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Eastern Rent Assessment Panel
Great Eastern House Tenison Road Cambridge CB1 2TR
Telephone: 0845 1002616 Facsimile: 01223 505116



REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL
Leasehold Reform Act 1967 section 21 and section 27

Property: Cherry Hill, Chiltern Road, Ballinger, Buckinghamshire HP16 9LH

Applicant(s): Mrs Esther Rosemary Gowdy by her attorney Mrs Jeanette Batten
Represented by: Mr Gabriel Fadipe (Counsel, instructed by Lennon & Co)
Mr Michael Harrap FRICS IRRV MEWI
(of Knight Frank LLP, Expert Valuer)

Respondent(s): Unknown

Case number: CAM/11UC/OAF/2008/0014

Date of Application: 7th May 2008

Valuation date: 6th March 2008

Members of Tribunal: Mr G M Jones - Chairman
Mr R W Marshall FRICS FAAV
Mr E A Pennington FRICS

ORDER

1. It is hereby declared that the price to be paid by the Applicants for the freehold of the property situate at and known as part of Cherry Hill, Chiltern Road, Ballinger, Buckingham HP16 9LH and registered under leasehold title number BM269826 at H M Land Registry is £9,394.00.
2. A copy of this Order shall be sent to the Chief Clerk of Milton Keynes County Court under claim number 8AY00291.

Geraint M Jones
Chairman
9 September 2008

1. THE APPLICATION

The Property

- 1.1 The subject property is a two bedroom semi-detached bungalow of brick and tile construction with UPVC double glazed windows and oil-fired central heating. The property was built in about 1965 and is currently undergoing refurbishment. The site is partly freehold under title number BM269815 at H M Land Registry and partly leasehold under title number BM269826. The dividing line between the freehold and leasehold parts of the site runs diagonally through the bungalow, about two thirds of which is on the leasehold land.

The Lease

- 1.2 The leasehold portion of the site forms part of property let by William Elwes to Thomas Elwes and Thomas Fountain on 9 April 1642 for a term of 400 years commencing 16 April 1641 at a peppercorn rent. The lease has been lost but is referred to in a deed of assignment dated 7 November 1960. The identity of the current freeholder/landlord is unknown.

The Application

- 1.3 On 6th March 2008 the Applicant applied to Aylesbury County Court under claim number 8AY00291 for an order under section 27 of the Leasehold Reform Act 1967 and for a transfer of the leasehold property. On 30th April 2008 by order of District Judge Mostyn the claim was adjourned generally pending determination by the LVT of the price, with liberty to restore before a Circuit Judge at Milton Keynes County Court.

2. THE LAW AND THE ISSUES TO BE DETERMINED

Enfranchisement of Freeholds

- 2.1 The Leasehold Reform Act 1967 enables tenants of houses let on long leases at low rents to enfranchise their properties – in other words to acquire the freehold on terms set out in the Act. Recent amendments introduced by Part 4 of the Commonhold & Leasehold Reform Act 2002 have expanded the scope of the 1967 Act. The question arises whether the term ‘house’ includes part of a house. In the judgment of the Tribunal, it is clearly arguable that it does and the Tribunal has jurisdiction to make the determination sought.
- 2.2 If the price is not agreed between the parties, there is provision under section 21 for an application to the Leasehold Valuation Tribunal to determine the price. The valuation methods are set out in section 9 of the Act. The method of determination depends upon which category the property and the lease fall into.
- 2.3 Section 27 of the 1967 Act provides for an application to the Court in cases where the landlord cannot be found and sets out the procedure to be followed. One part of this procedure requires the Leasehold Valuation Tribunal to determine the price, in accordance with the appropriate valuation method set out in the Act.
- 2.4 The Tribunal must determine the purchase price on the relevant day. The relevant day in this case is the date of the application to the Court, namely, 6th March 2008. The valuation is in this case to be carried out under section 9(1).

2.5 The Act requires the Tribunal to assume that the tenant has been granted an additional 50-year term at a modern ground rent and that the special position of the tenant as a potential purchaser is to be ignored. On the facts of this case, the price to be paid depends upon the following matters: -

- (a) The freehold value of the property with vacant possession on the basis that the tenants' repairing covenants have been complied with but the property is otherwise unimproved;
- (b) The proportion of the freehold value to be attributed to the leasehold land;
- (c) The plot value;
- (d) The capitalisation rate to be applied to the calculation of the value of future rents;
- (e) The deferment rate to be applied to the open market value to allow for accelerated payment.

3. THE EVIDENCE

3.1 The Applicant made her application to the LVT through her attorney and was represented at the hearing by Mr Gabriel Fadipe of Counsel, Instructed by Lennon & Co Solicitors. Her expert valuation witness was Mr Michael Harrap FRICS IRRV MEWI of Knight Frank LLP Chartered Surveyors.

3.2 On the first issue, Mr Harrap was able to support his figure of £300,000 by reference to a number of local comparables. The Tribunal invited Mr Harrap to update his valuation, which had been carried out in August 2007. In view of the altered state of the market, Mr Harrap reduced his valuation by 10%, from £300,000 to £270,000. Mr Harrap took the view that the freehold and leasehold portions of the site were each indispensable to the other and accordingly that the value of the leasehold portion should be taken as 50% of the whole i.e. £135,000. He assessed the plot value at 35% of that figure i.e. £47,250. The capitalisation rate originally adopted by Mr Harrap was 5%, which was also the figure he used for the deferment rate.

3.3 The issue of deferment rate has been very controversial in many cases over the years. Small changes of rate can make a huge difference to the outcome. This issue must be considered carefully in the light of the recent **Sportelli** decision, which set the deferment rates in the Prime Central London area at 4.75% for houses and 5% for flats. The Court of Appeal upheld the decision of the Lands Tribunal and commented that, while Tribunals operating outside the PCL might properly depart from the guideline rates if the evidence justified a different rate, they should not do so unless there was convincing evidence leading to a different conclusion.

3.4 Many knowledgeable professionals in this field working outside the PCL and dealing with more mundane properties found that element of the decision rather surprising. Mr Harrap used the figure of 5% at a time before the Sportelli appeal was decided. He was troubled by the fact that the experts in Sportelli were dealing with very valuable properties in the Prime Central London market. Considerations in cases relating to much less valuable properties in other parts of the country might be very different.

3.5 However, having considered the matter carefully, Mr Harrap considered that he should follow the decision of the Court of Appeal. On the facts of this case he was unable to identify any factor that would lead to a rate different from the guideline rate and accordingly adopted a deferment rate of 4.75%.

4. CONCLUSIONS

4.1 The Tribunal had little hesitation in accepting all the factual evidence and agreeing with Mr Harrap's approach, his revised freehold valuation of the property as a whole at £270,000 and his apportionment of the value of the leasehold portion of the site at 50% of the total or £135,000. The Tribunal, however, considered that the capitalisation rate should be 6%. There is no need for this figure to be the same as the deferment rate and, in the experience of the Tribunal, 4.75% would be too low a rate in this type of case.

4.2 Although it is no doubt convenient to set guidelines in order to increase certainty, promote early settlements and discourage expensive litigation, the basis for applying PCL rates to any case anywhere across the country appears to the Tribunal to be doubtful. The *Sportelli* rates appear to produce unrealistically high enfranchisement prices in many cases. Nevertheless, the Tribunal considers itself bound by the Sportelli decision and accordingly adopts a deferment rate of 4.75%.

4.3 The Tribunal concludes that the site has no significant hope value; nothing more need be said about that issue. The Tribunal's revised valuation is set out in the Schedule hereto and, in accordance with that valuation, the price to be paid is £9,394.00.

Geraint M Jones MA LLM (Cantab)
Chairman
9 September 2008



SCHEDULE

Cherry Hill, Chiltern Road, Ballinger, Buckinghamshire HP16 9LH

Case ref: CAM/11UC/OAF/2008/0014

Valuation for Enfranchisement

Capitalised Ground Rent

One Peppercorn Nil

Calculation of Modern Ground Rent

On Standing House basis

| | | | |
|--|-----------------|----------------|---------------|
| Unencumbered Market Value of whole Property based upon comparable evidence | £270,000 | | |
| 50% of value attributed to Leasehold part | £135,000 | | |
| Plot value assessed at 35% of Leasehold part | £47,250 | | |
| Section 15 ground rent assessed @ 6% of Plot value | | £2,835 pa. | |
| Years purchase @ 6% for 50yrs. | 15.7619 | | |
| Present value of £1 @ 6% | | | |
| Deferred 33yrs. | <u>.1461862</u> | <u>2.30417</u> | £6,532 |
| <u>Reversion to Market Value of Leasehold part after 83 years</u> | | | |
| Market Value of Leasehold part | £135,000 | | |
| Present value of £1 @ 4.75% in 83yrs. | | <u>.0212</u> | <u>£2,862</u> |
| | | | <u>£9,394</u> |

GMJ 9.9.08