that this may have on the market value of the individual flats, his answer was some £5,000 to £7,500 increase in value per flat dependent upon the allocation of 1 or 1½ spaces.
13. He also accepted that anyone buying this land for such commercial development as was being suggested, would not buy it without planning permission having been granted. He could not say why the Respondent had not applied for planning permission.

14. Neither expert had spoken to Southend Council about whether any planning permission would be likely to be granted, let alone for commercial use. This was regrettable in view of the vast difference in value put forward by each of them and the fact that this difference largely turned on this issue. They had also not spoken to the council about the cost of the drop kerbs.
15. Finally, in terms of the hearing, Mr. Plant said that his client accepted that this land would be included within the collective enfranchisement under Section 21(4) of the **Commonhold and Leasehold Reform Act 1993** ("the 1993 Act") i.e. because the property "*would cease to be capable of being reasonably managed or maintained by..*" his landlord client.

### Conclusions

16. References were made to various LVT decisions. These are not particularly helpful because, as the legal representatives will know, the Lands Tribunal and, subsequently, its successor, the Upper Tribunal, have said on several occasions that opinions expressed by and evidence given in one LVT do not bind a subsequent LVT. In this case, for example, the case of 158 West Hill has been used to support the Respondent's case. However, in that case, the lessees rights to park were already there and the facts therefore were similar to the earlier Lands Tribunal case of **Blendcrown Ltd. v The Church Commissioners for England** (LRA/50/2002). That case would tend to support the Applicants' view that parking rights on appurtenant land are included in the initial 'no Act world' value and therefore do not attract an additional value. In this case, according to the Respondent, the front garden is not appurtenant land.
17. As Mr. Demachkie pointed out, there are a number of other differences in the 158 West Hill case which would also tend to suggest that it is not a reliable indicator as to the decision needed in this case.
18. However the main problem with the Respondent's case is the reliability of the evidence that Southend Council are more likely than not to grant planning permission for the commercial use of the front garden. The Tribunal accepts that the front garden cannot just be valued as amenity land. The lessees may not be thinking of developing it now, but they could do and that must have a value. The relevant questions are (a) how the land could be developed and (b) how can that be valued?
19. On the first issue, as has been said, the evidence of the experts has not been particularly helpful. The Tribunal must therefore use its own considerable knowledge and experience in these matters. For example, there has been a tendency for planning authorities to turn away from granting planning permission to convert front gardens into car parks because this tends to spoil the visual amenity of the locality. This can happen even in areas, such as this, where there are already houses where this has been permitted in the past.

20. On the issue of how many car parking spaces would be allowed if planning permission were granted, the evidence included the Essex Planning Officers Association booklet called 'Vehicle Parking Standards' dated August 2001 which was created by a working party including 2 representatives from Southend Council. Under the heading 'USE CLASS C3 – Dwelling Houses', it says, at page 423 in the bundle, "*For main urban areas and locations where access to public transport is good, a maximum of 1 space per dwelling is appropriate*". The subject property is in a main urban area with good access to public transport.

21. It is this Tribunal's combined view that the chances of planning permission being granted for a car park to be created in the front garden with a change of use to commercial rather than as an adjunct to the residences, is so small as to be discounted. The proposed use would, of course, have to be disclosed in the application for planning permission. Apart from the main reason i.e. Tribunal's knowledge and experience, some ancillary matters taken into account are:-

- The failure of the Respondent to either apply for planning permission or even, apparently, to make enquiries with Southend Council
- The likelihood that the residents of the flats would not apply for such permission in any event because the risk of having vehicles on their land immediately in front of their residences such as vans and caravans over which they would have no control
- The assertion by the Respondent that this land, on its own, would not be capable of being reasonably managed or maintained. If there was to be a revenue of over £9,000 per annum for virtually no cost or management save for the initial conversion works, any professional property owner such as the Respondent would certainly not take such a view if it genuinely believed that the prospect of obtaining planning permission was good
- The fact that the website entries evidenced on behalf of the Respondent did not reveal any address. The Tribunal infers from this that there is probably no planning permission for the private letting arrangements being offered. In making this decision, the Tribunal cannot assume that the Applicants will break the law in this way
- The evidence from the Applicants themselves that parking is not a problem in this locality which may lead Southend Council to the view that this development was not necessary or desirable.

22. One is therefore left with the possibility of the Applicants applying for planning permission to use the land for parking as an amenity for the flats. Mr. Plaskow's view is that the value of a parking space to each flat is £5,000. In fact he simply puts the value of 4 parking spaces as

a whole at £20,000 which is the same thing. £5,000 per flat seems to be Mr. Holford's view as well if there were 1 parking space per flat. The Tribunal agrees that £5,000 per flat is the sort of figure a purchaser would pay to obtain a certain parking place if such purchaser was buying a flat in this locality. The very large flat on the ground floor may be prepared to pay for 2 parking spaces.

23. Whether Southend Council would grant permission for 4 or 5 parking spaces is pure speculation. Their own advice in 2001 would appear to have been 4. The suggestion of 6 spaces put forward by Mr. Holford is unrealistic because it would not allow easy pedestrian access to the building, which the Applicants already have in their leases. It is also at least probably that Southend Council would insist on wheelchair access.

24. There also have to be allowances made which the Tribunal would summarise as follows:-

- The risk that no planning permission would be granted
- The risk that planning permission would be granted but for only 4 vehicles
- The fact that the Applicants would lose the amenity value of the front garden. There is a certain 'ambience' value in having a front garden rather than a car park to cross when one has visitors. The Tribunal accepts Mr. Plaskow's view that the value of this is in the region of £3,000
- The loss of 2 and possibly 3 parking spaces on the roadside

25. It is also clear that the cost of the work needed to convert the garden into a car park has to be taken into account. The Applicant's evidence is that this will be £9,700 to include £2,700 for drop kerbing and planning permission. The Respondent has only costed the building work at about £3,000 but not the drop kerbing or the cost of obtaining planning permission.

26. The Tribunal is inclined to accept that Mr. Plaskow's figure for the building work is over estimated. Indeed, he tended to accept that this may be the case. The Tribunal's view is that £7,000 is a reasonable overall figure for the development cost.

27. The Tribunal's conclusion is that £7,500 is the correct figure for the front garden calculated as follows:-

Value of 5 parking spaces @ £5,000 each		£25,000
Less cost of development	£7,000	
Loss of amenity and ambience	<u>£3,000</u>	
		<u>£10,000</u>
Net potential cost		£15,000

28. The estimated value of the other 'risks' set out in paragraph 24 above is, in the Tribunal's view, about 50%. Thus the net value of the front garden to included possible development potential is £7,500.

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**Bruce Edgington**  
**Chair**  
**22<sup>nd</sup> March 2012**