

RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : 22 Wright's Orchard,
Aston,
Stevenage,
Herts SG2 7HR

Applicant : (1) John David Way
(2) Julie Kathleen Way

Respondent : unknown

Case number : CAM/26UD/OAF/2007/0004

Date of Application : 30th May 2007

Type of Application : To determine the amount to be paid into
court on enfranchisement where
landlord cannot be found (Section 27 of
the Leasehold Reform Act 1967 as
amended ("the Act"))

Tribunal : Bruce Edgington (lawyer chair)
Marina Krisko BSc (Est Man) FRICS
Neil Martindale FRICS

**Date and place
of hearing** : 20th August 2007 at Stevenage Golf and
Conference Centre, Aston Lane,
Stevenage SG2 7EL

DECISION

1. In the event that the Court grants the Applicants a Vesting Order, the amount to be paid into court in accordance with Section 27(5) of the Act is two thousand and seventy-five pounds (£2,075.00)

Reasons

Introduction

2. The Applicants are the owners of a leasehold interest in the property being the residue of the term of 500 years from the 20th October 1564 which is registered at HM Land Registry under title number HD 104594. No ground rent has been paid in recent years and the terms

of the lease save for its length are unknown as that deed has become lost.

3. They wish to obtain a freehold title by using the enfranchisement provisions under the Act but they have been unable to find the landlord and serve an Initial Notice under Section 8 of the Act.
4. The Act makes provision for this by enabling a tenant in the Applicants' position to apply to the county court for a vesting order. Whether or not a vesting order is made is a matter for the court and not this Tribunal. All this Tribunal has the power to do is adjudicate upon the amount to be paid into court in accordance with Section 27(5) of the Act in the anticipation that a vesting order will be made.
5. The method of calculating the amount to be paid into court is set out in Section 27(5) of the Act and is "*the aggregate of-*
 - (a) *such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9...; 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*"
6. In respect of a property outside London with a rateable value of less than £500 on the 31st March 1990, Section 9(1) says that the price payable is the amount which a willing buyer would pay a willing seller on the on market on the basis that the tenant was not buying or seeking to buy:-
 - (a) *on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold; and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended*
 - (b) *On the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges...to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and*
 - (c) *On the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 ..."*
7. When considering rateable value one must consider such value without any tenant's improvements and the Tribunal takes the view, on the

balance of probabilities, that such value would have been well under £500 in 1990. It is noted that the Applicant's valuer clearly agrees as he has used Section 9(1) as his valuation method.

8. The Applicants have provided the Tribunal with a valuation prepared by Mr. John E.G. Lowe FRICS which concludes that the price which should be paid is £2,300.

The Inspection

9. The members of the Tribunal inspected the property in the presence of the Applicants and found it to be, as anticipated in the papers, a modern property cavity wall brick built under a pitched tiled roof. It has what appears to be a 2 storey extension. There is a family bathroom, 2 single bedrooms, 2 double bedrooms one of which has a dressing area and shower room. On the ground floor is an entrance hall, kitchen/breakfast room and a large open plan lounge/family room and conservatory. There is an integral single garage and 2 parking spaces at the front and a reasonably large garden at the rear.
10. The property was in a pleasant established development of similar houses although it is not particularly close to any amenities.

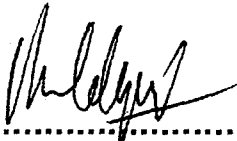
The Hearing

11. The Applicants were represented by Mr. Malik from the Applicants' solicitors although he was not really able to assist the Tribunal with valuation matters.

Conclusions

12. Having had the opportunity to inspect the 2 comparables used by Mr. Lowe in the same estate as the subject property from the outside, the Tribunal was satisfied that these, namely numbers 16 and 23 Wrights Orchard, were appropriate comparables.
13. Mr. Lowe says, in his report, that his valuation date is 3rd April 2006. This would not appear to be correct as his calculations presume a valuation date of 3rd April 2007 which is the same date as his report. In fact this is not the correct valuation date. The correct date is the date of the commencement of the action for a vesting order i.e. 14th December 2006. It was for this reason that the Applicants were ordered to file a valuation as at 14th December 2006. They failed to do so.
14. The starting point for the valuation exercise is the current market value of the property as it stands. According to the Tribunal's inspection, the Land Registry plan and Mr. Lowe's report, this property would appear to be very similar to 16 Wrights Orchard but with a smaller back garden. 23 Wrights Orchard would appear to be a smaller 'linked' detached house rather than completely detached. The Tribunal therefore considered that 16 was the best comparable and noted that this sold for £290,000 in February 2006 i.e. 11 months before the valuation date.

15. A valuation of £315,000 as suggested by Mr. Lowe would, in the Tribunal's view be a correct valuation and starting point. The Tribunal also accept Mr. Lowe's calculation save for 2 matters namely (1) the unexpired term is more like 58 years than the 57.5 years used when taking the valuation date of 14th December 2006 and (2) the Tribunal did not agree with the deferred 107.5 years calculation.
16. Dealing with the latter point, this would appear to be the 'add on' which assumes a value of the building erected on the land at the end of the term as extended (Section 9(1)(a) of the Act – see above) by 50 years. This is sometimes known as the Haresign effect after the case of **Haresign v St. John the Baptist College 1980 WL 148889 (Lands Tr), (1980) 255 E.G. 711**. However, in this case, the Tribunal took the view that after 108 years (58 years unexpired plus 50 years extension) it was impossible to speculate what would be on the land and the most appropriate way of dealing with this is to ignore the value of any structure.
17. Thus, the Tribunal did not accept the Haresign addition. On the assumption that there is no ground rent or rent charge, the valuation calculation is therefore as attached which is the calculation of the monies to paid into court.
18. As ordered, the Applicants' solicitors filed a draft transfer in form TR1. In this Act, as opposed to the **Leasehold Reform and Urban Development Act 1993**, it is in fact the court which approves the draft transfer (Section 27(3) of the Act). However, in order to assist the Applicants and the court, the Tribunal has the following observations:-
 - (a) The Applicants' solicitors should check with HM Land Registry to see whether they would prefer form TR1 or TP1 bearing in mind that the freehold title would appear to include more land than the subject property
 - (b) The vendor would appear to be the successor in title to Sir John Butler rather than the court. The person nominated by the court is the person who executes the Transfer
 - (c) Presumably the Applicants would wish to apply to merge the freehold and leasehold titles
 - (d) Under clause 9 the recital for the payment into court is not an acknowledgment of receipt. The second tick box should be used.



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Bruce Edgington
Chair
20th August 2007

LVT VALUATION UNDER SECTION 9(1) OF THE LESASEHOLD REFORM ACT
1967, AS AMENDED.

22 WRIGHT'S ORCHARD, ASTON, HERTS. SG2 7HR

Valuation date	14th December 2006.
Remaining term	58 years
Entirety value	£315,000

Valuation

Current Ground Rent	Nil	
Entirety value	315,000	
Site value $\frac{1}{3}$	105,000	
Section 15 rent @ 7% of site value	7,350	
Reversion to Section 15 rent	7,350 per annum	
YP @ 7% in perpetuity	14.2857	
PV 58 years @ 7%	0.0197579	<u>2075</u>
<u>Enfranchisement price</u>		<u>£2075</u>