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**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

Ref: BIR/OOCN/OAF/2005/0208

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21(1) OF THE LEASEHOLD REFORM ACT 1967*

Applicants: Mr & Mrs H Ford (leaseholders)

Respondent: Business Flats Limited (freeholder)

Subject property: 113 Bushmore Road
Hall Green
Birmingham B28 9QU

Date of tenant's notice: 4 July 2005

Application to the LVT: 8 September 2005

Hearing: 21 November 2005

Appearances:

For the applicants: Mr H R Barber FRICS

For the respondents: Mr K F. Davis FRICS

Members of the LVT: Mr A P Bell MA LLB
Mr DJ Satchwell FRICS
Mrs E Everett

Date of determination: 12 DEC. 2005

Introduction

1. This is a decision on an application under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr & Mrs H Ford, leaseholders of the house and premises at 113 Bushmore Road Hall Green Birmingham B28 9QU ("the subject property"). The application is under section 21(1)(a) of the 1967 Act for the determination of the price payable under section 9 of the 1967 Act for the freehold interest in the subject property.
2. The subject property is held under an Underlease dated 6 January 1932 for a term of 99 years less three days from 29 September 1930 at a ground rent of £6.25 per year. The unexpired term at the date of the notice of tenant's claim to acquire the freehold ("the relevant date") was 24¼ years.
3. The Applicants served on the Respondent a tenant's notice dated 4 July 2005 claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act, and they subsequently made the present application.
4. The Tribunal accepts that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.

Subject property

5. The property comprises a semi-detached house built in about 1931. The surrounding area is mainly residential with a large number of similar houses in the immediate area. The house is of two storey brick construction with a pitched tile roof. The accommodation comprises a hall, two living rooms kitchen and rear covered area on the ground floor with a landing, two double and one single bedroom and a combined bathroom/ wc on the first floor. Outside there is a garage and average size front and back garden.

Inspection and hearing

6. The Tribunal inspected the subject property on 21 November 2005 in the presence of Mr & Mrs Ford and their representative, Mr Barber.
7. The subsequent hearing was attended by Mr Barber (representing the Applicants) and Mr Davis (representing the Respondent).
8. The representatives of both parties at the hearing agreed:
 - the subject property had a frontage of 26 feet to Bushmore Road and a site area of 34 square yards
 - the unexpired term was 24¼ years
 - the relevant date was 4 July 2005
 - the same yield rate should be applied at all stages of the calculation

Representations of the parties

9. Mr Barber, on behalf of the Applicants adopted as the basis of valuation under the 1967 Act the generally recognised three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).

10. Mr Barber, adopting the standard house approach, submitted evidence based on the actual sale of three houses and one negotiated sale in Bushmore Road sale during a period from March 2004 to the present time at prices varying for concluded sales between £164,500 and £193,000. He also produced sale particulars relating to 78 and 80 Bushmore Road currently on the market at £205,000 and £209,950 respectively, the latter property having been extended at the rear. Based on this evidence Mr Barber submitted that the standing house value of the subject property at the relevant date was £180,000. Mr Barber also submitted that the Tribunal should apply a 35% figure in calculating the site value on the standing house basis, and that the appropriate percentage yield rate to be applied in capitalising the rents at all stages of the calculation exercise should be 7 per cent which was the level agreed by many valuers in the Birmingham area over many years and had been used by Tribunals in arriving at determinations. Mr Barber, in reference to the recent Lands Tribunal Decision in *Arbib v Earl Cadogan* (LRA/62/2004), (*Arbib*), pointed out that, as mentioned in the report of *Arbib*, yields in the central London residential market had fallen very considerably since the mid-1990's. He claimed that the area of Kensington and Chelsea was a unique residential area with many of the buildings listed and with the highest land values in London, but that there was nevertheless a very high demand for houses fuelled by the international money market.

11. On the basis of those figures Mr Barber submitted the following valuation:

(i) Capitalisation of existing ground rent

Ground rent payable: £6.25 per year
Years Purchase: 24 ¼ years @ 7%: 11.52
Capitalised ground rent: £6.25 x 11.52: £72

(ii) Section 15 rent

Standing house value of subject property: £180,000
Percentage attributable to site @ 35%: £63,000.
Section 15 rent @ 7%: £4,410.

(iii) Capitalisation of Section 15 rent

Section 15 rent (above): £4,410
Years Purchase @ 7% in perpetuity deferred 24 ¼ years: 2.77.
Capitalised Section 15 rent: £4,410 x 2.77: £12,216
£12,288

The addition of the capitalised existing ground rent of £72 and the capitalised Section 15 rent of £12,216 produced a figure of £12,288.

12. Mr Davis submitted evidence of two completed sales in Bushmore Road at prices of £193,000 and £175,000 respectively and one property on the market at £205,000, the best comparable, he contended, being 109 Bushmore Road where the sale had been completed on 13 June 2005 at a figure of £193,000. His external inspection of 109 Bushmore Road indicated that this had been extended at the rear on the ground floor level by the construction of a sun lounge and perhaps a utility area covered by a glass roof. Mr Davis submitted that the standing house value at the relevant date was £185,000. Mr Davis submitted that, if the Tribunal adopted the standing house approach, it should apply a figure of 40% in calculating the site value in consequence of his conversations with two potential developers who said they would be very content if the site of a house could be acquired at 40% of its ultimate sale value.

14. Mr Davis did, however, submit that the Tribunal should adopt the cleared site approach in the light of the site value evidence in respect of 11 sites in the Birmingham area detailed in his written submission. Mr Davis submitted that on the basis of this evidence the site value (with an area of 346 square yards) was £77,850.00.
15. Mr Davis, in reliance on *Arbib*, contended that the appropriate yield rate to be applied in this case was 6% compared with the rate of 4.5% in *Arbib*. While Mr Davis commented that there was an argument that the risk in Bushmore Road was no different to that in central London, he did consider that there should still be a differential between inner London and the rest of the country, and he had therefore adopted a figure of 6%.
16. On the basis of those figures Mr Davis submitted (as an alternative to his valuation on a cleared site approach amounting to £77,850 as referred to in paragraph 14 above) the following valuation on a standing house approach:

(i) Capitalisation of existing ground rent

Ground rent payable: £6.25 per year
 Years Purchase : 24 ¼ years @ 6% : 12.60
 Capitalised ground rent. £6.25 x 12.60 : £ 79

(ii) Section 15 rent

Standing house value of subject property : £185,000
 Percentage attributable to site @ 40 per cent : £74,000
 Section 15 rent @ 6% : £4,440

(iii) Capitalisation of Section 15 rent

Section 15 rent (above) : £4,440
 Years' purchase @ 6% deferred 24 ¼ years : 4.05
 Capitalised Section 15 rent : £4,440 x 4.05 : £17,982
£18,061

The addition of the capitalised existing ground rent of £79 and the capitalised Section 15 rent of £17,982 produced a figure of £18,061.

Decision

17. The Tribunal accept that, in calculating Section 15 rent, the cleared site approach is preferable to the standing house approach where there is evidence of sales of comparable vacant sites. Mr Davis was able to supply the Tribunal with evidence of numerous sales of vacant sites, but none of these involved the demolition of an existing semi-detached house with the consequent problems of costs associated with obtaining planning permission and building regulation consent, demolishing the subject property, complying with the Party Walls Act 1996 and, following demolition, supporting and weather-proofing the other half of the semi-detached house. The subject property does already have a narrow frontage (26 feet) to Bushmore Road which leads the Tribunal to conclude that any detached house which replaced this would have a maximum width of no more than 20 feet. A comparable sale of a vacant site would, in the Tribunal's view, only exist if it consisted of one half of a semi-detached house where planning permission had been obtained for this to be replaced by another house, whether detached or semi-detached. The Tribunal therefore find that no evidence has been produced by Mr Davis of a comparable development site which they can safely place on reliance on and in consequence have determined that the standing house approach should be adopted in this instance.

18. Applying the standing house approach the Tribunal conclude that the best comparable evidence (as Mr Davis conceded) was 109 Bushmore Road completed on 13 June 2005 at a price of £193,000. The particulars of sale of this property refer to a sun lounge and utility room which suggests a substantial extension at the rear of the property, as have many of the houses in Bushmore Road revealed by the Tribunal's inspection. The Tribunal's view is that the extension made at 109 Bushmore Road would have been likely to have increased the value of that property by between £10,000 and £15,000. In the light of this finding, and the evidence of the parties referred to above, the Tribunal, using its general knowledge and experience of prices in the locality of the subject property, determine that the standing house value of the subject property at the relevant date was £180,000.
19. The Tribunal consider that the percentage of 40% of the standing house value claimed by Mr Davis is too high. Normally the percentage adopted in the Birmingham area by Midland Tribunals varies between 25% and 35% depending largely on the size of the plot, and the Tribunal conclude that a higher figure of 40% would only be appropriate if the site contributed a materially above average proportion of the standing house value by virtue of having a well above average size garden. This does not apply to the subject property where the garden is of no more than an average size.
20. The Tribunal's decision in *Arbib* does give a very clear ruling that the yield rate should not be established by convention, whether 6% in London or 7% (or any other rate) elsewhere. The Lands Tribunal point out in their decision that:
- "The question of the appropriate deferment yield has continued to produce a significant number of applications for permission to appeal to this Tribunal and is clearly a matter of wide concern. It was felt that comprehensive consideration of this issue should be given by the Tribunal to reduce the number of appeals in the future."
- The Lands Tribunal in paras 115 and 116 of this Decision state that, while LVT decisions on questions of fact or opinion could be given little or no weight in other LVT proceedings and in proceedings of the Lands Tribunal, a decision of the Lands Tribunal "may be referred to when general guidance has been given on valuation principles or procedure". The decision in *Arbib* should be regarded as such general guidance. For this reason the Tribunal, in determining the yield, have given the decision in *Arbib* careful consideration. The starting point in *Arbib* in calculating the yield rate was by reference to index-linked gilts yielding 2%, this representing a risk-free investment to which the Lands Tribunal added 1% to allow for the comparative illiquidity of an investment in a freehold reversion reflecting as it did the combined cost of purchase and sale of the reversion and some costs for delay (para 151 *Arbib*). In addition, the Lands Tribunal added an additional 1½% for the costs of management of the investment, the fact that the asset might be destroyed and might be expensive to realise at the end of the term (para 152 *Arbib*) making a total of 4½% as a yield rate which the Lands Tribunal adopted in four of the five cases the subject of the *Arbib* decision.
21. The decision in *Arbib* (at para 148) recognises that it may be necessary to make further adjustments to have "regard to factors which make the investment particularly attractive or more risky than some notional norm". They also stated that "the shorter the unexpired term the more carefully the precise choice of rate must be reviewed." The Tribunal have carefully considered what these factors might be in the light of the *Arbib* decision, and conclude that these include the location of the property (para 154 of *Arbib*), the condition (para 156 of *Arbib*), the age of the property with the greater risk of obsolescence (para 185 of *Arbib*), the length of the unexpired term (paras 167 and 168 of *Arbib*), the size of the property (para 171 of *Arbib*) and also, although this is not relevant in this case, whether the property is a house or a flat (para 163 of *Arbib*).
22. The subject property is a semi-detached house in a good residential area in Birmingham. It is not, however, in any significant way, whether in its location, value or attractiveness, comparable to the

properties in inner London which were the subject of the *Arbib* decision. On the other hand, the subject property is in a better locality than many other properties in the Birmingham area and, by virtue of its age, in a better condition. Having regard to the various factors referred to in paragraph 21 above the Tribunal consider that the appropriate adjustment to make in this case is to increase the yield rate of 4 ½% (adopted in four of the five cases in *Arbib*) to 6% to reflect the difference between the not only the value and quality but also the risk attaching to an investment in the subject property in Birmingham and an investment in the high class properties in inner London which were the subject of the decisions in *Arbib*. In doing so the Tribunal agree with Mr Davis that the appropriate yield rate in this case is 6% and determine accordingly.

23. Adopting those figures, and applying figures of Years Purchase from Parry's Valuation Tables, the Tribunal calculates the price payable as follows:

(i) Capitalisation of existing ground rent

Ground rent payable: £6.25 per year
Years Purchase. 24 ¼ @ 6%: 12.60
Capitalised ground rent. £6.25 x 12.60 : £ 79

(ii) Section 15 rent

Standing house value of subject property: £180,000
Percentage attributable to site @ 35%: £63,000
Section 15 rent @ 6%: £3,780

(iii) Capitalisation of Section 15 rent

Section 15 rent (above): £3,780
Years Purchase at 6% in perpetuity deferred 24 ¼ years: 4.17456
Capitalised Section 15 rent: £3,780 x 4.1756 : £15,780
£15,859

The addition of the capitalised existing ground rent of £79 and the Section 15 rent of £15,780 produces a figure of £15,859.

24. Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £15,859.

Summary

25. The Tribunal determines the price payable by the Applicants for the freehold interest in the subject property at £15,859.

A P Bell

A P Bell
Chairman
Dated

12 DEC. 2005