



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

Case References	1	CAM/12UB/OAF/2018/0009
	2	CAM/12UG/OAF/2018/0006
Court Claim Nos	1	E00PE754
	2	E01PE314
Properties	1	The Old Forge, 43/44 Mill Hill, Weston Colville, Cambs CB21 5NY
	2	White Gables, The Green, Weston Colville, Cambs CB21 5NY
Applicants	1	Mark Edmund Turner (as Executor of the estate of Stanley Luckhurst Turner deceased)
	2	Jean Heath
Representative	:	Kate Church (solicitor), & Robert C Sadler FRICS
Respondent	:	Persons unknown, being the successors in title to John Lennard and Sampson Lennard, the landlords named in two leases dated 22 nd May 1582 (1) and 27 th May 1581 and/or 14 th February 1582 (2)
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 [LRA 1967, ss.9, 21(1) & 27(5)]
Tribunal Members	:	G K Sinclair, G F Smith MRICS FAAV REV & E Flint DMS FRICS IRRV
Date and venue of Hearing	:	Thursday 6 th December 2018 at Cambridge Magistrates Court
Date of this decision	:	14 th December 2018

DECISION

- Decision para 1
- Background paras 2–5
- Applicable valuation principles paras 6–12
- Inspection and hearing paras 13–19
- Findings paras 20–21
- Valuations under section 9(1) Schedules A & B

1. For the reasons set out below, and as demonstrated in the Schedule annexed, the tribunal determines that the amounts payable into court as the price required in order to acquire the freehold reversion in these two cases are :
 - a. For The Old Forge £6 300
 - b. For White Gables £5 050

Background

2. Yet again the tribunal is asked to deal with two of the many leases for a term of 500 years that were granted in the late Elizabethan period and 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 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 Crown 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 Crown or the ward's "guardian" could help himself and despoil the value of the estate, but Dr Charles Harpum 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 cases the properties stand on land let under one or more of three leases granted by John Lennard and Sampson Lennard to Richard Webb, for a 500 year term. No further particulars are known or were supplied on first registration (as long ago as February 1913) other than that the annual rent is one peppercorn.
4. On 31st May 2018 in the County Court at Peterborough, the applicant issued a claim under Part 8 of the Civil Procedure Rules 1998 seeking a transfer to her of the freehold of The Old Forge. By an order made by Deputy District Judge Evans at a hearing in Cambridge on 19th July 2018 the freehold title in the property was vested in the applicant subject to the appropriate sum being paid into court, the amount to be determined by this tribunal.
5. So far as White Gables is concerned, on 19th September 2018, in the County Court at Peterborough, the applicant issued a similar Part 8 claim. By an order made

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

by District Judge Bosman at a hearing in Cambridge on 29th October 2018 the freehold title in the property was vested in the applicant subject to the appropriate sum being paid into court, the amount to be determined by this tribunal.

Applicable valuation principles

6. The annual rent under the leases (one peppercorn) 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 :
 - 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.

7. 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*.³The practice of conducting a two-stage valuation should therefore cease and the full three-stage calculation, including the *Haresign*⁴ addition, be applied.

8. 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.

9. Interestingly, however, in *Re Clarise Properties* the President drew attention to one factor which would have the effect of suppressing the value of the freehold reversion. To quote the material passage in full :

39 When valuing the reversion to a standing house on the expiry of the 50-year lease extension it is necessary to assume that Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy. Accordingly the tenancy automatically continues until notice is served under para 4 of Schedule 10, when the tenant is entitled to an assured tenancy under the Housing Act 1988 at a market rent. Mr Evans made a deduction of £2 500 (or 1.75 per cent) from his standing house valuation

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

of £142 500 to reflect this provision. He accepted that the freehold interest in a house is significantly less attractive to a purchaser if it is subject to an assured tenancy than if it is vacant. He justified his very modest deduction, however, by emphasising that what is to be assumed is not that the tenant will continue in possession at the end of the 50-year extension, but that the tenant will have the right to remain in possession. It was impossible to know what the view of the tenant would be in 78.5 years' time.

- 40 It is true that the purchaser of the freehold reversion would have no means of knowing whether vacant possession would be gained at the end of the 50-year lease extension. In our view, however, the fact that there can be no certainty of obtaining vacant possession would have a significant depressing effect on value and a substantially greater effect than that suggested by Mr Evans. In the absence of any comparable evidence to indicate the scale of the appropriate deduction we conclude that a purchaser would assume that the value of the eventual reversion would be £114 000, equivalent to 80% of the full standing house value of £142 500.
10. The transcript of the judgment does not reveal the evidential basis for concluding that a reduction of 20% (as opposed to any other percentage) was appropriate. However, in the 6th edition of *Hague*⁵ at para 9–17 this is described as
...controversial, since there was no evidence adduced to support it, and it is substantially higher than the traditional 10 per cent which was used to calculate the risk of a statutory tenancy arising under Part 1 of the Landlord and Tenant Act 1954, and the much lower discount to reflect 1989 Act rights : see paragraph 9–43.

This is a very lengthy paragraph, but after referring to the case of *Lloyd-Jones v Church Commissioners for England*⁶ the material part reads :

On the evidence of that case, the Tribunal held that the landlord's reversion after the original term date should be valued at the vacant possession value (less the value of tenant's improvements) less 10 per cent deduction for the risk of the tenant claiming a tenancy under Part 1 of the 1954 Act, the resulting figure then being deferred at an appropriate percentage (the deferment rate) for the period of the unexpired term of the tenancy.

This approach and method has been universally adopted and accepted by the Lands Tribunal and leasehold valuation tribunals in subsequent cases both in relation to Part 1 of the 1954 Act and Schedule 10 to the 1989 Act. In either case, the appropriate deduction to take account of the tenant's right is a matter of valuation evidence. It is not a convention so the fact that a particular discount has been given on one set of facts in one case is not relevant for the purpose of determining what the discount should be in another case...

⁵ *Hague : Leasehold Enfranchisement* (6th ed – Sweet & Maxwell, 2014)

⁶ [1982] 1 EGLR 209

...Each case will depend on its own facts and evidence and some tribunals have given discounts under the 1993 Act of up to 10 per cent for assured tenancy rights.⁷

11. 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.⁸
12. 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 2002⁹ 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.”

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

13. The tribunal inspected the two properties at 10:00 on the morning of the hearing. At the time the weather was cold and dry, but the ground was damp.
14. The Old Forge comprises a pair of Victorian semi-detached cottages connected internally only via a central rear extension. Viewed from the street, the remains of the old forge are located in a single storey wooden extension at the right hand end, just beyond a covered vehicular passageway secured by garage doors to the front. The building sits next the road, centrally along one edge of a triangular site bordered to the rear by a stream, and with rough garden land to either side and at the rear. Sitting centrally to the rear are two brick outhouses, one of which is severely distressed due to the presence of a tree growing through or leaning on it. Internally, the right hand cottage is extremely dated and requires complete modernisation. It has two largish bedrooms (one over the passageway) reached via a very wide landing at the top of the stairs. This probably doubled as a child's walk-through bedroom in former times. The cottage to the left appears to have been renovated in about the 1970s, with a fine polished timber framework all that is left of a former lath and plaster wall on the ground floor, a new timber staircase, and built-in wardrobes in the bedrooms – one of which has a cabin bed. It would seem that the rear extension was used as the kitchen for this, lived-in end of the building after the acquisition of both semi-detached parts.

⁷ See also para 9–35 and the reference to *Silvot Ltd v Liverpool City Council* [2010] UKUT 192 (LC), where the tribunal declined to apply a 10 per cent deduction where only 11 years were left on the lease and there was no evidence to justify it

⁸ LRA 1967, s.9(1E)

⁹ In force from 28th February 2005

15. Next door, White Gables comprises a modest detached bungalow built perhaps in the 1960s or possibly early 1970s, to which a large conservatory extension has been built at one end and a garage at the other. The garage extends to the eastern boundary. The premises sit well back from the road, between a good-sized front garden and a very long rear one. To its west, separated by a hedge, trees and a side garden, lies the Old Forge. To its east, beyond a part-completed brick wall, lies another modest bungalow of perhaps similar vintage, but with a number of windows facing towards it.
16. When selling off the properties on either side the then owner of White Gables reserved the benefit for her adjoining land of
...the right at any time to erect or suffer to be erected any buildings or other erections and alter any buildings or other erections now standing or hereafter to be erected on the transferor's said adjoining property in such manner as to obstruct or interfere with the passage of light or air to any building which is or may be erected on the property.
17. At the hearing both applicants were represented by Ms Kate Church, solicitor, of Hewitsons. Expert valuation evidence was provided in each case by Robert C Sadler FRICS, who had prepared two reports and answered questions from the tribunal upon their contents. In each report Mr Sadler sought to rely upon the valuation principles, and in particular the adjustments to the *Sportelli* rate, that were accepted by previous tribunals in June and October 2014 when determining the sum to be paid into court for :
 - a. Green Cottage, 58 The Green, Weston Colville,¹⁰ and
 - b. White Gates, Common Road, Weston Colville.¹¹
18. When challenged about the values he had attributed to each site value Mr Sadler argued that it was unlikely that one could replace the Old Forge with three modern detached buildings, but with substantial modernisation and extension of the building that was already there (as two slightly linked houses plus forge) one could anticipate a standing house value of £750 000.
19. He also agreed that his value for White Gables may also be light, as that site could also accommodate a more substantial building. The best evidence for that, however, was the sale that had been agreed for the subject property – until the title issue came to light – at a price of £375 000. The purchaser is still interested, but at the lower price of £365 000 (even though it is the seller who has incurred the effort and expense of bringing the claim and who will have to pay money into court). Questioned about his comparables, which are all on smaller sites with no similar opportunity for extension and/or redevelopment, Mr Sadler argued that this is reflected in values of bungalows without that possibility, at c.£325 000. He agreed that his comparables are on smaller individual plots, and that the “tone of the list” for that type of property is between £325 000 and £350 000. If this were a cleared site, it would be back in the £250 000 category for the plot.

Findings

20. *The Old Forge* – The tribunal accepts that there are features, both internally within the main building and in the former forge extension itself, that could

¹⁰ CAM/12UG/OAF/2013/0003

¹¹ CAM/12UG/OAF/2014/0006

justify spot-listing, so valuation is best approached on the basis of a standing house that is ripe for modernisation and extension rather than on a vacant site basis. On the assumption that the site can accommodate only the one large house the tribunal attributes a built value to it of £750 000 and a site value (at 30%) of £225 000. The tribunal sees no reason to diverge from the yield and deferment rates, each of 6%, for which Mr Hallam had so persuasively argued in the case before this tribunal in April 2014 of Green Cottage, 58 The Green, Weston Colville and which decision Mr Sadler now relied upon. Making a deduction of 10% for Housing Act rights that produces a premium of £6 300 that is payable into court. A detailed explanation appears in Schedule A.

21. *White Gables* — While no listing constraints affect this property it does lie close to the adjoining bungalow and planners may care to impose some limitations on the precise location, dimensions and layout of any modern house built to replace the current bungalow (regardless of the rights reserved in the conveyances of both adjoining properties). Taking account of the values of comparables which enjoy no potential for redevelopment and enlargement, the tribunal considers that the most substantial house that might be achieved on this plot is likely to be less valuable than development next door, at The Old Forge. It attributes a value to any such property of £600 000, resulting in a bare site value of £180 000, at the same 30% proportion as above. Applying the same yield and deferment rates, and the 10% deduction under Schedule 10, produces a premium of £5 050 that the applicant must pay into court. A detailed explanation appears in Schedule B.

Dated 14th December 2018

Graham Sinclair

Graham Sinclair
Tribunal Judge

Schedule A – The Old Forge

Calculation of the amount payable into Court

Term : 500 years from 29th August
1581 and 29th September 1581

Unexpired term at valuation date : 63 years

Valuation of modern house £750,000.00

Site value @ 30% £225,000.00

Term

Current/historic ground rent Nil

YP for 63 years @ 6% 14.99 Nil

Value of modern ground rent

Site value, as above £225,000.00

Ground rent at 6% £13,500.00

Modern ground rent

YP for 50 years @ 6% 15.761

Present value of £1 deferred 63 years
@ 6% 0.0254 £5,404.00

Value of freehold reversion (Standing house)

Vacant possession value less
discount (1989 Act) @ 10% £675,000.00

PV for 113 years @ 6% 0.00138 £932.00

Total payable £6,336.00

Say **£6,300**

Schedule B – White Gables

Calculation of the amount payable into Court

Term : 500 years from 29th August
1581

Unexpired term at valuation date : 63 years

Valuation of modern house £600,000.00

Site value @ 30% £180,000.00

Term

Current/historic ground rent Nil

YP for 63 years @ 6% 14.99 Nil

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% 15.761

Present value of £1 deferred 62 years
@ 6% 0.0254 £4,324.00

Value of freehold reversion (Standing house)

Vacant possession value less
discount (1989 Act) @ 10% £540,000.00

PV for 113 years @ 6% 0.00132 £745.00

Total payable £5,069.00

Say **£5,050**