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BIR/00CN/OAF/2004/0009

**MIDLAND RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATIONS UNDER S21(1)(a) AND 21(1)(b) OF THE  
LEASEHOLD REFORM ACT 1967**

**Premises: 17 Hilary Drive, Walmley, Sutton Coldfield, B76 2SW**

**Applicants: Mr and Mrs J Boyle (tenants)**

**Respondent: Mrs J B Taylor (landlord)**

**Date of tenant's notice: 16 January 2004**

**RV on the appropriate day: Under £500**

**Applications dated: 20 January 2004**

**Heard at: Birmingham**

**On: 7 April 2004**

**Appearances:**

Mr G Ritchie of Margetts & Ritchie, solicitors, for the tenants

Mr P J A Taylor FRICS for the landlord

**Members of the leasehold valuation tribunal:**

Lady Wilson  
Mr I Humphries FRICS  
Mr D Underhill

**Date of the tribunal's decision: 27 April 2004**

## **Background**

1. These are applications to determine the price to be paid for the freehold of 17 Hilary Drive, Walmley, Sutton Coldfield, West Midlands, and the landlord's recoverable costs. The property is held by the tenants, Mr and Mrs Boyle, on a lease dated 17 June 1964 for a term of 99 years from 25 December 1963 at a ground rent of £29 per annum, fixed throughout the term. Approximately 59 years remained unexpired on the valuation date, which is 16 January 2004, the date of the tenants' notice of claim. The rateable value of the property is such that the valuation falls to be made in accordance with section 9(1) of the Leasehold Reform Act 1967.

2. The tribunal inspected the property on 7 April 2004, before the hearing, in the presence of Mr and Mrs Boyle. It is a two storey semi-detached house built in the 1960s, 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, three bedrooms, a bathroom/ wc and an integral single garage. The lease records that the area of the site is 253 square yards. Unaccompanied, the tribunal also externally inspected all the comparables in Hilary Drive and the nearby Laburnum Drive mentioned in the reports which the parties' representatives had submitted before the hearing in accordance with the tribunal's pre-trial directions.

## **The hearing**

3. At the hearing the tenants were represented by Mr G Ritchie of Margetts & Ritchie, solicitors, and the landlord by her husband, Mr P J A Taylor FRICS.

4. The issues were the entirety value, the yield to be applied to decapitalise the site value in order to arrive at the section 15 rent, and costs. It was agreed that the standing house approach

to arriving at the value of the site was appropriate, that site value proportion should be 33.33%, and that a yield of 7% should be used to capitalise the existing ground rent.

**i. Entirety value**

5. Mr Ritchie proposed an entirety value of £150,000, which he considered to be supported by the sale of 16 Hilary Drive for £160,000 in October 2003, the sale of 19 Hilary Drive for £152,000 in November 2003, the recent sale of 6 Laburnum Drive for £156,500, and by 30 Hilary Drive, the existing lease of which (the unexpired term being identical to that of the subject house) was on the market for sale at £146,950. He said that these properties were superior to 17 Hilary Drive in that 16 Hilary Drive had been modernised and had a conservatory, 19 Hilary Drive had a newly fitted luxury kitchen and a newly tarmaced driveway, 6 Laburnum Drive had a block paved drive, newly fitted kitchen and conservatory, and 30 Hilary Drive had a refitted bathroom and kitchen.

6. Mr Taylor proposed an entirety value of £155,000, based on the prices achieved for 16 Hilary Drive and 6 Laburnum Drive.

7. We are satisfied that the comparables fully support the entirety value proposed by Mr Taylor. The purpose of arriving at the entirety value is to establish the value of the site, and, in order to do that, when the standing house approach is adopted, a proportion of the value of the property assumed to be modernised and fully developing the value of the site is taken. If, therefore, the addition of a conservatory, for example, is feasible and would add value, then such an addition should be taken into account in arriving at the entirety value. It is clear from the lease plan and from our inspection that the sites of the comparables are essentially identical to that of the subject house. Values have certainly not decreased since the sales of the comparables, and we

have no doubt that, of the two proposed values, Mr Taylor's is to be preferred.

**ii. Yield**

8. Mr Ritchie had adopted a percentage rate of 7% to decapitalise the site for the purpose of arriving at the section 15 rent, the same rate which he had used to capitalise the ground rent payable under the lease. He said that this was the rate invariably adopted for this purpose by the tribunals of the Midland Rent Assessment Panel.

9. Mr Taylor had adopted a rate of 6.5% for this purpose, relying on a decision of the Lands Tribunal dated 25 August 1998 (LRA/10/1998) in respect of 10 Hilary Drive on the same estate and owned by the same landlord, whom he had represented. Although he had argued in that case that the same yield (6% in that instance) should be used for the capitalisation of the existing ground rent and of the section 15 rent, the member, Mr P H Clarke FRICS, had decided that different yields should be applied and had used 7% to capitalise the existing ground rent and 6.5% to capitalise the section 15 rent. However, Mr Taylor very frankly admitted that he did not fully understand the theoretical basis for making that distinction and personally considered that it was wrong in principle.

10. Although we bear in mind that a decision of the Lands Tribunal, particularly in relation to such a similar property, is persuasive, it is not binding on this tribunal, and, with respect, we agree with Mr Taylor that it is inconsistent to value the existing ground rent, which is the safer investment, at a higher yield than that adopted for the section 15 rent. We regard 7% as the appropriate rate for both aspects of the valuation and have adopted it.

### **iii. Costs**

#### **a. legal**

11. Both Mr Ritchie and Mr Taylor invited the tribunal to determine the conveyancing costs at this stage. No other recoverable legal costs have been incurred by the landlord in connection with this case.

12. Although, in his written statement lodged before the hearing, Mr Ritchie had asserted that the landlord's reasonable costs for conveyancing would be £200 plus VAT, at the hearing he said that he had changed his mind and now considered that they would be no more than £150 plus VAT. In the last year, he said, the landlord had instructed the same firm of Solihull solicitors in the sales of three freeholds in Hilary Drive. In the cases of two of them, 5 and 6 Hilary Drive, the conveyancing costs were the subject of determinations by the tribunal of £200 plus VAT, and, in the case of 8 Hilary Drive, the freehold was sold by private treaty and the conveyancing costs were £300. The work required of the landlord's solicitors in the present case was minimal. He himself had deduced title and engrossed a form of transfer. Because of the transactions previously dealt with on this title, the work required here would be "production line conveyancing", and would require no more than five brief letters. The work required in connection with Stamp Duty Land Tax was for the purchasers' solicitor, not the vendor's, to carry out. A leading firm of solicitors had charged only £250 for a considerably more complicated transaction on the Bournville Estate.

13. Mr Taylor asked for a fee for conveyancing of £325 plus VAT, which, he said, was the fee determined by the Lands Tribunal for similar work in a case concerning 109 Weymoor Road Harborne (LRA/40/2002). He agreed that the conveyancing in the present case was likely to be straightforward.