(11)

LVT 7 (3/94)

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LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON
RENT ASSESSMENT PANEL

Leasehold Reform Act 1967 — Housing Act 1980

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER S21(1)(b) OF
THE LEASEHOLD REFORM ACT 1967

Applicants: The Wimbledon and Putney Commons Conservators

Respondent: British Ensign Estates Limited

Re: The Mill House, Wimbledon Common, London SW19

Application to Tribunal dated 10 May 1996
Heard 16 December 1996 and 19 February 1997
Inspection 20 February 1997

Appearances:

Mr S Hunt (counsel)
Mrs J A King, Mr A Courtness and Mr Mayoor Parekh (Gregsons, solicitors)
Mr N G Simpson BSc (Hons) ARICS (Robert Holmes & Co)
Mr C E J Boston FSVA IRRV MCIM (Boston Carrington Pritchard)
Mr J Reader, Mrs E Witts, Mrs D Jones, Mr D Devons and Mr J Horrocks (conservators)

for the applicants

Mr C S R Marr-Johnson FRICS (Marr-Johnson & Stevens)
Mr D N MacLean Watt MA FRICS and Mr A S Beard BSc ARICS (Hamptons International)
Mr P G Blacker (British Ensign Estates Limited)

for the respondent

Members of the Leasehold Valuation Tribunal:

Lady Wilson MA (Chairman)
Mr D L Edge FRICS
Mrs L Walter MA

Date of Tribunal's decision: -8 APR 1997

The facts

1. The Mill House is situated on Wimbledon Common, near the well known Windmill. It was converted many years ago from two millers' cottages built at the beginning of the nineteenth century. The house has been extended over the years and is now a two storey house with, on the ground floor, three reception rooms, a kitchen/breakfast room, cloakroom, staff bedroom and bathroom, utility room and small study area, and, on the first floor, four bedrooms and two bathrooms. It also has a double garage. The house has a gross internal area of about 3469 square feet and stands on a plot of about 0.6 of an acre. Access to the property is by means of an unlit and unadopted road over the Common. It is held by British Ensign Estates, and occupied by Mr Blacker, a director of that company, together with his family, under an extended lease granted under the provisions of section 14 of the Leasehold Reform Act 1967 ("the Act") for a period of fifty years from 25 March 1971. The user clause of the lease provides that the lessee will not permit the house to be occupied other than as a private dwellinghouse. The ground rent payable under the lease was £900 per annum for the first twenty-five years, subject to a review on 25 March 1996. By a letter dated 6 September 1995 the landlords, the Wimbledon and Putney Commons Conservators, gave notice that the revised rent should be £55,000 per annum, and that was the figure which they asked for in their application to the Tribunal dated 10 May 1996. But by a letter dated 12 December 1996 they said that they proposed to ask for an increased rent of £80,000 per annum. The tenant contended that the rent should be £24,000 per annum.

2. The Mill House is not a listed building, although the Windmill is. At the review date it did not fall within a conservation area, but on 30 January 1997, before the resumed

hearing of the application, the London Borough of Merton included the house, together with the Windmill and the other buildings adjacent to them, in 'the Wimbledon Mill Conservation Area'. The whole of Wimbledon Common, including The Mill House, is Metropolitan Open Land and therefore, according to the Unitary Development Plan for the area, 'New buildings, other than minor extensions ... should be ancillary to the open space use and located so that from the surrounding public highways and areas to which the public have access appreciation of the extent and openness of the metropolitan open land is not impaired. Suitable development proposals must also be to a scale and character appropriate to that area.' The property is also within a designated Site of Special Scientific Interest and an Archaeological Priority Zone. The house is of historical interest as a former home of Lord Baden-Powell, who is said to have written part of *Scouting for Boys* there.

3. The Wimbledon and Putney Conservators are an elected body who derive their powers from The Wimbledon and Putney Commons Act 1871, section 34 of which provides that "The Conservators shall at all times keep the Commons open, uninclosed and unbuilt on, except as regards such parts thereof as are at the passing of the Act inclosed or built on ... and shall by all lawful means prevent, resist, and abate all encroachments and attempted encroachments on the Commons, and protect the Commons and preserve them as open spaces ... ".

4. On 20 February 1997, after the conclusion of the hearing, we inspected The Mill House externally and internally, and we inspected externally all the comparable properties relied on by both parties with the exception of The Old Mill House, 79 Villiers Road, Kingston-upon-Thames.

Decision

1. By section 15(2) of the Act, the rent "shall represent the letting value of the site (without including anything for the value of the buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy ...". For the purpose of the rent review the value of the site is to be assessed at the review date, 25 March 1996. The Lands Tribunal in *Farr v Millerson's Investments* ((1971) 218 EG 1177) identified three recognised methods of estimating the value of the site: the "cleared site" approach - a direct estimate, based upon sales of comparable sites, of what the site would be worth as a site for a new house; the "standing house" approach - where the site value is assessed as a percentage of the freehold vacant possession value of the property; and the "new-for-old approach" - estimated by taking the hypothetical value of the property with the best new house that might reasonably be expected to be built on it, substituted for the existing one, and deducting the estimated costs of building it.

2. The new-for-old approach is now largely discredited and was not relied on by either of the parties. The standing house approach has also been criticised as artificial and arbitrary (in, for example, *Miller v St John Baptist's College, Oxford* (1977) 243 EG 535). Mr Hunt, for the Conservators, invited us to rely primarily on the cleared site approach and to use the standing house approach as a cross check. Mr Marr-Johnson, for the tenant, said in his report that the cleared site approach was inappropriate since the site could not in fact be cleared, and he therefore relied only on the standing house approach. In our view the cleared site approach is to be preferred as allowing less room for guesswork and supposition, provided that evidence of transactions relating to comparable sites is available. Mr Simpson said on behalf of the Conservators that there were several sales of comparable cleared sites on which we could rely, details of which

he set out in appendices VIII and IX of his report, and these, he said, suggested that the value of the site of The Mill House was £1,000,000. We inspected all the sites which he listed; and, although Mr Marr-Johnson was, in our view, wrong to say that the cleared site approach could not be used because the site could not be cleared, (assessing a section 15 ground rent being by its nature an artificial exercise), he was on much stronger ground when he said that none of the cleared sites put forward was comparable to the site of The Mill House. All the cleared sites we saw were relatively small plots in residential roads, entirely different in character, location and size from the site of The Mill House; and we derived little assistance from them other than the most general confirmation of what we already knew, namely that parts of Wimbledon are high value areas of prestigious houses. We therefore, on the evidence in this case, prefer to rely on the standing house approach.

3. Mr Hunt said that the entirety value of the property, which we were required to take as the starting point for our evaluation of the proportion attributable to the site, was the value of the realistic maximum development of the site, namely £2,000,000, this being the value of the best single private dwellinghouse that could exist on the site. This approach he based on the Lands Tribunal decision in *Cadogan Estates Ltd v Hows* ((1989) EG 216), which concerned the enfranchisement price for a two storey mews house in a conservation area in Cadogan Lane, London SW1. The Tribunal concluded, following *H A Patten v Wenrose Investments Ltd* (1976) 241 EG 396, that the entirety value was the value of the property in good condition and fully developing the potential of its site. Mr Boston, who gave evidence for the Conservators in the present case and for the tenant in the *Hows* case, relied on the *Hows* case to support his view that the entirety value in the present case was the value of a hypothetical house, with 31.5 rooms and with an area of around 10,000 square feet, which might be constructed on the site if there was no building there already. That is not in accordance with our reading of the decisions

in *Hows* and *Wenrose*. In *Hows*, the entirety value found by the Lands Tribunal assumed the construction of an additional floor, a single-storey rear extension and internal rearrangement of the existing house, for which the Tribunal found on the evidence that planning permission was likely to be granted and that it was "feasible in practical terms" to carry out the works. In *Wenrose*, the entirety value assumed that the properties concerned were to be taken as they stood but in good condition and properly converted into maisonettes. That is by no means the same thing as envisaging that the existing house be removed and the house re-built; and in our view this argument for the Conservators is misconceived. We regard as fanciful and unrealistic the proposition that a developer would, as Mr Boston suggested, buy this site on the assumption that he could obtain planning permission to build a house of around 10,000 square feet. Such a mansion would be entirely out of keeping with its surroundings and it is in our view quite unrealistic to suppose that planning permission for it would be granted. Even though The Mill House was not within a conservation area at the valuation date, events have shown that it was likely to be so included if any proposal were made to demolish it. Moreover, even if the house were to be demolished, then, though Mr Simpson said that the planning authorities had informally indicated that the requirements of their Unitary Development Plan for open land would not be strictly applied to land already enclosed and built on, we consider it out of the question that the sort of property which no doubt would be allowed in some residential roads in Wimbledon would be allowed on this site. And even if we are wrong in our interpretation of the *Hows* case, the site, though large by London standards, has a number of drawbacks, described below, which would in our view limit its appeal to a developer intent on building a house worth £2,000,000. We accordingly reject Mr Hunt's argument on this point.

4. As an alternative, Mr Hunt proposed that we should estimate the entirety value on the basis of a more modest plan for improvement. In his evidence, Mr Boston, for the

Conservators did not address this hypothesis, which he regarded as not in accordance with *Hows*, but Mr Simpson did. He postulated that the property might be altered so as to extend the living accommodation, including the construction of an annexe over the garage, a swimming pool and a tennis court, with improved vehicular and pedestrian access, and with loose boxes or stabling in the rear garden, and concluded that its value in that state would be £1,850,000. During and following our inspection we considered the feasibility and practicality of such alterations. We concluded that an extension over the garage, adding perhaps an extra bedroom and bathroom, was, on the evidence, likely to receive planning permission, would be feasible and practical, and would add some value to the property. We also concluded that some improvement to the vehicular and pedestrian access to the property might be feasible and practical and that it, too, might add value to a small extent. We did not consider that a swimming pool, tennis court or loose boxes or stabling would add value, even if they were feasible. A swimming pool and tennis court would have to be constructed on the front lawn, which they would virtually eliminate, and, with it, much of the character of the property which has the air of a small Regency country house. Loose boxes, which would have to be constructed at the back of the house, next to the public car park, would be too close to the house for comfort, would in our view be likely to compromise the security of the house and would themselves be insecure, bearing in mind their proximity to the car park.

5. Accordingly, in our view, the entirety value of the property is its value in good and tenantable repair (in which it appears to be), but with the addition of extension over the garage and improved access. Mr Simpson did not address the value of the property in this condition, although he considered the value of the property as it currently stands to be £1,250,000. This valuation he based on a comparison with 42 Burghley Road, 10 Marryat Road and 12 Marryat Road. He conceded, however, that the values he had given were as at the date when he gave his evidence (16 December 1996) and that prices

had risen by seven or eight per cent, and possibly by as much as ten per cent, since March 1996. He said that, though these comparables were larger houses, the size of plot and the amenity value were less. Mr MacLean Watt for the tenant said that he had had great difficulty in finding direct comparables for the property. He said that the property had advantages and disadvantages. Its advantages were, he said, the secluded location with rural "feel", the attractiveness of the property with its period character, the age of the house, which was unusual in Wimbledon, the historic nature of the building, the proximity to the golf course and the Common, and the large plot, also unusual in the area. The disadvantages were the secluded location which could be seen as dangerous by some purchasers, by virtue in particular of the notorious unsolved murder which took place a hundred metres or so from the property, the proximity to the Windmill café, public lavatories and car park (which were a particular nuisance at weekends), the very poor layout at ground floor level in that the drawing room had to be approached through the dining room or ground floor fifth bedroom, the inferior reception rooms for a property within its price bracket, and the fact that there were only four first floor bedrooms. On the basis of our inspection, we agree with Mr MacLean Watt's description of the advantages and disadvantages of the property. Indeed, at our inspection, on a sunny Thursday morning at around 10 am, the smell, at the entrance to the property, of fried food emanating from the café was quite pronounced and the car park had a number of cars in it. There are two blocks of public lavatories very close to the perimeter of the back garden; the London and Scottish Golf Club House, which is also very close, has a shop; and the Windmill itself houses a museum which is advertised as open to the public in the summer months. Moreover the stables, occupied by the Commons Rangers who are responsible for security, are very close to the house. Security in the area appeared to be tight and was said at the hearing to have been so since shortly after the murder in July 1992, but the valuers for both parties agreed that the unsolved murder is likely to have had a substantial effect on value. Mr MacLean Watt relied on

a number of comparables in Wimbledon and Petersham to support his valuation of £1,000,000. He said in evidence that he had assumed for the purpose of his valuation that the extension over the garage had been built, but we find this hard to understand, since the extension would eliminate one of the disadvantages (only four first floor bedrooms) on the basis of which he made his valuation. In arriving at our valuation we have taken into account all the comparables suggested by the parties, and we have considered the advantages and disadvantages of this unusual property. We have concluded that its entirety value as defined above was, at the valuation date, £1,200,000.

6. The next issue which we have to determine is the proportion of the entirety value which is attributable to the site. For the Conservators, Mr Hunt said that the correct proportion was 50 per cent. Mr Marr-Johnson contended for 40 per cent, based exclusively, it appeared, on the decision of the Lands Tribunal in *Carthew and Others v Estates Governors of Alleyn's College of God's Gift (The Dulwich College Case:* (1974) 231 EG 809*)*. In *Farr v Millerson's Investments Ltd* the Tribunal said that "the proportion normally adopted (outside central London) varies, on the evidence, between one-quarter and one-third" but that "in central or near-central London or in other areas of highly-priced residential land, the proportion adopted is commonly higher, of the order of (plus or minus) 40 per cent." However, as appears from the cases (many of them quoted in Hague's *Leasehold Enfranchisement*, second edition, at pages 154 and 155), the percentage adopted depends on the evidence and the individual circumstances of each case. Where the site contributes an above average proportion of the value, the percentage should in our view be adjusted upwards. In the *Hows* case, for example, where the site, though small, was in prime central London, the evidence supported a proportion of 50 per cent. In the present case the site is in a high value area and is also unusually large and, despite its drawbacks, in our view it contributes very significantly to the value of the property. The *Dulwich College Case* concerned eight houses on, as far

as can be determined from the report, relatively small plots. The percentage of 40 per cent site value to entirety value adopted by the Tribunal was based on an analysis of two recent residential developments in the immediate vicinity and was not intended to be of general application. In the present case we had, as we have found above, no evidence of transactions affecting comparable sites; but we have applied our knowledge, and the principles to be derived from the cases, and have concluded that the correct percentage of site value to entirety value is 50 per cent.

7. We then have to determine the percentage rate to decapitalise the site value to arrive at the section 15 rent. Mr Hunt argued for 8 per cent and Mr Marr-Johnson for 6 per cent. Both agreed that rates commonly used in the locality for capitalising ground rents (11 per cent, for example, in the case of *84 Arthur Road SW19* (LON/ENF/26)) were inappropriate as a guide on the facts of this case. Both parties agreed that market and fair rent levels were irrelevant as a guide (see *The Dulwich College case*). Mr Hunt accepted that 7 per cent was the most usual percentage yield to apply, but based his suggested yield of 8 per cent solely on Mr Boston's evidence of his own analysis of a settlement in 1993 of an enfranchisement claim in relation to The Old Mill House, 79 Villiers Road, Kingston-upon-Thames. We do not consider that evidence of one agreed transaction in a different location should lead us to conclude that 8 per cent is the appropriate yield rate. Mr Marr-Johnson suggested 6 per cent, based principally on *The Dulwich College Case*. Neither party put before us any really helpful market evidence to assist us in determining the rate to be used here. We concluded that with this high value site, in a very good residential area, with only twenty-five years unexpired on the lease, an investor would readily accept a return of 6 per cent, and that this was the percentage we should apply to derive the rent from the site value.

8. Our valuation is accordingly as follows:

Entirety value	£1,200,000
Site value at 50 per cent	£600,000
Section 15 rent at 6 per cent	£36,000 per annum

Accordingly, we conclude that the rent to be paid by the tenant of The Mill House for the remainder of the extended lease, with effect from 25 March 1996, should be £36,000 (thirty six thousand pounds) per annum.

CHAIRMAN.....

DATE.....8 APR 1997.....