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Our Ref: M/LE6

WEST 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: Mrs O. Darrell
Respondent: ASB Portman Esq
Re: 204 Addison Road, Kings Heath, Birmingham, B14 7ER
Date of Tenants Notice: 26 September 1994
Application dated: 24 September 2002
Heard at: The Panel Office
On: Friday 1 November 2002

APPEARANCES:

For the Tenant: Mr A. Darrell (Mrs O. Darrell's son)
For the Landlord: Mr D.H Hackett BSc FRICS IRRV

Members of the Leasehold Valuation Tribunal:

N.R Thompson FRICS (Chair)
P.J. Waller
Mrs C.L Smith

Date of decision: 14 NOV 2002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21 (1) (b) OF
THE LEASEHOLD REFORM ACT 1967
IN THE CASE
OF**

PORTMAN v DARRELL

**204 ADDISON ROAD
KINGS HEATH
BIRMINGHAM
B14 7ER**

Reference : M/LE6

Background:

This is a determination under Section 15 of the Leasehold Reform Act 1967 (as amended) as to the rent to be paid for the leasehold premises 204 Addison Road, Kings Heath, Birmingham, B14 7ER. The Lessee, Mrs O M Darrell acquired the original tenancy of the property on the 15th August 1958, which at that time constituted an Underlease for a term of 99 years (less 3 days) from the 25th March 1903, at a ground rent of £4 per annum. On the 26th September 1994 Mrs Darrell served Notice on the freeholders of her desire to have an extended Lease of the property under Section 14 of the Leasehold Reform Act 1967, as a consequence of which, a new Lease for a term expiring on the 22nd March 2052 was granted to her on the 29th March 1996.

In accordance with the terms of the Act the extended Lease provided for the ground rent reserved under the original Underlease to continue to be paid until the expiry date on the 22nd March 2002. The application before the Tribunal is to determine the ground rent payable as from the 22nd March 2002 under the terms of the new Lease and in accordance with the provisions of the Act.

Property:

The Tribunal inspected the property externally on the 1st November 2002. The premises comprise a three story brick and slate inner terraced house situated on a busy suburban road within walking distance of Kings Heath High Street, some five miles south of Birmingham City Centre.

Hearing:

At the Hearing Mrs Darrell was represented by her Son, Mr A Darrell and the Landlord was represented by Mr D H Hackett BSc. FRICS. IRRV., a Director of Bigwood, Chartered Surveyors of Birmingham.

Following an initial explanation of the background to and purpose of the proceedings for the benefit of Mr Darrell (who had previously explained to the Tribunal that he was not an expert in such matters) the Hearing commenced with Mr Hackett introducing his case on behalf of the Landlord. He submitted details of his experience, the background to the grant of the extended Lease, and the provisional agreement which had been reached with Mrs Darrell's Agents in October last year. In addition he presented the following valuation:-

Standing House value as at the 25 th March 2002	£75,000
Site Value – 27.5%	£20,625
Ground Rent at 7% - £1,444	Say £1,450 per annum.

In support of his Standing House value of the entirety, Mr Hackett referred to the sale of 198 Addison Road (three doors from the subject premises) for £80,000 in September 2001 on a freehold basis. He also referred to the recent sale of approximately half an acre of land for housing development in Yardley Wood Road (some two miles from the subject premises) for £850,000. Although the sale of number 198 had taken place last September, Mr Hackett emphasised that his clients had instructed him not to seek any increase in the suggested Standing House value to reflect any increase in property prices which might have taken place during the intervening period. As such, Mr Hackett considered the figure of £75,000 to be, if anything, on the low side.

So far as the site value percentage was concerned, Mr Hackett suggested that this again was a fairly modest figure and was intended to reflect the relatively narrow frontage of the property (twenty feet or thereabouts).

In relation to the yield rate of 7%, Mr Hackett pointed out that this was a commonly adopted figure used by both this Tribunal and also the Lands Tribunal in such cases.

Mr Darrell did not wish to cross-examine Mr Hackett or offer any specific valuation evidence of his own.

Decision:

Under Section 15 (2) of the Leasehold Reform Act 1967, the rent payable under the extended Lease is defined as:-

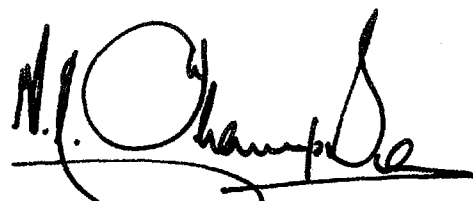
“The rent shall be a ground rent in the sense that it shall represent the letting value of the site (without including anything for the value of the buildings on the site) for the uses to which the house and premises have been put since the commencement of the tenancy, other than uses which by the terms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

It is important to appreciate that this definition does not include or contemplate the payment of any premium upon the grant of the Lease; it is purely the letting value of the site with which the Tribunal is concerned. In practice that is an entirely artificial situation given that no Landlord would, in the normal course of events, let a site on the terms stipulated by the Act i.e. for 50 years, with only one rent review at the end of the 25th year. Nevertheless, that is the basis on which the Tribunal must make its determination subject to a number of assumptions:-

1. The "uses" referred to in the definition relate to the actual use to which the house and premises have been put, which in this instance are effectively a house in single residential occupation.
2. The letting value of the site must be ascertained on the basis that it is an isolated site and not part of a larger site.
3. The letting value must also reflect the terms of the new tenancy – including the Landlord's right to possession under Sections 17 and 18 of the Act, upon payment of compensation.

In view of the assumption detailed at (2) above, the Tribunal did not feel that the evidence of the sale of land at Yardley Wood Road was particularly helpful. However the evidence of the sale of 198 Addison Road as at September 2001 clearly supported the value adopted by Mr Hackett.

Accordingly the Tribunal determined that the Section 15 rent payable in respect of the extended Lease of 204 Addison Road, Kings Heath, Birmingham, B14 7ER, dated the 29th March 1996 should be £1,450 per annum with effect from the 22nd March 2002.



N R Thompson
Chairman

14 NOV 2002