



LRA/5/2008

LANDS TRIBUNAL ACT 1949

LEASEHOLD ENFRANCHISEMENT – price – calculation of the freehold value of the property with vacant possession and of the value of the flats with a share of the freehold – apparent agreement between experts upon valuation matters in fact concealing a disagreement

**IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE
SOUTHERN RENT ASSESSMENT PANEL**

BETWEEN

**JOHN JULIAN LIONEL GEORGE SHEFFIELD
MARK HENRY ARMOUR
(Trustees of R LG Drax AMR 1987 Settlement Trust)**

Appellants

and

**KINGSBERE COURT
MANAGEMENT COMPANY LTD**

Respondent

**Re: Kingsbere Court,
3 Turberville Road
Bere Regis
Dorset BH20 7HA**

Before: His Honour Judge Huskinson

CASE DECIDED UPON WRITTEN REPRESENTATIONS

The following cases is referred to in this decision:

Arrowdell Limited v Coniston County Court (North) Hove Limited [2007] RVR 39

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DECISION

1. The Appellants appeal to the Lands Tribunal from the decision of the Leasehold Valuation Tribunal for the Southern Rent Assessment Panel (“the LVT”) dated 22 November 2007 whereby the LVT decided that the price to be paid by the Respondent to the Appellants for the freehold of the property to be transferred to the Respondent under the terms of an agreed draft transfer was £35,832. The Appellants are the freehold owners and the Respondent is the nominee purchaser in relation to the relevant property. The Respondent is entitled to acquire the freehold of the property from the Appellants pursuant to the provisions of the Leasehold Reform, Housing and Urban Development Act 1993.

2. Various matters were agreed between the parties before the LVT. There was no agreement regarding capitalisation rates and the deferment rate, but the LVT reached a conclusion upon these figures and there is no appeal against such conclusion. It may be noted that the parties agreed that the existing leasehold value of the property was £830,000 and that the value of the leasehold interest in a no-Act world was £790,000.

3. In order to reach a final conclusion as to the price payable it was necessary for the LVT to decide upon the proper value to represent what the LVT described in its valuation (in the Appendix to its decision) as the “Present value” of the freehold and as the “Participant’s interest after acquisition”. The LVT in accordance with the apparent agreement of the valuers treated these two values as being the same.

4. The valuers’ position as to these disputed values was as follows. The valuers were agreed that in order to obtain the “Present value” of the freehold reversion and in order to obtain the value of the “Participant’s interest after acquisition” it was appropriate to apply an uplift of an agreed percentage, namely 5½%, but there was disagreement between the valuers as to what was the base figure to which this uplift of 5½% should be applied.

- (1) On behalf of the Appellants Mr G D Bevens FRICS contended that this 5½% uplift should be applied to the existing leasehold value of the property (ie the value in the real world) namely £830,000, which gave an answer of £875,650.
- (2) On behalf of the Respondent Mr Holden FRICS contended that the 5½% uplift should be applied to the value of the leasehold interest in the no-Act world namely £790,000, which gave an answer of £833,450.

5. The LVT treated this as a case where the valuers were agreed as to all valuation matters and that the answer to the question of what price was payable depended upon a point of legal principle. The LVT decided that the 5½% uplift should be applied to the £790,000, as contended for by Mr Holden.

6. Permission to appeal was granted by the President restricted to the question of whether the LVT was right to apply the agreed marriage value uplift (ie 5½%) to the existing leasehold value in the no-Act world or whether the leasehold value in the real world should have been adopted.

7. In due course the parties each submitted a statement of case and agreed that the matter should proceed to a decision by the Lands Tribunal without a hearing, ie on the basis that the statements of case should stand as written representations and the decision should be reached upon that material.

8. On considering the papers with a view to making such a determination on written representations, it provisionally appeared to me that there was a difficulty in doing so. This difficulty was explained in the Tribunal's letter of 2 October 2008 to the parties which included the following text:

“Judge Huskinson's preliminary view is that for the following reasons the present appeal may not be capable of final decision on the written representation procedure in an appeal which is proceeding merely by way of review. For convenience I now used numbered paragraphs.

1. The LVT appears to have proceeded on the basis that this was a case where there was an agreement on the relevant valuation evidence (namely the amount of the marriage value uplift) and that the decision turned upon a point of legal principle.
2. However it appears that, contrary to the foregoing, this may instead have been a case where there was no agreement upon the relevant valuation evidence and where the decision required the making of a reasoned valuation decision (rather than the decision of a point of legal principle). Arguably the LVT may have erred in omitting to make a reasoned valuation decision on the point. If this is so then arguably in consequence the LVT's decision should not be allowed to stand.
3. The LVT arguably has not clearly and expressly focused upon what it was that a decision was needed upon. This would appear to have been the freehold value of the property with vacant possession and (which appears to have been assumed to be the same value) the value of the flats with a share of the freehold, see for example the presentation in the worked Example I at pages 444-5 of Hague Leasehold Enfranchisement (4th edition).
4. The LVT recorded that both valuers in the course of the hearing agreed that “the marriage value uplift would be 5.5%”. However there was a basic disagreement as to what figure that uplift should be applied to. More accurately described the position was that there was disagreement between the valuers as to what was the freehold value with vacant possession of the

property (and what was the value of the flats with a share of the freehold) with Mr Holden contending for £833,450 and Mr Bevans for £875,000.

5. It appears (see paragraph 12 of the Appellants' statement of case) that the figure of £830,000 was agreed as the existing leasehold value of the property (in the real rather than the no-1993 Act world) with the value of improvements excluded.
6. It is arguable that no legally sustainable reasons have been given by the LVT for concluding that the freehold value of the property with vacant possession (or the value of the flats with a share of the freehold) should be less than 0.5% more than this existing leasehold value of £830,000 bearing in mind that these existing leaseholds were of 73 years one month duration.
7. The Lands Tribunal decision in *Arrowdell Limited v Coniston Court (North) Hove Limited* LRA/72/2005 and [2007] RVR 39 was not considered by the LVT on this question of relativity and appears not to have been referred to by the parties. Arguably the LVT may have erred in not considering it. The *Arrowdell* decision indicates that there is scope for concluding that (contrary to the worked Example I in Hague) the freehold value with vacant possession is greater than the value of the flats with a share of the freehold and that the latter may be worth 99% of the former. This is a further reason for being concerned as to whether it is possible to support a decision that the freehold vacant possession value is less than 0.5% more not as compared with the value of the flats with a share of the freehold but instead as compared with the value of the flats on 73 year one month leases.
8. Also the *Arrowdell* decision at paragraphs 43 and 57 shows the assistance that may be drawn regarding relativities from the graphs of relativity there referred to (see paragraph 29 for a reference to the graph of graphs). The *Arrowdell* decision shows that in this context relativity is being referred to as the proportion (expressed in percentage terms) that the value of a lease of X years (valued in the no-1993 Act world) bears to the value of the freehold with vacant possession. Thus the expression relativity is being used in the sense used by Mr Holden in the present case rather than the sense used by Mr Bevans. However an examination of the graph of graphs would suggest that it may not be possible in relation to 73 year one month leases to justify a relativity of slightly under 95% (which is the figure which would be required if the freehold vacant possession value is 5.5% more than the leasehold value in the no-1993 Act world).
9. As regards the passages in the grounds of appeal arguing that the Appellants are not entitled to challenge the value of the freehold interest, Judge Huskinson's provisional view is that this argument cannot be supported. The whole point of the Appellants' appeal to the Lands Tribunal would appear to be to challenge the LVT's decision to use £833,450 in the calculation of marriage value. The LVT used the same figure in its calculation of the

freeholder's interest. A challenge to this £833,450 would appear necessarily to include a challenge to that figure at each point in the LVT's valuation where that figure was used.

Having regard to the foregoing Judge Huskinson provisionally considers that the proper course may be for the case to be listed for an oral hearing by way of review with a view to rehearing. At the hearing the parties would have the opportunity to advance arguments as to whether or not the present decision of the LVT should stand. If the Tribunal decided that the decision should stand that would be an end of the case. If the Tribunal decided otherwise then it would be necessary for there to be a rehearing upon the question of what is the proper figure to adopt for the freehold vacant possession value, which the valuers appear to have agreed should be treated as the same as the value of the flats with a share of the freehold (see the form of calculation in worked Example I in Hague). Any such rehearing would involve the need for expert evidence, limited to this question of the proper value for the freehold of the property with vacant possession and (being the same figure) the value of the flats with a share of the freehold. Judge Huskinson considers that such expert evidence should be available to be advanced (either in oral or written form) at the oral hearing, so as to avoid the need for a further adjournment supposing that the Tribunal decided that the present decision should not stand.

Judge Huskinson now invites any representations that the parties may wish to make on this proposed procedure. If both parties agree, despite the matters raised above, that the matter should nonetheless be decided so far as concerns the review stage on written representations, then Judge Huskinson would consider dealing with the matter on that basis. However, Judge Huskinson would not think it right to do this without giving the parties an opportunity to make written representations upon the points raised in this letter. If the matter did proceed on written representations so far as concerns the review stage and if the decision was that the LVT's decision should not stand, then directions could be given for the re-hearing part of the appeal (which could be either by way of written representations or an oral hearing, possibly before a valuer member of the Tribunal).

Please ensure that your response to this letter, together with any further written representations (if it is desired that the review stage should be decided on written representations) is received by the Tribunal no later than Friday 17 October 2008."

9. In due course both parties sought an extension of time for the making of further representations. This time was given, but it was explained in the Tribunal's letter of 27 October 2008 that the giving of this extension of time would result in a delay in a decision being reached for the reason there stated. It is regretted that there has indeed been such a delay.

10. The further representations submitted by the parties in answer to the Tribunal's letter of 2 October 2008 can be summarised as follows:

- (1) There is a letter of 6 November 2008 from the Appellants' solicitors effectively adopting and developing the points of concern which had been provisionally raised by the Tribunal in the letter of 2 October. The letter further stated:

“In the event that the Tribunal find that the LVT decision should not stand then we request that directions be issued for the re-hearing part of the appeal to be conducted by written representations before a valuer member of the Tribunal.”

- (2) The Respondent's solicitors wrote by letter of 7 November 2008 stating that they had no instructions to make any further representations in the matter.

11. I have considered the matter further. Both parties originally agreed that this matter be determined pursuant to the written representations procedure. Neither party has responded to the letter of 2 October 2008 asking that there should be an oral hearing. I consider the review stage of the appeal can properly be dealt with on written representations and without the need for an oral hearing. I conclude that my provisional views, which were expressed in the letter of 2 October 2008, are correct and that for the reasons there given the LVT's decision is wrong and cannot stand. I should add that the LVT is entitled to sympathy because it would appear the LVT was not assisted by the way in which the valuation evidence was presented to it, in that what was in fact a disagreement of valuation evidence appears to have been presented to the LVT as if the valuers were agreed and that a point of legal principle needed to be decided.

12. Accordingly I allow the Appellants' appeal and I order that there now be a redetermination on the one point in issue, namely the proper valuation of the present value of the freehold and (which the valuers treat as the same figure) the value of the participator's interest after acquisition. Once this figure has been redetermined the calculation of the price payable can be made in accordance with the scheme of the Appendix to the LVT's decision.

13. As regards procedure to be adopted for this redetermination stage of the appeal, the Appellants have expressly consented to the matter being dealt with on written representations by a valuer member of the Tribunal. The Respondent has already agreed to the present appeal being dealt with by written representations and has not objected to the price being redetermined by a valuer member on written representations. Accordingly I direct:

- (1) That the redetermination of the price payable be made by a valuer member of the Tribunal pursuant to the written representation procedure;
- (2) The parties are to exchange and lodge with the Lands Tribunal their expert evidence and submissions on the one point in issue (see paragraph 12 above) by 13 March 2009, with liberty to each party to respond to the other party's evidence and submissions by 3 April 2009.

14. Neither party has sought any costs from the other. In view of the Lands Tribunal's limited costs jurisdiction in this case I can at present see no basis on which either party could be entitled to costs from the other in relation to the matters decided so far. However, any question of costs is reserved to be dealt with as part of the Lands Tribunal's final decision when re-determining the price payable.

11 February 2009

His Honour Judge Huskinson