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LVT 9

Our Ref: M/EH 2475

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: Executors of WJ Whitehouse

Respondent: Fell Estates Ltd and Covent Garden Group Ltd

Re: 213 Bradford Road, Castle Bromwich, Birmingham B36 9AG

Date of Tenants Notice: 31/8/01

RV as at 1.4.73: £322.00

Application dated: 11/6/02

Heard at: The Panel office

On: 17/10/02

APPEARANCES:

For the Tenant: Mr A W Brunt of AW Brunt & Co

For the Landlord: Mr J R Devlin of Grove Tomkins Bosworth

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr J H Dove
Mrs C L Smith

Date of Tribunals decision: 30 OCT 2002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON THE PRICE PAYABLE UNDER SECTION 9 LEASEHOLD REFORM ACT 1967
FOR THE FREEHOLD INTEREST IN
213, BRADFORD ROAD, CASTLE BROMWICH, BIRMINGHAM B36
IN THE CASE OF**

EXECUTORS OF W J WHITEHOUSE

V

FELL ESTATES LIMITED AND COVENT GARDEN GROUP LIMITED

Background: Mr William James Whitehouse was the tenant of the dwelling house and premises at 213, Bradford Road, Castle Bromwich, Birmingham B36 (the 'Property') by a 99 year lease from 25 March 1937. By a notice (the 'Notice') dated 31 August 2001 (the 'Date') Mr Whitehouse claimed to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the 'Act'). Mr Whitehouse died on 24 December 2001 and, by section 5 of the Act, his executors (the 'Tenants') have the benefit of the Notice. The Freeholders named in Mr Whitehouse's Notice are Fell Estates Limited and Covent Garden Group Limited (the 'Freeholder'). By an application dated 11 June 2002 the Tenants, by their representative, apply to us to determine the price payable on the acquisition of the freehold of the Property under section 9 of the Act. We inspected the property on 17 October 2002 and a hearing was held on the same day.

The Tenants hold the Property by a lease (the 'Lease') for a term of 99 years from 25 March 1937 at a ground rent of £6.50 pa.

The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 34½ years.

The Property comprises a semi detached house of traditional brick and tile construction in a predominantly residential area of similar properties but with some business uses close by. The accommodation includes: on the ground floor - hall living room, dining room, kitchen, rear porch area with wc and store off; on the first floor - three bedrooms, bathroom, separate wc. The single garage is part integral with the house. The site frontage is 9.22m; the width is maintained throughout the depth of the site and the total site area is 389m².

Mr A W Brunt FRICS appeared for the applicant Tenants; Mr J R Devlin of Grove Tomkins Bosworth, Solicitors appeared for the Freeholder. We thank them for the careful attention they have given to this matter.

Privileged documents: Following delivery to the Tribunal office of documents intended to be relied upon, the office received an objection, a few days before the hearing, to the inclusion of privileged documents. We gave our assurance to Mr Devlin and Mr Brunt that the alleged privileged documents had been removed from each of our files by our respective secretaries prior to us seeing them, which was accepted. At the hearing we heard reference to the status of the documents without seeing them. From the submissions made to us we find and hold that, because the documents contain an offer/offers to compromise a dispute and the parties have not both agreed to waive any privilege, the documents are privileged, inadmissible and cannot be relied upon.

Contested jurisdiction: We have had advance written notice, from Mr Devlin, that he contends that we have no jurisdiction, submitting that we should stay the hearing and our determination pending resolution of the jurisdiction issue. Mr Brunt objects, saying that we should proceed.

Mr Devlin's submission centres on the validity of Mr Whitehouse's notice to enfranchise, saying that, subsequent to this notice, the Freeholder has transferred the freehold interest to a third party, namely Coolrace Limited and that, because of an error in one of the names of the Proprietorship Register by the Coventry District Land Registry, the

caution registered by Mr Whitehouse on 20 July 2001 is ineffective. He says that, because the question of the registration of the caution needs to be determined by the Birmingham County Court as a legal issue, we should stay our determination of the price payable pending the Court's determination to avoid incurring unnecessary costs.

Mr Brunt says that we should dismiss Mr Devlin's application for a stay; saying that there has been a history of adjournment(s), the Freeholder's application to us is a delaying tactic, court proceedings have not yet been commenced and any unnecessary costs disadvantage is offset by the prejudice to the Tenants by us not proceeding.

We pointed out that we have no jurisdiction to determine conclusively the issue of the validity of Mr Whitehouse's notice to enfranchise; only the court can do that. However, we should investigate the question of our jurisdiction for the purposes of deciding whether we should proceed or not.

We dismissed Mr Devlin's application for a stay on the grounds that the prejudice to the Tenants by not proceeding would be greater than the prejudice to the Freeholder by proceeding and that we had taken account of the probability that a court decision could be distant (as proceedings had not yet commenced) and that it cannot be said that the Tenants have no reasonable prospect of success on issue of validity and effectiveness of the caution.

Proceeding to determine the price payable in the absence of evidence from the Freeholder and the Freeholder's 'appearance' before us: On enquiring from Mr Devlin whether he had any objection to us proceeding with the hearing to determine the price payable, in the absence of evidence from the Freeholder, he raised no objection but, with the approval of Mr Brunt and ourselves, it is accepted that the Freeholder has, by its solicitors, 'appeared before the Tribunal in proceedings to which he was a party' for the purposes of any appeal from our decision pursuant to para. 2. part 1 Schedule 22 Housing Act 1980.

Valuation method: Mr Brunt adopts, and we accept, the generally recognised valuation method. The method is: (i) capitalise the ground rent from the Date for the unexpired term of the Lease; (ii) capitalise the modern ground rent (s15 of the Act), as at the Date, as if in perpetuity but deferred for the unexpired term of the Lease - 'as if in perpetuity' because, although the value of the modern ground rent is for a term of 50 years (as the extension to the Lease), the value of the freehold reversion in possession at the end of the fifty years' extension is ignored as being too remote to have a separate value for it. The modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value. The entirety value is the value of the freehold interest in the Property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful.

Tenants' valuation: Mr Brunt says that, after adjustments for correct arithmetic, the price payable should be £4,447.

More specifically, adopting the standing house method of valuation for the valuation of the reversion:

The Term		
Ground rent reserved	£6.50 pa	
YP 34½ years at 7%	12.90	
		£ 83.85
The Reversion		
Entirety value	£135,000	
Site apportionment at 1/3	£ 45,000	
Section 15 modern ground rent at 7%	£ 3,150 pa	
YP in perpetuity deferred 34½ years at 7%	1.385	
		£ 4,362.75
	Total	£ 4,446.60
	Say	£ 4,447.00


Mr Brunt's evidence: In support of his yield rate (7%) and his site apportionment ($\frac{1}{3}$) he says that these are consistent with previous decisions of the Tribunal.

In support of his entirety value (£135,000) he refers to us to the sale of 223, Bradford Road which is very similar to the Property and only five house away and on the same side of the road; saying that his information is that a sale of it was agreed prior to the Date at £137,500 with contracts exchanged after the Date. The Property is close to a petrol filling station, which is a detraction, whereas no 223 is further away from it; hence his opinion of the value of the Property at £135,000. He introduces evidence of an asking price for a not dissimilar property, in May 2002 (some nine months after the Date), at £144,950, which, he says, in the rising market, is not inconsistent with his entirety value for the Property.

Our decision: We find that Mr Brunt clearly recognises his duty to the Tribunal to give his independent honest opinion evidence. We find that the evidence of the sale of no 223, at about the time of the Date, is the most helpful to derive the entirety value and we attach significantly less weight to the post-dated asking price evidence. We accept Mr Brunt's opinion evidence of the entirety value at £135,000, his yield rate, at 7% and his site apportionment, at $\frac{1}{3}$; all of which, we find, are consistent with the generally accepted principles for the valuation of the price payable. Accordingly, we accept his valuation.

Conclusion: We determine that taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge and our inspection, that the sum to be paid by the Tenants for the acquisition of the freehold interest in accordance with section 9 of the Leasehold Reform Act 1967, as amended, is £4,447 (Four thousand four hundred and forty seven 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. In default of agreement over the amount of any costs payable under section 9(4), under the provisions of section 21(1)(ba), application may be made to the Leasehold Valuation Tribunal for a determination of such costs.

Date: 30 OCT 2002


T F Cooper
CHAIRMAN 30 OCT 2002