

**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 5 The Lawns, Brenchley, Kent TN12 7NW

Case Number: CHI/29UQ/OAF/2007/0015

Between:

Mr R Butters and Mrs I E Butters

Applicants

And

(1) The Lawns (Brenchley) Limited and (2) Persons Unknown

Respondents

Decision of the Tribunal

Hearing: 21st June 2007

Miss Bridget Williams (instructed by Messrs Bailey & Cogger) for the Applicants

Mr J C Moys B Sc FRICS of Messrs Bracketts as expert witness called by the Applicants

The hearing was also attended by Mr Butters (5 The Lawns) and Mr Daniel (9 The Lawns)

Issued: 26th June 2007

Tribunal

Mr R P Long LLB (Chairman)

Mr R Athow FRICS

Mr N I Robinson 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 5, The Lawns, Windmill Hill, Brenchley Kent the subject of this application is the sum of £ 6715-00 (six thousand seven hundred and fifteen pounds)

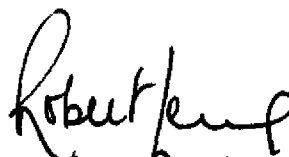
Reasons

2. The matter came before the Tribunal following an Order of the Tunbridge Wells County Court on 16th January 2007. The Order was made following an applications by the applicants (who in that applications were the lessees of eight of the ten properties in The Lawns, including the present Applicants) with regard to their respective properties at The Lawns 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(s) in question, and the price to be paid were to be referred to this Tribunal. It was a term of the Order that no sum was to be payable by those applicants for the superior tenancy of The Lawns (Brenchley) Limited.
3. There was before the Tribunal a detailed valuation reports dated 30th May 2007 prepared by Mr Jeffrey C Moys FRICS of Messrs Bracketts, Chartered Surveyors of Tonbridge 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 21st June 2007, 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. Miss Williams informed the Tribunal that the subject property was with much other property held under a lease, known as the “Primrose Lease” and dated 20th May 1569, which demised land at Brenchley 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 the Tribunal understands that the Primrose Lease itself is lost.
5. The subject property was demised by an underlease dated 1 June 1988 made between Denehurst Properties Limited (1) The Lawns Management Limited (2) and John Frederick Morgan and Audrey Mary Morgan (3). That lease demised the property for a term of five hundred years from 25 March 1569 less the last ten days, at the rent of one primrose on Easter Day (if demanded). Miss Williams outlined the making of the Order mentioned above, and its terms, and pointed out that the rateable value of each of the subject property on 31 March 1990 was less than £500 and the house was first rated in 1988. The Primrose Lease was granted in 1569. Accordingly, the subject property was brought within the legislation by section 1(5) of the Act, and the valuation was to be carried out in accordance with the provisions of section 9(1). There was no question of marriage value and the tenant’s bid was not to be ignored.

6. Since the Court, and not the Tribunal, was required by the terms of the Order to approve the form of conveyance, Miss Williams said that it was intended that the conveyance would be a conventional one with no rentcharge or other term that may affect the valuation.
7. Mr Moys spoke to his detailed valuation report that was before the Tribunal. He explained how he had derived the open market value of £370000 had been derived, primarily from the sales of 8 The Lawns in June 2005 for £360000 and of 3 The Lawns (a smaller property) in May 2006 for £310000. He considered that the open market value he had established was, for a house on a small plot like this, a fair representation of the entirety value, and since he had been dealing simultaneously with eight properties in The Lawns he felt he had been able to establish a fair representation of the comparative value of each.
8. 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 at that time 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. He ascribed no value to the right to receive a rent of one primrose.
9. It therefore followed 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 (25th March 2069) until the expiry of the fifty year extension. He had adopted the "standing house" approach to the valuation and had taken a proportion of the entirety value in order to determine site value. The valuation date is 11th December 2006, the date when the application to the Court that resulted in the Order was made.
10. The deferment period for the purposes of the valuation was accordingly approximately 62½ years, being the period from 11 December 2006 to 25 March 2069.
11. 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.

12. Mr Moys said that he 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) as the deferment rate. He had used the same percentage rate in capitalising the site rent because that was a figure that might be used in the locality at present in such transactions.
13. 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 on this occasion there should be any departure from that rate. His evidence was that a similar rate would be used for the purposes of capitalisation in the locality.
14. Mr Moys had reached his assessment of the open market value of the subject property by primary use of the comparables referred to above, but by reference also to comparables contained in a compendium that he had provided to the Tribunal with his report. After having carefully considered the value that Mr Moys had ascribed to the subject property in the light of those comparables, and his explanation of his methodology, and having also considered the values so reached for each property by comparison, so far as practicable, with the values reached for all the other properties at The Lawns that were before it on the same day and as part of the same hearing, the Tribunal concluded that it was might properly accept the values that Mr Moys had established as the entirety value of the subject property.
15. Finally the Tribunal accepted that the deferment rate referred to in Earl Cadogan –v- Sportelli of 4.75% was applicable in this case. No reason had been adduced before it for any departure from such rate. It had some reservation about applying what happened to be the same rate for the purpose of capitalising the ground rent but the only evidence before it was that this is a rate that might be used in the locality. It also accepted Mr Moys' view that no material value was to be ascribed to the right to receive a rent of one primrose (if demanded).
16. Accordingly the Tribunal was content to adopt Mr Moys' valuation, which was:

	£
Value of present rent (One primrose if demanded)	Nil
Entirety value	370000
Site value @ 33%	122100
Section 15 rent @ 4.75%	5799-75
YP in perpetuity deferred 62.5	
Years @ 4.75%	x 1.158
	6716-11
But say	<u>6715</u>


 Chairman 26th June 2007