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NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

MAN/00BS/0AF/2005/0026/01

LEASEHOLD REFORM ACT 1967 as amended

This document records the decision of the Leasehold Valuation Tribunal in respect of an application for enfranchisement in respect of

19 VALLEY ROAD
BREDBURY
STOCKPORT
CHESHIRE, SK6 2EA

<u>Name of Applicant/Leaseholder</u>	MR IAN PHILIP McILWRAITH
<u>Name of Respondent/Freeholders</u>	MORGOED ESTATES LTD
<u>Put before Tribunal on</u>	SEPTEMBER 15 th 2005
<u>Tribunal held at</u>	FIRST FLOOR, 26 YORK STREET, MANCHESTER, M1 4JB
<u>Attending for the Applicant</u>	MR IAN PHILIP McILWRAITH
	No attendance for or on behalf of the Respondent/Freeholder.
<u>Members of the Tribunal</u>	MR S CHESTERS-THOMPSON, M.A., F.R.I.C.S. (Chairman) MR NOEL CANNON, M.R.I.C.S.

- I This document records the decision with reasons of the Tribunal following the application to determine the price payable for the freehold estate in the house and premises above mentioned in accordance with the provisions of the Leasehold Reform Act 1967 as amended.
- II Following a request dated May 11th 2005 from Mr McIlwraith to purchase the freehold of the subject property, the right to purchase was acknowledged by the freeholders in correspondence from Morgoed Estates Ltd dated September 14th 2005.

The freeholders had initially been reluctant to acknowledge the right of the applicant to enfranchise due to discrepancies in the spelling of the applicant's surname and his Christian names and initials in the records held by the Land Registry and his application form to enfranchise. However, following the forwarding of documentary evidence to clarify the matter from the applicant to the respondents the right to enfranchise was acknowledged.

In correspondence prior to the hearing before the Tribunal the applicant offered £190.00 plus £40.00 Land Registry Fee to purchase the freehold and the respondents requested a figure of £500.00.

- III The property is held under a lease for 999 years from July 25 1933 at a ground rent of £6.00 p.a.

Initially the lease was in respect of both 19 and 21 Valley Road at a ground rent of £12.00 p.a. but the Land Registry details state that this rent was informally apportioned as to £6.00 p.a. for each property.

Ground Rent demands sent to the subject property by the Respondents refer to the ground rent as £6.00 p.a.

- IV The Tribunal made a brief inspection of the subject property on the morning of September 15th 2005 in the presence of Mr McIlwraith. The freeholder/respondents were neither present nor represented.

The subject property is a semi-detached house constructed in the 1930's and built of brick with a tiled roof. There are gardens to the front and rear. A drive from the front of the property leads to a garage at the rear. The house is situated on an estate of similar type properties with public transport nearby giving access to good shopping facilities in the Stockport town centre. The accommodation briefly comprises:- Hall, 2 living rooms, fitted kitchen, 3 bedrooms and bathroom/WC combined.

- V Following the inspection on the morning of September 15th 2005 a hearing was held at the Tribunal offices at 1st Floor, 26 York Street, Manchester, M1 4JB. Mr McIlwraith appeared to give evidence on his own behalf but the respondent/freeholders neither appeared nor were represented.

Mr McIlwraith stated that he had only heard that morning that the respondent/freeholders had acknowledged his right to enfranchise and he had been very concerned by the delay in his right to enfranchise being acknowledged and considered that minor discrepancies in the spelling of his name and his Christian names should not have caused so long a delay. He considered that the respondent/freeholders were trying to delay his application to enfranchise in the hope that he would not proceed.

He was however pleased that his right to enfranchise had eventually been acknowledged.

When questioned by the Tribunal Chairman about his offer he stated that the ground rent of £6.00 p.a. was worth £90.00 (15 years purchase) and in addition he had offered £100.00 for legal costs and £40 for Land Registry fees. He stated that he had not obtained a professional valuation of the interest although having discussed the matter with various contacts he considered his offer was reasonable.

Mr McIlwraith also stated that he was very concerned about the amount of legal costs he would have to pay to the respondents/freeholders if the enfranchisement did proceed and that he had been unable to obtain details of the costs involved.

VI The Tribunal had before it a fax from the Respondent/freeholders dated September 14th 2005 and followed up in a letter form and received by the Tribunal on the morning of the hearing September 15th 2005. In it the Respondent/freeholders acknowledged the applicant's right to enfranchise but requested that the hearing be adjourned as they had not had time to place evidence before the Tribunal. They considered that it was pointless to place evidence before the Tribunal until they had acknowledged the applicant's right to enfranchise and they had only been able to give this acknowledgement following the recent receipt of various documents from the applicant.

The Tribunal Chairman considered this argument but decided not to adjourn the hearing as the Respondent/freeholders had received Directions from the Procedural Chairman dated June 20th 2005 giving adequate time for a case to be prepared before the hearing on September 15th 2005 and in any event the question of whether or not the Respondent/freeholder had given acknowledgement of the leaseholder's right to enfranchise was one of the matters to be put before the Tribunal by the Applicant.

However, following the receipt of the letter and fax dated September 14th 2005 the acknowledgement was given to the applicant's right to enfranchise.

VII The Tribunal carefully considered the lease dated July 25th 1933 and noted in particular that the leaseholder was responsible for insurance and the use was restricted to a private dwelling house only.

In coming to its decision the Tribunal took its first function to be that of determining a price in accordance with Section 9 of the Leasehold Reform Act 1967 viz "..... the amount which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family who reside in the house not buying or seeking to buy) might be expected to realise.....".

Certain statutory assumptions must be made, but the only one of significance in this case was that in effect the freehold would be sold subject to the existing lease, i.e. with its 999 year term extendable for a further 50 years (s.9(1)(a)). In discharging this function of determining the price, the Tribunal (following the earlier Tribunal decisions in *Yates -v- Bridgewater Estates Ltd [1982] 261 EG 1001* and *Williams -v- Walsh and Others [1983] 268 EG 915*) took into account the following points:

- i) that there was nothing in the statute which would restrict their determination to the limits indicated by the prices considered appropriate by the parties.
- ii) that it would not be consistent with the verbal definition of price in Section 9 (1) of the 1967 Act or with the circumstances of the case to apply the algebraic formula prescribed by Parliament for the redemption of rent charges (Rent Charges Act 1977, s10);
- iii) that they were entitled to rely on their general knowledge and experience whatever the evidence or representations (or the absence of such) submitted by the parties.
- iv) that the statutory wording involved envisaged the sale on its own as one lot, ie: not as included in a parcel of ground rents;

- v) that the possibility of bids from the sitting tenant which might push up the open market price had been expressly excluded by the 1967 Act;
- vi) that the seller (although not also the buyer) had been statutorily described as "willing" so that any policy or practice of the landlord restricting sales had to be disregarded;
- vii) that the resultant loss of income to the landlord/seller was not comprehended by the statutory formula for determining the price payable;
- viii) that the hypothetical and potential buyers in the market would have in mind their own conveyancing costs (although not also those of the seller under Section 9 (4) of the 1967 Act and any covenants which would be continued in the conveyancing (see Section 9(1) (c) and Section 10(4) of the 1967 Act) and most important the length of the term and the amount of ground rent under the lease.
- ix) That the costs of collection of the ground rent, which might involve agents, the giving of receipts and proceedings for recovery of arrears must be taken into account as a half yearly matter strictly in accordance with the terms of the lease notwithstanding any practice of less frequent payment.

In the present case, there are 927 years of the lease unexpired. In the circumstances the Tribunal took the view that the position was similar to the Lands Tribunal case of *Janering -v- English Property Corporation Ltd and Nessdale Ltd* [1977] 242 EG388 that a reversion of this length would not be of any significance.

The Tribunal was also aware that in many cases tenants in their anxiety to purchase the freehold of their properties often without valuation advice put forward offers which include the tenants bid as an element which the Tribunal have to exclude (see *Dalaforce -v- Evans* 1970 215 EG31).

VIII The Tribunal with no professional valuation evidence available from the parties concluded that it would have to rely on its own knowledge, experience and judgement in determining the matter.

The Tribunal was however aware that the rent of £6.00 p.a. payable half-yearly at £3.00 would be of extremely limited interest to investors. Indeed the cost of demand notes, stationery, postage, etc would reduce the amount demanded and the net return would be very small. The legal costs on purchase would also deter many investors.

Under the circumstances the Tribunal has decided that the price payable to the Respondent/freeholder for the freehold interest in the property 19 Valley Road, Bredbury, Stockport should be:

£42.00 (Forty-two pounds)

This award is exclusive of permitted costs.

IX During the hearing the Applicant expressed his concern about the amount of the Respondent/freeholder's costs he would have to bear if this matter proceeds.

It was explained to the applicant that when he is informed of the costs that the Respondent/freeholders require him to pay, he may, if he is not satisfied that the costs required are reasonable refer the matter of costs to the Leasehold Valuation Tribunal.

The Tribunal will on receipt of the appropriate application determine the amount of costs payable under Section 21 (1)(ba) and Section 9(4) and 9(4A) of the Leasehold Reform Act 1967.

An appeal may be made from this Decision to the Lands Tribunal by leave of the Leasehold Valuation Tribunal. Such appeal must be made within 28 days of the issue of reasons (Lands Tribunal Act 1949 Section 6/3 and the Lands Tribunal Rules 1975 as amended).



S CHESTERS-THOMPSON
CHAIRMAN LEASEHOLD VALUATION TRIBUNAL

Date: October 12th 2005