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LVT 9

Our Ref: 2318c

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr J.J. Dowling & Mrs M.W. Dowling
Respondent: Allton Estates Ltd
Re: 5 Dalkeith Road, Sutton Coldfield, Birmingham, B73 6PW
Date of Tenants Notice: 01st October 2001
RV as at 1.4.73: £292.00
Application dated: 21st October 2001
Heard at: The Panel Office
On: 05th April 2002

APPEARANCES:

For the Tenant: Mr A.W. Brunt FRICS
For the Landlord: Not Represented

Members of the Leasehold Valuation Tribunal:

Mr T.F. Cooper BSc FRICS FCI Arb (Chairman)
Mr D.R. Salter LLB
Mrs N. Jukes

Date Of Determination

03 MAY 2002

LVT 96/5

**LEASEHOLD VALUATION TRIBUNAL
OF THE
WEST MIDLAND RENT ASSESSMENT PANEL**

Ref: M/LRC382

DECISION OF LEASEHOLD VALUATION TRIBUNAL

*ON AN APPLICATION UNDER SECTION 21(1) (ba)
OF THE LEASEHOLD REFORM ACT 1967*

Applicant: Mr J.J. Dowling & Mrs M.W. Dowling

Respondent: Allton Estates Ltd

Re: 5 Dalkeith Road, Sutton Coldfield, B73 6PW

Date of Tenants Notice: 01st October 2001

Application to Tribunal dated: 12th February 2002

Heard at: The Panel Office

On: 05th April 2002

Appearances:

For the Applicant: Mr A.W. Brunt FRICS

For the Respondent: Not Represented

Members of the Leasehold Valuation Tribunal:

Mr T.F. Cooper BSc FRICS FCI Arb (Chairman)
Mr D.R. Salter LLB
Mrs N. Jukes

Date of Tribunals decision:

03 MAY 2002

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON
THE PRICE PAYABLE ON ENFRANCHISEMENT AND
THE REASONABLE COSTS PAYABLE
IN THE CASE OF**

**DOWLING
V
ALLTON ESTATES LIMITED**

RE: 5, DALKEITH ROAD, SUTTON COLDFIELD B73 6PW

Background: Mr J J Dowling and Mrs M W Dowling are the tenants (the 'Tenant') of the dwelling house and premises at the above property (the 'Property'). The **Freeholder** is Allton Estates Limited. By a notice dated 1 October 2001 and posted 5 October 2001 (the 'Date') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the 'Act'). By an application dated 21 October 2001 the Tenant applies to us to determine the price payable on the acquisition of the freehold of the Property under sec 9 of the Act. By an application dated 12 February 2002 the Tenant also applies to us for a determination of the Freeholder's costs. We inspected the property on 5 April 2002.

The Tenant holds the Property by a lease (the 'Lease') for a term of 99 years from 24 June 1957 at a ground rent of £18.50 pa.

The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 55 years. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.

The Property comprises a semi-detached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes:- on the ground floor - hall, living room, conservatory, kitchen, utility with wc off; on the first floor - three bedrooms, bathroom with wc. There is an attached single garage. The site frontage is 9.83m and the width widens at the rear. The total site area is 720m².

A hearing was held on 5 April 2002. Mr A W Brunt FRICS appeared for the applicant Tenant; the Freeholder did not appear and was not represented but, through its solicitor, has provided an 'acceptable price'.

[Continued]

Tenant's Valuation: By Mr Brunt £1,4000 - more specifically:

The term:

Ground rent	£18.50 pa	
YP 55 years at 7%	<u>13.94</u>	£257.89

The reversion (by the Standing House method):

Entirety value	£135,000	
Site proportion at 35% of entirety value	£47,250	
Section 15 modern ground rent at 7% of £47,250	£3,307.50 pa	
YP in perpetuity deferred 55 years at 7%	<u>0.346</u>	
		<u>£1,144.40</u>
	Price	£1,402.29
	Say	£1,400.00

Freeholder's price: The Freeholder's solicitor has indicated a willingness to sell the freehold at £1,950 plus costs.

Submissions and evidence: Mr Brunt derives the price by the standing house method of valuation.

He says that there is a dearth of helpful comparable evidence to derive the entirety value but there is a similar house currently for sale at £135,000 and his information is that a similar house in Dalkeith Road recently sold at close to the asking price of £139,950. He points out that this evidence is after the Date.

He takes into account the principles of the entirety value being the value of the Property in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful.

He says that, as the Property is in a good area and it has a level site, 35% of the entirety value is the appropriate site apportionment.

Valuation of the Tribunal: We do not find the evidence of an 'acceptable price', on behalf of the Freeholder, is persuasive evidence. The evidence is not from a valuation expert witness and we find that it is not consistent with what is more inherently likely, by valuing the Freeholder's interest by the standing house method which we find is the best method in this case.

Applying the generally accepted valuation principles to the standing house method of valuation to derive the price for the Tenant to acquire the freehold on fair terms we find and hold that Mr Brunt's valuation - with £135,000 as the entirety value, 35% site apportionment and a 7% yield - is consistent with those principles and accept his valuation at £1,400.

Conclusion on the price payable: We determine that the sum to be paid by the Tenant for the acquisition of the freehold interest in accordance with section 9 of the Leasehold Reform Act 1967, as amended, is £1,400 (One thousand four hundred pounds) plus the Freeholder's reasonable costs in accordance with section 9(4) of the Leasehold Reform Act 1967 and Schedule 22, Part I, para. 5. of the Housing Act 1980, the amount of which we determine below.

OUR DETERMINATION OF COSTS

Background: Section 9(4) of the Act contains the provisions for the Freeholder's recovery of specified reasonable costs.

Section 9(4) of the Act provides as follows:

'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:

- (a) any investigation by the landlord of that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.'

Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

'The costs which a person may be required [to bear] under section 9(4) . . . of the 1967 Act . . . do not include costs incurred by a landlord in a connection with a reference to a leasehold valuation tribunal.'

Vat: All figures we refer to are exclusive of vat. We have no jurisdiction to determine conclusively vat matters as they are a matter for HM Customs and Excise. Therefore we make our determination exclusive of vat, save that vat shall be added at the appropriate rate if applicable.

Submissions and evidence generally: Mr Brunt, for the Tenant, explained his representations at the hearing. The Freeholder has made no written representations, other than a reference, by its solicitor, to £250 plus vat as its solicitor's costs as part of the 'acceptable price' to which we have referred in our determination of the price payable above.

The substantive issues on costs:

(i) Section 9(4)(a) costs: Mr Brunt, for the Tenant, says that we have no evidence that any of these specified costs, not incurred in connection with this reference to us, have been incurred by the Freeholder. We accept Mr Brunt's submission and find that no section 9(4)(a) costs have been incurred.

(ii) Section 9(4)(b)(c) and (d) costs: After a helpful oral exchange on the meaning and effect of these three subsections we hold and find that, in the case before us, (b), (c) and (d) costs may not be distinguishable and may be incurred by Freeholder after the date of this determination. We, therefore, treat them as one item and determine a maximum amount that is recoverable from the Tenant. Mr Brunt says that, in previous cases before the LVT, the generally accepted level of these costs is about

£200 (plus vat) when the freehold title is registered and it is not part of the Freeholder's title of several properties. He says that, currently, a more appropriate figure is £275 plus vat if appropriate.

Mr Brunt refers us to *Acton v Knott* [2002] LRA/34/2001 (LT) in which HH Judge M Rich QC, in an uncontested supplemental decision, found that there should be added a further £150 (plus vat) for future conveyancing work to £354.25 (plus vat) (including £8 disbursement) previously determined, making a total of £504.25 (plus vat) as part of the recoverable section 9(4) legal costs. Mr Brunt says that we should not rely on *Acton* as the case was not contested and the facts in *Acton* should be distinguished from the subject case.

We agree with Mr Brunt that we should not rely on findings of fact in uncontested previous cases as there is an inevitable weakness of any suggested authority. We hold that, in any event, findings of fact are not binding on a subsequent tribunal and should not be regarded as authoritative unless clear consistent guidance has been established (which we find is not the case in *Acton*). We attach no material weight to *Acton*.

We accept Mr Brunt's contention for £275 plus vat, if applicable.

(iii) Section 9(4)(e) costs: Mr Brunt says that we have no evidence that the Freeholder has incurred any such valuation costs. We accept his evidence and find that no valuation costs are recoverable.

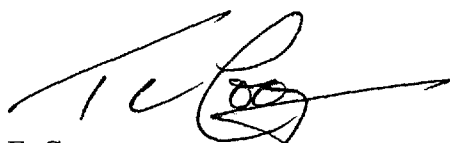
Summary of our determinations on the issues of costs:

- (i) Section 9(4)(a) costs: No costs have been incurred.
- (ii) Section 9(4)(b) to (d) costs: Shall not exceed £275 (plus vat if appropriate), plus the actual disbursements incurred in obtaining the office copy register entries.
- (iii) Section 9(4)(e) costs: No costs have been incurred.

Conclusion on costs: As our final determination on section 9(4) of the Act: no amount is payable by the Tenant to the Freeholder in respect of subsection (4)(a) and (e) costs; and the Tenant shall bear the Freeholder's subsection (4) (b) (c) and (d) costs, as follows:

A total sum not exceeding £275 plus vat, if appropriate, plus the actual disbursements incurred in obtaining the office copy register entries.

Date: **03 MAY 2002**



T F Cooper
CHAIRMAN

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