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NORTH WESTERN RENT ASSESSMENT PANEL

As

LEASEHOLD VALUATION TRIBUNAL

**Leasehold Reform Act 1967 Section 21
Housing Act 1980 Section 142 and Schedule 22**

This document records the decision of the Leasehold Valuation Tribunal in respect of an application for enfranchisement in respect of:

**7 Granville Avenue
Lytham St Annes
Lancashire
FY8 2RR**

Applications: By notice dated 15 September 2002. Mr N C Stephens of 7 Granville Avenue, Lytham St Annes, sought to exercise his rights to acquire the freehold of his house and premises. The notice was sent to the Freeholder, Estates and Management Limited, and the Underlessor, Mrs E M Tomlinson, the Personal Representative of John Arnold Ingham, deceased. The Freeholder acknowledged the leaseholders rights by notice dated 21 October 2002. The Underlessor did not respond. An application for Determination by a Leasehold Valuation Tribunal dated 29 September 2003 was submitted to the Tribunal by Mr Stephens's solicitors, Wylie Kay, and received on 25 November 2003, together with a copy of a Lease dated 8 October 1957 and an Underlease dated 22 May 1963.

Inspection: The Tribunal comprising P J Mulvenna LLB DMA, J W Shaw JP FRICS and Mrs D Rivers FILEX inspected 7 Granville Avenue during the morning of 1 November 2004. It found the house to be a semi detached two storey dwelling erected about 1964 with traditional accommodation comprising a hall, living room and kitchen/diner to the ground floor and three bedrooms, bathroom and separate W.C. to the first floor. The house had been extensively modernised over recent years and was in good order. A conservatory had been added by Mr Stephens in 1999 with the requisite consent from the Underlessor (by letter dated 15 June 1999 which was produced to the Tribunal).

Hearing: A hearing took place later the same day at the Best Western Hotel, St Annes on Sea. Mr Stephens was present, together with his wife. There was no appearance by or on behalf of the Freeholder or the Underlessor.

Mr Stephens submitted no additional valuation evidence beyond that set out in the letter dated 2 January 2002 from the Leasehold Advisory Service which had accompanied his application. He did, however, make representation as to the fairness of having to bear any of the Underlessor's costs because of her failure to respond to the original notice.

The Tribunal put to Mr Stephens the basis of valuation which it had to adopt and he accepted the approach and acknowledged the statutory basis for bearing the costs of transferring title.

The Tribunal heard no evidence that there had been a breach of any of the covenants under the Lease or the Underlease.

Valuation Principles

In assessing the value of freehold reversions under the 1967 Act as amended the Tribunal took account of the following.

- i) There was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties.
- ii) 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 formula prescribed by Parliament for the redemption of rent charges (Rent charges Act 1977, s10);
- iii) They were entitled to rely on their general knowledge and experience whatever the evidence or representations (or in the absence of such) submitted by the parties;
- iv) The statutory wording involved envisaged the sale on its own as one lot, i.e. not as included in a parcel of ground rents;
- v) 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) The seller (although not also the buyer) had been statutorily described as "willing" so that any policy or practice of the landlord restricting sales had to be disregarded;
- vii) The resultant loss of income to the landlord/seller was not comprehended by the statutory formula for determining the price payable;

- viii) The hypothetical and potential buyers in the market would 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) The costs of collection of the ground rent, which might involve agents, the giving of receipts and proceedings for recovery of arrears must be taken into account as a yearly matter strictly in accordance with the terms of the lease notwithstanding any practice of less frequent payment.
- x) In many cases in the open market tenants anxious to purchase the freehold of their properties often without valuation advice put forward sums which include the tenant's bid, an element which the Tribunal has to exclude (*DeLaforce -v- Evans 1970 215 EG 31*).

Interests to be enfranchised

In this case it is clear that Mr Stephens has the right to acquire the freehold. The Tribunal in the circumstances of the case is prepared to proceed on the basis of an informal apportionment of the head rent as between the Freeholder and the Underlessor in the ratio of 75% and 25% which from the information available to the Tribunal best reflects the original amount paid to the Freeholder by the Underlessor under the terms of the Lease.

Award

The Tribunal using its local knowledge and experience and assessing on the required statutory and case law basis set out above decided that the capital value of the freehold reversion is £70.00 which is to be paid as to 75% to the Freeholder and 25% to the Underlessor to reflect the income value of their respective interests.

Costs:

The above awards are exclusive of costs as set out in the Leasehold Reform Act 1967 Section 9 (A). The Tribunal have determined that the costs of the Underlessor should be limited to those set out in paragraphs (b), (c) and (d) of Section 9(4) of that Act, i.e., the reasonable conveyancing costs

An appeal may be made from this decision to the Lands Tribunal by leave of the Leasehold Valuation Tribunal or the Lands Tribunal. Such appeal must be made within 28 days of the issue of reasons (Lands Tribunal Act 1949 Section 6/3 and (Lands Tribunal Rules 1975) as amended.

P J MULVENNA
Chairman,
Leasehold Valuation Tribunal

18 November 2004