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Our Ref: M/EH 2300

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr B Jervis
Respondent: NCH Action for Children
Re: 281 Monmouth Drive, Sutton Coldfield, West Midlands, B73 6JU

Date of Tenants Notice: 16 December 2001

RV as at 1.4.73: £447.00

Application dated: 11 September 2001

Heard at: The Panel Office

On: Wednesday 23 January 2002

APPEARANCES: Mr A I Shepherd FRICS - Bigwood
For the Tenant:

For the Landlord: Not Represented

Members of the Leasehold Valuation Tribunal:

Mr R T Brown FRICS (Chairman)
Mr D R Salter LLB
Mrs C L Smith

Date of Tribunals decision:

23 JAN 2002

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

Our Ref: M/LRC 326

DECISION OF LEASEHOLD VALUATION TRIBUNAL

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

Applicant: Mr B Jervis

Respondent: NCH Action for Children

Re: 281 Monmouth Drive, Sutton Coldfield, West Midlands, B73 6JU

Date of Tenants Notice: 16 December 1997

Application to Tribunal dated: undated (received 27 November 2001)

Heard at: The Panel Office

On: Wednesday 23 January 2002

APPEARANCES:

For the Applicant: Mr A I Shepherd FRICS- Bigwood

For the Respondent: Not Represented

Members of the Leasehold Valuation Tribunal:

Mr R T Brown FRICS (Chairman)

Mr D R Salter LLB

Mrs C L Smith

Date of Tribunals decision:

23 JAN 2002

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

In respect of

**NCH Action For Children v B Jervis,
281 Monmouth Drive, Sutton Coldfield, West Midlands. B73 6JU.**

BACKGROUND

This case follows an application by Messrs Bigwood Chartered Surveyors on behalf of the Lessee, Mr Brian Jervis, dated 11th September 2001 for determination of the price to be paid under section 9 (1) of the Leasehold Reform Act 1967 and by a further application by Messrs Bigwood Chartered Surveyors dated 26th November 2001 for a determination on costs under section 9 (4) of the Leasehold Reform Act 1967 the (Act).

The underlease is dated 28th day of March 1955 for a term of 99 years less three days from 24th June 1954 at a ground rent of £17.50 per annum.

The Lessees Notice of Claim to purchase the freehold is dated 16th December 1997, when there were approximately 55 years unexpired on the lease.

The Tribunal inspected the property on the 23rd January 2002 in the presence of the Lessee.

THE PROPERTY

The property comprises a substantial detached house constructed in the mid 50's in traditional materials. The centrally heated accommodation is as follows: Ground floor, porch, hall, two living rooms, (conservatory after the date of the notice) kitchen (fully fitted), rear porch leading to coal store, w.c. and single garage. First floor, three double bedrooms, bathroom (bath/shower and wash basin) separate w.c. Outside, substantial gardens to front and rear.

THE HEARING

Mr A I Shepherd FRICS of Messrs Bigwood Chartered Surveyors, appeared for the Lessee Mr B Jervis.

Mr N Jordan Smith MRICS of Messrs Barnes Kirkwood and Woolf, Chartered Surveyors, represented the Lessor by written representation, as he was unable to attend the hearing due to injury:

PRELIMINARY ISSUE

The Tribunal had received copies of the underlease and the land certificate relating to Mr Jervis's interest. Mr Shepherd related that he believed NCH Action for Children have a merged freehold interest and indeed Mr Jervis had paid his ground rent either direct to the Landlord or via their agent. The Tribunal determines this matter on the basis that NCH Action for Children are the freeholders.

Mr Shepherd presented his valuation as follows:

Ground Rent Per Annum	£ 17.50	
YP for 55½ Years @ 7%	<u>£ 13.95</u>	£244.125
Standing House Value	£175,000	
Site Value @ 35%	£ 61,250	
Ground Rent @ 7%	£ 4,287	
YP in Perpetuity Deferred 55½ Years @ 7%	<u>0.334</u>	<u>£1,432</u>
		£1,676
	Say	£1,675

He then spoke of his valuation as follows:

Yield: 7% was the generally accepted rate of return for this type of valuation.

Standing House Value: £175,000. Mr Shepherd reminded the Tribunal that the date of the notice was December 1997 and in order to establish the value it was necessary to cast our minds back to that date. Currently, there were two four bedroomed detached houses for sale on Monmouth Drive at asking prices of £295,000. In support of his contention that £175,000 was the correct figure, Mr Shepherd referred us to 'SCPROP', a computer data base which gave brief details of properties for sale during the period 1997/1998. From this, schedule he had highlighted a number of three bedroomed detached properties with prices ranging from £143,500 to £199,000. From this he concluded that the correct value for this subject property as at December 1997 was £175,000. Mr Shepherd's opinion of the current value in 2002 for entirety purposes was £250,000; his original thoughts on the 1997 value had been £185,000. However, the information provided by the computer data represented asking prices, and Mr Shepherd suggested it was appropriate to allow a 5% deduction for negotiation.

Site Value Apportionment: Mr Shepherd adopted 35% after inspecting the records of Birmingham Midland Leasehold Valuation Tribunal and concluded that this was the highest level so far awarded. When questioned by the Chairman, he did admit that the property was on a 'super plot' and agreed that 35 % might be on the low side.

On the matter of legal costs Mr Shepherd put forward the sum of £250.00 plus VAT and disbursements for such costs under section 9 (4) sub sections (a) (b) (c) and (d).

With regard to Surveyor's Fees. S.9 (4) (e) Mr Shepherd explained that no-one from the freeholder had inspected the property and that he understood the legal position to be that in order to establish a valuation fee, the valuation must be carried out after the service of notice, but before the application to the Tribunal. He further considered that no fee was justifiable on the basis that the freeholder appeared to have deliberately delayed the purchase, and that there was some misleading correspondence in which the price suggested for freehold varied. In February 1998 it was £3,500.00, but in May 2001 it was £5,785.00.

Mr Jordan Smith made his submission by way of a letter dated 22nd January 2002, which was made available to Mr Shepherd prior to the Hearing. In the submission at appendix 2, he set out his valuation which is reproduced below:

Ground Rent	£17.50 per annum	
YP for 52 years @ 3%	13.8621	
Sub total		£242.59
Revert to:		
Entirety Value	£210,000.00	
Site Value at 40%	£ 84,000.00	
Section 15 rent @ 7%	£ 5,880.00	
Defer for 52 years @ 7%	0.42359	
		<u>£2,490.71</u>
		£2,733.30
Value of Freehold Interest say + surveyors and legal costs		£2,700.00

Mr Shepherd pointed out although there was a typographical error showing the term rate of return as 3%, the multiplier used was 7%. There was also a factual error in that at the date of the notice the number of years expired was 55½, not 52 as put forward by Mr Jordan Smith.

In support of his valuation, Mr Jordan Smith stated he had adopted an entirety value of £210,000, and considered that he had been more than reasonable with his assessment of value and that this had been confirmed by local estate agents.

The site value apportionment of 40% was based on the superior location, the site being opposite a local golf course.

The Section 15 rent had been derived by reference to decisions of the Midland Leasehold Valuation Tribunal.

In support of his valuation, the surveyors fees and solicitors costs, Mr Jordan Smith provided examples of recently negotiated settlements, from which he concluded as to costs, that surveyors fees should be £300.00 plus VAT and legal costs £250.00 plus VAT.

THE DECISION

A. Determination of Price

1. Entirety value. Mr Jordan Smith, contended for an entirety value of £210,000, against Mr Shepherds £175,000. The Tribunal was not entirely clear as to the date contended for by Mr Jordan Smith, as his valuation showed there to be 52 years unexpired at the date of the notice when in fact there were 55½ years unexpired. Mr Jordan Smith could provide no supporting evidence other than 'a reference to his valuation having been confirmed by a local estate agent'. Mr Shepherd, on the other hand had clearly researched the available evidence and whilst the Tribunal treats with caution evidence of properties available for sale, it appreciates that evidence from 3 years ago is difficult to establish and notes that Mr Shepherd had made an adjustment in to allow for 'negotiation'. The Tribunal concludes that the best evidence is that provided by Mr Shepherd and adopts his valuation at £175,000.

2. Site Apportionment The Tribunal notes that Mr Shepherd contends for 35% whilst admitting that it is a super plot, and Mr Jordan Smith for 40% based on the superior locational factors. Mr Shepherd quite rightly points out that 35% is the highest figure awarded recently by the Midlands Leasehold Valuation Tribunal. However, upon examining the record of some recent decisions, the Tribunal finds that the properties on which 35% was awarded, to be inferior to the subject property. In the light of this using their knowledge (but not any special knowledge) and experience in the evaluation of the evidence adduced, the Tribunal determines that the correct figure to adopt in this case, is 38%.
3. Rate of return 7% The Tribunal sees no reason to depart from the accepted rate of return of 7%.

THE TRIBUNAL'S VALUATION

TERM

Ground Rent	£17.50 per annum	
YP 55½ year @ 7%	<u>£13.95</u>	£244.12

Reversion

Standing House Value	£175,000	
Site Apportionment 38%	£ 66,500	
Section 15 Rent 7%	£ 4,655	
YP in Perpetuity		
Deferred 55½ years @ 7%	<u>0.334</u>	<u>£1554.77</u>
		1798.89
Say		<u>£1800.00</u>

B. Determination of Costs

Section 9 (4) of the Act provides as follows:

"Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:

- (a) *any investigation by the landlord of that person's right to acquire the freehold;*
- (b) *any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*
- (c) *deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*

(d) making out and furnishing such abstracts and copies as the person giving the notice may require;

(e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void”.

Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

“the costs which a person may be required [to bear] under section 9(4) . . . of the 1967 Act . . . do not include costs incurred by a landlord in a connection with a reference to a leasehold valuation tribunal”.

1. Mr Shepherd contended for legal costs of £250.00 plus VAT and disbursements if applicable and no surveyors fees, on the basis that the property had not been inspected and that a series of differing valuations had been produced, causing unnecessary delays.

Mr Jordan Smith, contends for £300.00 + VAT for surveyors fees and £250.00 plus VAT in respect of solicitors costs, being in line with previously agreed fees.

On the basis of the information provided, the Tribunal found no evidence that Mr Jordan Smith visited the property and his valuation must therefore be regarded as ‘a desk top valuation’. Consequently in line with previous decisions of this Tribunal, the Tribunal awards the sum of £100.00 plus VAT for surveyors fees.

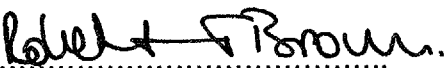
2. The Tribunal had evidence that the under leasehold interest was registered title but no evidence as to whether or not the freehold title was registered and awards legal costs on the following basis.
 - a. If the freehold title proves to be registered £200.00 plus VAT and disbursements or
 - b. If the freehold title proves to be unregistered £250.00 plus VAT and disbursements.

We determine that with the benefit of our inspection, and the use of our knowledge (but not any special knowledge) and experience in the evaluation of the evidence adduced, that the sum to be paid for the freehold interest in the above described property in accordance with section 9 (1) of the Leasehold Reform Act 1967 (as amended) is £1,800 (eighteen hundred pounds).

We award costs in accordance with section 9 (4) of the Leasehold Reform Act 1967 and Schedule 22 (part 1 (5) paragraph 5 of part 1) of the Housing Act 1980 as follows:

Surveyors fees £100.00 plus VAT if applicable.

Legal costs if (a) the freehold title is registered £200.00 plus VAT and disbursements or (b) if the freehold title proves to be unregistered £250.00 plus VAT and disbursements.

Signed.....
Robert T Brown FRICS
Chairman

25 FEB 2002