SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

In the matter of section 9 and section 27 of the Leasehold Reform Act 1967 (as amended) ("the Act")

and in the matter of 10 Lansdown Gardens Worle Weston super Mare BS22 7FE

Case Number: CHI/OOHC/OAF/2008/0010

Upon the application of: Mrs H Ellery ("the Applicant")

Inspection: 15th December 2008

Determination: 15th December 2008

The matter was considered in the light of written representations without a hearing

Decision of the Tribunal
Issued: 23rd December 2008

Tribunal

Mr A D Mc Gregg (Chairman)
Mr M Ayres FRICS

Decision

1. Tribunal has determined for the reasons set out below that the price payable by the Applicant for the freehold reversion in this matter is £2,531 being £2,423 in respect of the head leasehold interest and £108 in respect of the under leasehold interest.

Reasons

2. 10 Lansdown Gardens ("the property") is, in effect a semi detached bungalow. The access road leads to a parking area and incorporating pedestrian access for several adjoining properties. It was built in about 1988 as part of a development by Second City (SW) Limited through their subsidiary company Lansdown Homes Limited. The bungalow is for occupation by people of 60 years and over. The property is of brick cavity construction with a pitched concrete tiled roof. The accommodation comprises an entrance hallway, lounge, two bedrooms, a bathroom, a fitted kitchen and an enclosed rear garden, which is the subject of a right of way to the rear of other bungalows in the same terrace. The property has night storage heaters and communal gardens adjoining. There is no garage, but a parking space is available. There appeared from our inspection to be no material improvement or modernization that we should disregard for the purposes of the valuation. The Applicant did not seek a hearing before the tribunal. The members of the tribunal inspected the property in the presence of Mr A F Barry as successor to Mrs H Ellery on 15th December 2008.

3. The property is built upon land that was part of that demised by a sixteenth century lease, of which the tribunal understands no copy now is known to exist. The demise was in favour of John and Isabel Thomas for a term expiring in 2057 at an annual rent of £1-6-9d (£1-34). We are informed that the lessee under this lease pays no rent. The whereabouts of the lessors or beneficiaries under this lease are now unknown. Notwithstanding the above, the property is held on a sublease dated 16th October 1987 for a term of seventy years from 1st January 1987, the original parties to that lease being Second City Homes (SW) Limited, Lansdown Homes Limited and Hilda May Ellery.

4. The Weston Super Mare County Court made an Order under section 27 (5) of the Act on (undated) that the freehold of the property be vested in the Applicant. The Order contains a paragraph in the following terms:

   "AND THIS COURT determines and declares pursuant to the provisions of section 27(5) of the Leasehold Reform Act 1967 that the estimated amount of pecuniary rent payable for the said property by the Applicants as tenants thereof under the lease out of which the Applicants current interest arises provided by section 3 of the Landlord & Tenant Act 1954 as amended and which remains unpaid and which will remain unpaid up to the date of this order is the sum to be determined by the Leasehold Valuation Tribunal (under section 9(i) of the Leasehold Reform Act 1967

under the "original valuation basis)."

5. The amount that the tribunal is to determine is the 'appropriate sum' defined in section 27(5) of the Act as follows:

'The appropriate sum which in accordance with sub section (3) above, is to be paid into Court is the aggregate of:

(a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9 above, and
(b) the amount or estimated amount as so determined of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.'

6. Section 9 of the Act sets out in detail the assumptions to be made and the procedure to be followed in carrying out the valuation. The effect of section 27(1) is that the valuation date is the date on which the application Order was made to the Court. This was done on 25th April 2007.

7. The tribunal is aware that the expression "original valuation basis" is one that is referred to in a paper on the website of the Leasehold Advisory Service (LEASE) intended to explain valuations in matters of this nature to the general public, although the term does not appear in the leading textbook upon the matter, Hague on Leasehold Enfranchisement. However, the paper in question adopts the "standing house" method of valuation as does the valuation report dated the 26th November 2008 from Messrs Stephen & Co the applicants' valuers, which is the method commonly adopted for valuations under section 9(1) of the Act. The question whether not a Court in these circumstances is entitled to instruct an expert tribunal upon the valuation method it is to adopt it is not settled, but since the tribunal would be minded in any event to adopt the standing house approach in the present case, and it appears that that is the approach that the Court may have had in mind, no issue arises upon the point.

8. There is unlikely to be evidence of sales of vacant sites because the locality in which the property stands has been fully developed for some years. Finally, the tribunal bore in mind the cases to which the Applicant's valuers state that they had considered.

9. For the purpose of establishing what amounted to the standing house value the property on the valuation date Messrs Stephen & Co took into account the price paid on the sale of this property in June 2008 at £135,000.

10. Messrs Stephen and Co placed the entirety value of 10 Lansdown Gardens at £135,000.

11. The tribunal accepted this and felt that the entirety value of the property was properly reflected at £135,000.

12. Messrs Stephen & Co argued that the site value should be taken as 27.5% of the entirety value after taking into account the overall nature of the development on which the property is situate, and the proximity of adjacent premises. The tribunal was content to adopt that view. This is a plot that has planning permission for development for properties that may be occupied by those over 60 years of age, and the management and retirement care provisions attaching to the property as part of those arrangements, together with some restrictions of access, impose restrictions that justify a reduction from the figure of 30% of the entirety value that might otherwise have been adopted.

13. The tribunal then carefully considered the representations made by Messrs Stephen & Co in their report to the effect that the existence of numerous limited rights of access around the subject property, indicated on the plan attached to it, would have the effect of substantially limiting the price to be paid for the reversion. They referred in this connection to the principles enunciated in *Stokes v Cambridge City Council* [1961] 13 P & CR 77, and suggested that the price should be reduced by a further fifty per cent because of the difficulty of access for redevelopment purposes when the Underlease comes to an end in 2057. This argument was in addition to their argument that the site value of the property should on this occasion be reduced to 27.5% of the entirety value rather than the more usual 30% to reflect essentially the same matters.

14. The tribunal felt unable to accept this further argument. The effect of section 10 of the Act is that the rights in question are to be granted in the Conveyance whether by the underlessor or by the head lessor as may be appropriate. Parts 2 and 3 of paragraph 13 of the draft transfer appear to recognise that without specifically referring to the section in question. Accordingly there is no justification for making a reduction in price to reflect the problems that Messrs Stephen & Co mention.

15. Messrs Stephen & Co had taken a deferment rate of 6% (incorrectly referred to as 7%) rather than the 4.75% that might be indicated by the decision of the Lands Tribunal in *Cadogan and others v Sportelli [.LRM 50 2005]* ("Sportelli"). They argued that the nature of these premises, being suburban social housing in respect of which no ground rent is payable militated against the use of a deferment as low as that used in Sportelli.

16. The Tribunal recognised that there is some force in the argument that the absence of a ground rent in these cases can be regarded in this context as a particular feature that may indicate some departure from the rates mentioned by the Lands Tribunal as does the absence of a freeholder who can enforce the freehold covenants. It bore in mind that the property in Sportelli was a high value, low risk central London property, the market for which bears very little practical relationship for a property of this type in its location, and in an area where the rise of property prices generally has not been nearly as rapid as it has in central

London. Those factors in its judgment produce a risk factor that may be regarded as higher than that for a reversionary investment of the sort considered in Sportelli. It therefore adopted the deferment rate used by Messrs Stephen & Co of 6% which it considers to be a more accurate estimate of the sort of deferment rate that might be applied in the open market in the Weston super Mare area for a property like this.

17. The tribunal accepted Messrs Stephen & Co's representation that a modern ground rent in this locality might be established using a 7% rate of return on the site value.

The tribunal's valuation therefore was:

Ground rent reserved:	Nil
Estimated site value (27.5% of entirety value £130,000)	£35,750.00
Modern Ground rent @ 7% £2,598.75 say	£2,600.00

Under lease

Modern Ground rent say	£2,600.00
YP in perpetuity @ 6% deferred 48.75 years	0.9735
Total .	£2,531.10

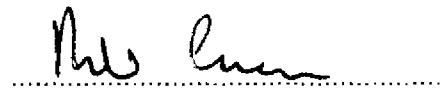
But say £2,531

Head lease

Modern Ground rent say	£2,600.00
YP in perpetuity @ 6% deferred 49.50 years	0.93195
Total	£2,423.07

But say £2,423

18. That calculation produces a value of £2,423 for the head lease and of £108 (the balance of the sum of £2,531 - £2,423) for the under leasehold interest. No ground rent is in practice payable so that no addition is required in that respect. The tribunal approves the form of transfer that was sent with the application, a copy of which is annexed and is signed by me for identification subject to the insertion in it of those prices.



Andrew Duncan McCallum Gregg

Chairman

23rd December 2008