

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CN/OAF/2004/0163
BIR/00CN/OC6/2004/0127Leasehold Reform Act 1967
Commonhold and Leasehold Reform Act 2002DETERMINATIONS OF LEASEHOLD VALUATION TRIBUNAL

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

Determination of reasonable costs under s.9(4) 1967 Act

Applicant Tenant: Saiqa Bi

Respondent Freeholders: SJ and GJ Laing and DM and GR Atkinson

Property: 159, Northfield Road, Kings Norton, Birmingham B30 1EA

Date of Tenant's Notice: 29 April 2004

Applications dated: 30 June 2004

Heard at: The Panel Office

On: 21 December 2004

APPEARANCES:

For the Tenant: Mr J Moore, Midland Valuations Limited

For the Freeholder: No appearance

Members of the Leasehold Valuation Tribunal:

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

Date of Tribunal's decision: 12 JAN 2005

Background:

- 1 Miss S Bi (the Applicant) is the Tenant by a 99 year lease from 29 September 1928 of the dwelling house and premises at 159, Northfield Road, Kings Norton, Birmingham B30 1EA (the 'Property'). By her notice (the 'Notice') 29 April 2004 she claims to acquire the freehold of the Property under the Leasehold Reform Act 1967 (as amended) (the 'Act'). The Freeholders are S J and G J Laing and D M and G R Atkinson. By applications (the 'Applications') dated 30 June 2004 the Tenant applies to us: (a) to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act; and (b) to determine the Freeholders' reasonable costs under s.9(4).
- 2 Our jurisdiction is challenged by Mansal Securities Limited ('Mansal') to whom the Notice is given by the Tenant. On 29 September 2004 we held a hearing on the question of our jurisdiction solely for the purpose of deciding whether to proceed with the Tenant's Applications. The issue of jurisdiction is whether the Tenant's Notice is 'served' (s.22(5) 1967 Act) on the Freeholders. By our ruling 15 October 2004 we ruled that the Tenant's Notice is validly served on the Freeholders; and that, in consequence, the Tenant's Applications are valid; and that we have jurisdiction. In giving our ruling we said that we do not have the jurisdiction to determine our jurisdiction on the Tenant's Applications conclusively to bind the parties; only the Court can do that. The Freeholders have not commenced a claim on our jurisdiction in the court; so, we proceed with our determinations.
- 3 The Tenant holds the Property by a lease (the 'Lease') for a term of 99 years from 29 September 1928 at a fixed ground rent of £8 pa. There is no intermediate interest.
- 4 The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 23½ years.
- 5 The Property comprises a semidetached house of brick and tile construction in an established residential area of similar properties and close to a school. The accommodation includes:- on the ground floor - hall, two living rooms, kitchen (no fittings); on the first floor - 3 bedrooms, bathroom (no fittings). The site frontage is about 7.3m; the width is maintained throughout the depth of the site and the total site area is about 644m².
- 6 We inspected the Property on 21 December 2004 and a hearing was held on the same day.
- 7 Mr J Moore appeared for the applicant Tenant; none of the Freeholders appeared and were not represented at the hearing but Mansal has provided written representations:
- 8 (a) a letter to Mr Moore 13 December 2004 giving Notice of Default pursuant to para 10 Pt 1 Schedule (the 'The Schedule') Leasehold Reform (Enfranchisement and Extension) Regulations 1967 on the grounds: (i) that the Official Copy of Register Entries ('Office Copies') supplied to Mansal does not evidence the Tenant's title; and (ii) the £25 Statutory Deposit, pursuant to para 1 The Schedule, has not been paid;
- 9 (b) a letter to the Tribunal 19 November 2004 saying notices have been served by Birmingham City Council under s.4 Prevention of Damage by Pests Act 1949 and Public Health Act to eradicate rodent infestation, remove overgrown vegetation and leave in a clean and tidy condition, for which the Tenant is the person responsible and with which the Tenant has not complied.

10 It is not suggested that the Freeholders are discharged from the further performance of their obligations, as set out in para 10(2) The Schedule, by the Tenant's failure to deduce her title within the 21 days' time limit in para 2 The Schedule or to pay the £25 Statutory Deposit within the 14 days' time limit in para 1 The Schedule. The date on which the Freeholders would be discharged, upon a continuing failure by the Tenant, is on the expiration of Mansal's Notice of Default, which, by para 10(1) The Schedule, must expire not earlier than 2 months after the Notice of Default (Notice 13 December 2004), namely not earlier than 13 February 2005. So, the Freeholders are not discharged and, as their obligations are continuing and the Tenant has the opportunity to make good the alleged default before the expiration of the Notice of Default, we proceed with our determinations. In any event, we note that the date by which Mansal requires the Tenant to make good the default is 7 February 2004 (*sic*). Even if it could be argued 2004 should have read 2005, 7 February is less than 2 months after 13 December 2004; so, it may be argued the Notice of Default is ineffective.

11 Irrespective of para 10 above, Mr Moore produces and relies on Office Copies as at 31 March 2004, as evidence of the Tenant's absolute leasehold title to the Property (title number WM734569) which, he says, was sent to Mansal with a letter 28 October 2004 and, again, on 8 December 2004. While the date of the Office Copies is about 4 weeks before the date of the Tenant's Notice (29 April 2004) we find and hold that the Tenant has deduced her title in compliance with para 2 The Schedule despite less than perfect compliance, by being about 4 weeks before the date of her Notice.

12 For the reasons we give in para 10 above, we hold that payment of the £25 Statutory Deposit is not a condition precedent to our determinations of the Applications.

13 We find, from our inspection of the Property, that the notices served by Birmingham City Council have been complied with. In any event, we find and hold that compliance with the Council's notices is not a condition precedent to our determinations of the Applications.

The price payable under s.9(1) 1967 Act:

14 After slight amendment to his years purchase at the hearing, Mr Moore's valuation is £15,242.67; no evidence of the price payable is adduced by the Freeholders.

15 Specifically, Mr Moore's valuation is:

The term:

Ground rent	£8.00 pa	
YP 23½ years @ 7%	<u>11.37</u>	
		£ 90.96

The reversion:

Entirety value	£ 225,000	
Site value (33% of entirety value)	£ 74,250	
S.15 modern ground rent (7% of site value)	£ 5,197.50 pa	
YP perpetuity at 7% deferred 23½ years	<u>2.915</u>	
		£ 15,150.71

£15,241.67

- 16 Mr Moore says that, in the absence of reliable evidence of sales of sites for residential development, the method of valuation of the reversion is the standing house method: accepted in *Farr v Millerson Investments Ltd* [1971] 22 P & CR 1055, as: (a) derive the site value from the entirety value as a percentage of it; (b) derive the s.15 modern annual ground rent from the site value; (c) capitalise the modern ground 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. He says, and we agree, that 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. The entirety value is 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.
- 17 In support of £225,000 as the entirety value, Mr Moore acknowledges he has no very persuasive evidence of comparable transactions. £225,000 is his opinion evidence, derived from: (a) two valuations for the Tenant, both at £200,000 assuming the Property fully modernised; and (b) the sale of 39 Northfield Road (a large Victorian mid-town house with four bedrooms) in June 2004 at £261,500 and the asking price of £245,000 for 160, Northfield Road (a semidetached with three bedrooms).
- 18 On our inspection, the Property was being extensively renovated and was in very poor condition but we hold that, to derive the entirety value, we must assume the Property to be in good condition. We find Mr Moore's opinion evidence is consistent with the assumption and accept £225,000.
- 19 We find both 33%, adopted by Mr Moore as the site apportionment, and 7%, adopted by him as the yield rates, are consistent, for the Property, with generally accepted guidance derived in the standing house method of valuation. In so doing we accept his evidence that the unexpired term (23½ years) is not sufficiently close to adopt a lower yield rate for the reversion than the term.
- 20 Accordingly, we accept Mr Moore's valuation of the price payable but round it up, from £15,241.67, to £15,242.
- 21 **Conclusion on the price payable:**
We determine that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge and our inspection, 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 £15,242 (Fifteen thousand two hundred and forty two pounds).
- Costs to be borne by the Tenant under s.9(4) 1967 Act:**
- 22 S.9(4) of the 1967 Act provides:
'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the [matters in subs.(4)(a) to (d) as to "legal costs" and in subs.(4)(e) as to "valuation costs"]; but [subs.9(4)]

shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.'

- 23 S.9(4A), added by s.176 Commonhold and Leasehold Reform Act 2002, Sch. 13 para 2, provides:
'[A person is not required] to bear the costs of another person in connection with an application to a [LVT].'
- 24 Mr Moore submits that £275 (exclusive of the costs of obtaining office copy entries and VAT) for subs.(4)(a) to (d) 'legal costs' is consistent with previous determinations of the Tribunal and solicitors' current fees for such work. We agree.
- 25 Mr Moore submits there is no evidence that the Freeholders have incurred subs.(4)(e) 'valuation costs' in pursuance of the Notice. We agree.

VAT:

- 26 All figures we refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters as they are a matter for HM Customs and Excise. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable.

Our determination of the costs:

- 27 In so far as subs.9(4)(a) to (d) 'legal costs' are incurred and are to be incurred by the Freeholders, the Tenant shall bear a sum not exceeding £275 (Two hundred and seventy five pounds) plus actual disbursements incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs.
- 28 The Freeholders have not incurred any subs.9(4)(e) 'valuation costs' and the Tenant shall not bear any.
- 29 This our final determination on the subs.9(4) costs to be borne by the Freeholders.

Date: **17** JAN 2005

T F Cooper
CHAIRMAN

