

RESIDENTIAL PROPERTY TRIBUNAL SERVICE**LEASEHOLD VALUATION TRIBUNAL****Case numbers : CAM/33UB/OAF/2009/0001****County Court claim number : 8NR 03937**

Property : Thorpe Cottage, 18 Lower Road, Rockland St Mary, Norwich, Norfolk NR14 7HS

Application : Determination of the price to be paid in respect of the freehold and the amount or estimated amount of any pecuniary rent payable for the house and premises up to the date of the transfer which remains unpaid, both of which are to be paid into court [Leasehold Reform Act 1967, ss.9, 21(1) & 27(5)]

Applicants : Michael Edward Crouch & Anne Elizabeth Crouch, of Thorpe Cottage, 18 Lower Road, Rockland St Mary, Norwich NR14 7HS

represented by : Mills & Reeve LLP, 1 St James Court, Whitefriars, Norwich NR3 1RU

Respondent : unknown

DECISION ON VALUATION

 Handed down 28th May 2009

Tribunal : G K Sinclair, B Collins BSc FRICS, G J Dinwiddy FRICS

Hearing date : Wednesday 29th April 2009 at the Oaklands Hotel, Thorpe

Representation : James Hordern, Mills & Reeve
John Utton FRICS (valuation evidence)

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Introduction

- I. The applicants are leaseholders of residential premises known as Thorpe Cottage, 18 Lower Road, Rockland St Mary, near Norwich. The premises comprise a small detached cottage probably built in the late eighteenth or early nineteenth century, extended to the rear sometime in the nineteenth century, and most recently extended by the Applicants at both sides and by a conservatory to the rear. The land occupied by this cottage was originally granted by an indenture dated 1st October 1603 for a term of 480 years

commencing on 29th September 1603. Originally held by copyhold tenure, this was formally abolished on 1st January 1926 and continued as a term of years, with the Lord of the Manor's interest converted into a freehold reversion expectant on the leasehold interest.¹ Details of the lease are as recorded on the Land Register for the leasehold title (Title No NK182991), but despite extensive enquiries no copy of it can be found. The leasehold interest in the premises was purchased by the Applicants on 15th October 1992 but the freehold estate is unregistered and the identity of the landlord is unknown. No rent has been demanded or paid for as long as the Applicants and their immediate predecessors in title can recall.

2. On 27th October 2008, in the Norwich County Court, the Applicants issued a claim under Part 8 of the Civil Procedure Rules 1998 seeking a transfer to them of the freehold of the above premises. By order of District Judge Sparrow dated 5th January 2009 the Leasehold Valuation Tribunal was directed to determine the price payable into court.

Inspection

3. As whatever building (if any) as existed on the land at the date of the demise in 1603 was no longer present the tribunal merely inspected the exterior and substantial garden to the side and rear of the premises. The present cottage sits towards one side of a large site rising from the west side of Lower Road, at the southern end of a row of detached bungalows and furthest from the village centre, with uninterrupted views over open marshland to the east. As the road forms part of the boundary to the Broads, which was constituted as a special area with a level of protection similar to a National Park by the Norfolk and Suffolk Broads Act 1988, such views are likely to remain uninterrupted.
4. The demised premises had once been much more extensive, but a substantial parcel of agricultural land had been hived off at one stage. There was no obvious boundary with this large field to the south (left side, viewed from the road) and west (rear), and Mr Crouch informed the tribunal that he believed that, through prolonged encroachment, he may have lost as a tennis court-sized area of land on the high ground to the rear. In the northwest corner of the site, overlooking the rear of the house but end on towards it, the Applicants have built a small timber chalet, mounted on blockwork and with a tiled pitched roof.

Applicable valuation principles

5. As the current rent under the lease is £0.20 per annum and the rateable value is £132 the purchase price is to be determined in accordance with section 9(1) of the Leasehold Reform Act 1967, the relevant elements of which may be described as :
 - a. The capitalised value of the rent payable from date of service of the notice of the tenant's claim (in the case of a missing landlord, the date that proceedings are issued) until the original term date. In this case that period starts on 27th October 2008 and ends on 28th September 2083.
 - b. The capitalised value of the section 15 modern ground rent notionally payable from the original term date for a further period of 50 years (due regard being paid to provision for a rent review after the first 25 years). In this case such modern ground rent would be notionally payable from 29th September 2083 until 28th September 2133.

¹ See the Law of Property Act 1922, s.133(1)

- c. The value of the landlord's reversion to the house and premises after the expiry of the 50-year lease extension. See below.
6. According to *Hague*,² at para 9–10 :
In some cases it may be inappropriate to make a separate valuation of the landlord's ultimate reversion because the effect on value is marginal. In such cases the recognised method of approach to this stage of the calculation is "to capitalise the section 15 rent as if in perpetuity, deferred for the period of the unexpired term of the existing tenancy, not seeking to quantify any different rent that might become substituted at the expiration of 25 years from the original term date, and not quantifying separately the value in reversion at the expiration of the 50 years from the original term date."³
7. In most cases where there is a missing landlord, but perhaps surprisingly not in all, there will have been no rent paid for a substantial period before the date of the application. Section 27(5) requires that the applicant must pay into court not only the price payable, as determined by the tribunal, but also the amount or estimated amount remaining unpaid of any pecuniary rent payable for the house and premises up to the date of the conveyance. Section 166 of the Commonhold and Leasehold Reform Act 2002⁴ may impose an interesting restriction upon that by providing :

"A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice."

The limitation period for recovery of unpaid rent is 6 years, so that is the maximum rent which could ever be recoverable.

The Applicants' valuation evidence

8. Mr Utton provided a valuation report dated 16th March 2009 and attended to give oral evidence and answer questions from the tribunal. Upon the assumptions he makes in his report Mr Utton calculates the total value of the freehold interest as £6,865.92, to which he adds a back-payment of 96 years (from an indenture dated 1st January 1914) at £0.20, making £19.20 in all. He therefore concludes that £6,885.12 is payable into court.
9. In oral evidence Mr Utton confirmed that his valuation date was 20th October 2008. He was valuing the property at the stage following the collapse of Lehman Bros, when there was some economic concern, the Bank rate was then 4.5% as opposed to its current 0.5%, and economic problems were arising but had not yet crystallised.
10. In determining a modern ground rent at expiry of the current term he thought that having regard to market conditions in October 2008 he should apply a capital value of £100,000 for a development plot, and then adopted a figure of 5% for ground rent. It was then necessary to capitalise that, with a deferment rate of 4%.

² *Hague : Leasehold Enfranchisement* (4th ed – Sweet & Maxwell, 2003)

³ *Farr v Millersons Investments Ltd* (1971) 22 P&CR 1055 (LT), at 1060; *Re Mansal Securities Ltd and others' application* [2009] 20 EG 104 (LT)

⁴ In force from 28th February 2005

11. He concluded that there was no marriage or hope value applicable.
12. Questioned by the tribunal about why he had not applied the deferment rate of 4.75% laid down by the Lands Tribunal in the *Sportelli*⁵ case, unsuccessfully appealed to the Court of Appeal⁶, Mr Utton observed that circumstances can change but conceded that if he were wrong to use 4% instead then his figure of £6,860 would reduce to £3,395.
13. In response to further questioning by the tribunal about site value Mr Utton said that:
 - a. He thought one would struggle to obtain permission to build a house worth more than £400,000 on the site
 - b. That an appropriate percentage for bare site value would be 25%
 - c. That there were advantages and disadvantages to being on the edge of the village, and a valuation of £100,000 was about right
 - d. Although it might be argued that the appropriate percentage was more likely to be 30–40%, house prices had dropped dramatically while building costs have not. With the decrease in house prices it is the plot value that has been hit
 - e. There were no comparables available in October 2008, when he was asked to consider valuation
14. On marriage value, Mr Utton did not consider that there was any here, because there is still quite a long term to run on the lease. There is therefore no pressure on the lessee to do the deal. It is such a low rent that deferment of the current ground rent was a good deal.

Findings

15. Although the Lands Tribunal has recently confirmed that, in principle, a departure from the 4.75% generic deferment rate in *Sportelli* could be justified in a section 9(1) valuation, if there were sufficient evidence to support it,⁷ this tribunal finds no such evidence here. Mr Utton's use of a 4% deferment rate is therefore rejected. However, that does not offer his clients the benefit he envisages.
16. The tribunal considers that, at the material valuation date, Mr Utton's view that the standing house value was £400,000 is probably correct. However, it rejects his opinion that the bare site value amounts to only 25% of that. The site is particularly attractive and therefore, applying its knowledge and experience, the tribunal considers that a more suitable percentage is in fact 40%, yielding a site value of £160,000 instead of the £100,000 argued for.
17. Mr Utton argued for a rate of return on the current ground rent of 3% (as it is very secure), and on the modern ground rent during the notionally extended term of 5%. The tribunal agrees with the former, but considers a 7% return as more appropriate for the latter.
18. As this is a valuation under section 9(1) of the Act marriage value does not form part of

⁵ *Earl Cadogan and Cadogan Estates Ltd v Sportelli* (LRA/50/2005) and four related appeals (15.ix.06)

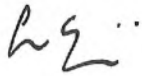
⁶ [2007] EWCA Civ 1042; [2008] 2 All ER 220

⁷ *Re Mansal Securities Ltd and others' application* [2009] 20 EG 104 (LT)

the calculation, as the price payable is that at which the premises might be sold in the open market by a willing seller with the tenant and members of his family not buying or seeking to buy, on certain further assumptions.

19. Applying the above findings, the tribunal determines that the price payable for the acquisition of the freehold is £7,600. For the reasons mentioned in paragraph 7 above, namely the non-service of the required notice to pay, the tribunal further determines that the arrears of rent to be paid into court are nil. (At most, the arrears could only be a maximum of £1.20, or six years' rent).
20. The full calculation appears in the Schedule annexed.

Dated 28th May 2009



Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal

SCHEDULE – VALUATION UNDER LRA 1967, s.9(1)

i. Present value of freeholder's interest

Term = 74 years @ £0.20 =		£29.60	
YP for 74 years @ 3% =	£5.92	say	£6

ii. Reversion to modern ground rent

Standing house approach	£400,000.00	
Site value @ 40%	£160,000.00	
Modern ground rent @ 7%	£11,200.00	
YP in perpetuity deferred 74 years @ 4.75%	0.67806	£7,594

iii. Reversion to freehold

no separate valuation		<hr/>	nil
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Total payable : **£7,600**