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

Tribunal Case Ref : CAM/33UG/OAF/2016/0001
County Court Claim No : BooNR967

Property : 400 Unthank Road, Norwich NR4 7QH

Applicant : Benjamin Jonathon Davis & Katie Davis

Representative : Stevensons Solicitors

Respondent : The successor in title to A C Havers & C Hurn, the lessors under an underlease of the property for a term of 999 years less 6 days from 25th March 1897, whose identity is unknown

Type of Application : Determination of the appropriate sum, namely 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)(cza) & 27(5)]

Tribunal Members : G K Sinclair & R Thomas MRICS

Date of inspection : 24th March 2016

Date of Decision : 29th March 2016 (amended 7th April 2016)

DECISION FOLLOWING INSPECTION & PAPER DETERMINATION
(as amended under rule 50)

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Introduction

1. Having purchased the long leasehold interest in the subject property in July 2009 the applicants investigated the freehold title, tracked down various parties that may have had (but denied actually having) an interest in the reversion, and finally issued proceedings for the acquisition of the freehold interest from a missing landlord on 24th September 2015 (the valuation date). By Order dated 6th November 2015 District Judge Reeves, sitting at Norwich, directed *inter alia* that

Upon advertisement the freehold of the property may be acquired by the Claimants and the case is transferred to the First-tier tribunal (Property Chamber) to determine the appropriate premium.

Thereafter, and upon payment of the amount determined into court, the case was to be relisted in order to determine the final vesting order with a draft transfer.

2. On 5th February 2016 this tribunal issued directions for the hearing of the aspect transferred to it, but subsequently – at the request of the applicants – it agreed to deal with the matter on the basis of written representations following a brief inspection.

Inspection

3. The tribunal inspected the subject property in the presence of Mrs Davies on the morning of Thursday 24th March 2016. Looking from the road, it is the left-hand one of a pair of semi-detached houses erected under a building lease in around 1903. The property is situate on a relatively quiet residential road running parallel to and northwest of the main Newmarket Road, outwith the city’s outer ring road and in a highly desirable residential area of Norwich. Most of the surrounding houses are of a similar Edwardian age, and are either large detached or semi-detached construction with generous front and rear gardens (although, backing on to the rear gardens of houses on the adjoining Judge’s Walk, those of the subject property and its immediate neighbours are shorter than others further along).
4. The property itself is three storeys in height, plus a cellar, with five generous bedrooms (one of which, on the second floor, with its own en suite bathroom). The accommodation, and its quality, are as described in paragraph 2.5 of Mr Evans’ report.

Applicable valuation principles

5. The annual rent or rents under the lease 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.
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*¹ 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*.²
- The practice of conducting a two-stage valuation should therefore cease and the full three-stage calculation, including the *Haresign*³ 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. In this case the claim was issued on 24th September 2015 but, although Mr Evans assumed the valuation date to be the date that the tribunal issued its directions (5th February 2016), the tribunal does not consider this difference to be of any significance – as the unexpired term of the lease is just over 880 years.

Valuation evidence

9. In view of the limited amounts involved the tribunal acceded to the applicants' request that this matter be dealt with by way of paper determination, so the only valuation evidence adduced was the report of John Geraint Evans MSc (Cantab) FRICS, of Bureau Property Consultants, dated 23rd February 2016.
10. In view of the fact that the unexpired term is 880 years he places no real value on the actual price of the standing house, although noting that it was sold in July 2009 to the applicants for £470 500 and that the adjoining semi-detached house sold in October 2013 for £495 000. The only material part of the calculation is the capitalisation rate chosen for the current fixed annual ground rent of £5.
11. Valuation is in accordance with section 9(1) of the 1967 Act, and Mr Evans quotes the relevant principles which are to be found in the 6th edition of *Hague*. After referring to the fact that the cost of a stamp to post a written demand will soon amount to 10% of the annual rent (let alone other administration costs required

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

² [2007] EWCA Civ 1042, [2008] 1 WLR 2142

³ 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

for its collection), and that inflation will slowly destroy the value of the rent as an investment, Mr Evans nonetheless argues that it has some value but that “as a matter of practice and experience in the market” (which he does not further explain) he attributes a capitalisation rate of 8% to this investment, producing a capital sum of £62.50.

12. Although rendered practically meaningless in this case by the 880 year unexpired term he also argues for a deferment rate of 5%, applying 0.25% to the standard *Sportelli* rate of 4.75% to reflect the geared nature of the investment here. He then considers the value of the freehold reversion and takes the view that as it unlikely ever to acquire historical monument status the hypothetical purchaser would treat the reversion as being to site only, and would place no value on it. For the sake of his calculation, however, he attributes a value to it of £1, making a total price of £63.50.

Findings

13. As usual in cases where not only the landlord but also the lease is missing, the history of the property is slightly confusing. The registered title refers to a lease or underlease dated 7th September 1904 for a term of 999 years less 6 days from 25th March 1897. This may be the underlease mentioned in an abstract of title prepared in 1925, which also refers to an earlier indenture of underlease dated 19th November 1903 for 999 years less 3 days from the same commencement date in 1897. This suggests that there may also have been a head lease for a straight 999 years, making four tiers in all : freeholder, lessee, underlessee and under-underlessee.
14. So far as this tribunal’s task is concerned it is surprised by the comparatively low price paid only in 2013 for the adjoining semi-detached house in a very desirable residential area in Norwich. The tribunal was able to see on its inspection how a previous kitchen had been converted into a small study or withdrawing room, and a former scullery and adjoining living room (perhaps dining room) had been knocked together recently into a large, modern kitchen/diner. The condition of the adjoining house upon sale is unknown, and it may have been priced to stay just below the then £500 000 step for Stamp Duty purposes, but for a house in the condition of the subject property in this location at the valuation date the tribunal considers that a price of or close to £600 000 would be more accurate.
15. For the reasons given by Mr Evans, however, it agrees that this really makes no difference to the end result. The price likely to be paid for a modern ground rent which does not start for another 880 years, and a freehold site in 930 years, is nil.
16. In the tribunal’s experience a more appropriate capitalisation rate is not 8% but 6%. This makes a modest difference of £20 in the overall sum that must be paid into court under section 27(3), as calculated under 27(5), namely £83.30.

Dated 29th March 2016 (amended under the slip rule – rule 50 – on 7th April 2016)

Graham Sinclair

Graham Sinclair – Tribunal Judge

Schedule

Calculation of the amount payable into Court

Term : 999 years from 25 th March 1897			
Unexpired term at valuation date :	880 years		
Valuation of modern house		£600,000.00	
Site value @ 30%		£180,000.00	
Term			
Current/historic ground rent		£5.00	
Capitalisation @ 6%	16.66		£83.30
Value of modern ground rent			
Site value, as above		£180,000.00	
Ground rent at 6%		£10,800.00	
Modern ground rent			
YP for 50 years @ 6%	15.76186		
Present value of £1 deferred 880 years @ 5%	0.00000		£0.00
Value of freehold reversion (Entirety value)			
Vacant possession value less discount (1989 Act) @ 10%		£540,000.00	
PV for 930 years @ 5%	0.00000		£0.00
Total payable			£83.30