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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/12UG/OAF/2014/0006**
County Court claim no	:	**3CB00728**
Property	:	White Gates, Common Road, Weston Colville, Cambridge CB21 5NS
Applicants	:	David John Harrison & Anne Maureen Harrison
Representative	:	Mr Rhodri Rees, of Adams Harrison, Solicitors, 52a High Street, Haverhill, Suffolk CB9 8AR
Respondent	:	The successor in title to the Right Hon Richard Lord Dacre, landlord under a lease dated 10th November 1620 for a term of 500 years, the identity of whom is unknown
Type of 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)]
Tribunal Members	:	G K Sinclair, M Krisko BSc (Est Man) FRICS & R Thomas MRICS
Date of inspection and determination	:	Friday 26th September 2014
Date of Decision	:	14th October 2014

DECISION FOLLOWING A WRITTEN DETERMINATION

Introduction

1. From 23rd April 1976 until 28th February 2014 the applicants were the leasehold owners of residential and appurtenant property known as White Gates, Common Road, Weston Colville, Cambridge CB21 5NS under the residue of a lease dated 10th November 1620 and granted by the Right Hon Richard Lord Dacre for a term of 500 years at an annual rent of 2d (two old pence). Those are the only known terms of the lease and are as recorded on the registered leasehold title, as no copy of the lease can be found. The identity of the current lessor is also unknown.

2. On 5th December 2013 the applicants agreed to assign their interest in the property, the benefit of this application and the right to have the freehold vested in them to Russell Mills and Carolyn Mills, as recorded in the order of Cambridge County Court dated 20th June 2014 (amended 4th July 2014).

3. Directions for the hearing of this application having been given, the applicants requested that, as the circumstances are so similar to a decision of the tribunal dated 3rd June 2014 in connection with a nearby property at Green Cottage, 58 The Green, Weston Colville, the application should be dealt with on the basis of their written evidence and submissions contained in the report of Mark C Hallam BSc FRICS dated 22nd August 2014. The tribunal acceded to that request and has dealt with the application without a hearing.

Inspection

4. The tribunal inspected the premises on the morning of Friday 26th September 2014. At the time the weather was cloudy but dry. A full description of the premises, with photographs of this and comparable properties, appears in the report of Mark Hallam BSc FRICS dated 22nd August 2014.

5. Although strictly irrelevant to the task before the tribunal, immediately to the rear of the wide plot on which the property sits is a freehold plot approximately double the length and which was also owned freehold by the applicants and sold to Russell Mills and Carolyn Mills as part of the deal referred to in paragraph 2 above. A planning application has been made to South Cambridgeshire Council for the erection of three houses on the combined plots. This tribunal can only direct its attention to the potential for the subject plot.

Applicable valuation principles

6. The annual rent or rents under the lease is nominal, and 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.

7. 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 Clarise Properties Ltd*[1] that there was now a much greater likelihood that the ultimate reversion would have a significant value than there was when the two-stage approach was adopted 40 years ago, because :

a. House prices had increased substantially in real terms; and

b. Lower deferment rates had been applied since the decision in *Earl Cadogan v Sportelli.*[2]

The practice of conducting a two-stage valuation should therefore cease and the full three-stage calculation, including the *Haresign*[3] addition, be applied.

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. Interestingly, however, in *Re Clarise Properties* the President drew attention to one factor which would have the effect of suppressing the value of the freehold reversion. To quote the material passage in full :

> 39 When valuing the reversion to a standing house on the expiry of the 50-year lease extension it is necessary to assume that Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy. Accordingly the tenancy automatically continues until notice is served under para 4 of Schedule 10, when the tenant is entitled to an assured tenancy under the Housing Act 1988 at a market rent. Mr Evans made a deduction of £2 500 (or 1.75 per cent) from his standing house valuation of £142 500 to reflect this provision. He accepted that the freehold interest in a house is significantly less attractive to a purchaser if it is subject to an assured tenancy than if it is vacant. He justified his very modest deduction, however, by emphasising that what is to be assumed is not that the tenant will continue in possession at the end of the 50-year extension, but that the tenant will have the right to remain in possession. It was impossible to know what the view of the tenant would be in 78.5 years' time.
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> 40 It is true that the purchaser of the freehold reversion would have no means of knowing whether vacant possession would be gained at the end of the 50-year lease extension. In our view, however, the fact that there can be no certainty of obtaining vacant possession would have a significant depressing effect on value and a substantially greater effect

[1] [2012] UKUT 4 (LC); [2012] 1 EGLR 83 (George Bartlett QC (President) & N J Rose FRICS)

[2] [2007] EWCA Civ 1042, [2008] 1 WLR 2142

[3] See *Haresign v St John the Baptist's College, Oxford* (1980) 255 EG 711, explained in the current (6th) edition of *Hague : Leasehold Enfranchisement* at para 9–16

than that suggested by Mr Evans. In the absence of any comparable evidence to indicate the scale of the appropriate deduction we conclude that a purchaser would assume that the value of the eventual reversion would be £114 000, equivalent to 80% of the full standing house value of £142 500.

10. The transcript of the judgment does not reveal the evidential basis for concluding that a reduction of 20% (as opposed to any other percentage) was appropriate. However, at paragraph 9–16 of *Hague*[4] this is described as :

> ...controversial, since there was no evidence adduced to support it, and it is substantially higher than the traditional 10 per cent which was used to calculate the risk of a statutory tenancy arising under Pt 1 of the Landlord and Tenant Act 1954, and the much lower discount to reflect 1989 Act rights : see para 9–43.

This is a very lengthy paragraph, but after referring to the case of *Lloyd-Jones v Church Commissioners for England*[5] the material part reads :

> On the evidence of that case, the Tribunal held that the landlord's reversion after the original term date should be valued at the vacant possession value (less the value of tenant's improvements) less 10 per cent deduction for the risk of the tenant claiming a tenancy under Pt 1 of the 1954 Act, the resulting figure then being deferred at an appropriate percentage (the deferment rate) for the period of the unexpired term of the tenancy.
>
> This approach and method has been universally adopted and accepted by the Lands Tribunal and leasehold valuation tribunals in subsequent cases both in relation to Pt 1 of the 1954 Act and Sc 10 to the 1989 Act. In either case, the appropriate deduction to take account of the tenant's right is a matter of valuation evidence. It is not a convention so the fact that a particular discount has been given on one set of facts in one case is not relevant for the purpose of determining what the discount should be in another case...
>
> ...Each case will depend on its own facts and evidence and some tribunals have given discounts under the 1993 Act of up to 10 per cent for assured tenancy rights.[6]

11. Section 27(2)(a) provides that the material valuation date is that on which the application was made to the court. In this case the claim was issued on 12th December 2013, so although Mr Hallam assumed the valuation date to be 22nd December the tribunal does not consider this difference to be of any significance.

4 *Hague : Leasehold Enfranchisement* (6th ed – Sweet & Maxwell, 2014)

5 [1982] 1 EGLR 209

6 But compare the approach in *Clarise Properties* to that adopted in *Silvote Ltd v Liverpool City Council* [2010] UKUT 192 (LC), referred to at para 9–35 fn 205, where the tribunal declined to apply a 10 per cent deduction where only 11 years were left on the lease and no evidence had been adduced to justify it

Hallam's £350 000 to £400 000.

16. The tribunal did not find Appendix V or Mr Hallam's cleared site calculation persuasive, and this was ignored. In the valuation spreadsheet at Appendix VI the tribunal could not understand the reference at the top of the page to a capitalisation rate of 7.5% for the ground rent. The rent is nil, so nobody would pay anything or expect any capitalisation rate for it. Further, the rate is not even mentioned in the body of the report. The tribunal ignored it, although it makes no difference whatever to the calculation. Taking into account the evidence and arguments advanced in the previous case– to which Mr Hallam regularly referred – the tribunal considered that sufficient evidence had been adduced to justify departing from the standard *Sportelli* rate and adopting in this case a deferment rate of 6%, and that it was appropriate that both the deferment and capitalisation rates chosen be the same.

17. The net result is that, by selecting a higher site value, the figures in Mr Hallam's spreadsheet require some upward adjustment. The tribunal determines that the price payable thus increases by £50 from Mr Hallam's £213 to a total of £263, as explained in the schedule annexed.

Dated 14th October 2014

Graham Sinclair

Graham Sinclair
Tribunal Judge

Schedule

Calculation of the amount payable into Court

Term : 500 years from 11th November 1620			
Unexpired term at valuation date :	107 years		
Valuation of modern house		£400,000.00	
Site value @ 30%		£120,000.00	
Term			
Current/historic ground rent		Nil	
YP for 107 years			Nil
Value of modern ground rent			
Site value, as above		£120,000.00	
Ground rent at 6%		£7,200.00	
Modern ground rent			
YP for 50 years @ 6%	15.76186		
Present value of £1 deferred 107 years @ 6%	0.001960		£223.00
Value of freehold reversion (Entirety value)			
Vacant possession value less discount (1989 Act) @ 10%		£360,000.00	
PV for 157 years @ 6%	0.0001064		£40.00
Total payable			**£263.00**