

297

BIR/00CR/OAF/2004/0299

MIDLAND RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER S27 OF THE LEASEHOLD REFORM ACT 1967**

Premises: 54 King Charles Road, Halesowen, West Midlands B62 0DR

Applicants: Mr and Mrs S R Prince (tenants)

Respondent: Unknown

Date of tenant's application to the Dudley County Court: 20 May 2004

RV on the appropriate day: Under £500

Heard at: Birmingham

On: 14 December 2004

Appearance: Mr E J Rutledge FRICS IRRV MCI Arb of Lawrence & Wightman, chartered surveyors, for the tenants

Members of the leasehold valuation tribunal:

Lady Wilson
Mr S Berg FRICS
Mrs C L Smith

Date of the tribunal's decision:

01 JAN 2005

Background

1. This is a determination under section 27(5) of the Leasehold Reform Act 1967 (“the Act”) of the price to be paid for the freehold of 54 King Charles Road Halesowen, the landlord of which cannot be found or his identity ascertained. On or about 20 May 2004 the applicant tenants made an application to the Dudley County Court under section 27(1) of the Act, and on 16 August 2004 District Judge Thompson directed that the tenants apply to the tribunal to determine the price to be paid under section 9(1) of the Act, to include a figure for arrears of ground rent.

2. 54 King Charles Road is held on an underlease dated 2 November 1937 between E A Green, the Birmingham Citizens Permanent Building Society and D M Pritchard for a term of 99 years less 3 days from 29 September 1936 at a ground rent of £6 per annum, fixed throughout the term. On 20 May 2004, which we have taken to be the valuation date for the reason given at paragraph 5 below, approximately 31 years and 4 months remained unexpired on the underlease. The headlease, which is dated 21 October 1936, is between E A Green and G H Brown, demises land of approximately 3740 square yards with a frontage to King Charles Road of some 81.5 yards for a term of 99 years from 29 September 1936 at a fixed annual rent of £52.

3. On 14 December 2004, before the hearing, the tribunal inspected the property in the presence of Mrs Prince, one of the applicants. It is a two storey semi-detached house with a third storey attic conversion, built in the 1930s, of brick and interlocking tile construction, on a development of similar houses. The house is centrally heated and double glazed and has a living room and dining area, kitchen, four bedrooms (including the converted attic room), a bathroom/wc, study, cloakroom and an integral single garage. There is a long rear garden. Mr Rutledge FRICS IRRV MCI Arb of Lawrence & Wightman, chartered surveyors, the valuer instructed by the tenants, has measured the frontage at approximately 8.17 metres and the overall site area at 477.9 sq m.

Unaccompanied, the tribunal also externally inspected two of the six comparables (five of which were asking rather than achieved prices) relied on by Mr Rutledge.

The hearing

3. At the hearing, Mr Rutledge proposed a price of £7401 for the freehold interest, based on the capitalisation of a profit rent of £5.78 at 7%, an entirety value of £185,000, a site proportion of 33%, and the decapitalisation of the site at 7% to arrive at the section 15 ground rent. As to the head leasehold interest, he said that although there was no plan attached to the headlease, nevertheless, based on the frontage and assuming that the sites on which the properties were built were all broadly the same size as the subject property, there would have been nine houses within a frontage of 81.5 yards or thereabouts. Apportioning the ground rent on that basis, the freeholder would have been entitled to receive £52 divided between nine properties, equating to about £5.78 per annum, a profit rent of some 22 pence, for each property. Since the reversion was not more than one month and the profit rent less than £5 per annum, the head leasehold interest was a minor superior tenancy within the meaning of paragraph 7A(2) of Schedule 1 to the Act, and, applying the appropriate formula to value it, its value was less than £1 and should be disregarded as negligible.

4. Mr Rutledge said that the maximum recoverable ground rent was for six years at £6 per year.

Determination

5. We are satisfied that Mr Rutledge's valuation is realistic and fair, his entirety value well supported by the comparables and his site proportion and yield rate as we would expect. We

agree that the valuation date is the date of the application to the county court because, by section 27(2)(a) of the Act:

the rights and obligations of all parties shall be determined as if the applicant had, at the date of the application, duly given notice of his desire to have the freehold.

We therefore determine that the price to be paid for the freehold is £7401, based on the following valuation.

Term:

Annual ground rent:	£5.78	
YP 31.33 years @ 7%	12.57	£73

Reversion:

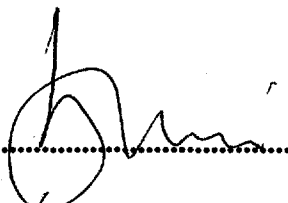
Entirety value	£185,000	
Site value @ 33%	£61,050	
Section 15 rent @ 7%	£4273	
YP deferred 31.33 years @ 7%	1.715	<u>£7328</u>
		£7401

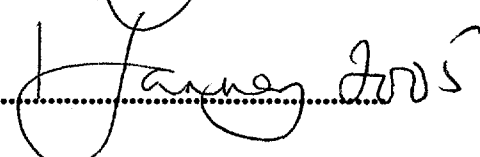
5. As to the unpaid ground rent, section 27(5)(b) of the Act, substituted by section 149(1) of the Commonhold and Leasehold Reform Act 2002 with effect from 30 September 2003 for part of section 27(5) as previously in force, follows section 27(5) as previously enacted by providing that the price shall be as determined in accordance with section 9 of the Act

and (b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains

unpaid.

It is clear that the arrears of ground rent payable by virtue of these provisions are limited to the six years for which recovery of rent is not statute-barred (*Re Howell's Application* [1972] Ch 509). Section 166 of the Commonhold and Leasehold Reform Act 2002, which provides that a tenant under a long lease is not liable to pay rent unless the landlord has given him notice relating to the payment, does not come into force until 28 February 2005 (The Commonhold and Leasehold Reform Act 2002 (Commencement No 5 and Saving and Transitional Provision) Order 2004. Accordingly we determine that the ground rent payable under section 27(5)(b) in addition to the price for the freehold is £36.

CHAIRMAN.....

DATE..... 2005