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MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CN/OAF/2004/0184

Leasehold Reform Act 1967

DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL

On an application under s.21 Leasehold Reform Act 1967 to determine the price payable on enfranchisement by the tenant under s.9(1)

Applicant Tenant: Ronald Christopher Pitt and Marilyn Joan Pitt

Respondent Freeholder: Adalat Khan, Pauline Sylvia Khan and Jon-Adam Khan

Property: 24, Glenwood Road, Kings Norton, Birmingham B38 8HF

Date of Tenant's Notice: 30 January 2004

Application dated: 19 July 2004

Heard at: The Panel Office

On: 29 September 2004

APPEARANCES:

For the Tenant: On the issue of jurisdiction - Mr J Barclay, counsel, instructed by Carvill & Johnson, solicitors;
On the issue of the price payable - Mr A Shepherd, Bigwood

For the Freeholder: Mr A Khan BSc (Est Man), the joint Respondent

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper (Chairman)
Mr W J Martin
Miss B Granger

Date of Tribunal's decision:

Background:

- 1 Ronald Christopher Pitt and Marilyn Joan Pitt are the tenants (the '**Tenant**') by a 99 year lease from 1937 of the dwelling house and premises at 24, Glenwood Road, Kings Norton, Birmingham B38 8HF (the '**Property**'). The freeholders are Adalat Khan, Pauline Sylvia Khan and Jon-Adam Khan (the '**Freeholder**'). By a notice (the '**Notice**') dated 30 January 2004 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 19 July 2004 the Tenant applies to us to determine the price payable on the acquisition of the freehold of the Property under s9 of the Act. It is common ground that the basis of valuation is that contained in s.9(1). We inspected the Property on 29 September 2004 and a hearing was held on the same day.
 - 2 The Tenant holds the Property by a lease (the '**Lease**') for a term of 99 years from 24 June 1937 at a fixed ground rent of £6 pa.
 - 3 The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 32 years.
 - 4 The Property comprises a semidetached house of brick and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - hall, through living room, kitchen; on the first floor - 3 bedrooms (one partitioned to provide staircase access to the fourth bedroom in the roof space), shower room with wc. The site frontage is about 6m; the width is maintained throughout the depth of the site and the total site area is about 237m².
 - 5 On the issue of the price payable **Mr A Shepherd** FRICS appeared for the applicant Tenant; on the issue of our jurisdiction **Mr Barclay**, counsel appeared. **Mr A Khan** BSc (Est Man), the joint Freeholder, appeared in person for the Freeholder.
- Preliminary issue of our jurisdiction:**
- 6 Mr Khan, by the Freeholder's notice 10 March 2004 in reply to the Tenant's Notice, does not admit the Tenant's right to have the freehold owing to the Tenant's alleged breach of covenants in the Lease (carrying out alterations without consent). He submits, with a helpful skeleton argument, that the Notice is not valid because it was served after the Freeholder's service of a s.146 Law of Property Act 1925 notice on the Tenant and The Birmingham County Court (Claim No 4BM72372), in its proceedings, does not have jurisdiction to direct that the Tenant has the right to have the freehold. He says: that the Court Order 28 April 2004 (the '**Order**') is misconceived and the LVT has jurisdiction to determine whether the Tenant has the right to the freehold, not the Court; that the Tenant's right to have the freehold should be deferred until the s.146 breaches are remedied or resolved as a condition precedent to the validity of the Notice; and that, as he believes the s.146 notice is still valid and the alleged breaches have not been remedied, the freehold interest cannot be valued fairly unless and until the breaches have been remedied.
 - 7 **Mr Barclay** (for the Tenant) says, with a helpful skeleton argument: (a) that, by s.20(2)(a), the Court has exclusive jurisdiction to determine whether the Tenant is entitled to acquire the freehold and the validity of the Notice goes to entitlement, not our s.21 jurisdiction (the price payable); (b) that the Order is effective

(subject to appeal) and we cannot go behind it; and (c) that the Tenant's alleged non-compliance with the s.146 notice does not affect valuation of the price payable and we have no jurisdiction in respect of any claim on the Tenant's covenants.

8 The Order includes, at para 4), '[the Tenant is] entitled to acquire from the [Freeholder] the freehold [title in the Property]'. We accept: (a) that we have no jurisdiction to determine the Tenant's entitlement to have the freehold, the jurisdiction is the Court's; (b) that we are bound by the Order; and (c) that s.146 issues do not affect our valuation and any question of an alleged remedy for non-compliance with covenants is not a matter for us.

9 We, therefore, decide to proceed. We recognise that we do not have the jurisdiction to rule on our jurisdiction conclusively to bind the parties. Only the Court can do that. We make our ruling solely for the purpose of deciding whether to proceed with the Tenant's application to determine the price payable.

The method of valuation:

10 Mr Khan says that, as the appearance of the Property has been changed, by the Tenant carrying out unauthorised alterations, what we saw at our inspection will necessarily influence our decision on the amount of the 'entirety value' (see below). We reminded Mr Khan of the generally accepted principle in *Cadogan Estates v Hows* [1989] 2 EGLR 216 (LT) in which the Member clarified the meaning of the entirety value as the value of the freehold interest in the Property with vacant possession, assuming it to be in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful. Accordingly, we do not accept that our decision on the entirety value is influenced - by being prejudicial to the Freeholder - by what we saw as the entirety value, reflecting *Cadogan*, is, in any event, likely to be different from the value in the Property's existing appearance and condition.

11 Despite Mr Khan's contention of prejudice to the Freeholder (see para 10 above), he accepts that the generally recognised conventional valuation method, accepted in *Farr v Millerson Investments Ltd* [1971] 22 P & CR 1055, may be used. The method is: (i) capitalise the ground rent from the Date for the unexpired term of the Lease; (ii) capitalise the modern ground rent (s15 of the Act), as at the Date, as if in perpetuity but deferred for the unexpired term of the Lease - 'as if in perpetuity' because, although the value of the modern ground rent is for a term of 50 years (as the extension to the Lease), the value of the freehold reversion in possession at the end of the fifty years' extension is ignored as being too remote to have a separate value for it. The modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value.

Common Ground:

12 The valuation date is 30 January 2004.

13 The unexpired term for the purposes of the valuation is 32 years.

14 The value of the term (£6 pa for 32 years at 7% yield) is £76.

15 The percentage to derive the s.15 annual modern ground rent from the site value is 7%.

16 A *Haresign* addition - recognised in *Haresign v St John The Baptists' College, Oxford* [1980] 255 EG 711 when specific account was taken of the reversion to the full value of the dwelling after the expiration of the assumed fifty years' extension of the lease - is not appropriate in this case.

Valuations:

17 By Mr Shepherd for the Tenant - £5,756.

By Mr Khan for the Freeholder - £81,076 or in the alternative £23,874.

More specifically:

18 For the Tenant:

The term (as common ground)		£76
The reversion:		
Entirety value	£150,000	
Site value (33% of entirety value)	£49,500	
S.15 modern ground rent (7% of site value)	£3,465 pa	
YP perpetuity at 7% deferred 32 years		<u>1.639</u>
		£5,680
		£5,756

For the Landlord:

19 (a) The term (as common ground)		£76
The reversion:		
Entirety value	£180,000	
Site value (45% of entirety value)		£81,000
		£81,076

20 (b) In the alternative, adopting the conventional valuation method:

The term (as common ground)		£76
The reversion:		
Entirety value	£180,000	
Site value (45% of entirety value)	£81,000	
S.15 modern ground rent (7% of site value)	£5,670 pa	
YP perpetuity at 5% deferred 32 years		<u>4.1973</u>
		£23,798
		£23,874

Issues in Dispute:

The method of valuation of the reversion:

21 While Mr Khan accepts the standing house method of valuation is the conventional approach, he includes his valuation (at £81,076) derived from 45% of the entirety value (£81,000) plus the value of the term (£76). Mr Shepherd says we should adopt the standing house method.

22 S.(9)(1)(a) provides an assumption of a sale of the freehold subject to the Lease and a (s.14) 50 years' extension of it at a (s.15) ground rent. Mr Khan's valuation, at £81,076, does not reflect the assumptions we are required to make. His valuation takes no account of a 50 years' extension of the Lease after 32 years. We do not accept his first method of valuation but accept his alternative method (the standing house method).

The amount of the entirety value:

23 Mr Shepherd, after enquiry from us on the characteristics, refers us to: 60 Glenwood Road, a similar house but with a side garage, currently for sale at £156,000; 73, Glenwood Road, a similar house, currently for sale at £134,950; 38, Glenwood Road, a similar house but with a side garage and accommodation above it, sold subject to contract in about June 2004 at £125,000; and 68, Heathleigh Road, a not dissimilar house but probably built in the 1950s and with different characteristics including two, not three, bedrooms, for sale at

£120,000. He says: that we should infer that 38, Glenwood Road (sale agreed at £125,000) is in poor condition because, in his opinion, it is cheap; and that, as there is no significant difference in values between January 2004 (the Date) and currently, the comparable evidence points to £150,000 as the entirety value.

24 Mr Khan says that if the Property had only three bedrooms the entirety value would have been £150,000 but as it has four bedrooms the value is £180,000, which reflects an assumption that the Property has a garage. Mr Shepherd does not accept that the fourth bedroom, in the roof space, significantly enhances the value. Mr Kahn refers us to 21 Glenwood Road, a four bedroom detached house for sale at £194,950 in December 2003 in support of £180,000.

25 We are not persuaded that the fourth bedroom, in the roof space with the loss of first floor bedroom space for the staircase access, increases the entirety value. We are, therefore, left with £150,000 as the entirety value as common ground, which we find is consistent with the comparables introduced. In so doing we find 21, Glenwood Road has sufficiently dissimilar characteristics for it to be of little assistance to us.

The site value:

26 Mr Shepherd says 33% is consistent with previous LVT decisions for sites with a 6m frontage; 35% would be a maximum percentage for a wider frontage, allowing a side garage; and, in reply to Mr Khan's contention for 45%, 40% is the maximum adopted for a significantly larger site.

27 We find 45%, adopted by Mr Khan, is not realistic and does not reflect the principles, nor guidance that can reasonably be derived from previous decisions, of the standing house method. We find 33% properly reflects the characteristics of the site.

The capitalisation rate for the reversion:

28 Mr Shepherd, in adopting 7%, says there is nothing unusual about the Property or its site to support a percentage any different from accepted guidance in previous decisions with comparable unexpired lengths of leases. Mr Khan (adopting 7%) says it is not possible to invest money with a 7% return but 5% may be achievable before tax. In reply, Mr Shepherd says that, in his wide experience of enfranchisement valuations, a percentage as low as 5% has never been adopted.

29 While Mr Khan may be right on the returns in the money market, there is clear authority that it is the property market which is persuasive, not the money market. We find Mr Shepherd's approach more persuasive and consistent with the property market (ignoring any bid from the Tenant and their family). We also accept that 7% is the generally adopted rate, on which parties may rely, for a reversion after 32 years.

Summary of our Decisions on the Issues:

30 The method of valuation is the standing house method;

31 The amount of the entirety value is £150,000;

32 The site value is 33% of the entirety value;

33 The capitalisation rate for the reversion is 7%.

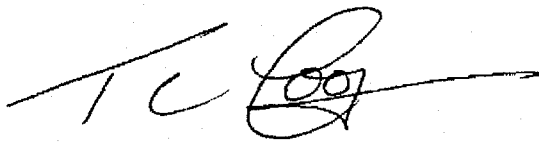
34 **Valuation of the Tribunal:** Adopting our decisions on the issues, we accept Mr Shepherd's valuation in its entirety at £5,756.

35 **Conclusion:** We determine, taking account of all the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge, and our inspection, that the sum to be

paid by the Tenant for the acquisition of the freehold interest in the Property in accordance with section 9(1) Leasehold Reform Act 1967, as amended, is £5,756 (Five thousand seven hundred and fifty six pounds) plus the Freeholder's reasonable costs in accordance with subsections 9(4) and (4A) Leasehold Reform Act 1967 (as amended s.176 Commonhold and Leasehold Reform Act 2002, Sch. 13 para 2). In default of agreement over the amount of any costs payable under subsection 9(4) under the provisions of subsection 21(1)(ba), application may be made to the Leasehold Valuation Tribunal for a determination of such costs.

Date: 15 OCT 2004

T F Cooper
CHAIRMAN

A handwritten signature in black ink, appearing to read 'T F Cooper', with a long horizontal stroke extending to the right.