

261

REF: BIR/00CN/0AF/2003/0161

**LEASEHOLD VALUATION TRIBUNAL OF THE MIDLAND RENT ASSESSMENT  
PANEL**

**Decision on an application for a determination of the price payable under  
Section 21 (1)(a) Leasehold Reform Act 1967**

**Applicants:** Mr M Jack and Mrs D Jack

**Respondent:** Mayfly (USK) Limited  
c/o Jack Dixon and Co  
43 High Street  
Harbourne  
Birmingham  
B17 9NT

**Property:** 46 Bournville Lane  
Bournville  
Birmingham  
B30 2LL

**Date of Notice exercising the right to  
acquire the freehold:** 12 December 2002

**Hearing:** 5 April 2004

**Appearances:** Mr A Brunt FRICS for the applicants  
Mr G Dixon for the respondents

**Members of the Leasehold Valuation  
Tribunal:** Miss T N Jackson BA Law (Hons) (Chair)  
Mr D Satchwell  
Mrs C L Smith

**Date of Determination:** 10 JUN 2004

1. **Background**

- 1.1 This is a decision on an application under Section 21(1)(a) of the Leasehold Reform Act 1967 for the determination of the price payable under Section 9 of the 1967 Act for the freehold interest in the subject property.
- 1.2 The subject property is held under an underlease dated 24 December 1908 for a term of 99 years (less 3 days) at a ground rent of £5 per annum. The unexpired term at the date of the Notice of the tenant's claim to acquire the freehold ("the relevant date") was 5 years.
- 1.3 The applicants served on the respondent a tenants notice dated 12 December 2002 claiming to acquire the freehold interest in the property under the terms of the 1967 Act and subsequently made the present application to determine the price payable under Section 9 of the 1967 Act on 22 October 2003.

## 2. Subject Property

- 2.1 The property comprises a mid terraced house built in approximately 1908. The surrounding area is mainly residential with a large number of similar houses in the immediate area. The house is of three storey brick construction with a pitched tile roof.
- 2.2 The accommodation comprises a hall, two reception rooms, dining room/kitchen on the ground floor, with a landing, 3 bedrooms and a bathroom on the first floor and a 4<sup>th</sup> bedroom in the attic. Outside there is a small area to the front of the house and a gravelled area to the rear of the house. The plan to the underlease of the 24 December 1908 shows a right of way approximately 12 foot wide to the rear of the premises over which the lessees and owners of the adjoining premises have a right of way. Bournville Lane has restricted parking Monday to Saturday inclusive.

## 3. Inspection and Hearing

- 3.1 The Tribunal inspected the subject property on 5 April 2004 in the presence of Mr R Jack and Mr A Brunt.
- 3.2 The subsequent hearing held on the same day was attended by Mr A Brunt (representing the applicants) and Mr G Dixon (representing the respondent).

## 4. Agreed Matters

The following matters were agreed by the parties:

- the site apportionment was 33%
- the site valuation date for the purposes of determining the price payable for the freehold was 12 December 2002
- the unexpired term of the underlease was 5 years
- the ground rent was £5 per annum
- subject to the question of a Haresign addition (see below), the formula to be adopted as the basis for valuation, namely:
  - i. the capitalisation of the ground rent payable under the existing lease for the remainder of the term
  - ii. the identification of a modern ground rent (by decapitalising the site value) and
  - iii. the capitalisation of the modern ground rent

the price payable on this basis being the sum of the capitalisations at stages (i) and (iii)

## 5. Matters in dispute

- 5.1 Since both parties applied the same established formula to determine the price payable, the matters that remained in dispute were the factors in that formula that were not agreed namely:-
- the entirety value;
  - the percentage yield rate to be applied in capitalising the ground rent at stage i);

- the percentage yield rate to be applied in de-capitalising and re-capitalising the site value at stages (ii) and (iii).
- whether a Haresign addition was appropriate

5.2 Mr Brunt on behalf of the applicant leaseholders submitted the following valuation:

Ground rent	£5 pa	
YP 5yrs @7%	4.1	£20.50
Entirety Value	£155,000	
Site value a third	£51,666.66	
Section 15 rent	£3,358.33	
YP in perp def'd		
5yrs@ 6.5%	11.228	<u>£37,707.36</u>
Price (say)		£37,728

5.3 Mr Dixon on behalf of the respondent freeholders submitted the following valuation:

Entirety Value	£170,000	
Site value at 33%	£56,100	
Section 15 rent @5 ½	£3,085.50	
YP for 50 years def'd		
5yrs@ 5 ½ %	<u>12.95</u>	£39,957.23
Reversion to a standing house		
£170,000 P.V. of £1 deferred 55	<u>0.0313</u>	<u>£5,321.00</u>
years @6 ½ %		£45,278.23
	say	£45,275.00

## 6. Evidence and submissions on behalf of the applicant leaseholders

### 6.1 Entirety value

Mr Brunt submitted that the entirety value of the subject property was £155,000 reflecting that it was a mid terrace, located in Stirchley rather than Bournville. Whilst it had the benefit of rear car access, the subject property fronted onto a road with restricted parking between Monday and Saturday between 7am and 11pm with prohibited return within 2 hours. He submitted that it was close in valuation to a comparator of 195 Beaumont Road, Bournville which the Midland Leasehold Valuation Tribunal had determined in December 2003 to have an entirety value of £150,000 as at September 2002. Mr Brunt advised that that property was located in Bournville and did not have an attic bedroom unlike the subject property.

6.2 Mr Brunt submitted details of sales particulars of other comparators including asking prices namely 122 Beaumont Road, Bournville (£159,950); 146 Beaumont Road, Bournville (£159,950); 2 Mary Vale Road, Stirchley (120,000); 179 Beaumont Road, Bournville (169,950). These properties had been on the market on

dates between September 2002 and November 2003 and Mr Brunt in evidence stated that 179 Beaumont Road had been sold for £150,000

### 6.3 Haresign addition

Mr Brunt stated he had not included a Haresign addition. Mr Brunt referred to instances where the Tribunal had considered the application of the decision in Haresign -v- St John the Baptist's College Oxford (lr/18/1979) including 195 Beaumont Road and Storrs Place where the Tribunal had determined not to include a Haresign addition. He accepted that the subject property was likely to be standing at the end of the 50 year lease but he questioned whether an investor would attribute value to receiving back the subject property with vacant possession at that time. He also submitted that the subject property could be distinguished from the property in the Haresign case

In cross examination Mr Brunt confirmed that he was aware that a Haresign addition had been included in the case of 96 Lawnswood Road

### 6.4 Yield Rates

Mr Brunt submitted that the appropriate percentage yield rate to be applied in capitalising the ground rent at stage (I) should be 7% and in decapitalising and recapitalising the site value at stages(ii) and (iii) should be 6.5% which was, in his experience, the rate normally used by the Tribunal in other cases to reflect the short outstanding lease

## 7. Evidence and submissions on behalf of the respondent freeholders

### 7.1 Entirety Value

Mr Dixon submitted that the appropriate figure for the entirety value at the date of the tenant's notice was £170,000 and in support of this he referred to a sale by auction of 10 Franklin Road in July 2003. Mr Dixon submitted that 10 Franklin Road was an inferior and smaller style of property with a limited site and restricted garden due to its location at the junction of Maryvale Road. He submitted that an auction represented the best example of what a buyer was prepared to pay and that private treaty sales were less accurate. In cross examination, Mr Dixon confirmed that, he had not been present at the auction, did not know who had bought 10 Franklin Road nor what the reserve was likely to have been.

Mr Dixon further stated in cross-examination that the proposed entirety value of £170,000 did not need to be discounted to reflect the date of valuation of the comparator namely July 2003 compared to the date of the tenant notice in this case namely December 2002. Mr Dixon acknowledged in cross-examination that 195 Beaumont Road had had an entirety value determined by the Tribunal of £150,000 although he did not consider it to be an appropriate comparable as a house three doors away had recently been sold at £210,000 and after deducting any increase in value as a result of house price inflation, the value did not then come back to £150,000.

7.2 On cross examination, Mr Dixon confirmed that he had recently been involved in the enfranchisement of 132 Watford Road where a notice had been served in 2003

involving a lease with 2 ½ years remaining. Mr Dixon confirmed that the property had been sold by private treaty for the sum of £142,000 although he stated that this was based on an economic decision rather than in accordance with strict valuation procedures.

### 7.3 Haresign Addition

Mr Dixon gave evidence that a "Haresign addition" should be included as there was sufficient evidence that the subject property would be standing for a least another sixty years. Letters from two banks, a letter from Jeremy A T Goer RIBA Dip.Arch (Burn) and a report from R J Wishart, a chartered building surveyor, contained in Mr Dixon's submission were referred to in support of this contention. Mr Dixon also referred to the Tribunal's decision in 96 Lordswood Road, Harbourne (wm/eh/1000 where a Haresign addition had been included) and expressed the opinion that the subject property was more desirable than that property. In cross examination, Mr Dixon acknowledged that the Lordswood Road property had had an unexpired term of 10 ½ years.

### 7.4 Yield Rates

Mr Dixon submitted that it was reasonable in the calculations to adopt a yield rate of 5.5% as the risk was minimal, this was a short term reversion and in his opinion, the money markets were the starting place for consideration, although he accepted that land markets needed to be taken into account. In view of the fact that interest rates were the lowest in the last 10 years; the base rate at the date of the notice in December 2002 was 4% and that the reversion could only rise substantially in value, Mr Dixon's submission was that 5.5% was appropriate. Mr Dixon also placed reliance on comments in the Tribunal's decision LRA for 1994 Windsor Life Assurance and David and Daphne Austin (20 Bishopstone Close).

## 8. Determination

- 8.1 The Tribunal gave full consideration to the evidence and submissions on behalf of the parties. Using its general knowledge and experience (but no special knowledge) of property prices in the locality of the subject property, and taking into account the positive and negative features of the subject property and all other relevant factors and considerations, the Tribunal determines the standing house value of the subject property at the relevant date was £155,000.
- 8.2 The Tribunal considered the points made by Mr Dixon that the appropriate percentage yield rate should be lower than those normally determined by Tribunals, but finds that money market rates over the past short to medium term are not necessarily related to property yields where a really long term rate was relevant. In the absence of any circumstances suggesting a departure from that practice, the Tribunal holds that the appropriate percentage yield rate at stage (i) should be 7% in consequence of the short remaining term of the lease and otherwise should be 6.5% to be applied at stages (ii) and (iii) of the valuation calculation.
- 8.3 The Tribunal gave careful consideration to the arguments put forward in respect of the appropriateness of the Haresign addition. The Tribunal does not consider that the Haresign addition is appropriate in all cases simply because the structure and condition of the property is such that there is a reasonable likelihood of the house

standing at the end of a 50 year lease and beyond. In the Haresign case the property was a substantial 3 storey late Victorian house situated in a conservation area with a value in 1995 of £195,000. The Committee considers that not only has the age of the property to be taken into account but also other factors such as the character, size and locality of the subject property. In this instance, if the subject property had been a listed building or in a conservation area or (as in Ball -v- Johnson (1973) 226 EG 470) had been a property with a substantial garden which was not likely to remain as a garden indefinitely, the Tribunal might well have come to a conclusion that a Haresign addition was appropriate. However, in this instance, the Tribunal considers that the circumstances in the Haresign case were significantly different from those in respect of the subject property and therefore the Tribunal is not satisfied that the price payable on enfranchisement should include a Haresign addition with the consequence that the modern ground rent is to be valued in perpetuity. The Tribunal determines that it is not bound by its previous decisions, particularly as no clear unequivocal guidance can be derived from the Tribunal's many previous decisions as to whether a Haresign addition should or should not be included.

8.4 Adopting those figures in relation to the entirety value and the respective percentage yield rates, 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:	£5 per annum	
Years purchase:	5 years at 7%=4.1	20.50

(ii) Modern ground rent

Standing house value of subject property: £155,000  
 Percentage attributable to site at 33 1/3%: £51,666.66  
 Section 15 annual equivalent at 6.5% = £3,358.33

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £3,358.33  
 Years purchase at 6.5% in perpetuity deferred 5 years: 11.228  
 Capitalised modern ground rent: £3,358.33 x 11.228 = £37,707.36

8.5 The addition of the capitalised existing ground rent of £20.50 and the capitalised modern ground rent of £37,707.36 produces a figure of £37,728 rounded up to the nearest pound.

8.6 Accordingly, the Tribunal determines the price payable under Section 9 of the 1967 Act for the freehold interest in the subject property at £37,728 plus the freeholder's reasonable costs calculated in accordance with section 9(4) of the 1967 Act and paragraph 5 of Schedule 22 to the Housing Act 1980

*N. Jackson.*

N Jackson (Chair)

Dated

18 JUN 2004