Valuation date is ‘relevant date’ regarding purchase price of freehold (Francia Properties Ltd v St James House Freehold Ltd)

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Property analysis: Discussing the Upper Tribunal’s decision in Francia Properties Ltd v St James House Freehold Ltd, Sam Laughton, barrister at Ten Old Square Chambers, advises that although development value can plainly be of great importance in such cases, solicitors and valuers should remember that there is no point in adducing or referring to evidence as to events, such as planning decisions, occurring after the date the initial notice is served.

Francia Properties Ltd v St James House Freehold Ltd [2018] UKUT 79 (LC)

What are the practical implications of this case?

The Upper Tribunal (Lands Chamber) (UT) confirmed that the First-tier Tribunal (FTT), when determining the purchase price of a freehold under the collective enfranchisement provisions of the Leasehold Reform, Housing and Urban Development Act 1993 (LRHUDA 1993), must not take into account matters arising after the valuation date (the valuation date is the ‘relevant date’, namely the date on which the leaseholders serve their initial notice claiming entitlement to acquire the freehold). Such matters—which might include, for example, positive or negative planning decisions—are irrelevant because a hypothetical purchaser at the valuation date would not have been aware of them.

Although development value can plainly be of great importance in such cases, solicitors and valuers should therefore remember that there is no point in adducing or referring to evidence as to events (such as planning decisions) occurring after the date the initial notice is served. Indeed, in suitable cases, if acting for the leaseholders they might consider whether to delay the date of service of the initial notice if it is considered that important planning decisions might be imminent which could improve their clients’ position on valuation.

What was the background?

The building in question was a purpose-built block of flats containing 14 flats on ground and three upper floors. The freehold owner had purchased the freehold in 2013 and proposed constructing a three-storey addition on the building’s roof to create nine new flats. The planning inspector advised that such a proposal would be refused, but a single-storey addition could be acceptable in principle, subject to certain conditions. Notwithstanding that indication, in 2015 the freeholder applied for planning permission for a three-storey addition (albeit for six flats) and was refused.

The freeholder then made a second application for planning permission for a more modest development, but this was also refused. Importantly, however, it was prior to this second refusal that the leaseholders of the flats served their initial notice that they were entitled to acquire the building’s freehold. The freeholder admitted their entitlement, but the parties could not agree the purchase price.

Pending a tribunal hearing to determine the purchase price, the freeholder applied twice more for permission for a single-storey development, but was refused. Thus, there were in total three planning applications that had been refused between the date of the initial notice and the tribunal hearing. The issue for the UT was therefore whether the existence of these refusals was relevant to a valuation of the freehold as at the date of the initial notice.

What did the UT decide?

LRHUDA 1993, Sch 6, para 3(1) provides that the value of a freeholder's interest is 'the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller' (subject to various exceptions, assumptions and disregards).

The UT therefore held that the FTT had been wrong to have taken into account the planning refusals that had occurred after the valuation date, since they were irrelevant to the determination of the development value as at the valuation date. A hypothetical purchaser at that date would obviously have not known about them, but instead would have made its own assessment as to the risk of planning permission not being granted. Indeed, it should be noted that the respondents to the appeal barely tried to argue otherwise.

In making its own redetermination of the purchase price, the UT also commented that the assessment of planning risk is specific to the circumstances of each individual case and no prospective purchaser would have regard to previous tribunal decisions in forming its own commercial judgment. It followed that previous tribunal decisions cannot provide precedents for the assessment of planning risk in a future determination.

Sam Laughton's practice encompasses a broad range of Chancery litigation and advisory work, with a particular focus on both commercial and private disputes relating to property. He is particularly skilled in multidisciplinary litigation, drawing on his expertise in land contracts, restrictive covenants and easements, commercial and residential landlord and tenant, including enfranchisement, personal and corporate insolvency, commercial disputes and company law, family and corporate trusts, wills, probate and the administration of estates and professional negligence arising out of these fields.

Interviewed by Kate Beaumont.

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