(226)

Ref LON/ENF/816/03

LEASEHOLD VALUATION TRIBUNAL

FOR

LONDON RENT ASSESSMENT PANEL

DECISION

ON APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

RE: 36 Cromford Road, Wandsworth, London SW18 1NX

Applicants: Sara Barrington & Julius Eardley Allcard
(Nominee Purchasers)

Respondent: Bestbaron Limited (Reversioner)

Application: 6 March 2003
Heard: 10 June 2003
Appearances: Mrs S Barrington accompanied by Mr M Adams)
- for Nominee Purchasers
Mr C H W Richards BSc MRICS
- for Reversioner

Members of the Leasehold Valuation Tribunal:
PROFESSOR J T FARRAND QC LLD FCIArb Solicitor (Chairman)
MR F W JAMES FRICS
MR P A COPLAND BSc FRICS

1. The two participating qualifying tenants served an Initial Notice on the Reversioner, dated 23 October 2002, proposing a purchase price for the freehold of the specified premises, 36 Cromford Road, of £3,000.
2. The Reversioner duly served a Counter Notice, dated 24 December 2002, admitting the right to enfranchise the premises and accepting all the proposals in the Initial Notice except as to the purchase price. A counter-proposal was made that the purchase price should be £34,000.
3. By their Application to the Tribunal dated 6 March 2003, the Nominee Purchasers, in effect, sought a determination that the appropriate purchase price was £3,000.
4. Mr Richards had written a letter, dated 17 December 2002, to the Reversioner's solicitors setting out, with explanatory notes, his valuation producing the counter-proposal price of £34,000. This letter had been copied to Messrs Wedlake Bell, solicitors acting for the Nominee Purchasers, and also to the Tribunal with a letter dated 5 June 2003 supporting the valuation.
5. Mr Richards' valuation contained four elements -
   - Value of freeholder's Existing Interest: £2,395.28
   - Value of Freeholder's Loss of Reversion: £637.50
   - Hope value for consent to alter roof structure to facilitate roof extension: £25,000
   - Retrospective Freeholder's consent, professional fees and costs relative to removal of the chimney breast, enlargement of kitchen window and lowering of bedroom ceiling within the First/Second Floor Flat: £6,000

   These elements produced a total of £34,032.78 - "But say £34,000".
6. Messrs Wedlake Bell had faxed a letter, dated 4 June 2003, to the Tribunal (copied to Mr Richards) referring specifically to Mr Richards' valuation. The first two elements - £2,395.28 and £637.50 - were expressly agreed. However, the other two elements were disputed.
7. At the Hearing, Mr Richards still supported the figure of £2,395.28 but sought to submit that the figure of £637.50 was derived from too low a value attributed to the reversion - ie £475,000 instead of £600,000. This was despite his letter to the Tribunal dated 5 June 2003, which simply repeated and relied upon the valuation including the first two elements as

agreed by Messrs Wedlake Bell, and despite the fact that he produced no evidence available to justify the higher value. Accordingly, the Tribunal declined to allow Mr Richards to resile, at this late stage and without notice, from that element of his own valuation. Therefore, those first two valuation figures were treated by the Tribunal as agreed between the parties and, despite reservations as to certain other elements appearing in their calculation, the figures were adopted without reconsideration for the purposes of its determination.

8. Consequently, the issues for the Tribunal to decide were the other two less usual elements of Mr Richards' valuation, as to hope value and retrospective consent etc, each of which involved substantial sums.

9. First, however, it was not clear from the letters referred to that the correct valuation date had been identified: Mr Richards' valuation was simply by letter dated 17 December 2002 whereas Messrs Wedlake Bell asserted that it was, in effect, as at the date of the Initial Notice, 23 October 2002. Presumably, this assertion was based upon amending provisions of the Commonhold and Leasehold Reform Act 2002, partly brought into force on 26 July 2002 by the Commencement No.1 Order (SI 2002 No.1912). If so, this would be wrong: the provisions of the 2002 Act affecting the valuation date are to be found in s.126 and Schedule 14 (in effect, amending Schedule 6 to the 1993 Act in this respect) and these particular provisions were not included in that Order. Accordingly, it appeared clear to the Tribunal that the valuation date should be 24 December 2002, being the date of the Counter Notice determining, in effect, "what freehold interest in the specified premises is to be acquired by the nominee purchaser" (ie within the definition in Schedule 6 para.1(1) to the 1993 Act). Mr Richards accepted this view at the Hearing and expressed the opinion that the differences in valuation date would have no significant affect upon his valuation.

10. The Tribunal inspected 36 Cromford Road externally and internally on 11 June 2003 and confirmed, in effect, the description given by Messrs Wedlake Bell in their letter dated 4 June 2003 and not disputed by Mr Richards. The house, evidently situated in a good suburban residential area conveniently for local shopping, transport and other public facilities, comprised three floors and was built for single occupancy. It had been sub-divided by the Reversioner into two flats or maisonettes which were demised on long leases, each for a term of 125 years from 24 June 1991 at a ground rent of £100 pa increasing by £50 at 25 year intervals (plus a 50% service charge). The demise of the ground

floor flat now included a cellar as well as exclusive use of a rear garden and that flat had been extended at the rear and improved internally. The upper flat was on split levels across the first floor and second floor, which had considerable attic space above accessible (to the Tribunal) by step-ladder. That flat too had been improved internally (see the fourth element in Mr Richard's valuation). The Tribunal' although unable to inspect that externally, was satisfied that, physically, potential existed for development of the roof space. In connection with this last point, the Tribunal observed that such developments had already been undertaken in a number of houses on the same side of Cromford Road.

11. As to the £25,000 hope value element, Mr Richards had appended the following note to his valuation:

> The roof structure is at present demised to the Freeholder. In my experience many such long leaseholders are requesting consent for building into and extending this area which in turn generally increases the value of the flat significantly. Since the Freeholder is not obliged to grant his consent to such works involving his demise it is normal practice to require a premium from the long leaseholder in return. The figure adopted above is the same as that recently agreed for the same purpose between this Freeholder and a long leaseholder of a similar property at Upper Maisonette, 45 Gartmoor Gardens, London SW 18.

The opening sentence signifies that the roof structure was expressly excluded by the Lease from the demise of the upper flat although the roof space was expressly included.

12. So far as material, the Lease of the upper flat contained the following tenant's covenant (Clause 2(8)) -

> (a) Not to make any alterations or additions to the structure of the demised premises and not 'to cut maim-damage or injure or permit or suffer to be cut maimed damaged or injured any part of the demised premises or the supporting timbers or joists thereof without the prior written consent of the Landlord first having been obtained (such consent not to be unreasonably withheld or delayed)
>
> (b) Not to convert the roof space or any part of it for use as a habitable room or rooms not to use or permit the same to be used for that purpose without the prior written consent of the Landlord.

The Tribunal noted that the creation of skylights (or other windows not trespassing into airspace) would come within para.(a), so that there would be no absolute right for the Reversioner to withhold consent unreasonably (see also s.19(2) of the Landlord and Tenant Act 1927). However, para.(b) relating to change of user was in terms absolute and

there would be no implication as to reasonableness (see *Guardian Assurance Co v Gants Hill Holding* (1983) 267 EG 678). The Lease contains no provision for any payment to be made to the Reversioner for any consent to alterations or conversions and, as to changes of user, no such provision could be effective (see s.19(3) of the 1927 Act).

13. Mrs Barrington stated that neither she nor a purchaser from her (for investment purposes) had any intention of undertaking any roof space development for which the Reversioner's consent would be needed. She also said that she had been advised that the creation of a fourth bedroom in an upper flat without garden access would add little value for greater cost. However, she recognised that in the future consent for such development might be sought.

14. Although various submissions were made as to possible increases in value as against costs of conversion and as to the Reversioner's intention "to profit with the long leaseholder from this development on the traditionally accepted marriage value basis" (ie by charging for the giving of consent: see Mr Richard's letter dated 5 June 2003), the Tribunal did not find them helpful. This was partly because the submissions were not based upon any cogent evidence but also because they missed the real issue. As Mr Richards accepted at the Hearing, this issue was what extra sum a notional purchaser of the freehold would have paid for the hope of charging a tenant sometime in the future for giving consent to a roof space development. In this connection, the notional purchaser as at the valuation date must be taken to be aware that jurisdiction would shortly be acquired by leasehold valuation tribunals to restrict administration charges to a reasonable amount (ie under Schedule 11 of the Commonhold and Leasehold Reform Act 2002). An "administration charge" is defined as meaning (*inter alia*) "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly - for or in connection with the grant of approvals under his lease, or applications for such approvals". The Tribunal considered it at least arguable that it would not be regarded as reasonable for such a charge to include the profit element contended for by Mr Richards.

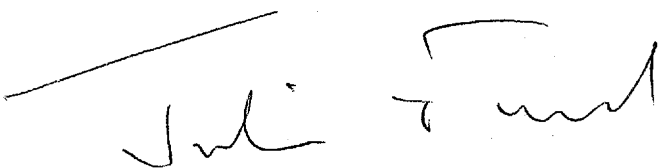
15. The Tribunal's conclusion as to the hope value element was that a notional purchaser in the market would pay something extra for the prospect of obtaining, by way of ransom as it were, a charge for consenting to a roof space development. However, the Tribunal did not accept that anything approaching Mr Richards' £25,000 figure would be

paid. In all the uncertain circumstances obscuring the future possibilities and, in particular, because of the 2002 Act jurisdiction which might well be thought designed to restrict this sort of exploitation of tenants, the Tribunal decided that the addition of a comparatively nominal sum was all that could be justified and put this sum at £1,000.

16. The fourth and final element of Mr Richard's valuation can be dealt with quite quickly. In effect, it involved adding to the enfranchisement price a sum representing damages for breach of covenant, ie in making alterations without the Reversioner's prior written consent. It appeared probable to the Tribunal not only that any such breach had been waived by the acceptance of rent with knowledge of the facts but also that the alterations constituted improvements enhancing the value of the upper flat without causing any depreciation to the property. However, it also appeared improbable to the Tribunal that any purchaser of the freehold would have paid any extra sum for the dubious right to sue the tenant for damages (cp *Re King* [1963] Ch 459). Certainly, no market evidence was submitted in support of this. Further, what is even more certain is that, apart from this improbability affecting the value of a freeholder's interest, compensation for breach of covenant is not an element in calculating the enfranchisement price under Schedule 6 of the 1993 Act. Accordingly, the Tribunal decided that, instead of the £6,000 sought by Mr Richards, a *nil* amount should be allowed for this element.

17. In the light of the above conclusions, the Tribunal determined that the enfranchisement price payable by the Nominee Purchasers for acquiring the freehold of 36 Cromford Road is the sum of **£4,050**. This sum is the total of the first two of Mr Richards' agreed valuation elements, namely £2.395.28 and £637.50, plus the £1,000 allowed by the Tribunal for his third element, which comes to £4.032.78, rounded up to £4.050.

18. It is understood that there is no dispute about the form and terms of the land registry transfer of the freehold by the Reversioner to the nominee Purchasers other than as to the price to be inserted.



CHAIRMAN

DATE