

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Section 9 and Section 27 of the Leasehold Reform Act 1967
(as amended) ("the Act")**

Case Number:	CH/29UQ/OAF/2009/0005
Property:	3 The Lawns Windmill Hill Brenchley Tonbridge Kent TN12 7NW
Applicant/Leasolders:	Mrs P A Rabbitt
Respondent/Landlord:	Unknown
Date of Inspection / Deliberations	30th April 2009
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr A O Mackay FRICS (Valuer Member) Mr N I Robinson FRICS (Valuer Member)
Date of the Tribunal's Decision:	18th May 2009

DECISION IN SUMMARY

1. The Tribunal determines for the reasons set out below that the price to be paid for the freehold reversion in respect of 3 The Lawns, Windmill Hill, Brenchley, Kent is the sum of £6,370.00 (six thousand three hundred & seventy pounds).

EVIDENCE

2. This matter came before the Tribunal following an order of the Tunbridge Wells County Court on the 9th February 2009. The Order was made following an application by the Applicant with regard to the property pursuant to the Leasehold Reform Act 1967 for a declaration that she was entitled to acquire the freehold of the property. The Court ordered

that she was so entitled and that the price to be paid should be determined by the Leasehold Valuation Tribunal pursuant to Section 9 of the Act. It was a term of the Order that no sum was to be payable for the superior tenancy.

3. The Applicant requested the Tribunal to determine the price payable on the basis of written evidence only, and accordingly there was no hearing. There was before the Tribunal a detailed valuation report dated the 2nd April 2009 prepared by Mr Jeffrey Moys FRICS of Messrs Bracketts Chartered Surveyors of Tonbridge in respect of the property. The report was tendered as expert evidence. It contained a detailed and, as far as the members of the Tribunal were able to see when they inspected the property on the 30th April 2009, an accurate description of the property. The Tribunal adopted that description for the purposes of arriving at its decision in this matter.
4. In addition to the report there was filed on behalf of the claimant a lengthy witness statement from Jeremy Woodford, a partner in the solicitors firm of Bailey and Cogger Solicitors. This statement was sworn in support of the Applicant's application for a vesting order in respect of the property and was served in pursuant of the County Court proceedings referred to above. This report contained detailed background facts and an assessment of the legal position insofar as it was relevant to this case.
5. From the witness statement the Tribunal ascertained that the property was with other property held under a lease known as the "Primrose Lease" and dated the 20th May 1569, which demised land at Brenchley for a term of 500 years at a rent of one primrose to be paid at Easter. The identity and whereabouts of the freehold reversioner to the Primrose Lease was not known and Mr Woodford proffered his view that the Primrose Lease itself is lost.
6. The subject property was demised by an Underlease dated the 19th April 1988 made between Denehurst Properties Limited (1) the Lawns Management Limited (2) and Marguerite Louise Moreland (3). That lease demised the property for a term of 500 years from the 25th March 1569 less the last 10 years at the rent of one primrose payable on Easter Day.
7. The report from Mr Moy stated that the ratable value of the property on the 31st March 1990 was less than £500 and that the house was first rated in 1988. Accordingly the subject property was brought within the legislation by Section 1 (5) of the Act and the valuation was to be carried out in accordance with the provisions of section 9(1) of the Act.
8. Mr Moys valued the property as at the 12th November 2008 being the date of the application to the Court in the sum of £320,000. The report explained how he had arrived at this open market value of £320,000 by reference to a number of previous Tribunal cases in the Lawns where he had been involved. He had put forward valuations in respect of eight cases in June 2007 and all his valuations had been accepted by the Tribunal. In arriving at his valuation for this property he relied upon these previous valuations making an appropriate adjustment for market changes in the intervening 2 year period. 3 The Lawns was a very similar house type to nos. 2, 9 and 10 The Lawns all valued as at the 11th December 2006. No 2 the Lawns had been valued at £345,000, No 9 The Lawns at £360,000 at £345,000. Bearing in mind these valuations had he been valuing 3 the Lawns as at December 2006 he would have valued the property at £350,000.

9. He had considered the Nationwide House Price Index which identifies a decrease in value of 8.63% between the two valuation dates of December 2006 and November 2008, i.e. over this two year period. Accordingly valuing 3 The Lawns at £350,000 as at December 2006 would result in a valuation of the same property as at November 2008 in the sum £319,789 say £320,000. Accordingly he considered the value of the unencumbered freehold interest of 3 The Lawns as at the 12th November 2008 was fairly reflected in the sum of £320,000. Bearing in mind he had dealt simultaneously with eight properties in The Lawns only 2 years ago, he felt that he had been able to establish a fair representation of the comparative value of each.
10. Mr Moys did not consider that there was any current value attributable to the landlord's reversion to the house and premises after the expiry of the 50 year extension, i.e. in some 112 years time. This was because the premises would then be old, so that the market would be unlikely at that stage to reflect any additional value over and above the site value. Further, it was his submission that it was not possible to value the section 15 rent payable after 25 years of the extension period as there were many uncertainties involved and the exercise would be of a speculative nature. He ascribed no value to the right to receive a rent of one primrose.
11. It therefore followed that the only relevant element of the valuation was the capitalized value of the rent arising in the extension period by virtue of the provisions of section 15 of the Act from the original term date, the 25th March 2069 until the expiry of the 50 year extension. From his valuation report the Tribunal could see that he had adopted the Standing House approach to the valuation and had taken a proportion of the entirety value in order to determine site value. He used the percentage of 33%.
12. In his report the deferment period for the purposes of the valuation was approximately 60.5 years from November 2008 until March 2069.
13. The report indicated that Mr Moys had taken a deferment rate of 4.75% in accordance with the guidelines set down by the Lands Tribunal as set down in the case of *Earl of Cadogan v Sportelli*. He had used the same percentage rate in capitalizing the site rent, because that was a figure that might be used in the locality at present in such transactions.

TRIBUNAL'S DELIBERATIONS

14. The Tribunal accepted Mr Moys' arguments about the site value. The figure of 33% that he advanced falls squarely within the bracket of 30 to 35% that is commonly accepted to form the percentage of the open market value of a house represented by site value. The Tribunal also had no difficulty in adopting the figures advanced by the Lands Tribunal for deferment rate as accepted by Mr Moy. No arguments were advanced to the Tribunal to suggest why on this occasion there should be any departure from that rate. Mr Moys' evidence was also accepted that a similar rate would be used for the purposes of capitalization in the locality. Mr Moys had reached his assessment of the open market value of the subject property by primary use of the comparables which had come before the Leasehold Valuation Tribunal in 2006 appropriately adjusted. Having carefully considered the value that Mr Moys had ascribed to the subject property in the light of those comparables, the Tribunal concluded

that it might properly accept the value that Mr Moys had established as the entirety value of the subject property.

15. Finally the Tribunal accepted that the deferment rate referred to in the Earl of Cadogan v Sportelli case of 4.75% was applicable in this case. No reason had been deduced before it for any departure from such rate. It was also prepared to accept the same rate for the purpose of capitalizing the ground rent, and finally it accepted Mr Moys' view that no material value was to be ascribed to the right to receive a rent of one primrose.

16. Accordingly the Tribunal was content to adopt Mr Moy's valuation which was:-

Value of present rent (one primrose if demanded)		Nil.
Entirety value	£320,000	
Site value at 33% thereof	£105,600	
Section 15 rent at 4.75% thereof	£ 5,016 per annum	
Years purchase in perpetuity deferred 60.5 years at 4.75%	x 1.27YP	<u>£6,370.32</u>
Total		£6,370.32
	say	<u>£6,370.00</u>

Chairman 
R.T.A. Wilson

Dated 18th May 2009