SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

In the matter of section 9 and section 27 of the Leasehold Reform Act 1967 (as amended) ("the Act")

and in the matter of 19 Perrymead, Worle, Weston Super Mare, BS22 7FB

Case Number: CHI/00HC/OAF/2007/0010

Upon the application of Ms P F Worrall ("the Applicant")

Inspection 15th May 2007

Determination: 15th May 2007

The matter was considered in the light of written representations without a hearing.

Decision of the Tribunal

Issued: 16th May 2007

Tribunal

Mr A D McCallum Gregg (Chairman)
Mr M J Ayres FRICS
Mrs M Hodge MRICS

Decision

1. The Tribunal has determined for the reasons set out below that the price payable by the Applicant for the freehold reversion in this matter is the sum of £1963-00.

Reasons

2. 19 Perrymead, Worle, BS22 7FB ("the property") is a corner two storey house being one of a pair which was constructed at the end of a terrace of properties built in about 1986 by Second City (South West) Limited.

   The property is of reconstituted stone block and brick cavity construction with a pitched tiled roof. The accommodation comprises an entrance into the living room with a small fitted kitchen off, French windows to the garden. Open stairs to a small landing, double bedroom and bathroom/WC. Outside as well as the small area of enclosed garden there is designated parking for two cars nearby but not immediately adjacent to the property. The property is on the south western corner of a terrace comprising three two bedroom houses and two one bedroom units. All mains services are connected and the property enjoys gas fired central heating and double glazing. There appears from our inspection to be no material improvement or modernisation that we should disregard for the purposes of the valuation. The Applicant did not seek a hearing before the Tribunal and the members of the Tribunal inspected the property on the 15th of May 2007.

3. The property is built upon land that was part of that demised by a sixteenth century lease, of which the tribunal understands no copy now is known to exist. The demise was in favour of John and Isabel Thomas for a term expiring in 2057 at an annual rent of £1-6-9d (£1-34). We are informed that no rent is paid by the lessees of the property under this lease. The whereabouts of the lessees or beneficiaries under this lease are now unknown. The rateable value is £98.

4. The Weston-super-Mare County Court made an Order under section 27(5) of the Act on 7th March 2007 that the freehold of the property be vested in the Applicants. The Order contains a paragraph in the following terms:

   "AND THIS COURT determines and declares pursuant to the provisions of section 27(5) of the Leasehold reform Act 1967 that the estimated amount of pecuniary rent payable for the said property by the Applicants as tenants thereof under the lease out of which the Applicants current interest arises as provided by section 3 of the Landlord & Tenant Act 1954 as amended and which remains unpaid and which will remain unpaid up to the date of this order is the sum to be determined by the Leasehold Valuation Tribunal (under section 9(i) of the Leasehold reform Act 1967 under the "original valuation" basis)."

5. The amount that the tribunal is to determine is the 'appropriate sum' defined in section 27(5) of the Act as follows:

'The appropriate sum which in accordance with sub section (3) above, is to be paid into Court 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 above, 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. Section 9 of the Act sets out in detail the assumptions to be made and the procedure to be followed in carrying out the valuation. The effect of section 27(1) is that the valuation date is the date on which the application for an Order was made to the Court.

7. The Tribunal is aware that the expression "original valuation basis" is one that is referred to in a paper on the website of the Leasehold Advisory Service (LEASE) intended to explain valuations in matters of this nature to the general public, although the term does not appear in the leading textbook upon the matter, Hague on Leasehold Enfranchisement. However, the paper in question adopts the "standing house" method of valuation as does the valuation from Messrs Stephen & Co the applicants' valuers, which is the method commonly adopted for valuations under section 9(1) of the Act. The question whether or not a Court in these circumstances is entitled to instruct an expert tribunal upon the valuation method it is to adopt is not settled, but since the tribunal would be minded in any event to adopt the standing house approach in the present case, and it appears that that is the approach that the Court may have had in mind, no issue arises upon the point.

8. There is unlikely to be evidence of sales of vacant sites because the locality in which the property stands has been fully developed for some years. Finally, the tribunal bore in mind the cases to which the Applicant's valuers stated that they had considered.

9. For the purposes of establishing what amounted to the standing house value of the property on the valuation date Messrs Stephen & Co have provided details of the sale of one comparable property. 20 Perrymead is a similar mid-terraced house that was sold in April 2005 for the sum of £102,500 and then again in September 2006 for the sum of £95,000. From those figures they had concluded that the entirety value of the subject property on the valuation date was fairly represented by a sum of £95,000. On the basis of its collective knowledge and experience of local process, and of the movement in them between the dates of the sales mentioned and the valuation date, the Tribunal took the view that the appropriate valuation figure was £110,000.

10. Messrs Stephen & Co argued that the site value should be taken as 26.5% of the entirety value, rather than the 30% that might more ordinarily be expected after taking into account the parking facilities for the property. The Tribunal did not feel that a 2.5% reduction proposed was appropriate in this case.

It agreed that another owner can park adjacent to the parking area which was a possible drawback but in its view was at the very least set off by the fact that the parking area that the subject property owns is no more than 25 yards away and it is capable, in the Tribunal's view, of taking two vehicles. That additional parking is a material benefit on a development like this. Accordingly the Tribunal put the site value as 29% of £110,000, that is to say £31,900.

11. The Tribunal accepted Messrs Stephen & Co's representation that a modern ground rent in this locality might be established using a 7% rate return on the site value. That produces a modern ground rent of £2,233-00. It added no amount for unpaid ground rent as any apportionment of the rent of one shilling and sixpence originally reserved produces an entirely insignificant sum for an individual property.

12. On 15th September 2006, the day that the present application was sent to the Tribunal, the Lands Tribunal published its decision in *Earl Cadogan and others v Sportelli [LRA 50 2005]* ("Sportelli"). That decision indicated that in the absence of special circumstances the appropriate deferment rate to be employed in enfranchisement calculations is 4.75% for houses and 5% for flats. Since the evidence before the Tribunal did not deal with the point, and because Messrs Stephen and Co in their valuation dated 3rd October 2006 had taken a deferment rate of 7% as has previously been used in cases in this locality, the Tribunal invited written representations on behalf of the Applicant as to the possible effect of the Sportelli decision in this case. Those further representations were received by the end of October, but it has of course been necessary then for copies of them to be circulated to the members of the Tribunal and for them to consult together in the light of them to in order to arrive at their decision.

13. The Applicant's solicitors averred that the tribunal should take no notice of the Sportelli decision because it was made after the valuation date and so must be disregarded, and Messrs Stephen and Co made that point as well. The point is in the Tribunal's judgement a bad one. A court ruling which changes the law from what it was previously thought to be operates retrospectively as well as prospectively. The traditional approach was stated crisply by Lord Reid in *West Midland Baptist (Trust) Association Inc v Birmingham Corporation* [1970] AC 874, 898-899, a case concerning compulsory acquisition:

'We cannot say that the law was one thing yesterday but is to be something different tomorrow. If we decide that [the existing rule] is wrong we must decide that it always has been wrong, and that would mean that in many completed transactions owners have received too little compensation. But that often happens when an existing decision is reversed.'

The issue is discussed more extensively (in a case involving the possibility of prospective overruling) in *National Westminster Bank plc v. Spectrum Plus Limited and others and others [2005] UKHL 41.*

14. In Sportelli the Lands Tribunal has discussed its responsibility for giving guidance in cases of this nature to Tribunals that fall within its sphere. At paragraph 117 of its decision it said:

"The function of the Tribunal is thus to make decisions on points of law and on what may be called principles of practice to which regard should be had by the first-tier tribunals and by practitioners dealing with claims in any of the Tribunal's original or appellate jurisdictions. Such principles of practice are not, in our view, confined to valuation methodology (for example, in rating, whether local authority leisure centres should be valued on the contractor's basis or by some other method: see *Eastbourne Borough Council v Allen (VO)* [2001] RA 273) but may extend to matters of quantification if the considerations underlying the quantification are of general application."

15. At paragraph 123 of the same decision, the Lands Tribunal said:

"The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate."

16. Messrs Stephen & Co make several points in this respect. First they say that Sportelli relates to London and not to the provinces. Thus one must take care in applying the decision to a property like 19 Perrymead where there is no ground rent passing and there may be many changes in interest rate before the reversionary date. They then draw attention to the provisions of paragraph 123 of the decision set out above. In Sportelli, they say, there is a landlord who is taking action and a ground rent passing. Here there is neither of those features.

17. The Tribunal considered those points carefully. It could find nothing in Sportelli to indicate that it was intended only to apply to London, although it recognises that the property concerned in it was part of the Cadogan estate in central London, and as such in very many ways different from the estate of which 19 Perrymead forms a part. There is however nothing in the Lands Tribunal's decision to suggest that Sportelli is only to have application in London cases. Indeed, as the quotation from paragraph 123 of their judgement set out above indicates, they take the view that the rates they have identified are "generally applicable".

18. The Tribunal is of the view that it is required to value the property in accordance with the requirements of the Act. It does however recognise that there is some force in the argument that the absence of a ground rent in these cases can be regarded in this context as a particular feature that may indicate some departure from the rates mentioned by the Lands Tribunal as does the absence of a freeholder who can enforce the freehold covenants. Those factors

in its judgement produce a risk factor that may be regarded as higher than that for a normal reversionary investment.

19. In the light of all those factors the Tribunal concluded that it was right to take a deferment rate of 6% rather than 4.75% as Sportelli might otherwise indicate.

20. The Tribunal's valuation was therefore:

Ground rent reserved:	Nil
Reversion	
Estimated site value (29% of £110,000)	£31900 - 00
Modern Ground rent @ 7%	£2233-00pa
YP in perpetuity @ 6% deferred 51 years	0.8792
Total	£1963.25

But say £1963-00.

21. The Tribunal approves the form of transfer that was sent with the application, a copy of which is annexed and is signed by me for identification.

signed

Andrew Duncan McCallum Gregg

Chairman

16th May 2007