

No cases are referred to in this Decision

DECISION

Introduction

1. The claimant is Friends Trusts Limited, a company established by the Britain Yearly Meeting of the Religious Society of Friends (“the Quakers”) which is the registered proprietor of a long leasehold interest in land and premises known as The Friends Meeting House, 14 West Street, Maidenhead, Berks (“the reference land”). Title to the land is held by the claimant as trustee for the Mid-Thames Area Meeting (“the Maidenhead Quakers”) which now wishes to enlarge its interest into the fee simple in accordance with the provisions set out in part 1 of the Places of Worship (Enfranchisement) Act 1920 (“the 1920 Act”).

2. The reference land is situated on the northern side of West Street in a mature commercial area within Maidenhead Town Centre. A now disused public house (The Portland Arms) is adjacent to the west, with the rear and east boundaries abutting a large telephone exchange. The rectangular site, which extends to approximately 327 sq m (0.082 acre), contains two buildings. The principal meeting house fronting West Street, which was constructed of brick under a tiled roof by the lessees in 1935 (and extended in 1998), extends to about 56.5 sq m (608 sq ft) and replaced the original meeting house and a stable built by the freeholder in 1803. The further meeting room was constructed to the rear in 1951. For the purposes of this reference, the buildings are to be excluded from the valuation.

3. The lease, registered under title number BK 429804, when it was transferred to the claimant in 2009, is dated 9 May 1805 and was granted by one “Rachel Newberry of Taplow” to Thomas Speakman [and others] for a term for 999 years with effect from 25 March 1805 (thus now having some 788 years unexpired) at a premium of “one shilling” (£0.05) and at a yearly rent of “six pennies” (£0.025). The lease is subject to a repairing covenant and contains a proviso for re-entry in the event of non-payment of rent or in the event that the premises ceased being used as a Quaker Meeting House for a period of three years. Assignment or disposal of the lease was only permitted to third party that belonged to “the said Society of Friends”.

Statutory provisions

4. The relevant sections of the Places of Worship (Enfranchisement) Act 1920 provide:

“Right of persons holding leasehold interest in place of worship or minister’s house to acquire freehold

1 (1) Where premises held under a lease to which this Act applies are held upon trust to be used for the purposes of a place of worship or, in connection with a place of worship, for the purpose of a minister’s house, whether in conjunction with other premises or not, and the premises are being used in accordance with the terms of the trust, the trustees, notwithstanding any agreement to the contrary (not being an agreement against the

enlargement of the leasehold interest into a freehold contained in a lease granted or made before the passing of this Act), shall have the right as incident to their leasehold interest to enlarge that interest into a fee simple, and that for that purpose to acquire the freehold and all intermediate reversions:....

Procedure for acquisition of reversionary interests

2. For the purpose of acquiring such reversionary interests as aforesaid, Part 1 of the Compulsory Purchase Act 1965 shall apply as if the trustees were an authority authorised to acquire the premises by virtue of a compulsory purchase order, made under the Acquisition of Land (Authorisation Procedure) Act 1946; but in relation to any acquisition under this Act the following provisions shall have effect:

(a) in Part 1 of the Compulsory Purchase Act 1965 section 4 (time limit for acquisition) shall not apply...

(b) ...

(c) in determining the amount of any compensation the value of any buildings erected or improvements made by the trustees, shall be excluded;

(d) ...

(e) in determining the amount of compensation in any case where the rent reserved under the lease is less than the full annual value of the land, the compensation, so far as it is payable in respect of the interest of the lessor expectant on the expiration of the term of the lease, shall not be ascertained on the basis of the rent so reserved, but, subject always to the foregoing provisions of this section, on the estimated full value of the land at the expiration of the term of the lease.”

5. Schedule 2 to the Compulsory Purchase Act 1965 relates to absent or untraced owners and provides:

“1. – (1) The compensation to be paid for any land subject to compulsory purchase to be purchased by an acquiring authority –

(a) ...

(b) from a person who cannot be found after diligent enquiry has been made

and the compensation to be paid for any permanent injury to any such land, shall be determined by the valuation of a surveyor selected from the members of the Lands Tribunal in accordance with section 3 of the Lands Tribunal Act 1949.”

The claimant's case

6. The solicitors acting for the claimant produced a comprehensive statement of case and relevant documentation setting out the extensive enquiries that have been undertaken in accordance with the above provisions to trace the heirs, successors or assigns of the late Rachel Newberry, including the appointment of a specialist finding service. Further, in accordance with the requirement under section 5 of the Compulsory Purchase Act 1965 (“the 1965 Act”), that the claimant shall serve a Notice to Treat on each owner of a reversionary interest unless, after diligent enquiry that owner cannot be found, such a notice, dated 13 October 2016, was posted on the premises for a period of not less than 14 days and was advertised in the local newspaper and the London Gazette. Those searches have failed to identify those now entitled to the reversion expectant upon the determination of the lease.

7. Accordingly, the claimant, being entitled to invoke the procedure laid down in Schedule 2 of the 1965 Act in circumstances where the freeholder cannot be traced, has obtained a valuation from Mr Steven Smith BSc (Est Man) FRICS FCI Arb, a partner in Haslams Surveyors LLP of Reading in accordance with the provisions of the above Acts. That valuation is in the sum of £2,500 and the claimant says that it “stands ready to pay into court [that sum] or such sum as the Tribunal shall direct” and will thereafter execute the necessary deed poll in accordance with para 2 of Schedule 2 to the 1965 Act.

8. Mr Smith confirmed the fact that the valuation is to take no account of the existing buildings, and must also disregard the prospect of enfranchisement. He explained that the reference land lies within an area designated as the “West Street Opportunity Area” as addressed in the adopted Maidenhead Town Centre Action Plan and the recently published draft Supplementary Planning Document (SPD). The SPD was produced as a design framework to support and enable property owners within the area to promote and arrange for the undertaking of a comprehensive mixed use redevelopment scheme (likely to be residential lead but to include commercial, retail and leisure uses). The land, which neither contains Listed Buildings nor is in a Conservation Area, is therefore considered ripe for redevelopment.

9. Mr Smith explained that in the circumstances of this case, the ‘normal’ way of valuing a freehold interest subject to a lease (by capitalising the rental income for the duration of the unexpired term of the lease and adding the value of the freehold reversion) was not appropriate. Here, he said, the freeholder is faced with being highly unlikely to ever secure possession and will effectively be receiving no rent throughout the term. With the lessee, apparently, having no intention to relocate or to develop the property, and being most unlikely to default, due to the non-onerous lease terms, the leasehold interest is a virtual freehold.

10. Despite the land being located within a potential redevelopment area, Mr Smith said it would be hard to foresee that a purchaser would wish to buy the freehold other than for an extremely nominal amount. However, he acknowledged that ownership of the freehold interest must have some value (to a speculator for instance) in that a clean title would be obtained, and if the lessee were ever to default there would be an instant opportunity to obtain development

value. With no comparable evidence available to give a guide as to just what a speculator might pay, Mr Smith said that he felt a value of, say, £2,500 would be “realistic”.

11. In accordance with the Tribunal’s procedure in Absent Owner cases such as this, a separate valuation has been obtained from Ann McManners BA (Hons) MRICS of the Reading Office of the Valuation Office Agency. Quoting the relevant sections of the 1920 Act, she said that as the rent reserved under the terms of the lease is less than the full annual value of the land, the valuation basis set out in section 2(e) applies. She interpreted this provision to mean that the full current value of the site (excluding buildings) should be assessed having regard to any potentialities since at the end of the lease the freeholder would regain possession and there would be no restrictions on use. She therefore assessed the current value of the land, assuming a residential led development carried out as part of a major town centre redevelopment scheme, but made a deduction to allow for delay (the time it would take to work up and obtain permission for such a scheme) and for risk at 25%. At £1,000 per sq m (based upon quoted comparable evidence) this would produce £327,000 less 25% equalling £245,250 – say £245,000.

12. Ms McManners went on to say that, if her interpretation was wrong, and the freehold value were to be deferred to the end of the lease, then the land would only have a nominal value of £50.

Discussion

13. The provision at section 2(e) of the 1920 Act is somewhat confusing. Indeed, *Hague* (5th Edition) makes reference to it at p.375, para 19-08 thus:

“This is a puzzling provision which appears merely to state the obvious, i.e. that the ultimate reversion must be valued at its actual value, without reference to the rent payable during the term. However, it precludes any argument that the compensation must be limited to the rent capitalised in perpetuity. But it does not carry any implication that the ‘marriage value’ or ‘tenant’s bid’ must be ignored.”

14. Mr Smith made no reference to that provision but in my judgment his reasoning produces a much more realistic figure than the first valuation produced by Ms McManners which takes no account of the fact that the hypothetical purchaser is acquiring a freehold subject to a lease which, in the circumstances set out by Mr Smith in para 9 above, is most unlikely to be defaulted upon or otherwise terminated early.

15. Neither of the valuers appears to have addressed the question of marriage value which has to be added to the value of the merger of the leasehold and freehold interests. As both the freehold and leasehold values are likely to be small, the potential marriage value would be substantial assuming a development value of over £300,000, (and in that regard I think Ms McManners’ assessment seems reasonable on the basis of the useful comparables she provided). However, on the basis of the evidence, I conclude that the hypothetical purchaser would not

assume that there was anything more than an extremely outside chance of that marriage value being realised. The lessee, in effect, enjoys a profit rent and would be unlikely to be tempted to move as to do so would involve considerable disruption and expense. As far as the freeholder is concerned, the amount that would need to be offered to make a move of the meeting house economically worthwhile would, in my view, be too much to make it an attractive proposition to try and buy the lessee out.

16. In the circumstances, therefore, I accept the albeit arbitrary figure suggested by Mr Smith. Further, I am satisfied that the claimant has complied with the statutory provisions under the 1920 Act and has also undertaken adequate steps to trace the freehold reversioner and thus determine compensation in the sum of £2,500. That sum shall therefore be paid into court and the claimant shall thereafter execute a deed poll in accordance with paragraph 2 of Schedule 2 to the Compulsory Purchase Act 1965 for the purpose of transferring to it all the estate and interest in the land held by the heirs, assigns and successors in title of the late Rachel Newberry.

17. This decision determines the issue in this reference, and I make no order as to costs.

Dated: 13 March 2017

A handwritten signature in black ink that reads "P R Francis". The signature is written in a cursive style with a large initial "P" and "R".

P R Francis FRICS