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NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Number: MAN/00BS/OAF/2006/0002

Name of Applicant/Leaseholders: Mr Ian MacArthur and
Mrs Beatrice Ann MacArthur.

Name of Respondent/Freeholder: Persons unknown

Address of Property: 2 Bramley Close, Bramhall, Stockport, SK7 2DT

Put before Tribunal on: Friday March 31st 2006.

Attendance at Tribunal: Mr Christian Martin Eagle
Messrs Ricksons solicitors for the
Applicant/leaseholders

Members of the Tribunal: Mr S Chesters-Thompson, MA. FRICS
Mr D Pritchard FRICS
Mrs S Burden BA JP

- I. This document records the decision with reasons of the Tribunal following the order by District Judge Lettall sitting at Stockport County Court on January 3rd 2006 for the Tribunal to determine the price payable for the freehold estate in the house and premises 2 Bramley Close, Bramhall, Stockport, SK7 2DT in accordance with the provisions of the Leasehold Reform Act 1967 as amended.
- II. The Applicant/Leaseholders represented by Mr C M Eagle of Messrs Ricksons Solicitors were unable to serve the normal notice to purchase the freehold as the Respondent/Freeholder was unknown. The Applicant/Leaseholders had made diligent enquiries and advertised in local newspapers and the London Gazette in an attempt to find the Respondent/Freeholder all to no avail so the matter was referred to Stockport County Court where District Judge Lettall gave the order for the matter to proceed without the need for the service of the Notice as the identity of the Freeholders could not be ascertained. It was also ordered that Messrs Ricksons Solicitors execute a conveyance of the said property in favour of the Claimants and containing paper provisions for giving the effect so far as possible to the requirements of Section 10 of the Leasehold Reform Act, the terms of the said Conveyance to be approved by the Courts. The valuation of the freehold estate to be determined by the Leasehold Valuation Tribunal.
- III. The Tribunal inspected the subject property on the morning of Friday March 31st 2006 in the company of Mr and Mrs MacArthur.

The subject property is a detached house constructed of brick with a tiled roof and built about 1956 and has the benefit of a good sized garden. The house is conveniently situated within walking distance of Bramhall railway station and the shops in Bramhall village. There is however a public car park to one side of the property and mixed development comprising, Scout premises and a large health centre. Bramley Close is a one-way street entered from Bramhall Lane South by the health centre.

The accommodation briefly comprises:- On the ground floor:- Hall, living room with fireplace and french door to garden, small sitting room/office, fully fitted kitchen with Aga, pantry and ground floor W.C. On the first floor:- 4 bedrooms and bathroom/W.C. There is a small brick built garage attached to the house. The property has the benefit of full central heating and is partly double glazed.

- IV. Following the inspection of the property a hearing was arranged for 11.45 am at the Tribunal offices at First Floor, 26 York Street, Piccadilly, Manchester, M1 4JB which was attended by Mr C M Eagle representing the Applicant/Leaseholders.

He gave the Tribunal a brief history of the matter and detailed the attempts to locate the Freeholder and explained how and why the matter had been referred to the County Court at Stockport

He referred the Tribunal to the written evidence provided and informed the Tribunal that as evidenced by the Office Copy Entries for the Property the property is comprised of land that is subject to two separate leases both of which created a long tenancy. The details of the leases being as follows:-

The First Lease. Created on 9th September 1932 between (1) Edward Howard Brocklehurst and (2) Frank Hallows and Edgar Roy Hallows. This lease was demised for the period of 999 years at a rent of £29-11s-8d.

The Second Lease. was created on 9th September 1932 between the same parties. This lease was demised for a period of 999 years at a rent of £37-8s-8d.

Both leases related to substantial areas of land of which the subject property only comprised a small part. It would appear that since the leases were first created in 1932 that various assignments of different parts of land comprised within the leases have been completed leaving only the land that comprises the subject property left under the terms of the lease.

The subject property that was subject to the provisions of the First Lease and the Second Lease was vested in Mrs B MacArthur by an assignment dated 2nd February 1970. Mrs B A MacArthur subsequently transferred the Leasehold Title to the property to herself and her husband Mr Ian MacArthur on 30th June 2005.

Under the terms of the Assignment the tenant was exonerated from paying the rents due under the first and second leases.

Mr Eagle confirmed that neither rent had been demanded nor paid for many years and the identity of the Freeholder was unknown.

When questioned by the Tribunal chairman Mr Eagle stated that no expert valuation of the interest had been obtained but he considered that the freehold was worth no more than £250.

- V. The Tribunal carefully considered the information provided at the hearing and the other written representations provided. The Tribunal found itself in some difficulty as both the leases had been lost and had to assume that neither would have contained any unusual or onerous covenants.

At the inspection the Tribunal found that the boundaries of the subject property differed slightly from the Land Registry plan and the plan provided by the Boy Scouts Association showing the land covered by the two leases of September 9th 1932.

The Tribunal would recommend that if this matter does proceed that an accurate plan of the existing boundaries of the subject property be prepared. It would appear that a small part of the land comprised in the original leases has been incorporated in the gardens of adjoining houses and possibly in some road alterations.

- VI. In coming to its decision the Tribunal took its first function to be that of determining a price in accordance with Section 9 of the Leasehold Reform Act 1967 viz: "..... 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 who reside in the house not buying or seeking to buy) might be expected to realise"

Certain statutory assumptions must be made, but the only one of significance in this case was that in effect the freehold would be sold subject to the existing lease, i.e. with the 999 year terms extendable for a further 50 years (s.9(1)(a)). In discharging this function of determining the price, the Tribunal (following the earlier Tribunal decisions in *Yates - v- Bridgewater Estates Ltd* [1982] 261 EG 1001 and *Williams -v- Walsh and Others* [1983] 268 EG 915) took into account the following points:

- i) that there was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties;
- ii) that it would not be consistent with the definition of price in Section 9 (1) of the 1967 Act or with the circumstances of the case to apply the algebraic formula prescribed by Parliament for the redemption of rent charges (Rent Charges Act 1977, s10);
- iii) that they were entitled to rely on their general knowledge and experience whatever the evidence or representations (or the absence of such) submitted by the parties;
- iv) that the statutory wording involved envisaged the sale on its own as one lot, ie: not as included in a parcel of ground rents;

- v) that the possibility of bids from the sitting tenant which might push up the open market price had been expressly excluded by the 1967 Act;
- vi) that the seller (although not also the buyer) had been statutorily described as "willing" so that any policy or practice of the landlord restricting sales had to be disregarded;
- vii) that the resultant loss of income to the landlord/seller was not comprehended by the statutory formula for determining the price payable;
- viii) that the hypothetical and potential buyers in the market would have in mind their own conveyancing costs (although not also those of the seller under Section 9(4) of the 1967 Act and any covenants which would be continued in the conveyancing (see Section 9(1)(c) and Section 10(4) of the 1967 Act) and most important the length of the term and the amount of ground rent under the lease;

In the present case, there are 925 years of the leases unexpired. In the circumstances the Tribunal took the view that the position was similar to the Lands Tribunal case of *Janering -v- English Property Corporation Ltd and Nessdale Ltd* [1977] 242 EG388 that a reversion of this length would not be of any significance.

The Tribunal was also aware that in many cases tenants in their anxiety to purchase the freehold of their properties often without valuation advice put forward offers which include the tenants bid as an element which the Tribunal have to exclude (see *DeLaforce -v- Evans* 1970 215 EG31).

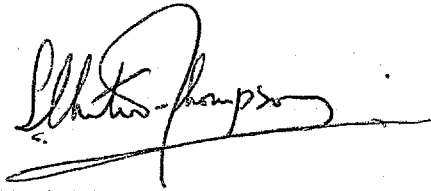
VII The Tribunal having no professional valuation evidence presented to it concluded that it would have to rely on its own knowledge, experience and judgement in determining the matter.

The Tribunal therefore determines a price of:-

£150.00 (One hundred and fifty pounds)

This figure is exclusive of permitted costs as set out in the Leasehold Reform Act 1967 Section 9

An appeal may be made from this Decision to the Lands Tribunal by leave of the Leasehold Valuation Tribunal or the Lands Tribunal. Such appeal must be made within 28 days of the issue of reasons (Lands Tribunal Act 1949 Section 6/3 and Lands Tribunal Rules 1975 as amended).

A handwritten signature in black ink, appearing to read 'S Chesters-Thompson', with a long horizontal flourish underneath.

S CHESTERS-THOMPSON
CHAIRMAN - LEASEHOLD VALUATION TRIBUNAL

Date: 10 MAY 2006