

CHI/43UB/OCE/2007/0012

**DECISION OF THE SOUTHERN LEASEHOLD
VALUATION TRIBUNAL ON APPLICATIONS UNDER
SECTION 24 OF THE LEASEHOLD REFORM, HOUSING
AND URBAN DEVELOPMENT ACT 1993**

Address: 15 & 15A Castleview Road, Weybridge, Surrey,
KT13 9AB

Applicants: (1) Catherine Elizabeth Allaway
(2) Brigid Cathleen Strowbridge

Respondent: Uphall Investments Limited

Application: 15 February 2007

Inspection: 25 April 2007

Hearing: 25 April 2007

Reconvene: 22 May 2007

Appearances:

Tenants

Mr Adrian Carr	Counsel
Mr Anthony George Davis	Churchod & Co, Chartered Surveyors
Ms Allaway	Leaseholder
Ms Strowbridge	Leaseholder

For the Applicants

Landlord

Miss Alison Oaks	Counsel
Miss Caroline Bird	Bevan Kidwell, Solicitors
Mr Kotak	Moss Kaye Pembertons Ltd, Chartered Surveyors
Mr David Frischman	Uphall Investments Limited, Lessor

For the Respondent

Members of the Tribunal: Mr I Mohabir LLB (Hons)
Mr D Lintott FRICS
Mr R A Wilkey FRICS FICPD

IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/43UB/OCE/2007/0012

**IN THE MATTER OF SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

**AND IN THE MATTER OF 15 & 15A CASTLEVIEW ROAD, WEYBRIDGE,
SURREY, KT13 9AB**

BETWEEN:

**(1) CATHERINE ELIZABETH ALLAWAY
(2) BRIGID CATHLEEN STROWBRIDGE**

Applicants

-and-

UPHALL INVESMTMENTS LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is application made by the Applicants pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to purchase the freehold interest in the property known as 15 & 15A Castleview Road, Weybridge, Surrey, KT13 9AB ("the property").
2. By a section 13 initial notice dated 5 October 2006 served on the Respondent, the Applicants exercised their right to collectively enfranchise by acquiring the freehold interest in the property. The said notice proposed a purchase price of £13,000. By a section 21 counter notice the Respondent admitted the Applicants right to enfranchise and counter proposed a purchase price of £125,000. The parties were subsequently unable to agree the purchase price

for the freehold interest and the terms of the conveyance in accordance with section 34 and Schedule 7 of the Act. On 15 February 2007, the Applicants make this application in order that the Tribunal could determine those matters.

3. Each party had instructed their own valuer. The Applicants had instructed Mr. Davis BSc (Est. Man) FRICS of the firm of Churchod & Co. whose valuation report is dated 12 April 2007. The Respondent had instructed Mr. Shapiro BSc (Est. Man) FRICS, IRRV, FCI Arb of the firm of Moss Kaye Pembertons Ltd. whose valuation report is dated 12 April 2007. Helpfully, both valuers had prepared a Schedule of Matters Agreed and Not Agreed. These were:

Matters Agreed

- (a) the ground floor (No.15) and the first floor (No. 15A) maisonettes were each comprised of two bedrooms, lounge, kitchen, bathroom/W.C., GIA 633 ft.².
- (b) both leases are for a term of 99 years from 24 June 1978 expiring on 23 June 2078 and had an unexpired term of 71.72 years remaining as at the valuation date. Each lease reserved a ground rent of £50 per annum for the first 33 years, £100 per annum for the next 33 years and £150 for the remainder of the term.
- (c) the valuation date is 5 October 2006, being the date of the initial notice.
- (d) the capitalisation rate is 7.5%.
- (e) the deferment rate is 5%.

Matters not Agreed

- (a) value of each flat on a share of the freehold basis (excluding development value and excluding the tenants' improvements).
- (b) relativity.
- (c) development value.
- (d) value of each flat on a share of the freehold basis (including development value but excluding improvements).

Each of the matters not agreed is considered in turn by the Tribunal below.

Inspection

4. The Tribunal inspected the subject property on 25 April 2007. The Tribunal inspected the property on 25th April 2007. They found that 15/15a Castleview Road consisted of one half of a detached purpose built property of four two bedroom flats constructed around the 1930's. The other half of the building is known as 17/17a Castleview Road. The building is of traditional construction, probably of brick but mostly covered with cement render and painted. The roof is clay tiled and there are gardens to the front and rear belonging to the ground floor flat, No.15, and an area of adjoining land which forms the garden of No.15a.

Hearing

5. The hearing in this matter also took place on 25 April 2007. Mr. Carr of Counsel appeared for the Applicants. Miss Oakes of Counsel appeared for the Respondent. The Tribunal was told that the terms of acquisition had largely been agreed and the parties were optimistic that the remaining terms were likely to be agreed shortly. On this basis, that part of the application was stayed until the Tribunal's Decision had been handed down and both parties were given permission to apply. The Tribunal, therefore, confined itself to the matters of valuation, set out above, that still remained in issue.

(a) Value of each Flat on a Share of the Freehold Basis (excluding development value and excluding the tenants' improvements)

6. There appeared to be little difference between the respective valuers on this issue. Mr. Davis was of the opinion that the ground floor maisonette (No. 15) was worth £190,000 and the first floor maisonette (No.15A) was worth £195,000. Mr. Shapiro contended that each flat was worth £200,000.
7. In chief, Mr. Davis pointed out that there was a material difference in the plans contained in his report and that of Mr. Shapiro. He said that Mr. Shapiro's plans (EFS/8) had been drawn incorrectly because he had taken the rear boundary of the property to the garages located there, whereas the Land Registry did not show this. The effect was to give the ground floor maisonette a deeper garden than was the case.

8. Otherwise, Mr. Davis effectively relied on the evidence set out in paragraph 5 of his report. He considered each maisonette to be identical and that in his opinion the market did not differentiate in value between first and ground floor units that were otherwise identical in size, accommodation, fittings and location. He believed that the first floor maisonette had a slightly higher value because of the larger garden area with the potential (subject to consent) to create off-street car parking space in its garden and this was reflected by a greater value of £5,000 than the ground floor maisonette.
9. It was a matter of common ground that the improvements carried out by the leaseholders, or their predecessors in title, should be disregarded in arriving at the value of the flats. The agreed improvements to both maisonettes were:
- (a) uPVC double glazed windows and doors.
 - (b) upgraded kitchens.
 - (c) upgraded bathrooms.
 - (d) installation of central heating systems, by gas fired boiler and radiators in No.15A and by electric radiators in No.15.
 - (e) fitted wardrobes and gas fire in No.15.
- He estimated that the cost of these works to be £20,000 and £25,000 respectively and proposed that an allowance for increase in value for each should be £15,000.
10. As to evidence of value, Mr. Davis relied on the five residential sales of similar properties that had taken place in Castleview Road in 2006 as appropriate comparables. Mr. Davis was also aware of a further sale of 10A Castleview Road on 27 October 2006, which was close to the valuation date. This property had sold for £207,500 and had an unexpired lease term of 125 years. He, therefore, proposed a value of £205,000 for No.15 and £210,000 for No.15A. Taking account of the adjustment for improvements, Mr. Davis proposed valuations of £190,000 and £195,000 respectively for the maisonettes.

11. It should be noted here that although Mr. Shapiro had prepared a valuation report, he did not attend the hearing to give evidence because of other professional commitments. Instead, Mr Kotak attended on his behalf. He said that although he had not written the report, he had inspected the property, researched the valuation and assisted Mr. Shapiro generally in the preparation of the report.
12. In his evidence, Mr. Kotak did not comment specifically on this issue. Indeed, neither did Mr. Shapiro in his report. In paragraph 5.1.3.2, he simply concluded that both flats have the same value of £200,000 each. In reaching this figure, he relied on an extract from Nethouseprices.com showing the most recent flat sales that this was a realistic price for an unimproved flat in good repair and maintained in accordance with the terms of the leases. Mr. Shapiro also relied on sales particulars relating to 11A Castleview Road, which had just come onto the market at asking price of £249,950. However, he concluded that the difference between himself and Mr. Davis on this matter was extremely small and he was content to leave this to the Tribunal to determine.
13. The Tribunal accepted the evidence of Mr. Davis on this issue. It did so for a number of reasons. Mr. Davis had personally inspected the property on two separate occasions whereas Mr. Shapiro had never done so. Mr. Davis was a local surveyor in practice for 45 years, with 28 years in Weybridge, and was more familiar with the local market and conditions in relation to this property. This was a highly relevant factor. On the other hand, whilst Mr. Shapiro is undoubtedly a highly experienced surveyor in his own right, that experience was largely confined to the London area. The Tribunal was also satisfied that Mr. Davis had made greater attempts to properly investigate and analyse the relevant capital values by reference to the sales of comparable properties located in the same Road. Mr. Shapiro had simply placed reliance on an internet search and sales particulars of one other comparable property, which had not as yet been sold. The Tribunal did not accept the submission made on behalf of the Respondent that the Applicants had not produced any evidence to assess whether any deduction should be made for improvements. It was never

the Respondent's case that those improvements carried out to each flat, were claimed as having been carried out by it or any predecessor in title. Indeed, both Mr. Shapiro and Mr. Kotak accepted in principle that this deduction ought to be made in this instance. The Tribunal considered the deductions made by Mr. Davis to be appropriate. The valuation of those improvements as proposed by Mr. Kotak was unrealistic. Taking all of these matters into account, the Tribunal determined that the valuations of No.15 and No.15A Castleview Road were £190,000 and £195,000 respectively giving a total of £385,000.

(b) Relativity

14. In the absence of any market evidence, Mr. Davis carried out a research of the published results of all LVT hearings in the Surrey area. He transcribed those results onto a graph set out at Appendix E in his report. On the basis of his graph, he proposed a relativity of 94%. Applying that relativity to the values of the flats determined above, produced current lease values of £178,600 and £183,300 respectively giving a total of £361,900.
15. In cross-examination, Mr. Davis said that his figure of 94% was not just based on analysis of LVT decisions in the Surrey area. He had also dealt with many agreements and settlements with other local valuers and 94% was the figure he was used to negotiating and this also corresponded with his graph. He accepted that he had brought no evidence of any such settlements to the hearing. He was also aware of the criticisms made in *Arrowdell Ltd.* (LRA 72/02/05) and *Arbib v Earl of Cadogan* [2005] 3 EGLR 139 of the use of previous decisions of the LVT in making findings on relativity.
16. On the issue of relativity, Mr. Shapiro mainly relied on a graph produced by Beckett & Kay (EFS/12). The first was a standard graph of relativity, which showed that a lease of an unexpired term of 71.72 years provided a range of relativities between 85% and 91.5% if the LEASE graph of all LVT determinations was excluded. The other graphs had been produced by central London firms, including the Moss Kaye 2005 graph, which had been compiled from an analysis of all the cases in which Mr. Shapiro had been involved in

prior to 2005 including settlements as well as determinations by the LVT. Mr. Shapiro submitted that the predominant factor when assessing relativity was the length of term and, therefore, the Beckett & Kay graph had equal application to other areas including the area in which this property was situated. He adopted the relativity of 91.5% set out in the Moss Kaye graph as being appropriate.

17. In the absence of any real market evidence, as was the case here, the issue of relativity remains a contentious one. As is often the case, self-serving and persuasive arguments can be advanced by either party to support their own particular case. In the absence of market evidence, the Tribunal must have regard to the other evidence available to it. Invariably, this involves a consideration of settlements reached and earlier determinations made by the LVT. Whilst this evidence may be unsatisfactory because it does not necessarily take place in a “no Act” world, it is not totally without value. This is effectively what was said by the Lands Tribunal in *Arrowdell* and *Arbib*. In *Arrowdell* the Lands Tribunal expressed its dissatisfaction about the evidence in relation to relativity. It expressed the opinion that it ought to be possible for the RICS to produce a standard graph to which reference to be made on this issue. In *Arbib* the Lands Tribunal, correctly, simply stated that little or no weight should be attached to the decisions made by other LVT's on questions, fact or opinion.
18. The Tribunal did not find the evidence relied on by the parties on the issue of relativity to be compelling either way. The Tribunal was satisfied that the graph compiled by Mr. Davis of earlier LVT determinations in Surrey did not directly place any reliance on decisions made by other LVT's on questions, fact or opinion in reaching those decisions. It simply recorded the determinations made and extrapolated those into a graph. Even if the Tribunal was wrong about that, it seems that the same criticism could be made of Mr. Shapiro's reliance on the Moss Kaye graph, which he stated included transactions reached by agreement as well as other determinations made by LVT's. In the absence of any clear evidence, the Tribunal determined that the correct figure to be adopted for relativity lay somewhere between the figures

proposed by either party. Accordingly, the Tribunal determined that the figure of 92.75% should be applied thereby providing a current value of £176,225 and £180,860 respectively for the leases.

(c) Development Value

19. This proved to be the most contentious issue between the parties. Mr. Davis simply contended that there was no hope value for development purposes. Mr Shapiro contended that there was. In the light of this, it is perhaps more convenient to consider the Respondent's evidence in support of this contention.

20. In his report, Mr. Shapiro argued that there was development potential in the site and this will be available to the Applicants upon enfranchisement. He stated that there was sufficient distance between the southern boundary of the site and the outside porch to construct a detached pair of maisonettes leaving ample room to gain access to the existing maisonettes and the new ones. Mr. Shapiro annexed an Ordnance Survey plan (EFS/8) to his report showing how this could be achieved. The highest price achieved for a maisonette in Castleview Road was £229,950 for No.6A on 3 October 2006. This property only had a standard size garden. Newer properties achieved a greater premium in the region of 10%. He concluded that it would be realistic to assume that each of the two proposed maisonettes could achieve a minimum of £250,000.

21. Mr Shapiro had prepared a residual calculation (EFS/9) showing the development value as being £270,757 (as amended). In arriving at that valuation, Mr Shapiro, in addition to the various costs of development, had made a further deduction of £10,000 in the value of each flat to reflect the reduction in the garden size caused by any development. He also made a further reduction of 25% to reflect the risk of not obtaining planning permission, although he believed such risk to be *de minimis*. This resulted in a valuation figure of £203,068, which he believed was the amount the Applicants could dispose of the garden land on an unconditional basis to a

local developer/builder. Therefore, his valuation of the freehold was as follows:

Value with existing gardens	£400,000
Less allowance for loss of park gardens	<u>£ 20,000</u>
	£380,000
Net additional site value on an unconditional basis	<u>£203,068</u>
	£583,068

22. Mr Davis' primary contention was that there was no development value. If there was, which was denied, it could affect the enfranchisement premium in two ways. Firstly, it might increase the reversionary value of the two flats with vacant possession at the end of the term and thereby the freeholder's current interest. However, Mr. Davis discounted this for a number of reasons. Actual development value could only exist where there is actual planning consent or deemed planning consent and there was none here. Moreover, the possibility for future development on this particular site was far too remote. Hope value would only be recognised in the market if the possibility for future development was likely. Whilst Mr. Davis did not entirely exclude this possibility, he argued that it was negligible. Not only was there lack of actual planning consent there was also the delay factor in achieving that consent. There were also additional uncertainties, which included restrictions on size and siting that might be imposed, possibly due to overlooking, access problems, soil conditions and so on. Any small percentage addition for hope of development value would be counterbalanced by the loss in value of the two flats occasioned by the loss of half their garden and the potential car parking space, poorer outlook and overlooking.

23. Secondly, it could have an effect on the marriage value. Hope of development value might take account of the possibility of allowing a development to take place earlier due to the merging of the current freeholder and leasehold interests thereby increasing the marriage value. He maintained that this proposition ignored the following factors:

- (a) that the Applicants did not wish to become developers. They only wished to enfranchise.
- (b) the Applicants only wished to use the side garden for off-street parking and to landscape the remainder.
- (c) they would effectively be forced into developing the site if they had to pay the substantial marriage value proposed by the Respondent. Such a price could not *per se* justify enfranchising.
- (d) the Applicants would be forced to borrow substantial sums to pay the increased premium.
- (e) in any event, there was a covenant at clause 2.25 in the draft Transfer restricting the use of the site to two residential dwellings. This would prohibit further development.
- (f) the Lands Tribunal in *Sportelli* ruled against hope value being taken into account in these circumstances.

In evidence, he conceded that there was a remote potential to develop the site despite these uncertainties and that this could be done by either the Applicants or their successors in title. If it was the latter, then that determination should be made at the relevant time and not now.

- 24. As to Mr Shapiro's residual valuation, Mr Davis maintained his original position that development value had no application in this instance. He only felt obliged to comment on this, as it had been raised by Mr Shapiro in his report. It was, therefore, incorrect of Miss Oakes to submit, in closing, that by effectively "pleading" to the residual valuation, Mr Davis had somehow abandoned his original position and that the real issue was the appropriate deduction to apply for the costs of the development and associated risk. Mr Davis was careful not to do so.
- 25. Miss Oakes also submitted that Mr Davis had confused the definition of "hope value" with development value. The Tribunal did not accept that submission. Hope value was defined *inter alia* in *Sportelli* (at para. 7) as being, not only the option of the freeholder to sell a lease extension to the tenant, but also the freehold. It must follow that the sale of the freehold will include valuing the

reversionary interest, which in turn must have regard to the possibility of hope of any development value of the site. It, therefore, cannot be right to submit that this has nothing to do with the development value of the freehold to a purchaser. It is for that reason that paragraph 5 of Schedule 6 of the Act expressly provides for the freeholder to be compensated in these circumstances. Miss Oakes went on to make further submissions about the evidence of Mr Davis in relation to the effect of any development value on marriage value. However, as will become apparent below, it is not necessary for the Tribunal to deal with these submissions here.

26. The issue to be decided by the Tribunal was whether the development value could properly be claimed by the Respondent as part of the value of the reversion. In the Tribunal's judgement it could not. Mr Shapiro's evidence and his valuation proceeded on the assumption that this was inevitable. Equally, Mr Kotak's evidence was largely concerned with Mr Shapiro's residual valuation of the development value. In the Tribunal's view, the test to be applied is whether the factual circumstances that exist can give rise to the reasonable possibility or expectation that development value existed. This was, in effect, the same test applied by Judge Riach QC in *Devonshire Reid Properties Ltd v Trenaman* [1997] 1 EGLR 45. In the instant case, the Tribunal concluded that this possibility or expectation was far too remote. The Tribunal's primary reasons for reaching this conclusion were as follows:

- (a) that the Respondent had not submitted any application for planning consent at the time of the hearing. The Respondent's evidence, such as it was, consisted of a letter written to Elmbridge Council and this was not disclosed.
- (b) No soil survey had been carried out to ascertain if the land was suitable for development.
- (c) the uncertainty about whether the site could provide parking for three vehicles, as required by local planning guidelines.
- (d) the inaccuracies in the measurements carried out by either Mr Kotak or Mr Shapiro giving rise to the possibility of doubt that the proposed development was in fact feasible.

- (e) the existence and location of the (admitted) private sewer at the rear of the garden and the fourth covenant contained in the Terms of Acquisition of not building within 3 metres of it. Mr Kotak could not even give any clear evidence as to the location of the sewer.
- (f) that any potential developer would require the consent of the lessees of Flats 15 and 15A, as the gardens are currently leased to them. That consent could not be guaranteed or, if so, at a substantial share of the profit obtained from the developer.
- (g) importantly, both flats and No. 17 and 17A Castlevue Road form part of the definition of the “Building” in the Recital of the leases. By clause 2(xv) of the respective leases, the lessees mutually covenanted:

“Not at any time during the term hereby granted to divide the possession of the demised premises by an assignment or underletting or parting or sharing with possession of part only (as opposed to the whole).”

By reason of this mutual covenant, any development of the land would amount to a breach of this covenant with the lessees of Flats 17 and 17A. The potential cost of being released from this covenant was unknown. Although the Tribunal is told in closing submissions that the Respondent is also the owner of 17A of Castlevue Road and would willingly release his rights, that was not put in evidence and the Tribunal takes no account of this. In any event this still leaves the same difficulty in relation to No. 17 Castlevue Road.

- (h) that by excluding development value, the Respondent was not financially prejudiced because in paragraph 13 of Annex A of the Terms of Acquisition, the Applicants expressly covenant with the Respondent not to allow any development of the gardens. Moreover, by paragraph 10, the Applicants further covenant not to use the gardens other than as private gardens for domestic recreation. Undoubtedly, to procure their release from those covenants, if appropriate, at some

point in the future will result in the Respondent or its successors in title being adequately compensated.

27. Having found that development value could not be claimed by the Respondent, for the reasons set out above, it was not necessary for the Tribunal to go on to consider the effect, if any, on the marriage value and whether this amounted to double counting in the residual valuation carried out by Mr Shapiro. Equally, it was not necessary for the Tribunal to consider the submission made on behalf of the Applicants about any possible compensation or loss payable to the Respondent within the meaning of paragraph 5 of Schedule 6 of the Act.
28. Accordingly, for the reasons stated above, the Tribunal determines that the premium payable by the Applicants to acquire the freehold interest in the subject property is **£20,900**. The Tribunal's valuation is annexed to this Decision.

Dated the 2 day of July 2007

CHAIRMAN..... J. Mohabir
Mr I Mohabir LLB (Hons)