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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/12UG/OAF/2013/0003**
County Court Claim No	:	**3CB00472**
Property	:	Green Cottage, 58 The Green, Weston Colville, Cambs CB21 5NT
Applicants	:	John Richard Henderson & Julia Hazel Henderson
Representatives	:	Rhodri Rees, solicitor, of Adams Harrison, and Mark C Hallam BSc FRICS, of Carter Jonas
Respondent	:	The successors in title to John Lennard & Sampson Lennard, landlords under leases dated respectively 27th May 1581 and 14th February 1582, the identity of whom 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, M Krisko BSc (Est Man) FRICS & R Thomas MRICS
Date and venue of Hearing	:	Tuesday 29th April 2014, at the tribunal office at Quern House, Mill Court, Great Shelford
Date of Decision	:	3rd June 2014

DECISION

Introduction

1. Since 13th December 1985 the applicants have been the leasehold owners of residential and appurtenant property known as Green Cottage, 58 The Green, Weston Colville (otherwise known as 58 Common Road, Weston Green) in Cambridgeshire. They hold the demised premises under the residue of one or both of two leases granted by John Lennard and Sampson Lennard as landlord and Richard Webb as tenant :
   a. Dated 27th May 1581, for a term of 500 years from 29th September 1580 at a rent of one peppercorn; and
   b. Dated 14th February 1582, for a term of 493 years from 29th September 1582 at an annual rent of five shillings.

2. The identity of the current landlord is unknown and during all the time they have lived there no rent has ever been paid. Indeed in his statutory declaration dated 12th August 2013 Mr Henderson exhibits a copy of an earlier statutory declaration dated 25th July 1939 and made by Francis Burbidge Toombs, chief clerk to the then estate agent for the Six Mile Bottom Estate, in which he confirms that even at that date no rent had ever been demanded for upwards of twenty years for this and adjoining parcels of land in Weston Colville held by the estate under the above leases.

3. By Order dated 11th March 2014 District Judge Taylor at Cambridge County Court, being satisfied that the claimants were entitled pursuant to section 27 of the Leasehold Reform Act 1967 to have the freehold vested in them, ordered that the appropriate sum to be paid into court be determined by the Leasehold Valuation Tribunal as if the claimants had given notice to the landlord on 23rd August 2013 (the date of issue of the proceedings).

4. The functions of the Leasehold Valuation Tribunal having been transferred to the First-tier Tribunal (Property Chamber) on 1st July 2013, it is for this tribunal to determine the appropriate sum to be paid into court. Directions for hearing were duly issued on 20th March 2014.

Inspection

5. The tribunal inspected the premises on the morning of Tuesday 29th April 2014. At the time the weather was drizzling. A full description of the premises, with photographs of this and comparable properties, appears in the report of Mark Hallam BSc FRICS dated 27th March 2014. Originally a thatched cottage believed to date from 1779, the present building on the site has been extended by the current leaseholders by a full height rear extension with pantiled roof. Perhaps in order to preserve the thatched cottage appearance from the front the extension is deep but inset at both sides, so in plan the building forms a T with the cross bar facing the street. To the rear are some detached outbuildings which block access to any land which may lie to the rear beyond.

6. Also noteworthy is the fact that a substantial part of the front driveway (including the front gates) and a diagonal slice towards the rear does not belong with the title. The tribunal was informed that it apparently belongs to a charitable trust that has no other land in the immediate vicinity, but attempts to purchase these strips had produced too high an asking price. The leaseholders must by now have acquired prescriptive rights of way over the driveway but, concerned about the ability to acquire a right to park as a legitimate easement[1], they had therefore constructed a gravelled spur in the front garden where cars could be parked safely on their own land.

Applicable valuation principles

7. The annual rent or rents under these two leases is 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.

8. 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*[2] 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.*[3]

   The practice of conducting a two-stage valuation should therefore cease and the full three-stage calculation, including the *Haresign*[4] addition, be applied.

9. 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.

10. 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 :

1 On this aspect the tribunal referred the applicants's solicitor to the House of Lords' decision in *Moncrieff v Jamieson* [2007] UKHL 42; [2007] 1 WLR 2620

2 [2012] UKUT 4 (LC); [2012] 1 EGLR 83 (George Bartlett QC (President) & N J Rose FRICS)

3 [2007] EWCA Civ 1042, [2008] 1 WLR 2142

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

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.

11. 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 5th edition of *Hague*[5] 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*[6] 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

5 *Hague : Leasehold Enfranchisement* (5th ed – Sweet & Maxwell, 2009)

6 [1982] 1 EGLR 209

> 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's 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 have given discounts under the 1993 Act of up to 10 per cent for assured tenancy rights.[7]

12. 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 23rd August 2013, so although Mr Hallam assumed that the valuation date was 10th January 2014 (the date of an early court order), it is 23rd August 2013 which is the material date. However, the tribunal does not consider this difference to be of any significance.

13. 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[8] 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

14. Valuation evidence was provided by a written report dated 27th March 2014 by Mark Hallam BSc FRICS, who attended both the inspection and the hearing and was able to speak at length to his report and answer questions from the tribunal.

15. He explained the reasoning behind his choice of deferment and yield rates thus. For the value of the term he had assumed that the ground rent payable was nil or very nominal, so the right to receive that would be nil. For the 1st reversion one must assume under s.9(1) that the tenant has the right to a 50 year extension of the lease. The ground rent payable will be a s.15 modern ground rent. To calculate that modern ground rent he had taken a valuation of the entirety value

7 See also main work para 9–34 and the reference in the supplement to *Silvote 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

8 In force from 28th February 2005

of £400 000, being equivalent to the optimum house that can be constructed on the site. Taking into account that it is a listed building, there is no opportunity of replacing it with something bigger. Having considered his comparables he assessed the plot value at 30%, giving a plot value of £120 000. He had then taken a percentage of that, and chose 6% as appropriate. This 6% rate was quite a common basis for assessment of ground rent. It can vary from 4.75% to 8%. *Hague* refers - at 8-13, 2nd para on page 211 - to the most common rate being 7%.

16. Historically, he said that he had done a number of s.9(1) cases and had adopted 6%. He dealt with a lot of Cambridge city cases, and there was a danger of achieving something very close to an assured shorthold tenancy rent. The rent is intended to be the rentalised value of just the plot. For a house that would achieve a rent of £900 per month it seemed to him inequitable to achieve a similar rent for the plot only. That was the main reason why, in line with *Hague*, he had adopted 6% rather than anything higher.

17. Having done that, one then needs to capitalise that for 50 years. This was usually done by capitalising it : see *Hague* at 9-14, at the top of page 223. One should capitalise and decapitalise at the same percentage rate, which is why he had adopted the same 6% rate.

18. The next stage was to say that the right to receive a higher ground rent for 50 years does not come in for another 62 or 67 yrs time, so one must defer that for that period. One must select a deferment rate.

19. Mr Hallam had chosen a rate slightly different than that adopted in *Sportelli*. There it was a high value house in Mayfair, which is very different. Here we are looking at the right to receive ground rent on a listed cottage. Having done a number of s.9(1) cases he said that he tended to agree 6%.

20. He put to one side the *Zuckerman* case, for here we were dealing with s.9(1) rather than s.9(1A). These tend to be smaller houses. In *Mansal*[9] it was said that it was appropriate to increase the rate from *Sportelli*, and he thought it was decided at 5%.

21. He told the tribunal that he had compared increases in values from Land Registry data since 1995, and produced a schedule demonstrating the results. He had compared three London boroughs with Cambridgeshire and the West Midlands. The expected increase in PCL values is 8.51% (with no allowance for inflation), whereas the increase in Cambridgeshire is much lower, at 5.3%.

22. One of the main issues in *Zuckerman* in the West Midlands, he argued, was that a higher deferment rate was justified because the expected growth rate was a lot lower in the West Midlands than in PCL. If one did this exercise in Cambridge city then the result would be very different and much higher than "out in the sticks".

23. He then turned to the *Clarise* case, which re-established the 3-stage process. He said it was interesting that in *Clarise* the rates concluded were 5.5% as a percentage of site value to ascertain the s.15 rent; and 5.5% (as in *Hague*) to

[9] LRA/185/2007, 24 February 2009 (unreported); mentioned in the supplement to *Hague* at 9-15

capitalise that for the 50 year extension, and 5.5% to defer that because it was not receivable until the end of the original lease. 5.5%, he argued, was established by *Clarise* as the deferment rate.

24. The 3rd stage is calculation of the 2nd reversion. He had also chosen a deferment rate of 6%. In comparison *Clarise* decided at 5.5%. The quotation from that case at [38] refers to a 5.5% rate, to avoid an adverse differential. What *Clarise* had decided was that rates should be the same all the way through, otherwise there was a risk of an adverse differential. The tribunal in *Clarise* adopted 5.5% but he, from his established practice in s.9(1) cases, chose 6% all the way through.

25. That brought him on to the 2nd reversion stage. Assessing the value of the existing house, he again took this at £400 000. After the 50 year extension the freeholder would receive back that house. What was its value? There was a risk that the tenant could remain in possession after the end of the lease. In *Clarise* 20% was chosen although, as explained in *Hague*, there was a distinct lack of evidence for that. He had therefore chosen 10% and, for the reasons explained, had also deferred that at 6%.

26. He was asked by the tribunal about the effect on his valuation of the fact that the property only had a right of way over the driveway and no right, for example, to erect gates. This, it was suggested, may add hassle when trying to sell it. He said that some tentative discussions had taken place about a purchase of the driveway, with a figure of up to £20 000 discussed with the trust's valuer, but there is a right of way in place - but not to park.

27. Asked about some of his comparables, and the adjusted valuation date, he confirmed that 51 High St, West Wickham was still on the market, with no offers received as yet. He agreed that the value would have been lower in August than in January - perhaps £10 000 less as the market was only just taking off. That figure took no account of the legal status of the driveway. He might perhaps deduct £25 000 as a combined deduction, thus yielding a £375 000 price last August.

Findings

28. Upon considering the various comparable properties referred to in Mr Hallam's report and evidence the tribunal agrees the revised valuation of £375 000 as at August 2013. This takes into account the defects to the title concerning the driveway.

29. It also found his evidence, based on considerable experience of this type of work and his research, to be particularly impressive. The tribunal therefore considered that sufficient evidence had been adduced to justify departing from the standard *Sportelli* rate and adopting in this case a rate of 6%. As demonstrated by the annexed Schedule, based on his second schedule and a shorter unexpired term, the price payable is therefore £3 365.

Dated 3rd June 2014

Graham Sinclair Graham Sinclair – Tribunal Judge

Schedule

Calculation of the amount payable into Court

Term : 493 years from 29th September 1580			
Unexpired term at valuation date :	62 years		
Valuation of modern house		£375,000.00	
Site value @ 30%		£112,500.00	
Term			
Current/historic ground rent		Nil	
YP for 62 years @ 6%	16.21701		Nil
Value of modern ground rent			
Site value, as above		£112,500.00	
Ground rent at 6%		£6,750.00	
Modern ground rent			
YP for 50 years @ 6%	15.76186	£106,392.56	
Present value of £1 deferred 62 years @ 6%	0.026980		£2,870.43
Value of freehold reversion (Standing house)			
Vacant possession value less discount (1989 Act) @ 10%		£337,500.00	
PV for 112 years @ 6%	0.0014647		£494.33
Total payable			£3,364.76
Say			**£3,365**