

Midland Rent Assessment Panel
Decision of
Leasehold Valuation Tribunal

On an application under section 21(1)(a) of the Leasehold Reform Act 1967 to determine the price payable under section 9(1), in respect of the tenant's acquisition of the freehold.

Reference: BIR/00CW/OAF/2009/0038

Property: 39 Hawkswell Drive, Willenhall, West Midlands WV13 3EH.

Applicant: Mr A Turner and Mrs K Turner

Respondent: Unknown

Deemed date of tenant's notice: 23rd December 2008

Date of Application: 24th April 2009

Date of Court Order: 26th February 2009

Considered at a Hearing: Birmingham Panel Office

On 25th June 2009

Submissions

For the Tenant Mr J Moore of Midland Valuations

For the Landlord None

Members of the Tribunal: Mr R Brown FRICS (Chairman)

Mrs N Jukes

Determination

The Tribunal determines that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience, but not any special knowledge, the price payable by the tenants for the acquisition of the freehold interest in the property in accordance with section 9(1) of the Leasehold Reform Act 1967 as amended is **£1897.50**.

Introduction

1. By an Order dated 26th February 2009 the Birmingham County Court ordered that the applicant has the right to acquire the freehold in the subject property, but is prevented from giving notice in accordance with the Act because the person to be served cannot be identified. The Court directed the applicant to apply to the Tribunal to certify a fair valuation of the price to be paid pursuant to the Act.
2. This application was received from agents Midland Valuations Ltd, on behalf of the Applicant, on 24th April 2009. A copy of the Court Order, the lease, office copy entries was lodged with the application together with an expert witness report as to valuation.

Inspection

3. The members of the Tribunal inspected the subject property on 25th June 2009.

The property

4. The property is a 1980s semi detached house. It has front and back gardens and side drive. The accommodation comprises Hall, Living Room, Breakfast/kitchen, two bedrooms and bathroom.
5. The lease is for a period of 99 years from 11th January 1982 at an initial rent of £40.00, rising on 11th January 2015 to £60.00 and on 11th January 2048 to £80.00. At the valuation date there were approximately 72 years unexpired.

Consideration

6. Following the inspection of the property a hearing was held in Birmingham attended by Mr Moore of Midland Valuations Ltd.
7. The Court Ordered the Tribunal to determine the value, accordingly there was no other matter before us and we have not settled the terms of the transfer.

Substantive Issues re valuation

Entirety value.

8. The Tribunal finds that the entirety value on the valuation date is £100,000.00. The Tribunal had regard to its general knowledge and experience of values in the locality concerned and the evidence of Mr Moore who had derived his valuation by devaluing recent sales of similar properties on this estate. The Tribunal accepted this method of valuation but found that Mr Moore's conclusion as to value (£105,000.00) was optimistic.

Site Value

9. The Tribunal confirmed Mr Moore's site value apportionment for this property in this location at 34%. This produces a site value of £34,000.00.

Capitalisation rate

10. The Tribunal concluded that the appropriate capitalisation rate was 6.25%. They arrived at this rate after considering Mr Moore's evidence and using their own knowledge and experience. Mr Moore argued that because the rent reviews were of low value and fixed in amount that it was appropriate to increase the rate to 6.5%. In evidence he referred to 25 Inchford Road, Solihull (BIR/00CT/OAF/2007/0096) in which the tribunal had adopted 6% (confirmed on appeal LRA/29/2008). In that case however the reviews were more attractive. This Mr Moore argued justified the higher rate of 6.5%. The tribunal accepted Mr Moore's contention but considered that an increase in rate of 0.5% to be too high accordingly determined 6.25%.

11. The tribunal accept Mr Moore's contention that the same rate should be applied each review.

Deferment rate

12. The tribunal determines that the deferment rate to be applied is 5%. They do this following the recent lands Tribunal decision of 512 Haslucks Green Road and Others (LRA/185/2007).

The tribunal is not persuaded to depart the above decision. Mr Moore's contention that this rate should be higher (+.5%) because of the absence of a freeholder who can enforce covenants against the leaseholder is not persuasive. Mr Moore quotes 5 Bosworth Close (BIR/OOCR/OAF/2007/0101) in support however he omits to refer to the later decision at 14 Bosworth Close (BIR/OOCR/OAF/2008/0558) which distinguished this case. The tribunal in that case not being persuaded that the absence of the freeholder would necessarily have an effect on value.

13. We find as a matter of judgement as an expert Tribunal

- a. We are not bound by previous decisions of the LVT.
- b. That Mr Moore has not persuaded us that we should depart from the decision of the Lands Tribunal in 512 Haslucks Green Road.

The Tribunal's valuation

14. Applying those findings to the determination the Tribunal calculates the price payable and hereby certifies to the Court as follows:

| | £ | £ | |
|--|---------|---------------|-------------------------|
| Term | | | |
| Current Ground Rent | | 40.00 | |
| YP 6 years @ 6.25% | | <u>4.8789</u> | 195.156 |
| Ground Rent from 11/01/2015 | | 60.00 | |
| YP 33years deferred 6years @ 6.25% | | <u>9.7461</u> | 584.766 |
| Ground Rent from 11/01/2048 | | 80.00 | |
| YP 33years deferred 39 years @6.25% | | <u>1.3005</u> | 104.04 |
| Reversion | | | |
| Entirety Value | 100,000 | | |
| Site apportionment 34% | 34,000 | | |
| Section 15 Modern Ground Rent | 1700 | | |
| YP in perpetuity deferred 72 years @5% | 0.5962 | | <u>1013.54</u> |
| | | | <u>£1,897.50</u> |

Robert T Brown FRICS

Chairman

Dated **03 JUL 2009**