



Subject Premises: 19 Western Street, Bedford, Bedfordshire MK40 1QT

Applicant Purchaser: Mr Russell Giddings, 42 Ickwell Road, Northill, Biggleswade, SG18 9AB

Applicant's Solicitor: Mr Neil Johnson, Park Woodfine Heald Mellows LLP, 1 Luke Street, Bedford, MK40 3TN

Applicant's Surveyor: Ms Jean Howe, BSc, FRICS, Dip Arb, Kirkby Diamond, 1 Union Street, Luton LU1 3AN

Respondents:

Freeholders & Landlords: Mr Anil Kumar, 14 Witham Close, Brickhill, Bedford MK41 7YT
Mr Jeremy Edward Cane last known address Subject Property

Application: An application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement.

Tribunal: Mr JR Morris LLB, LLM, PhD (Chair)
Miss M Krisko BSc (Est Man), BA FRICS
Mr D Banfield FRICS

Date of Hearing: 6th January 2012

Attendance:

Applicant: Mr Neil Johnson (Applicant's Solicitor)
Mrs Jean Howe (Applicant's Valuer)

Respondent: No attendance

DECISION AND STATEMENT OF REASONS

Decision: The price payable for the Freehold Interest is **£8,133.00**

Application

1. The Applicant made an application to the Tribunal on 29th September 2011 under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement of 19 Western street, Bedford, Bedfordshire MK40 1QT.

2. The Applicant as Purchaser, following an Application to the Bedford County Court on 12th April 2010, obtained an Order on 31st August 2010 under Claim OBE00514 before Deputy District Judge Bosman on 24th August 2010 as follows:

Upon the Defendants not attending and upon hearing Solicitor for the Claimant who was present and reading the witness statements of the Claimant and Neil Trevor Johnson and the Court noting the consent of the 2nd Defendant (Anil Kumar) to a transfer of the freehold to the Claimant contained in the 2nd Defendant's email to the Claimant of 12 June 20-10 at 14.24 It is Ordered that:

1. *There shall be a Vesting Order to enable the Claimant to purchase the freehold interest in the property 19 Western Street, Bedford MK40 1QT (title number BD69526) from the 1st Defendant Jeremy Edward Cane*
 2. *The said freehold interest shall be acquired by the Claimant with funds to be paid into court and the case shall be deferred to the Leasehold Valuation Tribunal for a determination of reasonable premium*
 3. *This order is to be made pursuant to sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993, and for the avoidance of doubt, this order relates only to the purchase of the freehold interest in the 1st Defendant, Jeremy Edward Cane by the Claimant, and does not relate to the purpose of the freehold interest of the 2nd Defendant, Anil Kumar.*
 4. *There be liberty to apply to any party in relation to the implementation and terms of the order*
3. An Application was made to the Leasehold Valuation Tribunal on 29th September 2011 for a determination of the premium to be paid. The Tribunal received the following documents:
 - a. Application Form
 - b. Copy of the County Court Order set out above
 - c. Official Copy of Register of Title for the Freehold Title of the Subject Property
 - d. The Valuation Report of the Applicant's Surveyor dated 5th April 2011 and subsequently received an additional statement regarding the yield percentages adopted.
4. Noting the terms of the Order the Tribunal requested evidence:
 - that the Restriction on the Proprietorship Register was by reason of the Respondents holding the Subject Property as beneficial tenants in common and
 - if so, of the apportionment of the respective shares
5. In the event this evidence could not be provided. The tribunal cannot take evidence on oath and so would require clear documentary proof of the matters of fact stated in this instance. Therefore the Tribunal determined to value the freehold interest as a whole. The issue of apportionment in accordance with the respective interests of the freeholders is remitted to the Court to decide when making the Vesting Order in accordance with any evidence adduced at the time, which may be accepted.

Inspection

6. The Tribunal inspected the Subject property in the presence of the Applicant's Solicitor. The Subject Property is situated in the town centre. The Subject Property is a two storey Victorian House of brick under a tile roof with an extension to the rear.

The Subject Property is attached to a building of similar age to the one side. The other side is unattached and there is pedestrian access to the rear. The external condition of the Subject Property is fair to poor. The windows are wooden and although refurbished to the first floor are showing signs of rot on the ground floor. The extension was probably built in 1983 when the Subject Property was converted into two flats. The ground floor section of the extension has been developed from part of the original building using reclaimed bricks whereas the first floor is constructed of new bricks. The bricks do not blend and there has been some movement of the structure since the construction of the extension.

7. The small communal area to the rear is used for the storage of bins. It is surrounded by adjacent buildings and is dank, appearing to receive little direct sunlight.
8. Internally the Subject Property has a common hallway giving access to an upper and lower flat. The Tribunal did not inspect the lower flat but were provided with photographs taken by the Valuer at her inspection. It was evident that the lower flat was much as it had been following conversion. It appeared to be rather smaller than the upper flat having the hall and staircase protruding into its space, which the Valuer said caused the lower flat to have an awkward layout.
9. The upper flat in contrast had been refurbished since conversion and had a modern kitchen and bathroom. There was a good-sized living room, first bedroom and kitchen/ diner. The second bedroom was small and used as a study. The ground floor flat was said to have far less generously proportioned living room and first bedroom and the second bedroom was even smaller than that of the first floor flat. Dimensions of the rooms of both flats were given in the Valuer's Report.

Lease

10. Copies of the Leases for both the Ground and First Floor Flats were provided and were found to be essentially the same. They were each for a term of 99 years from the 25th March 1983 and the rent is £20 per annum payable in equal half yearly payments for the whole term.
11. "The premises" is defined in Clause 1 (f) of the Lease as "the property hereby demised as described in the Third Schedule".
12. "The Reserved Property" retained by the Landlord is defined in Clause 1 (e) of the Lease as "that part of the property not included in the flats being property more particularly described in the Second Schedule ... and includes the roof foundations and the external and internal walls of the property".
13. The obligations of the Lessor are set out in the Seventh Schedule. Provision is made in the Sixth Schedule for the Lessees to indemnify the Lessor every six months for the costs incurred by the Lessor in carrying out the obligations. The obligations in the Seventh Schedule include maintaining the Reserved Property.

Valuation Evidence

14. Mrs Howe made her valuation as an expert. The date of Mrs Howe's valuation was 1st April 2011. It was noted that this was 12 months after the 12th April 2010, which is the date of the Applicant's Application to the Court and is the Valuation Date under the legislation. Mrs Howe stated that she did not consider that capital values had risen between the date of the Application to the court on 12th April 2010 and 1st April 2011.

Market Value of the Leasehold and Virtual Freehold of the Flats

15. Mrs Howe took a comparable approach to assessing the market values of the Leasehold and Virtual Freehold of the Flats. In her report she said that she had placed reliance on the first floor flat in the sum of £80,000 for a newly re-furnished flat. At the Hearing she was able to confirm that the flat had been sold for £80,000 and the Applicant's Solicitor was able to confirm that the sale had included a share in the freehold on the basis that the present proceedings would be successfully concluded and the Applicant would obtain the freehold, which would be transferred to the Purchaser. A copy of the Contract for the sale of the First Floor Flat was provided dated 18th April 2011, which stated that the Applicant's share was included in the price.
16. Mrs Howe referred to a number of other properties as follows:
 - Flat 3 at 21 Western Street that sold in May 2006 at £58,000 and is the top floor flat in the building next to the Subject property, which is of similar age and is also a converted building.
 - Flat 2 at Clapham Road, Bedford, which is currently on offer at £70,000. This is also a converted building.
 - Flat B at 12 Alexander Road, Bedford, the adjoining road, completed a sale at £75,000 on 19th December 2010 and Flat D completed a sale at £85,000 in July 2010.
 - Flat 9 at 49 Conduit Road which is within half a mile of the Subject Property completed a sale at £92,000 but is considered to be a better road than Western Street.
 - Two maisonettes were also referred to but were not considered to be such good comparables.
17. Mrs Howe said that she had not inspected the properties and did not have full details but the information she had indicated that these were similar properties and that they gave a good indication of the market values for flats like the Subject Property in the area. On the basis of the above evidence she gave her opinion that a fair value to be applied to the Subject Properties was £75,00 for each flat giving a total value for the existing Leasehold of £150,000. This valuation reflected the value of the first floor flat ignoring tenant's improvements and the general preference for ground floor flats in the market with the access to the rear yard or garden.
18. When asked she said that in the real market there was no difference between a leasehold value of a flat and a virtual freehold. However, the Tribunal did express the view that there must be some differential between the two.

Capitalisation Rate

19. As there is no uplift in rent receivable under the Lease Mrs Howe adopted a capitalisation yield of 8%. In an addendum to the original report Mrs Howe added that it is her practice to use a 7% capitalisation yield where there are regular rises in ground rent outside Prime Central London or similar high value areas. She said she adopted a 7.5% where there is one uplift but an 8% yield where there is no uplift in lower value areas such as Bedford. This yield had been accepted in a number of cases including Lichfield House, Bishops Walk, Aylesbury

(CAM/11UB/OCE/2010/026). It was also agreed in 25 Cowper Road, Berkhamstead and 7, Berkley Close Chesham in June 2011, 30 Cromwell Avenue, Thame in April 2010 and 17 Riverside Towers in July 2009. She said that it was her opinion that a capitalisation yield of 8% is appropriate to reflect the costs of collecting £20.00 per annum ground rent on these two properties.

Deferment Rate

20. Mrs Howe stated that the starting point in the assessment of a deferment rate is the decision of *Earl Cadogan and Cadogan Estates Limited v Sportelli* which concluded that there is a basic formula as follows:

Risk free rate (based on gilts)	+2.25%
Minus a real growth rate	-2.00%
Plus a risk premium for flats (owing to greater management problems)	+4.75%
Total	5.00%

The risk yield is made up of:

- a. Volatility
 - b. Prolonged periods of downturn
 - c. Illiquidity
 - d. Obsolescent design
 - e. Physical deterioration
 - f. Location
 - g. Exceptional difficulties relating to the management of flats as compared with houses
21. Mrs Howe referred to *Zukerman and Other v The Calthorpe Estate (Kelton Court)* The Upper Tribunal awarded a deferment yield of 6% on the basis that the risk premium should be increased to 5.25% and that the management allowance should be increased to 0.5% which related to an overall increase in the deferment rate.

Different Growth rates in Bedford v Prime Central London

22. Mrs Howe referred to the cases of *Earl Cadogan and Cadogan Estates Limited v Sportelli* [2008] 1 WLR 2142 and *Zukerman and Other v The Calthorpe Estate* [2009] UKUT 235 (LC) LRA/97/2008 she also referred to Lichfield House, Bishops Walk, Aylesbury (CAM/11UB/OCE/2010/026). In addition she referred to graphs comparing the house price index between Bedford and Prime Central London. Mrs Howe submitted by reference to the cases and the graphs that there was a body of evidence which showed that the prospect of future growth of property values in the Midlands is significantly less than that in Prime Central London in particular the graphs showed that capital values in Bedford were approximately 10% to 15% of the value of similar flats in Prime Central London. Therefore the adjustment of 0.25% to the *Sportelli* base rate adopted in *Zukerman* should be adopted in relation to the Subject Property. Mrs Howe said that in her opinion an investor would have a poorer perception of the capital reversionary value in the Subject Property than one located in Prime Central London.

Obsolescent design and physical deterioration

23. Mrs Howe referred to photographs included in the Report that were taken at the time of her inspection, which showed the extent of the deterioration in the building. The responsibility is on the landlord to undertake these works and there is a risk to the landlord of not being able to recover the significant expenditure that is required to the exterior of the property from the lessees. Therefore, in her opinion, the hypothetical investor in the freehold of the Subject Property would adjust the bid to reflect the fact

that there has been a significant amount of neglect to the building that would require a significant capital expenditure to bring the property back into good order in accordance with the lease and would take into account the risks associated with being able to recover the entirety of those costs. She therefore adjusted the standard deferment rate by 0.5% to take account of obsolescence and condition.

Management Difficulties

24. Mrs Howe said that she had adjusted the deferment rate by further 0.25% to reflect the potential difficulties of managing this property in respect of obtaining funds payable for the external repairs in its entirety. Additionally collecting a single ground rent of £20.00 per annum with no review, when the costs of collection may exceed that income would not be attractive to a leaseholder.

Conclusion

25. The deferment rate was submitted to be as follows:
- | | |
|--|---------------|
| Risk free rate | +2.25% |
| Real growth rate | -2.00% |
| Risk Premium | +4.50% |
| Difficulties of management of flats compared with houses | +0.25% |
| Additional risk premium reflecting lack of growth in capital values for area | +0.25% |
| Obsolescence | +0.50% |
| Special Management problems associated with particular property | <u>+0.25%</u> |
| Total Deferment Rate | 6.00% |

Relativity

26. Mrs Howe referred to the relativity tables and assessed the relativity for 71 years at 92%.

Expert's Valuation

27. Mrs Howe produced a calculation, which showed:
- | | |
|--|------------------|
| Diminution in the Landlord Freehold Reversionary interest | £2,896.22 |
| 50% Marriage Value to be achieved by undertaking the enfranchisement | £4,551.89 |
| Value of loss of commissions, management charges or other income | £0.00 |
| Total Premium payable | £7,448.11 |

Determination

28. Having considered the oral and documentary evidence the Tribunal makes the following findings.
29. The Valuation date is the 12th April 2010, which is the date of the Applicant's Application to the County Court. The Tribunal agreed that there had been no significant change in capital values during the year 12th April 2010 and 1st April 2011 in relation to the Subject Property. However, the unexpired term is 71.98 years.

Market Value of the Leasehold and Virtual Freehold of the Flats

30. The Tribunal found that the best evidence regarding the market values of the Leasehold and Virtual Freehold of the Flats was that of the recent sale of the newly re-furbished First Floor Flat in the sum of £80,000, which included a share in the freehold.

31. The Tribunal considered that the leasehold value of the unimproved flats of £75,000 submitted by Mrs Howe was high when compared with the sale price for the First Floor Flat including a share of the freehold of £80,000, although this was not inconsistent with her view that there was no difference between the existing leasehold value and the virtual freehold value. The Tribunal accepted the evidence in the context of it reflecting the general level of values, nevertheless the tribunal were of the opinion that the freehold did have a value over an above the existing leasehold value. Therefore the Tribunal, using the knowledge and experience of its members determined that the unimproved value of the flats with the existing lease is £69,000 for each Flat totalling £138,000 for both. The Tribunal valued the unimproved Flats with a share of the freehold at £75,000 each Flat totalling £150,000 for both. This would give the improvements to the First Floor Flat a value of £5,000 and reflected the greater value placed upon ground floor flats generally which the Tribunal considered appropriate.

Capitalisation Rate

32. The Tribunal agreed with Mrs Howe that a capitalisation yield of 8% was justified where there was no uplift in the ground rent in a lower value area such as Bedford. The rate also reflected the costs of collecting £20.00 per annum in two equal instalments on two properties.

Deferment Rate

33. The Tribunal agreed with Mrs Howe that the starting point in assessing the deferment rate is that of *Earl Cadogan and Cadogan Estates Limited v Sportelli*. However Mrs Howe submitted that the Tribunal should depart from the deferment rate in *Sportelli* in that the Subject Property would show less future growth, would be more likely to be obsolete and would have greater management difficulties than a property in Prime Central London.
34. With regard to the prospects of future growth the Tribunal agreed with Mrs Howe's submission that there was a body of evidence, which showed that the prospect of future growth of property values in the Midlands is significantly less than that in Prime Central London. The Tribunal accepted the findings in *Zuckerman* which were supported by the graphs submitted by Mrs Howe in the present case. Therefore the Tribunal found that the adjustment of 0.25% to the *Sportelli* base rate adopted in *Zukerman* should be adopted in relation to the Subject Property.
35. With regard to obsolescence the Tribunal considered that the question was whether the freeholder would recover the building in a reasonable condition at the end of the term. The Tribunal found that provided maintenance work was carried out in accordance with the Lease the Subject Property would be in a satisfactory condition at the end of the term. Therefore the Tribunal determined that no further adjustment under this head should be made to the deferment rate. Whether or not the landlord would recover the expenditure in putting the Subject Property in good order was a matter relating to management under the Lease.
36. With regard to management the Tribunal did not consider the terms of the Lease made it any more difficult for the landlord to put the Subject Property in good order than other leases taking into account that there are only two flats and that it would be as much in the interests of the Lessees as the Lessor to ensure that the foundations, roof and walls are in repair and there were clear provisions in the Lease for the landlord to recover the costs from the Lessees. It was noted that windows were not

expressly mentioned but as agreement with regard to their maintenance either as part of the demise or retained land would only need to be reached between three persons this was not considered to be any more onerous than the terms of other Leases. Therefore the Tribunal determined that no further adjustment under this head should be made to the deferment rate.

37. Therefore the Tribunal determined that a deferment rate of 5.25% should be adopted.

Relativity

38. The Tribunal agreed the relativity of 92%.

Tribunal's Valuation

39. The Tribunal determined that the price payable for the Freehold interest in the property is **£8,133.00** in accordance with the valuation attached.

JR Morris (Chair)

Date: 18th January 2012

Flats 1 & 2 at 19 Western Street, Bedford, MK40 1QT

PURCHASE PRICE PAYABLE BY NOMINEE PURCHASER

in accordance with the Leasehold Reform and Urban Development Act 1993

Valuation Date	12/04/2010
Yield	8.00%
Deferment rate	5.25%
Unexpired Term	72.00
72yrs	92.00%

Existing lease values

1	£69,000
2	<u>£69,000</u>
Total lease value	<u>£138,000</u>

Freehold values

2	£75,000
2A	<u>£75,000</u>
Total freehold value	<u>£150,000</u>
Ground rent per flat	£20

Freeholders interest

Flats 1 & 2

Ground rent receivable

YP	72 yrs	8 %	40	12.45097703	498
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Reversion

Freehold value			150,000		
Defer	72 yrs	5.25 %	<u>0.02511935</u>		<u>3,768</u>

Freeholder's existing interest

4,266

Marriage value

Future interests

Freeholders interest	0
Lessees interest	<u>150,000</u>
Total future interests	150,000

Less

Existing interests

Freeholder's	4,266
Lessee's	<u>138,000</u>
Total existing interests	<u>142,266</u>
Marriage value	7,734

Landlord's share of marriage value 50%

3,867

Total price payable for Freehold interest

£8,133