

130

LVT 9

Our Ref: M/EH 2320c

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 D.A. Millin

Respondent: St Ermins Property Co Ltd

Re: 30 Brabham Crescent, Streetly, Sutton Coldfield, West Midlands, B74 2BN

Date of Tenants Notice: 13th August 2001

RV as at 1.4.73: £279.00

Application dated: 22nd October 2001

Heard at: The Panel Office

On: Wednesday 06th 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 J.C. Ritchie
Mrs M.A.L. Mckenzie

Date Of Tribunals Decision 25 APR 2002

UNEXPIRED LEASE 59.10 YEARS

ANNUAL GROUND RENT £ 20.00

VALUE OF PROPERTY £ 100.000

LVT 96/5

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

Our Ref: M/LRC 302

DECISION OF LEASEHOLD VALUATION TRIBUNAL

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

Applicant: Mr D.A. Millin

Respondent: St Ermins Property Co Ltd

Re: 30 Brabham Crescent, Streetly, Sutton Coldfield, B74 2BN

Date of Tenants Notice: 13th August 2001

Application to Tribunal dated: 22nd October 2001

Heard at: The Panel Office

On: Wednesday 06th 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 FRICS FCI Arb
Mr J.C. Ritchie
Mrs M.A.L. McKenzie

Date of Tribunals decision: 25 APR 2002

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

**MILLIN
V
ST ERMINS PROPERTY CO LIMITED**

RE: 30, BRABHAM CRESCENT, STREETLY, SUTTON COLDFIELD B74 2BN

Background: Mr D A Millin is the **Tenant** of the dwelling house and premises at the above property (the '**Property**'). The **Freeholder** is St Ermins Property Co Limited. By a notice dated 13 August 2001 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 22 October 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 22 October 2001 the Tenant also applies to us for a determination of the Freeholder's costs. We inspected the property on 6 March 2002.

The Tenant holds the Property by a lease (the '**Lease**') for a term of 99 years from 24 June 1962 at a ground rent of £20 pa.

The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 60 years. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.

The Property comprises a semi detached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes:- on the ground floor – hall, living room, kitchen; on the first floor – three bedrooms, bathroom, separate wc. There is an integral single garage. The site frontage is 7.62m, the width is maintained throughout the depth of the site and the total site area is 230m².

A hearing was held on 6 March 2002. Mr J Moore appeared for the applicant Tenant; the Freeholder did not appear and was not represented but provided written representations by CHP Management Limited.

[Continued]

Tenant's Valuation: By Mr Moore £822.82 - more specifically:

The term:	
Ground rent	£20.00 pa
YP 60 years at 7%	<u>14.039</u>
	£280.78
The reversion (by the Standing House method):	
Entirety value	£95,000
Site proportion at 33% of entirety value	£31,350
Section 15 modern ground rent at 7% of £31,350	£2,194.50 pa
YP in perpetuity deferred 60 years at 7%	<u>0.247</u>
	£542.04
	Price £822.82

Freeholder's valuation: In written representations CHP Management Limited says that £1,050 is the appropriate figure, with a 35% site apportionment and a 7% yield.

Submissions and evidence: Mr Moore derives the price by the standing house method of valuation.

In support of his entirety value of £95,000 he relies on three determinations of the LVT in respect of nos. 25, 33 and 35 Brabham Street in which the LVT adopted entirety values of between £95,000 and £105,000. In the same cases the LVT adopted about 33%, as the site apportionment; and it adopted a yield rate of 7%.

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

We pointed out, and Mr Moore accepts, that the standing house method of valuation is primarily to derive the value of the cleared site of the Property, so that the reversion to a 50 year lease (effectively in perpetuity as the reversion to the vacant possession value, after a 50 year lease, is of no significant value) can be valued. We invited Mr Moore's comment on *Cadogan Estates Ltd v Hows and Hock* [1989] 2 EGLR 216 in which the Lands Tribunal decided that the entirety value is the value of the property in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful. In applying the principle in *Cadogan* he amends his entirety value to £100,000.

CHP Management Limited says that properties are being sold in the area for in excess of £115,000 with local estate agents saying that prices could achieve up to £125,000. CHP refer us to 38, Fordwater Road which the selling agent says is under offer at the asking price of £115,000.

Valuation of the Tribunal: We do not find CHP's evidence persuasive. It is based on a current provisionally agreed sale, significantly after the Date, at £115,000 which is less than CHP's entirety value at £125,000. The evidence is not from a named person and we find that it is not consistent with what is more inherently likely.

We accept the principles recognised in the cases Mr Moore refers us to and accept his amendment to £100,000 as the entirety value. 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, with £100,000 as the entirety value, is consistent with those principles. We set out the valuation below.

The term:

Ground rent	£20.00 pa	
YP 60 years at 7%	<u>14.039</u>	£280.78

The reversion (by the Standing House method):

Entirety value	£100,000	
Site proportion at 33% of entirety value	£33,000	
Section 15 modern ground rent at 7% of £33,000	£2,310 pa	
YP in perpetuity deferred 60 years at 7%	<u>0.247</u>	£570.57

Price	£851.35
Say	£850.00

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 £850 (Eight hundred and fifty 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. CHP, for the Freeholder, had made no written representations.

The substantive issues on costs:

(i) Section 9(4)(a) costs: Mr Moore, for the Tenant, says that we have no evidence that any of these specified costs, not incurred in connection with this reference to us, have been incurred by the Freeholder. We accept Mr Moore's submission and find that no section 9(4)(a) costs have been incurred.

(ii) Section 9(4)(b)(c) and (d) costs: After a helpful 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 Moore says that these costs should not exceed £200 plus office copy register entries' disbursements as the title is registered. We find that, as the title of the Property will be a part of the Freeholder's title of several properties, a slightly higher amount is reasonable. We determine £225.

(iii) **Section 9(4)(e) costs:** Mr Moore says that we have no evidence that the Freeholder has incurred any such valuation costs. We accept his evidence and 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 £225 (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 sum not exceeding £225 plus vat, if appropriate, plus the actual disbursements incurred in obtaining the office copy register entries.

Date: 25 APR 2002


T. F. Cooper
CHAIRMAN.

c:/rap/lvt/dec/2320c&302