

478

MIDLAND RENT ASSESSMENT PANEL

Ref:-
BIR/00CN/OAF/2004/0049
BIR/00CN/OC6/2004/0059

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicants: Sylvia Andrews and Anthony Walter Watson
(The Personal Representatives of Lilian Gertrude Andrews, deceased.)

Respondent: Trustees of the estate of William Thomas Coggins

Re: 42, Westminster Road, Selly Park, Birmingham B29 7RS

Date of Tenants Notice: 26th September 2003

RV as at 1.4.73: Less than £500

Applications dated: 10th March 2004

Heard at: The Panel Offices, Birmingham

On: 19th May 2004 and 28th June 2004.

APPEARANCES:

For the Tenant: Mr Brunt (of Anthony Brunt & Co., Valuers) - on 19th May 2004 only.

For the Landlord: Mr Davis (Chartered Surveyor) - on 28th June 2004 only.

Members of the Leasehold Valuation Tribunal:

Mr A.J.ENGEL M.A. (Chairman)
Mr I.D.HUMPHRIES B Sc; FRICS
Miss B.GRANGER

Date of Tribunals decision: 19 JUL 2004

Background

1. By written notice to the landlord, dated 26th September 2003, the Personal Representatives of the late tenant, Lilian Gertrude Andrews, who died on 2nd February 2002, gave notice of their desire to have the freehold of the property.
2. By letter, dated 10th March 2004, Mr Brunt (of behalf of the applicants) applied to the Tribunal for determinations of:-
 - (a) The price payable for the freehold;
 - (b) The costs payable under section 9(4) of the Leasehold Reform Act 1967 (the 1967 Act).

Inspection

3. On 19th May 2004, the Tribunal inspected the property in the presence of Mr Brunt and the applicants.
4. The property is a two storey mid terrace house with two storey rear wing and single storey coal house and w.c.. The accommodation comprises 2 reception rooms and kitchen on the ground floor with 3 rooms on the first floor. There is no bathroom and no inside w.c.. The property is unimproved; it has no central heating and the only hot water facility is an old geyser in the kitchen. It has a small front garden and an enclosed rear garden with access to a footpath. There is no garage and no parking facility; however, parking in Westminster Road is unrestricted.

Term

5. It is agreed by the parties that, at the date of valuation, there is an unexpired term (of the lease) of 1 year 9 months.

First Hearing

6. A hearing was held, after the inspection, on 19th May 2004. The only person who attended this hearing was Mr Brunt, who appeared on behalf of the applicants.
7. The Landlord was not represented at this hearing. The Tribunal had, prior to 19th May 2004, refused an application for postponement of the hearing made on behalf of the Respondent and opposed by Mr Brunt. The application was not renewed on 19th May 2004.
8. At the hearing, the Tribunal considered:-
 - (i) Written representations from Mr Davis;
 - (ii) Written representations from Mr Brunt;

- (iii) Oral representations made by Mr Brunt and documents handed in, at the hearing, by Mr Brunt.
9. At the request of the Tribunal, Mr Brunt addressed the question of whether a "Haresign addition" (see the case of Haresign v St John the Baptist's College, Oxford LR/18/1979) was appropriate in this case.
10. Mr Brunt conceded that the house would be standing in 52 years time, but he submitted that a Haresign addition was not appropriate.

Decisions on matters other than "Haresign"

11. After the hearing on 19th May 2004, the Tribunal made the following determinations:-

- | | |
|---------------------------------|-----------------------------|
| (a) Entirety Value: | £115,000 |
| (b) Site Value: | 30% |
| (c) Modern Ground Rent Yield: | 6.5% |
| (d) Surveyors costs limited to: | £150 (+VAT, if applicable) |
| (e) Legal costs limited to: | £350 (+ VAT, if applicable) |

12. These determinations were notified to the parties by letters, dated 20th May 2004.

Second hearing

13. The letters of 20th May 2004 also stated:-

"The LVT is considering whether it is appropriate for a "Haresign Addition" (see Haresign v St John the Baptist's College, Oxford LR/18/1979) to be applied and, if so, how it should be calculated.

The LVT will reconvene on 28th June 2004 to decide this issue.

If you wish to make written representations on this issue, they will be considered by the Committee provided that they are received at this office on or before 14th June 2004.

If you wish to make oral representations on this issue, the Committee will hear oral representations at 10 a.m. on 28th June 2004, in Birmingham, at a venue to be notified to you - provided that you inform the Case Officer (Miss Kelly Whittaker) of your wish to make oral representations on or before 14th June 2004."

14. By letter, dated 28th May 2004, Mr Brunt made written representations on the Haresign issue and, on 5th June 2004, Mr Brunt wrote to the Tribunal explaining that he was not available to attend a hearing on 28th June 2004 but stated:- "However, I am willing for the tribunal to continue without me being present."
15. By letter, dated 3rd June 2004, Mr Davis indicated that he would attend the hearing on 28th June 2004 in order to make oral representations.
16. By letter, dated 10th June 2004, Mr Brunt applied for a postponement of the hearing fixed for 28th June 2004. This application was refused.
17. The Tribunal reconvened on 28th June 2004, when Mr Davis attended, on behalf of the Landlord. He made oral representations on the Haresign issue and handed in written representations.

Decision on the Haresign Issue

18. The Tribunal determined that a Haresign addition was not appropriate for the following reasons :-
 - (i) If section 143 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) had not been enacted, the Tribunal would have determined that a Haresign addition was to be made in this case because we agreed with Mr Brunt that it was probable that the house would be standing in 52 years time;
 - (ii) In addition, we considered that an investor would be likely to pay an additional sum for the present value of the house in 52 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 after extension of lease), omit -

(a) subsection (1)(a) (no right of tenant under extended tenancy to acquire freehold after end of original lease)....."
 - (iv) We accept the force of the point made by Mr Brunt, in his letter of 28th May 2004, that, by reason of section 143 of the 2002 Act, a tenant can enfranchise during the 50 year lease extension to which the tenant is entitled (by reason of section 14 of the 1967 Act) and that 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 ascertain the price payable for the freehold. It provides for certain assumptions to be made - including in sub-section (a), an assumption that the tenancy has been extended by 50 years.
 - (vi) Accordingly, we assume that the tenancy 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, this change in the law means that a Haresign addition is not appropriate in this case and we recognise that this means that, if we are correct, the Haresign addition is unlikely to be appropriate in any future case.

Valuation

19. Term

Rent	£6	
Years Purchase (1 year 9 months) @6.5 %	1.589	
		<u>£9</u>

Reversion

Standing House Value	£115,000	
Site Value 30%	<u>£34,500</u>	
S.15 Modern Ground Rent @6.5%	£2,242 p.a.	
Years purchase 6.5% in perpetuity	15.3846	
Present value of £1 - 1year 9months @ 6.5%	0.895649	
		<u>£30,892</u>
		<u>£30,901</u>
	say	<u>£30,900</u>

Costs

20. No representations were made on behalf of the Landlord on this issue.
21. We limited surveyor's costs to £150 (+VAT, if applicable) on the basis that only an external inspection was involved (as is shown by the erroneous reference to a bathroom in Mr Davis' written representations).

Conclusions

22. The price payable for the freehold is £30,900
23. Surveyor's costs are limited to £150 (+VAT, if applicable).
24. Legal costs are limited to £350 (+VAT, if applicable).

SIGNED A.J.ENGEL

A. J. Engel

(A.J.ENGEL - Chairman)

DATED 17 JUL 2004