

2363.

**HM COURTS & TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Property:** Flats 1 – 14 Orchard Court and 34 & 36 Thoresby Avenue  
Gedling, Nottingham NG4 4FF

**Applicant:** Orchard Court Residents Association Gedling Limited

**Respondent:** None (the identity of the current landlord is unknown)

**Case Number:** BIR/37UE/OCE/2011/0004

**Date of Application:** 25 May 2011

**Type of Application:** Application under sections 26 & 27 of the Leasehold Reform, Housing and Urban Development Act 1993 for a determination of the terms of the vesting order and the appropriate price of the property.

**Tribunal:** Michael Tildesley OBE (Lawyer Chair)  
Vernon Ward BSc Hons FRICS

**Hearing Date:** 8 August 2011 at the Tribunal Centre, Byron House, 3<sup>rd</sup> Floor, 2a Maid Marion Way, Nottingham NG1 6HS

**Present:** James Carley of Massers Solicitors for the Applicant

**DECISION**

**Summary of the Decision**

1. The Tribunal decides that the price payable for the freehold of the property is **£94,200.00** plus **£960.00** in respect of ground rent. The Tribunal approves the terms of the Transfer of the Whole of the Registered Title dealing with the freehold subject to the amendments as set out in paragraph 33 below. If the Applicant wishes to progress its purchase of the freehold, the Applicant must return to the County Court, and pay the amounts ordered by the Tribunal into the Court.

### **The Application**

2. This application involved a collective enfranchisement by 16 tenants of maisonettes who have formed a company (the Applicant) to act as the nominee purchaser to acquire the freehold of the property at Orchard Court, Gedling. On 9  
5 May 2011 the Applicant applied to the County Court for a vesting order to acquire the freehold. The application to the County Court was necessary because the Applicant had been unable to identify the landlord. The tenants considered they were in limbo until the position of the freehold was resolved. The tenants have been advised that they would be unable to sell their properties to a buyer who required a mortgage due  
10 to the short length of the unexpired term on their leases. The purchase of the freehold would enable the tenants to acquire extensions to their leaseholds.

3. On 11 May 2011 District Judge Gailey of Birmingham County Court directed the Applicant to lodge an application with this Tribunal to determine the price payable for the freehold and the terms of the vesting order. On 31 May 2011 the Application  
15 was lodged with Tribunal which issued directions to progress it.

4. The Tribunal inspected the property and heard the application on 9 August 2011. The Tribunal as well as visiting the site carried out internal inspections of 1, 5, 7, 8, 9, 10, 11, 13 Orchard Court and 34 and 36 Thoresby Avenue. The Tribunal was accompanied on the inspection by Mr Gell of 8 Orchard Court, a director of the  
20 Applicant, and Mr Saunders FRICS, a chartered surveyor instructed by the Applicant. At the hearing Mr Carley presented the application and called evidence from Mr Saunders and Mr Gell. The Tribunal reserved its decision.

### **The Property**

5. The property comprised three two storey semi-detached premises with four  
25 maisonettes in each of the premises, and two detached two storey premises each containing two maisonettes. The detached block of 34 and 36 Thoresby Avenue was separated from the main site by the intervening detached property of 38 Thoresby Avenue which was not part of the Application. The Tribunal understood that the site for the maisonettes was formerly the orchard of 38 Thoresby Avenue and that the  
30 original postal addresses for 34 and 36 Thoresby Avenue were 15 and 16 Orchard Court.

6. There were two blocks of eight garages in a corner of the Orchard Court site, with each maisonette having the use of a garage. The Orchard Court maisonettes were situated in a development with an access road to the garages and a paved footway  
35 providing passage through the communal lawn gardens at the front. The communal gardens extended to the rear of the maisonettes with the site boundary delineated by a wooden fence. 34 and 36 Thoresby Avenue were situated on a self contained plot with a rear communal garden which was mainly grassed.

7. The maisonettes were built in 1968, of brick and roof tile construction with solid  
40 ground floors and wooden first floors. Each maisonette had its own front door. The maisonettes shared the same internal layout consisting of a hallway which gave access

to a lounge (15' 11 x 11'11), a double bedroom (11'11 x 9'6), a single bedroom with a cupboard (8'6 x 7'10) and a bathroom/WC (5'11 x 5'5). A kitchen (8'10 x 7'3) ran off the lounge area<sup>1</sup>. The maisonettes on the first floor were accessed by stairs from a front door on the ground floor and had the benefit of a small balcony off the living room area.

8. The tenants of the property have maintained it to a high standard and carried out extensive improvements to the maisonettes. The Tribunal is satisfied that the following improvements subject to minor amendments constituted tenant's improvements in respect of each maisonette:

- 10 (1) UPVC doubled glazed windows and doors.
- (2) Gas central heating including the installation of a boiler and radiators.
- (3) Replacement of the original kitchen with the installation of a modern kitchen with extensive units, tops and integrated kitchen appliances.
- (4) Replacement of the original bathroom with modern sanitary wear, sink, and in most maisonettes, a walk in shower unit.
- 15 (5) Electrical rewiring.
- (6) Replacement of the guttering and soffits.
- (7) Cavity wall insulation.

9. The property was in easy access of local amenities and facilities. The property overlooked the former site of the Gedling Colliery which has been redeveloped as a recreation and open space. Mr Saunders informed the Tribunal that the property was not adversely affected by subsidence associated with the former underground workings.

### **The Lease**

25 10. The Applicant supplied the original leases for each of the maisonettes except the one for 1 Orchard Court which was believed to be in the same form as the other leases. The leases followed the same format and were granted by Bracow (Builders) Limited for a term of 99 years from the 25 December 1966 with a ground rent of £10 per annum payable by equal half yearly instalments in advance on 24 June and 25  
30 December in each year. The terms of the lease conferred upon each tenant the benefit of a lock up garage and rights in common with other tenants. The common rights included use of the road and pathways and the garden that formed part of the landlord's property, rights of support and protection enjoyed by the other maisonettes within the same building and the free passage and running of water, gas and  
35 electricity.

11. The lease imposed a range of covenants upon the tenants, which included keeping the maisonettes and the garage insured to their full value in the names of the landlord

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<sup>1</sup> The measurements are approximate and taken from the sales particulars of 14 Orchard Court prepared by David James, Estate Agents.

and the tenant, and paying a joint and equal proportion of the costs of keeping the gardens turfed over and the grass properly cut.

5 12. The terms of the lease did not include a repairing covenant on the part of the landlord. The lease made no provision for the collection of a service charge and stipulated no mechanism for the recovery of the ground rent.

10 13. The landlord under the terms of the lease specified that it was the owner in fee simple in possession of the property. The Official Copy of the Register of Title for 11 Orchard Court provided details of the exceptions and reservations, and the restrictive covenants associated with the landlord's title. The Official Copy recorded details of a deed dated 11 September 1967, and made between (1) Ivy Vann, and (2) Bracow (Builders) Limited which modified a restrictive covenant to the effect that the construction of maisonettes was permitted on the site.

#### **The Position of the Landlord**

15 14. The tenants originally believed that the current landlord for the property was Langridge Homes Limited of 17-21 Clumber Avenue, Sherwood Rise, Nottingham NG5 1 AG. During 2008, and in the course of one of the maisonettes being purchased it was discovered that Langridge Homes Limited was unable to produce a copy of the conveyance transferring the freehold to it from Bracow (Builders) Limited. HM Land Registry refused the application of Langridge Homes Limited to be registered as the freeholder. An attempt was made to restore Bracow (Builders) Limited to the Register but this was not possible due to the fact that the company had been dissolved for more than 20 years. The Treasury Solicitor did not accept that the property has been vested in the Crown bona vacantia.

25 15. The Applicant inserted a notice in *The London Gazette* dated 1 June 2011 inviting the freeholder of the property known as Orchard Court, Gedling, Nottingham NG4 4FF to contact Massers Solicitors on or before 30 June 2011. There has been no response to the notice.

#### **The Legal Requirements for Collective Enfranchisement**

30 16. This was principally a matter for the County Court. The Tribunal, however, was satisfied that the requirements have been met for an application for a vesting order where the landlord cannot be found pursuant to section 26(1) of the Leasehold Reform, Housing and Urban Act 1993 (hereinafter the 1993 Act).

35 17. The application for collective enfranchisement was made by not less than two thirds of the qualifying tenants of flats contained in the property. The application involved the 16 tenants who all met the qualifying condition of holding an interest in a lease of more than 21 years in a flat. The property comprised five self contained premises which consisted of two or more flats held by two qualifying tenants.

## The Legal Powers of the Tribunal

18. The powers of the Tribunal following an application for a vesting order are to determine the terms of the vesting order and the price payable for the interest vested in the Applicant. The powers are set out in section 27 of the 1993 Act which provides as follows:

### **“27 Supplementary provisions relating to vesting orders under section 26(1).**

(1) A vesting order under section 26(1) is an order providing for the vesting of any such interests as are referred to in paragraph (i) or (ii) of that provision—

10 (a) in such person or persons as may be appointed for the purpose by the applicants for the order, and

15 (b) on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the interests being vested in that person or those persons in like manner (so far as the circumstances permit) as if the applicants had, at the date of their application, given notice under section 13 of their claim to exercise the right to collective enfranchisement in relation to the premises with respect to which the order is made.

20 (2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 26(1), the order shall have effect in relation to interests which are less extensive than those specified in the application on which the order was made.

25 (3) Where any interests are to be vested in any person or persons by virtue of a vesting order under section 26(1), then on his or their paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which—

(a) is in a form approved by a leasehold valuation tribunal, and

30 (b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 34 and Schedule 7;

and that conveyance shall be effective to vest in the person or persons to whom the conveyance is made the interests expressed to be conveyed, subject to and in accordance with the terms of the conveyance.

35 (4) In connection with the determination by a leasehold valuation tribunal of any question as to the interests to be conveyed by any such conveyance, or as to the rights with or subject to which they are to be conveyed, it shall be assumed (unless the contrary is shown) that any person whose interests are to be conveyed (“the transferor”) has no interest in property other than those interests and, for the purpose of excepting them from the conveyance, any minerals underlying the property in question.

40 (5) The appropriate sum which in accordance with subsection (3) is to be paid into court in respect of any interest is the aggregate of—

45 (a) such amount as may be determined by a leasehold valuation tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and

5 (b) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).

10 (6) Where any interest is vested in any person or persons in accordance with this section, the payment into court of the appropriate sum in respect of that interest shall be taken to have satisfied any claims against the applicants for the vesting order under section 26(1), their personal representatives or assigns in respect of the price payable under this Chapter for the acquisition of that interest.

15 (7) Where any interest is so vested in any person or persons, section 32(5) shall apply in relation to his or their acquisition of that interest as it applies in relation to the acquisition of any interest by a nominee purchaser”.

19. The matters to be determined by the Tribunal in this application in accordance with section 27 of the 1993 Act are as follows:

- (1) The nature of the interest to be vested in the Applicant.
- (2) The price payable for the freehold interest.
- 20 (3) The amount of any other sums (ground rent/service charges) payable by the tenants at the date of the execution of the Transfer.
- (4) The terms of the Transfer document conveying the interest to the Applicant.

#### **The Interest to be Vested in the Applicant**

25 20. The Applicant in its application dated 9 May 2011 claimed the rights and interests of the freeholder of the property at Orchard Court, Gedling, Nottingham NG4 4FF. The extent of the freehold property was coloured red on the plan attached to the draft Transfer submitted by the Applicant. The freehold interest claimed was an estate in fee simple subject to all rights, easements, covenants, leases and tenancies whatsoever as may have been imposed or entered into before the date of Transfer and still subsisting and capable of being enforced. The Tribunal agrees with the Applicant's claim in respect of the extent of the freehold interest. The Tribunal had no grounds for restricting the vesting order to interests less extensive than those specified in the application pursuant to section 27(2) of the 1993 Act.

#### **The Price Payable**

35 21. Paragraph 2(1) of schedule 6 of the 1993 Act specifies that the price payable shall be the aggregate of :

- (1) The value of the freeholder's interest.
- (2) The freeholder's share of the marriage value.
- (3) Any compensation payable to the freeholder.

22. The Applicant supplied a valuation for the price payable from Mr Saunders FRICS, which was £83,700.00. The Tribunal held the following misgivings with the valuation:

5 (1) The date of valuation, 21 July 2011, did not comply with the legislative requirements which fix the date of valuation as at the date of the application for a vesting order. In this case the valuation date was the 9 May 2011.

10 (2) Mr Saunders was unable to provide a rationale for his choice of a capitalisation rate of 6 per cent for the term. The deferment rate of 5 per cent appeared to be based on the *Sportelli* decision, which did not take into account recent developments suggesting a higher deferment rate for regions outside the Greater London area. .

15 (3) Mr Saunders adduced no sales evidence to support his respective valuations of the current and extended leases. Mr Saunders said that he relied on his extensive knowledge of the housing market in Nottinghamshire in arriving at his valuation of £60,000 for the extended lease of the maisonette.

(4) Mr Saunders determined that the value of the tenants' current lease was at 90 per cent of the value of the extended lease. Mr Saunders was unable to explain why he selected 90 per cent.

20 23. Paragraph 3(1) of schedule 6 of the 1993 Act defines the value of the freeholder's interest as *the amount which at the valuation date that interest might be expected to realise if sold on the open market subject to certain assumptions.*

24. The assumptions are as follows:

(1) The nominee purchaser or a tenant of the premises is not buying the freehold.

25 (2) The sale is one of an estate in fee simple subject to any defect in title and taking into account any leases subject to which the freeholder's interest is to be acquired.

(3) There is no right to acquire any interest or a new lease under the Act.

30 (4) Any increase in the value of the maisonettes due to tenants' improvements is disregarded.

(5) The sale is subject to the rights and burdens which apply to the conveyance (transfer) to the nominee purchaser.

#### ***Value of the Freeholder's Interest***

25. The value of the freeholder's interest before enfranchisement has two elements:

35 (1) The capitalised rental income;

(2) The value of the freehold with vacant possession deferred over the unexpired term of the lease.

26. The Tribunal makes the following findings on the value of the freeholder's interest in this application:

(1) The unexpired term on the lease is **54.5 years**.

(2) The value of the ground rent is **£10 per annum**.

5 (3) The capitalisation rate for the term is **7 per cent**. The Tribunal considers that 7 per cent was the appropriate rate because of the low value of the ground rent which was £10 per annum with no review. Further under the terms of the lease the landlord was not entitled to collect service charges, and thereby cover any management costs. Thus the rent charge would not be an attractive  
10 investment and expensive to collect.

(4) The deferment rate is **5.5 per cent**. The Tribunal's starting point was the 4.75/5 per cent deferment rate for houses and flats respectively as decided in the *Sportelli* case. Following the Upper Tribunal (Lands) decision in *Zuckerman v Trustees Calthorpe Estate* [2009] UKUT 235 (LC) the Tribunal considers that an  
15 additional 0.75 per cent to the risk premium stipulated in *Sportelli* was appropriate for the circumstances of this application. In this respect the Tribunal decides that the property market in the East Midlands shared the same features of the market in the West Midlands<sup>2</sup>. The Tribunal does not, however, consider the  
20 additional 0.5 per cent for the inherent management problems of flats as decided in *Sportelli* and *Zuckerman* applied to this application. The increased management risks associated with flats, in particular the strict consultation requirements on service charges did not arise because the terms of the tenants' leases imposed no repairing covenant on the landlord and no provision for the collection of service charges.

25 (5) The copies of the HM Land Registry Register of Title produced by the Applicant provided details of sales evidence for some of the maisonettes:

➤ 3 Orchard Court: £73,500 (9 July 2004)

➤ 5 Orchard Court: £89,600 (24 March 2006)

➤ 8 Orchard Court: £91,000 (28 July 2005)

30 ➤ 9 Orchard Court: £44,000 (3 July 2000)

➤ 11 Orchard Court: £49,500 (10 March 2003)

➤ 13 Orchard Court: £97,000 (14 December 2007).

35 (6) The Applicant advised the Tribunal that the previous owners of 5 and 13 Orchard Court acquired extensions to their leases before selling their properties. The Applicant believed that the previous owners of 5 and 13 Orchard Court paid in the region of £8,000 to £10,000 for the lease extensions.

(7) The most recent sales evidence for the maisonettes was the sale of 13 Orchard Court, which was at the time of a buoyant housing market when sale

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<sup>2</sup> The distinguishing features of the West Midlands area from those in London were lower future growth rates and higher risks of obsolescence and deterioration.



prices were inflated. Mr Saunders opined that there had been overall fall in house prices in the Nottingham area of about 10 per cent. The Nationwide House Price Indicator which is in the public domain showed an overall fall in house prices in the East Midlands of 9.41 per cent from quarter 4 in 2007 to quarter 2 in 2011. The Price Indicator, however, measures movements in average prices for all housing types in a wide geographical area. Mr Saunders acknowledged that sale prices for flats/ maisonettes have experienced a sharper decline since the top of the housing boom than that for houses. Further the current trading market for flats/maisonettes was more difficult in Nottingham except in West Bridgeford.. The Tribunal agrees with Mr Saunders' assessment of the current market for flats and maisonettes in the Nottingham area, and of the declining trend in sale prices.

(8) Mr Saunders provided no value of tenant's improvements in his valuation. At the hearing he suggested a value of £10,000 for each maisonette. The Tribunal considers Mr Saunders's valuation on the low side having regard to the extensive improvements carried out by the tenants. The Tribunal values the improvements at **£15,000** for each maisonette.

(9) The title to be registered under the draft transfer was one with limited title guarantee. The Applicant made no representations whether such a title would adversely affect the price paid for the freehold.

(10) Having regard to the sales evidence for the maisonettes, the trend in the local market for sales of flats/maisonettes and the value of the tenants' improvements, the Tribunal decides that the value of an extended lease for an unimproved maisonette is **£65,000** rather than the £60,000 advocated by Mr Saunders.

### ***Marriage Value***

27. Paragraph 4 of schedule 6 of the 1993 Act defines marriage value with the landlord's share being 50 per cent. Essentially the marriage value is the difference between the values of the freehold before and after enfranchisement. The problematical area in this Application was determining the value of the tenant's interest before enfranchisement. The Applicant adduced no sales evidence of leasehold interests which did not have a right to enfranchise or acquire a new lease. Mr Saunders supplied no justification for his valuation of the tenant's interest before enfranchisement at 90 per cent of the value of the extended lease.

28. The Royal Institution of Chartered Surveyors published a research paper in October 2009 entitled *Leasehold Reform: Graphs of Relativity* in response to the observation of the Lands Tribunal in the *Arrowdell* case<sup>3</sup> that graphs of relativity may provide helpful guidance on the value of an existing lease in the absence of adequate alternative evidence. The graphs published for Greater London and England using data supplied by five firms of chartered surveyors indicated that the value of a lease with an unexpired term of 55 years would be in the range of 79 to 85 per cent of the

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<sup>3</sup> *Arrowdell Ltd v Coniston Court (North) Hove Ltd* 2006, LRA/72/2005

freehold value. The Tribunal notes that the data for these graphs were principally derived from property transactions in the Greater London area and south England. The data supplied by other research organisations produced a range of 83 to 89 per cent. The College of the Estate Management was the sole body amongst the research  
5 organisations that supplied separate percentages for Inner London and the Rest of England and Wales which were 85.54 and 89 respectively. The Tribunal decides on balance the value of the tenant's interest before enfranchisement is at **87.5 per cent** of the value of the extended lease which produced a value of **£56,875** for each maisonette.

#### 10 ***Compensation and Other Matters***

29. All the potential tenants were participating in the enfranchisement which meant that the Tribunal did not have to consider the question of hope value arising from a capital receipt from a lease extension to a non-participating tenant. There was no evidence of the missing landlord having an interest in other property affected by the  
15 Applicant's acquisition of the freehold. Thus there was no basis for a compensation claim under paragraph 5 of schedule 6 of the 1993 Act.

#### ***The Price Payable***

30. The Tribunal decides that the price payable for the freehold by the Applicant is **£94,200.00**, details of the Tribunal's valuation are set out in Appendix One.

#### 20 ***Other Sums Payable by the Tenants***

31. There was no provision in the tenants' leases for the recovery of service charges. The only issue under this heading was the question of ground rent which was payable to the landlord under the terms of the lease. The amount owing to the landlord would be six years arrears of rents due to section 19 of the Limitation Act 1980, which  
25 equated to £60 per tenant making a total of £960 for the property.

32. Mr Carley pointed out that the tenants had been paying the ground rent by six monthly instalments on demand to Langridge Homes Limited. Mr Carley, however, conceded that the Tribunal was not entitled to take into account the receipt to Langridge Homes as it was made and demanded in error. In Mr Carley's view, the  
30 proper course for the tenants was to take action against Langridge Homes Limited for the recovery of the ground rent paid. In those circumstances the Tribunal decides that the sum of **£960** is payable by the Applicant under section 27(5)(b) of the 1993 Act.

#### ***The Terms of the Transfer document***

33. The Tribunal approves the terms of the draft Transfer submitted by the Applicant  
35 subject to the following matters:

- (1) Insertion of the amount of consideration in clause 8 in accordance with the Tribunal's order of the price payable.

(2) The date of the Court order when made in clause 11(1).

(3) Insertion of the additional title numbers, NT24666 and NT32494 in clause 11(2).

5 (4) Clause 12 to read *Execution as a deed by such person as the Court may designate* (paragraph 2(1) of schedule 5 of the 1993 Act).

34. The Tribunal is satisfied that the terms of the Transfer subject to the amendments give effect to the requirements of section 34 and schedule 7 of the 1993 Act.

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**MICHAEL TILDESLEY**  
**MEMBER OF THE MIDLAND RENT ASSESSMENT COMMITTEE**  
**RELEASE DATE:**

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**1 SEP 2011**

## APPENDIX ONE: TRIBUNAL'S VALUATION

### ORCHARD COURT GEDLING NOTTINGHAM – COLLECTIVE ENFRANCHISEMENT

DATE OF VALUATION: 9 May 2011

#### (i) Diminution in the freeholder's interest

##### **Term**

Current Rent: £160 per year

Years purchase: 54.5 years @ 7% = 13.9280435

£160 x 13.9280435 = £2,226.52 £2,228.49

##### **Reversion**

Open market value with extended lease;

£65,000 x 16 = £1,040,000.00

PV £1 in 54.5 years @ 5.5% = 0.054043187

£1,040,000 x 0.054043187 £56,204.91

##### **Freehold Interest**

**£58,433.40**

#### (ii) Marriage Value

Open Market value with extended lease £1,040,000.00

Less

Freehold Interest £58,433.40

Leasehold Interest (16 x £56,875.00) £910,000.00

##### **Marriage Value**

**£71,566.60**

#### (iii) Premium Payable

Freehold Interest £58,433.40

Marriage Value (50%) £35,783.30

£94,216.70

**Say £94,200.00**