

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE



**Residential
Property
Tribunal Service**

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S48 OF THE LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Case Number:	CHI/45UH/OLR/2008/0083
Property:	Flat 36 Dorchester Gardens Grand Avenue Worthing West Sussex BN11 5AY and Garage 50
Applicant/Leaseholders:	Madeline Phyllis Vaughan
Respondent/Landlord:	Dorchester Gardens (Worthing) Limited
Appearances for the Applicant:	Christopher Spratt BSc FRICS
Appearances for the Respondent:	Andrew Pridell FRICS
Date of Inspection /Hearing	14th November 2008
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R A Wilkey FRICS (Valuer Member) Lady Davies FRICS (Valuer Member)
Date of the Tribunal's Decision:	19th December 2008

THE APPLICATION

1. This is an application under S48 of the Leasehold Reform, Housing and Urban Development Act 1993 (The Act) for a determination of the price to be paid for a new lease of Flat 36 Dorchester Gardens, Grand Avenue, Worthing, West Sussex.
2. On the 7th February 2008 the Applicant served on the Respondent a notice pursuant to Section 42 of the Act claiming an extended lease of her flat. On the 28th March 2008 the Respondent served a counter notice under 45 of the Act admitting the Applicants right to

an extended lease but challenging certain proposals and making counterproposals. The Applicant subsequently made an application to the Tribunal under Section 48 of the Act.

INSPECTION

3. Accompanied by Andrew Pridell the Tribunal inspected the flat on the morning of the hearing. The Property comprises a purpose built second floor flat which forms part of Dorchester Gardens, a block built in the early 1970s. Dorchester Gardens is situated in West Worthing on the west side of Grand Avenue and forms part of a predominantly residential area close to the town centre. There are local facilities close by including town centre shops and railway station all within a short distance of the property. Flat 36 is a two bedroomed flat on the second floor consisting of two double bedrooms a sitting/dining room, kitchen, bathroom with a separate w.c. The flat benefits from a single garage situated in a block to the rear. Dorchester Gardens has been well maintained and the subject property is presented to a reasonable standard.
4. The flat is held on a lease dated the 17th March 1972 for a term of ninety-nine years from the 1st April 1971. The ground rent is currently £35 per annum rising in 2037 to £50 per annum.
5. At the hearing the applicant leaseholder was represented by Christopher Spratt of Spratt & Sons and the respondent landlord by Andrew Pridell of Andrew Pridell Associates Ltd. Mr Spratt and Mr Pridell both gave evidence.
6. At the hearing Mr Pridell and Mr Spratt produced a signed statement of facts showing a large measure of agreement. The following valuation evidence was agreed:-

Unexpired lease term	62 years
Date of valuation	7 th February 2008
Capitalisation of ground rent income	£520
Yields Income	7%
Yields Reversion	5%

7. The only matters not agreed were the value of the long improved leasehold interest and relativity. Mr Spratt contended that the value of the long improved leasehold interest was £160,000 and that the appropriate relativity rate was 93%. Andrew Pridell contended that the value of the long improved leasehold interest was £165,000 and that the appropriate relativity rate was 87%.

THE ISSUES

Value of the improved lease

8. Mr Spratt proposed a value of the extended lease of £160,000 whilst Mr Pridell proposed a slightly higher value of £165,000.

9. Mr Spratt accepted that it was somewhat disappointing that the two valuers should only be £5000 apart but should be unable to agree. However his valuation of £160,000 was at the top end of the scale and in his opinion at the valuation date the market had softened considerably and even his figure was probably unachievable. He had based his value of £160,000 on evidence from a table of POD results, which constituted transaction figures covering flats in Dorchester Gardens extracted from the Land Registry. The 2008 figures showed a range from a low of £142,500 to a high of £188,000. He referred the Tribunal to flat 46, which was a short lease not dissimilar to the subject property, which had sold for £145,000. The majority of other figures contained in the POD results were in the region of £165,000 to £168,000. Mr Spratt asserted that by February 2008, which was the valuation date, the market had softened which led him to the conclusion that a fair value was £160,000. This figure was broadly supported by the comparables set out in the POD results and he invited us to accept this figure.
10. Mr Pridell contended for a value of £165,000 and he based this on the following comparable evidence:-

Flat 8 Dorchester Gardens which had sold on the 14th September 2007 for £165,000

Flat 27 Dorchester Gardens which had sold in August 2007 for £168,000

Flat 28 Downview Court, which had sold for £172,500 in April 2008

Flat 7 Camargue Court, which had sold for £180,000 in May 2008

Furthermore there was another even closer comparable, Flat 6 Dorchester Gardens. This was an identical flat to the subject property, which sold very close to the valuation date namely the 29th February 2008 for £188,000. This figure included a premium of £15,000 which had been paid for the lease extension making the price agreed £173,000. From this figure Mr Pridell suggested an allowance of £5,000 for tenant's improvements, which gave a value of £168,000. Based on this evidence he considered that his figure of £165,000 represented a balanced valuation broadly supported by comparables.

11. The fact that two experienced local valuers have been unable to agree on the correct value of the flat is evidence that valuation is an imprecise science based as it is on the application of methodical calculation to a combination of known and assumed information. The Tribunal accepts that the valuation process cannot produce definitive values and can only be a best estimate based on market forces. As the two valuers in this case have been unable to agree, we believe that we can do no better than determine a mid price between their values, which produces a figure of £162,500. This figure lies mid way between the 3% margin of difference between the evidence of two experienced valuers.

RELATIVITY

12. The parties disagree on the relativity between extended lease value which we find to be £162,500 and the existing lease value. Mr Spratt argues for 93% and Mr Pridell for 87%.

13. In support of his chosen relativity Mr Spratt relied first on a number of Leasehold Valuation Tribunal decisions listed in his Appendix 2, secondly on what he called “case study” and thirdly on settlement evidence. He rejected graphic evidence on the basis that graphs tended to be self serving and that there were no graphs which related to the West Worthing area. With regard to four of the Leasehold Valuation Tribunal decisions he produced the following information,

ADDRESS	UNEXPIRED TERM	RELATIVITY
Anchor Court, Marine Crescent Goring	59.65 years	91.75%
Coneston Court Holland Road Hove	63 years	88%
Sea View Court Waterloo Square Bognor Regis	52years	87.5%
Sunningdale Court Jutts Lane Goring	54years	90%

14. The “case study” was in fact a comparison of two real world transactions; 4 Elm Court, Mulberry Lane, Goring by Sea and Flat 5 Elm Court. 4 Elm Court sold on a short lease of 53 years in January 2007 for £128,000 and 5 Elm Court an almost identical property, sold on an extended lease in September 2006 for £135,000. This evidence suggested a relativity of 94.85%. Whilst he conceded that he had not seen either flat, it struck him that these comparables should eclipse any graph unless it was West Worthing based. As no such graph had been produced he invited the Tribunal to accept his case study and to prefer his chosen relativity of 93%. In addition to the case study, Mr Spratt made reference to a number of sales relating to Romney Court, Worthing namely flat 17, flat 5 and flat 18. These had all sold on extended leases in the region of £185,000. Against these sales, flat 16 which did not have a lease extension was sold for £170,000 on the basis of a 61 year lease. Whilst adjustments were necessary to take into consideration the condition of the various flats when these adjustments were made the price difference between flats 17, 5 and 18 and flat 16 supported his proposed relativity of 93%.
15. Mr Pridell based his chosen relativity firstly on past Leasehold Valuation Tribunal decisions and secondly upon two graphs, firstly the well known Beckett and Kay (Graph of Graphs) and secondly on his own firms graph taken from concluded transactions. Relying on the decision of the Lands Tribunal in *Arrowdell Limited, v Coniston Court (North) Hove Limited*, he said that the best evidence of leasehold relativity was likely to be derived from graphs because individual pieces of evidence were likely to show inconsistencies. He said that the Graph of Graphs showed that for leases of 63 years, there was a range of between 78% to just under 90%. His own graph showed a percentage of just under 89%. He invited us to accept the principles laid down in *Arrowdell* and base relativity derived from the two graphs. He contended that *Arrowdell* provided a significant guide not only to practitioners but also to Tribunals. That said he


appeared unable to assist the Tribunal in identifying the valuation principals to be derived from this case.

16. The difficulty for the Tribunal in determining relativity is the state of the evidence. Direct evidence of what is happening in the market is the preferred measure for a Tribunal which is trying to establish the true market value of the various property interests. However, the present calculation must be done in a 'no act' world i.e. as if the parties are not influenced by the right which the leaseholder has under statute to extend their lease. In the real world the market operates with full knowledge of leaseholders' rights under the Act. This means the current and recent market evidence must be treated with caution and must be supplemented by the Tribunals own expert judgement.
17. The only relevant direct market evidence introduced by the parties was the case studies provided by Mr Spratt relating to No's 4 & 5 Elm Court. Mr Spratt said that the two sales produced a relativity of 94.85%. However for the reasons set out below we attach little weight to this evidence.
18. In arriving at its decision, the Tribunal has attached little weight to the case studies referred to by Mr Spratt because no attempt had been made by him to adjust the evidence to take into account the 'no act' assumptions which we referred to earlier and which must be made. Had Mr Spratt taken into account those assumptions we believe that the effect would have been to materially reduce his chosen relativity.
19. We have come to the conclusion that the correct relativity for the value of the existing lease to the value of the long lease is 88%. In arriving at this decision we have disregarded both the settlements and decisions relied upon by both parties, because these are, as one would expect, inconsistent. On the evidence before us this has left the two graphs put forwarded by Mr Pridell. His own graph produces a relativity of just under 88%, which is in the range of percentages derived from the Beckett & Kay Graph of Graphs. In the case of Arrowdell mentioned above a lease term of just less than 64 years produced a relativity of 88.5%. Whilst we accept that there may be difficulties in using graphic evidence predominantly based on London transactions, we concluded that on this occasion bearing in mind the evidence put to us, graphic evidence afforded the only evidence on which we could reasonably base our conclusions.
20. As we have said above valuation is an imprecise science and it is very difficult to determine the difference in relativity between the 63 years in the case of Arrowdell and the 62 years in this current case. Doing the best that we can with the evidence presented to us we conclude that the correct relativity is 88% which is consistent with the figures set out in the two graphs put forward by Mr Pridell and also within the range of evidence adduced by both parties. We felt unable to rely on transactional evidence for the reasons mentioned above. We chose a relativity of 88% for this property in Worthing having carefully weighed the evidence before us in graphical form and mindful of the decision in Arrowdell.

DETERMINATION

21. Accordingly we determine that the price to be paid for the new lease is £13,950 in accordance with the valuation which is attached to this decision as Appendix 1.

Chairman


R.T.A. Wilson

Dated 19th December 2008

APPENDIX 1

Flat 36 Dorchester Gardens and garage, Grand Avenue, Worthing BN11 5AY - Valuation

Unexpired term of lease	62 years
Relativity	88%
Value of long leasehold	£162,500
Value of existing leasehold	£143,000
Yield on term	7%
Yield on reversion	5%

Value of existing freehold interest

Capitalisation of existing ground rent income	Agreed	£ 520
Reversion to long leasehold	£162,500	
PV £1 def 62 years @ 5%	0.0485	<u>£7881</u>
		<u>£8401</u>

Marriage Value

Value of long leasehold	£162,500
Deduct Value of existing leasehold	£143,000
Deduct value of existing freehold	<u>£ 8,401</u>
	<u>£ 11,099</u>

Freeholder's share divided by two	£5549.50
Compensation	Nil
Premium payable	say £13,950