

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

SECTIONS 9 AND 27 OF THE LEASEHOLD REFORM ACT 1967 (AS AMENDED)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UQ/OAF/2008/0002

Property: 8 The Lawns
Windmill Hill
Brenchley
Tonbridge
Kent
TN12 7NW

Applicant: Margaret Jane Pemble

Respondents: (1) The Lawns (Brenchley) Management Ltd.
(2) Person or Persons Unknown

**Members of the
Tribunal:** Mr. R. Norman (Chairman)
Mr. J.N. Cleverton FRICS

Date decision issued:

RE: 8, THE LAWNS, WINDMILL HILL, BRENCHLEY, TONBRIDGE, KENT, TN12 7NW

Decision

1. The Tribunal has determined for the reasons set out below that the price to be paid for the freehold reversion in respect of 8, The Lawns, Windmill Hill, Brenchley, Kent, TN12 7NW ("the subject property") is £8,150.00 (eight thousand one hundred and fifty pounds).

Reasons

2. The Applicant applied to the County Court (Claim No. 7TN01662) for a declaration pursuant to the Leasehold Reform Act 1967 as amended ("the Act") that she was entitled to acquire the freehold of the subject property. The court ordered that the price to be paid for the freehold title to the subject property should be determined on the basis set out in Section 9 (1) of the Act and that the application be referred to the Leasehold Valuation Tribunal for the purpose of determining such price. The Court also ordered that no sum should be payable by the Applicant for the first Respondent's superior tenancy.

3. On 18th February 2008 directions were issued including that the Tribunal proposed to deal with the matter on the basis of written submissions only without an oral hearing and that

if any party objected to that procedure they must write to the Tribunal within 28 days from the date of the directions. No written objection has been received and the matter is being dealt with on the basis only of written representations and without an oral hearing.

4. On 31st March 2008 the matter came before a differently constituted Tribunal and was adjourned. The Tribunal had before it a valuation report prepared by Mr. Jeffrey Moys FRICS of Messrs. Bracketts in which, relying on the decisions in Earl Cadogan -v- Sportelli and Arbib -v- Earl Cadogan and Others, he had used the generic rate of 4.75% ("the Sportelli generic deferment rate"). The Tribunal was aware of recent decisions of the Leasehold Valuation Tribunal in the Midlands Area, one of which was on appeal to the Lands Tribunal, concerning the use of different deferment rates in determining the Section 15 ground rent and was concerned that the parties be given an opportunity to address the Tribunal on whether the Sportelli generic deferment rate should apply to the deferment of the Section 15 ground rent. Letters dated 9th May 2008 from Messrs. Bailey & Cogger, the Applicant's solicitors, and 7th May 2008 from Mr. Moys have been received in which it is stated that as the Sportelli deferment rates have been upheld they are content that the matter proceed to a paper determination relying on Mr. Moys' valuation report.

Inspection

5. On 18th July 2008 the Tribunal inspected the subject property and found it to be as described in Mr. Moys' report.

Consideration

6. We went on to consider the documents before us, from which we understood that:

(a) The subject property was with other property held under a lease known as "the Primrose Lease" dated 20th May 1569 which demised land at Brenchley for a term of five hundred years from 25th March 1569 at a rent of one primrose at Easter. We also understood that the freehold reversioner was not known and that the Primrose Lease had been lost.

(b) The subject property was demised by an underlease dated 5th August 1988 made between Denehurst Properties Limited (1) The Lawns (Brenchley) Management Limited (2) and Nicholas Barry Kirwan and Katrina Klara Kirwan (3). That underlease demised the subject property for a term of 500 years from 25th March 1569 (less 10 days) at the rent of a primrose on Easter Day (if demanded).

(c) The March 1990 Rateable Value of the subject property was £322

(d) The valuation date was 17th December 2007 being the date of the application to the Court.

7. Included with the documents provided by the Applicant was the valuation report of Mr. Moys which was tendered as expert evidence and is endorsed to that effect. It is dated 20th March 2008.

8. From Mr. Moys' report we noted the following:

(a) That he had acted as expert valuer in cases which came before the Leasehold Valuation Tribunal (Case Nos. CHI/29UQ/OAF/2007/0001-0006) relating to six properties in Brenchley. Those cases also concerned the purchase of the freehold under the Act where the purchase price had to be assessed in accordance with Section 9(1) of the Act. Those cases were determined on 17th May 2007 and in all instances the valuations he had put forward were adopted by the Tribunal.

(b) That he had acted as expert valuer in a case which came before the Leasehold Valuation Tribunal (Case No. CHI/29UQ/OAF/2007/0012) relating to eight properties in The Lawns, Brenchley (Nos. 1, 2, 4, 5, 6, 7, 9 and 10). That case also concerned the purchase of the freehold under the Act. That case was heard on 21st June 2007 and related to valuations as at December 2006. In all instances the valuations he had put forward were adopted by the Tribunal.

(c) That he had inspected the subject property on 10th March 2008.

(d) That he did not believe that there had been any recent sales of houses in The Lawns since the Tribunal hearing in June 2007 relating to the valuation of eight other houses in The Lawns when his valuations were accepted by the Tribunal. He therefore intended to rely upon those eight separate valuations for the purpose of valuing the subject property as at 17th December 2007 almost exactly twelve months after the valuation date relating to those eight other properties.

(e) In his opinion, the subject property is broadly similar to 1 The Lawns which he valued on a freehold basis as at December 2006 at £390,000. He did not consider that the subject property should be valued as high as Nos. 4 and 7 The Lawns which were both valued at £410,000 at the time. Those two houses had new kitchens and bathrooms whereas the subject property still had original fittings to the two bathrooms and kitchen (as at December 2007). Accordingly, he considered that the subject property would have had a value as at December 2006 of £390,000.

(f) He then had to consider whether, and by how much, that figure should be varied to reflect changes in market circumstances between December 2006 and December 2007. He referred to the Nationwide House Prices Index which identifies an 8.54% uplift between December (Q4) 2006 and Q4, 2007. Applying that percentage uplift to a property valued at £390,000 in December 2006 Mr. Moys calculated gives a figure of £423,324 in December 2007. Our calculation gave a figure of £423,306; the difference being negligible.

(g) He was aware that at the date of his report in March 2008 No. 6 The Lawns was on the open market for sale on a freehold basis at £370,000. It had been on the market since November 2007 and he understood that there was in March 2008 current interest but that the property was still available. The Tribunal does not know whether that property has since been sold or the present asking price but on the date of our inspection there was still a for sale board on the property. However, bearing in mind the changes which have taken place in the housing market over the last few months we considered that evidence of such matters would probably be of little assistance in arriving at a valuation as at December 2007. Mr. Moys valued the freehold of 6 The Lawns as at December 2006 for the Leasehold Valuation Tribunal hearing in June 2007 at £340,000. Applying the uplift of 8.54% he calculated gives a figure of £368,000 or thereabouts. Our calculation gives a figure of £369,036 which

although different by £1,036 is in the circumstances of no significance as the use of either figure produces a sum very close to the asking price of £370,000 and supports the use of an uplift of 8.54%.

(h) Mr. Moys stated that the Nationwide Index reflects completed sales within a given quarter following transactions probably agreed within the previous 3 to 6 months. The residential property market was certainly deteriorating as at the valuation date of December 2007 and therefore he considered that an appropriate market value (i.e. the entirety value) of the unencumbered freehold interest of the subject property as at 17th December 2007 was £420,000.

(i) Mr. Moys did not consider that there was any value to be given for the right to receive a primrose a year for the next 61.5 years i.e. from December 2007 to March 2069.

(j) As with his valuations in relation to eight other houses in The Lawns he did not believe it was possible to separately value the Section 15 rent after a 25 year rent review given the uncertainties involved and the speculative nature of that exercise. Also he did not consider there was any current value attributable to the landlord's reversion to the house and premises after the expiry of the 50 year extension i.e. in some 112 years time, given that the premises will then be old and as at the valuation date of December 2007 the market is unlikely to reflect any additional value over and above the site value.

(k) He did not believe that there was any value attributable to the value of the landlord's Section 17 rights.

(l) He did not consider that the purchase price would be affected by any new easements or restrictive covenants; nor would it be affected by any other rights under the extended lease extinguished on the acquisition of the freehold.

(m) It therefore followed that the only relevant element of the valuation was the capitalised value of the rent arising in the extension period by virtue of the provisions of Section 15 of the Act from the original term date until the expiry of the fifty year extension. He had adopted the "standing house" approach to the valuation and had taken a proportion of the entirety value in order to determine site value. The valuation date is 17th December 2007 being the date when the application to the Court was made. The deferment period was accordingly approximately 61 ½ years.

(n) His submission in relation to his valuation of the eight houses in The Lawns that site value should be 33% of the entirety value was accepted by the Tribunal when dealing with that case and we find that his figure falls squarely within the bracket of 30-35% that is commonly accepted to form the percentage of the open market value of a house represented by site value.

(o) Mr. Moys in his valuation methodology for arriving at the site value and ascertaining the deferment rate had used 4.75% following the decisions in the cases of Earl Cadogan -v- Sportelli and Arbib -v- Earl Cadogan and Others where the deferment rate for houses was determined at 4.75%. No arguments were advanced to suggest why on this occasion there should be any departure from that rate.

9. We accepted Mr. Moys' figure for the entirety valuation of the subject property, his method of arriving at the site value and his use of 4.75% as the deferment rate. We also accepted his submissions as to the matters which should not be included in the valuation. Our only departure from his valuation was the multiplier to be applied to the Section 15 rent. He had used 1.213 whereas we considered that the appropriate figure was 1.238.

10. Subject to that, the Tribunal was content to adopt Mr. Moys' valuation:

		£
Value of present rent (one primrose at Easter if demanded)		Nil
	£	
Entirety value:	420,000	
Site value @ 33%	138,600	
Section 15 rent @ 4.75%	6,583.50	
YP in perpetuity deferred 61.5 years @ 4.75%	x 1.238	
		8,150.37
Say		<u>8,150.00</u>



R. Norman
Chairman