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LEASEHOLD VALUATION TRIBUNAL

DECISION OF LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM ACT 1967

Applicants: MR. and MRS. BUTLER
Respondent: LINECROFT LIMITED
Property: 16 Hitchcock Close, Smethwick, Birmingham, B67 7RF
Valuation Date: 7 May 2008
Heard at: Birmingham Panel Offices
On: 10 September 2008
Appearances:
For the Applicant: Mr. A. W. Brunt (FRICS)
For the Respondent: Mr. N. Plotnek LLB
Members of the Tribunal: Mr. S. A. Rowlands
Mr. V. Chadha
Mrs. N. Jukes

Date of Decision

1. BACKGROUND:

- This is a decision of a leasehold Valuation Tribunal of the Midland Rent Assessment Panel on an application to determine the price payable for enfranchisement and costs under sections 21(1) (a) and 21 (1) (ba) of the Leasehold Reform Act 1967 ("the Act") in relation to 16 Hitchcock Close, Smethwick, Birmingham, B67 7RF ("the Property").
2. The Property is held under the terms of a Lease dated 20 June 1997 whereby the property was demised for a term of 99 years from 24 June 1996 at an escalating ground rent of £75, £150, and £300 per annum on a 33 year cycle.
 3. By the Tenants' Notice dated 7 May 2008, the Applicants gave Notice of the Tenants' Claim to acquire the Freehold. The Notice is admitted by the Respondent.

4. On 17 July 2008, the Applicants applied to the Tribunal for determination of the price payable under section 9(1) of the Act, and for determination of the Landlord's legal costs payable under section 9(4) of the Act.

5. INSPECTION:

The property was inspected by the Tribunal on 10 September 2008. It comprises a mid-terraced house built on an average sized plot surrounded by similar houses as the subject property. It is a 2 storey property, of brick construction, with a pitched tiled roof. The accommodation comprises a hall, living room, kitchen and conservatory on the ground floor. There are two bedrooms and a shower room on the first floor. The property has double glazing throughout as well as gas central heating. Outside, the property has two allocated parking spaces to the front, and a paved patio/garden area to the rear.

6. VALUATION DETAILS:

- i. Valuation in accordance with section 9(1) of the Act.
- ii. Valuation date – 7 May 2008.
- iii. Unexpired term – 86 years, 1 month, 12 days.
- iv. This is a straightforward term and reversion valuation. In the absence of any evidence of cleared site sales and as agreed by the parties, the Standing House Method was used to determine the section 15 ground rent.
- v. *Haresign* Addition – neither party considered it appropriate for there to be a separate valuation of the freehold reversion at the end of the 50 year extension, and, accordingly, the section 15 modern ground rent should be capitalised in perpetuity.
- vi. The Entirety value was agreed by the parties before the hearing in the figure of £120,000.
- vii. The site apportionment was agreed by the parties prior to the hearing at 33.33%.
- viii. Both parties agreed that surveyors costs were not recoverable in this case.

7. ISSUES FOR DETERMINATION:

- i. Capitalisation Rate for the term – Applicant- 6%; Respondent- 5.5%.
- ii. Deferment Rate – Applicant- 5.5%; Respondent- 4.75%
- iii. Legal fees – Applicant- £350 (+VAT and disbursements if appropriate); Respondent- £400 (+VAT and disbursements if appropriate).

REPRESENTATIONS:

8. The tribunal considered written reports from Mr. Brunt and Mr. Plotnek.
9. A hearing took place on 10 June 2008 at the Panel Offices in Birmingham (after the inspection). Mr. Brunt appeared on behalf of the Applicants and Mr. Plotnek on behalf of the Respondent. Both made oral representations in support of their written reports and each was cross examined by the other. The oral submissions may be summarised as follows, though all is contained in the Record of Proceedings and has been taken into account by the Tribunal.

- **CAPITALISATION RATE:**

- i. Mr. Brunt submitted that 6% was appropriate, particularly as 21 years remain until the 1st review, and 6% reflected other LVT decisions (and negotiated settlements).
- ii. Mr. Plotnek submitted that previous determinations referred to were the subject of appeal. That because of the high value of the rent, 5.5% was not unreasonable and reflected a bank rate of 5% with an added 0.5% for management.

- **DEFERMENT RATE:**

- i. Mr. Brunt referred to the Lands Tribunal Decision in Earl Cadogan and Cadogan Estates Ltd (1) and Michele Francesco Sportelli and Lara-Lyn Victoria Lamont Sportelli (2) LRA/50/2005 EWCACIB1042 (hereinafter referred to as Sportelli”).

In particular, Mr. Brunt referred the Tribunal to paragraphs 6, 8 and 51 which he quoted – “the deferment rate is an annual discount of a future receipt, the vacant possession value of the house or flat at term”.

Mr. Brunt submitted that a vacant possession valuation was not relevant in the present case where there was the assumption of a new 50 year lease at the ground rent. He submitted that an investor would pay more for an investment which would give vacant possession at the term date as that would provide more flexibility. The investor could sell the freehold, sell the leasehold, let on a short-hold tenancy or possibly re-develop. These options do not exist under section 9(1) circumstances

Mr. Brunt confirmed that the figure of 5.5%, raising the generic rate from 4.75%, was based upon this difference in situation at the end of the term between section 9(1) and section 9(1A) valuations.

Mr. Brunt submitted that 5.5% reflected a series of LVT decisions and negotiated settlements.

ii. Mr. Plotnek relied upon his written submissions. He acknowledged that there had been a series of LVT decisions reflecting 5.5%, but that this Tribunal was not bound by them.

• **LEGAL FEES:**

- i. Mr. Brunt submitted that the appropriate figure payable by the Applicant was £350 (plus VAT and disbursements). The transaction involved registered land, and would be carried out in house.
- ii. Mr. Plotnek submitted that £400 (plus VAT and disbursements) was the appropriate figure. He confirmed that it was probable that the transaction would be dealt with in house within the Respondent group.

VALUATION FIGURES:

10. The reports submitted for both parties contain detailed valuation calculations as follows:-

Mr. Brunt for the Applicant - £2,073

Mr. Plotnek for the Respondent - £2,613

THE TRIBUNAL'S DETERMINATION:

11.

i. **Capitalisation Rate:**

- Guidance as to the relevant Capitalisation Rate factors is given in the case of **Nicholson and Others v Goff (2007) LRA/29/2006** where The Lands Tribunal stated:-

“factors relevant to the Capitalisation – the length of the lease term, the security of recovery, the size of the ground rent (a larger ground rent being more attractive), whether there were provisions for review of the ground rent and, if there was such provision, the nature of it”.

- The Tribunal finds that in cases where the rent is small, and not subject to increase, a capitalisation rate of 6.5% or above would be appropriate.
- The position differs in this case. There is an escalating ground rent of £75, £150, and £300 on a 33 year cycle. The unexpired term is some 87 years, but it is 21 years until the 1st review increase.
- Reflecting the above factors, the Tribunal determines the Capitalisation Rate for the term at 6%.

ii. Deferment Rate:

○ The Tribunal finds that:-

- a. No mention of section 9(1) valuations is made in Earl Cadogan and Cadogan Estates Ltd (1) and Michele Francesco Sportelli and Lara-Lyn Victoria Sportelli (2) LRA/50/2005 (2007) (hereinafter referred to as Sportelli”.

The Lands Tribunal decision, describing the background to its decision, states:-

“The price payable on such enfranchisement of the higher value houses bought within the leasehold enfranchisement provisions under section 9(1A) of The Leasehold Reform Act 1967, and of flats, whether by way of collective enfranchisement or a single extended lease, under The Leasehold Reform Housing and Urban Development Act 1993”.

Paragraph 6 of The Lands Tribunal’s decision describes the primary issue as:-

“the proper Deferment Rate to be applied to vacant possession value”.

- b. The judgement of The Court of Appeal confirms that the 1st preliminary issue to be considered by it was:-

“The proper Deferment Rate to be applied to vacant possession value”.

- c. A section 9(1) valuation is the aggregate of:-

The present value of the rent reserved for the unexpired term, and the present value of a section 15 modern ground rent for a 50 year extension after the end of the unexpired term.

Unlike a section 9(1A) valuation, therefore, a Tribunal is not required to apply a Deferment Rate to vacant possession value. Under section 9(1) what is required is the determination of a modern ground rent, and not the application of a Deferment Rate to a vacant possession value.

- d. It follows, that as the Tribunal is not required to apply a Deferment Rate to vacant possession value, it is not therefore bound by guidance in “Sportelli”.

- e. The Tribunal finds that, despite the absence of truly reliable market evidence and recognising the difficulties of the hypothetical market postulated by the Act, including the assumption that there are no rights to acquire the freehold, the deferment rate for the reversion on a subs

9(1) basis is more than on a subs 9(1A) basis. On both bases the deferment rate is applied to the reversion at the end of the unexpired term. The subs 9(1A) reversion is, applying valuation methodology, the freehold vacant possession value after deduction, if any, for the tenant's right to remain in vacant possession at the end of the tenancy – subs 9(1A)(b). The subs 9(1) reversion is subject to a 50 year extension at a s. 15 ground rent, thereafter the freehold with vacant possession. However, to derive the price payable, the reversion subject to a 50 year lease is more usually taken as a reversion to lease in perpetuity. Despite the inclusion of the marriage value element in the subs 9(1A) basis (absent in the subs 9(1) basis) resulting in a higher subs 9(1A) value, the deferment rate for a reversion to effective vacant possession ('effective' because any allowance for subs 9(1A)(b) rights is taken in the vacant possession value, not the deferment rate) is lower (resulting in higher value) than the rate for the reversion subject to a 50 year lease at a fixed ground rent (subject to review after 25 years) and, thereafter, vacant possession. A reversion to vacant possession is more attractive than a reversion subject to a 50 year lease extension.

- f. Having considered the evidence and submissions, as an expert Tribunal, the Tribunal determines that the appropriate rate for firstly de-capitalisation and secondly re-capitalisation and deferment is 5.5%.

iii. Costs:-

- o The Tribunal finds that the conveyancing concerns registered land. The fees would be less than a standard conveyance because there is no contract to prepare. The leaseholders' solicitors would not have answer any questions relating to the house as this knowledge the lessee already has. It is noted that the work will be done in house. The Tribunal determines reasonable legal costs would be £350 (plus VAT and disbursements).

THE TRIBUNAL'S VALUATION:

12. Applying our determinations as above, the amount payable by the Applicant is as set out below and is in the sum of £2,073:-

Term:

Ground rent p.a.		£75.00	
YP for (yrs)	21 @ 6.00%	11.76408	
			£882.31
1 st rent review to		£150	
YP for (yrs)	33 @ 6.00%	14.23023	
PV of £1 in (yrs)	21 @ 6.00%	0.29416	
			£627.88

2 nd rent review to		£300	
YP for (yrs)	33 @ 6.00%	14.23023	
V of £1 in (yrs)	54 @ 6.00%	0.04300	
			£183.58

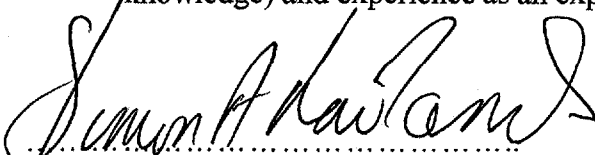
Reversion:

Entirety Value		£120,000.00	
Site apportionment @ 33.33%		£40,000.00	
Section 15 rent @ 5.50%		£2,200.00	
YP in perp def'd (yrs) 87 @ 5.50%		0.17245	
			£379.39
Price (say)	(Say)	£2,073	

DETERMINATION:

13. The Tribunal determines, therefore, that the price payable by the Applicants under section 9(1) of the Act is £2,073, and that the section 9(4) legal fees amount to £350 (plus VAT and plus disbursements).

In reaching our determination, the Tribunal has had regard to the evidence and submissions of the parties, the relevant law, and our own knowledge (but no secret knowledge) and experience as an expert Tribunal.



S. A. Rowlands
Chairman

Dated: 15 Sep. 08