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LVT 910

NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM ACT 1967 (as amended)

Application under section 9 for Determination of Price Payable

Applicant Peter McCarthy

Respondent G and O Properties (London) Ltd
58/60 Kingston Road New Maldon Surrey
for whom Urban Point Property Management act as
agents.

Property 36 Newland Avenue Pemberton Wigan

Heard at Wigan Town Hall on Friday 3rd May 2002

Appearance at the Hearing for

Leaseholder Mr and Mrs P McCarthy
Freeholder Did not attend and was not represented.

Members of the Leasehold Valuation Tribunal

Mrs E M Thornton-Firkin BSc MRICS (Chairman)
Mrs J A Turner FRICS
W T D Jones

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL IN THE CASE
OF MR P Mc CARTHY V. G and O PROPERTIES (LONDON) LTD**

Background

1. This is a determination of the price payable for the house and premises known as 36 Newland Avenue Pemberton, Wigan in accordance with Section 9 of the Leasehold Reform Act 1967, as amended, upon the grant of such premises for an estate in fee simple, subject to the subsisting tenancy of the Applicant and to such tenant incumbrances as may exist but otherwise free from incumbrances.
2. The Application was made by P McCarthy (the applicant) who had served a notice on Form 1 of the Schedule to the Leasehold Reform (Notices) Regulations 1997 dated 7 November 2001 on Urban Point Property Management Ltd. No reply was received from the Respondent on the regulation Form 3 stating whether or not he admits the tenant's right to acquire the freehold. Mr McCarthy applied to the Leasehold Valuation Tribunal on 28th January 2002 for the determination of the price payable. The Respondent replied to the Tribunal's letter of 8th February 2002 requesting evidence of selling prices of houses or land considered comparable, or setting out a statement of case, saying that the figures quoted for the purchase price of the freehold including their sale fee and associated legal fees are "virtually always around circa £1,500" and enclosing 19 similar transactions.

Inspection

3. The Leasehold Valuation Tribunal had the opportunity of inspecting the property, its curtilage and locality generally, immediately before the hearing. The applicant had extended the property and had notified the freeholder prior to extending.
4. The lease of the property, which is dated 31st December 1963, granted a term of 999 years at a yearly ground rent of twelve pounds payable half yearly upon consideration of £2,150 paid to the Building Company

Hearing

5. The Tribunal had received as evidence prior to the date of the hearing:-

From the Landlord

Letter dated 15th February 2002 including letters concerning 19 similar transactions

From the Tenant

- i. Copy of letter from the Respondent offering the property for £1500 dated 22nd October 2001.
- ii. Application for determination on acquisition of Freehold
- iii. Form 1 Notice of Tenant's Claim to Acquire the Freehold
- iv. Accompanying letter to Landlord
- v. Mortgage offer to Tenant dated 28th October 1966

vi. Copy of the Lease and accompanying letter to Leasehold Valuation Tribunal dated 15th February 2002.

6. The hearing was attended by Mr and Mrs P McCarthy who said they wished to buy the freehold of the property to avoid the difficulties they were having in getting replies from the Landlord and especially concerning a disagreement about the amount owing as ground rent. They also gave evidence regarding their rateable values in 1972/3. They had lived continuously in the property since 1966. They confirmed that no reply had been received in response to their Notice to Purchase. Mr McCarthy gave a history of the amounts various landlords had asked to purchase the freehold and suggested that he would be prepared to pay £340 - £350 to purchase the freehold including land registry costs.

The Decision

7. The Tribunal were aware of the deficiencies in the responses by the Applicant to Form 1 referred to above and the Court of Appeal Judgement in Speedwell Estates Ltd and another V Daziel and others ([2002] 02 EG 104) . They also regarded the lack of response of the landlord in the correct form and within the requisite time. They considered the landlord had accepted the applicants right to purchase the freehold by offering the freehold in their letter of 22nd October 2001 and providing comparables to the Tribunal accompanying their letter of 15th February 2002.

It thus appears to the Tribunal that there is no dispute between the parties that the Applicant is entitled to purchase the freehold, the dispute is over the purchase price.

The price to be paid under Section 9(1) of the 1967 act will include the value of the right to receive the reserved rent of £12 per annum for the residue of the term of the Lease (999 years from 1963) and the value of the ground rent for the site only for the 50 years extension as provided by the Act and thereafter the value of the freehold reversion in possession.

The length of the unexpired term is such that not only is there no point in considering what the ground rent might be under the extended lease, but a purchaser upon the hypothesis of a sale in the open market, would not see any quantifiable present value in a reversion deferred until 3012 . We therefore believe it is correct to value the right to receive the existing ground rent in perpetuity.

The Tribunal especially considered the provisions of the Act which require it to a) value the freehold as one lot and not as one included within a parcel of ground rents and b) expressly exclude the Tenant's bid.

The Tribunal considered the evidence by Mr McCarthy that he had paid the ground rent annually to a previous landlord because of the costs of collection. This confirmed their opinion that the value of the ground rent was nominal. The Tribunal are entitled to rely on their own knowledge and experience whatever the representations submitted by the parties. They found the Respondents' 19 comparables appeared to be sales to sitting tenants which are excluded by the Act and included an undisclosed amount for costs and legal fees. Mr McCarthy's

representations were based on previous landlord's asking prices and again included an element of costs.

The single rent of £12 per annum payable half yearly is one which the Tribunal believe it would be difficult to find an investor to purchase, no matter how well secured the income may be.

The ground rent cannot appreciate during the term of the lease and is for a period which could be regarded as perpetuity. It would also involve collection costs.

The Tribunal therefore determined that the price to be paid is £60 based on £12 per annum rent multiplied by a years purchase of 5.

Elizabeth Thornton-Firkin

24th May 2002

MRS E THORNTON-FIRKIN
CHAIRMAN

An appeal to the Lands Tribunal may be made by any person who appeared or was represented before the Tribunal and is dissatisfied with the Tribunal decision. Such appeal must be made within 28 days of the issue of these reasons.