

Case study

Introduction

The leasehold reform legislation enables lessees to buy their freehold or to extend their leases:

- A lessee of a flat can extend the lease by 90 years
- A lessee of a house can buy the freehold or extend the lease by 50 years
- A group of lessees in a block of flats can purchase the freehold, thus becoming their own landlord

Importance of a chartered surveyor

The lessee or lessees who claim the freehold or an extended lease and must pay the landlord(s) for its loss. Usually there are negotiations between the landlord's valuer and the claimants' valuer. Both are usually chartered surveyor valuers. The valuer will have to prepare a valuation report to inform the lessee as to the likely cost and the opening offers that are made. Agreement is usually reached against the background of the figure that an LVT is likely to determine if one has to decide the case.

If agreement cannot be reached, the case is referred to a Leasehold Valuation Tribunal for determination. Usually the valuer who conducted the negotiations will be appointed to provide valuation evidence to assist the LVT in reaching their decision.

The over-riding duty of an Expert Witness is to assist the LVT. The expert must give independent, objective and unbiased evidence and be truthful about facts, honest about their opinions and thorough as to the coverage of the relevant matters.

Specialist skills required by a chartered surveyor

The chartered surveyor expert will need a number of specialist skills:

- Knowledge of the appropriate Acts of Parliament and the relevant and recent case law
- Knowledge of the subject property and the current lease, including a detailed knowledge of any covenants and restrictions that might affect value
- Knowledge of the local market and recent sales of comparable properties, together with an ability to analyse those transactions and to compare properties on a like for like basis
- Good negotiating skills in an attempt to settle the dispute
 - If it is not possible to reach agreement, the ability to assess the viability of referring the issues to an LVT and to advise the client accordingly
 - Proper understanding of the procedures and timetable to agree relevant facts and figures prior to any proceedings
- Good presentation skills in both written documents and orally at the hearing,
- Full knowledge of the RICS Practice Statement Surveyors acting as expert witnesses and the requirements of the Civil Procedure Rules 1998 (CPR).

Typical procedure for lease extension or enfranchisement

It is important for the chartered surveyor to receive instructions in good time so that an assessment of value can be provided with advice about offers prior to the service of any Notice of Claim by the lessee, or Counter Notice by the landlord.

The chartered surveyor will normally inspect the property and report when a lessee is contemplating serving a Notice of Claim. The report should include details of the comparable properties on which the values are based with an analysis of those transactions.

Once a counter-notice has been served, the valuer will commence negotiations with the chartered surveyor acting for the other side.

If it appears that an agreed settlement may not be reached, the chartered surveyor should advise the client of the price the LVT is likely to set. This will enable the client to make an informed decision as to whether to refer the matter to the LVT or to settle the matter.

Once the LVT is dealing with the matter, they will give a date by which valuations must be exchanged, although they may well have been exchanged many weeks before as part of the negotiations. They will set a window for a hearing and ask the parties to give the dates in that window when they cannot attend a hearing. The LVT will set a hearing

date and give directions about preparation for the hearing including the exchange of evidence, usually 2 weeks before the hearing. The chartered surveyor should ensure to reserve the appropriate dates in their diary. It is expensive and unprofessional for a chartered surveyor to request postponement of judicial proceedings on the basis of alternative instructions or even holiday plans and postponement requests may be rejected for these and similar reasons.

As the date for exchange of evidence approaches the chartered surveyor should agree with his opposite number as many of the facts and matters of opinion as possible. This should include facts about the comparables to which both experts intend to refer. It is also desirable to identify the remaining issues as clearly as possible. The primary duty of the experts is to assist the LVT and one way in which they are assisted is to reduce the number of issues that need to be aired at the hearing.

Once facts are agreed, the chartered surveyor should prepare his expert report that is to be presented to the LVT and exchanged with the other party's expert. This report should be exchanged as directed in accordance with directions given by court/tribunal. If a chartered surveyor has accepted instructions from a client to appear before a tribunal, then he/she should ensure that he/she has reserved sufficient time in his/her schedule to prepare evidence and be available for any proceedings.

The expert then comments on the report of the other expert to assist the advocate in the preparation of the case and for cross examination. The expert must also prepare for his own cross-examination. Any chartered surveyor who does not feel confident that he/she can fulfil the duties under either the CPR or the RICS Practice Statement should decline instructions.

Once the LVT's decision is received, the valuer can also assist in the consideration of an appeal.

Summary

The chartered surveyor valuer taking leasehold reform instructions must ensure that he/she is in touch with the market, be a good negotiator, have an understanding of the leasehold reform process and legislation and be able to present reports and evidence in a timely and cost effective manner for the client and/or LVT.

Reference material/web site

Leasehold advisory service
www.lease-advice.org

Acts of the UK Parliament
www.hmsso.gov.uk/act.htm

Date of publication of this document: December 2011

The information contained in this document is not, and should not be taken as, legal advice. No responsibility for loss or damage caused to any person acting or refraining from action as a result of the material included in this publication can be accepted by the authors or RICS.

© RICS 2011. Copyright in this publication rests with RICS, and save by prior consent of RICS, no part or parts shall be reproduced by any means electronic, mechanical, photocopying or otherwise, now known or to be devised.

