

## **RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

### **LEASEHOLD VALUATION TRIBUNAL**

**Property:** 32 Benington Road, Aston, Hertfordshire, SG2 7DY

**Applicant Leaseholders:** Mr Anthony Richard Martin & Mrs Janet Louise Martin

**Applicants' Solicitor:** Mrs Vivienne Hamilton, Hamilton Davies, 28 High Street, Stevenage, SG1 3HF

**Applicant's Valuer:** Mr JEG Lowe FRICS of McNeill, Lowe & Palmer, Charter House, Marlborough Park, Southdown Road, Harpenden, Hertfordshire AL5 1NL

**Respondent Freeholder:** Unknown

**Case number:** CAM/26UD/OAF/2006/0015

**An application to the Tribunal under Section 21 Leasehold Reform Act 1967 (the 1967 Act) to determine the amount to be paid in to court pursuant to Section 27(5) of the 1967 Act as amended by the Commonhold and Leasehold Reform Act 2002**

**Tribunal:** Mr JR Morris (Chairman)  
Miss M Krisko, BSc (Est Man), BA, FRICS  
Mr JR Humphrys FRICS

**Hearing Date:** 1<sup>st</sup> September 2006

**Enfranchisement price determined by Tribunal                      £3,822**

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### **DECISION**

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#### **Preliminary**

1. An Application to the Leasehold Valuation Tribunal was been made pursuant to an Order of the Hitchin County Court in case number 6H100418 dated 20<sup>th</sup> March 2006 (the Order). Application to the Court for the Order was made on the 24<sup>th</sup> February 2006.
2. The Order provides that the Applicant is not required to any further steps for the purpose of tracing the Landlord(s) of the Property whether by advertisement or otherwise.

3. The Order also provides for a Leasehold Valuation Tribunal to determine the price payable in accordance with section 27(5) of the Leasehold Reform Act 1967.
4. The Application to the Leasehold Valuation Tribunal was made on the 15<sup>th</sup> June 2006.

**Documents received:**

5. Documents received relevant to the Application are:
  - a) A Claim Form (CPR Part 8)
  - c) Official Copies of Register Entry Title Number HD138863 relating to the Leasehold title
  - d) An expert's Report and Valuation
  - f) A Court Order dated 30<sup>th</sup> March 2006
  - g) Draft Transfer

**The Subject Property**

6. The Tribunal inspected the Subject Property in the presence of the Mr Martin the Applicant. The Property is a Grade II listed end of terrace house with a combination timber framing and brickwork with rendered elevations under a pitched tile roof. Access to the property is over the path of number 28 and the front of number 30 Benington Road. There is a front garden with a large rear garden which has a boundary and access to New Park Lane.
7. The accommodation comprises a hall, sitting room, study, kitchen lobby and cloakroom on the ground floor. There are two staircases, three bedrooms, a landing room, bathroom with w.c and shower room on the first floor. All main services are connected and there is gas fired central heating to radiators. Outside there is a double garage and hard standing at the rear with access to New Park Lane. The Subject Property is situated near to a public house.

**The Lease**

8. The Property Register of the Leasehold Title Number HD138863 states that the Lease under which the Subject Property is held was dated 20<sup>th</sup> October 1564 for a term of 500 years from 1654 between (1) Sir John Butler and (2) Thomas Waterman. The rent reserved, if any, is not known.
9. The Property Register states that neither the original Lease nor any copy thereof was supplied on first registration and the particulars were taken from an Assignment dated 15<sup>th</sup> June 1949 between (1) Ian Donald MacIcomson and Richard Hamilton Anstruther-Gough Calthorpe (Vendors) and (2) Cecil Leonard Merrick and Edith Elizabeth Merrick (Purchasers).
10. The Property Register states that the Subject Property has the benefit of a right of way only over the access way tinted brown on the filed plan.
11. The Property Register of the Subject Property also states that a portion of land originally within this Leasehold Title has been removed from the Title and registered

under the Title Number HD 435443. It is also stated that the Subject Property has the benefit of the rights reserved by but is subject to the rights granted by a Transfer dated 20<sup>th</sup> August 2004 made between (1) Anthony Richard Martin and Janet Louise Martin and (2) Charles Patrick Magnus Mowat of the land comprised in Title Number HD 435443.

12. The Proprietorship register states that Good Leasehold Title is granted to the Applicant
13. The Charges Register states that the Subject Property is subject to the following rights excepted and reserved by an Assignment dated 15<sup>th</sup> June 1949 between (1) Ian Donald Maccomson and Richard Hamilton Anstruther-Gough Calthorpe (Vendors) and (2) Cecil Leonard Merrick and Edith Elizabeth Merrick (Purchasers):-

“EXCEPT AND RESERVING unto the Vendors’ predecessors in title owners and occupiers of the time being of the adjoining property a right of way at all times over the said piece of land coloured pink (cross hatched blue on the filed plan) and cross hatched black show on the said plan for the purpose of repairing maintaining the buildings erected on the said adjoining land and the right to place thereon all such ladders as may properly be necessary for the purposes of carrying out such repairs”

#### **The Law**

14. The Leasehold Reform Act 1967 as amended by the Commonhold and Leasehold Reform Act 2002 (the 1967 Act) enables tenants of houses on long leases at low rent to enfranchise (acquire the freehold) their properties.
15. Section 21 of the 1967 provides that if the parties do not agree a price an application may be made to the Leasehold Valuation tribunal to determine the price. The valuation methods are set out in section 9 of the 1967 Act.
16. Section 27 of the 1967 Act provides for an application to the court where the landlord cannot be found to dispense with notice and require a Leasehold Valuation Tribunal to determine a price under section 9 to be paid into court and terms of transfer to be filed with the court.
17. Section 9 of the 1967 Act provides for one of three methods of valuation to determine the price depending on the rateable value of the property. The relevant method in this case is that set out in section 9 (1) which requires the tribunal to assume that at the end of current term, the tenant has applied for and been granted an extended lease under section 14 of the 1967 Act for a term of 50 years from the date of the existing tenancy at an open market ground rent. The basic principle is that the enfranchisement price should compensate the landlord of the loss of rents (including any current arrears) until the extended term date and the loss of the freehold at that time.
18. The Tribunal may therefore, as at the valuation date:
  - Ascertain and determine the current open market value of the Subject Property as it stands taking into account its full development value based, as far as possible, upon the sales of comparable properties close to the valuation date and then determine the site value of the Subject Property (this is assessed as a percentage of

- the open market value) or alternatively determine the site value directly from the sale of plots.
  - Assess the annual open market modern ground rent under section 15 of the Act which is calculated as a percentage of the site value
  - Ascertain and add the amount of any recoverable arrears
  - Calculate the current value of the lost future rents (using actuarial tables)
19. This will give the enfranchisement price, which relates only to the site value. In some cases an additional calculation is made to compensate the landlord for the loss of the house on the land where it is likely that this will still be standing at the end of the extended term. This is referred to as the *Haresign* rule after the case of *Haresign v St John the Baptist College, Oxford*.

### **The Evidence**

20. A Hearing was held following the Inspection on the 1<sup>st</sup> September 2006 at which the Applicant's solicitor attended.
21. The Applicant's Surveyor stated in a written valuation that the Subject Property was unlikely to have had a rateable value of more than £200 as at 23<sup>rd</sup> March 1965 and therefore the valuation method as set out in section 9(1) of the 1967 applied.
22. The Surveyor submitted a valuation on the basis that any improvements should be ignored in assessing the current market value and no mention had been made in the valuation of the potential for further development at the rear of the property. As the Tribunal is required to ascertain and determine the current open market value of the Subject Property as it stands taking into account its full development value the Valuer was requested to re-consider the valuation.
23. The Applicant's Surveyor submitted a fresh valuation including consideration of the full development value of the Subject Property. The Surveyor stated that he had spoken to the Planning Department of the East Hertfordshire District Council to explore the potential redevelopment of the rear part of the garden that fronts New Park Lane. The Planning Officer advised that as the Subject Property is Grade II listed in the Green Belt and form part of a Landscape Conservation Area, the likelihood of obtaining consent to build a new dwelling in the garden is extremely remote. On that basis the Surveyor considered that there is not any "hope value" and that is needed to be borne in mind that the rear garden is a particularly attractive feature and provides valuable off street parking and that if a large part were severed for development, it would have a detrimental effect on the value of the remainder.
24. The Applicant's Surveyor referred to five comparable properties together with agents details of each (except 16 Astonbury Manor, Aston):
- 3 School Lane, Aston a Victorian cottage under offer at £290,000
  - 6 Gun Land, Knebworth a four bedroom Victorian house under offer at £475,000
  - 16 Astonbury Manor, Aston an end of terrace mews style house recently sold for £360,000
  - 25 Bragbury End an end of terrace three bedroom Victorian House on the market at £425,000
  - 145, Hertford Road, Stevenage a four bedroom 1920s house on the market at £379,995

The Applicant's surveyor stated that it was difficult to find a direct comparable. Although the Subject Property has some unique characteristics it has a few disadvantages namely access to the front door is via a shared garden, the car parking is at the end of the rear garden and two of the bedrooms intercommunicate. Having regard to the properties referred to the Surveyor was of the opinion that the adjusted freehold value could be assessed at £395,000.

25. The Applicant's Surveyor submitted a valuation calculation as follows:

Ground rent	unknown		
Capitalisation rate	7%		
Adjusted freehold value	£395,000		
Remaining Term	58 years		
<b>Term</b>	nil		
<b>Reversion</b>			
Standing house value	£395,000		
Site Value at one third	£131,666		
Yield at 7%-Section 15 modern ground rent	£ 6,583		
YP for 50 years @ 7%	13.8007		
PV £1 57 years @ 7%value	.019579	.2702039	£1,779
Reversion to standing house value	£395,000		
PV £1 @ 7% deferred 108 years	.001		£395
<b>Enfranchisement price</b>			<b>£2,174</b>

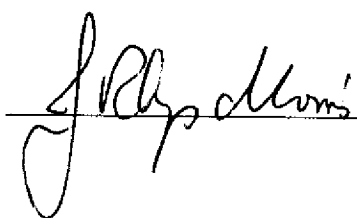
26. A draft Transfer was submitted to the Tribunal.

#### **Determination**

27. The Tribunal agreed that the method of valuation specified in section 9(1) of the 1967 Act applied.
28. The Tribunal considered the comparable evidence submitted by the Applicant's Surveyor and agreed that it was difficult to find a direct comparable but that the Bragbury End property was the most similar. Although the Subject Property has the disadvantages referred to nevertheless it has the added value of Grade II listing highlighting its individual characteristics. Notwithstanding that the Planning Officer advised that the likelihood of obtaining consent to build a new dwelling in the garden is extremely remote the Tribunal did not accept that there was no "hope value" and were of the opinion that a development value would be reflected in the market price of the Subject Property. The Tribunal therefore using the knowledge and experience of its members determined that the entirety value of the Property is £500,000 at the valuation date.
29. The Tribunal considered that a value of 40% of the entirety value was appropriate giving a site value of £200,000. The Tribunal appreciated the Applicant's Surveyor's

difficulty in finding direct comparables. The Tribunal therefore cross-checked the site value by reference to the value of plots. Whilst the Applicant's Surveyor did not use any sales of plots in evidence the Tribunal are of the view from their knowledge and experience that £200,000 is a reasonable price for this plot at the valuation date.

30. The Tribunal adopted the figure of 7% as being one that had been recently used in this area. The Tribunal were of the opinion that the *Haresign* rule addition should not be applied in this case. The addition under the Rule is normally only applied where the remaining term is very short.
31. The Tribunal determined that the enfranchisement price is £3,822 and the calculations are set out in the Schedule to this Decision.
32. The Transfer submitted to the Tribunal for approval did not include the Continuation Sheet referred to in Clause 12. A fresh transfer may be submitted to the Tribunal for approval and should contain the following provisions:
  - the plan attached is amended to only include the Title Numbered HD138863 and does not include the Title Numbered HD435443 which was transferred by the Applicants by an Assignment dated 20<sup>th</sup> August 2004 between (1) Anthony Richard Martin and Janet Louise Martin and (2) Charles Patrick Magnus Mowat.
  - Clause 12 of the Transfer should include the following provisions in the Continuation Sheet to ensure that they are included in the new Title:
    - the benefit of the right of way only over the access way tinted brown on the filed plan which appears to form part of 28 Benington Road
    - the rights excepted and reserved by an Assignment dated 15<sup>th</sup> June 1949 between (1) Ian Donald Malcomson and Richard Hamilton Anstruther-Gough Calthorpe (Vendors) and (2) Cecil Leonard Merrick and Edith Elizabeth Merrick (Purchasers) and set out in the Charges Register of Title Number HD138863
    - the recital of the benefit of the rights granted and reserved by an Assignment dated 20<sup>th</sup> August 2004 between (1) Anthony Richard Martin and Janet Louise Martin and (2) Charles Patrick Magnus Mowat together with the restrictive covenants contained in the Assignment.
33. Generally in respect of an application under the 1967 Act the Applicant must pay the Landlord's costs however in the case of an Application under section 27 the landlord does not incur costs and therefore the Tribunal make no order as to costs.



JR Morris (Chair)

14<sup>th</sup> December 2006

Schedule

**Leasehold Valuation Tribunal's Valuation**

In accordance with The Leasehold Reform Act 1967 Section 9 (1)

**Standing House Approach**

Current ground rent	Nil	
Entirety Value (Open Market Value)	£5,000,000	
Site Value 40% of OMV	£200,000	
Section 15 Rent @ 7% of Site Value	£14,000 per annum	
YP 7% in perpetuity	14.2857	
deferred 58.5 years @ 7%	0.01911	£3,822
<b>Enfranchisement price</b>		<b>£3,822</b>