

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL**

Property: 30 Benington Road, Aston, Hertfordshire, SG2 7DY

Applicant Leaseholder: Mr Charles Patrick Magnus Mowat

Applicant's Solicitor: Mrs Vivienne Hamilton, Hamilton Davies, 28 High Street, Stevenage SG1 3HF

Applicant's Surveyor: Mr JEG Lowe of McNeill Lowe and Palmer, Charter House, Marlborough Park, Southdown Road, Harpenden, Herts, AL5 1NL

Respondent Freeholder: Unknown

Case number: CAM/26UD/OAF/2006/0014

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: Mr JR Morris (Chairman)
Miss M Krisko, BSc (Est Man), BA, FRICS
Mr JR Humphrys FRICS

Hearing Date: 1st September 2006

Enfranchisement price determined by Tribunal **£1,242**

DECISION

Preliminary

1. An Application to the Leasehold Valuation Tribunal was been made pursuant to an Order of the Hitchin County Court in case number 6H100561 dated 30th March 2006 (the Order). Application to the Court for the Order was made on the 16th March 2006.
2. The Order provides that the Applicant is not required to any further steps for the purpose of tracing the Landlord(s) of the Property whether by advertisement or otherwise.
3. The Order also provides for a Leasehold Valuation Tribunal to determine the price payable in accordance with section 27(5) of the Leasehold Reform Act 1967.

4. The Application to the Leasehold Valuation Tribunal was made on the 15th June 2006.

Documents received:

5. Documents received relevant to the Application are:
 - a) A Claim Form (CPR Part 8)
 - c) Official Copies of Register Entry Title Number HD328361 and HD435443 relating to the Leasehold title
 - d) An expert's Report and Valuation
 - f) A Court Order dated 30th March 2006
 - g) Draft Transfer

The Subject Property

6. The Tribunal inspected the Subject Property in the presence of the Mr Martin the Applicant's neighbour. The Property is a Grade II listed mid terraced house with a combination timber framing and brickwork with rendered elevations under a pitched tile roof. There is no off road parking. The demised land is an awkward shape with a path and tiny garden area to the front and a long slim rear garden.
7. The accommodation has now been interlinked with the adjacent property, 28 Benington Road. However for the purposes of the valuation the Subject Property was considered as a separate entity and as such comprises a shared entrance lobby, living room and kitchen on the ground floor and on the first floor there are two bedrooms and a bathroom. All main services are connected and there is gas fired central heating to radiators.

The Lease

8. The Property Register of the Leasehold Title Number HD328361 states that the Lease under which the Property is held was dated 20th October 1564 for a term of 500 years from 1654 between (1) Sir John Butler and (2) Thomas Waterman. The rent reserved if any is not known.
9. The Property Register states that neither the original Lease nor any copy thereof was supplied on first registration and the particulars were taken from an Assignment dated 9th September 1949 between (1) Ian Donald MacIcomson and Richard Hamilton Anstruther-Gough Calthorpe and (2) Ellen Paternoster.
10. The Proprietorship register states that Good Leasehold Title is granted to the Applicant.
11. The Property Register of the Leasehold Title Number HD4353443 also states that the Lease under which the Property is held was dated 20th October 1564 for a term of 500 years from 1654 between (1) Sir John Butler and (2) Thomas Waterman. The rent reserved if any is not known.

12. The Property Register states that neither the original Lease nor any copy thereof was supplied on first registration and the particulars were taken from an Assignment dated 15th June 1949 between (1) Ian Donald MacIcomson and Richard Hamilton Anstruther-Gough Calthorpe (Vendors) and (2) Cecil Leonard Merrick and Edith Elizabeth Merrick (Purchasers).
13. The Property Register also states that the Subject Property has the benefit of the rights granted but is subject to the rights reserved by an Assignment dated 20th August 2004 between (1) Anthony Richard Martin and Janet Louise Martin and (2) Charles Patrick Magnus Mowat.
14. The Proprietorship register states that Good Leasehold Title is granted to the Applicant
15. The Charges register states that the Assignment dated 20th August 2004 between (1) Anthony Richard Martin and Janet Louise Martin and (2) Charles Patrick Magnus Mowat contains restrictive covenants.

The Application

16. The Applicant has applied to enfranchise the Subject Property under the provision of the Leasehold Reform Act 1967. A Court Order dated 30th March 2006 directed that the matter is transferred to the Leasehold Valuation Tribunal to determine the valuation of the freehold reversion of the Property pursuant to section 27(5) of the Leasehold Reform Act 1967.

The Law

17. 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.
18. 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.
19. 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.
20. 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 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.

21. The Tribunal must 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. This is the starting point of the calculations and is assessed for the Subject Property based, as far as possible, upon the sales of comparable properties close to the valuation date.
 - Determine the site value of the Subject Property (this is assessed as a percentage of the open market value)
 - 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)
 - Calculate the open market value of the Subject Property at the end of the extended lease at today's prices (using actuarial tables)

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

22. A Hearing was held following the Inspection on the 1st September 2006 at which the Applicant's solicitor attended.
23. The Surveyor submitted that the Subject Property was unlikely to have had a rateable value of more than £200 as at 23rd March 1965 and therefore the valuation method as set out in section 9(1) of the 1967 applied.
24. The Applicant's Surveyor referred to three comparable properties:
 5 New Park Lane, which is on offer at £187,500 and is a mid terrace and has off street parking.
 7 New Park Lane, which sold in November 2004 for £173,000.
 11 New Park Lane, which had been valued by a Leasehold Valuation Tribunal in December 2005 at £195,000 and has off street parking.
 The Applicant's Surveyor submitted that the Subject Property should be valued at £185,000, as it did not have off street parking.
25. The Applicant's Surveyor submitted a valuation calculation as follows:

Ground rent	unknown
Capitalisation rate	7%
Adjusted freehold value	£185,000
Remaining Term	58 years

Term nil

Reversion

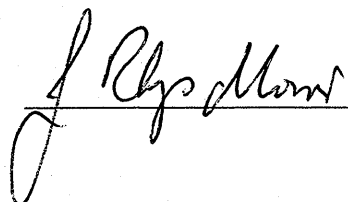
Standing house value £185,000

Site Value at one third	£61,666	
Yield at 7%-Section 15 modern ground rent	£ 4,316	per annum
YP for 50 years @ 7%	13.8007	
PV £1 57 years @ 7%value	.019579	.2702039
		£1,166
Reversion to standing house value	£185,000	
PV £1 @ 7% deferred 107 years	.001	£185
Enfranchisement price		£1,351

26. A draft Transfer was submitted to the Tribunal.

Determination

27. The Tribunal agreed that the method of valuation specified in section 9(1) of the 1967 Act applied.
28. The Tribunal considered the comparable evidence submitted by the Applicant's Surveyor and agreed that the property was comparable to 5 and 11 New Park Lane however notwithstanding that it did not have off street parking it was situated on a larger plot. The Tribunal also took account of the Valuation Date of 16th March 2006. The Tribunal therefore using the knowledge and experience of its members determined that the entirety value of the Property is £195,000 at the valuation date.
29. The Tribunal agreed with the Surveyor that a value of one third of the entirety value was appropriate. The Tribunal adopted the figure of 7% as being one that had been recently used in this area. Although the *Haresign* rule addition had been included in the Applicant's Surveyor's calculation the Tribunal were of the opinion that it should not be applied in this case. The addition under the Rule is normally only applied where the remaining term is very short.
30. The Tribunal determined that the enfranchisement price is £1,242 and the calculations are set out in the Schedule to this Decision.
32. The Tribunal approve the Transfer which specifically recites the benefit of the rights granted and reserved by an Assignment dated 20th August 2004 between (1) Anthony Richard Martin and Janet Louise Martin and (2) Charles Patrick Magnus Mowat together with the restrictive covenants contained in the Assignment.
33. 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)

Schedule

Leasehold Valuation Tribunal's Valuation

In accordance with The Leasehold Reform Act 1967 Section 9 (1)

Standing House Approach

Current ground rent		Nil		
Entirety Value (Open Market Value)		£195,000		
Site Value one third of OMV		£65,000		
Section 15 Rent @ 7% of Site Value		£4,550 per annum		
YP 7% in perpetuity	14.2857			
deferred 58.5 years @ 7%	0.01911	0.273		£1,242
Enfranchisement price				£1,242