

**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 23 Kelston Road, Weston Super Mare, BS22 7FD

Case Number: CHI/00HC/OAF/2009/0007

Upon the application of: Ms Barker ("the Applicant")

Inspection: 18th June 2009

Determination: 18th June 2009

The matter was considered in the light of written representations without a hearing

Decision of the Tribunal

Issued: June 2009

Tribunal

Mr A D McCallum Gregg (Chairman)
Mr M J Ayres FRICS

Decision

1. The Tribunal has determined for the reasons set out below that the price payable by the Applicant for the freehold reversion in this matter is the sum of £3,328.

Reasons

2. 23 Kelston Road ("the property") is a detached two storey house built in about 1988 on a development at Worle. Whilst the Tribunal were unable to gain access to the internal of the premises they were able to inspect the premises externally and had the benefit of a description from a report prepared by Messrs Stephen & Co dated 3rd June 2009. It was noted that the property appeared to be built of reconstituted block brick cavity construction with a pitched concrete tiled roof.

The Tribunal were informed that the accommodation comprises a ground floor entrance hall, cloakroom, living room, fitted kitchen open to and with step down to extension comprising a utility area with a gas boiler leading to a conservatory. On the first floor there is a landing, airing cupboard, three bedrooms, shower room, wash basin and WC combined. An adjoining former garage has been reduced in size to facilitate extension and is now a storage area only. There is an open plan front garden and an enclosed rear garden.

Due to the inability to inspect the premises the Tribunal were unable to ascertain what main services were connected to the premises or the sources of water and space heating. There appeared from the inspection to be no material improvement or modernisation that could be disregarded for the purposes of valuation.

The applicant had not sought a hearing before the Tribunal and the members of the Tribunal carried out only an external inspection of the property on the 18th June 2009.

3. The property is built upon land that was part of that demised by a 16th century lease, of which the Tribunal understands no copy is now known to exist. The demise was in favour of John and Isobel Thomas for a term expiring in 2057 at an annual rent of £1.6s.9d (£1.34p). We are informed that no rent is paid by the lessees of the property under this lease. The whereabouts of the lessees or the beneficiaries under the lease are now unknown. The rateable value is £218.
4. A claim has been submitted to the Weston Super Mare County Court under Part 8 of the CPR on the 7th day of April 2009 and a draft order under Section 27(5) of the Act vesting the freehold of the property in the Applicant has been approved by the court. The order contains a paragraph in the following terms:-

"AND THIS COURT determines and declares pursuant to the provisions of section 27(5) of the Leasehold Reform Act 1967 that the estimated amount of pecuniary rent payable for the said property by the Applicants as tenants thereof under the lease out of which the Applicant's current interest arises as

provided by section 3 of the Landlord & Tenant Act 1954 as amended and which remains unpaid and which will remain unpaid up to the date of this order is the sum to be determined by the Leasehold Valuation Tribunal (under section 9(i) of the Leasehold Reform Act 1967 under the "original valuation" basis)."

5. The amount that the Tribunal is to determine is the 'appropriate sum' defined in section 27(5) of the Act as follows:

'The appropriate sum which in accordance with sub section (3) above, is to be paid into Court is the aggregate of:

- (a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9 above, and
- (b) the amount or estimated amount as so determined of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.'

6. Section 9 of the Act sets out in detail the assumptions to be made and the procedure to be followed in carrying out the valuation. The effect of section 27(1) is that the valuation date is the date on which the application for an Order was made to the Court. The Tribunal is informed that in this case the application was made on the 7th of April 2009.
7. The Tribunal is aware that the expression "original valuation basis" is one that is referred to in a paper on the website of the Leasehold Advisory Service (LEASE) intended to explain valuations in matters of this nature to the general public, although the term does not appear in the leading textbook upon the matter, Hague on Leasehold Enfranchisement. However, the paper in question adopts the "standing house" method of valuation as does the valuation from Messrs Stephen & Co the applicant's valuers, which is the method commonly adopted for valuations under section 9(1) of the Act. The question whether or not a Court in these circumstances is entitled to instruct an expert tribunal upon the valuation method it is to adopt is not settled, but since the Tribunal would be minded in any event to adopt the standing house approach in the present case, and it appears that that is the approach that the Court may have had in mind, no issue arises upon the point.
8. There is unlikely to be evidence of sales of vacant sites because the locality in which the property stands has been fully developed for some years. Finally, the Tribunal bore in mind the cases to which the Applicant's valuers stated that they had considered.
9. For the purpose of establishing what amounted to the standing house value of the property on the valuation date Messrs Stephen & Co had supplied details of sales of five comparable properties, namely:

() Wansborough Road on the market since 2009 at £174,950

41 Priston Close, sold in February 2008 at £158,500 (semi-detached)

4 Locksbrook, sold in May 2008 at £215,000

8 Knight Close, sold in August 2008 at £167,000

And finally, an unnamed property sold subject to contract in April 2009 at £169,950.

From these figures they had concluded that the entirety value of the subject property based on the valuation date was fairly represented by the sum of £175,000. On the basis of its collective knowledge and experience of local processes and of the movement in them between the dates of the sales mentioned and the valuation date, together with the lack of comparables of the evidence supplied to the subject property, the Tribunal saw no reason to differ from that view.

10. Messrs Stephen & Co argued that the site value should be taken as 25% of the entirety value, rather than the 27.5% that might more ordinarily be expected after taking into account all the facilities. The Tribunal felt that 27.5% was the appropriate figure and furthermore the Tribunal noted that, unfortunately, Messrs Stephen & Co in their calculations had referred to a valuation figure of £100,000 as opposed to their earlier figure which the Tribunal accepts of £175,000.
11. The Tribunal accepted Messrs Stephen & Co's representation that a modern ground rent in this locality might be established using a 7% rate of return on the site value. That produces a modern ground rent of £3,369. It added no amount for unpaid ground rent as any apportionment of the rent of one shilling and sixpence originally reserved produces an entirely insignificant sum for an individual property.
12. The Tribunal was mindful of the decisions of the cases cited by Messrs Stephen & Co in their valuation report and in particular the decision in the cases of *Arbib v Cadogan 2005* and *Cadogan Estates Limited v Sportelli 2006*. Those decisions indicated that in the absence of special circumstances the appropriate deferment rate to be employed in enfranchisement calculations is 4.75% for houses and 5% for flats. Since the evidence before the Tribunal did not deal with the point, and because Messrs Stephen and Co in their valuation dated 3rd June 2009 had taken a deferment rate of 7% as has previously been used in cases in this locality.
13. In Sportelli the Lands Tribunal has discussed its responsibility for giving guidance in cases of this nature to Tribunals that fall within its sphere. At paragraph 117 of its decision it said:

"The function of the Tribunal is thus to make decisions on points of law and on what may be called principles of practice to which regard should be had by the first-tier tribunals and by practitioners dealing with claims in any of the Tribunal's original or appellate jurisdictions. Such principles of practice are not, in our view, confined to valuation methodology (for example, in rating, whether local authority leisure centres should be valued on the contractor's basis or by some other method: see *Eastbourne Borough Council v Allen (VO)* [2001] RA

273) but may extend to matters of quantification if the considerations underlying the quantification are of general application.”

14. At paragraph 123 of the same decision, the Lands Tribunal said:

“The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate.”

15. Messrs Stephen & Co make several points in this respect and in particular that the Arbib and Sportelli cases relate to London and not the provinces. Thus one must take care in applying these decisions to a property like 23 Kelston Road where there is no ground rent passing and there may be many changes in interest rate before the reversionary date.

16. The Tribunal considered this point carefully. It could find nothing in Sportelli to indicate that it was intended only to apply to London, although it recognises that the property concerned was part of the Cadogan estate in central London, and as such in very many ways different from the estate of which 23 Kelston Road forms a part. There is however nothing in the Lands Tribunal’s decision to suggest that Sportelli is only to have application in London cases. Indeed, as the quotation from paragraph 123 of their judgement set out above indicates, they take the view that the rates they have identified are “generally applicable”.

17. The Tribunal is of the view that it is required to value the property in accordance with the requirements of the Act. It does however recognise that there is some force in the argument that the absence of a ground rent in these cases can be regarded in this context as a particular feature that may indicate some departure from the rates mentioned by the Lands Tribunal as does the absence of a freeholder who can enforce the freehold covenants. Those factors in its judgement produce a risk factor that may be regarded as higher than that for a normal reversionary investment.

18. In the light of all those factors the Tribunal concluded that it was right to take a deferment rate of 6% rather than 4.75% as Sportelli might otherwise indicate or 7% as suggested by Messrs Stephen & Co.

19. The Tribunal’s valuation therefore was:

Ground rent reserved:	Nil
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Reversion

Estimated site value (27.5% of the entirety value of £175,000)	£48,125.00
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Modern Ground rent @ 7%	£3,369.00 pa
YP in perpetuity @ 6% deferred 48.5 years	0.98786
Total	£3,328.00

20. The Tribunal approves the form of transfer that was sent with the application, a copy of which is annexed and is signed by me for identification.


Andrew Gregg
Chairman

June 2009

Approved by me - A. C. C. C.
3rd July 2009

Land Registry
Transfer of whole of registered title(s)

TR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) of the property: AV156323
2	Property: 23 KELSTON ROAD, WORLE, WESTON-SUPER-MARE, NORTH SOMERSET, BS22 7FD
3	Date:
4	Transferor: THE SUCCESSORS IN TITLE TO CATHERINE WALLOP AND HENRY WALLOP <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:
5	Transferee for entry in the register: PAULINE SUSAN BARKER <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in England and Wales including any prefix:
6	Transferee's intended address(es) for service for entry in the register: 23 KELSTON ROAD, WORLE, WESTON-SUPER-MARE, NORTH SOMERSET, BS22 7FD
7	The Transferor transfers their interest in the Property to the Transferee

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

8 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):

The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate:

9 The transferor transfers with

full title guarantee

limited title guarantee

10 Declaration of trust. The transferee is more than one person and

they are to hold the property on trust for themselves as joint tenants

they are to hold the property on trust for themselves as tenants in common in equal shares

they are to hold the property on trust:

11 Additional provisions

12 This Transfer is made pursuant to an Order for enfranchisement within the provisions of Section 8 and Section 27 of the Leasehold Reform Act 1967 made in the Bristol District Registry by Order of District Judge dated the _____ day of _____ 200

13 Application is hereby made to the Chief Land Registrar to close the leasehold Title Number AV156323 and to cancel the entries numbers 1 and 2 of the Property Register

transferor must execute this transfer deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

14 Execution

SIGNED AS A DEED pursuant to the Order for
Enfranchisement by

DISTRICT JUDGE
as Successors in Title to Catherine Wallop and Henry Wallop
in the presence of:-

Signature of
Witness

Name (*in Block Capitals*)

Address

.....

SIGNED AS A DEED by PAULINE SUSAN BARKER
in the presence of:-

Signature of
Witness

Name (*in Block Capitals*)

Address

.....

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.