

LVT/58

18, Broadstone Hall Road North, Heaton Chapel, Stockport, Cheshire, SK4 5JZ

LEASEHOLD VALUATION TRIBUNAL  
OF THE  
NORTH WESTERN RENT ASSESSMENT COMMITTEE

DECISION OF THE TRIBUNAL  
ON AN APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967  
AND SECTION 142 HOUSING ACT 1980 AND SCHEDULE 22  
LEASEHOLD REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993

PROPERTY	18, Broadstone Hall Road North, Heaton Chapel, Stockport, Cheshire, SK4 5JZ
APPLICANT/LEASEHOLDER	Mr J Bramley
RESPONDENT/FREEHOLDER/HEAD-LEASEHOLDER	Terrafirma Properties Ltd, PO Box 11809, London, N20 8WL
MEMBERS OF TRIBUNAL	Mrs D Artis LL.B LL.M Mrs J A Turner FRICS Mrs S H Cawthra JP
DATE OF TRIBUNAL'S DECISION	15 <sup>th</sup> January 2001

**NEITHER PARTY APPEARED BEFORE THE TRIBUNAL**

This document records the decision with reasons of the Tribunal following an application to determine the price payable for the freehold estate in the house and premises above-mentioned in accordance with the provisions of the Leasehold Reform Act 1967, as amended.

The applicant has occupied the above property, Title Number CH16956, since November 1967. The Proprietorship Register shows that Mr Bramley has good leasehold title. The Property Register shows that the land is held on an under-lease, dated 6 October 1934, for a term of 997 years from that date, at a rent of £5 per annum and originally made between James Henry Williams and Jennie May Hancock. The under-lease requires the rent to be paid in equal instalments on 29 September and 25 March each year.

The under-lease also refers to two leases, one relates to 5,736 square yards of land and is dated 3 November 1933. It is for a term of 999 years from that date at an annual ground rent of £23 and 18 shillings per annum. The second lease relates to 4,797 square yards of land and is for a term of 999 years from 5 July 1934 at an annual ground rent of £17 and 10 shillings. The plan accompanying the under-lease, provided to the Tribunal, indicates that the two lots of land referred to in the two leases were divided into 29 plots. Assuming this is correct it explains the Respondent's reference (in a letter dated 6 November 2000) to £1-41 annual rent for an individual plot in respect of the head-lease. However the freeholder acquired these head leases, as evidenced by a letter, dated 14 February 2000, from the previous head-lessors (Hesmondhalgh and Morgan) stating that as from that date all their interest in the property in question was transferred to Terrafirma Properties Ltd, the Respondent. Thus the respondent became entitled to receipt of the ground rent of £5 p.a. reserved by the under-lease dated 6 October 1934 and having acquired the head leases, ceased to receive the rents thereby reserved.

Mr Bramley served notice on the respondent, dated 1 October 2000, of his claim to acquire the freehold of the above property. In a letter dated 9 October the Respondent replied acknowledging the Applicant's right. In that letter the Respondent also stated that they were the owner of both the freehold and the head-lease in the above property and were willing to sell both interests for £375, that sum to include legal fees but excluding Land Registry fees.

An application was made to the Leasehold Valuation Tribunal dated 7 October 2000 in which Mr Bramley stated that in his opinion a reasonable price for the purchase of the freehold was between £80 and £100.

Further correspondence from the Respondent, dated 6 November 2000, requests the Tribunal to inform the Applicant that he is obliged to pay the Respondent's legal fees in addition to the purchase price to be determined by the Tribunal. This, they envisage, will be in total more than the £375 requested by them in the first instance.

The Tribunal inspected the subject property on the morning of 15 January 2001 in the presence of Mr Bramley. The property is a three bedroom, semi-detached house with garage. There is a drive and gardens to front and rear. It is situated among similar properties in a pleasant residential area.

A hearing was available later that morning. Neither party was present or represented. The Respondent wished it to be put on record that they feel it is not equitable to expect someone to travel from London to Manchester for such a Tribunal and they should have the right to transfer the hearing to London. The Tribunal notes these comments. There is however no right of transfer and as the property is situated in the Manchester area the application is dealt with by the local Tribunal with knowledge and experience of the area.

In coming to their decision, the Tribunal took their sole function to be that of determining a price in accordance with Section 9 of the Leasehold Reform Act 1967, as amended, that is: "the amount which at the relevant time, the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family who reside in the house not buying or seeking to buy) might be expected to realise".

Certain statutory assumptions must be made, but the only one of significance in this case is that in effect the freehold is being sold subject to the existing lease; that is with its 997 year term extendable for a further 50 years (Section 9(1)(a)).

In discharging this function of determining the price, the Tribunal (following the earlier Tribunal decisions in *Yates v Bridgewater Estates Ltd* (1982) 261 EG 1001 and *Williams v Walsh and Others* 268 (1983) EG 915) took into account the following:

- (1) that there was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties;
- (2) that it would not be consistent with the verbal definition of price in Section 9 (1) of the 1967 Act or with the circumstances of the case to apply the algebraic formula prescribed by Parliament for the redemption of rent charges (Rent Charges Act 1977, Section 10);
- (3) that they were entitled to rely on their general knowledge and experience whatever the evidence or representations (or the absence of such) submitted by the parties;
- (4) that the statutory wording involved envisaged the sale on its own as one lot, that is not as included in a parcel of ground rents,
- (5) that the possibility of bids from the sitting tenant which might push up the open market price had been expressly excluded by the 1967 Act;
- (6) that the seller (although not the buyer) had been statutorily described as "willing" so any policy or practice of the landlord restricting sales had to be disregarded;

- (7) that the resultant loss of income to the landlord/seller was not comprehended by the statutory formula for determining the price payable excepting insofar as this was reflected in the normal valuation/market process;
- (8) that the hypothetical and potential buyers in the market would all have in mind their own conveyancing costs (although not also those of the seller under Section 9(4) of the 1967 Act) and any covenants which would be continued in the conveyance (see Section 9(1)(C) and Section 10(4) of the 1967 Act) and most important the length of the term and the amount of ground rent under the lease, and
- (9) that the costs of collection of the ground rent which might involve Agents, the giving of receipts and proceedings for the receipts and proceedings for the recovery of arrears must be taken into account as a half yearly matter strictly in accordance with the terms of the lease notwithstanding any practice of less frequent payment.

In the present case there are 930 years unexpired. In those circumstances, the Tribunal took the view (as did the Lands Tribunal in **Janering v English Property Corporation Ltd and Nessdale Ltd (1977) 242 EG 388**) that a reversion of more than 900 years would not be of any significance and (as in the above case) the right to receive a ground rent of £5 per annum, with no prospect of capital appreciation would be of limited attraction. The other clauses in the leases were regarded as minimal.

No comparable evidence was provided by either party, hence the Tribunal concluded they would rely on their own knowledge, experience and judgement. It is the Tribunal's opinion that the maximum justifiable in the present case is a purchase price of £25 calculated on the basis of 5 years purchase of the ground rent of £5.

This amount is exclusive of permitted costs.

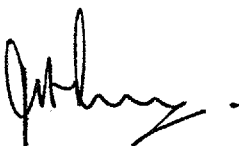
Turning to the Respondent's request (in a letter dated 6 November 2000) to inform the Applicant that he is obliged to pay the Respondent's legal fees, the Tribunal for information refer the parties to section 9(4) of the 1967 Act. This specifies that where a person gives notice of his desire to have the freehold of the house under the Act "there shall be borne by him--the reasonable costs of or incidental to any of the matters set out in Section 9(4)(a) to (e)". Furthermore under paragraph 5 of Schedule 22 to the Housing Act 1980 the costs which a person "may be required to bear under Section 9(4) of the 1967 Act do not include costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal."

No application has been made to this Tribunal at this time for a determination as to reasonable costs.

By Section 142 and Schedule 22 Part 1 paragraph 2 to the Housing Act 1988 an appeal to the Lands Tribunal may be made by any person who;

- (a) appeared before or was represented before the Tribunal and
- (b) is dissatisfied with the Tribunal's decision

Such appeal must be made within 28 days of the issue of the reasons (Lands Tribunal Act 1949 Section 6(3) and the Land Tribunal rules 1975 as amended).



**J A TURNER FRICS  
VALUER MEMBER  
LEASEHOLD VALUATION TRIBUNAL**