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NORTH WESTERN RENT ASSESSMENT COMMITTEE

Leasehold Reform Act 1967, Housing Act 1980  
and Leasehold Reform Housing and Urban Development Act 1993

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
in the case of

MR GEORGE & MRS JUNE MORDAUNT  
LEASEHOLDER/APPLICANT

and

E.B. CAPLIN & A.J WIEDER      FREEHOLDER

RE: 18, COLINMANDER GARDENS, HOLBORN HILL, LIVERPOOL  
ROAD, AUGHTON, ORMSKIRK

Application dated 1<sup>st</sup> February 2000

Heard at: Cross Hall Community Association, Wigan Road, Ormskirk

on the 28<sup>th</sup> March 2000

Appearances: Mr George and Mrs June Mordaunt (in person)

Members of the Leasehold Valuation Tribunal:

Mrs D Artis LL.B LL.M (Chairman)

Mrs J.A. Turner FRICS

Mrs J.P. McDougall LL.B JP

LVT51

1. This document records the decision, with reasons, of the Tribunal following the application to determine the price payable for the freehold estate in the house and premises above-mentioned in accordance with the provisions of the Leasehold Reform Act 1967 as amended.
2. Following a request from Mr and Mrs Mordaunt to purchase the freehold, the freeholder, Caplin and Wieder, replied that they were prepared to sell to the leaseholder, for the sum of £499, plus legal expenses. Mr and Mrs Mordaunt offered the sum of £80.
3. Supporting their offer Mr and Mrs Mordaunt referred to the adjoining property, number 20 Colinmander Gardens the freehold of which had been bought for £60 about 15 years ago. The freeholder cited numbers 4 and 8 both of Colinmander Gardens which had been sold for £499 and 119, Holborn Hill which had been sold for £680. The Tribunal was informed that all the leases similarly provide for all buildings 'to be insured against fire through the Agency of Messieurs Maxwells with such company as the lessor requires in a sum equal to at least three fourths of the full value; for the lessor's written consent to be obtained of any alterations to the exterior of the property and for the payment of a small fee (10s 6d) on assignment of the lease. These covenants are to be found on pages 5, 6 and 8 of the said lease.
4. In a letter, dated 10 February 2000, the freeholder explained that the price at which they were prepared to sell, had been calculated by taking 14 years purchase of ground rent and 20 times the commission on the insurance, which is claimed to be £35.05 per annum, resulting in a figure of £757 per annum which, after taking into consideration the saving of administrative costs, was reduced to £499.
5. The Tribunal inspected the subject property on the morning of 28 March 2000 in the presence of Mr and Mrs Mordaunt. The property is a semi-detached house constructed in 1938 of brick with a tile roof. It has the benefit of front and rear gardens with a shared drive leading to a detached garage. It affords the following accommodation: hall, lounge, dining room and kitchen on the ground floor, three bedrooms and bathroom/WC on the first floor. It is situated in a good residential area, on a small estate of similar properties built at the same time as the subject property, facing an open area maintained by the council. The Tribunal also viewed externally the comparable properties referred to above in paragraph 3. All the properties in Colinmander Gardens are similar and the property in Holborn Hill is now a Post Office.
6. Following the inspection a hearing was held at Cross Hall Community Association. Mr and Mrs Mordaunt appeared in person. The freeholder was not present nor represented. It was confirmed that the original lease, dated 22 November 1938, was for 999 years and assigned to them on 19 May 1958 at a ground rent of £4 per annum and subject to the covenants noted above in paragraph 3.

- 7 Mr and Mrs Mordaunt stated that the insurance had been put through the lessor's Agent from 1953 until 1973. They submitted that the commission of £35.05 per annum was high in the light of insurance costs and provided details of their current insurance premiums (which covered both building and contents).
- 8 In coming to their decision the Tribunal took their sole function to be that of determining a price in accordance with section 9 of the Leasehold Reform Act 1967, as amended viz.: **“the amount which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family who reside in the house not buying or seeking to buy) might be expected to realise”**.
- 9 Certain statutory assumptions must be made, but the only one of significance in this case was that in effect the freehold was being sold subject to the existing lease: that is with its 999 year term extendable for a further 50 years (section 9(1)(a)). A further consideration is the freeholder's loss of commission obtained by requiring the leaseholder to insure for fire via his Agent.
- 10 In discharging this function of determining the price the Tribunal (following the earlier tribunal decisions in Yates v Bridgewater Estates Ltd (1982) 261 EG 1001 and Williams v Walsh and Others (1983) 268 EG 915 took into account the following:
  - (1) that there was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties;
  - (2) that it would not be consistent with the verbal definition of price in section 9(1) of the 1967 Act or with the circumstances of the case to apply algebraic formulae prescribed by Parliament for the redemption of rentcharges (Rent Charges Act 1977, section 10);
  - (3) that they were entitled to rely on their general knowledge and experience whatever the evidence or representations (or the absence of such) submitted by the parties;
  - (4) that the statutory wording envisaged the sale on its own as one lot, i.e. not as included in a parcel of ground rents;
  - (5) that the possibility of bids from sitting tenant which might push up the open market price had been expressly excluded by the 1967 Act;
  - (6) that the seller (although not the buyer) had been statutorily described as “willing” so that any policy or practice of the landlord restricting sales had to be disregarded;
  - (7) that the resultant loss of income to the landlord/seller was not comprehended by the statutory formulae for determining the price payable excepting insofar as this was reflected in the normal valuation/market process;
  - (8) that the hypothetical and potential buyers in the market would all have in mind their own conveyancing costs (although not also those of the seller under section

important the length of the term and the amount of ground rent under the lease, and

- (9) that the costs of collection of the ground rent, which might involve Agents, the giving receipts and proceedings for the recovery of arrears, must be taken into account as a yearly matter strictly in accordance with the terms of the lease notwithstanding any practice of less frequent payment.
- (10) In the present case there were 937 years unexpired. In those circumstances the Tribunal took the view (as did the Lands Tribunal in the case of Janering v English Property Corporation Ltd and Nessdale Ltd (1977) 242 EG 388) that a reversion of more than 900 years would not be of any significance and (as in the above case) the right to receive a ground rent of £4 per annum, with no prospect of capital appreciation and with the only addition of requiring the leaseholder to insure all buildings against fire for a minimum of three-fourths of the value, would be of extremely limited attraction. The other clauses in the lease were also regarded as of minimal value as there is no provision entitling the lessor to require a fee for the granting of consent to external alterations to the property and the fee on assignment is also minimal. The comparable prices referred to by the lessor, being out of court settlements, were treated with caution because of the tenant's anxiety to settle, and lack of advice, and because the prices agreed would include the tenant's bid as an element, see Delaforce v Evans (1970) 215 EG 31. As regards the lessee's comparable this was also so treated, as not enough information was available to the Tribunal regarding the history of the sale.
- (11) The Tribunal concluded they would rely on their own knowledge, experience and judgement that the maximum justifiable in the present case was a purchase price of £90. Of that £40 being calculated on the basis of 10 years purchase and £50 to reflect loss of income arising under the covenants noted above. This amount is exclusive of permitted costs.

By section 142 and Schedule 22 Part 1 paragraph 2 to the Housing Act 1988, an appeal to the Lands Tribunal may be made by any person who:

- (a) appeared before or was represented before the Tribunal, and
- (b) is dissatisfied with the Tribunal's decision

Such appeal must be made within 28 days of the issue of reasons (Lands Tribunal Act 1949 section 6(3) and the Lands Tribunal Rules 1975 as amended)



Denise Artis  
Chair of the Leasehold Valuation Tribunal  
Date: 17 April 2000