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The law as stated during this webinar is as at **23 February 2016**



On the House -1967 Act case law (valuation)

Nicholas Kissen
23 February 2016

Leasehold Reform Act 1967



- Gives tenant of a leasehold house a right to acquire on fair terms either the freehold or an extended lease of the house in certain circumstances
- This webinar deals with important case law on determining the purchase price

The topics we will cover



- A reminder of the valuation bases
- Site value
- The Haresign addition

The topics we will cover



- Deferment rates
- Improvements

The valuation bases



SECTION 9 (1)

SECTION 9 (1A)

SECTION 9 (1C)

Section 9 (1) valuation



- Open market value subject to following assumptions-
 - Lessee and family members are not buying (marriage value excluded)
 - Freehold sold subject to lease



Section 9 (1) valuation



- No-Act world
- Lease assumed to have been extended



Section 9 (1) valuation



- Site value
- Most favourable basis for **leaseholder**

Section 9 (1A) valuation



- Open market value subject to the following assumptions
 - Lessee and family members are buying
- Freehold sold subject to lease



Section 9 (1A) valuation



- No-Act world
- Lease assumed not to have been extended even if it has been
- Lessee not obliged to repair

Section 9 (1A) valuation



- Price reduced to reflect value of any improvements undertaken by leaseholder
- Security of tenure



Section 9 (1C) valuation



- Similar assumptions to Section 9 (1A) valuation
- Can claim for "other loss"
 - Section 9A

Section (9)(1) - three stage approach



- Capitalised ground rent to termination
- Capitalised S15 rent for 50 years after termination
- Reversion value after 50 year extension

Rent capitalisation factors



- *Nicholson v Goff* [2007] 1 EGLR 83
- Lease length
- Security of recovery
- Size of ground rent
- Any provision for review
- The nature of any such review

Section 15 (2) (a) of the 1967 Act



- *the rent shall be a ground rent in the sense that it shall represent the letting value of the site (without including anything for the value of buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy, other than uses which by the terms of the new tenancy are not permitted or are permitted only with the landlord's consent;*

Section 15 (2) (b) of the 1967 Act



- *the letting value for this purpose shall be in the first instance the letting value at the date from which the rent based on it is to commence, but as from the expiration of twenty-five years from the original term date the letting value at the expiration of those twenty-five years shall be substituted, if the landlord so requires, and a revised rent become payable accordingly*

Reviews to “modern ground rent”



- *Plotnek v Govan* [2014] UKUT 0332 (LC)
- *Clarise Properties Ltd. v Rees* [2014] UKUT 0394 (LC)
 - Listed for hearing in Court of Appeal in October 2016

Site value



- To calculate S15 rent
- Cleared site approach
- Standing house approach

Cleared site approach



- *Farr v Millersons Investments Limited* 22 P.&C.R. 1055
- *Tsiapkinis v Earl Cadogan* LRA/59/2006

Standing house approach



- Entirety value of site
- Site value proportion
- *Tsiapkinis v Earl Cadogan LRA/59/2006*

Site value proportion



- *Farr v Millersons Investments Limited 22 P.&C.R. 1055*
- *Speedwell Estates Limited v Harris [1990] 2 E.G.L.R. 211 LT*

The Haresign addition



- The ultimate reversion
- *Haresign v St. John the Baptist's College, Oxford (1980) 255 E.G.711*



Haresign upheld



- *Re Clarise Properties Limited's Appeal [2012] UKUT 4 (LC)*

Section 9 (1) (A)



- Introduced by the Housing Act 1974
- Higher value properties
- Marriage value
 - Remember eighty year rule
- Improvements

Section 9 (1) (A) - the approach



- Capitalise value of existing ground rent
- Value reversion to vacant possession deferred over unexpired term
- Freeholder's share of marriage value

Deferment rates - 20 years plus



- *Cadogan v Sportelli*, [2007] EWCA Civ 1042
- PCL decision
- 4.75% for houses
- Components of rate
- Starting point

Sportelli-components of rate



- $DR = RFR - RGR + RP = 4.75\%$ (houses)
- Risk-free rate
 - 2.25%
- Real growth rate
 - 2%
- Risk premium
 - 4.5%

Departing from Sportelli



- *Zuckerman v Trustees of the Calthorpe Estates* [2009] 3 E.G.L.R. 165
- Lower growth rate compared to PCL
 - 0.5%
- Analysis of evidence

Deferment rates -10-20 years



- *Cadogan Square Properties Limited v Cadogan* [2010] UKUT 427(LC)
- Look at property cycle at date of valuation



Deferment rates - minus 5 years



- *Trustees of the Sloane Stanley Estate v Carey-Morgan* [2011] 1 UKUT 415 (LC)
- Net rental yield
- End allowance

Deferment rates - status of non-guidance Upper Tribunal (LC) decisions



- *Sinclair Gardens Investments (Kensington) Limited v Ray* [2015] EWCA Civ 1247
- Previous decisions of the Upper Tribunal as admissible evidence of what was decided
- Decide what weight to give it

Improvements - S9 (1A) (d) of the 1967 Act



• on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;

Improvements



- *Rosen v Trustees of the Camden Charities* 2 All E.R. 399
- *Shalson v Free Grammar School of John Lyon* [2003] UKHL 32
- *Fattal v Free Grammar School of John Lyon* [2004] EWCA Civ 1530

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Questions?

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Next webinar: 17 March 2016



- The lost landlord – cures for a common problem
 - What practical steps you can take to locate the landlord
 - The relevant court and tribunal procedure
 - What to do if there are multiple landlords and one or more is missing
 - What to do if the landlord re-appears
