

**RESIDENTIAL PROPERTY TRIBUNAL SERVICES****LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL****CASE NUMBER: CAM/00MC/0AF/2009/0005****IN THE MATTER OF SECTION 9(1) OF THE LEASEHOLD REFORM ACT 1967****AND****IN THE MATTER OF: THE COTTAGE, ROSEHILL HOUSE, PEPPARD ROAD, READING RG4 8XD****Parties:****SIMON ANTHONY DAVID GREGORY  
SIOBHAN MARIE HUGHES****Claimants****-and-****JONATHAN PATRICK WEAL****Defendant****Appearances:****For the Claimant: Ms Hughes****For the Respondent: Mr Weal****Date of application: 16<sup>th</sup> April 2009****Date of Directions: 8<sup>th</sup> May 2009****Date of hearing: 15<sup>th</sup> July 2009**

<b>Tribunal Members:</b>	<b>A A Dutton</b>	<b>Chair</b>
	<b>Mrs H C Bowers</b>	<b>BSc(Econ)MSc MRICS</b>
	<b>Mrs S F Redmond</b>	<b>BSc(Econ)MRICS</b>

**Date of Decision: 29<sup>th</sup> July 2009**

## **DECISION:**

**The Tribunal determines that the price payable for the freehold of The Cottage, Rosehill House, Peppard Road, Reading RG4 8XD ('the subject premises') is £5,295 as set out on the Schedule attached to this Decision.**

## **REASONS:**

### **A. BACKGROUND:**

1. On the 26<sup>th</sup> October 2007 the Applicants served on Mr Weal, the Respondent, a Notice seeking the right to acquire the freehold of the subject premises. The extent of the property is set out in the Notice and includes the house, garage and land comprised in a Lease dated 6<sup>th</sup> October 1993 made between Northumberland and Durham Property Trust Limited (1) Termhouse (Rosehill House) Management Limited (2) and Stephen John Ford and Andrea Joy Ford (3).
2. On 20<sup>th</sup> December 2007 Mr Weal gave a Notice in reply refusing to admit the Applicants rights for the reasons set out therein.
3. On 26<sup>th</sup> February 2009 an Order was made in the Reading County Court in action number 8RG03085 declaring that the Claimants were entitled to acquire the freehold of the property as described in their Notice of Claim.
4. As a result of this Order the matter came before us to determine the price payable for the freehold and if necessary to consider the terms of the Transfer. We will refer to that matter later in these Reasons.
5. In the papers before us we had a copy of the freehold title held by Mr Weal, the leasehold registered title and the lease as well as the draft Transfer. In addition there was a Report prepared by Mr Christopher Derek Moore an associate partner of Haslams Chartered Surveyors. This Report was dated 8<sup>th</sup> April 2009 and had a number of appendices attached. Mr Moore calculated that the price payable for the freehold was £1,791 as set out on a valuation he had prepared and which was attached to his Report.

### **B. INSPECTION:**

6. On 15<sup>th</sup> July, prior to the hearing, we inspected the subject premises. The Cottage adjoins Courtyard Cottage forming one development situated in the grounds of a substantial property now converted into flats. The subject premises, which appear to have been built sometime towards the end of the 19<sup>th</sup> century, is of brick construction under a tiled roof.

Externally, there is a private driveway serving just the property with a garden area to the front part bounded by Courtyard Cottage. The property has a separate garage at the end of the private driveway. Internally the property comprises, at ground floor level, an entrance hall and, to either side, a living-room and dining room and at the rear a good sized kitchen with modern units. On the first floor are three double bedrooms and a bathroom which has been the subject of improvement works by the Applicants after the valuation date.

7. The grounds of the main house are also available to the Applicants to use with an open grass area dominated by a large cedar tree to the side of the main house and to the front a wooded area which Mr Weal believed had development potential. In addition we were told that there was a laundry room in the main building and a drying area available to all residents.

**C. MR MOORE'S REPORT:**

8. Mr Moore, in his Report, confirmed his experience and that the Report complied with the RICS Practice Statement (Surveyors acting as Expert Witnesses) and with the Guidelines prepared by the Expert Witness Institute. He confirmed that the basis of the valuation was under s9(1) of the Leasehold Reform Act 1967 as amended and that marriage value was excluded in any event notwithstanding that the lease has more than eighty years to run.
9. After giving a general description of the property and the accommodation he confirmed the terms of the lease which we have cited above and which provides for ground rent on a rising basis. It is confirmed that the Applicants are to acquire the freehold interest of the land which is registered under title number BK320310 which includes the garage and the drive to the side of the property. Certain rights are to be retained and also contributions towards certain service charge payments.
10. As to capital value he confirmed he had taken an unimproved value of £375,000 based upon certain comparable properties in Emmer Green although the details given were somewhat scant. On the basis of the capital value, and the ground rent, his calculation of the premium assumed a capitalisation rate for the ground rent at 7% a rate for the deferment at 7% and a site value of 45%. This gave the premium of £1,791.

**D. HEARING:**

11. At the hearing of this matter Mr Moore was not able to attend but Ms Hughes and Mr Weal were at the hearing. There were some issues that were raised by Mr Weal. The first was

the valuation date which he thought should be the date of the Order rather than the date upon which the Notice was issued. He also queried the basis upon which we were to proceed, believing that in fact the Applicants should be receiving a 999 year lease. We had before us a letter from myleasehold.com dated 14<sup>th</sup> December 2007, which was only received at the Panel Offices on 10<sup>th</sup> July 2009, in which an assessment of the premium based on an extension to the existing lease to 999 years had given the compensation payment due of between £3,900 and £8,800. Attached to that letter was also a valuation from Hummerstone and Hawkins dated 3<sup>rd</sup> September 2007 apparently prepared for HSBC Bank plc. We also had another valuation for myleasehold.com in respect of Flat 1, Rosehill House which did not seem to be relevant to this matter.

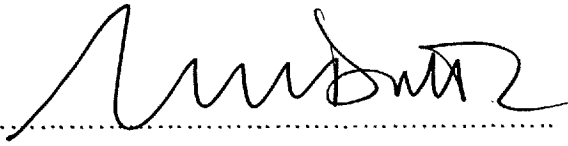
12. Mr Weal also raised the question of service charge arrears and we will deal with those in our findings.
13. We were told that solicitors were now in contact concerning the terms of the Transfer and again we will deal with that in our finding section. Although Ms Hughes was prepared to consider the terms of the Transfer she had no legal representation and Mr Weal said he would prefer that the solicitors agreed the arrangements between them.
14. Mr Weal confirmed that he agreed the capital value of the subject premises at £375,000 and also agreed a site value at 45% and had no objection to the capitalisation rate of the ground rent at 7%. So far as the deferment rate was concerned he thought 7% was too high and not in keeping with other Leasehold Valuation Tribunal Decisions. He believed Reading to be a commuter town close to London and that a 5% figure which he believed was in accordance with the House of Lords case of Sportelli would be the appropriate rate.
15. Mrs Hughes stood by the Report of Mr Moore.

**E. TRIBUNAL'S FINDINGS:**

16. We will deal firstly with some of the extraneous matters raised by Mr Weal. Firstly it seems to us that in accordance with the Act the valuation dated for this matter should be 26<sup>th</sup> October 2007. Mr Weal says that it should be from the date of the Order but of course in this case there is no Order in respect of this property but rather a declaration that the Applicant has the right to proceed and which Declaration specifically refers to the Notice given in October 2007. For that reason therefore we accept that is the due date upon which the valuation is to be assessed.

17. We are also satisfied that this property does fall within s9(1) of the Act and that any other valuation basis would be erroneous. The provisions of that section have been dealt with in Mr Moore's report at paragraph 3.1. There is no reason to consider that the Applicants would be entitled to a 999 year lease. Their application is for the acquisition of the freehold and that is what we are required to do under the terms of the Court declaration.
18. Finally Mr Weal raised contested issues in respect of service charge arrears. It was agreed that if there were any such arrears, which was not admitted by the Applicants, these would be dealt with separately.
19. We turn then to the assessment of the premium payable. It was helpful of Mr Weal to agree the capital value of the property at £375,000 and we see no reason to depart from that figure. We therefore need to consider the other elements. We conclude that the capitalisation of the ground rent at 7% as suggested by Mr Moore is reasonable given the nature of the investment and it was not challenged by Mr Weal. A site value at 45% for a property in the Reading area seems us to be perfectly reasonable and again was agreed by Mr Weal.
21. The question we therefore need to determine is the deferment rate. We have borne in mind a recent Lands Tribunal Decision which we referred to at the hearing of Mansal Securities Limited (2009) (No Respondent) and 21 Associated Appeal in the West Midlands (No Respondent) under Lands Tribunal reference: LAR/185/2007 etc., [2009] 10 EG 110. In that Decision the Tribunal held that in practice a valuer is deferring a capital sum (the site value) receivable on the termination of the existing lease. The decision went on to say that guidance as to deferment rate given by the Lands Tribunal in Sportelli are to be followed in cases under s9(1). In this case however the Lands Tribunal did consider that a s9(1) deferment rate at 5% was appropriate given that a higher risk premium would be required for the increased volatility and illiquidity of a site only. Having considered that Decision and the matters before us we conclude, likewise, that a 5% deferment rate is appropriate in this case. The 7% rate argued for by Mr Moore is not sustainable and in truth no evidence was given to us that we should depart that far from the guidance given in Sportelli. With these elements in place the price payable for the freehold is as set out on the attached Schedule.
22. We should perhaps also deal with the question of the Transfer. It seems to us that we are by agreement able to assist in the determination of the terms of the Transfer. However we will leave the parties to consider that and we give them 28 days in which to reach a

settlement on the wording of the Transfer. If they fail to do so the Applicants must apply to this Tribunal for the determination of the terms of the Transfer to be considered.



Chairman

Dated 29 July 2009

The Cottage Rosehill House, Peppard Road, Emmer Green, Reading

Valuation for Leasehold Enfranchisement under  
Leasehold Reform Act 1967

Valuation Date 26 October 2007

Ground rent YP 9 years @ 7%	£50 <u>6.515</u>		£326	
Ground rent YP 25 years @ 7% def 9 years 11.654 x 0.544	£100 <u>6.340</u>		£634	
Ground rent YP 25 years @ 7% def 34 years 11.654 x 0.1002	£150 <u>1.165</u>		£175	
Ground rent YP 24 years @ 7% def 59 years 11.654 x 0.01846	£200 0.212		<u>£42</u>	£1,177
Modern ground rent:				
Capital value	£375,000			
Site value @45% and ground rent @ 7%			£11,813	
YP in perpetuity @ 5% deferred 83 years			<u>0.34859</u>	<u>£4118</u>
<b>Premium payable</b>				<b>£5,295</b>