

1041

MIDLAND RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

BIR/00GA/OCE/2006/0001

DECISION OF LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM, HOUSING AND URBAN DEVELOPMENT ACT 1993

Applicant: 64 Bodenham Road Hereford Limited as Nominee Purchaser on behalf of the Qualifying Tenants listed at paragraph 2

Respondent : A J P Pugh

Property : 64 Bodenham Road, Hereford HR1 2TS

Valuation Date : 15th June 2005

Heard at : The Shirehall, Hereford

On : 1st August 2006

Appearances :

For the Applicant : Mr S Freeman (Solicitor)
Mr A J Carlton FRICS

For the Respondent : Mrs M A Pugh
Mr J R A Owens FRICS and Mr J R Owens

Members of the Tribunal : Mr D Jackson (Chairman)
Mr M Williams FRICS
Mr D Underhill

Date of decision : 11 AUG 2006

1. BACKGROUND

This is a decision of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel on an application for the determine of price payable and costs of enfranchisement by the Nominee Purchaser under sections 32 and 33 and Schedule 6 of Leasehold Reform, Housing and Urban Development Act 1993 (the Act) in relation to 64 Bodenham Road, Hereford HR1 2TS.

2. The property comprises a self contained building known as 64 Bodenham Road (the Building) comprising 5 flats occupied by Qualifying Tenants as follows :-

<u>Flat No.</u>	<u>Date of Lease</u>	<u>Parties</u>	<u>Qualifying Tenant</u>
1	27th February 1978	A J P Pugh (1) W R Harding (2)	L C T and H Alcock
2	30th May 1977	A J P Pugh (1) K N Hill (2)	Y Powell-Aubrey
3	24th January 1978	A J P Pugh (1) P M Haines (2)	V S Tilby and S M Pardell
4	28th February 1977	A J P Pugh (1) J R & A J Margarets (2)	K C Smith
5	6th December 1977	A J P Pugh (1) G R F Whitwam (2)	J & V Price

3. The Respondent Landlord is Mr A J P Pugh.
4. All five flats (together with numbered garage) were demised in similar terms under leases for 99 years subject to an initial ground rent of £20 per annum for the first 33 years, £30 per annum for the next 33 years and £40 per annum for the remainder of the term. The leases grant to the tenants easements, rights and privileges in relation to, inter alia, the use of the driveway, common parts of the building, the garden and grounds and the cellar.
5. By Notice dated 15th June 2005 the Qualifying Tenants gave notice under Section 13 of the Act to the Respondent Landlord of their right of and application for collective enfranchisement in relation to the Building together with the garden area, driveway, parking and turning area, and garages (the "Appurtenant Property"). The proposed purchase price for the Building was £1,250 and £1,000 for the Appurtenant Property.
6. The Nominee Purchaser on behalf of the Qualifying Tenants' is 64 Bodenham Road Hereford Limited (Company Registration No. 5441806).
7. On 24th August 2005 Messrs MFG as Solicitors and authorised agents for the Landlord gave a Counter Notice under section 21 of the Act admitting the claim but disputing the price payable. The Landlord's Counter Notice proposed a price of £11,084 for the Building and £1,000 for the Appurtenant Property.

8. On 20th February 2006 application was made to Tribunal to determine the price payable for the freehold and statutory costs.

9. INSPECTION

The Tribunal inspected the Property prior to the hearing on 1st August 2006. The Building comprises 5 self-contained flats within a converted late Victorian/Edwardian detached property, for the most part two storeys with one apartment at second floor level within the roof structure. There is a part single storey brick and felt section forming part of flat 5. In addition to the formal entrance there is also a separate single storey entrance to flat 5.

The Property occupies a corner plot at the junction of Bodenham Road and Ledbury Road. The vehicular access is via a tarmac driveway which is shared with 4 other houses. There is a block of 5 lock-up garages with one allocated to each flat. The grounds and gardens were overgrown.

Generally the structure of the property appeared to be in a poor state of repair and condition. Internally the flats were well maintained with modern kitchens and bathrooms and in good decorative order. There was some evidence of damp penetration in parts.

The common parts, particularly the entrance hall were in fair state and condition.

The cellar was unused with evidence of damp.

Each flat had an individual living room, double bedroom, kitchen and bathroom and each is gas central heated. Flat 1 on the second floor had 2 bedrooms. The kitchen in flat 2 had been moved into the living room to create a second bedroom.

10. AGREED ISSUES

10.1 Valuation Date : 15th June 2005.

10.2 Deferment rate : 7.5%

10.3 Price payable for Appurtenant Property : £1,000

10.4 Value of capitalised ground rents : £1,825.

11. ISSUES FOR DETERMINATION

11.1 Value of Tenant's interest before enfranchisement (Existing Lease Value).

11.2 Value of Tenant's interest after enfranchisement (Extended Lease Market Value).

11.3 Landlord's costs of enfranchisement under Section 33 of the Act.

12. APPLICANT'S SUBMISSIONS

The Tribunal has had the advantage of reading a report dated 17th July 2006 prepared by Mr A J Carlton FRICS on behalf of the Applicant. Mr Carlton also gave evidence to the Tribunal at the hearing.

13. In determining the reversionary value of the freehold Mr Carlton had particular regard to the following leasehold sales within the Building :-

13.1 Flat 3 sold January 2003 for £30,000.

13.2 Flat 2 sold May 2004 for £50,000.

13.3 Flat 5 sold May 2005 for £75,000.

Mr Carlton then took what he described as a pragmatic and reasonable approach to produce a "blended average" for each flat of £50,000. Mr Carlton felt that the fact that one flat as compared with another was slightly larger or in better condition was not a matter which would affect his valuation. Mr Carlton was asked by Mr Owens to comment on other comparables (see paragraph 20). Mr Carlton felt that the other properties compared to the Building were "chalk and cheese" in that they were immaculate buildings, professionally managed with exemplary maintenance and repair.

14. Having taken the "blended average" of £50,000 and applied as did Mr Rutledge (see paragraph 17) Mr Carlton applied an uplift of 5.5% to produce an Extended Lease Market Value.

15. The valuation proposed by Mr Carlton in his report was £8,564.

16. RESPONDENT'S SUBMISSIONS

The Tribunal considered a report dated 23rd August 2004 prepared by Mr E J Rutledge FRICS. The Respondent indicated that he had not instructed Mr Rutledge to attend at the hearing and accordingly the Tribunal attributed less weight to his report as neither the Tribunal nor the Applicant had had the opportunity of testing his valuation at the hearing.

17. Mr Rutledge put forward a market value for 4 of the flats at £70,000 and £85,000 for the "larger flat." Again he applied an uplift of 5.5% to produce an Extended Lease Market Value of £385,075. The total of his valuation was £12,084.
18. The Tribunal were assisted at the hearing by submissions from Messrs J R A Owens and J R Owens of Arkwright Owens, Chartered Surveyors in Hereford who had been instructed very shortly before the hearing by the Respondent. Under those circumstances they have not had sufficient time to prepare a written report.
19. Mr Owens' valuations were based on square footage as follows :-
Flat 1 - £140,000
Flat 2 - £ 75,000
Flat 3 - £ 85,000
Flat 4 - £ 80,000
Flat 5 - £ 95,000.
20. Mr Owens produced evidence of the following sales particulars :-
- 20.1 Flat 3 Hollymount, Bodenham Road, a 2 (double) bedroomed property on the market in April 2005 for £129,950.
- 20.2 Flat 6 Craddock Court, 30 Bodenham Road, (2 bedrooms) on the market in April 2005 for £115,000.
- 20.3 Flat 3 Litchfield Lodge, 32 Bodenham Road (1 bedroom) sold on 31st March 2005 for £87,500.
21. Whilst the Tribunal were most grateful to Mr Owens for attending at such short notice it felt that his submissions based on square footage were not persuasive. However the Tribunal was assisted by his general observations as to the buoyancy of the local property market, particularly "buy to let" which he suggested assisted in supporting the residential property market in Hereford. Mr Owens is of the opinion that Bodenham Road was in a good residential location and demand was high. It was very popular, near to schools and the town centre and in his opinion there was simply nothing on the market for less than £80,000 and very little below £100,000.
22. THE CELLAR/BASEMENT
The Tribunal considered whether any development value should be attributed to the cellar. The Valuers' submissions were as follows :-
- 22.1 Mr Carlton – "The subterranean space was formally a coal cellar and in my view is incapable of beneficial conversion to domestic living accommodation."

22.2 Mr Rutledge – “This basement comprises approximately 397 square feet (36.88 square metres) with minimal clear headroom of about 6ft 6 ins and with limited existing natural daylight. I do not therefore consider there is any additional value attributable to this area.”

22.3 Mr Owens – felt that whilst the basement was “big enough to convert” only a nominal value of approximately £5,000 should be attributable to the basement.

23 The Tribunal having inspected the cellar determined that the extent and cost of the necessary works would be prohibitive and accordingly no development value should be attributed to the cellar/basement.

24. THE TRIBUNAL'S VALUATION

The Tribunal valued the freeholder's interest in accordance with paragraph 3 of Schedule 6 to the Act :

“The value of the freeholder's interest in the specified premises is the amount which at the relevant date that interest might be expected to reach if sold on the open market by a willing seller.”

25. As required by Schedule 6 the Tribunal made the following assumptions :-

25.1 Freeholder selling subject to the existing leases

25.2 Sale in a “No-act “ World

25.3 Tenant's improvements to be disregarded.

26. The Tribunal's starting point was the open market sale to Mr and Mrs Price of Flat 5 in May 2005 for £75,000. The Tribunal noted that this open market sale occurred very shortly before the Valuation Date. As this was a sale of one of the subject flats within the Building the Tribunal felt that this was compelling evidence of how the market would react to the poor state of repair to the exterior and the physical condition of the property.

It was submitted by Mr Carlton that because of the failure to comply with the repairing covenants (or the absence of mutually enforceable covenants to do so) this meant that it would be very difficult to find a Mortgage Provider who would lend on any of these flats. Fortunately Mr Price had attended the Tribunal as an observer and was able to confirm that his mortgage application in 2005 had been refused for this reason.

27. The Tribunal further determined that the deduction should be made from the figure of £75,000 in determining the freeholder's interest having regard to the improvements carried out by the Tenants at their own expense. As noted on inspection modern bathrooms and

kitchens had been installed and a new single storey entrance constructed to flat 5. Flat 1 on the second floor had 2 bedrooms but access was poor, the rooms were built under the eaves and there was evidence of damp penetration. Flat 2 had 2 bedrooms although the "improvement" which converted the original kitchen into the second bedroom resulted in kitchen units being placed in the living room.

28. Balancing one matter against another and having regard to the requirement of Schedule 6 (value in a "no-act" world) the Tribunal determined that the value of the Tenants' interest before enfranchisement was £70,000 for each flat (making an Existing Lease Value for the whole Building of £350,000) whilst the Tenants' interests after enfranchisement should be calculated by using the 5.5 uplift as adopted by Mr Carlton and Mr Rutledge reaching an Extended Lease Market Value of £369,250.

29. No compensation is payable in relation to other property under paragraph 5 of Schedule 6 of the Act.

30. The Tribunal's valuation :-

Freehold Interest

Ground Rent		£1,825
Reversion to V P		
(Extended Lease Market Value)	£369,250	
P V £1 def 71 years @ 7.5%	<u>0.00589</u>	<u>£2,175</u>
		£4,000

Marriage Value

Extended Lease Market Value	£369,250	
Less:		
Existing Lease Value	£350,000	
Freehold Interest	<u>£ 4,000</u>	<u>£ 15,250</u>
		£ 7,625

Price

Freehold Interest	£ 4,000
Marriage Value	£ 7,625
Appurtenant Property	<u>£ 1,000</u>
	<u>£ 12,625</u>

31. COSTS

The Nominee Purchaser is liable for the reasonable costs of the landlord "to the extent that they have been incurred in pursuance of the Notice" (Section 33 of the Act). Section 33 (5)

of the Act provides that the Nominee Purchaser should not be liable for costs incurred in connection with proceedings before a Leasehold Valuation Tribunal.

32. Mr Pugh produced invoices from Messrs MFG who were his Solicitors until he dispensed with their services in May 2005 together with invoices from Messrs Lawrence and Wightman who were not instructed to attend at the hearing. Those invoices did not distinguish between work done in pursuance of the Notice under Section 13 of the Act and costs incurred in relation to proceedings before the Tribunal.

33. The Tribunal having heard submissions from Mr Freeman for the Applicant and Mrs Pugh, using its knowledge and experience, assessed the Respondent's reasonable costs as follows :-

- | | | |
|------|---|---------------|
| 33.1 | Legal costs of investigation pursuant to the Notice (Section 33 (1)(a)) | £500 plus VAT |
| 33.2 | Legal costs relating to conveyancing work to be carried out (Section 33(1)(b), (c) and (e)) | £750 plus VAT |
| 33.3 | Valuation costs (Section 33 (1)(d)) | £750 plus VAT |

34. DETERMINATION

- 34.1 The price payable by the Nominee Purchaser for the freehold of the Building and Property is £12,625.
- 34.2 The reasonable costs paid by the Nominee Purchaser under Section 33 of the Act are £1,250 plus VAT in relation to legal costs and £750 plus VAT in relation to valuation costs.
- 34.3 In reaching its determination the Tribunal had regard to the submissions of the parties, the relevant law and their own knowledge and experience of an expert Tribunal but not any secret knowledge.

Signed


MR D JACKSON – Chairman