

(477)

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

HUGHES V CALDIX LIMITED

19 REDBANK AVENUE, ERDINGTON, BIRMINGHAM B23 7JR

BIR/OOCN/OAF/2004/0067 & BIR/OOCN/OC6/2004/0056

Background

This is 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 a semi-detached house, 19 Redbank Avenue, Erdington, Birmingham B23 7JR. The lessee, Mrs J Hughes holds the property by way of a lease dated 28th May 1959 for a term of 99 years from 25th March 1958 at a yearly ground rent of £14.50. The tenant's Notice of Claim to acquire the freehold interest was dated 16th January 2004, when approximately 53 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 carried out an inspection on 9th June 2004 in the presence of Mrs Hughes, together with her agent, Mr Anthony Brunt and the freeholder's agent, Mr Grant Dixon.

The property comprises a two storey semi-detached house of brick and tile construction with a frontage of approximately 10 feet onto a cul de sac of largely similar properties in a well established residential area some five miles north east of Birmingham City Centre.

The accommodation comprises a hall; two living rooms and a kitchen with pantry off, on the ground floor, with three bedrooms and a combined bathroom/W.C. on the first floor. Externally the property has both front and rear gardens and backs onto a right of way over which the property has no access. The property occupies a site which slopes steeply from front to rear and side to side.

Hearing

At the hearing the Lessee was represented by Mr A W Brunt FRICS of Anthony Brunt & Co. The Landlord was represented by Mr Grant Dixon of Jack Dixon and Company.

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

Term

Annual Ground Rent :	£14.50
YP 53 years @ 7%	<u>13.889</u>

£ 201.39

Reversion

SHV :	£96,000
Site 30% :	£28,800
Rent @ 7% :	£ 2,016
YP in perp deferred 53 years @ 7% :	<u>.396</u>

£ 708.345

£999.73

say £1,000

In support of his entirety value, Mr. Brunt referred to No. 4 Redbank Avenue which he understood to have been offered for sale (freehold) for a period of six months during 2003 at a figure of £110,000 by three different agents – none of whom had been successful in securing a purchaser. That property had a road frontage of 24 ft; had the original garage converted into an extra living room (with the driveway now being used for parking) and had centrally heated accommodation with double-glazed windows comprising two reception rooms and a kitchen on the ground floor together with three bedrooms, a bathroom, and separate WC on the first floor.

In January 2004 the property was again put on the market but this time at a figure of £104,950 this time through a local firm of estate agents – Green & Co. Apparently they too were unable to find a buyer, and it was then offered in February of this year (i.e. approximately one month after the appropriate valuation date for the subject property) at an increased price of £108,000 through another firm of local estate agents, Dixons.

Taking all these factors into account, Mr Brunt considered that the adoption of an entirety value of £96,000 was appropriate, given the better accommodation, facilities, plot and nature of the site of No. 4 Redbank Avenue.

Turning to the question of the site value, Mr Brunt pointed out that in comparison with No. 4 Redbank Avenue, the subject property had a road frontage of only 10 ft and occupied a site which sloped steeply from both front to rear as well as from side to side. He emphasised that seven (elongated) steps were needed to cross the front garden in order to reach the front door; a further five steps were needed from the rear kitchen door to reach the patio; another eight steps were required from the patio to reach the rear garden and six further steps were needed to provide access to the lower section of the rear garden. Mr Brunt also pointed out that there was no parking or driveway with the subject property and that there was a heavy maintenance responsibility for the owner given the nature of the southern boundary which comprised a 6 ft to 8 ft high retaining wall. He suggested that all of these factors would have a considerable effect on the value of the property given the inherent inconvenience and danger the nature of the site presented to old and young alike.

In addition, Mr Brunt was of the opinion that the sloping nature of the ground would necessitate more expensive foundations than would normally be the case and this would inevitably be reflected in the price which a developer would be prepared to pay for the site within the terms contemplated by the Act.

Finally, in his submission relating to the value of the site, Mr Brunt cited two cases determined by the Tribunal in respect of 20 Raford Road, Erdington, Birmingham B23 5PE (M/EH2546C) and 86 Yateley Avenue, Great Barr, Birmingham B42 1JQ (WM/EH 1935). In both of those cases, the Tribunal had adopted 30 per cent of the entirety value the site because of the steeply sloping nature of the ground.

In Mr Brunt's opinion 30 per cent was an appropriate figure to adopt in the present case.

(Although not experienced personally in such matters, Mr Brunt presented anecdotal evidence to suggest that Redbank Avenue lay in an area of underlying sandstone where there was some concern about the bearing ability of the sub strata.)

In relation to the yield rate, Mr Brunt submitted that 7% had been adopted by the Tribunal for a long time in the vast majority of 1967 Act cases and this was a figure which he had negotiated on many occasions with surveyors representing a number of different freeholders. He also suggested that he had dealt with other cases at lower yields where the lessee had wanted to avoid an application to the Tribunal (often because of an impending sale or because of time constraints in respect of a mortgage offer), and conversely he had dealt with other cases at higher yields than 7% where freeholders' advisers were not as thorough as they perhaps might have been, or had not been local to the area. Within his personal experience therefore, he suggested that there was a yield range of six to eight per cent, although his view was that 7% was appropriate in the present case.

In anticipation of the evidence to be submitted on behalf of the freeholder, Mr Brunt pointed out that in the case of the Leasehold Valuation Tribunal decision concerning 7 St Govan Place, Swansea, a 6% yield rate had been adopted (as suggested by the lessee's surveyor) and a site value of 30% had been taken in respect of what was a three-bedroom, detached house having a road frontage of 33 feet 6 inches. In Mr Brunt's opinion this was a very different situation from the present case, where the property was semi detached; the site had distinct topographical disadvantages; and there was only a limited road frontage of 10 feet or thereabouts.

In cross-examination, Mr Brunt confirmed that he had been told No. 4 Redbank Avenue had been sold in the Spring of this year, although the sale price was not known. In relation to the case in Yateley Avenue which Mr Brunt had quoted, it was put to him that the rear garden in that instance had been so steeply sloping as to constitute "virtually a cliff". Mr Brunt responded by saying that it was the sloping nature of the subject site in two different directions – and not just the angle of the slope – which in his view would necessitate additional ground works, the costs of which would be reflected in the price a developer would be prepared to pay for the site. He also pointed out that even the two halves of the semi-detached houses incorporating the subject property were stepped.

In presenting his case, Mr Dixon indicated that, together with other members of his family, he was a director of Caldix Ltd.

Mr Dixon stressed that the property was in reasonable condition and the lessee must have been reasonably happy with it as she had been there since it was built. This suggested it did not suffer from all the disadvantages Mr Brunt seemed to be suggesting. Mr Dixon also pointed out that the Yateley Avenue case cited by Mr Brunt had not been contested, and although Mr Dixon had not seen the property, it did not appear to be an entirely comparable situation to the present case.

Since 2000, Mr Dixon had dealt with six cases of semi-detached houses where Mr Brunt had been representing the lessee and on each occasion they had settled the site value by negotiation at one third of the entirety value. In those terms he saw no reason why this case should be dealt with differently and in support of that stance, he referred to three Leasehold Valuation Tribunal cases in which he and Mr Brunt had been involved, all of which had involved inner terraced houses and all of which had been determined by the Tribunal at a site value of one third of the entirety value:

- 14 Regent Street Stirchley (0210);
- 195 Beaumont Road, Bournville (0137); and
- 11 Park Avenue, Cotteridge (2271).

In relation to the yield rate to be adopted, Mr Dixon did not accept the arguments put forward by Mr Brunt that those surveyors who were prepared to accept something less than 7% were necessarily not as thorough as they might have been, or were otherwise not familiar with the locality. He had personally dealt with a number of chartered surveyors who had accepted a 6% yield, which was the figure he felt to be appropriate in the present case.

Mr Dixon suggested that there was a distinct lack of evidence as to the entirety value in this case, as exemplified by the fact that Mr Brunt's original valuation (8th March 2004) had suggested a price of £1,031; his revised valuation (26th May 2004) had suggested a price of £950; and the further revised valuation presented at the hearing (9th June 2004) had suggested a price of £1,000.

Mr Dixon's own valuation was as follows:

Present Ground Rent:	£14.50 pa	
YP for 53 years @6%	<u>15.9</u>	£230.55
Entirety Value :	£115,000	
Site Value at 1/3rd	£38,333.33	
Section 15 Rent at 6%	£2,300pa	
YP in perp. def 53 years at 6%	<u>0.759</u>	£1,745.70
		£1,976.25

In relation to the entirety value, Mr Dixon indicated that he had contacted most of the local estate agents but with very limited success in obtaining an opinion as to the value of the subject property on a notional freehold vacant possession basis as at January 2004. One agent had suggested that the figure of £125,000 would be appropriate now, and that at the beginning of the year, the correct figure would have been circa. £115,000.

Mr Dixon referred to the sale at auction on 22nd April 2004 of 107 George Road, Erdington which comprised a turn-of-the-century inner terraced house abandoned in 1987 and not occupied since. During the intervening period, the property had been occupied by vagrants and had then been systematically vandalised - but had still achieved a price of £102,000 at auction - albeit four months after the date of the Notice of Claim in the present case. A costed Schedule of Dilapidations had been prepared in that case, which suggested that some £30,000 needed to be spent on the property in order to put it into reasonable condition. Mr Dixon felt this clearly suggested that £96,000 was too low for the entirety value of the subject premises as at the relevant date.

In relation to the site value, Mr Dixon said that the property had been built by his father and an associate, who - on enquiry - had indicated that they had not experienced any particularly difficult or expensive problems in developing Redbank Avenue. He emphasised that the lessee was the original occupier and seemed both perfectly happy at the property, and did not appear to have had suffered unduly because of the different levels of the site.

So far as the appropriate yield rate was concerned, Mr Dixon referred to the case of 7 St Govan Place in Swansea which had been determined by the Leasehold Valuation Tribunal in June 1997 when Base Rate had been 6.5%. The unexpired term of the lease in that case had been 79 years and a 6% rate had been adopted throughout the valuation.

The case involving 20 Bishopston Close, Redditch (LRA/4/1994) had been determined in 1994 when Base Rate had been 12% and the unexpired term of the lease had been 77.66 years. In the decision, it had been accepted that, "Base Rate can be influential over a period". Mr Dixon suggested that Base Rates undoubtedly had an effect on the yield which should be adopted in this and similar cases; a view which was supported by the negotiations he had concluded with a number of chartered surveyors who had been perfectly comfortable to accept a 6% yield rate.

In the present case the unexpired term was 53 years which, compared with the two cases detailed above, suggested that 6% was entirely appropriate and realistic.

In cross-examination, Mr Brunt asked whether there was any evidence of the ground having moved at 19 Redbank Avenue, to which Mr Dixon responded that he had received no reports of any such problem. Mr Brunt then asked whether he had seen No.4 Redbank Avenue as being for sale during six months of 2003, when it was apparently on the market. Mr Dixon confirmed that he had not been aware that No. 4 was up for sale, although he had visited Redbank Avenue during that period.

Mr Brunt then asked what Mr Dixon's opinion was of the value of 107 George Road, Erdington if it had been in a good state of repair and condition. Mr Dixon said that George Road was a different style of house which occupied a level plot and enjoyed an attractive view over the park at the front. In his opinion, the value the property in good condition would be of the order of £150,000 given that in terms of accommodation, it was an inner terraced property with three bedrooms and a first-floor bathroom.

Mr Brunt then questioned whether the agents who had suggested the value of the property might be between £115,000 and £125,000 as at January 2004 had been told about the nature of the subject site. Mr Dixon confirmed that he had not specifically mention this point, but the agents to whom he had spoken all knew the road well.

In relation to St Govan Place, on which Mr Dixon was partially basing his case for a yield of 6%, Mr Brunt questioned whether Mr Dixon would also wish to distinguish the site apportionment (as well as the yield rate) given that 30% of the entirety value had been used for the site in that case. Mr Dixon responded by saying that he had referred to the case in terms of the yield, not site apportionment, given that he had not been to inspect the property.

Costs

On the subject of the Landlord's recoverable legal costs, Mr. Brunt suggested that a reasonable fee would be £275 (plus VAT if applicable) and disbursements. The freehold title was registered and as further authority, he referred to the fact that this figure had been adopted by the Tribunal in numerous previous cases. Mr Dixon indicated that the freeholder's solicitors had suggested a fee of £325 (plus VAT and disbursements), but he considered £300 would be acceptable.

In relation to the landlords' valuation fees, it was confirmed that there had been lengthy negotiations before a Notice of Claim had been served, (Mr Dixon having undertaken his original valuation in January 2003). Since that time, Mr Dixon had updated his figures on a number of occasions, although he accepted that the majority of his work had been undertaken prior to the service of the Notice of Claim. Mr Dixon confirmed that he had not carried out an internal inspection of the property.

Decision

1 – Freehold

The three areas of dispute between the parties were the entirety value of the property as at the date of claim; the proportion of that figure to adopt as the value of the site, and the yield rate to be used in the valuation.

In relation to the first of these, the Tribunal considered that the evidence of the background to the sale of No. 4 Redbank Avenue provided the most relevant guidance, and in the circumstances, the Tribunal considered that a figure of £96,000 was appropriate as at January 2004.

In relation to the second area of dispute, the Tribunal considered that the nature of the site was such that, although 1/3rd for the site value would have been appropriate had it been at least reasonably level, and with a reasonable road frontage, the significantly sloping character (in not just one, but two directions) and the restricted frontage had to be reflected in the proportion of the entirety value to be adopted for the site. The Tribunal therefore determined that this should be 30%.

Finally, in relation to the yield, the Tribunal considered that 7% was the appropriate rate. It was clear that the St Govan case involved a very different type of property/site and the courts have expressly doubted whether the money market (i.e. Base Rates and their movement) provides a safe guide to land valuations (*Gallagher Estates Limited v Walker* (1973) 28 P&CR 113, 117 per Lord Denning MR). It also has to be appreciated that in the hypothetical market contemplated by the 1967 Act, it is questionable whether an investor would be particularly influenced by low base rates when the reversion is relatively distant.

The Tribunal therefore determines that the price to be paid for the freehold of the subject property should be £1,000 – a figure derived from Mr Brunt's revised valuation presented to the Tribunal at the hearing.

2 – Costs

In relation to costs, the application for a determination falls to be considered under Section 21 (1) (ba) of the Leasehold Reform Act 1967, as the freeholder's 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 work is normally of a very straightforward nature which many solicitors are prepared to undertake on a competitive basis. At the present time, a reasonable charge is considered to be £300 (plus VAT, if applicable) together with any Land Registry fee for Office Copies.

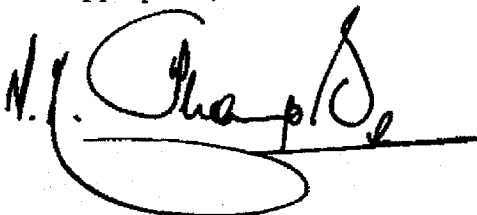
Valuation:

The claimant lessee is only responsible for payment of the freeholder's valuation fee in respect of a valuation undertaken as a consequence of the service of a Notice of Claim. It follows that the cost of obtaining any valuation before then is not recoverable from the lessee. Similarly, any valuation fee payable as a consequence of a reference to the Tribunal is not recoverable. Therefore, for all practical purposes, for a valuation fee to be recoverable from the lessee, it must be in respect of a valuation carried out as a consequence of the service of a Notice of Claim (and therefore after such a Claim has been served) and before any application to the Leasehold Valuation Tribunal for a determination as to the price to be paid for the freehold or the amount of the costs payable by the lessee.

Furthermore, the Tribunal would normally only award a "full" valuation fee where the freeholder's surveyor had actually carried out an internal inspection of the property. A valuation based on just an external inspection would attract a somewhat lesser fee, to reflect the more limited time taken by the valuer, and the correspondingly limited nature and scope of the valuation.

In this instance, it is clear Mr Dixon undertook some element of valuation work following the service of the Notice of Claim, but by his own admission, the majority was done before that time. Equally, Mr Dixon confirmed that he did not undertake an internal inspection of the property to produce his "post service of Notice" valuation updates. Consequently, only a reduced fee would normally be recoverable by the freeholders in this instance.

In the circumstances, a reasonable valuation fee is considered to be £150 + VAT (if appropriate).



Nigel R Thompson
Chairman

Date: 16th July 2004