UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LEASEHOLD ENFRANCHISEMENT – leasehold land adjacent to, and now incorporating, part of an extension to the appellant's freehold home – value of landlord's reversion after 50 year extension – marriage value – Leasehold Reform Act 1967 section (9)(1) – price determined at £14,000

IN THE MATTER of an APPEAL from a DECISION of the LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL

BY **EILEEN FAY WATSON** **Appellant**

Re: Inglands, Lower Icknield Way, Buckland, Aylesbury, Bucks HP22 5LR

Before: P R Francis FRICS

Sitting at: Harp House, 83 Farringdon Street, London EC4A 4DH
on
23 June 2009

Nicola Muir, instructed by D C Kaye & Co, solicitors of Prestwood, Bucks, for the appellant tenant

DECISION

1. This is an appeal by Mrs Eileen Fay Watson from a decision of the Leasehold Valuation Tribunal (LVT) for the Eastern Rent Assessment Committee dated 7 August 2008, and concerns the price payable, on enfranchisement under section 9(1) of the Leasehold Reform Act 1967, for approximately 0.6 acre of former agricultural land adjoining her freehold property, Inglands, Lower Icknield Way, Buckland, Aylesbury. The LVT determined the premium at £37,250.

Background

2. In 1979, the appellant and her late husband acquired the freehold interest in Inglands, a substantial detached house which had been constructed in about 1934, and occupied good sized grounds on the south side of Lower Icknield Way, on the edge of the village of Buckland. On 9 September 1987, they acquired, in the sum of £15,000, the lease of a plot of agricultural land that abutted the north-eastern side boundary of their property. The lease was dated 8 June 1724 and was for 300 years, but the documentation has since been lost, and the freeholder cannot be found. The purchase of the leasehold land served to virtually double the area of Inglands' plot, and the additional area was subsequently hedged, fenced and planted out to comprise part of the property's formal gardens. A portion of the land on the road frontage was requisitioned by the local highways authority for a road improvement scheme, although this did not materially reduce the area. In around 1992, Mr & Mrs Watson extended the house. Part of those extension works (comprising a formal dining room, loggia and cloakroom with two bedrooms above) was constructed on the leasehold land, as was the major part of a new detached garage, store and gardeners wc. Following the death of Mr Watson, title to the property was vested solely in the appellant in 1998.

3. Upon an application by Mrs Watson issued on 21 February 2008 (which is the valuation date for the purposes of this appeal), District Judge Hickman in the Aylesbury County Court, being satisfied that the claimant has a right under Part 1 of the Leasehold Reform Act 1967 to acquire the freehold of [the property] ordered, on 18 March 2008, that:

> "1. That the Court dispenses with any need for enquiries by advertisement or otherwise as to the whereabouts of the successor in title to the lease pursuant to which the Claimant holds the property situate at and known as Inglands, Lower Icknield Way, Buckland, Aylesbury, Bucks HP22 5LR;
>
> 2. That the Claimant's solicitors do obtain a Certificate of Valuation pursuant to section 27(5) of the Leasehold Reform Act 1967 as amended certifying the sum payable into Court in accordance with section 9(1) of the 1967 Act and shall lodge the same together with a draft transfer of freehold to the property;
>
> 3. That following the determination of the Leasehold Valuation Tribunal of the sum payable and issuing a Certificate of Valuation the Claimant will pay such sum into Court;

> 4. That pursuant to the Claimant complying with paragraph 2 and 3 of this Order and pursuant to section 27 of the 1967 Act, the Court appoints any judge sitting in the Aylesbury County court to execute the said transfer of the property in favour of the Claimant in the form approved by the Court and recorded on the Court file;
>
> 5. That the Court determines and declares that the estimated pecuniary rent payable by the Claimant is nil under section 27(5) of the 1967 Act;
>
> 6. That upon production of the Court Funds Office receipt of the sum paid by the Claimant into Court, the transfer to the Claimant be executed by the said judge."

The application to the LVT was made on 9 April 2008.

The LVT decision

4. The LVT had before it the report and valuation of Michael William James Carr BSc FRICS FCI Arb MEWI of Kempton Carr Croft, Chartered Surveyors of Maidenhead, Berks. In it, he said that having been instructed to advise upon the value to be paid as a premium by the tenant for the leasehold land, he considered that he could only do this by reference to the additional value that accrues to the adjoining freehold land, as the leasehold land could not be sold in the open market for residential development. This was because the leasehold land was previously arable agricultural land, and only became residential land with the granting of permission for the extension works. The land upon which the permission was granted was the whole plot (including the leasehold land).

5. Mr Carr said, in connection with market value:

> "My market value (MV) of the subject property, as inspected by me, assuming an unencumbered freehold interest, is in the sum of £250,000. This figure reflects my opinion of the added value this land gives to the adjoining freehold property, where that property benefits from an additional three quarters of an acre of garden land, allowing the house to sit towards the centre of the plot, rather than at one extreme edge. The addition of this land also now accommodates approximately 57.4 sq m of accommodation over two floors, and two thirds of the garage block."

6. He went on to say that the assessment of the Statutory section 15 Ground Rent (at 7% of site value) reflects the fact that the land and buildings now erected thereon are the full extent upon which planning consent might be expected to be successful, bearing in mind the restrictive planning regime [Green Belt and Area of Outstanding Natural Beauty] applicable in this location. Normally, he said, valuations of this type were for single long-leasehold plots of land with houses and the valuation issues are relatively straightforward. However, here, the leasehold land would be incapable of development other than as part of the adjoining freehold land. Mr Carr produced two valuations. The first, at £10,500, reflected the full benefit of the value of the leasehold land despite, he said, much of that value resulting from the activities of the tenant. The second, at £5,500, reflected what he considered to be a more correct "market approach" where the uplift in value "is split by marriage value calculation". This was his preferred option, and in respect of it he said:

> "I have prepared a marriage valuation approach valuation, where I have looked at the additional value achieved by Inglands, but I have then deduced the value [of the leasehold land] as agricultural land (no more than £7,500 per acre) giving an uplift which I have then shared equally between the two parties before adding back the freehold land role. I have then run through the usual 40% Gross Development Value and site value and this provides a premium price payable by the tenant of £5,500. I consider that therefore this alternative valuation of the premium to be paid here will correctly attribute value to the freehold interest on the basis of a normal commercial negotiation where most of the value has been achieved by way of tenant's improvements and conduct, rather than any activity by the landlord."

7. The LVT said, under the heading "Background", that in his report, Mr Carr fixed the market value of the subject premises at £250,000, which he apportioned as to £183,050 to the extension to the domestic property, and the remainder for the part of the garage block and the garden. They recorded the basis upon which he had prepared his first valuation, and went on to say, in connection with the second, preferred, valuation (para 6):

> "In addition, he had put forward a suggestion, perhaps no more than that, that there should be some marriage value and he had prepared a valuation on that basis (the second valuation)....."

and summarised his methodology.

8. In their decision, they said (para 9):

> "We are prepared to accept Mr Carr's market value of the subject property, that is to say the extension, garage block and the garden land at £250,000. Having viewed the property, we conclude that the value of the residential element should be apportioned differently as to £200,000 and for the garden with associated buildings at £50,000. The 7% section 15 Ground Rent is acceptable. We do not, however, take the view that the 40% site value allowance is appropriate. The extent of the residential element to the land in question is really quite limited on an area basis, and given the rural nature and the circumstances of this particular case, we conclude that a 30% site value proportion is appropriate."

9. The LVT's valuation (which also corrected an error in multiplier used for deferment), was thus:

Valuation: Leasehold Reform Act 1967

Inglands, Lower Icknield Way, Buckland, Aylesbury

Valuation Date: 21 February 2008
Term: 300 years from 8 June 1724

	£	£	£
Value of unexpired term			
Current Ground Rent			Nil

Value of site – Standing House approach

Entirety value – open market value fully developed	£200,000		
Site Value @ 30% of entirety value	£ 60,000		
Plus Garden Land	£ 50,000		
		£110,000	
Section 15 Modern Ground Rent @ 7% Site Value		£ 7,700	
YP in perpetuity @ 7%	14.2857		
Deferred 16 years @ 7%	0.338735	4.83906	£37,261
Enfranchisement price		**Say**	**£37,250**

The appeal

10. The application for permission to appeal was made on 29 September 2008 (the LVT having refused leave on 18 September 2008), and this was granted by the President on 23 October 2008.

11. It was submitted that the issue in dispute is the value of the landlord's reversion to the part of the house and premises situated on the leasehold land after the expiry of the 50 year extension on the basis that Schedule 10 of the local Government and Housing Act 1989 applies.

12. Mr Carr, who appeared before me and provided and expert witness report, said that the LVT had misinterpreted his preferred approach to the valuation (valuation 2). When he had referred to "marriage value", he had not meant that in the sense of section 9(1) of the 1967 Act. It was, he said, a sort of "reverse marriage value" as it is not marriage value as between the appellant's leasehold interest and the freehold of the subject land, but between her adjacent freehold interest (the original Inglands) and the subject land. As such, this approach was not in conflict with section 9(1) as it is marriage value in the valuation, or market, sense, rather than the statutory sense.

13. Prior to the Watsons' purchase of the subject land, it was purely agricultural and was part of a very large arable field just outside the village envelope. Being in the Metropolitan Green Belt, and in an AONB, Mr Carr said that the chances of the freeholder ever being able to obtain permission for any form of change of use (even horticultural or as a pony paddock) would have been nil. However, the planning consent that was obtained in 1992 for the extension of Inglands over part of the leasehold land served to substantially enhance the value of the land, far above its agricultural value. That enhancement was only achievable due to the existence of the appellant's freehold land adjacent. Indeed, the original price that the Watson's paid for the leasehold land (£15,000) was far above agricultural value (probably then about £2,000), and would have reflected the opportunity that it gave them to extend and improve their existing property. The price paid would have been between what it actually added to the value of the property as a whole and its basic agricultural value, and was therefore a classic marriage value situation but not, he stressed, as between the leasehold and freehold values of the subject land itself.

14. If the tenant's improvements were completely ignored, the land would have to be taken as agricultural and would not then fall within the ambit of the 1967 Act. This, Mr Carr said, was the dilemma he faced as a valuer. Section 9(1) requires that the subject land be valued at a level it would realise if sold in the open market by a willing seller, subject to the lease and to any extension that may be claimed under section 17, and upon the assumption that the tenant is not in the market to buy. Whilst, as he had explained, it was not the marriage value at the coalescence of the leasehold and freehold interests in the subject land that was being considered, but the marriage value with the adjacent freehold title, that still created the complication of a special purchaser, but in his view that could be simply ignored.

15. In the real world, the vendor would know that the owners of Inglands would be in the market, and that the land had an additional value to them. Thus, he would not be a willing seller if he had to dispose of the land at its agricultural value only. He would know that he could be missing out on a share of the increase in value that the opportunities referred to gave to the Watsons, and would wish to share in any hope value that existed. Mr Carr said that the circumstances of this case were somewhat unique because, unlike other absent landlord cases that he had been involved with, there was a severely limited marketplace with it being only the adjacent owner that could create additional value. Such circumstances had clearly not been envisaged by those drafting the 1967 Act or its subsequent amendments, and thus a slightly novel valuation approach was required.

16. Mr Carr said that his approach was to assess the diminution in value on the entirety of the land held by the appellant (assuming it all to be freehold) resulting from the theoretical loss or removal of the additional accommodation that had been built on the leasehold land. In his view, that impact would be £250,000. In other words, the inclusion of the leasehold land with the original freehold of Inglands, and the additional development that that allowed, added £250,000 to the value of the property as a whole. The LVT had taken that figure to be the market value of the freehold of the leasehold land (subject property) rather than the additional value that inclusion of the freehold of the leasehold land would add to the value of the original freehold Inglands land. They then apportioned it as to £200,000 for the buildings (the residential extension) and £50,000 for the garden and garage block. At their preferred 30% of gross development value (which Mr Carr accepted) this would give a site value of £75,000.

17. However, what the LVT then did was to calculate the site value of the residential element at £30% of £200,000 (£60,000) and add 100% of the site value of the garden and garage (£50,000) to give £110,000. They then took the section 15 ground rent at the uncontroversial 7% in perpetuity, deferred 16 years to give their determined figure of £37,250. Not only was it clearly wrong to allocate £250,000 as the gross development value of the leasehold land, but, Mr Carr said, to then split it between the residential and garden/outbuildings was illogical. Including 100% of the value of the garden suggested that that part had no development potential. It was purchased as agricultural land and, as at the valuation date, would have a value of about £7,500. The garden on its own cannot possibly, therefore, have a value of £50,000. It only has value when combined with the residential elements, and it is essential that the development value, and the proportion of it that applies to the leasehold land, must be determined by looking at the whole picture. If the site value methodology were to be used,

"2.4.1 If I am to value the subject land on the basis that this allows development which will enhance the value of the adjacent freehold property by £250,000, then the site value is £75,000 – 30% of the Gross Development Value (GDV).

2.4.2 Adopting the usual 7% for the section 15 Ground Rent = £5,250pa.

2.4.3 Adopting and calculating a Years Purchase in Perpetuity @ 7% and then deferring this sum of £75,022.50 for the remaining 16 years of the term = £25,412.75.

2.4.4 The value of the site on this basis is therefore £25,000"

Nevertheless, Mr Carr said, that only acted as a correction to the LVT's approach, but the approach itself was fundamentally flawed in taking the £250,000 as the gross development value of the leasehold land and then splitting it in the way that they did.

18. The preferred approach (valuation C) was to effectively split the uplift in value between the vendor and the purchaser for the reasons that he had given. The uplift is £242,500 after the value of the leasehold land on a purely agricultural basis is removed from the gross development value. The assessment, accepting development value at 30% and 7% for the section 15 Modern Ground Rent calculation gave a figure of £14,000. It was submitted that it should not go unnoticed that the LVT's acceptance of Mr Carr's £250,000 (although wrongly applied) was, of course, calculated on the marriage value basis.

19. Mr Carr also produced a third alternative (valuation A), which was on the basis of the current agricultural value of the leasehold land (£7,500), without improvement, deferred for 66 years at 7%. This gave £86.25. He said that even if the benefit of the statutory 50 year extension were to be ignored, the valuation would only amount to £2,500. It was his overall view that valuation C was the fair and appropriate methodology, and the price to be determined should therefore be £14,000.

Conclusions

20. In my judgment, the LVT clearly misunderstood the figure of £250,000 referred to by Mr Carr, when they adopted it as the gross development value of the leasehold land. They were also incorrect to split the figure as they did, and I accept Mr Carr's reasoning in its entirety. I am also satisfied that the preferred valuation approach he has adopted (valuation C) is appropriate in the circumstances, and that it does not conflict with the provisions of section 9(1) of the 1967 Act. The valuation is attached at Appendix 1.

21. He was right, I think, to differentiate between marriage value as between the leasehold of the subject land and the freehold, and that between the subject land and the appellant's existing freehold. In the former, any prospective bid of the tenant is to be ignored on they assumption that neither she, nor any member of her family, was in the market to buy. However, it must be correct to take into account the uplift under the second scenario as, otherwise, the tenant would

22. I therefore determine that the LVT was wrong in concluding as it did, and the appeal is allowed. For the purposes of the Certificate of Value as required under the order of the court, I determine that value of the freehold in the subject land at £14,000.

DATED 15 July 2009

P R Francis FRICS

APPENDIX 1

UPPER TRIBUNAL (LANDS CHAMBER)
VALUATION

Inglands, Lower Icknield Way, Buckland, Aylesbury HP22 5LR

Input information

Ground Rent	Peppercorn	£ -
Term		16yrs
Yield		7%
Market Value if freehold (57.5 sq m accom + 2/3 garage block + land		£250,000
30% of Gross Development Value		£ 75,000
Value as agricultural land		£ 7,500
Uplift in value		£ 67,500
50% share in uplift to freeholder		£ 33,750
Add back land value		£ 7,500
Landlord's land value and share of uplift		**£ 41,250**
s. 15 rent @ 7% site value		£ 2,887.50
Statutory term		50 yrs

Valuation

Unexpired term

Ground rent (£ pa)	£ -		£ -
YP for term of		16 years	
@		7.00%	£ -

Value of site – standing house approach

s. 15 Ground Rent (£ pa)	£ 2,887.50		
YP in Perpetuity @ 7%	14.29	£41,249.96	
Deferred to end of term. PV of £1 @	7.00%		
After	16 yrs	0.338735	£13,972.79

Thus, Premium payable by tenant **Say** **£14,000.00**