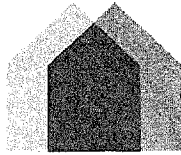


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Residential  
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TRIBUNAL SERVICE

## LEASEHOLD VALUATION TRIBUNAL

### LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993 (‘the Act’)

Case reference: MR/LON/OOBE/OCE/2009/0193

<b><u>Premises</u></b>	Flats 12, 14 and 16 Hull Close, London SE16 6BZ
<b><u>Applicants</u></b>	FA Crehan, RJ Kehr, ZL Barker and AM D’Arcy (leaseholders and nominee purchasers)
<b><u>Representation</u></b>	Wilson Dunsin MRICS of Dunsin Surveyors Limited and Miller Evans & Co (solicitors)
<b><u>Respondents</u></b>	Holding and Management (Solitaire)Limited (freeholders and landlords)
<b><u>Representation</u></b>	Ian Asbury BSc (Hons) MRICS of Chesterton Humberts (surveyors)
<b><u>Date of Hearing</u></b>	23 March 2010
<b><u>Date of Inspection</u></b>	23 March 2010
<b><u>Date of Decision</u></b>	7 May 2010
<b><u>The Tribunal</u></b>	James Driscoll, solicitor (lawyer chair) and Derek Huckle FRICS

## **DECISION**

**The Tribunal determines that the premium payable for the acquisition of the freehold to the subject premises is the sum of £18,300**

## The claim

1. This is an application by the nominee purchasers seeking a determination of the premium to be paid under their enfranchisement claim. A notice seeking the enfranchisement of the premises was given on 13 May 2009. This was met by counter-notice given by the freeholder dated 14 July 2009 which admitted the claim but proposed a different premium. The owners of the leases of the three flats act jointly as the nominee purchaser.
2. As the parties could not agree on the premium payable application was made to the seeking a determination. Standard directions were given on 9 December 2009 and a hearing was held on 23 March 2010 after which we carried out an inspection of the subject premises and similar properties in the locality. We were told that the other terms of the transfer of the freehold are not in dispute.
3. Hull Close is a quiet residential area in Rotherhithe. The block which contains the flats held by the nominee purchasers is a two storey brick building built in the late 1980's. Flat 16 is on the ground floor whilst flats 12 and 14 are on the first floor. There is shared use of a communal garden and shared use of parking spaces to the front of the building. Flat 12 has one bedroom, the other two have two bedrooms.

## The hearing

4. Both the applicants and the respondents instructed surveyors to advise on the premium payable. They have exchanged their valuation reports and they signed a memorandum of agreed facts on 9 March 2010. They agreed on the following matters.
  - the valuation date is 13 May 2009
  - each of the three flats has a lease term of 125 years from 25 December 1985
  - at the valuation date the unexpired lease terms were 101.61 years
  - the gross internal floor areas of the three flats
  - the deferment rate to be applied to the freehold vacant possession value is 5%
  - the current annual ground rents payable under each of the leases
  - that neither marriage value or any additional compensation is payable
5. They do not agree on the rate for capitalising the ground rents: the applicants propose 8% whilst the respondents claim 5.5 %. There was disagreement too over the freehold current condition value of the three flats and the values ignoring improvements and estimated ground rents from 25 December 2027 (the date of the next rent review) to 24 December 2110.
6. In their section 13 notice a premium of £14,489 was proposed by the applicants and the counter proposal by the respondent was stated to be £21,150 (later revised to (£19,750). The relevant valuation principles are contained in schedule 6 to the Act.

7. For the applicants, Mr Dunsin gave evidence stating that flat 12 has been improved by the installation of a modern gas fired central heating system and that flat 14 had been improved by the installation of double glazed windows. These two flats should, in his view, be valued by disregarding any increase in value following those improvements. He considered that a deduction of £2500 for the central heating at No.12 was appropriate and £2500 for the double glazing at No.14. In assessing values he relies on the evidence of comparable sales including those at numbers 21 and 22 Hull Close, the sales of two flats at 3a Dunnage Crescent and C3 Transom Close (overlooking a Marina) and the sale of a larger 3 bedroom maisonette at 18 Deck Close:
- 21 Hull Close comprises a 2 bedroom ground floor maisonette having an area of 55.7.m2 and sold in January 2009 for £217,000
  - 22 Hull Close comprises a 3 bedroom first & second floor maisonette having an area of 70.5.m2 and sold in September 2008 for £250,000
  - 3a Dunnage Crescent comprises a 2 bedroom ground floor flat having an area of 60.m2 and sold in January 2009 for £234,000
  - 3cTransome Close comprises a 1 bedroom first floor maisonette having an area of 38.6 m2 and sold in February 2009 for £195,000
  - 18 Deck Close comprises a 3 bedroom first & second floor maisonette having an area of 72.9 m2 and sold in October 2008 for £250,000
8. He uses this sales evidence, with adjustments to reflect the timings of those sales, location and other factors (and taking account of the improvements at flats 12 & 14 noted above) to arrive at freehold vacant possession values for the three flats as follows:
- £160,000 for flat 12
  - £205,000 for both flats 14 and 16.
- He considers that the generic deferment rate of 5% as decided in the *Sportelli* [2007] EWCA Civ 1042 litigation (where the Court of Appeal upheld the approach adopted by the Lands Tribunal) should be applied.
9. Turning to the ground rents, he considers that as the rent reviews in the leases are subject to market value reviews, this carries the risk of rent arrears and also the risk that the rents could fall. For these reasons he concludes an investor would require a yield of 8%. He says that this is in line with previous decisions of this Tribunal and is supported by his experience of the local market. He arrived at an enfranchisement price of £14,489.
10. Expert valuation evidence was given on behalf of the respondent by Mr Asbury. To arrive at the current freehold vacant possession value he relies on the sales of the two properties in Hull Close referred to by Mr.Dunsin, previous sales of the applicants' flats) and also to the sales of 24 Hull Close:
- 14 Hull Close sold in January 2008 for £311,000
  - 16 Hull Close sold in January 2003 for £172,000

- 12 Hull Close sold in June 2003 for £125,000
- 24 Hull Close sold in August 2007 for £302,000
- 14 Hull Close

He makes adjustments for size, dates of sale and condition to arrive at unimproved freehold values of £185,000 for flat 12 and £222,500 for each of flats 14 & 16.

11. Mr Asbury describes the ground rent income as 'very attractive' (paragraph 12.18 of his report). He argues that the rents are quite high by comparison to the flat values, that they are reviewed more regularly (each every 21 years) than is usually the case with residential leases and that they are linked to capital values. He and Mr Dunsin agree that the applicable deferment rate is 5% and he reasons from this that as the ground rents are linked to the capital values of the flats he adjusts the 5% rate up to produce a capitalisation rate of 5.5%.

## Our inspection

12. We inspected the premises and comparable properties following the conclusion of the hearing.

## Our determination

13. Because of the length of the leases no marriage value is payable in this claim. As all the leaseholders are participating (and no marriage value is payable) there is in law, no hope value payable either (applying the House of Lords decision in *Sportelli* [2008] UKHL 71. In this claim the valuation elements are, therefore, relatively straightforward.
14. In this case the lost ground rent is a significant element of the valuation. This involves the establishment of the appropriate capitalisation rate. Each valuer's position on this was summarised above.
15. Mr Dunsin refers to two previous determinations of this Tribunal and Mr Asbury puts a different interpretation on them. We do not think that relying on past decisions is evidence in itself and it is no substitute for actual evidence. It is noteworthy that here the two valuers interpreted the two past decisions differently (Mr Asbury refers to them, incorrectly in our view, as 'precedents').
16. Neither valuer produced any evidence, such as auction sales, to support their conclusions as to the appropriate capitalisation rate. Mr Dunsin says that his experience of similar investment types in the area leads him to an 8% rate. In contrast, Mr Asbury links the rate to the generic 5% deferment rate and proposes a 5.5% capitalisation rate. However, the two rates should usually be considered separately and we do not think the *Sportelli* generic rate is linked directly to the capitalisation rate. In our view the Lands

Tribunal was considering the deferment rate and whether hope value can be claimed in valuing the freehold version in the *Sportelli* determinations. The Lands Tribunal was not considering capitalisation rates in that case.

17. On balance we consider the ground rent income in this matter would be attractive to an investor with the frequency of rent review. We conclude that Mr Dunsin exaggerates the potential risks with the investment but that Mr Asbury is incorrect in linking the two rates under the *Sportelli*. On balance and based on our own knowledge and experience and the current uncertainties in the property market that the appropriate rate is 6%. Using this rate we determine the loss of ground rent part of the valuation at £14,004.
18. Turning to the freehold value, on balance we found the sales of 21 & 22 Hull Close the most useful as they are in the same development as the subject property and also the most relevant as comparable evidence in terms of size. We conclude that the freehold value in an unimproved state of flat 12 is £175,000 and that the values of flats 14 and 16 are each £220,000. This produces a freehold vacant possession value at the valuation date of £615,000 to which the 5% deferment rate is to be applied. This produces a figure of £18,300.
19. Our valuation is attached to this decision.

**Signed:**  
**(James Driscoll, lawyer chair)**

**Dated: 7 May 2010**

Reference:MR LON/00BE/OCE/2009/0193

**LEASEHOLD VALUATION TRIBUNAL DECISION**  
Valuation in accordance with s.32 & Schedule 6 of the  
Leasehold Reform Housing & Urban Development Act 1993, as amended

**Flats 12, 14 & 16, Hull Close, London, SE16 6BZ**

- Valuation date (date of Notice of Claim): 13 May 2009
- Lease terms: 125 years from 25.12.85
- Ground rents: No.12: £240 pa. Nos.14 & 16 each £320 pa. All rising.
- Unexpired terms at valuation date: 101.61 years .
- Capitalisation rate: 6%
- Deferment rate: 5% (agreed)
- Freehold VP value in unimproved state. No.12 £175,000. Nos. 14 & 15 £220,000 each.

**Diminution in Value of Landlord's Interest**

Ground rent to 24.12.2027	880		
YP 18.61 years @ 6%	<u>11.029</u>	£ 9705	
Ground rents post 24.12.2027	769		
YP 83 yrs @ 6%	16.534		
PV £1 in 18.61 yrs @ 6%	<u>0.3381</u>	£ 4299	
Reversion to freehold VP value £ 615000			
PV £1 in 101.61years @ 5%	<u>.00703</u>	£ 4323	£ 18327

**Marriage Value**

£ 0  
£ 18327

**Premium payable say £ 18,300**