



RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/33UC/OAF/2011/0004

County Court claim number : INR 00017

- Properties** : The Old Mill, Mill Drive, Foulsham, Norfolk NR20 5RB & 11 other properties, as recorded in a Schedule annexed to an Order of the Norwich County Court made on 9th May 2011
- 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** : John Digby Riddett & Linda Jane Riddett and others whose names are recorded on page 2 of the report of John Mansfield FRICS of Brown & Co, dated 26th October 2011
- represented by** : Blocks Solicitors, Arcade Chambers, 2–6 Arcade Street, Ipswich IP1 1EL
- Respondent** : The successor in title to Sir Thomas Hunt & William Hunt (1604), whose identity is unknown

DECISION

Handed down 8th February 2012

- Tribunal** : G K Sinclair, G J Dinwiddy FRICS, G Smith MRICS FAAV REV
- Hearing date** : Friday 16th December 2011, at the New Frost Hall, Foulsham
- Representation** : John Riddett, of Blocks Solicitors, Ipswich

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Introduction

1. The applicants are the leaseholders of twelve separate residential premises scattered throughout the village of Foulsham, in Norfolk. According to Mr Riddett 500 year leases were granted by Sir Thomas Hunt & William Hunt at around the time of King James VI's

accession to the English throne. In Mr Riddett's case leases for the two distinct parts of his premises were granted in May 1604. Leases were granted because the lessor could not alienate the land entirely, whereas a long lease was acceptable. The Hunts were not interested in the rent, merely the substantial cash premium paid for the grant. No rent has ever been paid. A book on the local history of Foulsham written as long ago as 1842 by Quarles stated that rent had not been paid in (what was then) living memory. As a result the landlord, whomever that has been from time to time, can perhaps be said to have washed his hands of the properties.

2. On 10th January 2011, 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 Old Mill. Similar claims were issued in respect of the other 11 premises. By order of District Judge Sparrow made on 9th May 2011 the Leasehold Valuation Tribunal was directed to determine the price payable into court in respect of all these claims.
3. It is worth recording at this stage that on 9th March 2010 a decision was handed down by a differently constituted Leasehold Valuation Tribunal in respect of a test case brought, with Mr Riddett's professional assistance, by Ms Clement-Shipleigh of Harmony House, High Street, Foulsham. A copy of the decision was appended to the valuation report relied upon in the present applications.

Inspection

4. The tribunal inspected all of the premises (one externally only) on a cold wet morning in mid-December 2011. The hearing followed in the afternoon. Two of the premises (Willowbank & Coldharbour) comprise modern bungalows in substantial plots of land, one (Pink Cottage) a 1987 rebuild of a former end-terrace cottage, and one (the Old Mill) is a modern house connected by an entrance lobby and first floor internal bridge to a converted former windmill. The Barn has been converted from a farm building with no windows facing the street, another (42 High Street) from a shop or former bank, and the rest of those inspected are of various vintages with more recent additions. None is likely to have been in existence when the leases were originally granted.
5. In certain cases the valuation exercise is complicated by the fact that the title is part freehold and part leasehold. According to its registered title Bray Cottage has both leasehold and freehold titles which are "indistinguishably intermixed". Two properties (Sunrise & Rose Villa) have title plans which show precisely which parts are freehold and which leasehold, with the dwellings in each case being mainly built on the freehold part but extending into that part held leasehold.
6. Photographs and fuller particulars of each of the twelve properties appear in the valuation report submitted on behalf of the applicants, so they need not be repeated here.

Applicable valuation principles

7. As the annual rent under the leases is unknown – save for two cases where it is believed to be 10½d (old pence) – it has in all cases 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.
8. 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.
9. 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 10th 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.¹
10. 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 2002² 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.

Valuation evidence and hearing

11. Mr John Mansfield FRICS, of Brown & Co, provided a detailed valuation report dealing with all twelve subject premises. In the preamble he explains the basis of his valuations and the comparable evidence which he has considered. These included a building plot sold recently in the village, which the tribunal also inspected. The tribunal's earlier decision in respect of Harmony House was drawn to his attention and he has sought to apply the same “standing house” method of valuing the freehold reversion. A copy of that decision is appended at the end of his report.
12. Mr Mansfield's principal assumptions are listed in paragraph 1.5.5 of his report :
- a. He has sought to assess the value of a modern freehold house of appropriate size erected on each plot

¹ LRA 1967, s.9(1E)

² In force from 28th February 2005

- b. From this modern house value he has attempted to assess, as a proportion of that, the site value
 - c. This method has been adopted because market evidence is scant, and because it has been adopted in various LVT decisions which he has seen
 - d. For the more cramped plots in the centre of the village he has adopted a site value of 25% of the modern house value
 - e. For the two bungalows on much larger sites he increased the proportion for site value to 35%
 - f. In the case of Bray Cottage, where the freehold and leasehold titles were said to be “indistinguishably intermixed” (i.e. it could not be said which part was which) he adopted a rule of thumb and treated the leasehold proportion as being 50% of the value of the whole
 - g. In the cases of the two where the boundaries between freehold and leasehold parts were clear he assessed the leasehold part as being a fair proportion of the whole
 - h. In assessing the value of the reversion to a modern ground rent he applied a rate of 7%
 - i. In accordance with the decision in *Sportelli* a deferment rate of 4.75% is applied to the end of the period of the extended term of the lease
 - j. No marriage value is payable.
13. Unfortunately Mr Mansfield had not been asked to attend the hearing to speak to his report and answer questions from the tribunal (and others) upon it. This meant that Mr Riddett was not best placed to answer points on valuation posed by the tribunal. A point of some importance was the percentage share of the modern house value which should be attributed to the site itself. In many cases Mr Mansfield had considered 25% to be the right figure, but in the tribunal’s experience the District Valuer would insist that site value was at least 35–40%. It was put to Mr Riddett that a developer will build at £100 per sq ft (some at £80), then add 15% profit margin and deduct the total from the open market price to get a site value. In the absence of Mr Mansfield (and the tribunal does not know how he would have responded to such questioning) Mr Riddett was forced to concede that perhaps 25% was not right.
14. Insofar as his own property was concerned, The Old Mill, Mr Riddett could give direct evidence. It was subject to two leases; one for the mill, outbuildings and driveway, and the other lease for the garden/allotments. He informed the tribunal that he had applied more than once to Broadland Council (most recently about 12 months previously) for planning consent to build on the garden closer to the road, but on both occasions had been turned down. The development boundary broadly follows existing development. While the Mill itself is not listed, the planners were not keen on the building of the current house. He had to have a site inspection to show that it was viable. He and his wife had been trying to sell for the last year because most of their children had left home. Some interest had been shown but there were no offers yet. Mr Mansfield’s valuation at £500 000 is a credible figure. They had put the property on the market at the highest valuation of £600 000, but most others were around £500 000, including that from Mr Mansfield’s own colleague at Brown & Co, Peter Sergeant. The house has no garage, but planning permission for this exists.

15. Other points made by applicants and the tribunal include :
- a. The Barn, 16 Gunn Street – Mr Mansfield had again applied a 25% percentage for site value, yet a barn is about the most expensive thing you can build/convert, at around twice the cost of a new-build house
 - b. Pink Cottage, 39 High Street – this is a 1987 rebuild of a Victorian end-terrace cottage. The issue is the 25% site value. Parking is a serious issue in the narrow High Street, with heavy lorry traffic passing through to a potato packing factory on a nearby old airfield. Pink Cottage, however, has parking at the side
 - c. Coldharbour, Chapel Lane – this is a large bungalow on a very large site close to a stream, which is said to be at risk of flooding. Due to Chapel Lane being so narrow all subsequent planning applications have failed, as there is no room for vehicles to pass
 - d. Truewell, 26 High Street – there is a vehicular right of way as far as the garage, but only a tiny car would fit in it. The applicant argues that this is closest as a comparable to Harmony House, High Street, the subject of the tribunal's earlier enfranchisement application, although it has a smaller plot than that because it narrows at the back
 - e. Sunrise, 9 High Street – the front of the house is freehold, with only the rear extension and garden being leasehold. It has off-road parking at the front
 - f. Willowbank, Twyford Lane – The last comparable mentioned is the next door bungalow, which was built in the 1930s. Mr Riddett acted on that sale. It was also a leasehold property and was bought to be lived in; not as a development site. It has 4 bedrooms, whereas the subject property has 3, but the rooms are smaller. Mr Riddett said that it was on the market for £280 000 but the seller had to drop that price in order to achieve a sale
 - g. Rose Villa, 40 High Street – this is built end on to the High Street, but only the rear extension, shed and garden with parking are leasehold. The adjoining Fern Cottage has a large garden to the side, but only pedestrian access. Its only parking is on the street, so the tribunal suggested that one might have to consider the question of bids for the rear land for parking use, and the effect on the subject property of the loss of its kitchen extension
 - h. Mill House – this is an extensive family home with a Georgian frontage and a Victorian and later extensions at the rear. It enjoys off-road parking and garaging. The rooms at the side do have traffic, with people passing to and fro, but it also has a large walled garden
 - i. Bray Cottage, 10 High Street – a purchaser offered £192 000 for the property, the freehold and leasehold parts of which are “indistinguishably intermixed”, but then withdrew because the vendors were part of this enfranchisement process. Half is assumed to be leasehold, but it is argued that only the owner of the rest could realistically purchase – a “special purchaser”
 - j. Rose Cottage, Gunn Street – this property, the only one not inspected by the tribunal internally, was built in 1988. A rear extension was put on in 1989 and that at the front about 8 years ago. There are 2 buildings in the rear garden – a garage and shed. The property has no further room for expansion, with 4 bedrooms, but 3 of which have one sloping roof and one – on the second floor – has 2. There is parking fore and aft along the narrow driveway to one side, in front of the garage.

Findings

16. Although none of the leases have been found the registered titles in most cases identify a lease date, and in two cases the rent. In all but three cases a specific date in 1604 is mentioned, in one a specific date in 1602, and in the remaining two an assumption has been made that they are also sometime in 1604. In each case therefore the unexpired term is just over 91 or 93 years, well in excess of the 80 year limit for inclusion of any marriage value.
17. As discussed during the hearing, the tribunal considered that Mr Mansfield's calculation of the site value to be ascribed to each property was on the low side. In part this was because of some low overall valuations, a number of which the tribunal has adjusted, but principally because of the percentages applied as bare site values. The tribunal agrees that in the case of Truwell, 26 High Street the site is so tight and parking awkward that 25% is acceptable, but elsewhere the tribunal increases Mr Mansfield's 25% to 30% or 35%. An exception is the Old Mill, built on a very large plot, where the tribunal values the site at 40% of the value if a modern house in good condition were erected on the land. The two bungalows on large plots are also assessed at 40% instead of the 35% applied by Mr Mansfield.
18. In the case of Bray Cottage the Land Registry has decided to record that the freehold and leasehold titles are "indistinguishably intermixed". Unlike the other two properties with mixed freehold and leasehold titles, where a line can be drawn between the two distinct parts, what is one to do here? The two titles cannot metaphorically be put in a blender, so is this simply a case where the existing or pre-existing documentation was of such poor quality that nobody really knows where the boundary of the two parts lies? This is an expression intended to disguise a blank on the plan : the Land Registry's twenty-first century equivalent of "Here be dragons".
19. But how then does one value the leasehold part, which on the basis of nothing at all has been assumed to be 50% of the whole? Mr Riddett floated an argument that, as the boundary is uncertain the only party that would be remotely interested in purchasing is the owner of the adjoining (intermixed) freehold. With only one purchaser then the value must be as little as that purchaser is willing to pay. However, in *Gajapatiru v The Revenue Divisional Officer for Vizagapatam*³ the Privy Council stated :

It was contended on behalf of the respondent that, at an auction where there is only one possible purchaser of the potentiality, the bidding will only rise above the 'poramboke'⁴ value sufficiently to enable the land to be knocked down to that purchaser. But if the potentiality is of value to the vendor if there happen to be two or more possible purchasers of it, it is difficult to see why he should be willing to part with it for nothing merely because there is only one purchaser. To compel him to do so is to treat him as a vendor parting with his land under compulsion and not as a willing vendor. The fact is that the only possible purchaser of a potentiality is usually quite willing to pay for it. An instance of this

³ [1939] AC 302 (aka *The Indian Case*)

⁴ The value of the land in effect for general agricultural use in common with others

is to be found in the case of *Inland Revenue Commissioners v Clay*.⁵

20. Section 9(1) also provides that in assessing the open market value it must be assumed that the tenant and members of his family will not be buying or seeking to buy. Does this also exclude the tenant in his separate capacity as adjoining freeholder? Although it is initially tempting to say that if the freehold and leasehold titles are so confused there can only be one purchaser, and he will pay as little as possible for the leasehold part, the true position is as declared in *Gajapatiru*. An open market deal between willing buyer and willing seller must be assumed. In the absence of evidence one way or the other about the respective sizes of the freehold and leasehold parts it is only right that the tribunal apply the equitable principle that equality is equity, so it shall assume (as Mr Mansfield did also) that 50% of the property is leasehold.
21. Having taken into account the evidence presented on behalf of the Applicants, that seen during the tribunal's inspections, the various submissions advanced at the hearing and the tribunal's own general knowledge and experience, the following are determined to be the purchase prices payable for the subject premises. A full explanation of how each price has been determined appears in the schedules annexed.

<i>Property</i>	<i>Purchase price</i>	
	<i>Mansfield</i>	<i>Tribunal</i>
42/44 High Street, Foulsham	£1588	£2165
Rose Villa, 40 High Street	£664	£779
Pink Cottage, 39 High Street	£818	£904
Mill House, 28 High Street	£1770	£2581
Truewell, 26 High Street	£717	£737
Bray Cottage, 10 High Street	£455	£424
Sunrise, 9 High Street	£688	£744
The Old mill, Mill Drive	£2269	£3185
Willowbank, 8 Twyford Lane	£1661	£1911
Coldharbour, Chapel Lane	£1894	£2070
The Barn, 16 Gunn Street	£1868	£2376
Rose Cottage, 18 Gunn Street	£1135	£1434

Dated 8th February 2012

Graham K Sinclair – Chairman
for the Leasehold Valuation Tribunal

**HM Courts and Tribunals Service
Leasehold Valuation Tribunal**

07-Feb-12

Decision of the Tribunal

Address 42/44 High Street, Foulsham, Dereham, Norfolk, NR20 5RT

Premises Former Shop/Bank and House with Large Outbuilding, and parking

Term: 500 years from 25 March 1604

Notice date:

10-Jan-11

Valuation Date:

10-Jan-11

Unexpired term at Valuation Date

93.2 years

Value of Modern Freehold House £375,000

Site Value as a proportion of House Value 35% £131,250

Value of Ground rent : £0

Ground rent: not known but taken to be nominal

Term

Ground Rent £0

YP for 93.2 years at 7.00% 13.801

£ -

Value of Modern Ground Rent :

Site Value as above £131,250

Ground Rent at 7.00%

Modern Ground Rent £9,188

YP for 50.0 years at 7.00% 13.801

PV of £ def 93.2 years at 4.75% 0.013230

143.2

0.18258 £ 1,677

Value of Reversion to Freehold

VP Value £375,000

PV of £ def 143.2 years at 4.75% 0.001300

£ 487

£ 2,165

Enfranchisement Price

£ 2,165

**HM Courts and Tribunals Service
Leasehold Valuation Tribunal**

07-Feb-12

Decision of the Tribunal

Address Mill House, 28 High Street, Foulsham, Dereham, Norfolk, NR20 5RT

Premises Large Georgian house set in about a third of an acre of land

Term: 500 years from 15 May 1604

Notice date:

10-Jan-11

Valuation Date:

10-Jan-11

Unexpired term at Valuation Date

93.3 years

Value of Modern Freehold House £450,000

Site Value as a proportion of House Value 35% £157,500

Value of Ground rent : £0

Ground rent: not known but taken to be nominal

Term

Ground Rent						£0		
YP for	93.3	years	at	7.00%	<u>13.801</u>	£	-	

Value of Modern Ground Rent :

Site Value as above £157,500

Ground Rent at 7.00%

Modern Ground Rent £11,025

YP for	50.0	years	at	7.00%	13.801		
PV of £ def	93.3	years	at	4.75%	<u>0.013144</u>	0.18140	£ 2,000
	143.3						

Value of Reversion to Freehold

VP Value £450,000

PV of £ def	143.3	years	at	4.75%	<u>0.001291</u>	£	581
						£	2,581

Enfranchisement Price

£ 2,581

**HM Courts and Tribunals Service
Leasehold Valuation Tribunal**

07-Feb-12

Decision of the Tribunal

Address **Truewell, 26 High Street, Foulsham, Dereham, Norfolk, NR20 5RT**

Premises **Small cottage with outbuilding but no parking**

Term: **500 years from *assumed* 15 May 1604**

Notice date: **10-Jan-11**

Valuation Date: **10-Jan-11**

Unexpired term at Valuation Date **93.34 years**

Value of Modern Freehold House £165,000

Site Value as a proportion of House Value **25%** £41,250

Value of Ground rent : £0

Ground rent: not known but taken to be nominal

Term

Ground Rent £0

YP for 93.3 years at 7.00% 13.801

£ -

Value of Modern Ground Rent :

Site Value as above £41,250

Ground Rent at 7.00%

Modern Ground Rent £2,888

YP for 50.0 years at 7.00% 13.801

PV of £ def 93.3 years at 4.75% 0.013144

0.18140 £ 524

143.3

Value of Reversion to Freehold

VP Value £165,000

PV of £ def 143.3 years at 4.75% 0.001291

£ 213

£ 737

Enfranchisement Price

£ 737

**HM Courts and Tribunals Service
Leasehold Valuation Tribunal**

07-Feb-12

Decision of the Tribunal

Address Willow Bank, 8 Twyford Lane, Foulsham, Dereham, Norfolk, NR20 5RJ

Premises Large modern bungalow set in about a quarter of an acre.

Term: 500 years from 15 May 1604

Notice date: 10-Jan-11

Valuation Date: 10-Jan-11

Unexpired term at Valuation Date 93.34 years

Value of Modern Freehold House £300,000

Site Value as a proportion of House Value 40% £120,000

Value of Ground rent : £0

Ground rent: not known but taken to be nominal

Term

Ground Rent					£0		
YP for	93.3	years	at	7.00%	<u>13.801</u>	£	-

Value of Modern Ground Rent :

Site Value as above £120,000

Ground Rent at 7.00%

Modern Ground Rent £8,400

YP for	50.0	years	at	7.00%	13.801		
PV of £ def	93.3	years	at	4.75%	<u>0.013144</u>	0.18140	£ 1,524
	143.3						

Value of Reversion to Freehold

VP Value £300,000

PV of £ def	143.3	years	at	4.75%	<u>0.001291</u>	£	387
						£	<u>1,911</u>

Enfranchisement Price £ 1,911

**HM Courts and Tribunals Service
Leasehold Valuation Tribunal**

07-Feb-12

Decision of the Tribunal

Address Coldharbour, Chapel Lane, Foulsham, Dereham, Norfolk, NR20 5RA

Premises Large modern bungalow set in a site of about three quarters of an acre, liable to flooding.

Term: 500 years from 15 May 1604

Notice date: 10-Jan-11

Valuation Date: 10-Jan-11

Unexpired term at Valuation Date 93.3 years

Value of Modern Freehold House £325,000

Site Value as a proportion of House Value 40% £130,000

Value of Ground rent : £0

Ground rent: not known but taken to be nominal

Term

Ground Rent					£0		
YP for	93.3	years	at	7.00%	<u>13.801</u>	£	-

Value of Modern Ground Rent :

Site Value as above £130,000

Ground Rent at 7.00%

Modern Ground Rent £9,100

YP for	50.0	years	at	7.00%	13.801		
PV of £ def	93.3	years	at	4.75%	<u>0.013144</u>	0.18140	£ 1,651
	143.3						

Value of Reversion to Freehold

VP Value £325,000

PV of £ def	143.3	years	at	4.75%	<u>0.001291</u>	£	420
						£	<u>2,070</u>

Enfranchisement Price £ 2,070

