

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

The Property : 11 Faggot Yard,
Church Lane,
Bocking,
Braintree,
Essex CM7 5SJ

Applicants : Ruth Denise Cracknell

Respondent : none

Case number : CAM/22UC/0AF/2005/0004

Application Type : to determine price payable for freehold title
(Section 27 Leasehold Reform Act 1967)

Tribunal : Bruce Edgington (lawyer chair)
Robin V. Auger FRICS
Richard Marshall FRICS FAAV

DECISION

1. The Applicant has a Good Leasehold title to the property and wishes to convert this into a freehold title.
2. As the lease would appear to be for a term of 500 years from 6th June 1555, it is not surprising that the present landlord and/or freehold owner cannot be found. The Applicant is therefore unable to serve a notice to commence the enfranchisement procedure.
3. The Applicant is therefore using Section 27 of the Leasehold Reform Act 1967 ("the 1967 Act"). She has applied to the court for an order vesting the freehold in her name. In accordance with the procedure set out in Section 27(5) as amended by the Commonhold and Leasehold Reform Act 2002 ("the

2002 Act”), the court has referred the matter to this Tribunal for a determination of the amount to be paid into court.

4. The Applicants have to pay a sum into court in accordance with Section 27(3) of the 1967 Act which is the aggregate of:-
 - “(a) such amount as may be determined by a leasehold valuation tribunal to be the price payable in accordance with section 9 (of the 1967 Act) and
 - (b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid”
5. Once the freehold of the house and premises are vested in the name of the Applicant, the sum which is paid into court will be taken to have satisfied any claim against her.
6. The basic valuation method is to ascertain what the freehold would realise on the open market if sold by a willing seller subject to the lease, to any rentcharge and to any other burden on the freehold title. In some cases there will also be a marriage value and this is discussed below.
7. In this case the lease had 50 years to run at the relevant date. There are no known rentcharges and as the Applicant has not produced any up to date Land Charges Searches giving details of any covenants on the freehold title, the determination has been undertaken on the basis that there are none. If there are any unduly onerous covenants subsequently discovered, the court will no doubt be asked to refer the matter back to this Tribunal for a further determination.
8. The Tribunal inspected the land in question. It is a small plot of land on which is built a terraced 2 bed roomed house. It is said to have been built about 150 years ago. Bocking is a suburb of Braintree. The land is served only by a small private footpath and the registered leasehold title refers to the property having the benefit, with 12 Faggot Alley of a right granted by a 1956

Deed over a pathway round the rear of 10 Faggot Yard and also "such right of way as was enjoyed by the said Joseph Perry over the common path called Faggot Alley (or Lane) from and to Church Lane aforesaid". The Property Register of the Good Leasehold title then records the fact that Faggot Alley or Lane is now known as Faggot Yard. As there was no evidence that such rights had been challenged in the past, the determination is on the basis that there are such valid rights of way, although it has to be said that the first right cannot be exercised at the moment because the gate to the right of way cannot be opened.

9. The evidence produced by the Applicant consists of a valuation report and a calculation from C C Woodhouse FRICS (assumed to be Mr. although this is not clear from the report). The report describes the property and then simply gives a certificate that the value is £1,400.
10. At the request of the Tribunal, Mr. Woodhouse did prepare the calculation which was of some help but the evidence to support the calculation was not there.
11. Mr. Woodhouse did not attend to answer questions as to how he arrived at his base freehold figure. The Tribunal therefore had to use its own knowledge and expertise and start from scratch.

Method of Valuation

12. The first fact to establish is the rateable value of the property because there are different Statutory provisions which apply depending on whether the rateable value is more or less than £500. Mr. Woodhouse did not supply this information. As water rates are based upon rateable value, the Tribunal chair therefore contacted Anglian Water who stated that the rateable value for this property is £144.
13. In these circumstances, the Tribunal is not concerned with marriage value.

14. The next matter for the Tribunal to determine is the value of any tenants' improvements because they should be disregarded. The problem faced by the Tribunal is that the house it saw could not possibly have been the house on the site in 1555, if indeed there was a house on the site. The present house must have been built by the then tenants at their expense. The question to decide is whether this amounts to a tenants' improvement. Without knowing what was on the site in 1555, it is impossible to say. However, in **Rosen v. Trustees of the Camden Charities** [2001] 10 EG 159 CA it was held that the erection of a house where no house had existed previously cannot be an improvement for these purposes.
15. It was also said by Lord Hoffman in **Shalson v. John Lyon's Free Charity Grammer School** [2003] 3 AER 975 that in order to rely upon any improvement disregarded, the tenant had to identify any such improvement(s). There was no suggestion in this case that the Applicants were relying on the improvement disregarded.
16. It was therefore left to the Tribunal to ascertain the open market value for the property and undertake the usual valuation exercise in these matters taking into account the Statutory framework. There was no evidence before the Tribunal upon which its members could make any assessment of the open market freehold title
17. The Tribunal therefore considered Property Trader for 21st June 2005 and obtained details of 2 bed roomed mid terraced properties for sale from the internet with asking prices as follows:-
 - (a) Buttermere, White Courts, Braintree - £147,000
 - (b) Spencer Square, Bocking - £160,000
 - (c) Church Street, Bocking - £160,000
 - (d) Church Lane, Braintree - £162,000
 - (e) Friars Lane, Bocking - £130,000 (needs modernisation)
 - (f) Church Street, Bocking - £190,000 (large rear garden + garage)

18. The Tribunal also took note of the fact that the price paid for the property in September 2002 was £97,053. Using the Nationwide house price index calculator would give a valuation of £124,128 as at the first quarter of this year.
19. The property in this case is small. The owner will be responsible for the cost of maintaining her part of Faggot Yard. There is a small courtyard back garden and a well proportion front garden. The house is an attractive property in an attractive part of Essex. Its main disadvantage is that access can only be obtained via a fairly long footpath and there is no off street parking. Allowing for the differences in location, type and size of properties above and using it's own knowledge and experience the Tribunal's view of the open market value of this house is that it is the region of £140,000 and this is the figure upon which the valuation is based.

Valuation under Section 9(1) of the 1967 Act

Freehold value of house	£140,000
Land apportionment @ 33.3% say,	£ 46,600
Modern ground rent @ 7% say,	£ 3,270

Present ground rent unknown and never collected so value is	£ nil
Revert to modern ground rent as above	£ 3,270
YP in perpetuity Deferred 50 years @ 5%	.48 = £ 1,569

Say £1,570

Enfranchisement price to be paid into court	<u>£1,570</u>
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Bruce Edgington,
Chair,
22/06/05