

## **SOUTHERN RENT ASSESSMENT PANEL**

### **LEASEHOLD VALUATION TRIBUNAL**

In the matter of sections 26 & 27 of the Leasehold Reform Housing and Urban Development Act 1993 (as amended) ("the 1993 Act")

And in the matter of 8 Priory Place Gloucester ("the property")

#### **BETWEEN**

Mary Silmon and Leslie Fenwick Clyde                      Applicants

And

Unknown Defendant    Respondents.

#### **ENFRANCHISEMENT OF LEASE**

#### **DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ("LVT")**

**Case No:**        **CHI/23UE/OCE/2005/0063.**

**Date of Inspection**    12 October 2005.

**Date of Decision**        10 November 2005.

**Tribunal Members:** Mr R L Sansbury (Chairman)  
                              Mr P K D Harrison FRICS  
                              Mr P E Smith FRICS

#### **DECISION**

1.        The Tribunal has decided for the reasons set out below that the price payable by the Applicants for the freehold reversion in this matter (and the amount therefore to be paid into Court) is £17,275 (Seventeen thousand two hundred and seventy five pounds).

#### **REASONS**

##### **Background.**

2.        The Applicants Mrs Mary Silmon ("Mrs Silmon") and Mr Leslie Fenwick Clyde ("Mr Clyde") have applied for the enfranchisement of the title to this property in circumstances where the identity and whereabouts of the landlord are unknown.

- 3 The Applicants hold the property by virtue of a Lease ("the Lease") dated 1 April 1556 for a term of 500 years from the feast of the Anunciation of our blessed lady St Mary the Virgin, such date being recorded in the Property Register at H M Land Registry (Title No.GR113577) as 25 March 1556. The Lease reserved a rent of thirty shilling to the Lessor, Thomas Payne.
- 4 The Charges Register of Title No GR113577 records that three sub-Leases ("the Sub-Leases") have been granted of flats at the property as follows:-  
  
Flat 1 (basement and ground floor with garden ground) dated 6 August 1990  
Flat 2 (first floor flat) dated 17 May 1990  
Flat 3 (second floor flat) dated 17 May 1990.  
  
All three sub-Leases are stated in the Charges Register to be for a term commencing on their date and expiring on 23 March 2056 being two days before the expiration of the Lease referred to in paragraph 3 above.
- 5 The Tribunal were provided with copies of the said sub-Leases relating to Flats 1 and 3.
- 6 By an Order of the Gloucester County Court dated 22 June 2005 ("the Court Order") it was ordered that the property be vested in the Applicants as nominee purchasers upon such terms and at such price as might be determined by a Leasehold Valuation Tribunal and that the form of transfer or conveyance be approved by the Tribunal.
- 7 The Applicants were represented by Mr Edward James Rutledge FRICS ("Mr Rutledge") of the firm of Lawrence and Wightman of Birmingham. His valuation of the enfranchisement price ("Mr Rutledge's Valuation" or "his Valuation") is dated 8 August 2005 and is based on a valuation date ("the valuation date") of 22 June 2005 being the date of the Order; it is in the sum of £16,462.
8. There was also before the Tribunal a copy of a Decision of another Leasehold Valuation Tribunal on 26 January 2005 in relation to an adjoining property number 7 Priory Place. The enfranchisement price determined by that Tribunal was £1,334. Having been asked to comment, Mr Rutledge by letter dated 3 October 2005 indicated that the subject property is in three flats and therefore fell to be dealt with under the 1993 Act.

#### **Inspection.**

9. The Tribunal inspected the property in the presence of the Applicant Mr Clyde and found it to be a flush fronted, inner terraced dwellinghouse on three floors together with a basement, situated in a small row of similar properties close to the centre of the City of Gloucester.

The property is of brick construction with a rendered front elevation in Regency style beneath a tiled roof and originally dated from approximately 1850. It is connected to all mains services and is approached at the front from a paved area marked "Private No Parking". (The Tribunal subsequently noted that the sub-Leases do not contain any right to park on that area).

The interior of the property is fully described on page 3 of Mr Rutledge's Valuation and the Tribunal agreed with his description whilst also observing:- Flats 1 and 3 have gas central heating. Flat 2 has electric night storage heaters. There is poor natural lighting of the rooms at basement level and also some evidence of damp.

### **Hearing.**

10. A hearing was held at the Gloucester Civic Offices North Warehouse The Docks Gloucester. Mr Rutledge represented both Applicants. Mr Clyde was also present in person.

The Chairman referred to the previous LVT Decision relating to 7 Priory Place referred to in paragraph 8 above and pointed out that that property was also said to have been in three flats. Mr Rutledge understood that property to have been rather informally let whereas the subject property was converted into three flats and formal Leases granted in 1990; the layout of the flats was also a factor. Mr Rutledge had been obliged to advise the Applicants that the subject property was not a "house" within the meaning of the Leasehold Reform Act 1967 and had properly to be treated as three flats in accordance with the 1993 Act, even though that would result in a much higher enfranchisement price.

In his submission on behalf of the Applicants, Mr Rutledge confirmed that he had valued the freehold in accordance with Schedule 6 of the 1993 Act and referred the Tribunal to Part II Section 2 (1) of that Schedule and Section 3 as to the valuation of the freeholder's interest. He then referred to his Valuation and confirmed his understanding (set out on page 7) that there was no longer any ground rent payable.

He confirmed his market valuation of the three flats as follows: -

Flat 1 - £80,000; Flat 2 - £70,000; Flat 3 - £65,000.

Total £215,000 on an existing leasehold basis.

Those figures he supported as set out in Appendix B of his Valuation by reference to the likely sale price of nine other properties in or about the centre of Gloucester.

On the basis that the Lease had just under 51 years unexpired as at the valuation date, Mr Rutledge had applied an uplift of 12.5% to reflect the valuation of each flat on an extended leasehold (or "almost freehold") basis.

He concluded that the extended leasehold value of all three flats with the 12.5% uplift was therefore £215,000 + 26,875 = £241,875. He had applied what he referred to as a Capitalisation Rate (but which should more properly be referred to as a Deferment Rate) of 7.5% stating on page 6 that this was "consistent with in excess of 200 Collective Enfranchisement and Lease Extension cases under the 1993 Act settled by negotiation or through the Leasehold Valuation Tribunal around the West Midlands generally".

Mr Rutledge's calculation of the enfranchisement price is fully set out on page 7 of his Valuation and results in a figure of £16,462.

In reply to questions Mr Rutledge assisted the Tribunal further in the following respects:-

- (1) By going through the market evidence in Appendix B of the Valuation in detail, particularly as to the term thought to be unexpired of the lease in each case. He conceded that none of them were perfect comparables but they revealed a general pattern.
- (2) As to his proposed "capitalisation" (deferment) rate of 7.5% he submitted that the Lands Tribunal cases of *Arbib v Earl Cadogan* and others decided on 15 September 2005 ("*Cadogan*") was only an authority in relation to properties in Central London; he was also critical of the decision in other respects. His own evidence about the rate was based on over two hundred enfranchisement and lease extension cases under the 1993 Act.
- (3) In relation to his proposed uplift of the market values by 12.5%, he referred the Tribunal to the lengthy (18 page) Appendix C to his Valuation setting out over one hundred cases of negotiated settlements and Tribunal decisions under the 1993 Act. Those shown (in column 4 of the Appendix) at a "capitalisation" rate of 7% were houses within the meaning of the 1967 Act. Those at 7.5% were flats and maisonettes dealt with in accordance with the 1993 Act. He agreed that none of the properties was in Gloucester; the vast majority were in Birmingham with some others in Sutton Coldfield, Worcester and Torquay. He submitted that apart from Central London uplifts and rates of interest were broadly similar.

The hearing closed at 12.30. Mr Rutledge would supply a copy of the Lease of Flat 2.

### **Consideration leading to the Decision.**

11. The Tribunal was supplied with that copy Lease of Flat 2 which was found to be in similar form and expiring on the same date as the other two sub-Leases. The Tribunal also took time to obtain and consider a full transcript of the Decision in *Cadogan*.
12. One of the members of the Tribunal having also been a member of the Tribunal dealing with 7 Priory Place on 26 January 2005, this Tribunal was aware that that property had only been informally converted into flats and in particular that there were no formal leases or separate titles, and the property fell to be enfranchised under the Leasehold Reform Act 1967. . The Tribunal decided that the proper basis of calculation for No. 8 Priory Place was the 1993 Act as indeed is recorded in the Court Order and in the Provisional Direction of the Tribunal dated 19 July 2005.
13. The Valuation fell to be made under Schedule 6 of the 1993 Act and Mr Rutledge had correctly identified the valuation issues on page 6 of the his Valuation and in his submissions at the hearing.
14. The Tribunal accepted Mr Rutledge's valuation of the three flats in a total sum of £215,000 and that an uplift of 12.5% was appropriate so that the extended leasehold value of all three flats was £241,875.
15. Having carefully considered *Cadogan*, the Tribunal did not agree with Mr Rutledge's submission that it only applied to properties in London. Nevertheless the Tribunal found the subject property to be very different from those described in *Cadogan*. Those were plainly very high quality, prime Central London properties. Indeed one of them is referred to in paragraph 181 of the Decision as a "trophy house".
16. The Tribunal thought it significant that in *Cadogan* a different Deferment rate had been applied to the property 32 Rosary Gardens. That property, though prime, is said in paragraph 185 of the Decision to be "less attractive and less valuable than the other properties". In the same paragraph it is also stated:-

"If one arrives at an appropriate deferment rate by the route which we have adopted, any differential would be the result of a difference in security of the investment, that is to say a greater comparative risk of obsolescence or greater volatility in values or reduced growth rates"

The Lands Tribunal adopted (albeit with some reluctance) a Deferment rate of 6.4% for 32 Rosary Gardens.

17. The Tribunal found that, within the context of Gloucester and the surrounding area, Priory Place cannot be described as prime residential property; it is certainly secondary and arguably tertiary. It considered that it would therefore be wrong to correlate the yields applied to prime Central London with those of Priory Place Gloucester. The future of the subject property must be less certain than that of the properties in *Cadogan*; in 51 years time when the Lease expires the whole of this area of Gloucester may be (or have been) developed. There is therefore a greater risk of obsolescence
18. The Tribunal therefore did not consider that a Deferment rate of 4.75% or 4.5% as applied in *Cadogan* to the five properties other than 32 Rosary Gardens would be appropriate in this case.
19. The Tribunal had regard to Mr Rutledge's evidence (which they accepted) that in over two hundred cases which he had dealt with in the West Midlands under the 1993 Act, a Deferment rate of 7.5% had been applied. Even after removing LVT cases this still provided a substantial body of evidence by which the Tribunal was partially persuaded
20. However the Tribunal concluded that a rate of 7.5% would be too high. Having regard to recent trends indicating a modest fall in interest rates and in yields and its own knowledge of current Deferment rates, and as an expert tribunal with skill and experience, it decided that the appropriate Deferment rate in this case is 7%.
21. The Tribunal's valuation therefore is:-

Valuation of the Freehold interest    Ground Rent – Nil

Valuation of each Flat, excluding the tenants improvement subject to the existing leasehold interest.

Flat 1	£80,000	
Flat 2	70,000	
Flat 3	<u>65,000</u>	
Total value of existing leasehold flats		£215,000
Total market value with extended leases		
	£215,000 + 12.5%	£241,875
Present value of £1 in 51 years @ 7%		0.0317269
Freehold value		<hr/> £7,674

Marriage value

Extended leasehold value of all 3 flats £241,875

Less

existing freehold value £7,674

Existing leasehold value  
of 51 year leases

£215,000

£222,674

Marriage value

£19,201

Enfranchisement price

50% marriage value 19,201

x

0.5

9601

Plus

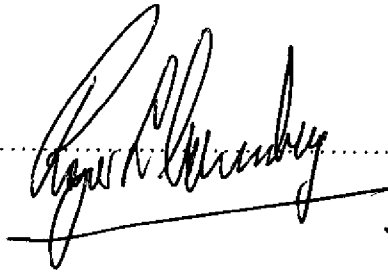
Value of freehold interest

7674

Enfranchisement price

£17,275

22. The Tribunal approves the form of transfer that was sent with the application and which is signed by me for the purpose of identification.

A handwritten signature in black ink, appearing to be 'Roger P. ...', is written over a horizontal dotted line. Below the dotted line is a solid horizontal line.

22 November 2005

Chairman

*Pages 2 & 3  
Chastman: Leasehold Valuation  
22 November 2005*

*5/11/05  
9101/01*

H. M. LAND REGISTRY

TRANSFER OF WHOLE

LAND REGISTRATION RULES 2003

FOR GIVING EFFECT TO SECTION 26(1)(1a)(i) OF THE LEASEHOLD  
REFORM HOUSING AND URBAN DEVELOPMENT ACT 1993 (AS  
AMENDED) ("THE ACT")

Administrative District: Gloucestershire, Gloucester  
Title Number: To be allocated.  
Property: 8 Priory Place, Gloucester

Dated 2005

1. Pursuant to an Order dated 2005 made in proceedings in the Gloucester County Court of which the Title and Reference Number are:  
Claimant: Mary Silmon and Leslie Fenwick Clyde Defendant: Persons unknown Case Number: 5GL01005 (the sum of £ having been paid into Court pursuant to the said Order on the day of 200 ) the person or persons (hereinafter called the Transferor) in whom the land known as 8 Priory Place, Gloucester, Gloucestershire, which is shown edged red on the plan attached hereto, (hereinafter called the Property), is on the date hereof vested for an estate in fee simple hereby transfers to Mary Silmon of 114 London Road, Gloucester, GL1 3PL and Lesley Fenwick Clyde of 30 Hallfield, Alverston, Cumbria, LA12 9TA (hereinafter called together "the Nominee Purchaser") the freehold interest in the Property.
2. The Transferor in so far as the Transferor is capable of granting them, grants to the Nominee Purchaser all such easements and rights over other property, including rights of way that are necessary for the reasonable enjoyment of the Property, rights of support, rights to the access of light and air, rights to the passage of water and of gas and other piped fuel, rights to the drainage and disposal of water sewage, smoke and fumes, and to the use and maintenance of pipes and other installations for such passage, drainage and disposal, and rights to the use and maintenance of cables and other installations for the supply of electricity for the telephone and for the receipt directly and by landline of visual and other wireless transmissions as exist for the benefit of the Property immediately prior to the date hereof.



3. There are excepted and reserved for the benefit of adjoining and neighbouring properties rights similar to those set out in Clause 2 as exist over the Property immediately prior to the date hereof.
4. It is hereby declared that the same covenants for Title, but no further covenants shall be implied herein, as if the owner was transferring and was expressed to transfer the Property with Limited Title Guarantee.
5. This Transfer is executed for the purposes of Chapter 1 of Part 1 of the Leasehold Reform Housing and Urban Development Act 1993 as amended.

Signed as a Deed by

District Judge

Pursuant to the said Order

Dated 200

For and on behalf of the Transferor

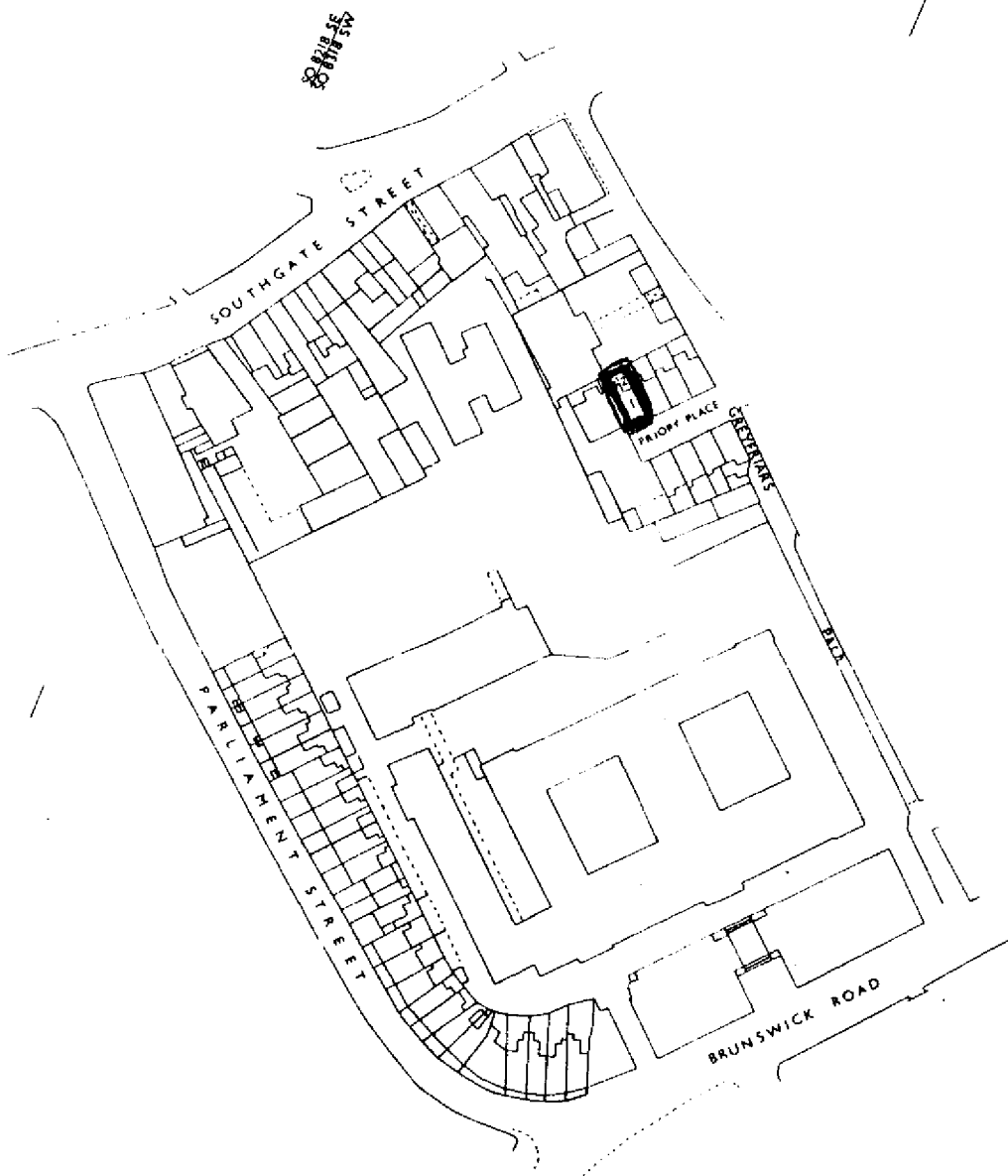
# H. M. LAND REGISTRY

NATIONAL GRID PLAN  
GLOUCESTERSHIRE  
GLOUCESTER DISTRICT

SO 8318

SECTION Q

Scale 1/1250



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**TITLE No. GR 113577**

This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans. This official copy shows the state of the title plan on 12 March 2004 at 8:45:10. It may be subject to distortions in scale. Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original. Used on 12 March 2004. Crown copyright. Produced by HMLR. Further reproduction in whole or part is prohibited without the prior written permission of Ordnance Survey. Licence Number GD272728. If this title is dealt with by the Gloucester District Land Registry.