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### Leasehold Valuation Tribunal

On an application under section 21(1)(a) of the Leasehold Reform Act 1967 ('The Act') to determine the price payable under section 9(1), in respect of the tenant's acquisition of the freehold transferred from Stoke on Trent County Court (2SQ00147) under paragraph 3(1)(c) of the Commonhold and Leasehold Reform Act 2002

Reference: BIR/41UH/OAF/2012/0044

Property: Hill Top Cottage, Biddulph Park, Stoke on Trent ST8 7SH

Applicant: Mr and Mrs D Lovatt

Respondent: Unknown

Date application received: 4<sup>th</sup> July 2012

Deemed date of tenant's notice: 24<sup>th</sup> January 2012

Date of application to County Court: 24<sup>th</sup> January 2012

Considered at Hanley Tribunal Office on 4<sup>th</sup> September 2012

#### Submissions

For the Applicant Mr M Hambleton who called Mr I McIndeor FRICS  
For the Respondent there were no representations.

Members of the Tribunal: Mr R T Brown FRICS  
Mr P J Hawksworth Solicitor

#### Determination

1. The Tribunal determines that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience, but not any special knowledge, the price payable by the lessee for the acquisition of the freehold interest in the property in accordance with section 9(1) of the Leasehold Reform Act 1967 as amended is **£35.00**.

#### Reasons for Decision

##### Introduction

2. By an Order dated 21<sup>st</sup> May 2012 of District Judge Mitchell sitting in the Stoke on Trent County Court, pursuant to a claim dated 24<sup>th</sup> January 2012, the Applicant has the right to acquire the freehold in the subject property, but is

prevented from giving notice in accordance with the Act because the person to be served cannot be identified. The Court directed that the date of the claim be treated as due notice and that the Applicant does apply to the Tribunal to certify a fair valuation of the price to be paid pursuant to the Act.

3. The application was received from the Applicant, on 4<sup>th</sup> July 2012. A copy of the Court Order was lodged with the application together with an opinion of value prepared for the Applicant. The original lease has been lost.

### Inspection

4. The members of the Tribunal inspected the subject property on 5<sup>th</sup> September 2012 in the presence of one of the Applicants Mrs Lovatt.

### The Property

5. The property, originally constructed circa 1800, is a stone and slate semi detached cottage. It has a front driveway with no rear garden but overlooking fields. The centrally heated double glazed accommodation comprises: Conservatory porch, hall, inner hall to kitchen (fitted) and store, living room, and on the first floor: 1 double and 1 single bedroom, bathroom (full suite).
6. The site has a driveway suitable for 2 cars and no additional land.
7. The lease, which was not produced, is for a term of 500 years from the 27<sup>th</sup> August 1675 originally at a ground rent of £6.00 per annum. At the valuation date, 24<sup>th</sup> January 2012 there were approximately 166 years unexpired.
8. By virtue of an indenture dated 26<sup>th</sup> March 1703 (recorded at Land Registry) the ground rent was discharged

### Hearing

9. The public Hearing was attended by Mr Hambleton solicitor of Charlton's who called Mr McIndeor of Whitaker Biggs to give valuation evidence.
10. The Court ordered the Tribunal to determine the value of the freehold interest in the subject property in accordance with the provisions of the Act. Accordingly there was no other matter before us and we have not settled the terms of the transfer or the payment of any outstanding ground rent.
11. The Tribunal agreed with Mr McIndeor's proposition that as the ground rent had been discharged there was, for the freeholder, no value attributable to the remaining term of the lease.
12. Mr McIndeor had valued the reversion by applying the Present Value of £1.00 to the purchase price (£175,000.00) of the property in February 2009.
13. Following the Court of Appeal in *Cadogan and Another v Sportelli and Another (2007) EWCA Civ 1042* he had adopted a deferment rate of 4.75%
14. This resulted in a valuation of £79.00.
15. The Tribunal in their capacity as an expert Tribunal challenged Mr McIndeor on this method suggesting that the proper approach would be to follow the method in section 9(1) of the Leasehold Reform Act 1967 and recently endorsed in *Re Clarise Properties Limited, 167 Kingshurst Road, Northfield, Birmingham, B31 2LL [2012] UKUT 4 (LC) LRA/170/2010*.
16. Mr McIndeor responded that he was aware of the case of *Clarise* but not its impact in adopting the '3 stage approach' as being the normal method of valuation.

### **The Tribunal's Deliberations**

17. The Tribunal considered all the written and oral evidence submitted.
18. The valuation exercise under section 9(1) is in three stages:  
Stage (1) the valuation of the remainder of the existing term (166 years) by capitalising the Ground Rent,  
Stage (2) Valuing an assumed extension to the lease of 50 years and  
Stage (3) Valuing the property with assumed vacant possession after the end of the existing term plus 50 years (206 years) (subject to tenant's rights under Schedule 10 of the Local Government and Housing Act 1989).
19. For many years valuers and Tribunals had regarded the 3<sup>rd</sup> stage of the valuation as, in most cases, adding little or no value and, accordingly, the 'usual method' of valuation was to ignore the 3<sup>rd</sup> stage and revert to perpetuity at the end of the term. The 3 stage valuation was only used where it was demonstrated that the land and buildings erected thereon would have a real value at the end of the existing term plus 50 years. This was commonly known as the 'Haresign' addition (*Haresign v St John the Baptist's College, Oxford* (1980) 255 EG 711).
20. The Tribunal was not persuaded by Mr McIndeor's approach. The Tribunal adopts the 3 stage valuation as the 'usual method' of valuation following the recent Upper Tribunal decision in *Clarise Properties Ltd Re 167 Kingshurst Road, Northfield, Birmingham B31 2LL* (LRA/170/2010).
21. It is obvious to us and should be obvious to those familiar with valuation matters that the general fall in the value of houses, in recent times, has resulted in a disproportionately greater fall in the value of sites.
22. Our determination is made, as a matter of judgement, as an expert Tribunal using our general knowledge and experience to achieve a fair and just result but not relying on any specific evidence.
23. The Tribunal agrees with Mr McIndeor that the term has no value, for this purpose, to the Freeholder.

### *Years Unexpired*

24. On an inspection of the land registry documents the Tribunal concluded that the unexpired term of the lease at the date of application to the County Court on 24<sup>th</sup> January 2012 was approximately 166 years.

### *Entirety Value*

25. Entirety Value assumes '*the value of the property in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful*' (*Marlodge Monnow Ltd v Midland RAP* [2002] LRA 15 2002 (LT) and *Cadogan Estates Ltd v Hows Hock* LRA 1 and 3/1988, [1989] 48EG 167, 2EGLR 216 (LT)).
26. The Tribunal accept the expert evidence of Mr McIndeor that the market has not moved significantly since the property was purchased in 2009 and find the entirety value on the valuation date is £175,000.00.

### *Standing House Value and the adjustment for Schedule 10*

27. Standing House Value may best be described the value of the house '*as it stands*'.

28. The Tribunal concluded that in this case there is no difference between Standing House Value and Entirety Value because the site was already developed to its full potential (see above).
29. For the purposes of section 9(1) it is necessary to consider whether or not the property would actually have a value over and above site value at the end of the extended lease (i.e. in 206 years) when the property would be over two hundred years old.
30. The Tribunal concurred with Mr McIndeor's view that the property would not only be standing but that it would also have a value.
31. After questioning Mr McIndeor the Tribunal came to the view that there was insufficient evidence to satisfy the Tribunal as to the likelihood of a tenant being in occupation and in a position to establish security of tenure. (Hague at paragraph 33-04). In these circumstances it is unnecessary to consider or make any allowance for the tenant's right to remain in possession under Schedule 10 to the Housing and Local Government Act 1989.

#### *Site Value Apportionment*

32. We find the appropriate site apportionment is 22%.

For completeness and by way of explanation the Tribunal would have attributed a higher percentage for the site apportionment but for the physical characteristics of the site namely the fact that apart from the parking area at the front of the property Hill Top Cottage occupies the entire site.

The Tribunal further adjusted the site apportionment percentage (downwards) to reflect the recent general fall in house prices. It should be obvious to anyone with a knowledge and understanding of the principle of entirety value and site apportionment in a section 15 valuation that volatility in the entirety value, caused by recognised overall market conditions, necessarily results in a greater volatility in the site value. In consequence with the general knowledge of recent falling house prices the percentage site apportionment must at October 2011 be less than previously when house prices were higher. The authority for this proposition is in the Lands Tribunal case of *Re Mansal Securities and Others (LRA/185/2007 and 21 other cases)* where, at paragraph 26, N J Rose says:

'Ground Rental value is the annual equivalent of site value. The latter is the amount which remains after the building and other development costs (including an allowance for profit) are deducted from the value of the completed building. The nature of such residual calculation means that a gearing effect operates. An increase in the estimated value of the completed house is likely to result in a more than proportionate increase in the residual site value and vice versa'

33. The site value we have determined (22%) reflects the adverse impact of the physical site characteristics outlined above and the more than proportionate fall in residual site value caused by the falls in house prices which started in the late summer of 2007.

#### *Deferment Rate*

34. The LVT has acknowledged that the group of decisions known collectively as 'Sportelli' (*Earl Cadogan and Another v Sportelli and Another (2006) LRA/50/2005* and other decisions) did not apply to section 9(1) valuations and has acknowledged that the deferment rate applied to Prime Central London did

not apply outside the Prime Central London area. This led parties in cases where a section 9(1) valuation applied to argue for a variety of different rates.

35. Mr McIndeor had adopted, following *Sportelli* 4.75% and no evidence was presented to justify a review of that figure and accordingly the Tribunal determines the deferment rate at 4.75%.

*Tribunal's Valuation*

36. Applying those conclusions the Tribunal's valuation is as follows:

Stage 1	<b>Term</b>		
	Current Ground Rent		0.00
Stage 2	<b>1st Reversion</b>		
	Entirety Value	£175,000.00	
	Site apportionment 22.00%	£38,500.00	
	Section 15 Modern Ground Rent 4.75%	£1,828.75	
	YP 50 years @ 4.75%	<u>18,984.4</u>	
		£34,717.72	
	PV £1 in 166 years @ 4.75%	<u>0.0005</u>	17.36
Stage 3	<b>2nd Reversion</b>		
	Standing House Value	175,000.00	
	Less for Sch 10 Rights	0.00	
		175,000.00	
	PV £1 in 206 years at 4.75%	<u>0.0001</u>	17.50
			34.86
		<b>say</b>	<b>£35.00</b>

*Robert G Brown*  
Robert Brown Chairman

Dated **05 OCT 2012** .....