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Eastern Rent Assessment Panel
Great Eastern House Tenison Road Cambridge CB1 2TR
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REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL
Leasehold Reform Act 1967 section 21 and section 27

DRAFT

Premises: 40 Gough Way, Cambridge CB3 9LN
Our ref: CAM/12UB/OAF/2008/0006

Hearing: 22 April 2008

Applicants: Mr Luke Forsyth and Mrs Diana Forsyth – tenants
Represented by: Mr D T Ward FRICS

Respondent: Dr S L Adelman – freeholder
(Cannot be traced)

Members of Tribunal: Mr G M Jones - Chairman
Mr G J Dinwiddy FRICS
Mr R W Marshall FRICS FAAV

ORDER

1. It is hereby declared that the price to be paid by the Applicants for the freehold of the property situate at and known as 40 Gough Way, Cambridge CB3 9LN is £57,188.
2. This case is hereby remitted to the Cambridge County Court for final determination.

Geraint M Jones
Chairman
24 April 2008

A handwritten signature in black ink, appearing to read "Geraint M Jones", with a horizontal line underneath.

1. THE APPLICATION

The Property

- 1.1 The subject property is a four bedroom detached house built in the 1960's as part of an estate of substantial houses on land on the western edge of Cambridge in the popular Newnham area. It has modest gardens and a double garage, which has been partially converted into usable living accommodation. The house is of brick and tile construction with feature timber panels on the front elevation and, in the main, UPVC double glazed windows. One or two of the original single glazed softwood framed windows remain and are in rather poor condition. Accommodation on the ground floor comprises entrance porch; hall; living room with double doors to dining room; study, kitchen and WC. On the first floor are the family bathroom with separate shower cabinet; two double bedrooms; and two single bedrooms. The master bedroom has been partitioned to provide space for a walk-in wardrobe and an en suite shower room, though no plumbing has been installed. The original under floor heating system has been replaced with modern gas-fired central heating radiators.

The Lease

- 1.2 The property was let by Dr Adelman to Mr & Mrs Evans on 8 July 1974 for a term of 99 years from that date at a ground rent. As is usual in such leases, the tenant is liable for repair and redecoration. No extensions or additions are permitted save with the prior approval of the landlord's architect (such approval not to be unreasonably withheld). The tenant is to use the house for the purposes of a private or professional residence only. Mr & Mrs Forsyth became tenants by assignment on 21 September 2007.

The Dispute

- 1.3 In 2007 the Applicants' predecessors in title Mr & Mrs Ellis Miller wanted to dispose of the property. They looked into the possibility of enfranchisement under the provisions of the Leasehold Reform Act 1967. Their solicitors made enquiries to trace Dr Adelman but without success. They decided to sell the property instead. Mr & Mrs Forsyth were interested in buying the property and enfranchising as soon as possible. Accordingly, on 20 September 2007, Mr & Mrs Ellis Miller made application to the Cambridge County Court under section 27 of the LRA 1967. The intention was that the right of action would be assigned to Mr & Mrs Forsyth after they had completed their purchase, which was duly done. Mr & Mrs Forsyth were substituted as Claimants and on 18 December 2007 D J Pelly made the necessary declaration and transferred the matter to the LVT for determination of the price.

2. THE LAW AND THE ISSUES TO BE DETERMINED

Enfranchisement of Freeholds

- 3.1 The Leasehold Reform Act 1967 enables tenants of long leases at low rents to enfranchise their properties – in other words to acquire the freehold on terms set out in the Act. Recent amendments introduced by Part 4 of the Commonhold & Leasehold Reform Act 2002 have expanded the scope of the 1967 Act. If the price is not agreed between the parties, there is provision under section 21 for an application to the Leasehold Valuation Tribunal to determine the price. The valuation methods are set out in section 9 of the Act. The method of determination depends upon which category the property and the lease fall into.

- 2.1 Section 27 of the 1967 Act provides for an application to the Court and sets out the procedure to be followed in cases where the landlord cannot be found. One part of this procedure requires the Leasehold Valuation Tribunal to determine the price, in accordance with the appropriate valuation method set out in the Act.
- 2.2 The Tribunal must determine the purchase price on the relevant day. The relevant day in this case is the date of the application to the Court, namely, 20 September 2007. The valuation is to be carried out under section 9(1) or section 9(1A), depending in this case upon whether the RV on 31 March 1990 was more than £500. The actual figure was £522, so that the price is to be determined in accordance with section 9(1A).
- 2.3 On the facts of this case, the price to be paid depends upon the following matters: -
- (a) The freehold value of the property with vacant possession on the basis that the tenants' repairing covenants have been complied with but the property is otherwise unimproved;
 - (b) The relative value of the unexpired term of the lease;
 - (c) The capitalisation rate to be applied to the calculation of the value of future rents;
 - (d) The deferment rate to be applied to the open market value to allow for accelerated payment.

3. THE EVIDENCE

- 3.1 Mrs Forsyth attended the hearing with Mr Ward, who had previously submitted a formal valuation report. Mr Ward presented his report and answered questions on valuation issues. Mrs Forsyth was able to assist the Tribunal with a certain amount of factual information, which the Tribunal accepted. The four issues listed above were considered in turn.
- 3.2 Mr Ward first corrected the property description section of his written report. He had stated that the en suite shower had been removed, whereas in fact it had never been fitted. He had omitted references to the kitchen and to the second double bedroom. None of these issues affected the valuation process or the final conclusions.
- 3.3 Mr Ward said there were few closely comparable properties which were either for sale or recently sold in Cambridge. He relied primarily upon three pieces of valuation evidence: -
- (i) 3 Penarth Place is a five bedroom detached house in a close off Gough Way. It was built in the 1970's but is similar in style and size to the subject property. Although it has an extra bedroom, it lacks a study. It is superior to the subject property in having two bathrooms and a utility room. The kitchen units are relatively modern. It was sold freehold with vacant possession in January 2008 for £640,000
 - (ii) 4 Spens Avenue is a four bedroom detached house in another close off Gough Way. It was also built in the 1970's and is smaller, with a narrow corner plot and a single garage. It has no study or utility room. There is only one double bedroom, which has an en suite shower room.

The property was marketed at £525,000 and sold freehold with vacant possession in January 2008 for £500,000

- (iii) 25 The Crescent is a 1990's four bedroom detached house with a conservatory in a highly regarded residential area off Storey's Way between Churchill College and New Hall. The main building comprises a kitchen/breakfast room and living room with three bedrooms above (one with en suite shower room). At the front of the main building is an annexe comprising a living room or study; a fourth ground floor bedroom; and a shower room. At the front of the plot is a single garage and car port. The property was sold freehold (subject to contract) in February 2007 at a price of £565,000.

3.4 The Tribunal was aware of two other relevant comparables, though in both cases the prices quoted were asking prices only. The Cambridge Evening News for 3 October 2007 contained an advertisement for a property at Bandon Road (near Girton College) at £595,000. Currently on the market is 42 Gough Way, identical to the subject property but with unconverted garage; modern kitchen and bathroom; walk-in wardrobe and en suite shower room to master bedroom; and a conservatory. Mrs Forsyth had been inside and was able to confirm that the property is fully modernised to a high standard. It is on the market freehold for £650,000.

3.5 Mr Ward said that properties at the top end of the market in Cambridge were being advertised at prices slightly above those current in September 2007 and were generally selling at or close to asking prices. He considered £650,000 to be a realistic price for No 42. To modernise No 40 to the same standard, as most buyers would want to do, would involve substantial cost. Mrs Forsyth said that she had been quoted a ball park figure of £20,000 for the kitchen alone. Mr Ward took the view that replacing windows at the end of their useful lives and updating the heating system amounted to no more than compliance with the tenants' covenants; but updating kitchen and bathroom, fitting out the en-suite shower room and adding a conservatory would be improvements. He considered that the new information about the Bandon Road property and, more importantly, 42 Gough Way, was consistent with his view that the open market value of the subject property, valued in accordance with section 9(1A), was £600,000.

3.2 Mr Ward considered that the unexpired leasehold term, with nearly 66 years to run, was worth 85% of the freehold value. He had consulted the well-known "graph of graphs" prepared from a substantial body of data. This suggested that the figure should be 80-90%. He had also prepared his own graph of Cambridge cases. This showed good correlation with a series of cases he regarded as reliable examples from his experience over the years. This led to a figure of 85%. There was general agreement amongst the valuers present that the correct figure for capitalisation of ground rents was 6%. This makes very little difference to the outcome and nothing more need be said about it.

3.3 Mr Ward took the view that the tenants' right under Part 1 of the Landlord & Tenant Act 1954 had no significant effect on the valuation and that the site had no significant hope value. The Tribunal agrees; nothing more need be said about those issues.

- 3.4 The issue of deferment rate has been very controversial in many cases over the years. Small changes of rate can make a huge difference to the outcome. This issue must be considered carefully in the light of the recent **Sportelli** decision, which set the deferment rate in the Prime Central London area at 4.75% for houses and 5% for flats.
- 3.5 The Lands Tribunal took the view that these rates were logically applicable to any property anywhere in the country. Many knowledgeable professionals in this field working outside the PCL and dealing with more mundane properties found that element of the decision rather surprising. Mr Ward said that, if it were not for the **Sportelli** decision, he would have opted for a deferment rate of 6%. That was the rate generally agreed between local valuers to be appropriate for most properties in the Cambridge area and, indeed, beyond. He was troubled by the fact that the experts in Sportelli were dealing with very valuable properties in the Prime Central London market. Considerations in cases relating to much less valuable properties in other parts of the country might be very different. However, in this case he was unable to identify any factor that would lead to a different rate and accordingly adopted a rate of 4.75%.

4. CONCLUSIONS

- 4.1 The Tribunal had little hesitation in accepting all the factual evidence and agreeing with Mr Ward's approach and his freehold valuation at £600,000. Likewise, the relative value of the leasehold interest at 85% accorded with the local and national evidence and with the experience of the Tribunal. The capitalisation rate was agreed to be 6%. The real difficulty in the case was to decide upon the deferment rate.
- 4.2 Although it is no doubt convenient to set guidelines in order to increase certainty, promote early settlements and discourage expensive litigation, the basis for applying PCL rates to any case anywhere across the country appears to us to be doubtful. The **Sportelli** rates appear to produce unrealistically high enfranchisement prices in many cases. We are, of course, bound by the ruling of the Court of Appeal. But it is difficult to see how a decision of fact on a matter susceptible to valuation evidence can be elevated into a principle of law. Carnwath L J recognized that there must be "an implicit distinction" between the PCL area and "other parts of London or the country". He continued: -

"The issues within the PCL were fully examined in a fully contested dispute between directly interested parties. [He might have added that they were using distinguished and highly experienced expert witnesses]. The same cannot be said in respect of other areas. The judgment that the same deferment rate should apply outside the PCL area was made, and could only be made, on the evidence then available. That must leave the way open to the possibility of further evidence being called by other parties in other cases directly concerned with different areas. The deferment rate adopted by the Tribunal [i.e. the Lands Tribunal] will no doubt be the starting point; and their conclusions on the methodology, including the limitations of market evidence, are likely to remain valid. However, it is possible to envisage other evidence being called, for example, on issues relevant to the risk premium for residential property in different areas."

- 4.3 The flaw in the assertion that the Sportelli rates should be of universal application may lie in the assumption that there is a single market; whereas in reality, there are many small investors dealing with lower value properties in London suburbia and in the provinces who inevitably look for higher rates of return on capital. No doubt, large diversions in a long series of small individual provincial transactions from the rates adopted between large institutional investors dealing with "blue chip" properties would eventually attract the attention of the market makers and be subject to a degree of self-correction; but there is clearly room for significant diversions outside the PCL whether or not that happens. In the judgment of this Tribunal, the risk element is an important factor, leading to higher deferment rates in every case where confidence about the future of relevant property values is less than for prime properties in the PCL.
- 4.4 Cambridge is a relatively prosperous city where property values are fairly high (though far lower than in the PCL area) and confidence in property values is generally strong. The subject property is in a well regarded residential area convenient for access to the M11 and not too far from the City centre. However, the property is a "one-off" house in a freehold estate and the market for freeholds of such properties in the Cambridge area is very limited. The understandable controlling urges of the University and Colleges have led to the letting of many houses in the city on long leases; but the freeholders do not sell the reversions. There are, of course, blocks of flats, the freeholds of which are owned by private investors, but the security of those investments is not the same as for prime residential property in the PCL. Taking all these matters into account, the Tribunal considers that long term investors likely to be interested in this property would require a slightly higher return in this case and a deferment rate of 5% is appropriate.
- 4.5 There was a small error in Mr Ward's calculation of the capitalized ground rents. The Tribunal's revised valuation is set out in the Schedule hereto and, in accordance with that valuation, the price to be paid is £57,188.

Geraint M Jones MA LLM
Chairman
24 April 2008



(Cantab)

LEASEHOLD VALUATION TRIBUNAL

40 GOUGH WAY, CAMBRIDGE
CAM/12UB/OAF/2008/0006

SCHEDULE TO ORDER

Unexpired term:	66 years (say)
Ground rent :	£25.00 per annum
Capitalisation rate:	6%
Deferment rate:	5%
Freehold interest:	£600,000
Leasehold interest @ 85%:	£510,000

1. Value of freehold interest excluding marriage value

- (a) Ground rent £25.00 p.a. 66 yrs purchase @ 6%:

Multiplier	16.3	
Total		£408

- (b) Reversion deferred 66 yrs £600,000 PV of £@ 5%:

PV of £ in 66 yrs@ 5%:	0.039949	<u>£23,969</u>
		<u>£24,377</u>

2. Lessor's share of marriage value

- (a) Freehold value £600,000

- (b) Deductions:

Lessor's interest	£24,377	
Lessee's interest	<u>£510,000</u>	<u>£534,377</u>

- (c) Gain on marriage of interests £65,623

Lessor's share 50%		<u>£32,811</u>
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3. Price to be paid for freehold £57,188

GMJ 24.4.08