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**Eastern Rent Assessment Panel**  
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**REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL**  
Leasehold Reform Act 1967 section 21 and section 27  
**DRAFT REASONS**

**Premises:** 246 Kristiansand Way, Letchworth Garden City, Herts SG6 1TU  
**Our ref:** CAM/26UF/OAF/2008/0017

**Hearing:** 7 November 2008

**Applicant:** Mr T M Thurstan

**Respondent:** Freehold Managers Nominees Limited (as reversioner)  
**Freeholder:** Letchworth Garden City Heritage Foundation

**Members of Tribunal:** Mr G M Jones - Chairman  
Mr J R Humphrys FRICS  
Mr R Thomas MRICS

**ORDER**

1. The price to be paid by the Applicant to Letchworth Garden City Heritage Foundation for the freehold interest of 246 Kristiansand Way, Letchworth Garden City, Hertfordshire SG6 1TU is £10.00 plus costs of £200.00 + VAT (if applicable) plus disbursements.
2. The price to be paid by the Applicant to the Respondent Freehold Managers Nominees Limited for the intermediate leasehold interest in the said property is £1,890.00 plus legal costs of £395.00 + VAT (if applicable) and valuation costs of £250.00 + VAT (if applicable).
3. The parties have permission to apply to the Tribunal within 28 days in the event the forms of transfer cannot be agreed and/or there is any dispute about disbursements.

**Geraint M Jones MA LLM (Cantab)**  
Chairman  
25 November 2008

A handwritten signature in black ink, appearing to read "Geraint M Jones".

## **0. BACKGROUND**

### **The Property**

- 0.1 The subject property is a small mid-terrace mock-Tudor house on an estate of houses of similar vintage in a moderate residential area of Letchworth. The property was built in about 1986-7 with softwood single glazed windows, including a wooden "jetty" window at first floor level on the front elevation, which is in poor condition. Generally, the windows are nearing the end of their useful lives. Most of the neighbouring properties now have UPVC double glazed units, which are undoubtedly an upgrade, though now standard for many new properties.
- 0.2 The front door opens into the modest living room. At the rear is a small kitchen/diner. At first floor level are one single and one double bedroom and a bathroom. The kitchen and bathroom still have the original fittings, which now appear rather dated. There is a tiny rear garden. At the end of the terrace is a small single lock-up garage.

### **The Leases**

- 0.3 A large number of properties in Letchworth were originally let on long leases in order that the freeholder Letchworth Garden City Corporation (now the Heritage Foundation) would be able to control development in the city through a strict regime of leasehold covenants. The subject property is no exception. It was let by Letchworth Garden City Corporation to the developer McLean Homes North London Limited on 15 March 1989 for a term of 990 years commencing 29 December 1986 at a peppercorn rent. That lease is now held by the Respondent, which at the same time (8 December 1995) purchased the leases of 72 neighbouring properties in Kristiansand Way, all built by McLean Homes and Bryant Homes.
- 0.4 McLean Homes underlet the subject property to Edith Collingwood on 14 December 1989 for a term of 125 years from 25 March 1988 at a ground rent of £125 p.a. payable annually in arrear. The under lessee covenanted not to make any alteration materially affecting the external appearance of any building nor make any addition without the written consent of both the mesne landlord and the head landlord. In the experience of the Tribunal, the Heritage Foundation in practice exercises firm control over development, which is both an advantage (as it prevents unsuitable development by neighbours) and a disadvantage (as it often prevents developments leasehold owners consider to be reasonable and desirable).
- 0.5 The Applicant purchased the underlease from Ms Collingwood in 1991 and currently lets the property to a monthly tenant on assured shorthold terms.

## **1. THE DISPUTE**

- 1.1 By notice dated 13 March 2008 the Applicant exercised his right to acquire the freehold of the subject property. It is common ground that this is the valuation date. The "reversioner" is the Respondent. It seems unlikely that there will be any dispute over the form or content of the transfer documents. After some negotiation, the Applicant has agreed a nominal price of £10.00 for the interest of the freeholder.

Negotiations took place between the Applicant and the Respondent in an attempt to agree the price; but without success. The issues remaining to be decided are the price to be paid to the Respondent for the intermediate leasehold interest and the sums to be paid to the Heritage Foundation and to the Respondent by way of costs.

## **2. THE ISSUES**

2.1 This application at first sight appears very simple and is, in principle, relatively straightforward. However, recent developments in the law have made all such applications more complex than was previously thought. Moreover, in this particular case, a good number of details proved incapable of agreement.

2.2 The Applicant's objections to the Respondent's case are as follows:

(a) The price to be paid for the intermediate leasehold interest should be £1,940 (allowing £10 to the freeholder), rather than the figure of £2,666 advanced by Mr Shapiro (or the figure of £4,000 sought by the Respondent in negotiation).

(b) In particular, the standing house value should be taken as £180,000; the site value at 25%; the capitalisation rate at 7%; the deferment rate at 5.5%; and there should be no "Haresign" addition.

(c) The valuation fee of the Respondent is agreed at £250 (plus VAT if applicable); the Respondent's costs to be paid by the Applicant should be reduced from £500 (as claimed) to £167.14 (plus VAT if applicable); the Applicant should not be required to pay any of the freeholder's costs.

## **3. THE EVIDENCE**

3.1 The Applicant has not engaged the services of an expert valuer to assist him in the determination of the price. He has, however, studied the law and valuation principles quite carefully and undertaken considerable investigation of the market. As a result, he advances a number of arguments against the valuation put forward by the Respondent through Mr Eric Shapiro BSc (Est Man) FRICS, IRRV, FCI Arb, an acknowledged expert in this somewhat arcane branch of property valuation.

3.2 As regards the freehold value of the property as it stands (assuming the property to be in good condition throughout), the Applicant has assembled a formidable body of comparable evidence. In particular, he relies upon the comparable evidence of 164 Kristiansand Way, a two bedroom mid-terrace house with separate garage, let for a term of 125 years with 105 years to run at a peppercorn rent and sold on 25 April 2008 for £176,500. Also 36 Kristiansand Way, an end terrace property with a parking space but no garage, sold in May 2006 for £155,000. Applying the Nationwide House calculator, the equivalent value in 2008 would be £171,887. A similar three bedroom mid-terrace property with parking space at 6 Chagny Close was sold in October 2007 for £186,000. 244 Kristiansand Way, a three bedroom end-terrace with adjoining garage was recently sold for £185,000. The Applicant argues that the Tribunal is not (as Mr Shapiro suggests) required to assume that the property is in new condition.

- 3.3 As a cross check on plot value, the Applicant refers to a building plot at Caslon Way sold earlier this year for £25,000. The Valuation Office Agency's most recent two Property Market Reports gives average plot values in nearby Stevenage as £2,650,000 per hectare, equating to £40,810 for the subject plot.
- 3.4 The remainder of the Applicant's case depends upon analysis of previous cases and legal submissions, amply and clearly set out in his written submissions.
- 3.5 The Respondent relies entirely upon the report of Mr Shapiro. There is no need to set out or summarise the comparable evidence relied upon by Mr Shapiro, which will be referred to as necessary to demonstrate how we reached our conclusions.

#### **4. THE LAW**

##### **Enfranchisement of Freeholds**

- 4.1 The Leasehold Reform Act 1967 enables tenants of long leases of houses let 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. 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.
- 4.2 In the case of an "old" lease, the appropriate valuation method is that set out in section 9(1). Under section 9(1) the price payable is the amount which on the valuation date the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family not seeking to buy) might be expected to realise on certain assumptions, including the assumption that the tenant would exercise his right to claim an extended lease under section 14.
- 4.3 It has been established by case law that the price should be determined by estimating the present value of the right to recover the property at the end of the assumed lease extension and adding the capitalised value to the landlord of the rent reserved under the lease and the modern ground rent payable under the assumed lease extension.
- 4.4 In most cases, the appropriate assumption is that the value to be realised by the landlord is site value only. In some exceptional cases, an addition is made for the residual value of the house itself (the "Haresign" addition); but in the ordinary case, it is assumed that the house will have reached the end of its useful life by the end of the assumed lease extension.
- 4.5 Paragraph 1 of Schedule 1 to the 1967 Act provides that, where there is more than one interest to be purchased by the Applicant, the holder of one of those interests (as defined in that paragraph) is the "reversioner" who must represent the interests of the others.

- 4.6 The Applicant must pay the reasonable costs of the landlord or landlords whose interests he is acquiring as set out in section 9(4). In case of dispute, the Tribunal determines the costs. The Tribunal will also, if necessary, settle the terms of the relevant transfers.

## 5. CONCLUSIONS

### Standing House Value

- 5.1 In the end, there is little difference between the parties as regards the value to be attributed to a freehold interest in the property as it stands. Both parties opt for a figure of £180,000 on the basis of the comparable evidence. Mr Shapiro, however, adds a further £5,000 to reflect the assumption he says the Tribunal must make that the site has been developed to its full potential i.e. that it contains the best new house that might reasonably be built on the site.
- 5.2 The Tribunal accepts that, in principle, the site value should reflect the development potential of the site. However, the Tribunal rejects the addition proposed by Mr Shapiro. This tiny site has been fully developed and, in the judgment of the Tribunal, a new freehold house on that site would not be worth any more than £180,000.

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### Site Value

- 5.3 Mr Shapiro argues that the plot value should be taken at 37.5% of developed value. He cites the decision of the LVT re **512 Haslucks Green Road, Solihull**, where the parties agreed a figure of 35%, and then makes an adjustment for the better location of the subject property. However, he has used 35% in his valuation schedules. The Applicant cites Hague (the standard textbook on leasehold enfranchisement), where plot values outside London are said to be generally between 25% and 33% of developed value. He argues that the subject property should fall at the lower end of this range because the plot is very small (about 0.0154 ha) and divided (thus reducing development potential); the frontage at 4.4m is very narrow; and there is a shared pedestrian right of way to the back garden.
- 5.4 The Tribunal considers that Mr Shapiro's figure is too high for this plot. The arguments advanced by the Applicant (as regards plot division, plot size and frontage) have considerable merit; but his figure is too low. Mr Thurston points out and the Tribunal notes that in his book "**Modern Methods of Valuation**", published by the Estates Gazette in 2000, Mr Shapiro reported that Tribunals outside London tended to use a figure around 30%. The Tribunal assesses the plot at 30% of developed value or £54,000 on the valuation date.

### Capitalisation Rate

- 5.5 Mr Shapiro refers once again to the **Haslucks Green Road** decision, in which a capitalisation rate of 6.5% per annum was adopted. He says that location is not relevant to this issue. On the facts of this case, the higher ground rent and the stable low interest rate regime currently existing suggest a rate of 6%, which is often adopted for flats in cases under the Leasehold Reform Housing & Urban Development Act 1993 ("LRHUDA 1993").

- 5.6 The Applicant says that in 1995, when the leases had just over 117 years to run, the Respondent purchased 73 freeholds in Kristiansand Way for £77,563, an average of £1,063 per unit. This (using his figures) equates to a yield of 11.96%. Making allowance for the passage of time and allowing a 50% profit margin, one reaches a figure of 7%. In the recent case of **Flats 5-8 Royston Court, Eastcote**, Mr Shapiro argued (successfully) on behalf of the Respondent for a figure of 7%. The LVT took into account the length of the term and the low ground rents and concluded that the income was very secure. Mr Shapiro's book states that:

"As a general rule, the Lands Tribunal decisions tended to adopt rates between 6 and 8%, but since 1980 most LVT decisions have adopted 7%. Higher rates have been employed where the outstanding term is relatively long or where there is market evidence."

- 5.7 In **Nicholson v Wilks** (LRA/29/2006) the Lands Tribunal said that the factors which affect the capitalisation rate are likely to vary in every case and will include the length of the lease term, the security of recovery, the size of the ground rent and the existence and nature of any provisions for review. In this case the term still has 105 years to run and the ground rent, though not very low, is fixed throughout the term. The Tribunal is not convinced by Mr Shapiro's arguments. In the judgment of the Tribunal the correct capitalisation rate in this case is 7%.

#### **Deferment rate**

- 5.8 There has been considerable controversy since the decision of the Court of Appeal in the **Sportelli** cases. In those cases, the Court upheld the finding of the Lands Tribunal that the deferment rate for the capital values of flats should generally be 5% and for houses 4.75% throughout England and Wales. Guidance on the application of **Sportelli** has since been given by the Lands Tribunal in **Hildron Finance Ltd v Greenhill Hampstead Ltd** (LRA/120/2006). This Tribunal is, of course, bound by the legal principles decided in the Court of Appeal.
- 5.9 In the **Sportelli** appeal, the Court was dealing almost exclusively with the application of LRHUDA 1993 to luxury flats in the prime Central London area ("the PCL"), the exception being a house valued under section 9(1A) of the 1967 Act. The **Sportelli** cases did not include any properties valued under section 9(1). Some lawyers consider that it was inappropriate or even wrong in principle to elevate findings of fact into what is, in effect, a rule of law. Some valuers are concerned about the fact that almost all the expert evidence in that case was put forward by extremely wealthy landlords holding large portfolios of very expensive London properties. Many valuers do not agree that the expert evidence relied upon in **Sportelli** is applicable to all cases throughout the country or to modest properties such as the subject property. In any event, it is far from clear whether the assumptions made by the undoubtedly eminent financial and valuation experts in the **Sportelli** cases still hold good in the light of the current devastating and almost entirely unexpected global economic crisis. Moreover, in several recent cases LVT's have decided that the **Sportelli** figures should not and do not apply to the deferment of capitalised rental income.

5.10 Returning to the facts of this case, the assumption the Tribunal must make for the purposes of section 9(1) is that at the expiration of the lease, in this case 105 years after the valuation date, the tenant will remain in occupation at a modern ground rent for a further 50 years, with a rent review after 25 years. The Act therefore requires the valuer to value and capitalise two income streams. The second income stream is usually taken in perpetuity unless, as in the Haresign case, the existing property is likely to be more valuable than the plot and still standing at the end of the new lease. The second income stream is capitalised and the present value obtained. It is at this stage that Mr Shapiro (for obvious reasons) argues that the Tribunal should follow the **Sportelli** decision.

5.11 This Tribunal disagrees. **Sportelli** allows the capitalisation of rents to follow the property market and it follows that the present value of rents should reflect the current property market. This is no different in principle from capitalising rents subject to review in cases where the present value is obtained using property market evidence – it is only upon reversion to the vacant possession capital value that the **Sportelli** deferment rate is applied to ascertain the present value. For the avoidance of doubt no Haresign addition is appropriate in this case because the house is unlikely to be standing in 100 years, let alone 155 years. The Tribunal does not accept that it is bound by reason of the **Sportelli** decision to adopt a deferment rate of 4.75%.

5.12 Free from the constraints of **Sportelli** and accordingly relying upon the knowledge and experience of its members, the Tribunal considers that the appropriate rate on the facts of this case is 6%. The Tribunal's valuation is set out in the Schedule hereto. As can be seen from the Schedule, the Tribunal considers that the price to be paid by the Applicant for the freehold on the valuation date in accordance with section 9(1) is £1,900. The Tribunal considers that the value of the freeholder's interest is nominal only and that a figure of £10 appropriately reflects that nominal value. Accordingly, the price to be paid to the Respondent is £1,890.

#### **Costs**

5.13 The freeholder seeks the sum of £350 + VAT for legal costs and £280 + VAT for the preparation of a site plan. The site plan is included in the hearing bundle (page 84). It is basically an extract from the OS map with dimensions drawn on it. It seems most likely that the dimensions were ascertained by scaling. In any event, there could be no possible need for a site visit in this case. The dimensions indicating the width of the garage are patently wrong; a garage only 1360mm wide would be useless. The Tribunal can think of no reason why it was appropriate for the Heritage Foundation to commission a plan and also considers the fee to be absurdly inflated. Accordingly, this cost is unreasonable and is disallowed.

5.14 Clearly the Foundation will incur legal fees in connection with the transfer of the freehold interest. But the whole estate is registered; the Land Register is not definitive of boundaries; and the conveyancing involves little more than the execution of a transfer (prepared by the purchaser) in standard form. It seems highly unlikely that any issues affecting the freehold title would involve the solicitor in any additional work.

Any matters arising would be likely to be dealt with by the Foundation in house as routine enquiries. The Foundation did not comply with the Tribunal's direction to provide a breakdown of legal costs. Doing the best we can on limited evidence, the Tribunal allows the sum of £200 + VAT (if applicable) for the legal costs of the freeholder and also allows any reasonably necessary disbursements (e.g. HIP expenses) for which copy invoices are provided to the Applicant. The Tribunal does not consider that there is any reliable evidence that the Applicant has agreed the legal costs of the Foundation.

- 5.15 The Tribunal accepts that the valuation costs of the Respondent are agreed at a figure of £250 + VAT (if applicable). The Respondent claims £500 + VAT for legal costs. The Respondent has complied with the Tribunal's direction to provide a breakdown of the costs claimed. This is at pages 1 and 2 of the bundle. It can be seen that all the scheduled work was carried out by a trainee solicitor, which appears appropriate having regard to the straightforward nature of the task. However, the Respondent estimated its legal costs at "no more than £395 + VAT". Almost all of the correspondence was probably routine and conducted using standard templates. The Tribunal takes the view that a trainee solicitor whose services reasonably justify a charging rate of £125 per hour should have been able to carry out the necessary work within that estimate. Accordingly, the Tribunal allows the Respondent the sum of £395 + VAT (if applicable) for legal costs.

Geraint M Jones MA LLM (Cantab)  
Chairman  
25 November 2008





**SCHEDULE**

**LEASEHOLD VALUATION TRIBUNAL'S VALUATION**  
**Leasehold Reform Act 1967 Section 9(1)**

**246 Kristiansand Way, Letchworth Garden City, Herts SG6 1TU**

Lease	125 years from 25 March 1988
Valuation Date	13 March 2008
Years Unexpired	105
Rent Reserved	£125 p.a. (no reviews)
Capitalisation Rate	7% for term
Capitalisation rate	6% for modern ground rent
Present Value or Deferment Rate	6%

**1**

<b>Term</b>			
Rent Reserved		125	
YP 105 years @ 7%		<u>14.2740</u>	1748

**2 Reversion to Modern Ground Rent**

Site Value			
£180,000 @ 30%		54,000	
Modern Ground Rent @ 6%		3,240	
YP in perpetuity @ 6%	16.666		
PV of £1 in 105 years @ 6%	0.0022	<u>0.3666</u>	119
			<u>1,903</u>

<b>Total enfranchisement price, say</b>	<u><u>£1,900</u></u>
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Allocation:

Letchworth Garden City Heritage Foundation	10.00
Freehold Managers Nominees Limited	<u>1,890.00</u>
	<u><u>£1,900.00</u></u>

**GMJ**