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Ref: LON/LVT/1575/03

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Julia Rosemary Gallaway

Respondent: Inworth Property Company Limited

RE: 24 Bohun Grove, East Barnet, Herts EN4 8UA

Date of Tenant's Notice 22 July 2002

Application to Tribunal dated: 10 March 2003

Heard: 20 May 2003

Appearances: Mr Bruce Maunder Taylor FRICS of Maunder Taylor & Co

for the Applicant Tenant

Mr P Gunby MRICS of B Bailey & Co

for the Respondent Landlord

Members of the Leasehold Valuation Tribunal

Mrs C A Lewis FCI Arb (Chairman)
Mr P M J Casey MRICS
Mrs T J Gordon

Date of Tribunal's decision: 15 June 2003

A. INTRODUCTION

This was an application by the Tenant, Julia Rosemary Gallaway to determine the price to be paid for the freehold of 24, Bohun Grove, East Barnet, under Section 21 of the Leasehold Reform Act 1967.

The property is a two-storey 1920's end of terrace house, and it is held on a full repairing and insuring lease for a period of 99 years from the 29 September 1929 at an annual ground rent of £9.45.

A notice dated 22 July 2002 was served by the Applicant pursuant to her rights under the Act. The parties have agreed that the rateable value of the property at the relevant time was £256. The Respondent Landlord CHP Management Ltd acknowledged the Applicant's notice on 2 August 2002 and requested further information. A statement was made that the Applicant's claim would then be processed further, but that the letter should neither be taken as acceptance nor denial of the Applicant's rights. Subsequently a letter, dated 5 December 2002 from CHP Management Ltd was received which implied that the Applicant's rights were accepted and some valuation details were given. There was no dispute before the Tribunal as to the Applicant's right to enfranchise as a consequence of her notice.

On 6 March 2003 application was made to have the enfranchisement price determined by the Tribunal and Pre-Trial Review Directions were sent to both parties on 21 March 2003.

The hearing took place on 20 May 2003. Mr B Maunder Taylor FRICS of Maunder Taylor and Co appeared for the Applicant, and Mr P Gunby MRICS for the Respondent. The parties had helpfully agreed a Statement of Agreed Facts and Issues for the Tribunal's determination. After further discussion with the Tribunal the parties were able to reach further agreement without prejudice as to how either arrived at the figures, in respect of the capital value of the ground rent passing for the unexpired term of the lease in the sum of £100; in respect of the modern ground rent applicable to the assumed 50 year lease extension in the sum of £9,000 per

annum; and that for valuation purposes this modern ground rent should be capitalised in perpetuity deferred for the 26 years remaining of the original lease.

The only valuation issue remaining unresolved between the parties' expert valuers, and to be determined by the Tribunal was the appropriate capitalisation rate to be applied to the modern ground rent. There were two further non-valuation issues where the parties were not in agreement. These related to the form of transfer and the Landlord's reasonable valuation and legal costs for which the Applicant was liable. On these two issues, Mr Maunder Taylor told the Tribunal that they sought determination because of the lack of response from the Respondent Landlord's Solicitors. Mr Gunby told the Tribunal that he had no instructions in respect of either issue, but promised to endeavour to ensure that these matters were properly addressed and if possible agreed. The Tribunal gave directions to the parties that in the event of these matters not being resolved by agreement at the end of 6 weeks from the date of the hearing, they should make written representations to this Tribunal, who would decide the matters without hearing and on the basis of these submissions.

The interest to be valued is the freehold interest subject to the lease described earlier, with title absolute under Title Number NGL 672374. The valuation is to be made in accordance with the provisions of Sections 9 and 15 of the Leasehold Reform Act 1967.

The parties agreed at the hearing that given the extent to which the issues had been narrowed, the Tribunal need make only an external inspection of the property and its location.

B. INSPECTION

The Tribunal inspected the property on 21 May 2003 and found it to be a typical suburban 1920's end of terrace house. The property is of traditional brick and tile construction on ground and first floors, and with gardens at the front and rear. It is located on a quiet residential road in an area of similar properties, reasonably close to local amenities in East Barnet on the northern fringes of Greater London.

C. THE HEARING

Mr Maunder Taylor, for the Applicant submitted a written proof of evidence, although in the light of the narrowing of the issues between the parties he referred the Tribunal only to those aspects of the report which were relevant to the capitalisation rate. He spoke to a valuation of £11,153. In his opinion as an expert, the appropriate yield rate to be adopted was 9%. In support of this view he referred the Tribunal to paragraphs 5.2 to 5.4 of his proof, and the relevant enclosures thereto.

Mr Maunder Taylor maintained that the handbook published by Sweet and Maxwell on Leasehold Reform from which he had derived assistance, although no longer in print, was still very useful in that it covered the valuation methods adopted in many other 1967 Act cases.

He was firmly of the view that a £300,000 house in this type of location was a modest property, and accepted that there had been capital growth over the last year which he put at about 10%. He was of the opinion, and had so advised clients, that residential property had not always been a good investment over the last 25 years. There had been constant legal changes over that period, and it was one thing to look at these matters with the benefit of hindsight, but it was a valuers duty to look at things at the relevant time. Ground rent investments in particular, in his opinion had not been good investments over the long period which Mr Gunby was asking him to address.

In response to questions from the Tribunal, Mr Maunder Taylor accepted that market evidence was the best evidence, but said that he had been unable to find any such evidence comparable to the present situation. He again agreed that settlement evidence, with the parties properly advised, was the next best evidence of value. He had put forward details of his agreement for Inheritance Tax purposes made with the District Valuer, which was the only settlement evidence he had been able to find which he considered had a bearing on the present case. While again accepting that Leasehold Valuation Tribunal and Lands Tribunal decisions were determined on the evidence and the facts in each case, he thought that the Lands Tribunal decision on

163, St Albans Avenue Chiswick, LRA/44/2001 a collective enfranchisement case, was a helpful indication of the appropriate yield. Although the yield had not been an issue in the Lands Tribunal, it had been in the preceding Leasehold Valuation Tribunal. In his opinion the only purchasers of such ground rent investments were companies, they were not attractive to individuals as there were no significant tax advantages to an individual for such an investment. The limited number of company purchasers that were active in the market largely bought to exploit management, repair and insurance opportunities, particularly with older and poorly drafted forms of leases. When these features were absent, as for example with developers selling newly completed blocks of flats held on long unexpired terms, the number of flats involved at ground rents of £100 per annum each provided a reasonable chunk of income and a purchaser would benefit from pro rata cost benefits on legal fees and management. The subject property had a very small income fixed for 26 years and therefore it was not an attractive investment.

Mr Gunby, for the Respondent Landlord, also provided a written proof of evidence and gave oral evidence. His valuation was £23,694. He accepted Mr Maunder Taylor's suggestion that his proof did not contain any market or settlement evidence and that he had based his yield of 7% on this being the going rate in Tribunal decisions.

He explained that he had been instructed only very recently, and was unsure as to whether his role was as an advocate for his client or as an expert witness. He had prepared his proof on the assumption that he was the former, but was happy to present it as his professional opinion fully recognising his duties to the Tribunal. He stood by his figure of 7% as the appropriate yield to adopt and was willing to be cross examined and questioned by the Tribunal as an expert on this opinion. In support of this he referred to returns on other types of investment, and the current low inflation rate. He considered that yields determined by Leasehold Valuation Tribunals in the past had been too low, but in the present economic climate they might be on the high side.

The past 25 years had shown residential property to be a good investment, and growth in the locality had been at least 10% in the past year. The yield adopted

should reflect growth. Although this was a small fixed income it was very secure with significant income growth available in 26 years time, effectively accumulating on a tax free basis. In Mr Gunby's opinion the Tribunal, without compelling evidence, should not overturn the established pattern of yields shown by other Leasehold Valuation Tribunal decisions. He referred to two cases in which he had been involved in Birmingham in which 7% had been determined for properties over 100 years old and worth £60,000.

In reply to questions from Mr Maunder Taylor, Mr Gunby said that he had argued for 6% in the Birmingham cases, one of which had involved an expired lease, the other with 6 years to run. He accepted that he had no market or settlement evidence, his role in such cases being confined to providing valuation advice to clients and representing them at the Leasehold Valuation Tribunal, not conducting negotiations. He agreed that he had not sold such an investment to a client of his, although he claimed that he knew of several individuals who would be interested, including himself. He agreed with Mr Maunder Taylor that the shorter the term of the unexpired lease, the lower the yield should be and that yield could differ with the location of the property, with for example low yields in prime Central London.

DECISION

The Tribunal agreed with Mr Maunder Taylor that there is no established pattern of yields from Tribunal decisions which should be blindly followed in all circumstances. Each case is decided on its own facts and the evidence presented. Mr Gunby presented little evidence as such to support his view that the yield should be 7%. He was not in a position to provide the Tribunal with full details of the Birmingham cases with which he had been involved, but even they would not have been direct evidence in this case.

Mr Maunder Taylor's only direct and helpful piece of evidence was his settlement with the District Valuer. However it should be borne in mind that the District Valuer is merely seeking a fair valuation on which tax will be paid and not seeking to maximise the price to be received by a landlord client, nor to minimise it for a tenant client. The evidence was though of some assistance to the Tribunal. They agree with Mr

Maunder Taylor that location, length of unexpired term, and amount of passing ground rent are all relevant factors which would be in the mind of an investor in determining the yield which he would accept to purchase such an investment. The Tribunal do however agree with Mr Gunby that there has been good recent capital growth in the locality and that an investment such as this would provide tax advantages to some classes of investor/purchaser, particularly those investing for a future pension income.

Bearing this in mind and the lack of any direct market or truly comparable settlement evidence the Tribunal considered that Mr Maunder Taylor's chosen yield was a little on the high side. In the opinion of the Tribunal the appropriate yield to adopt in this case for capitalisation of the modern ground rent would be 8%.

The Tribunal's valuation is attached in the sum of £15,310 as the price payable for the purchase of the freehold interest.

CHAIRMAN

Cherry A Lewis

DATE.....

15th June 2003

VALUATION OF THE LEASEHOLD VALUATION TRIBUNAL OF THE PRICE PAYABLE FOR THE FREEHOLD INTEREST IN 24 BOHUN GROVE, EAST BARNET, HERTS.

1)	Capitalisation of the passing GR	£100	Agreed
2)	Derivation of S15% modern GR £9000 p.a.		Agreed
3)	Capitalisation of S15 GR @ 8% in perpetuity, deferred 26 yrs <u>1.69002</u>	£15,210	
4)	Reversion – parties have agreed to value S15 GR in perpetuity		<u>Nil</u>
	Price Payable	£15,310	