

GREATER MANCHESTER AND LANCASHIRE RENT ASSESSMENT PANEL

**Leasehold Reform Act 1967, Housing Act 1980 and
Leasehold Reform Housing and Urban Development Act 1993**

DECISION OF LEASEHOLD VALUATION TRIBUNAL

in the case of

MR AND MRS R.M. BAILEY

LEASEHOLDER/APPLICANT

and

GROSS HILL PROPERTIES LTD

FREEHOLDER

RE: 54 FERNWOOD, MARPLE BRIDGE, STOCKPORT, CHESHIRE, SK6 5BE

Application dated 24 April 1995

**Heard at: Alexandra House, 14-22 The Parsonage,
Manchester, M3 2JA**

on: 19 July 1995

**Appearances: Mr R J Anning FRICS, IRRV (for the freeholder)
Mr R M Bailey (in person)**

Members of the Leasehold Valuation Tribunal:

M Davey LL.B (Chairman)

S Chesters-Thompson MA, FRICS

This document records the decision with reasons of the Tribunal following an application to determine the price payable for the freehold estate in the house and premises above-mentioned in accordance with the provisions of the Leasehold Reform Act 1967 as amended.

A notice dated 12 January 1995 giving notice of their desire to acquire the freehold was served by the applicants on the freeholder. By notice in due form dated 30 January 1995 the freeholder's solicitors, Edwards Geldard, Dumfries House, Dumfries Place, CARDIFF CF1 4YF, admitted the applicants' right to claim the freehold in accordance with the provisions of the Leasehold Reform Act 1967. By a letter dated 2 February 1995 the freeholder proposed a purchase price of £500 exclusive of valuation and legal fees. In their application to the Committee (see above) the applicants proposed a purchase price of £345 inclusive of legal costs but exclusive of Land Registry fees.

The Tribunal inspected the subject property on the morning of 19 July 1995 in the presence of Mr and Mrs Bailey's adult son and Mr R J Anning representing the freeholder company. The property is a large detached house constructed of brick with a tiled roof. The area of the property, which is situated on an estate of modern houses built mainly in the 1980s, is approximately 212 metres square. The house has been extended since the original construction and enjoys an elevated position in a popular, good class residential area within commuting distance of Stockport and Manchester. The ground floor accommodation now consists of an open porch with tiled floor, hall, cloakroom with wc and washbasin, study, lounge with sliding patio doors, dining room, morning room, kitchen with dining area, and a wash house with sink unit, cupboards etc. On the first floor there is a main bedroom with built in wardrobes, en-suite tiled bathroom/wc, four further bedrooms and a tiled bathroom/WC. The property is fully centrally heated from a gas boiler installed in the garage. There is partial double glazing to the ground floor. There are gardens to the front and rear of the property and there is an attractive stone patio area at the rear of the property.

In the absence of agreement between the parties as to the price payable for the house and premises under Section 9 of the 1967 Act as amended, the price payable became determinable by the Tribunal: (S.21(1)(a) of the 1967 Act as amended).

At the hearing, Mr Bailey appeared in person whilst Mr R J Anning FRICS, IRRV; the Property Director of Gross Hill Properties Ltd., appeared for the freeholder.

At the hearing Mr Bailey spoke to a written submission, copies of which he presented to the Tribunal and to Mr Anning. Mr Bailey explained that the lease was granted jointly to Mr and Mrs Bailey on 17 August 1983 for a period of 999 years at a yearly rent of £30. In essence Mr Bailey submitted that the purchase price should be the capitalised ground rent which he calculated at £300 on the basis of ten years' purchase in perpetuity at 10%. (Mr Bailey also proposed a sum of £45 as being a reasonable estimate of the landlord's costs. The Chairman pointed out that the Tribunal's jurisdiction does not extend to the determination of such costs).

By contrast Mr Anning for the freeholder relied upon a Schedule detailing a considerable number of freehold sales to tenants, by his company, of properties let on 999 year leases. In most of these sales the price obtained for the freehold was in the order of 22 times the annual ground rent. He also referred to a decision of a Leasehold Valuation Tribunal in Newcastle-upon-Tyne on 21 July 1993 which involved a property (7 St Asaph Close, Church Green, Newcastle) owned by Gross Hill Properties Ltd. In that particular decision the Tribunal had taken the view that Mr Anning's evidence should be looked at in the light of the principle that the enfranchisement prices quoted should be discounted to allow for the fact that an enfranchising tenant had a vested interest in settling the matter without adjudication by a third party. The Committee in that case went on to determine a purchase price based on 12.5 years' purchase. In the present case Mr Anning submitted that his approach by reference to comparables was correct save that he would admit that some discount should be made for the effect referred to above. Accordingly he suggested a price of £500 being 16.6 years purchase at 6%. In response Mr Bailey submitted that all or most of the comparables cited by Mr Anning were cases of sales to sitting tenants where the parties, and in particular the tenant, might be assumed to have been unwilling to risk the expense and delay of a hearing over a comparatively small amount of money. (See *Delaforce v Evans* (1970) 22 P & CR 770). He submitted that to that extent such settlements were of little if any assistance because they were not true open market sales.

Mr Bailey relied instead on other evidence. He referred to the fact that the current landlord's predecessor, Simarc Property Management Ltd., had, in November 1988, proposed to the tenants of the subject property and of the neighbouring property 60 Fernwood a purchase price of 10 times the ground rent for sale of the freehold interest in each of these properties plus £45 legal fees and administration costs. Indeed the tenant of number 60 had subsequently purchased the freehold at that price. Finally Mr Bailey referred to the practice of a local

builder, Chorley Building Developments Ltd, of selling the freehold of long leasehold properties at a price of ten times the ground rent.

In coming to their decision the Tribunal took their sole function to be that of determining a price in accordance with Section 9 of the Leasehold Reform Act 1967 viz: "..... the amount which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family who reside in the house not buying or seeking to buy) might be expected to realise".

Certain statutory assumptions must be made, but the only one of significance in this case was that in effect the freehold was being sold subject to the existing lease; ie with its 999 year term extendable for a further 50 years (S.9(1)(a)).

In discharging this function of determining the price, the Tribunal (following the earlier Tribunal decisions in Yates v Bridgewater Estates Ltd (1982) 261 EG 1001 and Williams v Walsh and Others (1983) 268 EG 915) took into account the following points.

1. that there was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties;
2. that it would not be consistent with the verbal definition of price in section 9(1) of the 1967 Act or with the circumstances of the case to apply the algebraic formula prescribed by Parliament for the redemption of rentcharges (Rentcharges Act 1977, s.10);
3. that they were entitled to rely on their general knowledge and experience whatever the evidence or representations (or the absence of such) submitted by the parties;
4. that the statutory wording involved envisaged the sale on its own as one lot ie; not as included in a parcel of ground rents;
5. that the possibility of bids from the sitting Tenant which might push up the open market price had been expressly excluded by the 1967 Act;

6. that the seller (although not also the buyer) had been statutorily described as "willing" so that any policy or practice of the Landlord restricting sales had to be disregarded;
7. that the resultant loss of income to the Landlord/Seller was not comprehended by the statutory formula for determining the price payable;
8. that the hypothetical and potential buyers in the market would all have in mind their own conveyancing costs (although not also those of the seller under s.9(4) of the 1967 Act) and any covenants which would be continued in the conveyance (see s.9(1)(c) and s.10(4) of the 1967 Act) and most important the length of the term and the amount of the ground rent under the Lease; and
9. that the costs of collection of the ground rent, which might involve agents, the giving of receipts and proceedings for recovery of arrears must be taken into account as a half-yearly matter strictly in accordance with the terms of the lease notwithstanding any practice of less frequent payment.

In the present case there were 987 years of the lease unexpired. In those circumstances the Tribunal took the view (as did the Lands Tribunal in the case of *Janering v English Property Corporation Ltd and Nessdale Ltd* (1977) 242 EG 388) that a reversion of more than 900 years would not be of any significance and (as in the above case) the right to receive a ground rent of £30 per annum with no prospect of capital appreciation would be most unattractive. The Tribunal also took the view, as expressed by Mr Bailey and accepted by the Newcastle Tribunal (in the case referred to above)

that Mr Anning's evidence did not have sufficient regard to the qualifying factors articulated by Mr Bailey in his submission. The Tribunal concluded that in the light of all the evidence submitted and their own knowledge, experience and judgment that the maximum justifiable in the present case was a purchase price of £345 (exclusive of permitted costs) being calculated on the basis of 11.5 years' purchase and the Tribunal have so determined.

Finally the Tribunal would like to thank both Mr Bailey and Mr Anning for their extremely helpful written and oral submissions.

By Section 142 and Schedule 22 Part I paragraph 2 of the Housing Act 1988, an appeal to the Lands Tribunal may be made by any person who (a) appeared before or was represented before the Tribunal and (b) is dissatisfied with the Tribunal's decision. Such appeal must be made within 28 days of the issue of these Reasons (Lands Tribunal Act 1949, Section 6(3) and the Lands Tribunal Rules 1975, as amended).



MARTIN DAVEY

Chairman of the Leasehold Valuation Tribunal

11 January 1996