

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

CAM/26UD/OAF/2004/0015

PROPERTY; White Farm, Long Lane, Aston End, Stevenage, Herts SG2 7HF

Parties:

**John William Conway Rawlings and
Victoria Joan Brooker**

Applicants

Respondent unknown

Attendances:

For the Applicants

**Mr J W C Rawlings and Mrs V J Brooker
Mr C D Bayles MA FRICS FAAV DMS (Agric)
Mr M Addrison Solicitor**

Tribunal:

**Mr A A Dutton Chair
Mr R Marshall FRICS FAAV
Miss M Krisko BSc(Est Man) FRICS**

Date of Court Order; 12th May 2004

Date of hearing 15th February 2005

Date of decision 28th February 2005

A BACKGROUND

1. This application by Mr John William Conway Rawlings and his sister Victoria Joan Brooker was referred to us by the Hitchen County Court in May 2004. The history leading to this referral to us under section 27 Leasehold Reform Act 1967 ("the Act") is briefly as follows.
2. On 1st March 1961 the late George William Rawlings acquired the leasehold interest in White's Farm, Aston End, Hertfordshire, the property being held under the terms of a lease granted in the sixth year of the reign of Elizabeth 1st (1564) for 500 years at a peppercorn rent. The said lease is missing, as is the landlord, hence the application to the Court.
3. The property is currently held by the applicants as executors for their father, the late George William Rawlings, who had died on 15th March 2003, probate to his estate having been granted on 2nd October 2003.
4. The application to the Court appears to have been made sometime in March/April 2004 for there is a notice of a directions hearing dated 30th April 2004.
5. The Order of the Court dated 12th May 2004 required the Applicants to lodge a application with the Tribunal for the "determination of any rent due and the price payable in accordance with sections 9 and 27(5) of the Leasehold Reform Act 1967".
6. The Order appears to contain certain typographical errors as it requires the application to be lodged with the Tribunal "no later than 30th June 2003", which plainly cannot be correct
7. The application to the Tribunal is dated 3rd December 2004 and amongst other matters indicates the appropriate price for the freehold of the house and premises sought of £2,440.00

B INSPECTION

8. A description of the property is contained in a report prepared for the Applicants by Mr C D Bayles. It is a grade II listed property dating from the 1700's and was apparently two cottages. It is constructed in tile, flint, render, plaster and timber stud work. There is a single storey extension. The accommodation on the ground floor comprises a kitchen/dining area/ living area, two further living rooms and a hallway. On the first floor are four bedrooms, although one has to be passed through to reach another and a shower room. In parts on the first floor there is restricted head height. There is partial central heating and all mains services, including gas. Externally there are a number of outhouses and farm buildings in varying degrees of repair.
9. The application to the Tribunal indicated that three parcels of land were to be included in the conveyance to the Applicants. The first parcel included the house and garden land appurtenant thereto, including the yard and buildings surrounding same to the front of the property and abutting the road. In addition a workshop and log store lying just to the north of the first parcel of land was included, as was thirdly, an orchard, separated from the first and second parcel of land by a driveway and farm track which served fields to the rear and the orchard. The three parcels are shown on the plan annexed hereto respectively edged in red, coloured blue and edged in green.
10. The lease referred to above also demised several acres of arable and pasture land which were not the subject of this application.

C EVIDENCE

11. Mr Bayles had produced a report which was given to us at the hearing. The valuation of the premises was conducted on the basis that section 9(1) of the Act applied. After describing the property he set out comparable properties at Magpie Farm, Cottered; Rainbow's Farm in Rushden; the Cuckoo at Ashwell; Hummerstons, also at Cottered and finally Meadowcroft, likewise at Cottered.

Taking these properties as comparables he suggested that the market value for the freehold of the first parcel of land, that is to say the farmhouse and garden land was £400,000. For the additional workshop and log store he suggested a rental value of £700, although no rent was actually received and for the orchard a value of £4580, based on a price per acre of £20,000.

12. As to the capitalisation of the rent to be assessed under section 15 of the Act he took 33% of the site value and applied a deferment rate of 7% over 60 years. This gave a figure of £2279.93, rounded up to £2300 for the house and land, a further £56.94 for the workshop and log store and an additional £79.00 for the orchard. The grand total was, after rounding up, £2,440.00.
13. Under questioning from the Tribunal he indicated that in his view the addition of the orchard was "a natural and usual adjunct to a rural property of this sort". Mr Rawlings indicated that it did not form part of the farm and that its exclusion would not affect their use and enjoyment of the farm house and garden land. We were told that Counsel had indicated that the workshop, log store and orchard, were from the description given, part of the premises and thus to be included in the whole.
14. We were told that the first parcel of land comprising the farmhouse and garden land had the benefit of services which did not cross other property, coming straight from the roadway.
15. We were told that there was little or no likelihood of development. Indeed the applicants had made an application for planning for the purposes of building a bungalow where some pig sty's were presently sited for their mother but this had been refused.

D THE LAW

16. Section 9.1 of the Act states *"the price payable for a house and premises on a conveyance under s8 above shall be the amount which at the relevant time the*

house and premises if sold on the open market by a willing seller, with a tenant and members of the family not buying or seeking to buy, might be expected to realise on the basis of certain assumptions" which we do not need to set out in detail in this Decision. Perhaps the most important element of the law in this case relates to the extent of house and premises. Section 1(3) of the Act states *"this part of this Act shall not confer on the tenant of the house any right by reference to his being tenant of it at any time when (a) it is let to him with other land or premises to which it is ancillary or (b) it is comprised in (i) an agricultural holding within the meaning of the Agricultural Holdings Act 1986 held under a tenancy in relation to which that Act applies or (ii) holding held under a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995."* The conveyance and Assignment to the late Mr Rawlings do not indicate any such matters and it would not appear that the dwelling was ancillary to other land or premises but rather the other way round.

17. Section 2 of the Act deals with the meaning of house and house and premises. Sub-section (3) states as follows. *"subject to the following provisions of this section where in relation to a house let to a tenant reference is made in this part of this Act to the house and premises the reference to premises should be taken as referring to any garage, outhouse, garden yard and appurtenances which at the relevant time are let to him with the house"*.
18. There have been several cases determining what may constitute house and premises and we will deal with those in more detail in the Decision section.

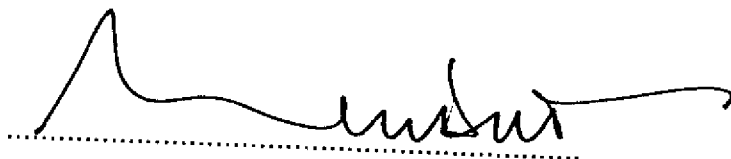
E. DECISION

19. The first issue for us to clarify is the question of the extent of the land which is to be the subject of the enfranchisement. Mr Bayles presented his valuation on the basis of three parcels of land. The first was the farmhouse with garden land attached. The second was the farmhouse with the workshop and log store and the third was the farmhouse, workshop, log store and the orchard land all parcels being shown on the plan annexed hereto. The definition of garage and

outhouse cause us no concern in this case. The question to be considered is the premises which may be classified as appurtenances. We quote from the learned authors of Hague Leasehold Enfranchisement Fourth Edition at page 53 paragraph 2-16. *"Appurtenances. These are not confined to incorporeal hereditaments but extend to driveways, passageways, forecourts and similar pieces of land as well as a lake or part of a river or stream. The expression would also include most garages, outhouses, gardens and yards of the kinds discussed above". However to constitute an appurtenance, any such premises must be within the curtilage of the house. It is not sufficient that it was included in the same lease as the house, or that it is advantageous or convenient or even (it appears) necessary for the full enjoyment of the house. The premises and the house must together constitute an integral whole and the test appears to be whether a conveyance of the house by its name alone would pass the piece of land or premises. A rough pasture fenced off from the formal garden of the house is held not to be an appurtenance and it is considered that similarly neither the surrounding parkland nor the tree screening of a strip of land of mansion house is an appurtenance. A house on the edge college grounds, some distance from the college buildings was not within the curtilage of such buildings."*

20. We are satisfied that the appropriate extent of the property to be included within this application is that which is edged in red on the plan annexed hereto. That is to say the property itself, the yard, the buildings to the front, the garden and a vegetable garden to the rear. We do not find that the workshop and log store are appurtenances which should be included with in the demise and certainly the orchard that is separated from the house by a driveway and agricultural buildings, is not, in our finding, an appurtenance which should be conveyed under the Act. Accordingly we have limited our value to the area of land shown edged red on the plan annexed hereto which is the area which we order should be the subject of the vesting deed.

21. We turn now to the question of valuation. Mr Bayles had helpfully provided a number of comparable properties which we found of assistance. We have concluded that the standing house value for the property with land should be £400,000.00. We are content with Mr Bayles' site value at 33% and his capitalisation figure of 7%. The only area where we differ slightly is in respect to the value of the Landlord's ultimate reversion. No allowance was made for this by Mr Bayles. We are however satisfied that a property having been built in the 1700's will have value at the end of the 50 year extension. We have therefore allowed for a section 15 modern ground rent for 50 years following from the end of the lease with a subsequent reversion to the landlord. This calculation uses the same percentage figure as Mr Bayles's and results in a valuation of £300 more than his submission for the area of land edged in red. Our conclusion is that the enfranchisement price which is to be paid into court is £2,600.00 as is shown on the attached valuation.
22. We have invited the solicitors for the Applicants to resubmit the draft conveyance to us. It seems to us in the light of the Decision in *Re Robertsons Application [1968 R. number 6]* that there is some doubt as to whether the easements and covenants which are included in the draft conveyance can in fact be so included. We therefore requested that the Applicants solicitors resubmit a draft to us for consideration within the next 14 days. To ensure this matter does not become stale we include with this Decision an Order that if the conveyance is not with us within 28 days of the date of the Decision, the application shall be deemed to be withdrawn. We would welcome any submissions that solicitors acting on behalf of the Applicants may wish to make with regard to the terms of the conveyance when they resubmit the draft for our consideration.



Chairman

Dated... 28 February 2005

LEASEHOLD VALUATION TRIBUNAL
VALUATION FOR WHITE FARM LONG LANE ASTON END STEVENAGE

Term

Present ground rent for 60 years

Peppercorn

Reversion

Standing House value	£400,000.00	
Section 15 site value 33%	£132,000.00	
Modern Ground rent 7%	£9,240.00	
Modern ground rent £9,240.00 per annum		
YP for 50 years @ 7%	13.8007	
PV £1 60 years @ 7%	0.0172573	£2,200.00
Reversion to standing		
house value	£400,000.00	
PV £1 110 years @ 7%	0.001	<u>£400.00</u>
Enfranchisement price to be paid into Court		<u>£2,600.00</u>



TITLE

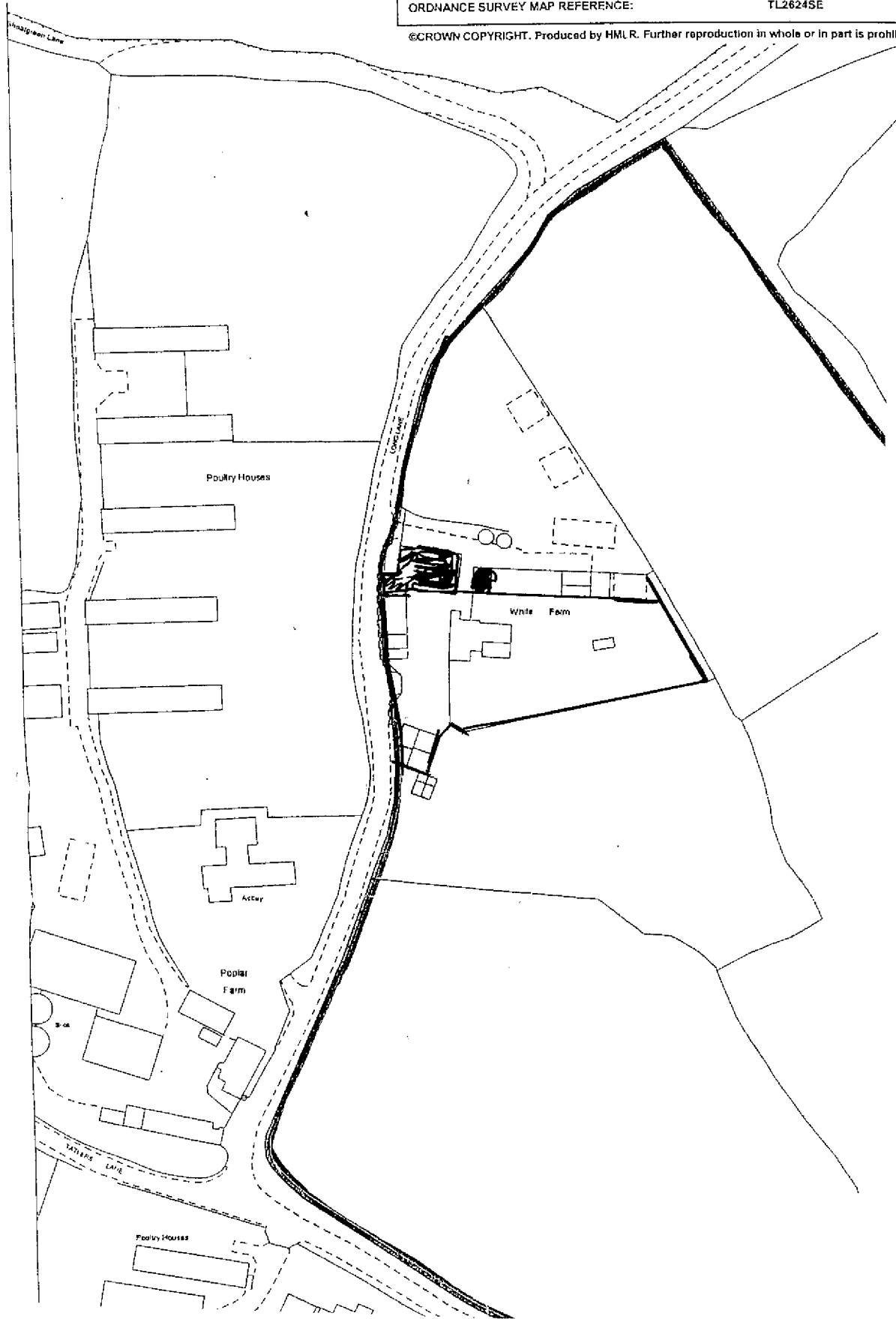
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ORDNANCE SURVEY MAP REFERENCE:

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