



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

Case Reference : **CAM/33UC/OAF/2017/0002**

County Court Claim No : **D00NR134**

Property : 7 Wallers Lane, Foulsham, Dereham NR20 5TN

Applicant : Mrs Sally Wilman

Representative : John Mansfield FRICS

Respondent : 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 : Tuesday 12th December 2017 at South Green Park, Mattishall

Date of this decision : 15th December 2017

DECISION

- Decision para 1
- Background paras 2–4
- Applicable valuation principles paras 5–9
- Inspection and hearing paras 10–16
- Findings paras 17–20
- Valuation under section 9(1) Schedule

1. For the reasons set out below, and as demonstrated in the Schedule annexed, the tribunal determines that the amount payable into court as the price required in order to acquire the freehold reversion is £2 845.00.

Background

2. Yet again the tribunal is asked to deal with one of the many Foulsham leases for a term of 500 years that were granted over a period of about 10 years at the start of the reign of King James VI & I. The tribunal's own researches, which include some observations by the editor of the current (6th) edition of *Megarry & Wade*, tend to support the view that the explanation why so many 500 year leases were granted in this early Jacobite period concerned not so much strict settlements (which developed later) but wardship – an unfortunate element of the feudal tenure by knight service which was used by the king to raise extra cash without having to call a Parliament to argue about his budget.¹ The tribunal assumed it was a means by which the king or the ward's "guardian" could help himself and despoil the value of the estate, but Dr Charles Harpun has explained it as a preventive measure often employed by estates to reduce their land value and thus discourage the king from exercising his rights of wardship where the heir was still a minor (which rights could include telling him whom he should marry. Refusal was possible, but bold and expensive). The whole thing was ended by Parliament during the Civil War and confirmed, upon its insistence, on the restoration of Charles II in 1660.
3. In the instant case the lease was granted by Sir Thomas Hunt and William Hunt to George Spicer on 16th September 1604, for a 500 year term. No further particulars, including as to rent, are known or were supplied on first registration in February 2001. The current proprietor, Mrs Wilman, purchased in 2011 for the sum of £241 000; her husband being ineligible for a mortgage due to his age.
4. On 2nd January 2017, in the County Court at Norwich, the applicant issued a claim under Part 8 of the Civil Procedure Rules 1998 seeking a transfer to her of the freehold of this leasehold property. By an order made by District Judge Reeves at a hearing on 19th May 2017 the freehold title in the property was vested in the applicant subject to the appropriate sum being paid into court, that to be determined by this tribunal.

Applicable valuation principles

5. The annual rent under the lease (which is unknown) has been treated as nominal, and the purchase price is determined in accordance with section 9(1) of the Leasehold Reform Act 1967, the relevant elements of which may be listed as :

¹ See Charles J Reid Jnr: *The Seventeenth Century Revolution in the English Land Law* (Cleveland State University, 1995), at pgs 234–241

- 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) 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.
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. Section 27(2)(a) provides that the material valuation date is that on which the application was made to the court. The claim was issued on 2nd January 2017, so that is the material date to be applied. As the unexpired term exceeds 80 years no share of any marriage value is payable.⁵
9. 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 2002⁶ imposes an interesting restriction upon that by providing :
- “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.”

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 (6th) edition of *Hague : Leasehold Enfranchisement* at para 9–16

⁵ LRA 1967, s.9(1E)

⁶ In force from 28th February 2005

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

Inspection and hearing

10. The tribunal inspected the property at 10:00 on the morning of the hearing. At the time the weather was cold, grey and icy under foot. The property comprises a bungalow or early 1960s construction, to the left hand end of which was added an extension comprising a new entrance hall, en-suite bathroom, lounge and utility room in about 1993/94. It is therefore approximately 2.5 times wider than it is deep, and sits across a deep site measuring 0.3 acre, with a substantial back garden with some sheds which wraps around the southern or right hand end of the bungalow. To the front is ample parking for 4–5 vehicles.
11. One oddity, resolved by the inspection, is that the hearing bundle includes two copies of the title plan – one dated 2016 (at page 39) and the second 2017 (at page 62). Strangely, while the later plan includes the house built on the plot immediately to the south (on the corner with Twyford Lane) it does not include the extension to the subject property built more than 20 years ago. The converse is true with the earlier plan, but while both show a kink in the southern boundary the 2016 version shows it as being much deeper than in the 2017 plan. From its inspection the tribunal is satisfied that the smaller kink is correct.
12. Wallers Lane is a narrow road situate at the northwestern edge of the village of Foulsham, connecting Twyford Lane to the south with Guist Road to the north. The property is on the eastern side of Wallers Lane, facing slightly to the north of west.
13. Mr & Mrs Wilman both attended the hearing and were represented by Mr John Mansfield FRICS, their expert valuer whose report and valuation appeared at section D of the bundle.
14. The principal issue for discussion was what, imagining a hypothetical bare site, a modern developer would wish to do with it. The tribunal put to Mr Mansfield that, bearing in mind the sizes of the two plots immediately to the north, two (or possibly more) houses could be built on it. He rejected that suggestion, arguing that planning policy these days was more scientific, and that the highways department would have great concerns about the intensification of use of a site fronting a narrow lane with no pavement. He suggested also that some of the comparables referred to by the tribunal, at 47 Guist Road and The Willows, would expect a separate garage and a roomier plot than would be the case if this site were split in two.
15. Most development in Norfolk, he submitted, is going on with green field sites, allowing easily for access, etc. to be designed in. This would be an in-fill site on a narrow road. He agreed that there is more building going on, and pressure for even more, but he did not think this would be an obvious choice.
16. Other relevant factors pointed out by Mr Wilman and Mr Mansfield were that the site is below the level of the lane, under which a shallow public sewer runs. The fall from the site to the invert level is very shallow. Secondly, all the surrounding buildings on Wallers Lane are bungalows – although that immediately to the

north is a newish chalet bungalow, with dormer windows facing the front only – so there is limited or no overlooking. That would reduce the prospects of a grant of permission for two storey houses on the site.

Findings

17. The tribunal noted the various points made on behalf of the applicant. Although Mr Mansfield was unable to assist the tribunal with where Broadland District Council is with its five year housing supply target, or whether it charges CIL on all new development, he raised a doubt about the likelihood of permission being granted for two or more houses on the site.
18. The tribunal is confident that a developer would not be content with a bungalow such as that currently on the site. A more reasonable comparable was the new-build house at 32 Guist Road. A satellite view of that revealed a comparable plot size, although while a larger building would be the obvious choice to maximise the value of the plot there was a distinct possibility that local planners might restrict it to a larger chalet bungalow of about 2 000 square feet, with windows designed so as not to overlook adjoining rear gardens.
19. The tribunal therefore started with a much higher modern house value than that proposed by Mr Mansfield : £360 000 rather than £275 000. That reduction in overall value – from a site comprising two modest detached houses to one with a large one-and-a-half storey house – would suffice to reflect any planning risk, so Mr Mansfield’s proposed bare site value of 40% was agreed.
20. That produced a site value of £144 000, which then affects the modern ground rent. Adopting the value of the reversion to site value of 7% and a deferment rate of 4.75% (following *Sportelli*) results in an enfranchisement price of £2 845. The full calculation appears in the Schedule annexed.

Dated 15th December 2017

Graham Sinclair

Graham Sinclair
Tribunal Judge

ANNEXE - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result sought by the party making the application.
3. The application for permission to appeal must arrive at the Regional office within

28 days after the tribunal sends written reasons for the decision to the person making the application.

4. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit. The tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite it being outwith the time limit.

Schedule

Calculation of the amount payable into Court

| | | |
|---|------------|------------------|
| Term : 500 years from 25 th March 1604 | | |
| Unexpired term at valuation date : | 88.7 years | |
| Valuation of modern house | | £360,000.00 |
| Site value @ 40% | | £144,000.00 |
| Term | | |
| Current/historic ground rent | | £0.00 |
| Value of modern ground rent | | |
| Site value, as above | | £144,000.00 |
| Ground rent per annum at 7% | | £10,080.00 |
| Modern ground rent | | |
| YP for 50 years @ 7% | 13.8007 | |
| Present value of £1 deferred 88.7 years @ 4.75% | 0.0163056 | £2,268.28 |
| Value of freehold reversion (Entirety value) | | |
| Vacant possession value | | £360,000.00 |
| PV for 138.7 years @ 4.75% | 0.0016019 | £576.68 |
| Total payable | | £2,844.96 |
| Rounded up to | | £2,845.00 |