

**NORTH WESTERN RENT ASSESSMENT PANEL**

Ref: MAN/00BQ/OAF/2004/0006

**Leasehold Reform Act 1967 Section 21  
Housing Act 1980 Section 1 & 2 & Schedule 22**

This document records the decision of a Leasehold Valuation Tribunal in respect of an application for enfranchisement in respect of

**30 Derwent Drive  
Littleborough  
Rochdale  
OL15 0BT**

**Applications:** By notice dated 31<sup>st</sup> October 2002 Mrs C Kershaw sought to exercise her rights to acquire the freehold of her residence. The notice was sent to the freeholders Leafenvoy Limited, 2 Mottingham Road, Edmonton, London, N9 8DY who entered into correspondence but did not serve official notice acknowledging Mrs Kershaw's right to acquire. An application for determination by a Leasehold Valuation Tribunal was submitted by Mrs Kershaw dated 27<sup>th</sup> June 2004 and received 28<sup>th</sup> June 2004.

**Inspection:** The Tribunal comprising C H Davies MA FRICS, J Hilton FRICS and Mrs J Howell Phd inspected the subject property during the morning of 19<sup>th</sup> August 2004. It found the house to be a 4 bedroomed detached dwelling of modern construction attractively designed improved and located. The original and subject site was relatively small but had open views to the rear. The rear garden had been extended by recent purchase of a freehold strip of former agricultural land. Recent extensions comprised a rear porch/utility room for which landlords consent had been granted, and a conservatory, the erection of which post dated the application to purchase the reversion.

**Hearing:** A hearing took place later the same day at the Tribunal's Manchester office, the applicant was present and represented by her husband Mr Kershaw FRICS. The freeholders did not appear but submitted a letter. The Tribunal had the benefit of a copy of the subject lease dated 3<sup>rd</sup> March 1978 for a term of 999 years from 1<sup>st</sup> November 1976 at a fixed ground rent of £25 per annum payable in equal half yearly instalments. The lease was

in usual terms as to grantor and grantee with covenants stipulating, inter alia, a landlords' consent in writing for material alterations or additions subject to a reasonable charge of not less than £5.00 plus VAT. Mr Kershaw related his wife's correspondence with the freeholder which encompassed an offer to sell at £2,200 plus costs and a counter offer of £750 plus costs. He stated that his current estimate of value of the ground rent was 10-15 years purchase given that individual rents were unattractive and attributed his wife's earlier higher offer to a desire to settle and not have recourse to current proceedings. He did not think the freeholders written points were valid in relation to market value or the requirements of the subject legislation.

Leafenvoy Limited in its letter dated 16<sup>th</sup> August 2004 stated its belief that £2,200 was fair and reasonable for the freehold given an increase in their opinion in the value of the house when offered freehold of £5,000 and references to 'the arbitrator' exercising fairness to both parties and to look to open market value of the merged interest and not investment value.

### **Valuation Principles**

- i) That there was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties.
- ii) 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 (Rentcharges Act 1977, s10);
- iii) 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;
- iv) That the statutory wording involved envisaged the sale on its own as one lot, ie not as included in a parcel of ground rents;
- v) 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;
- vi) That the seller (although not also the buyer) had been statutorily described as "willing" so that any policy or

practice of the landlord restricting sales had to be disregarded;

- vii) That the resultant loss of income to the landlord/seller was not comprehended by the statutory formula for determining the price payable;
- viii) That the hypothetical and potential buyers in the market would 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
- ix) That the costs of collection of the ground rent, which might involve agents, the giving of receipts and proceedings for recovery of arrears must be taken into account as a yearly matter strictly in accordance with the terms of the lease notwithstanding any practice of less frequent payment.
- x) In many cases in the open market tenants anxious to purchase the freehold of their properties often without valuation advice put forwards which include the tenants bid as an element which the Tribunal has to exclude (Delaforce -v- Evans 1970 215 EG 31).

**Decision:**

The Tribunal acting as an expert body and not arbitrator decided that interest in the purchase of a single ground rent in the open market without a leaseholders bid was very limited. Necessarily ignoring the 'Delaforce' factor in past negotiations between the parties, it considered that taking into account the hypothetical purchasers costs and a rent of £25 per annum a value of circa 10 years purchase was warranted. In this case given the capricious market, the superior nature of the property and neighbourhood, a slightly higher bid could be envisaged and therefore a figure of £275 (Two hundred and seventy five pounds) was warranted.

**Costs:**

The above awards are exclusive of costs as set out in the Leasehold Reform Act 1967 Section 9 (A).

An appeal may be made from this decision to the Lands Tribunal by leave of the Leasehold Valuation Tribunal or the Lands Tribunal. Such appeal must be made within 28 days of the issue of reasons

(Lands Tribunal Act 1949 Section 6/3 and (Lands Tribunal Rules 1975) as amended.

A handwritten signature in black ink, appearing to read 'C H Davies', with a long horizontal stroke extending to the right and ending in a small flourish.

**C H Davies**  
**Chair – Leasehold Valuation Tribunal**

**Dated 20/09/04**