

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL**

SECTIONS 9 AND 27 OF THE LEASEHOLD REFORM ACT 1967 (AS AMENDED)

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/29UQ/OAF/2009/0002

Property: Mon-Del
Windmill Hill
Brenchley
Tonbridge
Kent
TN12 7NP

Applicants: Mr. and Mrs R.T. Miles

Respondents: Person or Persons Unknown

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. R. Athow FRICS MIRPM
Mr. C.C. Harbridge FRICS

Date decision issued:

RE: MON-DEL, WINDMILL HILL, BRENCHLEY, TONBRIDGE, KENT, TN12 7NP

Decision

1. The Tribunal has determined for the reasons set out below that the price to be paid for the freehold reversion in respect of Mon-Del, Windmill Hill, Brenchley, Kent, TN12 7NP ("the subject property") is £11,455 (eleven thousand four hundred and fifty five pounds). The terms of the transfer are approved.

Reasons

2. The Applicants applied to the County Court (Claim No. 8TN01092) for a declaration pursuant to the Leasehold Reform Act 1967 as amended ("the Act") that they were entitled to acquire the freehold of the subject property. The Court ordered that the ascertainment of the correct basis of valuation under Section 9 of the Act, the terms of the transfer of the freehold to the Applicants and the determination of the price to be paid for the freehold title to the subject property should be referred to the Leasehold Valuation Tribunal.

3. On 19th January 2009 directions were issued including that the Tribunal proposed to deal with the matter on the basis of written submissions only without an oral hearing and that if any party objected to that procedure they must write to the Tribunal within 28 days from the date of the directions. No written objection has been received and the matter is being deal with on the basis only of written representations and without an oral hearing.

4. Included with the documents provided by the Applicants was the valuation report of Mr. Jeffrey C. Moys FRICS which was tendered as expert evidence and is endorsed to that effect. It is dated 9th January 2009.

Inspection

5. On 25th February 2009 the Tribunal inspected the subject property and found it to be as described in Mr. Moys' report.

Consideration

6. We went on to consider the documents before us, from which we understood that the subject property was with other property held under a lease known as "the Primrose Lease" dated 20th May 1569 which demised land at Brenchley for a term of five hundred years from 25th March 1569 at a rent of one primrose at Easter. We also understood that the freehold reversioner was not known and that the Primrose Lease had been lost.

7. From Mr. Moys' report we noted the following:

(a) That he had acted as expert valuer in cases which came before the Leasehold Valuation Tribunal (Case Nos. CHI/29UQ/OAF/2007/0001-0006) relating to six properties in Brenchley. Those cases also concerned the purchase of the freehold under the Act where the purchase price had to be assessed in accordance with Section 9(1) of the Act. Those cases were determined on 17th May 2007 and in all instances the valuations he had put forward were adopted by the Tribunal.

(b) That he had acted as expert valuer in a case which came before the Leasehold Valuation Tribunal (Case No. CHI/29UQ/OAF/2007/0012) relating to eight properties in The Lawns, Brenchley (Nos. 1, 2, 4, 5, 6, 7, 9 and 10). Those cases also concerned the purchase of the freehold under the Act. Those cases were heard on 21st June 2007 and related to valuations as at December 2006. In all instances the valuations he had put forward were adopted by the Tribunal.

(c) That he had acted as expert valuer in a case which came before the Leasehold Valuation Tribunal (Case No. CHI/29UQ/OAF/2008/0002) relating to 8 The Lawns, Brenchley. That case also concerned the purchase of the freehold under the Act and his valuation methodology was adopted by the Tribunal.

- (d) That he had inspected the subject property on 3rd December 2008.
- (e) That the March 1990 Rateable Value of the subject property was £397 and because it was below £750, he considered that the correct method of ascertaining the purchase price payable for the freehold interest is under Section 9(1) of the Act.
- (f) That the valuation date was 4th September 2008 being the date of the application to the Court.
- (g) The Section 15 rent shall be a ground rent representing the rental value of the site (without including anything for the value of the buildings on the site), for the uses to which the house and premises have been put since the commencement of the existing tenancy, other than uses which by the terms of the new tenancy are not permitted or are permitted only with the landlord's consent.
- (h) The rental value for this purpose shall be in the first instance the rental value at the date from which the rent based on it is to commence, but as from the expiration of 25 years from the original term date the letting value at the expiration of those 25 years shall be substituted, if the landlord so requires, and a revised rent become payable accordingly.
- (i) Mr. Moys was of the opinion that the fair market value (i.e. the entirety value) of the unencumbered freehold interest of the subject property as at the valuation date of 4th September 2008 is £575,000.
- (j) In support of his valuation Mr. Moys produced details of the sales of two properties in Brenchley. The sales had been completed in June and September 2008. He also made use of the Nationwide Index.
- (k) As to site value, Mr. Moys considered, as had been accepted by the Leasehold Valuation Tribunal in the cases referred to in paragraphs 7 (a) (b) and (c) above, that the site value should be 33% of the market value of the freehold interest.
- (l) Relying on the decisions in *Earl Cadogan v Sportelli* and *Arbib v Earl Cadogan and Others*, Mr. Moys had used the generic rate of 4.75% to de-capitalise the site value to arrive at the Section 15 rent and in capitalising the value of the reversionary Section 15 rent.
- (m) He did not believe that it was possible to separately value the Section 15 rent after a 25 year rent review given the uncertainties involved and the speculative nature of that exercise.
- (n) He did not consider that there was any current value attributable to the landlord's reversion to the house and premises after the expiry of the 50 year extension i.e. in 111 years time, given that the premises will then be old and as at the subject valuation date of September 2008, the market is unlikely to reflect any additional value over and above the site value.

(o) He did not believe there was any value attributable to the value of the landlord's Section 17 rights.

(p) He did not believe that the purchase price was affected by any new easements or restrictive covenants nor by any other rights under the extended lease extinguished on the acquisition of the freehold.

(q) He did not consider that there was any value to be given for the right to receive a primrose a year for the next 60.5 years i.e. from September 2008 to March 2069.

8. Mr. Moys had adopted the "standing house" approach to the valuation and had taken a proportion of the entirety value in order to determine site value. His submission that site value should be 33% of the entirety value was accepted by the Tribunals when dealing with the cases referred to in paragraphs 7 (a) (b) and (c) above and we find that his figure falls squarely within the bracket of 30-35% that is commonly accepted to form the percentage of the open market value of a house represented by site value. The valuation date is 4th September 2008 being the date when the application to the Court was made. The deferment period was accordingly approximately 60.5 years. Mr. Moys in his valuation methodology for ascertaining the deferment rate had used 4.75% following the decisions in the cases of Earl Cadogan v Sportelli and Arbib v Earl Cadogan and Others where the deferment rate for houses was determined at 4.75%. No arguments were advanced to suggest why on this occasion there should be any departure from that rate. We accepted Mr. Moys' figure for the entirety valuation of the subject property, his method of arriving at the site value and his use of 4.75% as the deferment rate. We also accepted his submissions as to the matters which should not be included in the valuation.

9. Accordingly the Tribunal was content to adopt Mr. Moys' valuation which was:

£

Value of present rent for the residue of the contractual term: Nil

£

Entirety value:	575,000	
Site value @ 33%	189,750	
Section 15 rent @ 4.75%	9,013.13	
YP in perpetuity deferred 60.5 years @ 4.75%	x 1.27088	
		<u>11,454.60</u>
Say		11,455.00



R. Norman
Chairman