

9 HARPFORD DRIVE, BRIGHTMET, BOLTON BL2 6TW

1. This document records the decision with reasons of the Tribunal following the application to determine the price payable for the freehold estate in the house and premises above mentioned in accordance with the provisions of the Leasehold Reform Act 1967 as amended.
2. On May 6th 1997 Messrs Perkins and Company Solicitors of Manchester acting on behalf of their clients Paul Francis Brown and Dorothy Jean Brown, the leaseholders, served a notice of their clients claim to acquire the freehold, the notice being served upon Messrs Cavernlodge Ltd, the freeholders. In a further letter to the Tribunal dated March 6th 2001, Messrs Stevensons solicitors of Huntingdon, Cambridgeshire acting on behalf of the freeholders supplied the Tribunal with a valuation prepared by Messrs Conrad Ritblat Erdman in the sum of £343.00.
3. The Tribunal inspected the subject property on the morning of April 9th 2001 in the presence of Mr Brown. The freeholders were neither present nor represented at the inspection. The subject property is a detached dwellinghouse constructed of brick with a tiled roof and originally built about 1970. The property has gardens to the front and rear and occupies a corner site at the junction of Harpford Drive and Harpford Close. The house is however situated towards the end of the estate and some distance from shops and other amenities. The house has the benefit of blown air central heating and all windows are double glazed.

The accommodation briefly comprises:- on the ground floor: - Porch, hall, livingroom, dining room and fully fitted kitchen with eating area and on the first floor three bedrooms and a bathroom/W.C. combined with a coloured suite. There is also an attached single brick garage entered from Harpford Close the side road.

4. Following the inspection on the morning of April 9th 2001 a hearing was held at 20th Floor, Sunley Towers, Piccadilly Plaza, Manchester. Mr Brown the leaseholder was present but the freeholders were not present nor represented. However, in the letter of March 21st 2001 from Messrs Stevensons enclosing the valuation on behalf of the freeholders it was stated that neither they nor their clients wished to appear at the Tribunal hearing and that no discourtesy to the Tribunal was intended.

At the hearing the Leaseholder Mr Brown outlined the history of his attempts to purchase the freehold of the property and complained of a lack of response from the freeholders. He considered that having failed to reach an agreement with the freeholders in the 3 and a half years since he served the notice to acquire freehold that he had no alternative but to apply to the Leasehold Valuation Tribunal. Mr Brown complained that his letters to the freeholders were either ignored or if a reply was forthcoming it did not deal with the matters raised by him. He complained that cheques forwarded to the freeholders in payment of the ground rent had been returned.

Although the freeholders were not present nor represented at the hearing the Tribunal did take into consideration the correspondence from their solicitors and the valuation prepared by Messrs Conrad, Ritblat Erdman.

5. In coming to its decision the Tribunal noted that the lease was for 999 years from March 25th 1970 and the ground rent was £24.00 per annum payable by equal half yearly instalments.
6. In coming to its decision, the Tribunal took its sole function to be that of determining a price in accordance with Section 9 of the Leasehold Reform Act 1967, as amended, viz "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 who reside in the house not buying or seeking to buy) might be expected to realise".
7. Certain statutory assumptions must be made, but that the only one of significance in this case was that in effect the freehold was being sold subject to the existing lease: that is with its 999 year term extendable for a further 50 years (Section 9 (1)(a)).
8. In discharging this function of determining the price, the Tribunal (following the earlier tribunal decisions in *Yates v Bridgewater Estates Ltd* (1982) 261 EG 1001 and *Williams v Walsh and Others* (1983) 268 EG 915 took into account the following:
 - (i) that there was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties;
 - (ii) that it would not be consistent with the verbal definition of price in Section 9 (1) of the 1967 Act or with the circumstances of the case to apply the algebraic formulae prescribed by Parliament for the redemption of rent charges (Rent Charges Act 1977, Section 10):
 - (iii) that they were entitled to rely on their general knowledge and experience whatever the evidence or representations (or the absence of such) submitted by the parties;
 - (iv) that the statutory wording envisaged the sale on its own as one lot, i.e. not as included in a parcel of ground rents;
 - (v) that the possibility of bids from the sitting tenant which might push up the open market price had been expressly excluded by the 1967 Act;
 - (vi) that the seller (although not the buyer) had been statutorily described as "willing" so that any policy or practice of the landlord restricting sales had to be disregarded;
 - (vii) that the resultant loss of income to the landlord/seller was not comprehended by the statutory formulae for determining the price payable excepting insofar as this was reflected in the normal valuation/market process;
 - (viii) that the hypothetical and potential buyers in the market would all have in mind their own conveyancing costs (although not also those of the seller under Section 9 (4) of the 1967 Act and any covenants which would be continued in the conveyance (see Section 9 (1) (C) and Section 10 (4) of the 1967 Act) and most important the length of the term and the amount of ground rent under the lease, and
 - (ix) that the costs of collection of the ground rent, which might involve Agents, the giving of receipts and proceedings for the recovery of arrears, must be taken into account as a half

yearly matter strictly in accordance with the terms of the lease notwithstanding any practice of less frequent payment.

9. In the present case there are 968 years unexpired. In the circumstances the Tribunal took the view [as did the Lands Tribunal in the case of *Janering v. English Property Corporation Ltd and Nessdale Ltd* (1977) 242 EG 388] that a reversion of more than 900 years would not be of any significance and (as in the above case) the right to receive £24.00 per annum with no prospect of capital appreciation would be of extremely limited attraction. The Tribunal noted that there was no specific clause in the lease giving the freeholders the right to charge a fee for giving consent for alterations to the exterior of the property but the freeholders consent was required but it was not to be unreasonably withheld. The freeholder's consent was also required for the erection of a brick garage, shed or other structure upon any part of the plot. The Tribunal noted that there was a brick garage at the property and that there was very little room if any for further development of the site. The Tribunal considered that the right to a fee of £2.10 in respect of receiving a notice in respect of an assignment, underletting or otherwise parting with possession of the property was of nominal value only.

The Tribunal noted that the valuation for Messrs: Conrad, Ritblat Erdman on behalf of the freeholders at £343.00 being 14.28 years purchase of the rent but using its own knowledge and experience considered this to be very high. The Tribunal must look at the sale of the rent in isolation and not as part of a parcel of rents and must exclude any element of the tenant's bid [see *Dalaforce v Evans* (1970) 215 EG 31]

The Tribunal therefore concluded that it would rely on its own knowledge, experience and judgement that the maximum justifiable in the present case was a purchase price of £170.00 this being calculated on the basis of 7 years purchase of the ground rent [£24.00 at 7YP = £168.00 say £170.00]. This amount is exclusive of permitted costs.

By Section 142 and Schedule 22 Part 1 Paragraph 2 of the Housing Act 1988 an appeal to the Lands Tribunal may be made by any person who:-

- a) appeared before or was represented before the Tribunal and
- b) is dissatisfied with the Tribunal's decision

Such appeal must be made within 28 days of the issue of reasons (Lands Tribunal Act 1949 Section 6 (3) and the Lands Tribunal Rules 1975 as amended).



S CHESTERS-THOMPSON
CHAIRMAN OF THE LEASEHOLD VALUATION TRIBUNAL