



Residential
Property
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CHI/29UQ/OAF/2010/0002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT
1967**

Address: Mill Cottage, Windmill Hill, Brenchley, Tonbridge, Kent, TN12 7NR

Applicants: (1) Mr Dennis Charles Jackson (2) Mrs Patricia Jackson

Respondent: Person or Persons Unknown

Application: 6 January 2010

Inspection: 16 June 2010

Determination: 16 June 2010

Appearances

Not applicable

Members of the Tribunal

Mr I Mohabir LLB (Hons)

Mr A. O. Mackay FRICS

Mrs H. C. Bowers MRICS

DECISION

Introduction

1. By a Part 8 claim dated 19 June 2009, the Applicants applied pursuant to section 27 of the Leasehold Reform Act 1967 (as amended) ("the Act") to acquire the freehold of the property known as Mill Cottage, Windmill Hill, Brenchley, Tonbridge, Kent, TN12 7NR ("the property"). It seems that the freeholder is not known and cannot be found.

2. Pursuant to paragraph 2 of an order made by District Judge Hebblethwaite at Tunbridge Wells County Court dated 12 December 2009, the Applicants were ordered to make an application to the Leasehold Valuation Tribunal to determine the amount payable by them to acquire the freehold interest in the property. On 6 January 2010, the Applicants so applied.

3. It seems that, by a letter dated 22 January 2010 (not before this Tribunal), a procedural Chairman at the Tribunal raised a potential jurisdiction point as to whether the basis of the valuation lies with the Court or with the Tribunal. In a letter dated 19 February 2010, the Applicants' solicitors, by reference to *Hague*, argued that the Tribunal did have jurisdiction to determine the basis of the valuation. On 4 March 2010, the Tribunal issued Directions. The Directions make no mention of any issue regarding jurisdiction and, in the absence of this, it is to be assumed that jurisdiction was accepted and that the Tribunal proceeded to determine this application on this basis.

Inspection

4. The Tribunal inspected the property on 16 June 2010. The Tribunal inspected the property on 16 June 2010 and found it to comprise a detached period style cottage, which is included on the Statutory List of Buildings of Special Architectural or Historic Interest, Grade II, and where the original construction is believed to date from the 16th Century. The cottage is of brick and timber framed construction, tile hung to the first floor elevations, and with a pitched and tiled roof. Many of the original period features have been retained. The property is arranged on ground and two upper floors. In

summary, the accommodation comprises on the second floor an attic style bedroom, on the first floor a landing, 3 further bedrooms, a bathroom with a corner bath, wc and wash hand basin. On the ground floor there is an entrance hall, a study area, a combined sitting room and dining room divided by an inglenook style fireplace, a kitchen with a breakfast room off the kitchen, also accessible from the sitting room, and a utility room. To the rear of the cottage there is a garden, and the house has a driveway off Windmill Hill with gravelled parking for two cars. We formed the opinion that the property was generally speaking in satisfactory condition.

Decision

5. The Tribunal's determination also took place on 16 June 2010. There was no hearing in this matter and the Tribunal heard no oral evidence. Its determination is based solely on the documentary evidence file on the half of the Applicants. The Respondent did not participate in these proceedings.
6. The expert valuation evidence for the Applicants was provided in a valuation report prepared by Mr J. C. Moys FRICS of Bracketts, Chartered Surveyors dated 24 March 2010. The contents of his report can be summarised as follows.
7. Mr Moys correctly adopted a valuation date of 19 June 2009, being the date the Applicants applied to the County Court. He inspected the property on 11 January 2010 and in his report he provided a description of the location of the property and the accommodation it provides. He was of the view that the property was generally in satisfactory condition. It had the benefit of mains water, electricity and drainage. However, there was no gas supply and, therefore, the central heating was oil fired. His understanding was that a new boiler and central heating system using the old radiators was installed approximately 4 years earlier.
8. The premises are held under a lease dated 20 May 1568 for a term of 500 years commencing Lady Day 1568 at an annual rent of a primrose. The Applicants acquired the leasehold interest on 23 January 1996 and have occupied the property since then. Apparently, the least cannot be found

despite many earlier investigations. The Applicants have never paid any rent nor has any rent ever been demanded and they have never been contacted by the landlord or any person purporting to act on their behalf.

9. In his report, Mr Moys stated that he had been provided with a copy of an invoice from Southern Water indicating that the rateable value of the property was £172 representing the March 1990 rateable value. Given that it was less than £750, he correctly concluded that the correct basis for valuing the freehold interest was under section 9(1) of the Act.
10. Mr Moys also correctly set out the valuation elements that have to be considered having regard to the statutory assumptions set out in section 9(1) to determine the purchase price for the freehold interest. These are:
 - (a) the capitalised value of the rent payable under the tenancy from the date of service of the Notice of the Tenant's Claim until the original term date.
 - (b) the capitalised value of the section 15 rent payable from the original term date until the expiry of the 50 year extension (due regard being had to the provision for rent review after the first 25 years of the extension). Later on in his report, Mr Moys goes on to explain that the section 15 ground rent represented the rental value of the site (excluding the value of any buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy, other than uses by which the terms of the new tenancy are not permitted or are permitted only with the landlord's consent. Therefore, the rental value in the first instance is rent at the commencement of the tenancy and, thereafter, any revised rent substituted by the landlord after expiry of 25 years of the original term.
 - (c) the value of the landlord's reversion to the house and premises after the expiry of the 50 year extension, on the basis that Schedule 10 of the Local Government and Housing Act 1989 applies to the tenancy.

- (d) the value (if any) of the landlord's right under section 17 to determine the 50 year extension for redevelopment purposes.
 - (e) the effect of new easements and restrictive covenants in the conveyance.
 - (f) the value (if any) of any other rights under the extended lease extinguished on the acquisition of the freehold.
11. Mr Moys then went on to consider each of these valuation elements and to set out his conclusions.
12. Mr Moys concluded that, in his opinion, the fair market value of the unencumbered freehold interest of the property, as at the valuation date, was £475,000. His reasons for doing so were that he had been aware that the Applicants had been attempting to sell the property in the last few years but and had offered the property for sale during 2009. In May 2009, they received an offer of £475,000. However, having become aware that the Applicants only held a leasehold interest, the prospective purchaser reduced their offer to £465,000. It seems that this lower offer was subsequently withdrawn when the uncertainty about the lease became known. Given that the initial offer made was contemporaneous with the valuation date, Mr Moys was of the view that the unencumbered freehold interest was £475,000.
13. In relation to site value, Mr Moys applied a value of 33% of the market value of the freehold interest. He did so, on the basis that he had applied the same rate in a number of earlier Tribunal cases¹ made under the Act for other properties in Brenchley and, in particular, Windmill Hill and this figure had been accepted in each instance by the Tribunal.

¹ See paragraphs 1.2-1.7 of the report

14. As to the deferment rate, Mr Moys adopted the generic rate of 4.75% for houses adopted by the Lands Tribunal in *Cadogan v Sportelli* (LRA/50/2005). Furthermore, this rate had been used not only to de-capitalise the site value to arrive at the section 15 rent, but also in capitalising the value of the reversionary section 15 rent.
15. Mr Moys did not consider to separately value the section 15 rent after a 25 year rent review given the uncertainties involved and the speculative nature of this exercise. Furthermore, 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 (in approximately 110 years) given that the premises would then be old and, as at the valuation date, the market was unlikely to reflect any additional value over and above the site value.
16. Mr Moys did not consider there was any value attributable to the value of the landlord's section 17 rights. Furthermore, he did not consider that the purchase price is affected by any new easements or restrictive covenants nor any other rights under the extended lease extinguished on the acquisition of the freehold.
17. Based on the conclusions set out above, Mr Moys valued the purchase price for the freehold as follows:

| | | |
|--|-----------|------------------|
| The value of the present rent for the residue of the contractual term (based on the right to receive a primrose every year for the next 59.75 years) | | Nil |
| The capitalised value of the section 15 rent payable from March 2069 on the basis of a 50 year extension reviewable after 25 years, being | | |
| Market/Entirety value | £475,000 | |
| Site value at 33% | £156,750 | |
| Section 15 rent and 4.75% | £7,445.63 | |
| Years purchase in perpetuity deferred 59.75 years at 4.75% | x 1.316 | <u>£9,798.45</u> |

| | |
|-------|---------------|
| Total | £9,798.45 |
| say | £9,800 |

18. Having inspected the property and having carefully considered the valuation evidence of Mr Moys, the Tribunal was satisfied that he had adopted the correct valuation principles and that his conclusions were also correct. The Tribunal was also satisfied that Mr Moys was well acquainted with values in the area of Brenchley and, in particular, Windmill Hill, having provided valuation evidence in a number of earlier Tribunal cases brought under the Act. In those cases he had advanced largely the same arguments, especially in relation to site value, and these had been accepted on each occasion. His conclusions did not strike the Tribunal as being manifestly wrong. Accordingly, the Tribunal confirmed the valuation of Mr Moys and determined that the purchase price for the freehold of the property is **£9,800**.

Dated the 25 day of AUGUST 2010

CHAIRMAN.....
Mr I Mohabir LLB (Hons)