

**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)**

**and in the matter of 'Little Portobello', Windmill Hill, Brenchley, Kent.**

**Case Number: CHI/29UQ/OAF/2007/0003**

**Upon the application of Mr A J Higginson and Mrs A V Fraser ("the Applicants")**

**Decision of the Tribunal**

**Hearing:** 18<sup>th</sup> April 2007

Mr Edward Cole of Counsel instructed by Messrs Warners LLP for the Applicants

**Decision issued:** 17<sup>th</sup> May 2007

**Tribunal**

Mr R P Long LLB (Chairman)

Mr J N Cleverton FRICS

Mr R Athow FRICS

## **Decision**

1. The Tribunal has determined for the reasons that are set out below that the price to be paid for the freehold reversion in respect of the property the subject of this application is £13,885-00, which amount is derived as set out in the valuation appended to this note.

## **Reasons**

2. The application came before the Tribunal with others following Orders of the Tunbridge Wells County Court on 12<sup>th</sup> December 2006. The Orders were made following applications to the Court by the applicants and others with regard to their respective properties pursuant to the Leasehold Reform Act 1967 (“the Act”) for a declaration that they were entitled to acquire the freehold of the property in question. The Court ordered that they were so entitled, and that the ascertainment of the correct basis of valuation under section 9 of the Act, the terms of the transfer to the applicant in question, and the price to be paid were to be referred to this Tribunal.
3. There was before the Tribunal a detailed valuation report dated 22 March 2007 prepared by Mr Jeffrey C Moys FRICS of Messrs Bracketts, Chartered Surveyors of Tonbridge, who attended the hearing, in respect of the subject property. The report was tendered as expert evidence and bears the appropriate endorsement to that effect. It contains a detailed and, as far as the members of the Tribunal were able to see when they inspected the subject property on 18 April 2007, an accurate description of the property. The Tribunal is content to adopt that description for the purposes of arriving at its decision in this matter, and considers that little will be served by copying it into this document.
4. Mr Edward Cole of Counsel, instructed by Messrs Warners LLP of Tonbridge, appeared at the hearing on behalf of the applicants. He informed the Tribunal that all of the properties the subject of the applications to the Court mentioned above were held under a lease, known as the “Primrose Lease”, which demised land at Brenchley on 20<sup>th</sup> May 1569 for a term of five hundred years at a rent of ‘one primrose at Easter’. The identity and whereabouts of the freehold reversioner to the Primrose Lease was not known, and it appeared from the copies of the entries on HM Land Register of the titles to the leasehold interest subject property that the Primrose Lease itself was lost many years ago.
5. Mr Cole outlined the making of the Orders mentioned above, and their terms, and pointed out that the rateable value of the subject property on 31 March 1990 was less than £500. Thus the property would therefore fall within either section 1(5) or 1(6) of the Act (if not section 1(1)). In order clearly to establish the basis of valuation against what are by now relatively complex statutory provisions, he pointed out that the Primrose Lease was granted before 18<sup>th</sup> February 1966. Section 1(5) of the Act would apply to any property first rated on or before 1 April 1973 and section 1(6) would apply to any property first rated after that date. If for the purposes of section 1(1) the rateable value exceeded £200 on the appropriate day then for the purposes of section 1(5)

and 1(6) the relevant threshold is £750. In any event the valuation would only be made under section 9(1)(A) if the rateable value exceeded £500 on 31 March 1990, and that was not the case in respect of any of the subject properties. The Tribunal accepted that that is an accurate statement of the position as it applies here. Mr Moys' report indicates that the subject property was built in or about 1735 with later extensions, so that section 1(5) of the Act appears to apply in this case.

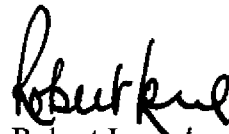
6. The potential elements of a section 9 valuation had been set out by Mr Moys in each of his reports, said Mr. Cole. The amount of the rent was one primrose, and Mr Moys had expressed the view that no value attached to the right to receive one primrose every year for the next sixty-two and a half years. The Tribunal accepted that no material value could be ascribed to such a right.
7. Mr Cole drew attention to the fact that Mr Moys did not ascribe any value to the landlord's right to the reversion to the house and premises in each case after the expiry of the fifty year extension (reviewable after twenty five years of that period) that would in any event be available to a lessee pursuant to the provisions of sections 14 and 15 of the Act at the end of the fifty year extension. As the law presently stands, a tenancy under Schedule 10 of the Local Government and Housing Act would arise, and the property would in his submission be old, so that the market would be unlikely at that stage to reflect any additional value over and above the site value. It was in his submission not possible to value the section 15 rent payable after twenty-five years of the extension period. There were many uncertainties involved and the exercise would be of a speculative nature.
8. It therefore followed, Mr Cole said, that the only relevant element of the valuation was the capitalised value of the rent arising in the extension period by virtue of the provisions of section 15 of the Act from the original term date (25<sup>th</sup> March 2069) until the expiry of the fifty year extension. Mr Moys had adopted the "standing house" approach to the valuation by taking the freehold value with vacant possession of the whole property ("the entirety value") and then taking a proportion of the entirety value in order to determine site value.
9. Mr Cole pointed out that the valuation date shown as 24 November in Mr Moys' report ought in fact to be 23 November. As he observed, this makes no material difference to the valuation
10. Mr Moys made reference to comparable transactions at Acorn House in Windmill Hill at Brenchley, where two houses had been erected on a double plot and the plot value represented 38% of the total achieved sale price of the two houses, and to the proposed sale of a site at the rear of Carlton House on Brenchley Road where the likely market value of the house to be erected was £450,000 to £475,000 and the site guide price was £160,000, some 33-35% of the likely sale price of the finished house. In the former case Mr Moys said that some economies of scale would be likely to have been achieved. He submitted in his reports as a result that it would be appropriate to take a site value of 33% of the market value of each of the subject properties for the purpose of determining the modern ground rent under section 15.

11. As to deferment rate, Mr Cole pointed out that Mr Moys had taken a rate of 4.75% in accordance with the guidelines set down by the Lands Tribunal in *Earl Cadogan –v- Sportelli* (LRA/50/2005). He had used the same percentage rate in capitalising the site rent.
12. The Tribunal accepted Mr Moys arguments about the site value. The figures that he described lent credence to the figure of 33% that he advanced, and that figure falls squarely within the bracket of 30-35% that is commonly accepted to form the percentage of the open market value of a house represented by site value. It had no difficulty on this occasion in adopting the figures advanced by the Lands tribunal for deferment rate. No arguments were advanced to it to suggest why there should be any departure from that rate. It apprehends that it is merely fortuitous that the rate of 4.75% was also used to derive the modern ground rent from site value, since there is no apparent connection between the rate used for that purpose and a deferment rate. The Tribunal was however content to accept that such a rate is acceptable for the purpose in the market in this locality since there was no evidence before to lead to a contrary conclusion.
13. Mr Moys had reached his assessment of the open market value of the subject property by use of the comparables contained in a compendium of comparables that he had provided to the Tribunal with his report. The Tribunal found that compendium most helpful when it came to consider the question of the open market values when arriving at its decision. After having carefully considered the open market value of £765,000 that Mr Moys had ascribed to the subject property in the light of those comparables, and having also considered the values so reached for each property by comparison, so far as practicable, with the values reached for the other five properties before it at the same hearing, it concluded that the evidence that Mr Moys had advanced supported the value that he had determined. It similarly accepted the arguments that Mr Cole advanced concerning the valuation that followed from it.
14. It follows from the foregoing that the Tribunal was able to accept the valuation for the subject property contained in Mr Moys' reports and set out at paragraph 1 above, and to determine that that sum is the price to be paid for the freehold reversion.
15. As to the draft transfers there is no evidence before the Tribunal to suggest that there are any matters omitted from them. There were however two minor amendments to which the tribunal's attention was drawn that require to be made:
  - a. in paragraph 6 the wording should read:

“The District Judge of the Tunbridge Wells County Court executes this transfer on behalf of the person or persons in whom the reversion hereby transferred is on the date hereof vested for an estate in fee simple”, and

b. the name of “Anthony James Higginson” in paragraph 7 and in the testimonium should be spelled “Antony James Higginson”.

16. The Tribunal’s attention was also drawn to the fact that the second applicant is named as Anne Veronica Higginson, whereas her correct name is Anne Veronica Fraser. The Tribunal is satisfied that no prejudice has been caused to any party by reason of that error and directs that the application is to be treated as if it had been correctly made in the name of Antony James Higginson and Anne Veronica Fraser.
17. The Tribunal’s valuation, which is Mr Moys’ valuation that it adopts, is set out in Annex 1.

  
Robert Long  
Chairman

15<sup>th</sup> May 2007

Appendix

“Little Portobello”, Windmill Hill, Brenchley Kent.

Valuation Date 23 November 2006

Value of the present rent (a primrose at Easter for 62.5 years)		Nil
Capitalised value of the Section 15 rent payable from March 2069 on basis of fifty year extension reviewed after 25 years:		
Entirety Value	765000-00	
Site value at 33%	252450-00	
Section 15 Rent @ 4.75%	11,991-00	
Years purchase in perpetuity deferred 62.5 years at 4.75% (1.158)		<u>£13885-58</u>
But say		<b>£13885-00</b>