



**Residential
Property**
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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL & LEASEHOLD VALUATION
TRIBUNAL**

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 13 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

REF: CHI/29UQ/OCE/2009/0044

Property: **19 LANSDOWNE ROAD, TUNBRIDGE WELLS,
KENT TN1 2NG**

Applicant: **19 LANSDOWNE ROAD (TUNBRIDGE WELLS)
LIMITED**

Respondents: **ALAN PHILIP BULLOCK (1)
DANIEL EVMY (2)**

Date of Hearing : **17 MARCH 2010**

Appearances:

For the Applicant: **Miss Swingle of Buss Murton Law LLP**

For the Respondent: **None**

Members of the Leasehold Valuation Tribunal

**Sonya O'Sullivan (Chair)
Andrew Mackay FRICS
Nigel Robinson FRICS**

Background

- a) Property: 19 Lansdowne Road, Tunbridge Wells, Kent, TN1 2NG.
- b) Date of nominee purchaser's notice: 23 April 2009
- c) Date of counter-notice: 17 June 2009
- d) Date of application to Leasehold Valuation Tribunal: 29 September 2009
- e) Valuation date: Agreed at 23 April 2009
- f) Participating tenants: Erik Jan Schutte and Claire-Jane Abbey (Garden Flat)
Jean Cooper (Flats 1 and 3)
Matthew Robert Blaylock (Flat 2)
Rebecca Leigh Robinson (Flat 5)
Sharon Jenner and Neil Jenner (Flat 6)
- g) Tenant's proposed premium: £2,150
- h) Landlord's proposed premium: £10,000
- i) The Tribunal were informed by letter dated 27 October 2009 that the First Respondent had transferred his interest to the Second Respondent.
- j) Each of the participating tenants holds a 999 year lease although the starting dates of the leases vary from 24 June 2004 to 12 October 2007.

Inspection

- 1) The Tribunal made an external inspection of the subject property in the morning before the hearing on 15 March 2010. The subject property, 19 Lansdowne Road, Tunbridge Wells, Kent TN1 2NG (the "Property"), is a detached villa style house, built circa 1880 on lower ground, ground, first and second floors and arranged as 6 flats formed as a result of a conversion. The Property has rendered and painted elevations with a

hipped and pitched slated roof. There are two splayed bays to the front elevation.

- 2) To the front of the Property is a forecourt used for car parking purposes. To the rear of the Property there is a terrace of three lock-up garages. Adjacent to the garages there is an additional area of land which has been tarmacadamed for car parking purposes. Behind the garages is an irregularly shaped area of garden, mainly laid to lawn.
- 3) The Property is situated close to Tunbridge Wells town centre. Car parking restrictions are in operation on Lansdowne Road.

The Hearing and Evidence

- 4) The hearing in this matter took place on the morning of 17 March 2010.
- 5) This is an application made in pursuance of section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (the "Act") by the nominee purchaser, 19 Lansdowne Road (Tunbridge Wells) Limited, to purchase the freehold interest in the Property.
- 6) The tenants' initial notice proposed a premium of £2,150 whilst the landlord's notice proposed £30,000. At the hearing the nominee purchaser still proposed a figure of £2,150 whilst the landlord had revised its proposed premium to £10,000.
- 7) The Applicant was represented at the hearing by Miss Swingle of Buss Murton Law LLP who relied on a skeleton argument. The Applicant relied on a proof of evidence prepared by Roger Morehen BSc (Est Man) MRICS dated March 2010. The Respondent did not attend and was not represented but had lodged by way of expert evidence letters dated 21 December 2009 and 25 January 2010 from Rupert Farrant MRICS of Durlings Chartered Surveyors which provided a valuation. The Tribunal understood from the contents of Mr Morehen's report that Mr Farrant had

not been given instructions to enter into discussions with the Applicant's expert and as a result no discussions had taken place and the experts had not provided a joint report as provided for by the Tribunal's directions.

- 8) On behalf of the Applicant in his report Mr Morehen briefly set out the basis of his valuation. He confirmed that he had taken the total ground rent income receivable by the freeholder of £150 per annum and capitalised this at 7% to reach a figure of £2,142 which he had rounded up to £2,150. He did not provide any explanation of why he had chosen a capitalisation rate of 7% and did not provide any evidence as to why this was the correct rate in his view. He confirmed that taking into account the length of the leases the value of the reversionary interest in his view was nil and that marriage value did not apply as the remaining leases are for over 80 years.
- 9) On behalf of the Respondent Mr Farrant had written a brief letter in which he confirmed that he "*did not necessarily disagree*" with the approach taken by Mr Morehen but considered that the valuation fell short of "*sufficiently taking into account the development potential of the rear garage block, despite an earlier refusal of a planning application to redevelop this property*". His view was that based on an element of hope value for planning his opinion was that the freehold interest was in the order of £10,000. No evidence was provided as to the basis upon which this figure was reached.
- 10) In response to Mr Farrant's letter of valuation Mr Morehen stated that he did not agree that there was any development potential as the garages and parking spaces are included in the individual leases and the gardens are communal.
- 11) The Tribunal was informed by Miss Swingle that an application for planning permission had been made on 7 July 2005 which had proposed demolishing the existing coal bunker, shed and three garages and replacing this with a building to provide four garages with a flat above. The

Tribunal was also referred to a copy of the planning refusal reference TW/05/01755 dated 26 September 2005 in relation to this application and noted the various grounds for refusal. The Tribunal was informed that it was understood by the Applicant's solicitor that there had been no appeal against the refusal.

Jurisdiction

12) Section 9 (1) of the Act provides the Tribunal with jurisdiction to determine any question arising in relation to any matter specified in subsection (2) which includes the "*terms of acquisition*" relating to any interests to be acquired by a nominee purchaser.

13) By section 24 (8) "*terms of acquisition*" include the interests to be acquired, the extent of property to which those interests relate and the amount payable as the purchase price for such interests.

The Law

14) The valuation provisions in respect of the acquisition of the freehold by a nominee purchaser are contained in Schedule 6 to the Act. Paragraph 2 (1) of Schedule 6 provides that the price payable is the aggregate of:

- a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
- b) the freeholder's share of marriage value as determined in accordance with paragraph 4, and
- c) any amount of compensation payable to the freeholder under paragraph 5.

The Tribunal's Decision

- 15) The Tribunal considered the evidence before it. It was far from satisfactory that neither expert had attended at the hearing as the Tribunal was unable to ask questions in relation to the valuations provided.
- 16) As far as the capitalisation rate was concerned Mr Morehen had adopted a rate of 7%. Mr Farrant's response had been ambiguous, it was not clear whether he agreed this rate specifically but rather in the Tribunal's view he appeared to put forward a global figure of £10,000 which took development value into account.
- 17) Mr Morehen considered that taking into account the length of the leases the reversionary interest is nil and the Tribunal agrees.
- 18) Mr Morehen also submitted in his report that marriage value will not apply as the remaining lease terms are for over 80 years and the Tribunal likewise agrees.
- 19) The Tribunal was provided with no evidence as to the basis upon which the capitalisation rate of 7% was adopted by Mr Morehen. However taking into account the length of the term of the leases and the amount of the ground rent the Tribunal having regard to own expertise and experience agreed the correct rate to be adopted as 7%.
- 20) The Tribunal went on to consider whether the price to be paid should include an element in respect of development potential. It was noted that the land required for any redevelopment was not in the control of the freeholder and was in fact demised to a number of different parties pursuant to various leases. Any potential development would therefore require some degree of negotiation. In addition the Tribunal considered the likelihood of planning permission being obtained. The Tribunal had been referred to a copy of the planning refusal dated 26 September 2005 which had contained robust and detailed grounds for refusal, in particular that it

was considered that the proposal would “*cause significant harm to the residential amenities of neighbouring occupiers resulting in overbearing impact and loss of privacy*” and that the proposed building would “*compromise the spacing between buildings in this locality and be out of scale in a rear garden setting*”. The Tribunal had noted on inspection that there was no evidence of any back land development to the rear of any of the neighbouring properties. In addition the site was in the Tribunal’s opinion fully developed. Taking all of these factors into account the Tribunal concluded that it was unlikely that planning permission would be obtained for any development. The Tribunal therefore concluded that there was no reasonable likelihood of development to the site and accordingly that there should be no hope value apportioned.

21) In reaching its valuation therefore the Tribunal took the annual ground rent income of £150 and applied a capitalisation rate of 7% to reach a price for the freehold interest of £2,150.

22) Accordingly the Tribunal determines that the price to be paid for the freehold interest in the Property is £2,150.

Application for costs

23) On behalf of the Applicant Miss Swingle made an application for an award of £500 costs pursuant to paragraph 10 Schedule 12 to the Commonhold and Leasehold Reform Act 2002. Pursuant to this provision the Tribunal has the power to make such an award if it is satisfied that a party to proceedings has in its opinion acted “*frivolously, vexatiously, abusively, disruptively or otherwise unreasonably*” in connection with the proceedings. The Tribunal was provided with a copy summary of invoices which showed that the Applicant had incurred legal costs well in excess of £500.

24) In making its decision the Tribunal considered the Respondent’s conduct in the proceedings, notably its failure to comply with the Tribunal’s

directions dated 21 October 2009 and in particular its failure to meet with the Applicant's expert and agree a joint report and provide a skeleton argument to the Tribunal. The Tribunal noted that the Respondent's expert had not been instructed to enter into any form of discussion. Had the experts met they may well have been able to reach agreement and the need for a hearing may have been obviated. The Tribunal also noted the Respondent's failure to arrange for a representative to appear at the hearing and its failure to inform the Tribunal of its non appearance and to provide reasons. Taking all of these factors into account the Tribunal considered that the Respondent has acted unreasonably in connection with the proceedings and therefore orders that the Respondent do pay to the Applicant the sum of £500 within 14 days of the date of this decision.

Signed

Sonya O'Sullivan

Chairman

Date: 29 March 2010



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**SOUTHERN RENT ASSESSMENT PANEL & LEASEHOLD VALUATION
TRIBUNAL**

**THE TRIBUNAL'S DECISION IN RELATION TO AN APPLICATION FOR
PERMISSION TO APPEAL AGAINST A DECISION OF THE LEASEHOLD
VALUATION TRIBUNAL DATED 29 MARCH**

REF: CHI/29UQ/OCE/2009/0044

Property: **19 LANSDOWNE ROAD, TUNBRIDGE WELLS,
KENT TN1 2NG**

Applicant: **19 LANSDOWNE ROAD (TUNBRIDGE WELLS)
LIMITED**

Respondents: **ALAN PHILIP BULLOCK (1)
DANIEL EVELY (2)**

Summary Decision

The Tribunal refuses the Second Respondent's application for leave to appeal in this matter for the reasons set out below. That being the case, it is open for to the Second Respondent to renew his application for leave to appeal to the Lands Tribunal within fourteen days of the date when this decision is sent to him.

Appeal Application

The Tribunal's determination of the original application was published on 29 March 2010. By letter dated 16 April 2010 the Second Respondent sought leave to appeal. The Second Respondent is the only relevant Respondent, the First Respondent having transferred his interest to the Second Respondent.

Each of the grounds in respect leave is sought and the Tribunal's determination in relation to it is set out below.

Summary of Determination

There is nothing which leads this Tribunal to conclude that there has been any error of law, practice or procedure in reaching its decision which would justify reconsideration of the original application. The application for leave to appeal is accordingly refused.

The grounds of appeal

1) Order for costs

- a) The Respondent appealed the Tribunal's decision to make an order for costs against the Respondent in the sum of £500 pursuant to paragraph 10 Schedule 12 to the Commonhold and Leasehold Reform Act 2002. This appeal is made on the basis that the Respondent's solicitors informed him that "*all legal costs would be met by the Applicant but ...never explained. ..the procedure and processes of the LVT...Keogh Caisley have run up fees of over £3000*". By their letter of 22 April 2010 Keogh Caisley dispute that they failed to advise the Respondents in relation to costs.
- b) As set out in its decision dated 29 March 2010 the Tribunal has the power to make such an award if it is satisfied that a party to proceedings has in its opinion acted "*frivolously, vexatiously, abusively, disruptively or otherwise unreasonably*" in connection with the proceedings. The Tribunal was provided with a copy summary of invoices which showed that the Applicant had incurred legal costs well in excess of £500.
- c) In making its decision the Tribunal considered the Respondent's conduct in the proceedings, notably the failure to comply with the Tribunal's directions dated 21 October 2009 and in particular the failure to meet with the Applicant's expert and agree a joint report and provide a skeleton argument to the Tribunal. The Tribunal noted that the Respondent's expert had not been instructed to enter into any form of discussion. Had the experts met they may well have been able to reach agreement and the need for a hearing may have been obviated. The Tribunal also noted the Respondent's failure to arrange for a representative to appear at the hearing and its failure to inform the Tribunal of its non appearance and to provide reasons. Taking all of these factors into account the Tribunal considered that the Respondent had acted unreasonably in connection with the proceedings and ordered that the Respondent paid the Applicant the sum of £500 within 14 days of the date of the decision.
- d) The Respondent alleges that he was not properly advised by his solicitors in relation to LVT procedure. This is in the Tribunal's view a

matter between the Respondent and his solicitor and does not constitute a ground for appeal against the Tribunal's decision.

2) Development Potential

- a) The Respondent also appeals against the Tribunal's decision made in relation to development potential. In its decision dated 29 March 2010 the Tribunal concluded that there was no reasonable likelihood of development to the site and accordingly that there should be no hope value apportioned on the basis of several factors as set out in its decision. The Respondent says that the Tribunal was incorrect in noting that "*on inspection there was no evidence of any back land development to the rear of any neighbouring properties*". In support the Respondent encloses a letter dated 19 August 2005 to Tunbridge Wells Borough Council with a street survey indicating the developments which have taken place within Lansdowne Road. It is also suggested that there is potential to develop and enhance the grounds and garage block that could increase the value and requires no planning permission.
- b) The Tribunal set out its decision in relation to development potential in its decision. The Tribunal did not have the letter of 19 August 2005 before it at the hearing or in evidence and it was not referred to in the Respondent's valuation evidence. The Respondent was not represented and thus the Tribunal did not hear the submissions now included in the grounds of appeal. The Tribunal's decision on development potential was made on the basis of the evidence before it and on the Tribunal's inspection. It is not appropriate for the Tribunal to take into account any new evidence in the application for permission to appeal.
- c) The Tribunal would add that although it might well be that there are back land developments on Lansdowne Road which is a substantial road, the Tribunal did not note any such developments on inspection. Had this matter been dealt with in valuation evidence or had the Respondent been represented at the Tribunal the Tribunal's attention could have been drawn to any such developments at the inspection.

The Tribunal's Decision

There is nothing which leads this Tribunal to conclude that there has been any error of law, practice or procedure in reaching its decision which would justify reconsideration of the original application. The application for leave to appeal is accordingly refused.

Signed

Sonya O'Sullivan

Chairman

Date: 15 June 2010