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LVT/B/98/62

LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTH WESTERN RENT ASSESSMENT PANEL

Tribunal. R Potter CB Chairman
 J S McAllister FRICS Member
 M J Sharples FRICS Member

Decision of the Leasehold Valuation Tribunal

In the matter of Section 21 of the Leasehold Reform Act 1967 as amended

RE: 7 MARSHFIELD WAY, FAIRFIELD PARK, BATH, BA1 6HA

Applicants: Andrew Richard Legg and Sarah Elizabeth Legg (the tenants)

Respondents: David John Gay and Reginald George Hillman (the executors of the estate of Victor Tom Charles Abbot, deceased)

Date of tenants' notice and application to the Tribunal : 11 February 1998

Heard : 15 July 1998

Appearances : Andrew Richard Legg and Sarah Elizabeth Legg

1. This is an application made under Section 21(2) of the Leasehold Reform Act, 1967, as amended (the Act) for a determination by the Leasehold Valuation Tribunal (the Tribunal) of the price payable under Section 9 of the Act for 7 Marshfield Way, Bath and for the determination if that provision ought to be contained in the conveyance. The application at clause 10 stated the price the applicant considered appropriate to be £42.

2. The applicants submitted a valuation in the following terms, prepared by Hextalls, Chartered Surveyors on the 4 March 1998:

Ground Rent £pa	£ 8.40
Y.p. in perp at 7%	£ 14.28
Enfranchisement Price:	£119.95

3. The applicants further submitted a draft conveyance with the said application.

4. On the 27th day of February 1998 the Clerk to the Tribunal sent a letter to both Respondents, enclosing copies of the said application and draft conveyance, inviting the said Respondents to submit documents for

the consideration of the Tribunal and indicating that an inspection of the premises and a hearing would be arranged in due course. No reply was received.

5. On the 25th day of June 1998 the Clerk to the Tribunal sent a further letter to both Respondents to inform them that the said inspection and hearing would be held on the 15th day of July 1998. Again no reply was received. However, on the 14 July 1998 the solicitors for the Respondents telephoned the Tribunal Clerk and stated that whilst they were aware of the proceedings neither they nor their clients would be attending on the following day.

6. On the said 15th July 1998 the Tribunal conducted an inspection of the subject property in the presence of the tenants. On inspection the property was found to be an end terrace dwelling house of reconstituted stone construction with a pitched and tile clad roof, comprising three floors with an integral garage and store together with a hallway entrance on the ground floor; a living room, dining room and modern kitchen on the first floor with access to the back garden and a landing, 3 bedrooms and a bathroom/wc on the third floor. The property was situated in a garden plot with a depth of 26.5 metres and a width of 3.85 metres, a further strip of land of approximately 13.8 metres length and 1.5 metres depth runs from the left hand front corner of the property across the end of Marshfield Way.

7. Later on the 15th July 1998 a formal hearing was held by the Tribunal. The Applicants were present but their legal advisers were not, by prior agreement. The Respondents were not present. The Tribunal had regard to Regulation 7 of the Rent Assessment Committee (England and Wales) (Leasehold Valuation Tribunal) Regulations, 1993 and, being satisfied that notice had been given to the Respondents, proceeded with the hearing.

8. The Chairman outlined the function of the Tribunal under the Act and invited Mr Legg to put his case on the two issues - namely, the price and the draft conveyance.

Mr Legg, in dealing with the price, was invited by the Tribunal to consider the additional correspondence which had been delivered to the Tribunal and copied to him on the preceding day. In particular, to the letters between solicitors relating to the offer by the Respondents' solicitors, in their letter of 18 June 1998 to sell the interest in the freehold for £300 including the payment of legal fees limited to £200 plus VAT. The Tribunal also referred to the letter of 14 July 1998 from the solicitors for the applicant describing this offer as £300 plus £200 costs. Mr Legg was not able to assist the Tribunal on the basis of these letters.

9. The Tribunal further referred to the Applicants' offer of £42 for the price, indicated in the original application. Again, Mr Legg was not able to establish the origin of that figure. Mr Legg submitted that he relied upon the figure of £119.95 set out in the report of the Chartered Surveyor (supra).

10. On the first issue, namely that of the price of the freehold for the said property, the Tribunal made the following findings:

Value of the Term

- (i) the applicants' case was based upon the valuation of £119.95. However, the Tribunal had regard to the judgement of the Lands Tribunal in the case of Maryland Estates Ltd v 63 Perham Road Ltd (1997) 35 EG 97 in which a valuation based on 7 YP was generally approved and made the calculation:-

Ground rent	£ 8.40
	x 7
YP at 14.28%	£58.80 = Enfranchisement price;

Say £60.

Value of the Reversion

- [ii] the Tribunal further considered the other factors under Section 9 of the Act and decided that since reversion does not take effect until 2962 and there was no provision for a rent review in the lease there was no reversionary value;
- [iii] the letter of 18 June from the solicitors for the Respondents was not a valuation report. The reference to £300 was an invitation to treat;
- and [iv] the Tribunal found that there would be no difference between the value of the virtual freehold and the existing leasehold and freehold value, and in consequence there would be no gain in the context of marriage value.

11. The Tribunal then turned to the second issue, that of the draft conveyance, and invited Mr Legg to consider the recent correspondence between the solicitors for both parties. In essence, the solicitors for the Respondents had proposed substantial amendments to the original draft - in particular the proposed Third Schedule to include at [b] and [c] covenants against the carrying on of any trade or business of any kind and against the creation of a nuisance or annoyance. In their reply the solicitors for the Applicants had rejected this draft, seeking these provisions to be struck out and relying on the law of tort, local controls and the reservation by the landlord in clause 6 of the lease of the right to modify, waive or release all or any of the covenants relating to the land as supporting their application.

In their reply of 14 July 1998 the solicitors for the Respondents relied upon the Provisions of Section 10 of the Act enabling the landlord to request such provisions to be incorporated in the conveyance to secure the continuation of restrictions arising by virtue of the original lease. Mr Legg was unable to assist the Tribunal further on this issue.

12. The Tribunal considered all these matters and decided:

- [i] the effect of the conveyance of the freehold would extinguish the lease;
- [ii] however, clauses 2(s) and 2(t) of the lease were covenants expressed in similar terms to clauses [b] and [c] of the proposed Third Schedule of the new conveyance;
- [iii] under the provisions of Section 10(4) of the Act the landlord, in this case the Respondents, were entitled to request such provisions to be incorporated in the conveyance and it was not unreasonable for the landlord to so stipulate;
- [iv] the Tribunal therefore approved the latest draft of the conveyance, including the Third Schedule in full, with the express alteration of the sum of £300 in clause 1 to the said £60 [supra].

13. The findings of the Tribunal were:

- [i] the price of the freehold of the subject property was determined at £60;
- and [ii] the draft amended conveyance, proposed by the solicitors for the Respondents, was approved - subject to the amendment set out in paragraph 12 [iv] above.

Dated the 15th day of July 1998

Chairman: R POTTER CB