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**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : CAM/33UF/OAF/2013/0001  
CAM/33UF/OAF/2013/0002

**County Court Claim no** : 3NR 00070 & 3NR 00072

**Properties** 0001 Fox Cottage, Brick Kiln Road, Thursford, Norfolk  
NR21 0BQ  
0002 Badger Cottage, Brick Kiln Road, Thursford, Norfolk  
NR21 0BQ

**Applicants** 0001 Mr David Lewis Harris & Mrs Anne Mavis Harris  
0002 Mr Chris Stevens & Mrs Julie Stevens

**Representative** : Each in person

**Respondent** : The successor in title to Captain M E B Sparke  
deceased, whose identity is unknown

**Type of 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)]

**Tribunal Members** : G K Sinclair, G F Smith MRICS FAAV REV  
& R Thomas MRICS

**Date and venue of  
Hearing** : Monday 1<sup>st</sup> July 2013 at the Wensum Lodge Hotel,  
Fakenham, Norfolk

**Date of Decision** : 16<sup>th</sup> July 2013

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**DECISION**

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**Introduction**

1. The applicants in each of these cases are the long leaseholders of what were until quite recently two semi-detached Airey homes situate in a rural setting on what had been the old Melton Constable to Thursford road until the line of the B1354 road was moved near this point to follow that of the former railway. Both couples assisted each other in researching the history of their respective titles and issued court proceedings at the same time, relying on the same evidence. Together they instructed the same valuer, who reached the same conclusion for these similar sized plots. In the circumstances it seemed only right that both references to the tribunal be dealt with together.
2. By orders made by Deputy District Judge Smart in the Norwich County Court on 15<sup>th</sup> March 2013 the respective claimants were directed to advertise their claims in the London Gazette and the Eastern Daily Press and, upon expiry of those notices, the matters be transferred to the Leasehold Valuation Tribunal for determination of the price payable into court in respect of each claim.
3. Directions for determination of both applications together were issued on 7<sup>th</sup> May 2013 and they were listed for hearing on 1<sup>st</sup> July 2013, upon which date the First-tier Tribunal (Property Chamber) came into existence, replacing inter alia the Leasehold Valuation Tribunal. Further, on the hearing date the old procedural regulations in force at the transfer of the claims to the tribunal were replaced by the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

**Inspection**

4. The tribunal inspected the premises on the morning of Monday 25<sup>th</sup> June 2012, when weather conditions were sunny and dry. The semi-detached Airey houses were knocked down and were replaced about ten years ago by two large detached bungalows, each of which enjoyed a small mezzanine level at the highest point in the roof structure. The two buildings differ in shape, style and construction method. Fox Cottage is believed to be of timber frame construction with a brick skin under a pantile roof. External woodwork has a natural finish. By contrast, Badger Cottage is of traditional block construction, with an outer skin of brick and flint panels. It too has a pantile roof but external woodwork is painted. It has tiled floors throughout the ground floor and a more complex layout. Full descriptions of each property (plus photographs) appear in the two reports of Nick Saffell FRICS, of Brown & Co, dated 14<sup>th</sup> May 2013.
5. Each property sits centrally in a large garden, with plenty of parking space to the front. Each has a garage. Dense woodland adjoins the rear boundary of both properties, and one side of Badger Cottage. Arable land lies to one side of Fox Cottage, and on the opposite side of the road to both.

### **Applicable valuation principles**

6. The Airey houses now replaced by these two houses were built in a corner of the large parcel of woodland leased by M E B Sparke to the Forestry Commission on 1<sup>st</sup> June 1931, probably as homes for forestry workers. As the annual rent under these two small parts of the leasehold land is unknown it shall be treated as nominal, and 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.
  
7. 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 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.
  
8. 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.
  
9. 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

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

<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

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.

10. 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, in the second supplement to the 5<sup>th</sup> edition of *Hague*<sup>4</sup> at 9–16 this is described as

...controversial, since there was no evidence adduced to support it, and it is substantially higher than the traditional ten per cent which was used to calculate the risk of a statutory tenancy arising under Part 1 of the Landlord and Tenant Act 1954, and the much lower discount to reflect 1989 Act rights : see paragraph 9–42 of the main work.

This is a very lengthy paragraph, but after referring to the case of *Lloyd-Jones v Church Commissioners for England*<sup>5</sup> the material part reads :

On the evidence of that case, the Tribunal held that the landlord's reversion after the original term date should be valued at the vacant possession value (less the value of tenant's improvements) less 10 per cent deduction for the risk of the tenant claiming a tenancy under Part 1 of the 1954 Act, the resulting figure then being deferred at an appropriate percentage (the deferment rate) for the period of the unexpired term of the tenancy.

This approach and method has been universally adopted and accepted by the Lands Tribunal and leasehold valuation tribunals in subsequent cases both in relation to Part 1 of the 1954 Act and Schedule 10 to the 1989 Act. In either case, the appropriate deduction to take account of the tenants' right is a matter of valuation evidence. It is not a convention so the fact that a particular discount has been given on one set of facts in one case is not relevant for the purpose of determining what the discount should be in another case...

...Each case will depend on its own facts and evidence and some tribunals

<sup>4</sup> *Hague : Leasehold Enfranchisement* (5<sup>th</sup> ed – Sweet & Maxwell, 2009)

<sup>5</sup> [1982] 1 EGLR 209

have given discounts under the 1993 Act of up to 10 per cent for assured tenancy rights.<sup>6</sup>

11. 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 25<sup>th</sup> January 2013, so although Mr Saffell undertook his valuation on 14<sup>th</sup> May 2013 it is January 2013 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>7</sup>
12. 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>8</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**

13. Valuation evidence was provided in each case by a written report dated 14<sup>th</sup> May 2013 by Mr Nick Saffell FRICS, who unfortunately had not been asked to attend the hearing and, after telephone enquiry was made at the outset, was found to be able neither to attend nor answer any questions by the tribunal over the phone. The applicants therefore had to take the report very much at face value and any observations by the tribunal on trust, although they were able to comment a little about the modern house valuation. They commented that what in each case was there now was the maximum size and height that, on appeal, the planners would allow to be built in this isolated rural area.
14. Mr Saffell's calculations are set out in detail at paragraph 2.1.4 of each report, with the explanation for the amounts and percentages adopted explained at 1.6.
15. Based on a range of four comparable properties (sold between November 2010 and December 2012) he reached the modern freehold house valuation and site value (1.6.6 & 1.6.7). He treats the current ground rent as nil (1.6.10). He then applies a 7% yield to assess the modern ground rent (1.6.11) and a deferment rate

<sup>6</sup> See also main work para 9–34 and the reference in the supplement to *Silvot Ltd v Liverpool City Council* [2010] UKUT 192 (LC), where the tribunal declined to apply a 10 per cent deduction where only 11 years were left on the lease and there was no evidence to justify it

<sup>7</sup> LRA 1967, s.9(1E)

<sup>8</sup> In force from 28<sup>th</sup> February 2005

of 4.75% to the capitalisation of that ground rent (1.6.12) and also to the reversion to the freehold (1.6.13).

16. However, in his calculation at 2.1.4 Mr Saffell applies a deferment rate of 5.5% to the modern ground rent but 4.75% to the reversion to freehold, from which he then deducts a further 20% (as per *Clarise Properties*).
17. At the hearing the tribunal queried this choice of 5.5%, but Mr Harris then produced a copy of an earlier tribunal decision concerning not Harmony House, High Street, Foulsham but 33 High Street, Foulsham – which two members of the tribunal recollected (for it was their decision) was a part-renovated flat above an awkwardly shaped village shop, store room and private garage.

### **Findings**

18. With a lease dated 1<sup>st</sup> June 1931 for a term of one hundred and ninety eight and three quarters years (to 1<sup>st</sup> March 2129) the unexpired term as at the date of issue of the claim was roughly 116 years. The tribunal does not regard a discrepancy of only a few months as at all significant.
19. The tribunal is content with Mr Saffell's assessment of modern house value, at £450 000, and site value at 30% or £135 000. It also agrees that current ground rent should be treated as nil, and that 7% is an appropriate yield to apply when calculating the modern ground rent.
20. However, the tribunal does not accept that the deferment rate to be applied to the modern ground rent should be as high as 5.5% yet that for the freehold reversion remain at 4.75%. Although the higher rate was accepted in the case of 33 High Street, Foulsham, that was based on the particular characteristics of a specific awkward site and building. In this case, and as Mr Saffell says in paragraph 1.6.12, it sees no reason why it should not simply apply the *Sportelli* rate of 4.75% to both.
21. Having considered Hague's critique of the 20% discount applied – without any explanation or evidence – in the *Clarise Properties* case the tribunal is also disinclined to venture any higher than 10%.
22. The net outcome, and the figure to be paid into court in respect of each property, is set out in the Schedule annexed.

Dated 16<sup>th</sup> July 2013

## Schedule

### Calculation of the amount payable into Court

Term : 198.75 years from 1 <sup>st</sup> June 1931			
Unexpired term at valuation date :	116 years		
Valuation of modern house		£450,000.00	
Site value @ 30%		£135,000.00	
<b>Term</b>			
Current/historic ground rent		Nil	
YP for 116 years @ 7%	14.2801375		Nil
<b>Value of modern ground rent</b>			
Site value, as above		£135,000.00	
Ground rent at 7%		£9,450.00	
<b>Modern ground rent</b>			
YP for 50 years @ 4.75%	18.9844	£179,402.58	
Present value of £1 deferred 116 years @ 4.75%	0.00459338		£824.05
<b>Value of freehold reversion (Standing house)</b>			
Vacant possession value less discount (1989 Act) @ 10%		£405,000.00	
PV for 166 years @ 4.75%	0.000451264		£182.74
<b>Total payable</b>			<b>£1,006.79</b>
Say			<b>£1,007</b>