(127)

*LVT 9*

Our Ref: M/EH2339c

# 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 C.H.G. Taylor & Mrs L.A. Taylor

Respondent: Mr S.C. Jan

Re: 10 Lansdowne Crescent, Two Gates, Tamworth, Staffordshire, B77 1EH

Date of Tenants Notice: 14th November 2001

RV as at 1.4.73: £197.00

Application dated: 14th November 2001

Heard at: The Panel Office

On: Tuesday 26th march 2002

APPEARANCES:

For the Tenant: Mr J. Moore

For the Landlord: Not Present

Members of the Leasehold Valuation Tribunal:

Chairman: Mr T.F. Cooper BSc FRICS FCI Arb
Mr D.R. Salter LLB
Mrs N. Jukes

Date Of Tribunals Decision 25 APR 2002

UNEXPIRED LEASE 59.6 YEARS

ANNUAL GROUND RENT £ 15.00

VALUE OF PROPERTY £85,000

LVT 96/5

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

Our Ref: M/LRC317

*DECISION OF LEASEHOLD VALUATION TRIBUNAL*

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

Applicant: Mr & Mrs Taylor

Respondent: Mr S.C. Jan

Re: 10 Lansdowne Crescent, Two Gates, Tamworth, Staffordshire, B77 1EH

Date of Tenants Notice: 14th November 2001

Application to Tribunal dated: 14th November 2001

Heard at: The Panel Office

On: Tuesday 26th March 2002

Appearances:

For the Applicant: Mr J. Moore

For the Respondent: Not Present

Members of the Leasehold Valuation Tribunal:

Chairman: Mr T.F. Cooper
Mr D.R. Salter
Mrs N. Jukes

Date of Tribunals decision: 25 APR 2002

**CASE NOS: M/EH 2239c**
**M/LRC/317**

# DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON THE PRICE PAYABLE ON ENFRANCHISEMENT AND THE REASONABLE COSTS PAYABLE IN THE CASE OF

**TAYLOR**
**V**
**JAIN**

## RE: 10, LANDSDOWNE CRESCENT TWO GATES TAMWORTH STAFFS B77 1EH

**Background:** Mr C H G Taylor and Mrs L A Taylor are the Tenants (the '**Tenant**') of the dwelling house and premises at the above property (the '**Property**'). The **Freeholder** is Mr S C Jain. By a notice (the '**Notice**') dated 7 September 2001 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 14 November 2001 the Tenant applies to us to determine the price payable on the acquisition of the freehold of the Property under sec 9 of the Act. By an application dated 14 November 2001 the Tenant also applies to us for a determination of the Freeholder's costs. We inspected the property on 26 March 2002.

The Tenant holds the Property by a lease (the '**Lease**') for a term of 99 years from 25 March 1962 at a ground rent of £15.00 pa.

The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 59½ years. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.

The Property comprises a semidetached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes:- on the ground floor – hall, cloakroom, living room/dining room, kitchen; on the first floor –three bedrooms, bathroom with wc. There is a single garage. The site frontage is 5.79m and is wider at the rear. The total site area is 385m².

A hearing was held on 26 March 2002. Mr J Moore appeared for the applicant Tenant; the Freeholder did not appear and was not represented but had made a written offer to sell. The offer is not marked 'without prejudice'. We hold that the Freeholder's offer (the '**Offer**') is an opening offer, consequent on the Tenant's Notice, and is not privileged.

[Continued]

**Tenant's Valuation:** By Mr Moore £711.16 - more specifically:

| | | |
|---|---|---|
| The term: | | |
| Ground rent | £15.00 pa | |
| YP 59½ years at 7% | 14.031 | |
| | | £210.47 |
| The reversion (by the Standing House method): | | |
| Entirety value | £85,000 | |
| Site proportion at 33% of entirety value | £28,050 | |
| Section 15 modern ground rent at 7% of £28,050 | £1,963.50 pa | |
| YP in perpetuity deferred 59½ years at 7% | 0.255 | |
| | | £500.69 |
| | Price | £711.16 |

**Freeholder's Offer:** Mr Jain's Offer is £1,400 plus his costs or £1,900 with each party paying their own costs.

**Submissions and evidence:** Mr Moore derives the price by the standing house method of valuation. He recognises the limitations of this method but says that there is no reliable evidence of comparable sales of cleared sites to derive the value of the reversion.

In support of his entirety value of £85,000 he refers us to two recent sales of similar houses in the locality at £68,000, leasehold, and £98,000, freehold. He says that £98,000 is inconsistent with the general level of values for similar house in the locality. He has particular regard to the principle that the entirety value should reflect the value of the Property in good condition and fully reflecting the potential of its site provided always that the potential identified is realistic and not fanciful. In adopting £85,000 he takes account of the close proximity of a main railway line at the rear of the Property.

In support of his 33% site apportionment he refers us to several decisions of the LVT, saying that 33% is consistent with those decisions reflecting the characteristics of the Property.

Helpfully, he refers us to other LVT and Lands Tribunal determinations and court authorities on the principles which he applies in his valuation.

Other than the Offer we refer to above no representations are made by or for the Freeholder.

**Valuation of the Tribunal:** We attach no significant weight to the Freeholder's Offer as it is not supported by any evidence.

We accept the principles recognised in the cases Mr Moore refers us to. Applying the generally accepted valuation principles to derive a price for the Tenant to acquire the freehold on fair terms we find and hold that Mr Moore's valuation is consistent with those principles. However we round the valuation to £711.

**Conclusion on the price payable:** We determine that the sum to be paid by the Tenant for the acquisition of the freehold interest in accordance with section 9 of the Leasehold Reform Act 1967, as amended, is £711 (Seven hundred and eleven pounds) plus the Freeholder's reasonable costs in accordance with section 9(4) of the Leasehold Reform Act 1967 and Schedule 22, Part I, para. 5. of the Housing Act 1980, the amount of which we determine below.

## OUR DETERMINATION OF COSTS

**Background:** Section 9(4) of the Act contains the provisions for the Freeholder's recovery of specified reasonable 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.

**Vat:** All figures we refer to are exclusive of vat. We have no jurisdiction to determine conclusively vat matters as they are a matter for HM Customs and Excise. Therefore we make our determination exclusive of vat, save that vat shall be added at the appropriate rate if applicable.

**Submissions and evidence generally:** Mr Moore, for the Tenant, explained his representations at the hearing. Mr Jain's Offer refers to his solicitor's costs of £300 plus vat and his surveyor's costs of £300 plus vat.

**The substantive issues on costs:**

**(i) Section 9(4)(a) costs:** Mr Moore, for the Tenant, says that we have no evidence that any costs contemplated by subsection (4)(a) have been incurred by the Freeholder. We accept his evidence and find that no section 9(4)(a) costs have been incurred.

**(ii) Section 9(4)(b)(c) and (d) costs:** After an oral exchange on the meaning and effect of these three subsections we hold and find that, in the case before us, (b), (c) and (d) costs may not be distinguishable and may be incurred by Freeholder after the date of this determination. We, therefore, treat them as one item and determine a maximum amount that is recoverable from the Tenant. Mr Jain says that his solicitor's costs amount to £300. Mr Moore says that these costs should not exceed £200 plus office copy register entries' disbursements as the title is registered. We find that Mr Moore's evidence is more persuasive and determine £200.

**(iii) Section 9(4)(e) costs:** Mr Jain says that his valuation costs are £300. Mr Moore says that we have no evidence that the Freeholder has incurred any such valuation costs. We have no evidence that Mr Jain has incurred such costs in pursuance of the Notice and accept Mr Moore's evidence. We find that no valuation costs are recoverable.

**Summary of our determinations on the issues of costs:**

(i) Section 9(4)(a) costs: No costs have been incurred.

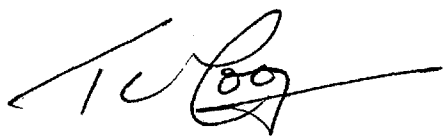
(ii) Section 9(4)(b) to (d) costs: Shall not exceed £200 (plus vat if appropriate), plus the actual disbursements incurred in obtaining the office copy register entries.

(iii) Section 9(4)(e) costs: No costs have been incurred.

**Conclusion on costs:** As our final determination on section 9(4) of the Act: no amount is payable by the Tenant to the Freeholder in respect of subsection (4)(a) and (e) costs; and the Tenant shall bear the Freeholder's subsection (4) (b) (c) and (d) costs, as follows:

> A total sum not exceeding £200 plus vat, if appropriate, plus the actual disbursements incurred in obtaining the office copy register entries.

Date: 25 APR 2002



T F Cooper
CHAIRMAN

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