

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00CN/OAF/2005/0214

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967*

Applicant: Ms J F Fallon (leaseholder)

Respondents: Fell Estates Ltd and Covent Garden Investments Ltd
(freeholder)

Subject property: 30 Melrose Road
Perry Barr
Birmingham
B20 3ES

Date of tenant's notice: 18 June 2005

Applications to the LVT: 16 September 2005

Hearing: 9 December 2005

Appearances:

For the applicant: Mr A K Bonsor FRICS

For the respondent: Mr M A Fell

Members of the LVT: Professor N P Gravells MA
Mr D J Satchwell FRICS
Mrs A Bartram

Date of determination:

21 DEC 2005

Introduction

- 1 This is a decision on two applications under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Ms J F Fallon, leaseholder of the house and premises at 30 Melrose Road, Perry Barr, Birmingham, B20 3ES ("the subject property"). The two applications are, first, under section 21(1)(a) for the determination of the price payable under section 9(1) for the freehold interest in the subject property; and, secondly, under section 21(1)(ba) for the determination of the reasonable costs recoverable under section 9(4).
- 2 The applicant leaseholder holds the subject property under a lease for a term of 89 years from 24 June 1939 at a ground rent of £6.00 per year. The lease devolved to and was vested in the applicant pursuant to a grant of probate dated 13 December 2004. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 23 years.
- 3 The applicant served on Fell Estates Ltd and Covent Garden Investments Ltd, the respondent freeholders, a tenant's notice dated 18 June 2005, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and she subsequently made the present application.

Subject property

- 4 The subject property is a mid-terrace house of brick and slate construction, located on Melrose Road in Perry Barr. The accommodation comprises, on the ground floor, hallway (with two stores off), two reception rooms and kitchen; and, on the first floor, three bedrooms and combined bathroom/wc. Space heating to the ground floor is provided by an electric fire in the front reception room and a gas fire in the rear reception room; there is no space heating to the first floor. Hot water is provided by immersion heater. Outside there are gardens to the front and rear of the property. There is a brick store in the rear garden. There is shared access to the rear of the property where there is potential garage space.

Inspection and hearing

- 5 The members of the Tribunal inspected the subject property on 9 December 2005 in the presence of Mr Bonsor, representing the applicant leaseholder.
- 6 The subsequent hearing was attended by Mr Bonsor, representing the applicant leaseholder, and by Mr Fell, representing the respondent freeholders.

Representations of the parties

- 7 Mr Fell declared his personal interest as a director of Fell Estates Ltd.

Price payable for the freehold interest in the subject property

- 8 Both Mr Bonsor and Mr Fell adopted as the basis of valuation under the 1967 Act the standard three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity, deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).

- 9 In addition to the facts outlined above, the following matters were specifically agreed by the parties for the purposes of the valuation calculation:
- The relevant date for the purposes of the valuation is 21 June 2005.
 - The unexpired term of the lease at the relevant date was 23 years.
 - The ground rent payable under the lease is £6.00 per year.
 - The percentage figure to be applied to the freehold entirety value of the subject property to determine the site value in accordance with the "standing house method" is 35 per cent.
- 10 Since both parties apply the same established formula to determine the price payable for the freehold interest, the matters that remain in dispute between the parties are the two factors in that formula that are not agreed, namely:
- The freehold entirety value of the subject property at the relevant date.
 - The appropriate deferment or yield rate to be applied at all stages of the valuation calculation.
- 11 As to the freehold entirety value, Mr Bonsor, on behalf of the applicant leaseholders, argued for the figure of £120,000, whereas Mr Fell, on behalf of the respondent freeholders, argued for the figure of £130,000. As to the appropriate deferment or yield rate, Mr Bonsor adopted the figure of 7 per cent, whereas Mr Fell adopted the figure of 5.5 per cent.

Evidence and submissions on behalf of the applicant leaseholder

- 12 As to the entirety value, Mr Bonsor stated that he had significant experience and local knowledge of the neighbourhood of the subject property; he stated that the demand for properties in that neighbourhood comes mainly from persons already resident in the area; and he suggested that this had the effect of restricting property values. He indicated that the subject property was placed on the market in November 2004 at an asking price of £115,000, on the basis that the applicant leaseholder would be able to acquire the freehold interest prior to the conveyance to a purchaser. However, in the absence of any offer over £100,000, the property was withdrawn from the market. Mr Bonsor referred to two comparable properties on Melrose Road. 56 Melrose Road has, in addition to the accommodation of the subject property, a verandah/utility room and a garage; it has the benefit of double-glazing and superior kitchen and bathroom fittings. It was sold in May 2005 for £132,000. 55 Melrose Road, although requiring some cosmetic improvement, has the benefit of double-glazing and central heating. It was sold in May 2005 for £120,000. In his written representations Mr Bonsor also referred to a property in Aston Lane; but he accepted that its evidential value in the present case was limited. On the basis of that evidence, Mr Bonsor submitted that the entirety value of the subject property at the relevant date was £120,000.
- 13 As to the appropriate deferment or yield rate, Mr Bonsor acknowledged the recent decision in *Arbib v Earl Cadogan* and the other cases determined with that decision ("the *Cadogan* cases") in which the Lands Tribunal had adopted the rate of 4.5 per cent for a house in a prime area of central London. However, Mr Bonsor argued that, bearing in mind the differences between the properties in those cases and the subject property in the present case, and the respective risks attached to an investment in such properties, the *Cadogan* cases had no relevance to the present case. Mr Bonsor argued that the appropriate deferment or yield rate in the present case is 7 per cent.
- 14 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Bonsor submitted the following valuation:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £6.00 per year

Years Purchase: 23 years @ 7%: 11.2722

Capitalised ground rent: £6.00 x 11.2722 = £67.63

(ii) Modern ground rent

Standing house value of subject property: £120,000

Percentage attributable to site: 35%: £42,000

Annual equivalent @ 7% = £2,940

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £2,940

Years Purchase at 7% in perpetuity deferred 23 years: 3.01353

Capitalised modern ground rent: £2,940 x 3.01353 = £8,859.78

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £9,000.

Evidence and submissions on behalf of the respondent freeholders

- 15 Mr Fell, although not professionally qualified, stated that he had five years' experience of enfranchisement transactions, as a director of Fell Estates Ltd, a company which specialises in investing in freehold ground rents and which also acts on behalf of other landlord clients.
- 16 As to the entirety value, Mr Fell referred to the marketing of the subject property in November 2004, although he seemed to be under some misapprehension as to whether or not the property had been offered with the freehold interest. Mr Fell also referred to 56 Melrose Road. However, he expressed the view that the differences between that property and the subject property (see paragraph 12 above) were properly reflected in a minimal difference only in values. Moreover, he suggested that the general increase in property prices between the sale date of 56 Melrose Road and the relevant date for the purposes of the present application would reduce any differential. On the basis of that evidence, Mr Fell submitted that the entirety value of the subject property at the relevant date was £130,000.
- 17 As to the appropriate deferment or yield rate, Mr Fell relied almost exclusively on the recent decision of the Lands Tribunal in the *Cadogan* cases. Starting with the rate of 4.5 per cent adopted in *Arbib v Earl Cadogan*, he added an additional percentage point to maintain the conventional pre-*Cadogan* differential between deferment or yield rates in London and elsewhere. On that basis, Mr Fell submitted that the appropriate deferment or yield rate in the present case is 5.5 per cent.
- 18 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Fell submitted the following valuation:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £6.00 per year

Years Purchase: 23 years @ 5.5%: 12.8750
Capitalised ground rent: £6.00 x 12.8750 = £77.25

(ii) Modern ground rent

Standing house value of subject property: £130,000
Percentage attributable to site: 35%: £45,500
Annual equivalent @ 5.5% = £2,502.50

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £2,502.50
Years Purchase at 5.5% in perpetuity deferred 23 years: 5.30678
Capitalised modern ground rent: £2,502.50 x 5.30678 = £13,280.22

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of £13,357.47.

Reasonable costs recoverable under section 9(4) of the 1967 Act

Evidence and submissions on behalf of the applicant leaseholder

- 19 Although the applicant had made an application to the Tribunal for the determination of reasonable costs recoverable by the respondents under section 9(4) of the 1967 Act, Mr Bonsor made no submissions to the Tribunal.

Evidence and submissions on behalf of the respondent freeholders

- 20 Mr Fell stated that the conveyancing fee charged to the respondents is £350 plus VAT. In addition, he put in evidence a schedule of other legal costs incurred amounting to £250 and a valuation fee of £350. He submitted that all these costs were reasonable and recoverable under section 9(4) of the 1967 Act.
- 21 In response to questions from the Tribunal, Mr Fell agreed that the valuation of the subject property had been carried out by Mr Martin Fell, who is not a professionally qualified valuer or surveyor. He was unable to confirm whether the valuation exercise had included an internal inspection of the subject property.

Determination of the Tribunal

- 22 The Tribunal gave full consideration to the arguments and evidence of the parties.

Price payable for the freehold interest in the subject property

- 23 The Tribunal holds that the standard basis of valuation adopted by Mr Bonsor and Mr Fell properly reflects the principles of the 1967 Act.
- 24 As noted above, there are two factors in the valuation calculation on which the parties remain in dispute: the entirety value of the subject property and the appropriate deferment or yield rate to be applied at all stages of the valuation calculation.

Entirety value of the subject property

- 25 As to the entirety value of the subject property, both Mr Bonsor and Mr Fell rely

on the sale price of £132,000 achieved for 56 Melrose Road in May 2005. However, the parties differ significantly on the value of the differences between that property and the subject property. In the view of the Tribunal, Mr Fell grossly undervalues the advantages of 56 Melrose Road, while at the same time he overstates the increase in property values between the sale date of 56 Melrose Road (or even the date of exchange of contracts) and 21 June 2005, the relevant date for the purposes of the present application. Having regard also to the evidence of the sale price achieved for 55 Melrose Road, the Tribunal determines that the entire value of the subject property at the relevant date was £120,000.

Deferment or yield rate

- 26 As to the appropriate deferment or yield rate to be applied at all stages of the valuation calculation, the starting point for the Tribunal must be the decision of the Lands Tribunal in the *Cadogan* cases. Although the Lands Tribunal reaffirmed the principle that previous decisions on questions of fact and opinion do not establish any conventions or precedents, it stated that decisions of the Lands Tribunal that set out general guidance on valuation principles may be applied or referred to in subsequent cases.
- 27 In the view of the Tribunal, the *Cadogan* cases do provide general guidance to which leasehold valuation tribunals should have regard. At the same time, the actual decisions in the *Cadogan* cases must be treated with extreme care since the properties in question were very high value properties in the Kensington and Chelsea London Borough, arguably one of the most sought after residential locations in the country.
- 28 The *Cadogan* cases reject any notion of a "conventional" deferment or yield rate and require that the rate must be individually determined on the evidence in each case. Moreover, the Lands Tribunal concluded that, as a matter of economic theory, it is unlikely that there would have been a constant deferment rate despite the changes that have occurred in the investment market and financial indicators over the last ten years; and the implication is that the deferment or yield rate would have decreased. In the view of the Tribunal, therefore, the corollary of the rejection of a conventional rate would seem to be that the Tribunal should not even treat the conventional rate as the default rate, to be adopted in the absence of evidence pointing to a different rate.
- 29 The Tribunal therefore starts from the position that, in the absence of compelling evidence, the deferment or yield rate will normally be lower than 7 per cent, which has arguably become the conventional rate adopted in determinations under the 1967 Act in relation to properties in the West Midlands.
- 30 Neither Mr Bonsor nor Mr Fell adduced any hard evidence in support of their respective submissions as to the appropriate rate in the present case. Rather Mr Bonsor questioned the relevance of the decision in the *Cadogan* cases and in effect he argued for the adoption of the conventional rate of 7 per cent. By contrast, Mr Fell sought to rely on the actual decision in the *Cadogan* cases, increasing the 4.5 per cent rate adopted in those cases by a percentage point in order to maintain the conventional differential between the conventional rates adopted in London and elsewhere. In the view of the Tribunal, an adjustment on that basis is precluded by the Lands Tribunal's rejection of the use of conventional deferment or yield rates.
- 31 In the view of the Tribunal, the implication of the *Cadogan* cases is that the conventional rate is probably too high. At the same time, it is equally clear that the subject properties in the present case are very different from the subject

properties in the *Cadogan* cases - in respect of their location, size, nature, quality, value and, ultimately, in respect of the risk attached to an investment in such properties.

- 32 The Tribunal therefore holds that the appropriate deferment or yield rate in the present case is 6.5 per cent.

Valuation calculation

- 33 Applying those figures (and the agreed figures referred to in paragraph 9 above), the Tribunal calculates the price payable as follows:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £6.00 per year
Years Purchase: 23 years @ 6.5: 11.7701
Capitalised ground rent: £6.00 x 11.7701 = £70.62

(ii) Modern ground rent

Standing house value of subject property: £120,000
Percentage attributable to site: 35%: £42,000
Annual equivalent @ 6.5% = £2,730

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £2,730
Years Purchase at 6.5% in perpetuity deferred 23 years: 3.61448
Capitalised modern ground rent: £2,730 x 3.61448 = £9,867.53

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of £9,938.15.

- 34 Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £9,938.15.

Reasonable costs recoverable under section 9(4) of the 1967 Act

- 35 As to legal costs, the Tribunal accepts that the conveyancing costs are marginally higher where, as in the case of the subject property, title is unregistered. However, the market for conveyancing services remains very competitive; and the Tribunal holds that the reasonable conveyancing costs recoverable by the respondents from the applicant under paragraph (b) of section 9(4) of the 1967 Act are £325 (plus VAT if applicable).
- 36 As to other legal costs claimed under paragraphs (a) and (c), Mr Fell submitted a schedule of work undertaken for the purposes of investigating the applicant leaseholder's right to acquire the freehold interest in the subject property and verifying the applicant's title. However, the crucial issue is the method of charging that is applied to the work undertaken. Mr Fell confirmed that the stated costs did not reflect the actual time spent on each item of work nor the actual costs incurred but rather represented a standard charge for a broad description of work (for example, "receiving and verifying" a document).
- 37 In the view of the Tribunal, the method of charging adopted by the respondents, if applied without qualification, has the clear potential to overstate to a considerable extent the actual cost of the work for which the leaseholder is

required to pay; and that would in effect endorse the recovery of costs beyond what is reasonable.

- 38 There is no evidence in the schedule that the work in the present case involved any unusual or complex factors; nor did Mr Fell make any submission to that effect. The Tribunal finds that the work specified in the schedule could be completed in a maximum of two hours; and that a reasonable hourly rate for such work would not exceed £50.00.
- 39 The Tribunal therefore determines that the reasonable legal costs recoverable by the respondents from the applicant under paragraphs (a) and (c) of section 9(4) of the 1967 Act are £100 (plus VAT if applicable).
- 40 As to valuation costs, on the weight of the evidence (the absence of any reference by the respondents to the internal condition of the subject property and the fact that Mr Fell was unable to confirm that an internal inspection had been carried out), the Tribunal finds that the valuation exercise carried out on behalf of the respondent freeholders did not include an internal inspection of the subject property; but that the valuation was based on a "drive-by" external inspection only. In the circumstances, the Tribunal therefore determines that the reasonable valuation costs recoverable by the respondents from the applicant under paragraph (e) of section 9(4) of the 1967 Act are £150 (plus VAT if applicable).

Summary

- 41 The Tribunal determines as follows:
- The price payable by the applicant leaseholder for the freehold interest in the subject property is £9,938.15.
 - The reasonable legal costs recoverable by the respondent freeholders from the applicant leaseholder are £425 (plus VAT if applicable).
 - The reasonable valuation costs recoverable by the respondent freeholders from the applicant leaseholder are £150 (plus VAT if applicable).



Professor Nigel P Gravells
Chairman

21 DEC 2005

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OF THE
MIDLAND RENT ASSESSMENT PANEL**

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Respondents: Fell Estates Ltd and Covent Garden Investments Ltd
(freeholder)

Subject property: 30 Melrose Road
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B20 3ES

Date of tenant's notice: 18 June 2005

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Appearances:

For the applicant: Mr A K Bonsor FRICS

For the respondent: Mr M A Fell

Members of the LVT: Professor N P Gravells MA
Mr D J Satchwell FRICS
Mrs A Bartram

Date of determination:

21 DEC 2005

Introduction

- 1 This is a decision on two applications under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Ms J F Fallon, leaseholder of the house and premises at 30 Melrose Road, Perry Barr, Birmingham, B20 3ES ("the subject property"). The two applications are, first, under section 21(1)(a) for the determination of the price payable under section 9(1) for the freehold interest in the subject property; and, secondly, under section 21(1)(ba) for the determination of the reasonable costs recoverable under section 9(4).
- 2 The applicant leaseholder holds the subject property under a lease for a term of 89 years from 24 June 1939 at a ground rent of £6.00 per year. The lease devolved to and was vested in the applicant pursuant to a grant of probate dated 13 December 2004. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 23 years.
- 3 The applicant served on Fell Estates Ltd and Covent Garden Investments Ltd, the respondent freeholders, a tenant's notice dated 18 June 2005, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and she subsequently made the present application.

Subject property

- 4 The subject property is a mid-terrace house of brick and slate construction, located on Melrose Road in Perry Barr. The accommodation comprises, on the ground floor, hallway (with two stores off), two reception rooms and kitchen; and, on the first floor, three bedrooms and combined bathroom/wc. Space heating to the ground floor is provided by an electric fire in the front reception room and a gas fire in the rear reception room; there is no space heating to the first floor. Hot water is provided by immersion heater. Outside there are gardens to the front and rear of the property. There is a brick store in the rear garden. There is shared access to the rear of the property where there is potential garage space.

Inspection and hearing

- 5 The members of the Tribunal inspected the subject property on 9 December 2005 in the presence of Mr Bonsor, representing the applicant leaseholder.
- 6 The subsequent hearing was attended by Mr Bonsor, representing the applicant leaseholder, and by Mr Fell, representing the respondent freeholders.

Representations of the parties

- 7 Mr Fell declared his personal interest as a director of Fell Estates Ltd.

Price payable for the freehold interest in the subject property

- 8 Both Mr Bonsor and Mr Fell adopted as the basis of valuation under the 1967 Act the standard three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity, deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).

- 9 In addition to the facts outlined above, the following matters were specifically agreed by the parties for the purposes of the valuation calculation:
- The relevant date for the purposes of the valuation is 21 June 2005.
 - The unexpired term of the lease at the relevant date was 23 years.
 - The ground rent payable under the lease is £6.00 per year.
 - The percentage figure to be applied to the freehold entirety value of the subject property to determine the site value in accordance with the "standing house method" is 35 per cent.
- 10 Since both parties apply the same established formula to determine the price payable for the freehold interest, the matters that remain in dispute between the parties are the two factors in that formula that are not agreed, namely:
- The freehold entirety value of the subject property at the relevant date.
 - The appropriate deferment or yield rate to be applied at all stages of the valuation calculation.
- 11 As to the freehold entirety value, Mr Bonsor, on behalf of the applicant leaseholders, argued for the figure of £120,000, whereas Mr Fell, on behalf of the respondent freeholders, argued for the figure of £130,000. As to the appropriate deferment or yield rate, Mr Bonsor adopted the figure of 7 per cent, whereas Mr Fell adopted the figure of 5.5 per cent.

Evidence and submissions on behalf of the applicant leaseholder

- 12 As to the entirety value, Mr Bonsor stated that he had significant experience and local knowledge of the neighbourhood of the subject property; he stated that the demand for properties in that neighbourhood comes mainly from persons already resident in the area; and he suggested that this had the effect of restricting property values. He indicated that the subject property was placed on the market in November 2004 at an asking price of £115,000, on the basis that the applicant leaseholder would be able to acquire the freehold interest prior to the conveyance to a purchaser. However, in the absence of any offer over £100,000, the property was withdrawn from the market. Mr Bonsor referred to two comparable properties on Melrose Road. 56 Melrose Road has, in addition to the accommodation of the subject property, a verandah/utility room and a garage; it has the benefit of double-glazing and superior kitchen and bathroom fittings. It was sold in May 2005 for £132,000. 55 Melrose Road, although requiring some cosmetic improvement, has the benefit of double-glazing and central heating. It was sold in May 2005 for £120,000. In his written representations Mr Bonsor also referred to a property in Aston Lane; but he accepted that its evidential value in the present case was limited. On the basis of that evidence, Mr Bonsor submitted that the entirety value of the subject property at the relevant date was £120,000.
- 13 As to the appropriate deferment or yield rate, Mr Bonsor acknowledged the recent decision in *Arbib v Earl Cadogan* and the other cases determined with that decision ("the *Cadogan* cases") in which the Lands Tribunal had adopted the rate of 4.5 per cent for a house in a prime area of central London. However, Mr Bonsor argued that, bearing in mind the differences between the properties in those cases and the subject property in the present case, and the respective risks attached to an investment in such properties, the *Cadogan* cases had no relevance to the present case. Mr Bonsor argued that the appropriate deferment or yield rate in the present case is 7 per cent.
- 14 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Bonsor submitted the following valuation:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £6.00 per year
Years Purchase: 23 years @ 7%: 11.2722
Capitalised ground rent: £6.00 x 11.2722 = £67.63

(ii) Modern ground rent

Standing house value of subject property: £120,000
Percentage attributable to site: 35%: £42,000
Annual equivalent @ 7% = £2,940

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £2,940
Years Purchase at 7% in perpetuity deferred 23 years: 3.01353
Capitalised modern ground rent: £2,940 x 3.01353 = £8,859.78

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £9,000.

Evidence and submissions on behalf of the respondent freeholders

- 15 Mr Fell, although not professionally qualified, stated that he had five years' experience of enfranchisement transactions, as a director of Fell Estates Ltd, a company which specialises in investing in freehold ground rents and which also acts on behalf of other landlord clients.
- 16 As to the entirety value, Mr Fell referred to the marketing of the subject property in November 2004, although he seemed to be under some misapprehension as to whether or not the property had been offered with the freehold interest. Mr Fell also referred to 56 Melrose Road. However, he expressed the view that the differences between that property and the subject property (see paragraph 12 above) were properly reflected in a minimal difference only in values. Moreover, he suggested that the general increase in property prices between the sale date of 56 Melrose Road and the relevant date for the purposes of the present application would reduce any differential. On the basis of that evidence, Mr Fell submitted that the entirety value of the subject property at the relevant date was £130,000.
- 17 As to the appropriate deferment or yield rate, Mr Fell relied almost exclusively on the recent decision of the Lands Tribunal in the *Cadogan* cases. Starting with the rate of 4.5 per cent adopted in *Arbib v Earl Cadogan*, he added an additional percentage point to maintain the conventional pre-*Cadogan* differential between deferment or yield rates in London and elsewhere. On that basis, Mr Fell submitted that the appropriate deferment or yield rate in the present case is 5.5 per cent.
- 18 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Fell submitted the following valuation:

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Capitalised modern ground rent: £2,502.50 x 5.30678 = £13,280.22

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of £13,357.47.

Reasonable costs recoverable under section 9(4) of the 1967 Act

Evidence and submissions on behalf of the applicant leaseholder

- 19 Although the applicant had made an application to the Tribunal for the determination of reasonable costs recoverable by the respondents under section 9(4) of the 1967 Act, Mr Bonsor made no submissions to the Tribunal.

Evidence and submissions on behalf of the respondent freeholders

- 20 Mr Fell stated that the conveyancing fee charged to the respondents is £350 plus VAT. In addition, he put in evidence a schedule of other legal costs incurred amounting to £250 and a valuation fee of £350. He submitted that all these costs were reasonable and recoverable under section 9(4) of the 1967 Act.
- 21 In response to questions from the Tribunal, Mr Fell agreed that the valuation of the subject property had been carried out by Mr Martin Fell, who is not a professionally qualified valuer or surveyor. He was unable to confirm whether the valuation exercise had included an internal inspection of the subject property.

Determination of the Tribunal

- 22 The Tribunal gave full consideration to the arguments and evidence of the parties.

Price payable for the freehold interest in the subject property

- 23 The Tribunal holds that the standard basis of valuation adopted by Mr Bonsor and Mr Fell properly reflects the principles of the 1967 Act.
- 24 As noted above, there are two factors in the valuation calculation on which the parties remain in dispute: the entirety value of the subject property and the appropriate deferment or yield rate to be applied at all stages of the valuation calculation.

Entirety value of the subject property

- 25 As to the entirety value of the subject property, both Mr Bonsor and Mr Fell rely

on the sale price of £132,000 achieved for 56 Melrose Road in May 2005. However, the parties differ significantly on the value of the differences between that property and the subject property. In the view of the Tribunal, Mr Fell grossly undervalues the advantages of 56 Melrose Road, while at the same time he overstates the increase in property values between the sale date of 56 Melrose Road (or even the date of exchange of contracts) and 21 June 2005, the relevant date for the purposes of the present application. Having regard also to the evidence of the sale price achieved for 55 Melrose Road, the Tribunal determines that the entirely value of the subject property at the relevant date was £120,000.

Deferment or yield rate

- 26 As to the appropriate deferment or yield rate to be applied at all stages of the valuation calculation, the starting point for the Tribunal must be the decision of the Lands Tribunal in the *Cadogan* cases. Although the Lands Tribunal reaffirmed the principle that previous decisions on questions of fact and opinion do not establish any conventions or precedents, it stated that decisions of the Lands Tribunal that set out general guidance on valuation principles may be applied or referred to in subsequent cases.
- 27 In the view of the Tribunal, the *Cadogan* cases do provide general guidance to which leasehold valuation tribunals should have regard. At the same time, the actual decisions in the *Cadogan* cases must be treated with extreme care since the properties in question were very high value properties in the Kensington and Chelsea London Borough, arguably one of the most sought after residential locations in the country.
- 28 The *Cadogan* cases reject any notion of a "conventional" deferment or yield rate and require that the rate must be individually determined on the evidence in each case. Moreover, the Lands Tribunal concluded that, as a matter of economic theory, it is unlikely that there would have been a constant deferment rate despite the changes that have occurred in the investment market and financial indicators over the last ten years; and the implication is that the deferment or yield rate would have decreased. In the view of the Tribunal, therefore, the corollary of the rejection of a conventional rate would seem to be that the Tribunal should not even treat the conventional rate as the default rate, to be adopted in the absence of evidence pointing to a different rate.
- 29 The Tribunal therefore starts from the position that, in the absence of compelling evidence, the deferment or yield rate will normally be lower than 7 per cent, which has arguably become the conventional rate adopted in determinations under the 1967 Act in relation to properties in the West Midlands.
- 30 Neither Mr Bonsor nor Mr Fell adduced any hard evidence in support of their respective submissions as to the appropriate rate in the present case. Rather Mr Bonsor questioned the relevance of the decision in the *Cadogan* cases and in effect he argued for the adoption of the conventional rate of 7 per cent. By contrast, Mr Fell sought to rely on the actual decision in the *Cadogan* cases, increasing the 4.5 per cent rate adopted in those cases by a percentage point in order to maintain the conventional differential between the conventional rates adopted in London and elsewhere. In the view of the Tribunal, an adjustment on that basis is precluded by the Lands Tribunal's rejection of the use of conventional deferment or yield rates.
- 31 In the view of the Tribunal, the implication of the *Cadogan* cases is that the conventional rate is probably too high. At the same time, it is equally clear that the subject properties in the present case are very different from the subject

properties in the *Cadogan* cases - in respect of their location, size, nature, quality, value and, ultimately, in respect of the risk attached to an investment in such properties.

- 32 The Tribunal therefore holds that the appropriate deferment or yield rate in the present case is 6.5 per cent.

Valuation calculation

- 33 Applying those figures (and the agreed figures referred to in paragraph 9 above), the Tribunal calculates the price payable as follows:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £6.00 per year
Years Purchase: 23 years @ 6.5: 11.7701
Capitalised ground rent: £6.00 x 11.7701 = £70.62

(ii) Modern ground rent

Standing house value of subject property: £120,000
Percentage attributable to site: 35%: £42,000
Annual equivalent @ 6.5% = £2,730

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £2,730
Years Purchase at 6.5% in perpetuity deferred 23 years: 3.61448
Capitalised modern ground rent: £2,730 x 3.61448 = £9,867.53

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of £9,938.15.

- 34 Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £9,938.15.

Reasonable costs recoverable under section 9(4) of the 1967 Act

- 35 As to legal costs, the Tribunal accepts that the conveyancing costs are marginally higher where, as in the case of the subject property, title is unregistered. However, the market for conveyancing services remains very competitive; and the Tribunal holds that the reasonable conveyancing costs recoverable by the respondents from the applicant under paragraph (b) of section 9(4) of the 1967 Act are £325 (plus VAT if applicable).
- 36 As to other legal costs claimed under paragraphs (a) and (c), Mr Fell submitted a schedule of work undertaken for the purposes of investigating the applicant leaseholder's right to acquire the freehold interest in the subject property and verifying the applicant's title. However, the crucial issue is the method of charging that is applied to the work undertaken. Mr Fell confirmed that the stated costs did not reflect the actual time spent on each item of work nor the actual costs incurred but rather represented a standard charge for a broad description of work (for example, "receiving and verifying" a document).
- 37 In the view of the Tribunal, the method of charging adopted by the respondents, if applied without qualification, has the clear potential to overstate to a considerable extent the actual cost of the work for which the leaseholder is

required to pay; and that would in effect endorse the recovery of costs beyond what is reasonable.

- 38 There is no evidence in the schedule that the work in the present case involved any unusual or complex factors; nor did Mr Fell make any submission to that effect. The Tribunal finds that the work specified in the schedule could be completed in a maximum of two hours; and that a reasonable hourly rate for such work would not exceed £50.00.
- 39 The Tribunal therefore determines that the reasonable legal costs recoverable by the respondents from the applicant under paragraphs (a) and (c) of section 9(4) of the 1967 Act are £100 (plus VAT if applicable).
- 40 As to valuation costs, on the weight of the evidence (the absence of any reference by the respondents to the internal condition of the subject property and the fact that Mr Fell was unable to confirm that an internal inspection had been carried out), the Tribunal finds that the valuation exercise carried out on behalf of the respondent freeholders did not include an internal inspection of the subject property; but that the valuation was based on a "drive-by" external inspection only. In the circumstances, the Tribunal therefore determines that the reasonable valuation costs recoverable by the respondents from the applicant under paragraph (e) of section 9(4) of the 1967 Act are £150 (plus VAT if applicable).

Summary

- 41 The Tribunal determines as follows:
- The price payable by the applicant leaseholder for the freehold interest in the subject property is £9,938.15.
 - The reasonable legal costs recoverable by the respondent freeholders from the applicant leaseholder are £425 (plus VAT if applicable).
 - The reasonable valuation costs recoverable by the respondent freeholders from the applicant leaseholder are £150 (plus VAT if applicable).



Professor Nigel P Gravells
Chairman

21 DEC 2005