

LVT 9

Our Ref: BIR/OOCT/OAF/2002/0078
BIR/OOCT/OC6/2002/0040

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 G McIntyre
Respondent: Dorridge Estates Limited
Re: 27 Weston Close, Dorridge, Solihull, B93 8BL
Date of Tenants Notice: 19th June 2002
RV as at 1.4.73: £394
Application dated: 3rd October 2002

Heard at: The office of The Leasehold Valuation Tribunal in
Birmingham

On: 14th January 2003

APPEARANCES:

For the Tenant: A W Brunt FRICS of Anthony Brunt & Co

For the Landlord: R F Muntz FRICS of Muntz Associates

Members of the Leasehold Valuation Tribunal:

N R Thompson (Chairman)
J Woolf
Mrs M A L McKenzie

Date of Tribunals decision: 14th April 2003

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

IN THE CASE

OF

McINTYRE v DORRIDGE ESTATES LIMITED

**27 WESTON CLOSE
DORRIDGE
SOLIHULL
B93 8BL**

Reference : BIR/OOCT/OAF/2002/0078/01 & BIR/OOCT/OC6/2002/0040

Background

This is a determination under Section 9 of the Leasehold Reform Act 1967 (as amended) as to the price to be paid for the freehold interest in respect of a detached house, 27 Weston Close, Dorridge, Solihull, B93 8BL. The Lessees, Mr & Mrs G McIntyre, hold the property by way of an Underlease dated the 7 March 1968 for a term of 99 years (less 3 days) from the 25th March 1966 at a fixed annual ground rent of £52. The Lessees' Notice of Claim to acquire the freehold interest was dated 19th June 2002 when just under 63 years of the term remained unexpired. The Tribunal accepted that the qualifying conditions for entitlement to enfranchise under the Act had been fulfilled.

Property

The Tribunal inspected the property on the 14th January 2003 in the presence of Mr & Mrs McIntyre and found it to comprise a two storey detached house of brick and tile construction built in the late 1960's by a well known local builder, situated in a cul-de-sac forming part of a small development of similar properties within walking distance of Dorridge Village Centre.

The centrally heated and double glazed accommodation (which has been extended by the present Lessees) comprises a Hall with Cloaks area, Study and ground floor WC off; an L-shaped Living/Dining Room and Breakfast Room/Kitchen with Utility Room extension on the ground floor, plus four Bedrooms and a combined Bathroom and WC on the first floor. Externally the property has both front and rear gardens and an attached single Garage. The property is located at the end of the cul-de-sac formed by Weston Close and backs on to the car park of Dorridge Station. The site of the subject property has a road frontage of approximately 3.65 metres.

Hearing

At the Hearing the Lessees were represented by Mr A W Brunt, FRICS of Anthony Brunt & Company, Chartered Surveyors of Birmingham and the Landlords were represented by Mr Robert F Muntz, FRICS of Muntz Associates, Chartered Surveyors of Coventry.

The Hearing commenced with Mr Brunt introducing his case on behalf of the Lessees by submitting details of the property and the following valuation :-

Annual Ground Rent :	£52	
Y.P. 63 years @ 7%	<u>14.08</u>	£ 732.16
SHV	£275,000	
Site 35%	£ 96,250	
Rent	£ 6,737.50	
Y.P. in perp. deferred 63 years @ 7%	<u>0.201</u>	<u>£1,354.24</u>
Price (say) :		<u><u>£2,086</u></u>

Mr Brunt confirmed that the only two areas of difference between himself and Mr Muntz were the Standing House (Entirety) Value and the proportion of that value to be adopted for the site.

In support of his Entirety Value, Mr Brunt referred to the tabled copy advertisements and particulars for a number of properties :-

Date	Property	Price	Remarks
21.09.02	15 Boningale Way, Dorridge	£279,950	Advertised 3 months after the valuation date.
16.05.02	Edstone Close, Dorridge	£265,000	A ¹ / ₄ of a mile from Dorridge village.
16.05.02	Buckminster Drive, Dorridge	£285,000	
16.05.02	Buckminster Drive, Dorridge	£255,000	Smaller but still 4 bedrooms.
16.05.02	Hanbury Road, Dorridge	£275,000	No en-suite bathroom

Tabled with the copy particulars/advertisements was a location map showing the position of the various properties cited by Mr Brunt.

In addition to the above houses Mr Brunt drew particular attention to, and submitted sale particulars of 32 Dorridge Road, which was situated close to Dorridge Railway Station. Mr Brunt emphasised that this was a property having very similar accommodation to the subject premises and in particular four bedrooms but only one bathroom. It had been for sale in the Spring of 2002 and because his clients knew the vendor, he was able to confirm that a sale had been concluded in May 2002 at a figure of £270,000 on a freehold basis (the leasehold details in the particulars apparently being incorrect).

Finally, Mr Brunt submitted particulars of a freehold building plot with detailed planning permission for a four bedroomed detached house at Ashmead Drive, Cofton Hackett, sold at auction in December 2002 for £85,000. Mr Brunt had not been able to obtain any view from the auctioneers as to the possible value of the completed house to be built on the plot, but in Mr Brunt's opinion a likely figure was circa £250,000.

Mr Brunt also emphasised that the subject property suffered from having a shared drive access from Weston Close as well as the noise and light pollution emanating from both the railway line to the rear, and more particularly the car park of Dorridge Station less than 40 feet from the main reception rooms of the house.

In relation to the Entirety Value of 35% which he had adopted, Mr Brunt indicated that :-

- a) Site values of 35% had been adopted in two cases he had dealt with on the Calthorpe Estate in Edgbaston, a correspondingly high value residential area in Birmingham.
- b) In a previous case heard by the Tribunal involving 12 The Spinney, Wythall (M/EH2437) the Tribunal had indicated that a site value proportion of over one third would be appropriate in exceptional cases and in respect of sites which were either substantial or where land values attracted a particular premium.
- c) Although Dorridge is a sought after area, the irregular shape of the subject site; its surroundings (particularly the Railway Station car park) and the fact that there was a shared access all mitigated against regarding the site as in any way exceptional.
- d) He had consulted Bill Tandy, a Chartered Surveyor operating in the Sutton Coldfield and Lichfield areas, who specialised in the sale of individual and small building plots who had expressed the view that generally, developers were willing to pay one third of the Entirety Value for such plots.
- e) In the case of 70 Elizabeth Road, Moseley (M/EH2218) the Tribunal had adopted a Site Value of 33% where there was a road frontage of 20 feet and a site area of 760 square yards i.e. similar to but somewhat larger than the subject premises.
- f) He was aware of the case of 281 Monmouth Drive, Sutton Coldfield (M/EH2300) in which the Tribunal had adopted a Site Value of 38% to reflect the premium value of land in that particular area.
- g) There were some five or six other cases in Dorridge which had been heard by the Tribunal but they were too historical to be of assistance in the present case.

Under cross examination from Mr Muntz, Mr Brunt indicated that he considered that the most relevant of the comparables he had offered was 32 Dorridge Road given that it was a similar type of property and in close proximity to the subject premises. He emphasised however that his other comparables were of significant importance given that the asking prices, dates and accommodation gave an overall picture.

When asked why he had not felt it appropriate to have a valuation undertaken by a local surveyor, Mr Brunt indicated that he considered that he was competent to undertake the valuation himself given some thirty years experience of specialising in this type of work. He agreed however that he had not dealt with a great number of cases in Dorridge although he believed that there had actually been very few which had come before the Tribunal.

Mr Muntz then asked the relevance of the location of the Cofton Hackett property to the current case. Mr Brunt responded by indicating that he felt it might be helpful to the Tribunal in terms of considering the site apportionment. This led Mr Muntz to question whether Cofton Hackett was really within sufficiently close proximity to be at all helpful, and whilst agreeing that it was not in the immediate locality, Mr Brunt felt that it was not so far away (e.g. in London) to be of no relevance at all.

Mr Muntz then concluded his cross examination by asking whether Mr Brunt considered the Cofton Hackett or Dorridge evidence to be the most relevant. Mr Brunt suggested that in the normal course of events the evidence from Dorridge would obviously be preferred but that was not to say that the Cofton Hackett evidence was irrelevant. The timing of the sale, the situation of the property relative to the subject premises and the comparability in terms of value were all indicators which helped to form an overall picture.

Mr Muntz then presented his case on behalf of the freeholders by reference to his letter addressed to the Tribunal of the 9 January 2003 together with the accompanying submission and three appendices.

He confirmed the two areas of difference between himself and Mr Brunt as being the Entirety Value of the property and the proportion of that value to be taken for the site. He had adopted an Entirety Value of £300,000 and a Site Value of 50% of that figure compared with Mr Brunt's £275,000 for the Entirety Value and the Site Value at 35% of that figure.

In dealing with the question of the Entirety Value, Mr Muntz referred the Tribunal to Appendix I – a valuation dated the 9 January by Nigel Evans FRICS IRRV a residential property specialist in the Knowle and Dorridge area. (Notwithstanding the fact that this suggested a valuation of £300,000 as at 19 June 2002 on a leasehold basis, Mr Muntz clarified that he understood it actually related to the freehold interest.)

Mr Muntz also cited two comparable sales which he felt supported his Entirety Value :-

- a) 3 Gladstone Road, Dorridge – a four bedroomed detached house with a conservatory sold in September 2002 (some three months after the relevant date) at a price of £309,950
- b) 48 Dorridge Road, Dorridge – a comparable four bedroomed detached house in what Mr Muntz considered to be a less private position on the corner of Dorridge Road and Weston Close which had been sold in June 2002 (i.e. at approximately the relevant date) at a figure of £295,000.

Mr Muntz also alluded to the agreed sale of the freehold interest of 25 Weston Close, Dorridge (adjoining the subject premises) where, in November 2001 – some seven months before the relevant date – he had agreed an Entirety Value with the lessees agent, Paul Rocky FRICS, of £300,000. In that instance the property had however been extended, although Notice under Schedule 8 of the Housing Act 1974 had been given which had resulted in a notional rateable value of below £500. As a consequence, a similar basis of valuation had applied in that case i.e. Section 9 (1) as opposed to Section 9 (1) (A).

Turning to the question of the percentage of the Entirety Value to be adopted for the Site Value, Mr Muntz referred the Tribunal to Appendix II and III of his submission :-

Appendix II :

This detailed information was supplied by John Shepherd – a local firm of Chartered Surveyors and Estate Agents – which Mr Muntz felt supported the adoption of a Site Value of 50%.

The first transaction concerned the sale of a plot of land with planning consent for a single detached four bedroomed house (with garage) at 2 Dorridge Road/Clyde Road, Dorridge which had been sold at auction by John Shepherd on the 8 May 2000 for £270,000. The house subsequently constructed on the site had been assessed by John Shepherd as having an Entirety Value of between £520,000 and £540,000 as a consequence of which the value of the site lay somewhere between 52% and 54% of the value of the completed house.

The second transaction concerned the sale of a plot of land adjoining 2A Dorridge Road/Clyde Road, Dorridge in June 2002 again by John Shepherd. The plot had the benefit of planning permission for the erection of a single dwelling and was sold for £400,000. The house currently being built on the plot is designed to have five bedroomed accommodation extending in total to some 3,250 square feet gross internal. On completion the house is to be offered for sale by John Shepherd seeking offers in the region of £850,000. If achieved, that price would represent a Site Value of 47% of the value of the completed house.

In considering whether a figure of £850,000 was realistic, details were given in Appendix II of the sale of comparable properties currently under construction by Chase Homes (in Temple Road, Dorridge) and Bloor Homes (Tall Trees, Dorridge) where sale prices of approximately the same amount per square foot were being achieved. Consequently Mr Muntz considered that £850,000 was a realistic figure to expect the new house on this plot to sell for and as such this sale would equate to a Site Value of 47%.

Appendix III :

Mr Muntz referred the Tribunal to the list of eleven cases of freehold sales in the vicinity of the subject property which he had negotiated between February 1999 and January 2002. In each case, the purchasers had qualified to compulsorily enfranchise; Mr Muntz had represented the freeholders, Dorridge Estates Limited; and in only four of the cases had the lessees represented themselves in the negotiations. In the other seven instances the lessees had been represented either by solicitors or chartered surveyors.

Mr Muntz emphasised that in each case a Site Value of 50% of the Entirety Value had been adopted and as such he considered this to provide compelling evidence to support the figure which he had used in his valuation of 27 Weston Close.

Under cross examination by Mr Brunt, Mr Muntz confirmed that he was connected with Dorridge Estates Limited in that the Directors are two of his sisters together with his father and uncle as Trustees for two cousins.

Mr Muntz confirmed that although he had not inspected the property internally, Nigel Evans had as part of undertaking the valuation shown at Appendix I.

Mr Brunt asked whether Mr Muntz felt that the valuation reflected the impact of the car park of Dorridge Station on the subject property to which Mr Muntz replied that he relied on the expert opinion of Nigel Evans who clearly had been aware of the proximity of the car park in formulating his opinion of value.

Mr Brunt asked whether particulars were available for either of the comparable properties cited by Mr Muntz in support of his Entirety Value of £300,000. Mr Muntz indicated that he did not have detailed particulars of either 3 Gladstone Road or 48 Dorridge Road. Mr Brunt then went on to ask whether Mr Muntz felt number 48 Dorridge Road was better or inferior to the subject property. Mr Muntz suggested that as it was located on the corner of two roads (Dorridge Road and Weston Close) it occupied a less private situation than Weston Close and was therefore less desirable. Although it did not suffer from having the lights of Dorridge car park to the rear (as in the case of the subject property) Mr Muntz made the point that it had street lighting to the front which could be equally intrusive.

Mr Brunt then questioned whether a formal Notice of Claim had been served in the case of 25 Weston Close (adjoining the subject premises) to which Mr Muntz confirmed that although a Notice under Schedule 8 of the Housing Act 1974 had been served and had led to an agreement that the notional rateable value should be £388, a formal Notice of Claim had not actually been served.

Mr Muntz was then asked whether he knew that Paul Rocky had advised his (widow) client who was the lessee of 25 Weston Close to take the matter to the Tribunal because he considered that the price he had been able to negotiate was excessive. Mr Muntz responded by indicating that he was aware Paul Rocky was not happy with the negotiated figure.

Turning to the evidence contained within Appendix II, Mr Brunt questioned the relevance of the first transaction given that the sale took place in May 2000 – over two years before the relevant date and at a time of rapidly increasing property prices. Mr Muntz accepted that one had to adjust for various factors and that clearly something nearer the relevant date would be more helpful and relevant.

Mr Brunt asked whether details were available of the area of the site at 2 Dorridge Road but Mr Muntz did not have this information available.

In connection with the plot adjoining 2A Dorridge Road Mr Brunt again questioned the relevance of the sale of a plot of land at £400,000 when this was £100,000 or more in excess of the Entirety Value of the subject property. Mr Muntz accepted that the figures were different but it was the principal of the ratio which the evidence portrayed that he felt to be important and to support his case.

In response to further questioning from Mr Brunt, Mr Muntz confirmed that the property under construction on that plot had not actually been sold yet and he was not aware of the area of the site.

In considering Appendix III Mr Brunt asked how many out of the eleven transactions shown had arisen as a consequence of the leaseholders serving a formal Notice of Claim under enfranchisement legislation. Mr Muntz confirmed that the majority had not and so far as he could recollect only one or two had done so, but he was not sure which ones they were.

Mr Muntz agreed with the suggestion put to him by Mr Brunt that in the case of 32 Dorridge Road it was highly likely that there was an element of Delaforce effect in that instance as the sale of the freehold was agreed in January 2002 at £3,000 and the property was then sold in the market on a vacant possession basis in May 2002.

Costs

On the subject of the landlords legal costs Mr Brunt indicated that he had only just become aware that the freehold title of the subject property was not registered. Accordingly he suggested that rather than £250 plus VAT as referred to in his original application to the Tribunal, the landlords recoverable legal fees should be £325 plus VAT.

In relation to the landlords valuation fees, Mr Brunt contended that no fee was payable in respect of the valuation undertaken by Nigel Evans on the grounds firstly that this had been an open market valuation rather than for the purposes of valuing the freeholder's interest, and secondly, the valuation had been undertaken in January 2003 i.e. after the application to the Tribunal.

On behalf of the freeholders, Mr Muntz referred to his letter to the Tribunal of the 8 January 2003 together with the attached copy of an invoice from Nigel Evans dated the 9 January 2003 and copy correspondence from Wragge & Co dated the 6 January.

Mr Muntz emphasised that Nigel Evans had looked at the outside of the property before providing initial verbal advice regarding the value of the premises. His invoice dated the 9 January covered two visits to the property and in the circumstances he considered it both reasonable and properly recoverable from the lessees. The fee of £250 to Muntz Associates was for providing the freeholders with a valuation of their interest which, when cross examined by Mr Brunt, Mr Muntz indicated had been initially in March 2002 (when he had first written to the leaseholders), and then secondly, when he had written to Mr Brunt on the 5 June 2002 (some two weeks before the submission of the Notice of Claim.)

In relation to the landlord's legal fees, Mr Muntz confirmed that the Title was unregistered and therefore his clients legal costs were likely to be higher than might otherwise be the case. Wragge & Co held the Title Deeds to the property and therefore the most practical and cost effective solution was for them to deal with the freehold transfer. Against that background Mr Muntz highlighted the section in the letter from Wragge & Co of the 6 January confirming that their standard fee in relation to the disposal of a freehold reversion was £425 plus VAT.

Decision

1 Freehold

The two areas in dispute between the parties were the Entirety Value to be adopted for the subject property as at the date of the Notice of Claim in June 2002, and the percentage of that value to then be taken as representing the value of the site. Both parties presented a considerable body of evidence in support of their respective cases and the Tribunal gave careful consideration to all of this before reaching its conclusions.

So far as the Entirety Value was concerned, the Tribunal took the view that whilst opinions of value and asking prices were potentially helpful in portraying a general level of values for a particular type of property in a given location, market evidence of actual sales in the locality would normally be regarded as preferable in determining value. In that context, the Tribunal found the evidence of the sales of 32 Dorridge Road (presented by Mr Brunt); 3 Gladstone Road (presented by Mr Muntz), and 48 Dorridge Road (also presented by Mr Muntz) to be the most helpful in determining the Entirety Value of 27 Weston Close.

Given that the Dorridge Road properties effectively form part of the same development they in turn were considered to be preferable to Gladstone Road (for which details were not made available).

In considering which of numbers 32 and 48 Dorridge Road provided the most comparable evidence to the subject property, the Tribunal took into account the relatively "cramped" feel of number 27 Weston Close at the end of the cul-de-sac; the fact that it had a partially shared driveway with its neighbour; and perhaps most significantly of all, the close proximity of the car park for Dorridge Station immediately to the rear. Against that background, it was felt that there were greater similarities with number 32 Dorridge Road – also in close proximity to the Station and therefore the attendant traffic and noise implicit in such a location, whereas number 48 Dorridge Road was felt to be in a rather better and more desirable location.

Accordingly, the Tribunal considered that the Entirety Value of the subject property as at the date of the Notice of Claim was £275,000.

In terms of the percentage of that figure to be adopted for the Site Value, the Tribunal accepted that Dorridge was a highly desirable residential area and as such would command premium land values. However, the Tribunal was not persuaded that this would be as high as 50% of the Entirety Value given that the case presented by Mr Muntz relied on the evidence shown in Appendix II – which in large measure was based on opinions of value and anticipated sales rather than hard evidence, and Appendix III which the Tribunal felt needed to be regarded with a degree of caution for a number of reasons :-

- a) As Mr Muntz confirmed to the Tribunal, the end figures had been agreed with the relevant claimants or their professional advisers but the devaluation of how those figures had been arrived at had not necessarily always been agreed between the parties.
- b) The sale figures had in four out of the eleven instances been agreed by the claimants themselves rather than by professional advisers; two had been agreed by solicitors; one had been agreed by an estate agent and three had been agreed by chartered surveyors – one at least of whom had apparently recommended a client to take the matter to the Tribunal because the negotiated settlement was felt to be excessive.

- c) Although Mr Muntz was unable to be precise, he indicated that only one or two of the eleven cases had been dealt with on a formal basis following the service of a Notice of Claim under the Leasehold Reform Act 1967 (as amended). Consequently at least nine out of the eleven cases must be regarded with a degree of caution notwithstanding the fact that Mr Muntz made the point that all of the lessees involved in these cases qualified to serve a Notice of Claim should they have so wished.
- d) The Tribunal considered that there was a significant element of Delaforce effect in this instance exemplified firstly by the apparent reluctance of the claimant at 25 Weston Road to accept the advice of her professional adviser to reject the negotiated settlement and take the matter to the Tribunal, and secondly by the fact that at least nine out of the eleven cases detailed in Appendix III had been dealt with by way of informal negotiations rather than under the aegis of the Act.

This may well be as a result of a reluctance to become embroiled in what many lay people might perceive as being a legal/judicial process but could also be connected with the fact that as one freeholder, represented by one agent had previously negotiated a series of settlements which had apparently established a level of value, many lessees and their advisers would have felt that a "tone" had been established which would be difficult if not impossible to challenge. The problem with establishing such a "tone" is that it can become self fulfilling in that once two or three cases have been settled at a certain level and can be cited as evidence by one party, then it can be perceived to be increasingly difficult to challenge that simply by virtue of the fact that a number of other people have agreed it.

The Tribunal accepted however that because of the nature of the area land values were likely to attract a premium and in this instance it was considered that a Site Value of 38% should be adopted.

Accordingly, the Tribunal determined the price to be paid for the freehold interest to be as follows:-

Annual Ground Rent :	£52	
Y.P. 63 years @ 7%	<u>14.0845</u>	£ 732
Revert to Freehold Entirety Value :	£275,000	
Site Value @ 38%	: £104,500	
Sect 15 Rent @ 7%	: £ 7,315	
Y.P. in perp. @ 7% def. 63 years :	<u>0.20124</u>	
		<u>£1,470</u>
		<u><u>£2,202</u></u>

2. Costs

In relation to costs, the lessees' application for a determination is pursuant to Section 21 (1) (ba) of the Leasehold Reform Act 1967 as the freeholders reasonable costs payable under Section 9 (4) of that Act and Schedule 22 Part I (5) of the Housing Act 1980.

Legal

In cases of this type but where the land is registered, the conveyancing is normally of a very straight forward nature which many solicitors are prepared to undertake on a competitive basis. At the present time a reasonable charge in such circumstances would be of the order of £250 plus VAT and any Land Registry fee for office copy entries. As the Title to the subject property is not registered however, the Tribunal determined the landlords legal costs payable by the lessee to be £325 plus VAT (as appropriate).

Valuation

Mr Muntz had indicated to the Tribunal that he first undertook a valuation of the freehold in March 2002 (communicated directly to the leaseholders at that time) and later – albeit at a different figure – on the 5 June 2002 when he wrote to Mr Brunt. As both of those occasions pre-dated the lessees' Notice of Claim (19 June 2002), the valuation advice which Mr Muntz gave cannot be considered to have been given pursuant to the service of a Notice of Claim. As such, no valuation fee is recoverable by or on behalf of Muntz Associates.

So far as the valuation by Nigel Evans was concerned, the Tribunal noted that this was not a valuation of the freehold interest per se but rather an open market value of the property designed to fix its Entirety Value. Nevertheless, whatever the purpose of the valuation, as a matter of fact, it was not provided for the freeholders until the 9 January 2003 – some two and a half months after the application to the Tribunal by Mr Brunt on behalf of the lessees. As such, a valuation fee is not recoverable from the lessees.

Accordingly, the Tribunal determined that no valuation costs were payable by the lessees pursuant to Section 9 (4) (e) of the Act.

NIGEL R THOMPSON
Chairman

14th April 2003

