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Our Ref: M/EH 2455

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 & Mrs M.J Wescott

Respondent: Trustees of the Calthorpe Edgbaston Estate

Re: 68 Sir Richards Drive, Harborne, Birmingham, B17

Date of Tenants Notice: 23 June 2001

RV as at 1.4.73: £505

Application dated: 17 May 2002

Heard at: The Panel office

On: Monday 9 December 2002

APPEARANCES:

For the Tenant: Anthony Brunt FRICS – Anthony Brunt & Company Valuers

For the Landlord: Kenneth. F Davis FRICS - BK

Members of the Leasehold Valuation Tribunal:

T.F Cooper BSc FRICS FCI Arb (Chair)
P.J Waller
Mrs C.L Smith

Date of decision: 14 February 2003

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL IN THE CASE OF
WESTCOTT
V
TRUSTEES OF THE CALTHORPE EDGBASTON ESTATE

1. **Background:** Mr M J and Mrs G M Westcott are the 'Tenants' of the dwelling house and premises at 68, Sir Richard's Drive, Harborne, Birmingham B17 8SH (the 'Property') by an underlease (the 'Lease') for a term of 99 years less 10 days from 25 March 1964. The 'Freeholder' is The Trustees of The Calthorpe Edgbaston Estate. By a notice (the 'Notice') dated 23 June 2001 (the 'Date') the previous tenant, who has assigned the Notice to the Tenants, claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the 'Act'). By an application dated 17 May 2002 the Freeholder applies to us to determine the price payable on the acquisition of the freehold of the Property under s9 of the Act.
2. It is common ground that our determination of the price payable shall be in accordance with section 9(1C) of the Act. This is to the effect that: we shall not assume that the bids of the Tenants and their family are excluded; we shall assume that at the end of the Lease the Tenants have no rights to remain in possession of the Property; and we shall include a proportion of the marriage value created by the merging of the Freeholder's and the Tenants' interests.
3. We inspected the Property on 9 December 2002 and a hearing was held on the same day.
4. The ground rent reserved in the Lease is £45 pa, fixed throughout the term. It is common ground that the head lease has merged with the freehold.
5. The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 62 years. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.
6. The Property comprises a detached chalet style house of traditional brick and tile construction on a corner site in an established residential area of similar properties. The accommodation includes:- on the ground floor - hall, living room and dining area, 3rd bedroom, study, kitchen, shower room with wc; on the first floor - two bedrooms, bathroom separate wc. Outside there is a single garage and gardens to the front and rear.
7. Mr A W Brunt FRICS appeared for the applicant Tenants; Mr K F Davis FRICS appeared for the Freeholder. We thank them for the careful attention they have given to this matter and for their written proofs of evidence delivered to us immediately prior to the hearing. Both Mr Brunt and Mr Davis clearly recognise their duty to assist us in reaching a just determination and have complied with that duty in giving

their evidence.

8. **Common Ground:** In essence, the basis of valuation for the enfranchisement price contained in section 9(1C) of the Act is: the value of the rent reserved in the Lease for the unexpired term of it; plus the value of the freehold interest with vacant possession (excluding the Tenants' or their predecessors' in title improvements) deferred for the unexpired term of the Lease with no rights of the Tenants to remain in possession; plus the marriage value subject to the Tenant not being entitled to more than one half share of it. Marriage value is calculated by deducting the total of the Freeholder's interest and the Tenants' interest from the unencumbered freehold interest on the Date.

- a. The headleasehold interest has merged with the freehold interest.
- b. There is no value attributable to any diminution in the value of the Freeholder's interest in any other property.
- c. The unexpired term of the Lease for the valuation is 62 years.
- d. The value of the rent reserved in the Lease, capitalised at 7% for 62 years, is £633.
- e. 7% is the yield rate for the whole of the valuation.
- f. The improvements, carried out by the Tenants' predecessors' in title, which shall be ignored in the valuation calculation are the ground floor extensions to the kitchen and shower room.
- g. The Tenants' share of the marriage value is 50%.
- h. No account (by a downward adjustment of the freehold vacant possession value) shall be taken of the risk of the Tenants remaining in possession at the end of the Lease - the assumption in section 9(1A)(b) is excluded.
- i. There are no sums payable to the Freeholder as compensation.

9. Using our general knowledge and experience as an expert tribunal, we find that the matters agreed as common ground are consistent with the provisions of the Act to determine the price on enfranchisement in accordance with s9(1C) of the Act.

10. **Valuations:**

By Mr Davis for the Freeholder - £13,829.

By Mr Brunt for the Tenants - £9,466.

More specifically:

11. **Freehold value of the rents reserved in the Lease (as common ground):**

Current ground rent	£45 pa	
YP 62 years at 7%	<u>14.07</u>	£633

12. **Mr Davis's valuation of the freehold interest with vacant possession deferred for the unexpired term of the Lease and the marriage value:**

Unencumbered freehold with vacant possession	£235,000	
PV of £1 in 62 years at 7%	<u>0.015</u>	£3,525
Marriage value:		
Unencumbered freehold	£235,000	
Less value freehold subject to Lease (£633 + £3,525)	£4,158	
Less value of Tenants' interest (90% of £235,000)	<u>£211,500</u>	
Marriage value	£19,342	
Freeholder's share at 50%		<u>£9,671</u>
Total (including £633 as common ground)		£13,829

13. **Mr Brunt's valuation of the freehold interest with vacant possession deferred for the unexpired term of the Lease and the marriage value:**

Unencumbered freehold with vacant possession	£220,000	
PV of £1 in 62 years at 7%	<u>0.015</u>	£3,300
Marriage value:		
Unencumbered freehold	£220,000	
Less value freehold subject to the Lease (£633 + £3,300)	£3,933	
Less value of Tenants' interest	<u>£205,000</u>	
Marriage value	£11,067	
Freeholder's share at 50%		<u>£5,533</u>
Total (including £633 as common ground)		£9,466

14. In summary Mr Davis's valuation is:

Value of the rents reserved in the Lease	£ 633	
Add deferred value of freehold	£ 3,525	
Add ½ marriage value	£ <u>9,671</u>	
Total		£13,829

15. In summary Mr Brunt's valuation is:

Value of the rents reserved in the Lease	£ 633	
Add deferred value of freehold	£ 3,300	
Add ½ marriage value	£ <u>5,533</u>	
Total		£9,466

16. Mr Davis's valuation includes his derivation of the value of the Tenants' interest (£211,500) as 90% of the unencumbered freehold (£235,000). He provides an alternative valuation (**Mr Davis's Alternative Valuation**) in which he relies on the evidence of the purchase, by the Tenants, of their leasehold interest in the Property at £216,000 - the correct figure should be £216,800 (see 'Issue (i)' below). He reduces £216,000 by 4% to reflect the exclusion of the value attributable to the Tenants' benefit of the Notice at the time of their purchase, resulting in £207,360. He derives the value of the unencumbered freehold by adding £15,000 (his valuation of the enfranchisement price (£13,829) plus fees, rounded up to £15,000) to the

value of the Tenants' interest (£216,000), equals £231,000. His alternative valuation is set out below.

Unencumbered freehold with vacant possession	£231,000	
PV of £1 in 62 years at 7%	<u>0.015</u>	£3,465
Marriage value:		
Unencumbered freehold	£231,000	
Less value freehold subject to Lease (£633 + £3,465)	£4,098	
Less value of Tenants' interest (£216,000 less 4%)	<u>£207,360</u>	
Marriage value	£19,542	
Freeholder's share at 50%		<u>£9,771</u>
Total (including £633 as common ground)		£13,869

17. In summary Mr Davis's Alternative Valuation is:

Value of the rents reserved in the Lease	£ 633	
Add deferred value of freehold	£ 3,465	
Add ½ marriage value	£ <u>9,771</u>	
Total		£13,869

18. **Issue in Dispute:** The two issues in dispute are:

- (i) The value of the Tenants' interest. Mr Davis says £211,500; Mr Brunt £205,000.
- (ii) The value of the unencumbered freehold. Mr Davis says £235,000; Mr Brunt £220,000;.

19. **Issue (i):** It is not contested, at the hearing, that the leasehold interest in the property was purchased by the Tenants in August 2001 (about two months after the Date) for £218,150 including some extras for £1,350, resulting in £216,800 (not £216,000) as the price for the Property.

20. Mr Davis derives £211,500 as 90% of £235,000 (his opinion of the value of the unencumbered freehold). He also relies on the Tenants' purchase in August 2001 but saying that there must be a difference in the price that would be paid for the leasehold interest in the Property with the benefit of a tenant's notice to enfranchise (as in the subject case) and without the benefit of a notice. He says that the value we should adopt in the enfranchisement price is the value without the benefit of a notice. This principle is accepted by Mr Brunt. Mr Davis's Alternative Valuation reflects this principle by reducing the purchase price (£216,000 adopted) by 4%, resulting in £207,360 as the value of the Tenants' interest.

21. In support of £205,000 Mr Brunt says that we should be cautious in placing significant weight on the Tenants' purchase in August 2001 at £216,800 because the Property has particular characteristics which the Tenants required, due to their daughter's disability. The characteristics centre on adaptation of the Property for a disabled person including an enlarged ground floor shower room and a ground floor bedroom. He says that the Tenants probably paid an over-bid price, evidenced by them having bridging finance to purchase the Property whilst their previous property had not been sold and another prospective purchaser was bidding for the Property. As further evidence of the unreliability of the evidence of the purchase, Mr Brunt

says that the Tenants, at the time they purchased, did not realise that, on enfranchisement, they would have to pay a figure to include not less than ½ the marriage value being a section 9(1C) valuation, not a section 9(1) valuation. He says that the difference would amount to between £8,000 and £12,000. He says that we should also recognise that the enlarged kitchen (enlarged as an improvement) has a significant effect on value which we should ignore. In cross-examination Mr Davis says that the kitchen and shower room extension alterations have no effect on value and that the market was buoyant when the Tenants purchased.

22. Both Mr Brunt and Mr Davis refer us to the evidence of a negotiated settlement following a tenant's notice to enfranchise in October 2000, in which Mr Davis acted for the freeholder; the price agreed was £12,263 for the freehold of the four bedroom detached house at 32, Sir Richard's Drive with an unexpired term of 62 years and a fixed ground rent of £45 pa. Mr Davis says that the valuation shows that the tenant's interest was 90% of the unencumbered freehold. Mr Davis submits that his valuation at £13,829 is the price we should determine relying on an unencumbered freehold value at £235,000 with a 10% deduction to derive the Tenants' interest. In further support of a 10% difference, he refers us to an extended lease case, under the Leasehold Reform, Housing and Urban Development Act 1993, before this tribunal with 57.75 years unexpired, in which the tribunal adopted the parties' agreement to a 10% differential. Mr Brunt questions whether the tenant of 32 Sir Richard's Drive was competently represented by an enfranchisement specialist in the settlement figure, citing a lower settlement figure in a case where both parties were competently represented. In any event, he says that negotiations on 32, Sir Richard's Drive were protracted for many months which suggests an element of the *DeLaforce* effect, namely a tenant's 'anxiety to settle' as being a factor making settlement evidence unreliable - recognised in *DeLaforce v Evans* [1970] 215 EG 315. Mr Brunt says that a 10% difference is too much relying on lower differences in previous cases. Mr Davis says that, as the freeholder's representative for 32, Sir Richard's Drive, there was no *DeLaforce* effect on the settlement figure but accepts that no application had been made to the LVT to determine the price payable and the tenant's representative, to Mr Davis's knowledge, has not appeared for a party at a LVT hearing on an enfranchisement price.
23. We find that, in deriving the value of the Tenants' interest, we do not make an adjustment to the purchase price (£216,800) for any special suitability of the Property for the Tenants (as argued by Mr Brunt) because it is not contested that another prospective purchaser had been bidding for the Property at the time of purchase and we have no evidence that the Tenants actually bid more than the open market value.
24. We are not persuaded by Mr Brunt that we should make an adjustment for the kitchen and shower room extension alterations because they may not have general appeal: whilst they may be an attraction to some purchasers, they may, equally, be a detraction to others and we are not persuaded that the open market value (with the benefit of a tenant's notice to enfranchise), excluding the extension alterations, is not £216,800.
25. We are not persuaded that the Tenants may not have appreciated the significance of a section 9(1C) valuation including marriage value as the proposition is speculative.

26. We find that we attach only limited weight to evidence of negotiated settlements and, on the balance of probability, there may have been an anxiety to settle [*Delaforce* effect]. We have conflicting evidence on the reliability of the negotiated settlement on 32, Sir Richard's Drive. Without direct evidence of the relevant surrounding circumstances from both the tenant and the freeholder we find that we should attach greater weight to the evidence of the price paid for the leasehold interest by the Tenants for the Property. We do not find the evidence of an agreed 10% differential in a 1993 Act case is persuasive and, in respect of other LVT and Lands Tribunal cases introduced, we hold that they are not persuasive because each case is resolved on its own facts.
27. We have decided that no adjustment shall be made for special suitability, extension alterations, the effect of a section 9(1C) valuation and that evidence of negotiated settlements is not persuasive. Despite Mr Brunt's misgivings on the reliability of the £216,800 paid by the Tenants, we attach greatest weight to that evidence for the reasons we have given. It is common ground that the value shall exclude any enhanced value due to the benefit of a tenant's notice to enfranchise and that the Tenants purchased the leasehold, at £216,800, with a tenant's notice. Mr Davis says that 4% should be deducted. Whilst Mr Brunt contests the reliability of the evidence, he does not contest the percentage deduction. We accept Mr Davis's 4% deduction.
28. We reach the inevitable conclusion, from our findings and the common ground, that the value of the Tenants' interest is £216,800 (the correct figure, not £216,000) less 4% (£8,672) equals £208,128.
29. **Issue (ii):** Mr Davis's opinion of the value of the unencumbered freehold is £235,000, supported by the evidence of his negotiated settlement of 32 Sir Richard's Drive with a valuation of the unencumbered freehold at £200,000 in October 2000. Mr Brunt refers us to the general level of percentage uplifts, from the leasehold value, to derive the value of the unencumbered freehold in cases with not dissimilar facts from the subject case. He says that, reflecting the length of the unexpired term (62 years in the subject case), an uplift of less than 10% is more consistent with the general level than Mr Davis's uplift (derived from his discount of 10% from the freehold to derive the leasehold). Mr Davis's uplift is arithmetically about 11% ($£235,000 \div £211,500$). Mr Brunt's opinion of the value of the unencumbered freehold is £220,000, which is an uplift of £15,000 from his leasehold value (about 7.3% - $£220,000 \div £205,000$).
30. Mr Davis's figure is £235,000, derived primarily from his opinion evidence but supported by his uplift of [arithmetically] 11% on the leasehold value (£211,500) and his addition of £15,000 to the Tenants' interest in his Alternative Valuation. On 'Issue (i)' we have attached greatest weight to the evidence of the Tenants' purchase of the leasehold at £216,800. We have no evidence of comparable sales of unencumbered freeholds, only valuations adduced from settlements and previous decisions. In the absence of evidence of comparable unencumbered freeholds we find that the most helpful evidence is the evidence of the Tenants' purchase of the leasehold to which we add an uplift. On their valuation figures, Mr Davis's uplift is 11%; Mr Brunt's 7.3%. Weighing the evidence adduced, we find, as a matter of judgment, that Mr Brunt's uplift

is nearer a general level of uplift appropriate in this case than Mr Davis's and that the uplift shall be 8%. Applying this to our decision on the leasehold value (£208,128) the resultant figure is £224,778 (£208,128 × 1.08 = £224,778). Both Mr Davis and Mr Brunt have adopted rounded figures. We round up £224,778 to £225,000.

31. We find that the value of the unencumbered freehold interest is £225,000.

Summary of our decisions on the issues in dispute:

32. **Issue (i):** The value of the Tenants' interest is £208,128.

33. **Issue (ii):** The value of the unencumbered freehold is £225,000.

34. **Valuation of the Tribunal:** Adopting our decisions on the issues, the valuation of the Tribunal is:

Value of rent reserved in Lease (as common ground)		£633
Unencumbered freehold	£225,000	
PV of £1 in 62 years at 7%	<u>0.015</u>	£3,375
Marriage value:		
Unencumbered freehold	£225,000	
Less value freehold subject to the Lease (£633 + £3,375)	£4,008	
Less value of Tenants' interest	<u>£208,128</u>	
Marriage value	£12,864	
Freeholder's share at 50%		<u>£6,432</u>
	Total	£10,440

35. **Conclusion:** We determine that taking account of all the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge, and our inspection, that the sum to be paid by the Tenants for the acquisition of the freehold interest in accordance with section 9 of the Leasehold Reform Act 1967, as amended, is £10,440 (Ten thousand four hundred and forty 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. In default of agreement over the amount of any costs payable under section 9(4) under the provisions of section 21(1)(ba), application may be made to the Leasehold Valuation Tribunal for a determination of such costs.

Date: 14 February 2003

TF Cooper
CHAIRMAN