

**LEASEHOLD VALUATION TRIBUNAL
FOR THE
SOUTHERN RENT ASSESSMENT PANEL**

LEASEHOLD REFORM, HOUSING & URBAN DEVELOPMENT ACT 1993:

SECTION 26

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00HC/0CE/2004/0032

Property:

**9 GARDENS ROAD
CLEVEDON
SOMERSET
BS21 7QQ**

Applicants:

**Mrs C A Mackie
Mr R D Mackie
Mr C S Brighty
c/o Cale Palmer**

Respondents:

Mr & Mrs D Hulme

Members of the Tribunal:

**T E Dickinson BSc, FRICS, IRRV (Chairman)
S Hodges BSc, FRICS, IRRV
P Smith BSc, FRICS**

Date Decision Issued: 7 July 2004

9 GARDENS ROAD, CLEVEDON, SOMERSET BS21 7QQ

1. The Reference

This case has been referred to us, following an order from Weston-Super-Mare County Court dated 14 March 2004 in the following terms:

Pursuant to Section 26 of the Leasehold Reform Housing and Urban Development Act 1993 ("The Act") the freehold of 9 Gardens Road, Clevedon, Somerset BS21 7QQ be vested in "9 Gardens Road Management Company Limited" in such terms as shall be determined by The Leasehold Valuation Tribunal ("the LVT") as provided by Section 27 of the Act.

As a result of that Order, Cale Palmer, Solicitors, 5 Grove Road, Blackboy Hill, Bristol BS6 6UJ on behalf of 9 Gardens Road Management Company Limited ("the Nominee Purchaser") have applied to this Tribunal to determine the terms of transfer ie. the terms of a Vesting Order which the Court has made under Section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act").

2. Inspection

We attended at the property on 24 June 2004 and inspected parts of the property in the presence of Mrs C A Mackie and her representatives from Cale Palmer, Solicitors. We saw a substantial late Victorian semi detached house understood to have been originally constructed around 1880 and featuring an ornately moulded and castellated front two storey bay. The property was found to be constructed principally of solid stonework walls with Bath stonework features to Quoins and window surrounds under pitched timber roofs covered with natural slating. It would appear that the roof coverings have all been renewed in recent years.

We saw that the exterior of the building has generally been maintained in sound condition although there is evidence of some eroded pointing to the stonework and some erosion to the bath stone notably around the front west facing bay.

We inspected the gardens and patio areas together with the communal entrance hall, providing access to both the ground and first floor flats. We also inspected the interior of the ground floor flat comprising a hallway, large living room, front double bedroom, breakfast room, kitchen, tiny office, bathroom/wc and rear double bedroom. It was not possible to inspect the interior of the first floor flat although the Tribunal members had been provided with a copy of the lease relating to the upper floor flat which included a floor layout plan.

3. The Hearing

At the hearing, at the Clevedon Community Association Hall, which immediately followed the inspection, the Nominee Purchaser was represented by Mr Peter Cale of Cale Palmer, Solicitors. There was of course no representation on behalf of the Respondents.

Mr Cale referred to the problems that had been caused by the absentee Landlords and the knock-on effect on marketability. Mr Cale outlined to the Tribunal members that both leases had been granted for terms of 999 years, both at ground rents of £30 per annum and both leases provided for insurance and repairs. The leaseholders had had no dealings with the absentee freeholders for many years.

Mr Cale referred to the Expert Valuer's Report prepared by PC Emery FRICS on behalf of CJ Hole Surveying dated 26 May 2004. Mr Emery was not called to appear before the Tribunal as an Expert Witness, but Mr Cale referred to information contained in Mr Emery's report; inter alia, Mr Emery's opinion was that in the case of both leases there was a nil value in the Landlords reversionary interest due to the length of the unexpired terms of the leases. Mr Cale also referred to the Expert Valuer's opinion, that in so far as the capitalisation of the ground rents were concerned, a relatively high yield of 20% was applicable. Mr Emery had therefore adopted five years purchase on the total ground rent income of £60 per annum to arrive at a valuation of £300.

When questioned by the members of the Tribunal, Mr Cale stated that Mr Emery's reasoning was detailed in the letters and in his submission the figure of £300 was fair and his clients would stand by this figure. No comparable evidence had however been cited in Mr Emery's reports.

When questioned by the Tribunal, Mrs Mackie stated that the ground rent for her flat had not been paid for ten years and had also not been demanded.

With regard to the maintenance of the building, there were no essential repairs pending, no leaks or no evidence of damp penetration. Mrs Mackie stated that Mr Hulme had carried out the conversion works to the property around 1982. Extensive efforts had been made to trace him over the past ten years. She had visited all known addresses and understood that Mr Hulme was a Certified Accountant. Mrs Mackie confirmed to the Tribunal that, to the best of her knowledge, Mr & Mrs Hulme had never had any interest in any adjoining property. With regard to the Perpetual Rent Charge of £7 per annum, Mrs Mackie confirmed that she had paid the rent charge in full to Shenstone Properties for the past fifteen years. Each year Shenstone had offered them the opportunity to buy out the rent charge for £100. Mrs Mackie was unable to provide the Tribunal with any comparable evidence for other ground rent investments that had been sold in the locality.

4. The Law

The main provisions affecting our jurisdiction in the case of a vesting order are to be found in Section 27(3) and Section 27(5) of the 1993 Act, as follows:

Where any interests are to be vested in any person or persons by virtue of a vesting order under section 26(1), then on his or their paying into court the appropriate sum in respect of each of those interests there shall be executed by such person as the court may designate a conveyance which-

- a. is in a form approved by a leasehold valuation tribunal, and*
- b. contains such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 34 and Schedule 7;*

and that conveyance shall be effective to vest in the person or persons to whom the conveyance is made the interests expressed to be conveyed, subject to and in accordance with the term of the conveyance.

- 1. The appropriate sum which in accordance with subsection (3) is to be paid into court in respect of any interest is the aggregate of-*
 - a. such amount as may be determined by a leasehold valuation tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and*
 - b. any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).*

It will be seen that this tribunal therefore has to determine “the appropriate sum”, which is to be paid into court.

5. Consideration

Following the hearing, the Tribunal retired to consider the matter. First of all, it worked through the valuation report prepared by Mr P C Emery. This had to be prepared in accordance with Schedule 6 of the Act and set out the details of the length of the terms remaining on the two leases. The two remaining terms well exceeded 80 years. Each lease reserved ground rents fixed for the duration of the terms at £30 per annum. Each lease referred to a perpetual rentcharge of £7 per annum payable on “the Mansion”.

The valuation had to be divided into three parts namely the value of the freeholders present interest, the freeholders share of marriage value and any compensation payable to the freeholder. With regard to the valuation of the ground rent income, Mr Emery was of the opinion that a relatively high yield in present interest rate terms of 20% is applicable and in arriving at his valuation for the income received had adopted five years purchase.

In respect of the reversionary value Mr Emery assessed this at nil bearing in mind the unexpired term and thought that there would be a negligible marriage value. Regarding the other issues to be addressed, Mr Emery did not think that these applied in this case.

The Tribunal accepted Mr Emery’s evidence that there should be nil marriage value and no compensation should be payable. With regard to the capitalisation of the ground rents Mr Emery had not, in his calculations made a deduction for the annual payment of a perpetual rent charge in respect of the whole property reducing the annual income for the whole to £53.

Mr Emery had stated in his letter of 26 May 2004 that the Landlords, under the fourth Schedule of the lease, could claim other expenses incurred in the maintenance and management of the property. Clause 5 of the fourth Schedule refers to all other expenses incurred by the lessor in and about the maintenance and proper and convenient management and running of the Mansion.

Clause 6 refers to the fees and disbursements paid to any Managing Agents appointed by the lessor in respect of the Mansion provided that so long as the lessor does not employ Managing Agents they shall be entitled to add the sum of 10% to any of the aforementioned items for administration.

Clause 7 refers to the situation that when any repairs, redecorations or renewals are carried out by the lessor, he shall be entitled to charge as the expenses or costs thereof, there normal charges (including profit) in respect of such work.

The Tribunal have also noted that under Clause 3(f) of the lease, additional charges may be levied by the lessors in respect of transfer of the lease, mortgages or legal charges.

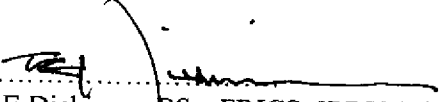
Applying their own knowledge and experience the Tribunal members considered that there was still a ready market for ground rent investments, particularly where the lessor could claim expenses under the terms of the leases. The Tribunal therefore rejected Mr Emery’s evidence that a relatively high yield in present interest rate terms of 20% would be applicable. Again, applying their own knowledge and experience the Tribunal members determined that a yield of 9% would be the most appropriate.

The Tribunal agreed that there would be no marriage value as the two leases had terms with over 80 years to run. There would be no compensation payable as there appeared to be no circumstances nor any evidence before the Tribunal which would justify any compensation being paid.

6. Decision and Order

With no marriage value or compensation payable this Tribunal finds that the valuation calculations relate purely to the capitalisation of net income and have decided upon the following valuation format:

Ground rents reserved	£60 per annum
Less:	
Perpetual annual rent charge	£ 7 per annum
Net annual income	£53
Y.P. 978 years at 9%	<u>11.1111</u>
	£588.89 but say £590


T E Dickinson BSc, FRICS, IRRV (Chairman)

A member of the Southern Rent Assessment Panel and
Leasehold Valuation Tribunal appointed by
The Lord Chancellor

7 July 2004