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Ref: BIR/00CN/OAF/2004/0110

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S27 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Ayub Khan

Property: 10, Melrose Avenue (off Walford Road), Sparkhill, Birmingham B11 1QN

Date of Tenant's Application
(to the Court) : 31st October 2003

RV as at 1.4.73 : Less than £500

Heard at : The Panel Offices, Birmingham

On : 21st October 2004

APPEARANCES:

For the Tenant : Mr E.J.Rutledge FRICS

Members of the Leasehold Valuation Tribunal:

Mr A.J.ENGEL (Chairman)
Mr D.J.SATCHWELL
Miss B.GRANGER

Date of Tribunals decision: 29th November 2004

Background

1. On 31st October 2003, the Tenant applied to the County Court for a vesting order, under Section 27 of the Leasehold Reform Act 1967 (the 1967 Act) in respect of the property.
2. On 26th April 2004, the Court ordered that the Tenant obtain a certificate as to the value of the freehold interest of the property.

3. On 11th May 2004, an Application Form was sent to the Tribunal.
4. On 13th September 2004, a preliminary hearing was held, in Birmingham, to consider the jurisdiction of the Tribunal.
5. On 24th September 2004, the Tribunal decided that it had jurisdiction to determine the appropriate sum under section 27(3) of the 1967 Act - as amended by Section 149 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) - which had replaced certificates of value with such determinations.

Inspection

6. On 21st October 2004, the Tribunal inspected the property.

It is a 2 storey mid-terraced house within a block of 3 in a pedestrian cul-de-sac in an inner city district.

It comprises:-

On the ground floor:- 2 rooms, a kitchen and a bathroom/w.c..

On the first floor :- 2 double and 1 single bedrooms.

The property has gas central heating. There are small gardens to the front and rear - but no parking facility.

Written Representations

7. We considered a written report from Mr Rutledge, dated 14th October 2004.

Hearing

8. A hearing took place, at the Panel Offices in Birmingham on 21st October 2004 when Mr Rutledge made oral representations.

Tenure

9. The only relevant document of title produced to us was a copy of an Underlease, dated 16th May 1972, in respect of the property and No.10 Melrose Avenue.
10. We accepted the evidence that the Tenant had purchased the interest of the intermediate Leaseholder.

Date of Valuation

11. We agreed with Mr Rutledge that the date of valuation should be the date of the Application to the Court (31st October 2003).

The reason is that Section 27(5)(a) of the 1967 Act (as amended by Section 149 of the 2002 Act) refers to "the price payable in accordance with section 9" and Section 9 (of the 1967 Act) refers to "the relevant time" - which is defined in Section 37(1)(d) of the 1967 Act as "in relation to a person's claim to acquire the freehold....., the time when he gives noticeof his desire to have it."

Valuation

12. The Underlease we saw referred to a term of 99 years less 3 days from 25th March 1908. We, therefore, agreed with Mr Rutledge that the unexpired term was 3.5 years, as at 31st October 2003.
14. The Underlease referred - at paragraph 6(b) - to a yearly ground rent of £20-25p made payable by the Head Lease. Mr Rutledge submitted that this should be apportioned (equally) between the 3 houses in the block; however, we decided that as the Underlease referred to only 2 of the houses in the block, the ground rent should be apportioned between 2 houses only. This gave £10-13 per annum for the ground rent for the property.
15. We agreed with Mr Rutledge that the standing house value was £95,000, the site value 28% and the yield 6.5%.
16. We also considered whether a "Haresign Addition" (see Haresign v St John the Baptist's College Oxford LR/18/1979) was appropriate in this case.

We decided that a Haresign Addition was not appropriate for the following reasons:-

- (i) If Section 143 of the 2002 Act had not been enacted, the Tribunal would have determined that a Haresign Addition was to be made in this case because in our view it is probable that the house will still be standing in 52.5 years time;
- (ii) In addition, we considered that an investor would be likely to pay an additional sum to the present value of the house in 52.5 years time over and above the value of the capitalised ground rent;
- (iii) However, Section 143(1) of the 2002 Act provides:-

"In section 16 of the 1967 Act (limits on rights of extension of lease), omit -

(a) subsection (1)(a) (no right of tenant under extended tenancy to acquire freehold after end of original lease)....."
- (iv) The amendment made by Section 143(1) of the 2002 Act means that a tenant can now enfranchise during the 50 year lease extension to which the tenant is entitled by reason of Section 14 of the 1967 Act. In our view, this change in the law has a considerable impact on the Haresign issue;
- (v) Section 9(1) of the 1967 Act sets out the basis of the calculation that we must make in order to determine the appropriate sum (under Section 27(3) of the

1967 Act). It provides for certain assumptions to be made - including in sub-section 9(1)(a), an assumption that the tenancy has been extended by 50 years.

- (vi) Accordingly, we assume that the Tenancy in this case has been extended by 50 years and we take into account that (by reason of Section 143 of the 2002 Act), enfranchisement can take place at any time during the 50 year extension period.
- (vii) In our judgement, the change in the law (effected by Section 143 of the 2002 Act) means that a Haresign addition is not appropriate in this case. We recognise that (if we are correct) the Haresign addition is unlikely to be appropriate in any future case.

17. Accordingly, our valuation is:-

Apportioned Ground Rent	£10-13	
Years Purchase (3.5 years) @6.5%	<u>3.037</u>	£31-00
Standing House Value	£95,000	
Site value @ 28%	£26,600	
S.15 Modern Ground Rent @ 6.5%	£1,729 per annum	
Years Purchase in perpetuity deferred 3.5 years @ 6.5%	<u>12.347</u>	
		<u>£21,348-00</u>
	TOTAL	<u>£21,379-00</u>

Conclusion

18. The Tribunal determines that the appropriate sum payable - pursuant to Section 27(3) of the 1967 Act (as amended by Section 149 of the 2002 Act) is:-

£21,379 (Twenty one thousand three hundred and seventy nine pounds)

SIGNED  (A.J.ENGEL - Chairman)

DATED 29th November 2004