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LVT 9

Our Ref: M/EH 2496c

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: Susan Anne Lupasco
Respondent: M Ramzan, N Akhtar & R Khan
Re: 21 Shawhurst Lane, Hollywood, Birmingham, B47 5HL
Date of Tenants Notice: 20 May 2002
RV as at 1.4.73: £280
Application dated: 31 July 2002
Heard at: The Panel Office
On: Tuesday 5 November 2002

APPEARANCES:

For the Tenant: Mr J. Moore MA – Midland Valuations Ltd
For the Landlord: not represented

Members of the Leasehold Valuation Tribunal:

R.T Brown FRICS (Chair)

J.H Dove

Mrs C. L Smith

Date of decision: 13 DEC 2002

REFERENCE

M/EH 2496C

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

MIDLAND RENT ASSESSMENT PANEL

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

IN RESPECT OF

SUSAN ANNE LUPASCO v M. RAMZAN, N. AKHTAR & R KHAN
21 SHAWHURST LANE, HOLLYWOOD, BIRMINGHAM B47 5HL

BACKGROUND

These cases follow applications by Mr Moore of Midland Valuations Ltd on behalf of the Lessee Susan Anne Lupasco both dated 31st July 2002 for a determination of the price to be paid under Section 9 (1) and for a determination of the costs to be paid under Section 9 (4) of the Leasehold Reform Act 1967 (as amended)('the Act').

The Lease dated 11th January 1977 is for a term of 99 years from 1st January 1964 at an annual ground rent of £30 per annum.

The Lessee's Notice of Claim to purchase the freehold is dated 20th May 2002 when there are approximately 60 ½ years remaining on the Lease.

The Tribunal inspected the property on 5th November 2002 in the presence of the Lessee.

THE PROPERTY

The property comprises of a link-detached house constructed in the early 1960's in traditional materials. The centrally heated, single glazed accommodation is as follows: Ground floor; hall, through lounge/dining room, kitchen (fully fitted) First floor; one single and two double bedrooms, bathroom (full suite with shower over bath). Side garage and utility. Outside; driveway to front and garden to rear.

The site has a frontage of approximately 8 metres.

THE HEARING

Mr Moore MA of Midland Valuations Limited appeared on behalf of the Lessee, S A Lupasco.

The Freeholders did not appear nor were they represented, however, they did submit a written representation.

(i) The Leaseholders case

A. Valuation Issue

Mr Moore presented his valuation as follows:

Term:

Ground Rent	£30.00	
YP 60 ½ years @ 7%	14.047	£421.41

Reversion

Entirety Value	£170,000	
Site Value @ 33.3%	£56,610	
Section 15 Rent @7%	£3,962.70	
YP referred 60 ½ years @ 7%	0.238	<u>£943.12</u>
		£1,364.53
	say	£1,365

In support of various elements of this valuation, Mr Moore commented as follows:

Term

The use of 7% yield rate is now generally accepted by valuers acting for both Leaseholders and Freeholders and is consistent with the rates adopted by the Leasehold Valuation Tribunal and the Lands Tribunal.

Reversion

- (a) Entirety value. In adopting an entirety value of £170,000, Mr Moore referred to the recent sale of No. 17 Shawhurst Croft, a similar property which had recently sold for close to this asking price of £180,000. No. 36 Falstaff Avenue, another similar property is currently being marketed at £180,000. Both of these properties were considered to be better than the subject property on the basis that they benefited from double-glazing and extensions to the rear. Mr Moore acknowledged that these sales are some 5 ½ months after the effective date, during which time prices have hardened noticeably. The subject property has no extensions and is only partly modernised. However, allowing for the fact that the standing house approach must consider the plot to have been developed to its fullest potential, Mr Moore adopted £170,000.

The Tribunal introduced evidence in relation to No. 27 Shawhurst Lane, which was currently sold Subject to Contract at £155,000, whilst not inspected internally, appeared to be a similar property. Mr Moore was aware of this property and advised that he understood it required extensive work. He had not inspected any of the comparable properties internally.

- (b) Site value. Mr Moore adopts an apportionment to site value of 33.3%, which he considers to be in line with a number of recent decisions of this Tribunal for similar plots.

MEH2337c (108 Claremont Road, Coton Green): a detached house with a plot frontage of 30 feet and a site area of 348 square yards; the Tribunal determined an apportionment of 33.3%.

M/EH2235c (25 Falstaff Road, Hollywood): a link-detached house where unfortunately no site measurements are detailed: the Tribunal determined 33%.

M/EH2218c (70 Elizabeth Road, Moseley): a detached house with plot frontage of 20 feet and an area of 760 square yards: the Tribunal determined 33%.

M/EH2215-7c (3 properties in Averill Drive, Rugeley): link-detached houses where again no site measurements are available, but where this Tribunal determined an apportionment of 32% in each instance.

- (c) Reversion. The Midlands LVT has been consistent in its use of the 7% reversionary yield for all but the shortest leases. At 60 ½ years unexpired, this lease cannot fall into this category and therefore 7% is appropriate.

(ii) **The Landlords Submission**

The Tribunal examined the written submission of the Landlord's and questioned Mr Moore upon its contents. In their submission the Landlords explained that they had purchased the property at auction for the sum of £1,500 and to date had incurred the following costs

Costs incurred to date by the Freeholder in purchasing the Freehold on 13th February 2002

Purchase Price	£1,500.00
Auctioneers (Allsop & Co) Purchase Premium	£150.00
Seller's Legal Costs	£411.25
Current Freeholder's Solicitors Costs (in purchasing Freehold)	£129.25
Land Registry Costs etc.	<u>£100.00</u>
	<u>£2,290.50</u>

The average house price for a detached house in the B47 area is now £204,640 based on the quarter April – June 2002.

In the light of this, they consider that on the evidence available in the current market a figure should be in excess of £2,500 to reflect true market valuation.

The Tribunal asked Mr Moore to comment on the Freeholders' approach to valuation and in response Mr Moore stated that the Landlords' valuation did not follow the procedure under Section 9 of the Act and the Tribunal should lend little weight to the arguments of the Landlord.

B. Costs Issue

(1) Legal Costs

Mr Moore submitted that the legal fees should be £225.00 plus VAT if applicable in line with a number of recent decisions of the LVT where the conveyance is of a single registered title. In support of this, he referred to three 2002 decisions as follows:

M/LRC419 – 49 Claremont Road, Coton Green, Tamworth
M/LRC385 – 23 Hayworth Close, Coton Green, Tamworth
M/LRC372 – 12 Claremont Road, Coton Green Tamworth

It is apparent to the Tribunal from the evidence already submitted that this is a single registered freehold title.

The Landlords contend for the sum of £350.00 plus VAT if applicable which Mr Moore considered excessive for the transfer of a single registered title. The Landlords give no evidence in support of their proposed charges.

(2) Valuation Fees

Mr Moore submitted that no valuation fee should be paid as no valuation has been undertaken between the date of the Notice (20th May 2002) and the application to the Tribunal (31st July 2002). This is not disputed by the Freeholders who make no claim for valuation fees.

THE DECISION

A. Enfranchisement Price

1. *Section 9 (1) of the Act provides as follows:*

(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be 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 this family who reside in the house not buying or seeking to buy) might be expected to realise on the following assumptions –

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

(b) *on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rent charges (....) to which section 11 (2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchases would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's in cumbrances: and*

(c) *on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.*

2. The Tribunal accept Mr Moore's contention that the freeholders approach to the valuation is not in line with Section 9 (1) of the Act and therefore lend no weight to the evidence submitted on behalf of the freeholder.

3. Having examined the evidence submitted by Mr Moore and in particular considered the entirety value, the Tribunal adopt Mr Moore's valuation in its entirety.

B. Costs

1. 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 1 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 connection with a reference to a leasehold valuation tribunal"

2. Whilst noting Mr Moore's contention with regard to legal fees, the Tribunal consider this figure is now low in relation to the work involved.
3. Both parties are agreed that no valuation was undertaken by or on behalf of the Landlord.

THE DETERMINATION

1 Determination of Price

We determine that with the benefit of our inspection and the use of our knowledge (but not any special knowledge) and experience in evaluation of evidence produced, that the sum to be paid for the freehold interest in the above described property in accordance with Section 9 (1) of the Leasehold Reform Act 1967 (as amended) is One thousand, three hundred and sixty five pounds (£1,365).

2 Determination of Costs

We award costs in accordance with section 9(4) of the Leasehold Reform Act 1967 and Paragraph 5 of Part 1 of Schedule 22 of the Housing Act 1980 as follows:

- | | | |
|---|----------------|--|
| A | Legal costs | £250 plus VAT (if applicable) and proper disbursements in connection with Land Registry fees and office copy entries |
| B | Surveyors fees | Nil |

Signed Robert T Brown

Robert T Brown FRICS
Chairman

13 DEC 2002