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IN THE DUDLEY COUNTY COURT

CLAIM NO: 4DD05461

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CR/OAF/2005/0089

Leasehold Reform Act 1967

Commonhold and Leasehold Reform Act 2002

DETERMINATION 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

Pursuant to the Order of District Judge Morton in the Dudley County Court 3 March 2005

Applicant Tenants: Brian Rubery and Patricia Susan Rubery

Respondent Freeholder: Person or Persons unknown

Property: 12, Tamar Drive, Woodsetton, Dudley, West Midlands DY3 1DA

Date of Court Order requiring this determination: 3 March 2005

RV on 31 March 1990: Less than £500

Application dated: 14 April 2005

Heard at: The Panel Office

On: 18 May 2005

APPEARANCES:

For the Tenants: Mr J Moore, Midlands Valuations Limited

For the Freeholder: No appearance

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Professor N P Gravells MA
Mr M H Ryder

Date of Tribunal's decision: 23 MAY 2005

Background:

- 1 Brian Rubery and Patricia Susan Rubery are the **Tenants** by a 380 year lease from 1712 of the dwelling house and premises at 12, Tamar Drive, Woodseton, Dudley, West Midlands DY3 1DA (the '**Property**'). The person to be served with a Tenants' notice claiming the right to acquire the freehold cannot be found or his identity ascertained.
- 2 By the order (the '**Order**') of District Judge Morton in the Dudley County Court 3 March 2005 the Leasehold Valuation Tribunal is directed to determine the price payable by the Tenants for the purpose of section 27 Leasehold Reform Act 1967 (the '**Act**') in respect of the Property.
- 3 By an application 14 April 2005 the Tenants apply to us to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act. We inspected the Property on 18 May 2005 and a hearing was held on the same day.
- 4 The Tenants hold the Property by a lease (the '**Lease**') for a term of 380 years from 1712 at a £Nil ground rent throughout the term. The relevant date for our determination is, by s.27(1), the date of the Tenants' application to the County Court; other than saying the date was late 2004, the actual date has not been disclosed to us. The Tenants adopt the date of the Order, March 2005, as the relevant date (the '**Date**') but we find that the effect on the price payable of the difference (late 2004 and March 2005) is a negligible amount and we hold that, applying the *de minimis* rule, we take no account of the difference.
- 5 The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 87 years.
- 6 The Property comprises a detached house and attached single garage of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - porch, hall with cloakroom and wc off, lounge, dining room, kitchen; on the first floor - 3 bedrooms, bathroom with wc. There is gas fired central heating to radiators. The site is roughly rectangular with a frontage of about 9.3m and an area of about 230m².
- 7 **Mr J Moore** of Midland Valuations Limited appeared for the applicant Tenants. With Mr Moore's approval we consolidated two other similar cases at the hearing (for which Mr Moore appears), namely 23 and 29, Tamar Drive, to the effect that all evidence adduced is taken into account and weighed in all three cases. Our determinations of the prices payable for nos. 23 and 29 Tamar Drive are contained in two separate determinations.

THE PRICE PAYABLE UNDER S.9(1) 1967 ACT

The valuation method:

- 8 Mr Moore adopts, and we accept, the generally recognised valuation method to derive the price payable for the freehold interest, namely: (i) capitalise the ground rent (£Nil pa) from the Date for the unexpired term of the Lease (87 years) - resulting in a £Nil value of the term in this case; (ii) capitalise the modern ground rent (s.15 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 material value for it (namely no *Haresign* addition - see below). As no evidence of cleared sites is adduced, the modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value. 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.

9 Mr Moore's valuation does not include 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 Head Lease. We accept his approach.

10	Mr Moore's valuation and evidence:	For the freehold interest - £185	
	More specifically:		
	Term (Ground rent £Nil)		£Nil
	Reversion		
	Entirety value	£190,000	
	Site value at 35%	£66,500	
	Sec. 15 ground rent at 7%	£4,655 pa	
	YP deferred 87 years at 7%	<u>0.03967</u>	
			£184.66
		Say	£185

11 Adopting 7% as the yield rate in his valuation, Mr Moore says 7% is consistent with previous decisions of this tribunal when the unexpired term of the lease is relatively long - relative to the assumed 25 year rent review in the assumed 50 year lease extension. We agree.

12 In support of his entirety value (£190,000) he refers us the recent provisional sale of 31, Bosworth Close at £155,000, saying no. 31 is identical to the Property but no 31 requires substantially improved fittings and cosmetic improvement; he adds that, from information provided to him, it has been marketed at a price with the intention of achieving a sale as soon as possible. He also refers us to the sale of 6 Tamar Drive at £230,000 in September 2004 but no. 6 is a substantially larger house with four bedrooms and a double garage on a larger site. He says that, from opinion information given to him by local estate agents, the entirety value is £190,000 but accepts the only evidence of a completed transaction is no. 6 (at £230,000) but it has more desirable features.

13 As to the entirety value - at the hearing we indicated to Mr Moore that the sale of no. 6 is probably the most reliable evidence, as a completed sale prior to, and close to, the Date. We also indicated that, from what we saw at our inspections (of the Property (no. 12), no. 23 (virtually identical to the Property) and no. 29 (virtually identical to no. 6 - the comparable we rely on)), if the entirety value of no. 29 (derived from the sale of no. 6 (at £230,000)) is £230,000, the inferior features of the Property point to an entirety value of the Property of about £170,000.. On consideration of our comments Mr Moore says he is minded to agree.

14 We find the evidence of the recent provisional sale of 31, Bosworth Close, to which we attach only limited