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LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

M/EH 2460
M/LRC 457

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Miss S Khatun (leaseholder)

Respondent: Bankway Properties Ltd (freeholder)

Subject property: 70 Church Road
Yardley
Birmingham
B25 8XE

Date of tenant's notice: 31 January 2002

Applications to the LVT: 29 May 2002 (price payable)
13 August 2002 (reasonable costs)

Hearing: 13 August 2002

Appearances:

For the applicants: Mr A W Brunt FRICS

For the respondent: Mr P F Gunby MRICS

Members of the LVT: Professor N P Gravells MA
Mr J E Ravenhill FRICS
Mrs M A L McKenzie

Date of determination: 24 SEP 2002

Introduction

- 1 This is a decision on two applications under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Miss Khatun, leaseholder of the house and premises at 70 Church Road, Yardley, Birmingham B25 8XE ("the subject property"). The two applications are, first, under section 21(1)(a) for the determination of the price payable under section 9 for the freehold interest in the subject property; and, secondly, under section 21(1)(ba) for the determination of the reasonable costs payable under section 9(4).
- 2 The applicant leaseholder holds the subject property under an underlease, dated 1 August 1951, for a term of 99 years less six days from 25 March 1905 at a ground rent of £2.75 per year. The underlease was assigned to the applicant on 11 May 1998. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 2 1/8 years.
- 3 The applicant served on the respondent freeholder a tenant's notice dated 31 January 2002, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and she subsequently made the present applications.
- 4 The parties do not dispute and the Tribunal accepts that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.

Subject property

- 5 The subject property is a terraced house located on Church Road in Yardley. The accommodation comprises, on the ground floor, a large reception room, kitchen and bathroom/wc; and, on the first floor, three bedrooms. The property is fully double-glazed. Space heating is by gas-fired central heating with radiators in all rooms. Outside there is a small paved area to the front of the property and a garden to the rear of the property. There is no garage or off-street parking; and parking is not permitted in the immediate vicinity of the property.

Inspection and hearing

- 6 The Tribunal inspected the subject property on 13 August 2002 in the presence of Miss Khatun, the applicant leaseholder, and Mr Brunt.
- 7 The subsequent hearing was attended by Mr Brunt, representing the applicant leaseholder, and by Mr Gunby of B Bailey & Co, representing the respondent freeholder, Bankway Properties Ltd.

Representations of the parties

The price payable for the freehold interest in the subject property

- 8 Mr Brunt, on behalf of the applicant leaseholders, adopted as the basis of valuation under the 1967 Act the standard three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity, deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).
- 9 First, Mr Brunt put in evidence the sale price of £62,000 achieved on the property at 64 Church Road in August 2002. On the basis of that evidence and his general experience, and bearing in mind the upward movement in property prices in the period between the relevant date and August 2001, Mr Brunt submitted that the standing house value of the subject property at the relevant date was £60,000.
- 10 Secondly, Mr Brunt submitted that the appropriate percentage to be applied in calculating the site value on the standing house basis was $33 \frac{1}{3}$, producing a site value of £20,000.
- 11 Thirdly, Mr Brunt submitted that, consistent with the figure applied in the overwhelming majority of decisions of Leasehold Valuation Tribunals in the Midland region and of the Lands Tribunal in appeals from the region, the appropriate percentage yield rate to be applied in capitalising the ground rent at stage (i) of the valuation calculation was 7 per cent; but that, given the short unexpired term of the lease, the appropriate figure to be applied in decapitalising and recapitalising the site value at stages (ii) and (iii) was 6.5 per cent.
- 12 On the basis of those figures, he submitted the following valuation:
- (i) *Capitalisation of existing ground rent to termination of lease*
- Ground rent payable: £2.75 per year
Years Purchase: 2 years @ 7%: 1.8
Capitalised ground rent: £2.75 x 1.8 = £4.95
- (ii) *Modern ground rent*
- Standing house value of subject property: £60,000
Percentage attributable to site: $33 \frac{1}{3}$ %: £20,000
Annual equivalent @ 6.5%: £1300
- (iii) *Capitalisation of modern ground rent*
- Modern ground rent (above): £1300
Years Purchase at 6.5% in perpetuity deferred 2 years: 14.446
Capitalised modern ground rent: £1300 x 14.446 = £18,780

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £18,785.

It should be noted that the factor applied in stage (iii) of the calculation (14.446) appears to be incorrect. The correct figure taken from Parry's Valuation Tables is 13.563992, which, when applied to Mr Brunt's figure of £1300 for the modern ground rent, would produce a figure for the capitalised modern ground rent of £17633.19 and a final figure for the price payable of £17,638.14.

13 Mr Gunby, on behalf of the respondent freeholder, submitted a calculation that differed from Mr Brunt in four respects. He submitted:

- that, following the decision in *Haresign v St John the Baptist's College, Oxford* (1980) 255 EG 711, an additional value should be attributed to the freehold reversion over and above the site value and that the basis of calculation for the capitalisation of the site value should be adjusted accordingly;
- that the standing house value of the subject property at the relevant date was £70,000;
- that the appropriate percentage attributable to the site is 40 per cent;
- that the appropriate percentage yield rate to be applied at all stages of the calculation is 7 per cent.

14 First, Mr Gunby argued that the shortness of the unexpired term of the lease was sufficient in itself to support the inclusion of the "*Haresign* addition".

15 Secondly, Mr Gunby put in evidence the particulars and sale prices achieved in respect of a number of comparable properties in the vicinity of the subject property. He also put in evidence the views of various local estate agents as to the price of the subject property.

16 Thirdly, in relation to the percentage attributable to the site, Mr Gunby argued that the figure of 40 per cent reflected the proximity of the subject property to the centre of Birmingham.

17 Mr Gunby did not expand on his adoption of his figure of 7 per cent for the percentage yield rate at all stages of his valuation calculation.

18 On the basis of those figures, he submitted the following (corrected) valuation:

(i) *Capitalisation of existing ground rent to termination of lease*

Ground rent payable: £2.75 per year
Years Purchase: 2 years @ 7%: 1.808
Capitalised ground rent: £2.75 x 1.808 = £4.97

(ii) *Modern ground rent*

Standing house value of subject property: £70,000
Percentage attributable to site: 40%: £28,000
Annual equivalent @ 7%: £1960.00

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £1960.00

Years Purchase: 50 years @ 7%: 13.8007

Present Value £1 deferred 2 years @ 7%: 0.873487

Capitalised modern ground rent: £1960 x (13.8007 x 0.873487) = £23,618

(iv) *Value of reversion*

Standing house value of subject property (above): £70,000

Present Value £1 deferred 52 years @ 7%: 0.02965

Present value of reversion: £70,000 x 0.02965 = £2075.50

The addition of the capitalised existing ground rent, the capitalised modern ground rent and the present value of the reversion produced a figure of £25698.47.

Reasonable costs

- 19 Although no application under section 21(1)(ba) for the determination of the reasonable costs payable under section 9(4) had been submitted, Mr Brunt and Mr Gunby jointly sought leave to make an application and to have that application heard as part of the present hearing. The Tribunal concluded that in the circumstances no prejudice would result from granting the parties' joint application; and the Tribunal adjourned the hearing briefly to permit Mr Brunt to submit a written application on behalf of the applicant leaseholder.
- 20 The respondent freeholder was seeking to recover (i) conveyancing costs of £950 (under paragraph (b) of section 9(4)), (ii) other costs and disbursements of £500 (under paragraphs (a) and (c)) and (iii) valuation costs of £700 (under paragraph (e)). Mr Gunby argued that these figures were reasonable.
- 21 Mr Brunt submitted that the costs that the respondent was entitled to recover from the applicant were considerably less than the sums claimed. His submissions were based on section 9(4) of the 1967 Act and on paragraph 5 of Schedule 22 to the Housing Act 1980 ("the 1980 Act").
- 22 The relevant words of section 9(4) of the 1967 Act provide:
- "Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then ... 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 of 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;"

23 The relevant words of paragraph 5 of Schedule 22 to the 1980 Act provide:

“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 connection with a reference to a leasehold valuation tribunal.”

24 First, Mr Brunt accepted that the respondent was entitled to recover conveyancing costs under paragraph (b) but he submitted that respondent's figure of £950 was wholly unreasonable. He submitted that, in the absence of evidence of special circumstances, the Tribunal should follow its usual practice and determine the reasonable costs under paragraph (b) at £250 plus VAT (if applicable).

25 Secondly, Mr Brunt also accepted that the respondent was entitled to recover costs under paragraphs (a) and (c) in respect of the checking of documentation provided by the applicant and requesting the relevant statutory declaration(s) and proof of title. However, he submitted that, since the applicant had provided a statutory declaration as to her occupation of the subject property, the respondent could not recover the costs of further personal enquiries made by the respondent in respect of the same issue. In summary, Mr Brunt estimated the reasonable costs under paragraphs (a) and (c) at £100 (plus VAT if applicable).

26 Thirdly, Mr Brunt submitted that the respondent was precluded from recovering the valuation fee of Mr Gunby. He argued that the fact that Mr Gunby had been instructed less than two weeks before the date of the hearing of the present application led to the clear inference that he had been instructed specifically for the purposes of the hearing; that his fees were “costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal” and thus not recoverable by virtue of paragraph 5 of Schedule 22 to the 1980 Act.

Determination of the Tribunal

The price payable for the freehold interest in the subject property

27 The Tribunal gave full consideration to the arguments and evidence of the parties in relation to the issues in dispute.

28 The Tribunal holds that the decision in *Haresign v St John the Baptist's College, Oxford* (1980) 255 EG 711 should not be followed in the present case and that no additional value should be attributed to the freehold reversion over and above the site value. The Tribunal holds that the shortness of the unexpired term of the lease is insufficient in itself to support the inclusion of the “*Haresign* addition”; and that there should be no such addition where, as in the present case, there is no evidence that the house will remain standing and will be of value at the end of the presumed 50-year extension to the lease.

29 The Tribunal therefore holds that in the circumstances of the present case the standard basis of valuation adopted by Mr Brunt properly reflects the principles of the 1967 Act.

- 30 In relation to the standing house value of the subject property, Mr Gunby candidly acknowledged that he was "at a disadvantage" since he was based in Essex and had no previous experience of valuing terraced houses in the Birmingham area. However, the Tribunal finds that the comparable evidence submitted by Mr Gunby both in relation to sales achieved and suggested prices for the subject property points to a standing house value *at the relevant date* in the range of £60,000 to £65,000. The evidence of Mr Brunt related to one property only and suggests a standing house value *at the relevant date* in the middle of that range. Using their general knowledge and experience (but no special knowledge) the Tribunal finds that the appropriate figure for the standing house value of the subject property at the relevant date was £63,000.
- 31 In relation to the percentage attributable to the site, the Tribunal concluded that Mr Gunby's suggested figure of 40 per cent may have been influenced by the practice in London and south-east England, where such figures are commonly adopted. The percentage adopted outside that area is normally rather lower; and in the Birmingham area the normal figure is in the range of 30-35 per cent. The Tribunal holds that the appropriate figure in the present case is 33 1/3 per cent.
- 32 In relation to the percentage yield rate, the Tribunal holds that, consistent with the figure applied in the overwhelming majority of decisions of Leasehold Valuation Tribunals in the Midland region and of the Lands Tribunal in appeals from the region, the appropriate figure to be applied in capitalising the ground rent at stage (i) of the valuation calculation is 7 per cent; but that, given the short unexpired term of the lease, the appropriate figure to be applied in decapitalising and recapitalising the site value at stages (ii) and (iii) is 6.5 per cent.
- 33 Applying those figures, and applying figures of Years Purchase from Parry's Valuation Tables, the Tribunal calculates the price payable as follows:

(i) *Capitalisation of existing ground rent to termination of lease*

Ground rent payable: £2.75 per year
Years Purchase: 2 1/8 years @ 7%: 1.91
Capitalised ground rent: £2.75 x 1.91 = £5.25

(ii) *Modern ground rent*

Standing house value of subject property: £63,000
Percentage attributable to site: 33 1/3 %: £21,000
Annual equivalent @ 6.5%: £1365

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £1365
Years Purchase at 6.5% in perpetuity deferred 2 1/8 years: 13.46051
Capitalised ground rent: £1365 x 13.46051 = £18,373.60

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of £18,378.85.

34 Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £18,380.

Reasonable costs

35 The Tribunal holds that the respondent is entitled to recover reasonable conveyancing costs under paragraph (b) and a reasonable amount in respect of other costs and disbursements under paragraphs (a) and (c). However, the Tribunal finds that the figures submitted on behalf of the respondent are excessive. Moreover, the Tribunal accepts the submission of Mr Brunt that, since the applicant had provided a statutory declaration as to her occupation of the subject property in response to the request of the respondent, the respondent is not entitled to recover the costs of making further personal enquires in relation to the same issue. Relying on the recent practice of Leasehold Valuation Tribunals in the West Midland region, the Tribunal determines the costs recoverable under paragraphs (a) to (c) of section 9(4) at £400 (plus VAT if applicable).

36 In relation to valuation costs under paragraph (e) of section 9(4), having carefully considered the submissions of the parties, the Tribunal finds that those of Mr Brunt on behalf of the applicant are more persuasive. Mr Gunby was instructed by the respondent at a very late stage, after the leaseholder's application to the Leasehold Valuation Tribunal and after the hearing date had been fixed (indeed less than two weeks before the date fixed for the hearing). The Tribunal is satisfied on a balance of probabilities that the inference to be drawn is that Mr Gunby was instructed specifically to provide a valuation for the purposes of the hearing (and to represent the respondent at the hearing). The Tribunal therefore holds that the costs of Mr Gunby's valuation are "costs incurred by a landlord in connection with a reference to a leasehold valuation tribunal" and thus not recoverable by virtue of paragraph 5 of Schedule 22 to the 1980 Act.

Summary

37 The Tribunal determines the price payable by the tenants for the freehold interest in the subject property at £18,380 and the landlord's reasonable costs at £400 (plus VAT if applicable).

Nigel Gravells

NIGEL P GRAVELLS
CHAIRMAN

24 SEP 2002