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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Case number : CAM/33UC/OAF/2012/0004**

**County Court claim number : INR 00921**

- Property** : 33 High Street, Foulsham, Dereham, Norfolk NR20 5RT
- Application** : Determination of the price to be paid in respect of the freehold and the amount or estimated amount of any pecuniary rent payable for the house and premises up to the date of the transfer which remains unpaid, both of which are to be paid into court [Leasehold Reform Act 1967, ss.9, 21(1) & 27(5)]
- Applicants** : David Roy Banyard & Jocelyn Elizabeth Banyard, 33 High Street, Foulsham, above
- represented by** : Blocks Solicitors, Arcade Chambers, 2-6 Arcade Street, Ipswich IPI IEL
- Respondent** : The successor in title to Sir Thomas Hunt & William Hunt (1604), whose identity is unknown

**DECISION**

following a paper determination

**Tribunal** : G K Sinclair (chairman) & G Smith MRICS FAAV REV

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**Introduction**

1. The applicants are the latest leaseholders of houses in the village of Foulsham, Norfolk, to have applied to the court to acquire the freehold reversion to their soon-to-expire 500 year leases. In the instant case, according to the affidavit of David Banyard, the lease was granted by Sir Thomas Hunt & William Hunt to George Spicer on 16<sup>th</sup> September 1604 for a term of 500 years from 23<sup>rd</sup> March 1604. Unfortunately no copy of the lease is known to survive.
2. On 13<sup>th</sup> December 2011, in the Norwich County Court, the Applicants issued a claim under Part 8 of the Civil Procedure Rules 1998 seeking a transfer to them of the freehold of 33 High Street. By order of District Judge Birchall made on 24<sup>th</sup> January 2012 the

Leasehold Valuation Tribunal was directed to determine the price payable into court in respect of the claim.

### **Inspection**

3. The tribunal inspected the premises on the morning of Monday 25<sup>th</sup> June 2012, when weather conditions were overcast but dry. As described by Mr John Mansfield FRICS in paragraph 1.5.1 of his report on valuation :

This is a two-storey building of traditional brick and tiled construction. It apparently dates from the 1700s but was extended in the 1970s. The gross internal floor area of the building is approximately 2 190ft<sup>2</sup> including the garage and storeroom. The shop sales area occupies about 610ft<sup>2</sup>.

For the avoidance of doubt, the shop sales area is included within the gross internal floor area mentioned above.

4. In plan the building comprises a dog-leg, with the oldest part of the building closest to the road junction of High Street and Twyford Lane. The shop occupies the ground floor and three bedrooms the first floor. On the Twyford Lane side the ground floor has been extended, with first floor window reveals set into the sloping tiled roof above the extension. Behind this oldest section the building kinks slightly, to provide what to outward appearances is a side entrance and a double garage with two separate doors, with stairs to further living accommodation above. In fact the first "garage" comprises a store for the shop, while the vehicular door furthest from the High Street end of the building serves an entirely separate garage which is used by the leaseholders. Above can be found a store room/office, bathroom, kitchen and living room; the latter having full length opening windows which give access via an external staircase to a walled garden.

### **Applicable valuation principles**

5. As the annual rent under the leases is unknown – save for two cases where it is believed to be 10½d (old pence) – it has in all cases been treated as nominal, therefore the purchase price is to be determined in accordance with section 9(1) of the Leasehold Reform Act 1967, the relevant elements of which may be described as :
- a. The capitalised value of the rent payable from date of service of the notice of the tenant's claim (in the case of a missing landlord, the date that proceedings are issued) until the original term date
  - b. The capitalised value of the section 15 modern ground rent notionally payable from the original term date for a further period of 50 years
  - c. The value of the landlord's reversion to the house and premises after the expiry of the 50-year lease extension.
6. Although valuers have long operated on the assumption that this third element would be deferred so long as to be almost valueless, and hence they tended to ignore it and instead carry out only a two-stage valuation, the Upper Tribunal (Lands Chamber) has recently determined in the case of *Re Clarise Properties Ltd*<sup>1</sup> that there was now a much greater likelihood that the ultimate reversion would have a significant value than there

<sup>1</sup> [2012] UKUT 4 (LC); [2012] 1 EGLR 83 (George Bartlett QC (President) & N J Rose FRICS)

was when the two-stage approach was adopted 40 years ago, because :

- a. House prices had increased substantially in real terms; and
- b. Lower deferment rates had been applied since the decision in *Earl Cadogan v Sportelli*.<sup>2</sup>

The practice of conducting a two-stage valuation should therefore cease and the full three-stage calculation, including the *Haresign*<sup>3</sup> addition, be applied.

7. Section 9(1) requires that the price payable shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family not buying or seeking to buy), might be expected to realise on the assumptions listed in the sub-section.
8. Interestingly, however, in *Re Clarise Properties* the President drew attention to one factor which would have the effect of suppressing the value of the freehold reversion. To quote the material passage in full :

39 When valuing the reversion to a standing house on the expiry of the 50-year lease extension it is necessary to assume that Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy. Accordingly the tenancy automatically continues until notice is served under para 4 of Schedule 10, when the tenant is entitled to an assured tenancy under the Housing Act 1988 at a market rent. Mr Evans made a deduction of £2 500 (or 1.75 per cent) from his standing house valuation of £142 500 to reflect this provision. He accepted that the freehold interest in a house is significantly less attractive to a purchaser if it is subject to an assured tenancy than if it is vacant. He justified his very modest deduction, however, by emphasising that what is to be assumed is not that the tenant will continue in possession at the end of the 50-year extension, but that the tenant will have the right to remain in possession. It was impossible to know what the view of the tenant would be in 78.5 years' time.

40 It is true that the purchaser of the freehold reversion would have no means of knowing whether vacant possession would be gained at the end of the 50-year lease extension. In our view, however, the fact that there can be no certainty of obtaining vacant possession would have a significant depressing effect on value and a substantially greater effect than that suggested by Mr Evans. In the absence of any comparable evidence to indicate the scale of the appropriate deduction we conclude that a purchaser would assume that the value of the eventual reversion would be £114 000, equivalent to 80% of the full standing house value of £142 500.

The transcript of the judgment does not reveal the evidential basis for concluding that a reduction of 20% (as opposed to any other percentage) was appropriate. However, the tribunal is conscious that decisions of the Upper Tribunal now establish precedents binding on tribunals of equal or lower status.

<sup>2</sup> [2007] EWCA Civ 1042, [2008] 1 WLR 2142

<sup>3</sup> See *Haresign v St John the Baptist's College, Oxford* (1980) 255 EG 711, explained in the current (5<sup>th</sup>) edition of *Hague : Leasehold Enfranchisement* at para 9–16

9. Section 27(2)(a) provides that the material valuation date is that on which the application was made to the court. In this case the claim was issued on 13<sup>th</sup> December 2011, so although Mr Mansfield undertook his valuation on 24<sup>th</sup> May 2012 it is December 2011 which is the material date. However, the tribunal does not consider this difference to be of any significance. As the unexpired term of the lease exceeds 80 years no share of any marriage value is payable.<sup>4</sup>
10. In most cases where there is a missing landlord, but perhaps surprisingly not in all, there will have been no rent paid for a substantial period before the date of the application. Section 27(5) requires that the applicant must pay into court not only the price payable, as determined by the tribunal, but also the amount or estimated amount remaining unpaid of any pecuniary rent payable for the house and premises up to the date of the conveyance. Section 166 of the Commonhold and Leasehold Reform Act 2002<sup>5</sup> may impose an interesting restriction upon that by providing that :

A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.

The limitation period for recovery of unpaid rent is 6 years, so that is the maximum rent which could ever be recoverable.

#### **Valuation evidence**

11. Mr John Mansfield FRICS, of Brown & Co, provided a detailed valuation report dated 25<sup>th</sup> May 2012. In paragraph 1.6.4 he refers to the only recent comparable value of which he is aware, namely one of two development plots on Guist Road which sold in September 2011 for £90 000. The other adjoining plot is still on the market at £100 000. In the next paragraph he then goes on to say this :

In view of the lack of evidence of sale of building plots in the locality it does not seem unreasonable to consider the value of a property newly-built on the plot so as to maximise its development potential. Mr Banyard told me that he purchased the property two years ago for approximately £285 000 but that this figure included the goodwill for the business of the shop. He put this at about £50 000 making the value of the property alone about £235 000. I have obtained details of five modern detached houses in the locality which sold over the last twelve months for prices ranging from £206 000 to £300 000. Copies of the details are attached at Appendix 4.

12. The figures quoted are inaccurate, as the price recorded at entry 2 in the proprietorship register [page 14 of the bundle] is stated as having been £247 000.
13. Mr Mansfield argues at paragraph 1.6.6 that it would be uneconomic to construct a new 2 000ft<sup>2</sup> house on this rather awkwardly shaped plot, and that the maximum size that

<sup>4</sup> LRA 1967, s.9(1E)

<sup>5</sup> In force from 28<sup>th</sup> February 2005

would be realistically achievable is only 1 600ft<sup>2</sup>. Deducting his assumed building costs from the price at which such a house might sell he achieves a plot value of £83 000, or close to 30% of the value of the property. For the sake of his valuation he then adopts 30%, or £82 500.

14. In assessing a modern ground rent he adopts a capitalisation rate of 7%, producing an annual rent of £5 775.
15. Finally, he adopts the standard *Sportelli* 4.75% deferment rate for houses. His calculation of the price payable appears on page 7 of his report, at £1 479.

### **Findings**

16. The valuation date is that on which the claim was issued in the Norwich County Court, viz 13<sup>th</sup> December 2011. Although Mr Mansfield valued the property as at 25<sup>th</sup> May 2012 and the tribunal inspected on 25<sup>th</sup> June it is satisfied that nothing material turns on this.
17. Although the lease cannot be found the evidence concerning it which is recorded on the registered title includes both a commencement date and a term of 500 years, so the tribunal is satisfied that the unexpired term is 92 years.
18. Nothing is payable in respect of any unpaid ground rent under the existing lease.
19. The tribunal considers that Mr Mansfield's calculation of the site value to be ascribed to the property is on the low side, and that denser development would be attempted. It accepts that 30% is a fair estimate, but ascribes a modern freehold house value for the property of £325 000, producing a site value of £97 500.
20. It applies a 7% yield for the modern ground rent, or £6 825 per year, to which the tribunal applies a deferment rate of 5.5% (as approved in *Clarise Properties*).
21. Where Mr Mansfield adopts a standing house value (for calculation of the reversion to freehold value) of £265 000 the tribunal considers that £275 000 is more appropriate. However, applying *Clarise Properties*, this must then be discounted by 20% to reflect the risk attributable to the effect of Schedule 10 to the Local Government and Housing Act 1989. That produces a net value of £220 000, deferred 142 years at the *Sportelli* rate for houses of 4.75%.
22. As explained in the Schedule attached, the tribunal determines that the amount payable into court is £1 919.

Dated 19<sup>th</sup> July 2012

Graham Sinclair – Chairman  
for the Leasehold Valuation Tribunal

**HM Courts and Tribunals Service  
Leasehold Valuation Tribunal**

**Decision of the Tribunal**

**Address** 33 High Street, Foulsham, Dereham, Norfolk, NR20 5RT

**Premises** Village Shop with house to side and over, parking & garden

**Term:** 500 years from 23rd March 1604  
**Notice date (application to court):** 13th December 2011  
**Valuation Date:** 13th December 2011

**Unexpired term at Valuation Date** 92.0 years

**Value of Modern Freehold House** £325 000

**Site Value as a proportion of House Value** 30% £97 500

**Ground rent : not known but taken to be nominal** £0

**Term**

Ground Rent £0  
 YP for 92.0 years at 7.00% 14.25743 £0

**Value of Modern Ground Rent :**

**Site Value as above** £97 500

**Ground Rent at** 7.00%

**Modern Ground Rent** £6 825

YP for 50.0 years at 5.50% (Clarise Properties) 16.93152  
 £115 558

PV of £ def 92.0 years at 4.75% (Sportelli) 0.013990 £ 1 617  
 142.0

**Value of Reversion to Freehold (Standing House)**

VP Value £275 000 (20% discount -Clarise Properties) £220 000  
 PV of £ def 142.0 years at 4.75% (Sportelli) 0.001374 £ 302  
 £ 1 919

**Enfranchisement Price**

£ 1 919

Parry's	YP	16.93152	20.75810	18.17274	20.75810	14.25743
	PV	0.06877	0.013990	0.0004991	0.0139904	0.0019801
	<i>n</i> years	50.00	92.00	142.00	92.00	92.00
	at <i>i</i> interest rate	5.50%	4.75%	5.50%	4.75%	7.00%