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Our Ref: BIR/00CU/0AF/2003/0163 &  
BIR/00CU/0C6/2003/0108

**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: Mr & Mrs D J Mackay

Respondent: St Ermins Property Co Ltd

Re: 17 Fordwater Road, Streetly, Sutton Coldfield, West Midlands, B74 2BQ

Date of Tenants Notice: 20<sup>th</sup> August 2003

RV as at 1.4.73: £272

Application dated: 23<sup>rd</sup> October 2003

Heard at: Midland Leasehold Valuation Tribunal Offices in Birmingham

On: 20<sup>th</sup> January 2004

APPEARANCES:

For the Tenant: J A Moore MA of Midland Valuations Ltd

For the Landlord: None

Members of the Leasehold Valuation Tribunal:

N R Thompson (Chairman)  
Mrs A Bartram  
P J H Waller

Date of Tribunals decision: 12 FEB 2004

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATIONS UNDER SECTION 21 AND 21 (1) (ba) OF  
THE LEASEHOLD REFORM ACT 1967**

**IN THE CASE**

**OF**

**MACKAY v ST ERMINS PROPERTY CO LTD**

**17 FORDWATER ROAD  
STREETLY  
SUTTON COLDFIELD  
WEST MIDLANDS  
B74 2BQ**

**References : BIR/00CU/0AF/2003/0163 & BIR/00CU/0C6/2003/0108**

**Background**

This a determination under Section 9 of the Leasehold Reform Act 1967 (as amended) as to the price to be paid for the freehold interest in respect of 17 Fordwater Road, Streetly, SuttonColdfield, West Midlands B74 2BQ. The lessees, Mr & Mrs D J Mackay hold the property by way of a lease dated 30<sup>th</sup> September 1964 for a term of 99 years from 24<sup>th</sup> June 1962 at a fixed yearly ground rent of £20. The tenants' Notice of Claim to acquire the freehold interest was dated 20<sup>th</sup> August 2003, when approximately 57.75 years of the term remained unexpired. The Tribunal accepted that the qualifying conditions for entitlement to enfranchise under the Act had been fulfilled.

**Property**

The Tribunal inspected the property on 20<sup>th</sup> January 2004 in the presence of Mr & Mrs Mackay and found it to comprise a two storey semi detached house of brick and tile construction with an integral garage. It forms part of a substantial development of similar houses constructed some forty years ago.

The centrally heated and double glazed accommodation comprises an entrance porch, hall, dining room with arched entrance, extended rear living room and kitchen on the ground floor, with three bedrooms, shower (bath) room and separate W.C. on the first floor. Externally the property has front and rear gardens. The frontage is 7.62m (25 feet) and the site area is 224.94 square metres (246 square yards).

**Hearing**

At the Hearing, the lessees were represented by Mr. J. Moore MA of Midland Valuations Ltd. The landlords were not represented.

The Hearing commenced with Mr. Moore introducing his case on behalf of the lessees by submitting details of the property and the following valuation:-

### Term

Annual Ground Rent : £20  
YP 57.75 years @ 7% 13.998

£ 279.96

### Reversion

Entirety Value : £145,000  
Site Value @ 33% : £ 47,850  
Sec.15 Rent @ 7% : £ 3,349.50  
YP deferred 57.75 years @ 7% : 0.287

£ 961.31  
£1,241.27

Say £1,241

In support of his Entirety Value, Mr. Moore referred to the sale of a similar three bedroomed semi detached house at 5 Fordwater Road in November 2003 (some three month after the date of the Notice of Claim in the current case), at "near to the asking price of £145,000". In addition, Mr Moore referred to 126 and 179 Hundred Acre Road, two semi detached houses close to the subject property being marketed on a leasehold basis in November 2003 at £139,950 each. Subsequently, it was understood that 126 had sold for £138,000. He also referred to three recent decisions by the Tribunal involving 36 Brabham Crescent (BIR/00CU/OAF/2003/0104), 15 Brabham Crescent (BIR/OOCU/OAF/2003/0118) and 48 Fordwater Road (BIR/OOCU/OAF/2003/0141) where the dates of valuation were 30<sup>th</sup> May 2003, 26<sup>th</sup> June 2003 and 17<sup>th</sup> July 2003 respectively, and the Tribunal had adopted an Entirety Value of £145,000 in each case.

In relation to his adopted yield of 7%, Mr Moore submitted that this was a generally accepted rate in cases such as this, and had been widely adopted by the Tribunal and the Lands Tribunal.

Mr Moore submitted a detailed case to support the adoption of a Site Value based on 33% of the Entirety Value, and quoted an extensive list of comparable cases determined by the Tribunal involving similar frontages and site areas.

He emphasised that at £145,000 he had adopted a very full Entirety Value and to use a Site Value of more than 33% would (a) be contrary to the vast majority of decisions by the Tribunal in comparable cases and (b) would constitute "double counting".

### **Costs**

On the subject of the landlords' legal costs, Mr. Moore suggested a reasonable fee for the work involved would be £225 (plus VAT if applicable) and disbursements. His justification for this was:

- the freehold title was registered;
- this was one of several cases being dealt with over a relatively short period of time by the freeholders' solicitors and therefore there were economies of scale available to them;
- this was the level of award by the Tribunal in the cases of 36 Brabham Crescent, 15 Brabham Crescent and 48 Fordwater Road (ante);

In relation to the landlords' valuation fees, Mr. Moore confirmed that neither he nor his clients had received any indication of a valuation or suggested price for the freehold, and submitted that as no valuation of the property therefore appeared to have been carried out following service of the Notice of Claim and prior to the application to the Tribunal on 23rd October 2003, then the landlords were not entitled to recover any valuation costs from his clients.

## **Decision**

### **1 – Freehold**

The landlords not having submitted any written representations to the contrary, the Tribunal saw no reason to disagree with the broad thrust of Mr. Moore's valuation, which conformed in all material respects with the principles laid down by the Leasehold Reform Act (as amended). The Tribunal therefore determined the price to be paid for the freehold of the subject property to be £1,241.

### **2 – Costs**

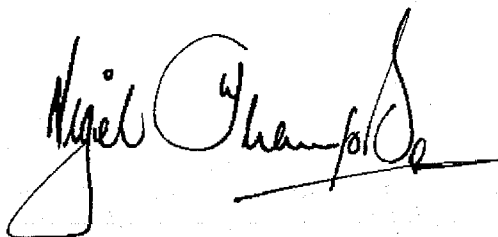
In relation to costs, the lessees' application for a determination is pursuant to Section 21 (1) (ba) of the Leasehold Reform Act 1967 as the freeholders' reasonable costs payable under Section 9 (4) of that Act and Schedule 22 Part 1 (5) of the Housing Act 1980.

#### **Legal:**

In cases of this type the conveyancing is normally of a very straightforward nature which many solicitors are prepared to undertake on a competitive basis. In this particular case, there are a number of other instances nearby of the freehold being sold recently, and some element of duplication and therefore economy is inevitably available to the freeholders' solicitors. However, it needs to be borne in mind that since the introduction of Stamp Duty Land Tax as from 1<sup>st</sup> December 2003, there is a significant further element of work to be undertaken by the freeholders' solicitors in completing the relevant return – regardless of the liability to tax in any given case. Consequently, this needs to be reflected in the freeholders' legal fees, and a reasonable level of fee payable by the tenants is therefore considered to be £275 (plus VAT if appropriate) and any Land Registry fee for Office Copies.

#### **Valuation:**

In the absence of any evidence that a valuation has been undertaken by or on behalf of the landlords in consequence of the tenant's Notice and prior to the date of the reference to the Tribunal, no valuation costs are payable by the Lessee pursuant to Section 9 (4) (e) of the Act.



**Nigel R Thompson**  
Chairman

12 FEB 2004