

360

Eastern Rent Assessment Panel
Great Eastern House Tenison Road Cambridge CB1 2TR
Telephone: 0845 1002616 Facsimile: 01223 505116



REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL
Leasehold Reform Act 1967 sections 21 and 27

Premises: Rippleway, Chiltern Road, Ballinger, Gt Missenden, Bucks HP16 9LH
Our ref: CAM/11UC/OAF/2005/0006

Applicants: Mesdames M Ellis and A M Dewar, Mr D M Turner
Personal Representatives of Peter Sydney Portway Deceased
Represented by: Blaser Mills (Solicitors) – Mr Jonathan Lilley
Applicant's Expert: Mr David T Stone FRICS

Respondent: Not Known

Members of Tribunal:

Mr G M Jones - Chairman
Mr G R C Petty FRICS
Miss M Krisko BSc (Est Man) FRICS

0. BACKGROUND

The Property

- 0.1 This property is a semi-detached two-bedroom chalet bungalow with mature gardens sloping down steeply to a wooded area through which runs a public footpath. The property was built in 1959 or thereabouts. Outside there is a car port and at the rear a pre-fabricated garage. The grounds include large section of garden acquired separately by the Applicant under freehold title no BM 270918 at H M Land Registry. The leasehold part of the property is registered under leasehold title number BM271009.

The Leases

- 0.2 The history of the ownership of the landlord's interest is shrouded in mystery. The root of title of the leasehold land is probate of the last will of one John Davies, who died on 26 January 1919. The Applicants have produced a copy of a title indemnity insurance policy which recites the original grant. On 9 April 1642 William Elwes let certain lands to Thomas Elwes and Thomas Fountain for a term of 400 years from 16 April 1641 at an annual rent of a peppercorn. It has been pointed out that this was on the eve of the English Civil War. Be that as it may, Mr Davies was in possession of a parcel of land in Chiltern Road, Ballinger having a frontage of 847 feet or thereabouts. Some 22 dwellings were built on the land in about 1959.

- 0.3 The original leases have been lost for many years or more. The precise extent of the parcel of land included in the original lease is unknown. The identity of the current landlord is also unknown. The Deceased became tenant by assignment on 9 August 1960, when he also acquired the freehold portion of the garden. It appears that 21 other properties in the same road have the same leasehold title. So far as is known, none of the tenants has a copy of the original lease or knows who is the current landlord.

1. THE APPLICATION

- 1.1 The Applicants wish to enfranchise under the provisions of the Leasehold Reform Act 1967. On 19 May 2005 they applied to the High Wycombe County Court for the necessary orders. That appears to be the valuation date for the purposes of the Act. By order dated 6 July 2005 the Court referred to the LVT the issue of the purchase price.
- 1.2 There appears to be no doubt that the valuation method to be applied in this case is that set out in section 9(1) of the Act. The Tribunal is required to assume that, at the end of the current term, the tenant has applied for and been granted an extended lease under section 14 for a term of 50 years from the term date of the existing tenancy at an open market ground rent. The basic principle is that the enfranchisement price should compensate the landlord for the loss of rents (including any current arrears) until the extended term date and the loss of the freehold at that time.
- 1.3 The Tribunal must therefore undertake the following processes as from the valuation date:
- Ascertain and determine the current open market value of the property as it stands
 - Determine the site value (usually a percentage of OMV)
 - Assess the open market ground rent at current prices
 - Calculate the current value of the lost future rents (using actuarial tables)
 - Ascertain and add the amount of any recoverable arrears
 - Consider the likely state of the property at the end of the hypothetical extended lease
 - Assess the open market value of the property at that date at today's prices
 - Calculate the current value of that OMV (using actuarial tables).
- 1.4 There are in theory three separate parts to the assessment process; the rent under the lease; the rent during the extended term; and the OMV at the end of the extended term. In practice, the second and third parts are run together unless the unexpired term is relatively short. The usual methodology is to assess the likely ground rent yield, apply that figure to the site value and then calculate the current value of those lost rents in perpetuity.
- 1.5 This method reflects the assumption that, at the end of the extended term, the property will in most cases be worth no more than site value, to be assessed by reference to its rental yield. Whether this is a correct assumption is, perhaps, unimportant if expert valuers agree upon the methodology, because the proper method of assessing the open market price likely to be realised by a willing seller is the method adopted by expert valuers. In this particular case, it is very doubtful whether the existing dwelling is likely to be standing in 86 years' time.

2. THE EVIDENCE

- 2.1 The subject property was sold (subject to contract) in April 2005 at a price of £274,000, on the basis that the vendors would first enfranchise the property at their own expense. The members of the Tribunal inspected the property on the morning of 26 August 2005. The Tribunal was also able to conduct “walk-by” inspections of other properties relied upon by the Applicants’ expert valuation witness, Mr David T Stone FRICS, in his report. There is a row of rather similar bungalows and chalet bungalows, detached and semi-detached, all part of the 1959 development. The Tribunal noted improvements, extensions and additions to various of these properties, which gave an indication of the potential of the subject property for improvement. Some had revised roof arrangements; some had conservatories or rear extensions; most had UPVC double-glazing. One, Dunelm, a two-bedroom bungalow with integral garage, is obviously in very much original condition, with softwood glass-panelled front door and “Crittall” windows.
- 2.2 Mr Stone’s report is dated 5 April 2005 (not long before the date of the application to the county court). He values the freehold reversion at £315,000 and the site at £126,000 (40%). He assumes an unexpired term of 36 years and a yield of 7%. Applying a three-stage methodology, he reaches a figure of £11,590.
- 2.3 It appears from the terms of Mr Stone’s report that he has valued the reversion on the basis of new build on the relatively small plot owned by the unknown landlord. This is a reasonable approach, given that the principal purpose of the valuation is to ascertain site value, which depends upon the development potential of the site. The Tribunal notes that, irrespective of the mode of development, the leasehold site is quite small compared with the sites of adjoining properties and, in particular, the comparable properties mentioned by Mr Stone.
- 2.4 The Tribunal took into account one piece of evidence not available to Mr Stone. Enquiries of local agents revealed that Dunelm is currently under offer, leasehold, at an agreed price of £250,000. The Tribunal felt able to make use of this information without inviting comment from Mr Stone, for reasons which will become apparent.

3. THE LAW

- 3.1 **The Leasehold Reform Act 1967** enables tenants of long leases at low rents to enfranchise their properties – in other words to acquire the freehold on terms set out in the Act. Recent amendments introduced by Part 4 of the Commonhold & Leasehold Reform Act 2002 have expanded the scope of the 1967 Act.
- 3.2 If the price is not agreed between the parties, there is provision under section 21 for an application to the Leasehold Valuation Tribunal to determine the price. The valuation methods are set out in section 9 of the Act. The method of determination depends upon which category the property and the lease fall into.
- 3.3 **Section 27** of the 1967 Act provides for an application to the Court and sets out the procedure to be followed in cases where the landlord cannot be found. One part of this procedure requires the Leasehold Valuation Tribunal to determine the price, in accordance with the appropriate valuation method set out in the Act.

- 3.4 In the case of a very old lease at a peppercorn rent or a fairly nominal rent, the appropriate valuation method is likely to be that set out in section 9(1). Once the price is determined, the money is to be paid into Court.

Costs

- 3.5 The Applicant under the 1967 Act must generally pay the landlord's reasonable costs. In the case of an application under section 27 this does not arise; there will be no order as to costs.

4. CONCLUSIONS

- 4.1 The Tribunal must first determine what property is to be enfranchised under the Act. The Applicant's right under section 1 is to enfranchise the "house and premises". Section 2 defines the "house and premises" as including any garage, outhouse, garden, yard and appurtenances which at the relevant time are let to [the Applicant] with the house and are occupied with and used for the purposes of the house or any part of it ...".
- 4.2 It is clear in this case that the bulk of the back garden is held under the separate freehold title BM270918. Thus only a small portion of the garden is part of the "house and premises" for the purposes of the Act. There is a separate triangle of land included in BM271009 which lies beyond the freehold land and appears insignificant in valuation terms. The substantial sloping garden (75% of which is not included in the leasehold title) is an attractive feature of the property as it stands. The Tribunal considered that this reduces the market value of the subject property by about £10,000.
- 4.3 The Tribunal did not find it easy to reconcile the market evidence. The principal reason for this was probably lack of information about the condition at the times of sale of the various properties mentioned by Mr Stone, as some of the comparables have recently been improved, possibly after the sales referred to in his report.
- 4.4 Nevertheless, the Tribunal felt able to undertake its own valuation for the purpose of testing the opinion of Mr Stone. For this purpose, the Tribunal had particular regard to the price of £274,000 at which the current purchasers have agreed to buy the freehold of Rippleway. However, it is clear from external inspection of nearby properties that there is potential in the subject property potential for further development by way of improvement and extension. Maitland (the only other semi-detached comparable), sold in August 2003 for £298,000, appears to have been extended. The most recent sale was of Ashwood, which achieved £317,500 in May 2005; however, it is not clear how much accommodation the property included or to what standard it was equipped.
- 4.5 Relying on the knowledge and experience of its members and informed by the above-mentioned evidence (including the comparables mentioned in Mr Stone's report) the Tribunal was initially inclined to value the freehold reversion, on the basis of the site being developed to its full potential, at £310,000. However, having regard to the considerable experience and local knowledge of Mr Stone, the Tribunal bows to his judgment and adopts a figure of £315,000.
- 4.6 The Tribunal can see no reason to differ from Mr Stone's view that the site value represents

40% of the developed value. That figure is often used in this type of case and the Tribunal finds no unusual factors justifying departure from it. Rental yields vary from time to time and from place to place; but over a long period will tend to fall close to the average figure. Valuers in a particular locality generally opt for a conventional figure. The figure most generally used in this area is 7%. On that basis, the ground rent would be £8,820 p.a.

4.7 However, the Tribunal differs from Mr Stone in one respect. In the judgment of the Tribunal, the appropriate method of valuing the reversion is to take the present value of the ground rent from the end of the term of the lease in perpetuity. This results in a figure slightly different from that reached by Mr Stone.

4.8 In the light of the above findings, the Tribunal concludes that the price payable for enfranchisement is £11,029.00. The detailed calculation is set out below.



Geraint M Jones MA LLM (Cantab)
Chairman
26 August 2005

LEASEHOLD VALUATION TRIBUNAL'S VALUATION
 in accordance with The Leasehold Reform Act 1967 Section 9(1)

Rippleway, Chiltern Road, Ballinger, Gt Missenden, Bucks HP16 9LH

Assessment of Modern Ground Rent (Section 15 Rent)
Standing House Approach

	£
Entirety Value	315,000
Site Value 40%	126,000
Section 15 Rent @ 7%	<u>£8,820 p.a.</u>

Current Term	£
Rent 36 years – peppercorn	
Value	NIL

Extended Term and Reversion	
Section 15 Rent	£8,820
YP in perpetuity @ 7%	14.2857
Deferred 36 yrs	0.0875355
Multiplier	1.2505058 11,029.46

Enfranchisement Price	say <u>£11,029</u>
------------------------------	--------------------