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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Case number : CAM/12UB/OCE/2012/0005**

**County Court claim number : ICB 00552**

- Properties** : Flats 1–10, Prince Andrew Court, 166 High Street, Chesterton, Cambridge CB4 1NS
- 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 land 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)(cza), 21(2) & 27(5)]
- Applicants** : Andrew Court Residents Association Limited, c/o John Pocock, 55 Regent Street, Cambridge CB2 1AB
- Respondent** : The successor in title to the landlord under two 500 year leases each dated 21<sup>st</sup> November 1588, whose identity is unknown.

**DECISION**

Handed down 14<sup>th</sup> May 2012

- Tribunal** : G K Sinclair, R Thomas MRICS, G F Smith MRICS FAAV REV
- Hearing date** : Friday 20<sup>th</sup> April 2012, at Quern House, Great Shelford
- Representation** : John Pocock FRICS, 55 Regent Street, Cambridge CB2 1AB, and Islay Currie, Chair of the Applicant company

- Introduction . . . . . paras 1–2
- Inspection . . . . . paras 3–7
- Applicable valuation principles . . . . . paras 8–11
- Valuation evidence and hearing . . . . . paras 12–19
- Findings . . . . . paras 20–26
- Valuation under section 9(1) . . . . . Schedule

**Introduction**

I. The applicant is the nominated purchaser on behalf of all ten leaseholders of flats held on underleases for a term commencing on 25<sup>th</sup> December 1987 and expiring two days before the 500 year headleases granted on 21<sup>st</sup> November 1588. The headleases have not been seen, and their provisions are unknown. The Prince Andrew Court site also comprises a sliver of freehold land along the eastern boundary; which may perhaps have once been a footpath leading to adjoining but long-disappeared premises. The freehold

title has been acquired already by the applicant, so enfranchisement of the rest of the site will complete this tidying up operation.

2. On a date unknown, the Applicant issued a claim in the Cambridge County Court under Part 8 of the Civil Procedure Rules 1998, seeking a transfer to it of the freehold title to Prince Andrew Court. By order of District Judge Taylor made on 22<sup>nd</sup> December 2011 the court purported to make a vesting order in favour of the Claimant under section 26 of the Leasehold Reform Act 1967. The Leasehold Valuation Tribunal's task under section 27 is to determine the price payable into court in respect of the claim.

### **Inspection**

3. The tribunal inspected the exterior of the property and the interior of three sample flats on the morning of the hearing. The site immediately adjoins the Chesterton Working Men's Club, on the east. This looks like a former Victorian church, three side windows of which overlook the courtyard car park, but there is also a more modern building to the rear. Both are said to be a source of noise.
4. The following description is taken from Mr Pocock's valuation, at document 7 in the hearing bundle :

Prince Andrew Court is a courtyard group of 10 small 1 bedroom flats 2½ miles from the centre of Cambridge. There is a block of 5 at the front and 5 at the rear with an archway entrance and car parking in the middle with one space for each flat. Although there are slight variations in design, they are all approximately the same size with an internal floor area of about 42sqm. Heating is from electric storage heaters. They were built in 1987 and are single glazed.
5. The tribunal's impression is that the flats, all of brick construction under a rather flimsy asbestos tiled roof, can be divided into three sub-groups :
  - a. The five in the building to the front, two on the ground floor (either side of the archway entrance) and three on the first floor, all of which are full height but perhaps suffer from street noise
  - b. The three ground floor flats in the building behind the communal car park, each of which has a small enclosed garden to the rear
  - c. The two first floor flats in the rear building, which are built into the mansard roof and consequently have sloping Velux windows only. Like the flats to the front, they have no garden.
6. The tribunal observed that not only the upper floor Velux windows but also those at ground level appeared to be double glazed sealed units in timber frames, although in most cases the seals had deteriorated with age and condensation had penetrated the internal gap, causing some misting.
7. The two blocks appear to have been built to a budget, and to a poorer specification associated with student accommodation, as evidenced by the inferior roof cladding, internal doors used instead of external front doors, plywood used to form the balustrade for the upper balcony to the front block, and night storage heating.

### Applicable valuation principles

8. As the annual rent under the leases is unknown it has been treated as nominal, therefore 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
  - 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
  - c. The value of the landlord's reversion to the house and premises after the expiry of the 50-year lease extension.
9. Although valuers have long operated on the assumption that this third element would be deferred so long as to be almost valueless, and hence they tended to ignore it and instead carry out only a two-stage valuation, the Upper Tribunal (Lands Chamber) has recently determined in the case of *Re Clarisse Properties Ltd*<sup>1</sup> that increases in property values in recent decades may in certain instances tend to disprove such an assumption. The practice of conducting a two-stage valuation should cease and the full three-stage calculation, including the *Haresign*<sup>2</sup> addition, be applied.
10. Section 9(1) requires that the price payable shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family not buying or seeking to buy), might be expected to realise on the assumptions listed in the sub-section.
11. Section 27(2)(a) provides that the material valuation date is that on which the application was made to the court. In the case of the Old Mill the claim was issued on 10<sup>th</sup> January 2011, so although Mr Mansfield inspected and reported in October 2011 it is January 2011 which is the material date. The dates of the other applications are unknown to the tribunal but are likely to be similar. As the unexpired term in each case exceeds 80 years no share of any marriage value is payable.<sup>3</sup>
12. 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 2002<sup>4</sup> 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

<sup>1</sup> [2012] UKUT 4 (LC)

<sup>2</sup> See *Haresign v St John the Baptist's College, Oxford* (1980) 255 EG 711, explained in the current (5<sup>th</sup>) edition of *Hague : Leasehold Enfranchisement* at para 9-16

<sup>3</sup> LRA 1967, s.9(1E)

<sup>4</sup> In force from 28<sup>th</sup> February 2005

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.

### **Valuation evidence and hearing**

13. Mr John Pocock FRICS provided a brief valuation in the bundle, based mainly on his 50 years' experience of dealing with the sale of Cambridge property. It did not strictly follow the Act, focussing on the value of the freehold reversion (less a 5% discount for that part of the site comprising a sliver of freehold land) and marriage value. At the date of the application the headleases had more than 77 years unexpired, so marriage value is payable. He considered that the value of a "freehold" flat would be around £142 000 with intermediate lease extinguished, but if sold leasehold on the original underlease then only £135 000. The £142 000 freehold figure represented a relativity of 95%, which he considered to be near the average in his experience.
14. Mr Pocock explained at the hearing that he was not entirely clear whether he should be valuing the property subject to the intermediate interest, comprising the right to receive ground rent in respect of the ten modern underleases. The Applicant company had bought out the intermediate landlord's interest for a payment of £20 000 before making the application. The tribunal confirmed that as the intermediate interest was now owned by the applicant the valuation exercise was more straightforward.
15. However, the tribunal explained how the valuation should be carried out in three stages under the Act, with consideration being given to the quality of the buildings presently on site, and whether a developer would want to retain or demolish them in 77 years time.
16. On the prospects for redevelopment Mr Pocock suggested that it was unlikely that one could put more than ten flats on the site without building a block of flats. This current development had only succeeded on appeal; the local authority having objected on grounds of density. The tribunal queried this, as a large part of the site is devoted to car parking, and planning requirements for recent city or town centre developments had included much less provision for cars. It considered that the build quality (inappropriate asbestos roof tiles, defective windows in need of replacement, poor quality external doors, upper flats with external access only, and two rear flats built into the roof instead of there being a proper full-height first storey) and more recent changes to planning criteria indicate that there is a distinct opportunity for future redevelopment. This is not a conservation area.
17. Asked how his virtual freehold valuation equate with Cambridge prices, Mr Pocock said that there is quite a spread. In Chesterton there are not many flats, but the spread is between £130 000 and 150 000. This development was, in his view, about in the middle. In Cambridge one-bed flats would be from £120 000 to 160 000, with some ex-council flats below that. It was, he said, unfortunate that none of these subject flats had been sold in recent years, or else he could have given real figures to back up his assessment.
18. He had derived a marriage value of £7 000 from the 95% relativity, but now that the applicant owned the intermediate interest he thought that it should be less, at 3/5 of that

figure. Mr Pocock also noted that all flat owners have agreed to pay equal amounts, so there is no issue about assessing the relative values of the individual flats.

19. Finally, the tribunal enquired about his deduction of 5% to reflect fact that two flats are part-built on freehold that the applicant already owns. The tribunal queried whether this was rather generous, and if a developer would really be troubled by such a narrow sliver (especially if he did not want to build hard up against – and tied into – the Working Men’s Club as at present).

### **Findings**

20. *Value of freehold reversion* — The tribunal considered how it would value the various flats on the site, pondering values for the rear ground floor flats with gardens of £140 000; the rear 1<sup>st</sup> floor flats at £130 000; the front ground floor flats at £135 000; and the upstairs ones at perhaps the same. The evidence of comparables across the area ranged from £100 000 to £200 000, so this was not an easy exercise. In the end the tribunal determined to defer to Mr Pocock’s greater knowledge and leave the freehold value at £142 000, although this it thought was perhaps slightly on the high side, and in any case is an average across the ten flats.
21. The tribunal did not consider that a 5% discount was required in respect of the sliver of land, perhaps no more than one to one and a half metres wide, to the front part only of the eastern boundary.
22. *Deferment value* — Mr Pocock had, perhaps by accident, applied the standard *Sportelli* rate of 5% for flats. Since the initial decision in that case variations in that guideline rate have become accepted where there is persuasive evidence to support such a course. These have included the increased complexity and risk of flat management due to the rather convoluted consultation regime required in the case of major works and long term agreements, and the risk of obsolescence or deterioration in the building making it less likely that it will be such a secure investment.<sup>5</sup>
23. As discussed during the hearing, the tribunal disagreed with Mr Pocock on the prospects for redevelopment and considered that both these factors were at play here, justifying an increase in deferment rate from 5% to 5.5%.
24. *Modern ground rent* — Mr Pocock had not factored this into his calculation at all, but the tribunal must. What proportion of the overall value of the property is attributable to the site value itself? Hague, at paragraph 8–10, records a wide range of percentages, with the smarter central London boroughs attracting by far the highest percentages, at 55% for a mews property in Chelsea, while other poorer areas such as parts of Sheffield or Cardiff attracting only 19.5 or 20%. Cambridge in general and even Chesterton in particular, are attractive areas with many excellent facilities and attractions, and in the tribunal’s determination is more akin to some of the other London boroughs or the smarter regional areas like Solihull, Southport or Sutton Coldfield, at around 33%, with a yield of 7%. If each flat is worth £142 000 then all ten are £1.42m, so the site value is £473 333. Of this 7% produces a section 15 ground rent of £33 133.

<sup>5</sup> *Zuckerman v Calthorpe Estates Trustees* [2009] UKUT 235 (LC), [2011] L&TR 12

25. *Relativity* — The tribunal agrees with Mr Pocock that, with the intermediate interest already acquired, the only real liability for the leaseholders (once their leases are varied) is to pay a peppercorn rent. A relativity of 95% is therefore inappropriate and 98% is substituted.
26. The net result is that the acquisition price payable by the applicant into court is £44 600, calculated as per the Schedule below.

Dated 14<sup>th</sup> May 2012

Graham K Sinclair – Chairman  
for the Leasehold Valuation Tribunal

#### SCHEDULE

<i>Current unpaid rent x 6 years</i>		NIL
<i>1. Freehold reversion</i>		
£142 000 per flat x 10	1 420 000	
Deferred 77 years @ 5.5%	0.0162017	
Payable		£23 006
<i>2. Section 15 rent</i>		
Modern Ground Rent @ 7%	33 133	
YP 50 years	13.8007	
Deferred 77 years @ 5.5%	0.0162017	
MGR payable		£7 408
<i>3. Marriage value</i>		
At 98% relativity	28 400	
Landlord's share @ 50%		£14 200
<b>Acquisition price</b>		<b>£44 615</b>
Say		£44 600