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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property: 52 Long Lane, Aston End, Hertfordshire, SG2 7HD

Applicant Leaseholders: Mr John Burns & Mrs Jean Ellen Burns

Applicants' Solicitor: Boyes Sutton & Perry, Solicitors, 20 Wood Street,
Barnet, Hertfordshire EN5 4BJ

Applicant's Valuer: Mr Derek Evans MRICS of Bevan Hollis Associates,
Wellingham House, 15 Church Street, Welwyn,
Hertfordshire AL6 9LN

Respondent Freeholder: Unknown

Case number: CAM/26UD/OAF/2010/0004

Application An application to the Tribunal under Section 21
Leasehold Reform Act 1967 (the 1967 Act) to determine
the amount to be paid in to court pursuant to Section
27(5) of the 1967 Act as amended by the Commonhold
and Leasehold Reform Act 2002

Tribunal: Dr JR Morris (Chairman)
Miss M Krisko, BSc (Est Man), BA, FRICS
Ms E Flint DMS FRICS IRRV

Hearing Date: 2nd June 2010

Enfranchisement price determined by Tribunal £5,127

DECISION

Preliminary

1. An Application to the Leasehold Valuation Tribunal was made pursuant to an Order of the Hitchin County Court in case number 9H101914 dated 24th November 2009 and issued on the 27th November 2009.
2. The Order provides that further enquiry and advertisement asking for anyone claiming to be the freehold reversioner of the Property be dispensed with.
3. The Order also provides for a Leasehold Valuation Tribunal to determine the price payable in accordance with section 27 of the Leasehold Reform Act 1967.
4. The Application to the Leasehold Valuation Tribunal was made on the 18th March 2010.

5. The date of the Application to the County Court was not known. The only date available to the Tribunal was the 24th November 2009, which was the date of the Court Order. Therefore in the absence of evidence that the matter was not dealt with immediately on application the 24th November was deemed to be the date of application to the Court and therefore the date of valuation.

Documents received:

6. Documents received relevant to the Application are:
- a) A Claim Form (CPR Part 8) the main points of which are that:
- The Property is leasehold and registered at the Land Registry with Good Leasehold Title under title number HD156268
 - The lease dated 15th October 1564 for a term of 500 years from 20th October 1564 has been lost and the original parties to the Lease are not known
 - The Applicants have never paid rent
 - The Applicants have occupied the property as their only or main residence since September 1988
 - The freehold reversioner was unknown and could not be found
 - The Applicants therefore claim to be entitled to the freehold reversion of the Property
- The Applicants requested the Court to direct that:
- The matter is referred to the Leasehold Valuation Tribunal to determine the amount to be paid into court pursuant to Section 27 of the 1967 Act and the freehold of the Property be vested in them
- b) A Court Order of District Judge Field Claim Number 9H101914 in the Hitchin County dated 24th November 2009, directing that:
- The matter is referred to the Leasehold Valuation Tribunal to determine the amount to be paid into court pursuant to Section 27 of the 1967 Act
 - On receipt of such determination the Claimants are to file the determination with the Court together with the draft Order and Transfer
- c) Official Copy of Register Entry Title Number HD156268
- d) Application to the Leasehold Valuation Tribunal was received 18th March 2010

The Subject Property

7. The Tribunal inspected the Subject Property in the presence of the Applicant. The Property is a Grade II semi-detached house the original part of which is wood frame and the more recent additions are brick rendered with wooden cladding to match the wooden frame portion. The roof is thatched. It is believed that the original part of the Property dates from 1748 and that it was extended during the early part of the nineteenth century and again about 25 years ago.
8. The accommodation comprises a dining room/kitchen, cloakroom/utility room and living room on the ground floor. On the first floor there is a landing, off which is a bedroom and study through which is access to a bathroom with w.c. and the main bedroom beyond. The layout would be awkward for family living. Main water, electricity and drainage are connected. There is no gas and space heating is by oil-fired central heating to radiators. Outside there is a detached conservatory. The

Property has a long frontage to the road and it was noted that looking at other properties the site was fully developed.

The Lease

9. The Property Register of the Leasehold Title Number HD156268 states that the Lease under which the Subject Property is held was dated 15th October 1564 for a term of 500 years from 20th October 1564 and that the parties are unknown. From other leases in the area the Landlord may have been Sir John Butler. The rent reserved, if any, is not known and it is stated that neither the Applicants nor their immediate predecessors have paid rent.
10. At the date of valuation there are approximately 55 years remaining of the term of the Lease.
11. The Proprietorship register states that Good Leasehold Title is granted to the Applicant
12. The Charges Register states that the Property is subject to a right reserved in a deed dated 2nd June 1972 between (1) Peter Martineau (Vendor) and (2) Keith Stansfield Jackson and Susan May Jackson (Purchaser) to the owner for the item being of 2 Asmores coloured blue on the attached plan to the free and uninterrupted passage and running of water soil and electricity.
13. The Lease relates to the whole of the Property.

The Law

14. The Leasehold Reform Act 1967 as amended by the Commonhold and Leasehold Reform Act 2002 (the 1967 Act) enables tenants of houses on long leases at low rent to enfranchise (acquire the freehold) their properties.
15. Section 21 of the 1967 provides that if the parties do not agree a price an application may be made to the Leasehold Valuation tribunal to determine the price. The valuation methods are set out in section 9 of the 1967 Act.
16. Section 27 of the 1967 Act provides for an application to the court where the landlord cannot be found to dispense with notice and require a Leasehold Valuation Tribunal to determine a price under section 9 to be paid into court and terms of transfer to be filed with the court.
17. Section 9 of the 1967 Act provides for one of three methods of valuation to determine the price depending on the rateable value of the property. The relevant method in this case is that set out in section 9 (1) which requires the tribunal to assume that at the end of the current term, the tenant has applied for and been granted an extended lease under section 14 of the 1967 Act for a term of 50 years from the date of the existing tenancy at an open market ground rent. The basic principle is that the enfranchisement price should compensate the landlord of the loss of rents (including any current arrears) until the extended term date and the loss of the freehold at that time.
18. The Tribunal may therefore, as at the valuation date:
 - Ascertain and determine the current open market value of the Subject Property as it stands taking into account its full development value based, as far as possible,

upon the sales of comparable properties close to the valuation date and then determine the site value of the Subject Property (this is assessed as a percentage of the open market value) or alternatively determine the site value directly from the sale of plots.

- Assess the annual open market modern ground rent under section 15 of the Act which is calculated as a percentage of the site value
- Ascertain and add the amount of any recoverable arrears
- Calculate the current value of the lost future rents (using actuarial tables)

19. This will give the enfranchisement price, which relates only to the site value. In some cases an additional calculation is made to compensate the landlord for the loss of the house on the land where it is likely that this will still be standing at the end of the extended term. This is referred to as the *Haresign* rule after the case of *Haresign v St John the Baptist College, Oxford*.

The Evidence

20. A Hearing was held following the Inspection at which the Applicant's Surveyor attended and confirmed his written valuation, previously submitted, in oral evidence.
21. The Applicant's Surveyor stated in a written valuation that he had been unable to establish the rateable value of the Property as at 23rd March 1965 due to the lack of records but had been informed that the water charge was based on a 1985 rateable value of £202. It was therefore submitted that the rateable value would not have exceeded the limits provided in the legislation of more than £200 as at 23rd March 1965 and therefore a valuation in accordance with section 9 (1) of the 1967 Act had been prepared.
22. The Surveyor submitted a valuation based on the standing house approach, which firstly requires an assessment of the unencumbered freehold interest in the Property. The surveyor stated that he had taken the valuation date as being the 27th November 2009. The Tribunal accepted that there was no difference in values between the 24th (the deemed valuation date) and 27th November 2009.
23. The Applicant's Surveyor's personal inspections of properties in the locality and information from the Land Registry. The Applicant's Surveyor referred to a number of comparable properties as follows:
- Diamond Cottage, Holders Lane, which is close to the Property but is a 1900 detached house with 4 bedrooms, 2 reception rooms and an external area of 156 square metres. It was sold in March 2002 for £379,000. Using the Nationwide Society indices in the last quarter of 2009 a value of £570,000 would be indicated.
 - 32 Tatlers Lane is a detached period house with entrance lobby, cloakroom, kitchen, lounge, rear lobby and dining room on the ground floor and landing, 3 bedrooms one with ensuite and a family bathroom on the first floor. It has an external area of 137 square meters. It sold for £414,000 on 27th November 2009.
 - 30 Tatlers Lane is a larger detached property with at least 4 bedrooms on a larger plot and sold for £530,000 on 21st September 2004.
 - 53 Long Lane refurbished semi-detached house dating circa 1900/1920, which sold in December 1999 for £150,000. Applying the indices this would give a 2009 value of £292,000.
 - South along Long Lane there is a terrace of four houses built circa 1970 which are probably 3 bedroom properties. Number 8b (mid terrace) was sold in January 2010 for £239,995 and 8d (end terrace) was sold in December 2002 for £215,000.

- 12 Long Lane which the Surveyor was not able to identify positively is a semi detached house that had sold for £232,500 in May 2003 and which applying the indices would be valued at £275,000 at the date of valuation.
24. The Applicant's surveyor stated that the best comparable was 32 Tatlers Lane being in close proximity and the same floor area. However, it is better presented, detached and in a superior position (Long Lane suffering from through traffic and proximity to the Crown Inn). It was also said that the Agents considered that they were fortunate to achieve the price obtained.
 25. It was suggested that the site had been developed to its full potential although there might be a slight premium for its period nature compared with more modern properties. The Applicant's Surveyor stated that in his opinion the market value of the freehold interest in the Property as at the date of valuation in good condition was £325,000.
 26. The Applicant's Surveyor submitted that the assessment of the land as a factor of the above value would be one third. He noted that in recent years 40 to 45% and in some cases more had been achieved for plots but that this had been affected by the reduction in the availability of finance for such projects more than general housing.
 27. It was submitted that the *Sportelli Case* had set a yield on the reversion deferment of a rate of 4.75% for the enfranchisement of houses for central London. It was submitted in oral evidence that this was not applicable to section 9(1) calculations and this appeared to be the view of the Tribunals in the following Leasehold Valuation Cases of:
 32 Bennington Road, Aston – CAM/26UD/OAF/2006/0015
 22 Wrights Orchard, Aston – CAM/26UD/OAF/2007/0004
 Holders Cottage, Aston End – CAM/26UD/OAF/2007/0001
 This is not like a London investment where there is a rent receivable throughout the term until a reversion to capital value. In the present case there is nothing for 55 years after which there is a rental income (capitalised under the 1967 Act enfranchisement to compensate the Landlord for its loss). There is no reversion to a capital value.
 28. In the Tribunal cases referred to above a rate of 7% had been applied. The Applicant's Surveyor stated that he had applied the same in his own calculations. When pressed to justify the sum he stated that he considered it a little high and that in discussions with Mr John Hillson, a surveyor with Letchworth Heritage Foundation, a large landowner in the locality, he had found that 6% was applied which he thought was probably more appropriate.
 29. It was also noted that the Haresign addition had not been applied in the above cases and it was submitted that it should not be applied in this case either.
 30. The Applicant's Surveyor submitted a valuation calculation as follows:

| | |
|--------------------------|----------|
| Market Value of freehold | £325,000 |
| Value of land at 33.33% | £108,333 |
| Section 15 rent at 7% | £ 7,583 |

Term

| | |
|----------------------------------------------|----|
| Rent not known and no present monetary value | £0 |
|----------------------------------------------|----|

| | |
|------------------------------------------|----------------|
| <u>Reversion</u> | |
| Section 15 rent | £ 7,583 |
| YP in perpetuity at 7% deferred 55 years | <u>0.34578</u> |
| | £2,622.05 |

Enfranchisement price **£2,650**

31. A draft Transfer was submitted to the Tribunal.

Determination

32. The Tribunal agreed that the method of valuation specified in section 9(1) of the 1967 Act applied.

33. The Tribunal considered the comparable evidence submitted by the Applicant's Surveyor and agreed that it was difficult to find a direct comparable but that the 32 Tatlers Lane was the most similar although accepted that the price of £414,000 should be adjusted to take account of the 32 Tatler's Lane being detached, with a better layout and in a more desirable position away from the relatively busy road and Crown Inn public house. The Tribunal agreed that the market value of the freehold interest in the Property as at the date of valuation in good condition was £325,000.

34. The Tribunal agreed that the land was fully developed and therefore no further adjustment was made.

35. The Tribunal also agreed that the assessment of the land as a factor of the above value would be one third and that a modern market ground rent would be 7% of the land value.

36. The Tribunal agreed with the Applicant's Surveyor that the yield of 4.75% referred to in the *Sportelli Case* related to the capital value of a property on reversion. This yield was used to calculate the compensation payable to the landlord for the loss, as a result of the enfranchisement or lease extension, of the *capital* value of the property at the end of the lease. The yield for calculating the compensation payable to the landlord for the loss of the *income* was not in issue in the *Sportelli Case* although in that particular case the legislation required the landlord's compensation to be calculated using both yields.

37. However under section 9(1) of the 1967 Act, which applies in the present case, the landlord's compensation is based on the capitalised loss of income only. Under section 15 of the 1967 Act the income which the landlord would lose is a modern market ground rent that would be payable in perpetuity at the end of the current lease. Therefore the Tribunal has to assess, on the evidence and using the knowledge and experience of its members, an appropriate yield rate for the capitalisation of the modern market rent that would be payable in perpetuity at the end of the current Lease and which would be lost by the landlord on enfranchisement. In doing so the Tribunal noted the evidence of the Applicant's Surveyor and the practice of Letchworth Heritage Foundation, which corresponded with the knowledge and experience of the Tribunal members. The Tribunal therefore determined that a figure of 6% should be applied.

38. The Tribunal were of the opinion that the *Haresign* rule addition should not be applied in this case. The addition under the Rule is normally only applied where the remaining

term is very short e.g. a few years. The Tribunal were of the opinion that as the *Haresign* calculation is based on calculating a deferred capital value on reversion then the decision in the *Sportelli Case* would be applicable.

39. The Tribunal calculated the enfranchisement price as follows:

| | |
|--------------------------|----------|
| Market Value of freehold | £325,000 |
| Value of land at 33.33% | £108,333 |
| Section 15 rent at 7% | £ 7,583 |

Term

| | |
|----------------------------------------------|----|
| Rent not known and no present monetary value | £0 |
|----------------------------------------------|----|

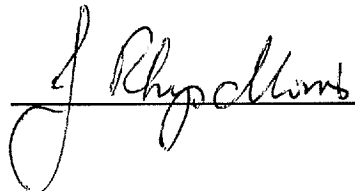
Modern Ground Rent (section 15)

| | | |
|-------------------------------------------|-----------|-----------|
| Section 15 rent | £7,583 | |
| Years Purchase in perpetuity at 6% | 16.667 | |
| Present Value deferred for 55 years at 6% | 0.0405674 | |
| 16.667 x 0.0405674 | = | 0.6761368 |
| 0.6761368 x 7,583 | = | £5,127 |

| | |
|------------------------------|---------------|
| Enfranchisement price | £5,127 |
|------------------------------|---------------|

40. Therefore Section 8 of the Transfer submitted to the Tribunal should be amended to read **Five thousand one hundred and twenty seven pounds (£5,127)**.

41. Generally in respect of an application under the 1967 Act the Applicant must pay the Landlord's costs however in the case of an Application under section 27 the landlord does not incur costs and therefore the Tribunal make no order as to costs.

 JR Morris (Chair)

10th June 2010