

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S.21 THE LEASEHOLD REFORM ACT 1967

**TO DETERMINE THE PRICE PAYABLE ON ENFRANCHISEMENT BY THE TENANT UNDER
S.9(1) L R ACT 1967**

Applicant Tenant: Roger Jerome Guy

Respondent Freeholder: Marlodge (Monnow) Limited

Property: 14, Regent Street Stirchley, Birmingham B30 2LG

Date of Tenant's Notice: 23 October 2003

RV as at 1.4.1973: Less than £500

Application dated: 22 December 2003

Heard at: The Panel Office

On: 30 March 2004

APPEARANCES:

For the Tenant: Mr A W Brunt FRICS

For the Freeholder: Mr G Dixon

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
 Mr P J Waller
 Mrs N Jukes

Date of Tribunal's decision: 12 MAY 2004

- 1 **Background:** Mr R J Guy is the tenant (the '**Tenant**') of the dwelling house and premises at 14, Regent Street Stirchley, Birmingham B30 2LG (the '**Property**'). The Freeholder is Marlodge (Monnow) Limited. By a notice dated 23 October 2003 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 22 December 2003, on behalf of the Tenant, the Tenant applies to us to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act. We inspected the Property on 30 March 2004 and a hearing was held on the same day.
- 2 The Tenant holds the Property by a lease (the '**Lease**') for a term of 52 years from 25 March 1963 at a fixed ground rent of £8.50 pa.
- 3 The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 11½ years but is contested for valuation purposes. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.
- 4 The Property comprises an inner terraced house of traditional brick and tile construction in a residential area of similar properties. The accommodation includes: on the ground floor - hall, two living rooms, kitchen; on the first floor - two bedrooms, bathroom with wc. The site frontage is c.4m; the width is maintained throughout the depth of the site and the total site area is c.100m². There is a pedestrian right of way to the Property adjoining the rear of the rear single storey addition, in common with others to their properties.
- 5 We thank **Mr Brunt**, Chartered Surveyor (for the Tenant) and **Mr Dixon**, Estate Agent, Auctioneer and Valuer (for the Freeholder) for their attention they have given to this matter and for their written valuations and skeleton cases. However, we would have expected Mr Dixon to have disclosed to us, in advance of presenting his case, that he has a financial and personal interest in the Freeholder company (20% shareholding and a 50% shareholding by his family) and that he is the Freeholder's managing agent. He only disclosed his interest to us in cross-examination by Mr Brunt and we find Mr Dixon's submissions and evidence cannot be said to be truly independent as he has a personal interest in our determination. In appearing as a lay advocate and witness, he should have disclosed his interest and expressly confirmed and recognised his duty, not only to present his case, but to assist us in achieving a just determination and his overriding duty, as a witness, of independence, impartiality and truthfulness. These duties do not bar him from appearing but require him to disclose his interest voluntarily, preferably with confirmation that, despite his interest, he understands his duties.
- 6 **Common Ground:** The generally recognised valuation method, accepted in *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055, should be used. The method is: (i) capitalise the ground rent from the Date for the unexpired term of the Lease (in the case before us agreed as £nil); (ii) capitalise the modern ground rent (s15 of the Act), as at the Date, as if in perpetuity but deferred for the unexpired term of the Lease - 'as if in perpetuity' because, although the value of the modern ground rent is for a term of 50 years (as the extension to the Lease), the value of the freehold reversion in possession at the end of the fifty years' extension is ignored as being too remote to have a separate value for it. The modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value. The entirety value is the value of the freehold interest in the Property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful.
- 7 The value of the ground rent (£8.50 pa) from the Date for the unexpired term of the Lease is £nil.

- 8 The entirety value is £122,500.
- 9 In the valuation of the reversion the site value apportionment is $\frac{1}{3}$ of the entirety value.
- 10 We accept that the matters agreed, as common ground, are consistent with the generally accepted principles to derive the price payable.
- 11 **Valuations:**
By Mr Brunt for the Tenant - £19,800
By Mr Dixon for the Freeholder - £22,500
- 12 **Issues:** There are two issues in dispute, namely:
(a) The unexpired number of years of the Lease. Mr Brunt says 11½ years; Mr Dixon 11.41 years; and
(b) The yield rate to be used in the valuation of the reversion. Mr Brunt says 6½%; Mr Dixon 5½%.
- 13 Issue (a) - the unexpired number of years of the Lease: Mr Brunt says that, for valuation purposes, we should round the unexpired term to the nearest $\frac{1}{4}$ or $\frac{1}{2}$ year - in this case 11½ years. Mr Dixon says it is more accurate to adopt the actual unexpired term, to the nearest two decimal places - in this case 11.41 years.
- 14 Our decision on Issue (a): We find that, in determining the price payable '... if sold in the open market ...' (s.9(1)), the market would not be sufficiently forensic to distinguish values having unexpired terms calculated to two decimal places. We accept Mr Brunt's rounding to the nearest $\frac{1}{4}$ year (11½ years). In any event the unexpired term, to two decimal places, is 11.42 years, not 11.41 years.
- 15 Issue (b) - the yield rate to be used in the valuation of the reversion: It is common ground that the yield rate to derive the s.15 modern ground rent (from the entirety value and site value) is the same as the rate to capitalise the s.15 rent for the reversion.
- 16 In adopting 6½%, Mr Brunt accepts that the generally accepted rate, in valuing the reversion, is 7%. However, when the unexpired term is less than, say 12 years it is expected, from a relatively consistent approach in previous decisions, that ½% lower (to reflect the substantial increase in the rent receivable in a relative short period of time) is the correct approach. He accepts that analyses of auction results produce lower rates but this reflects a speculative enhanced value for a possible capital gain which we are required, by s.9(1), to exclude; he cites an example in which an investor purchased in the market and lost money when the price payable on enfranchisement was determined at a lower amount. Mr Brunt also accepts that money market rates were, on the Date, lower than previously prevalent when many Tribunal determinations adopted 6½% but stresses the overriding criterion is the land investment market within the artificial constraints of s9, not the money market. He says 6½% is consistent with the bases of his very many negotiated settlements and refers us to *Hague on Leasehold Enfranchisement* (4th Edn) p202, para 9-09 which cites authority for greater weight to be attached to settlements than to indirect evidence of bank rate/money market rates and previous decisions.
- 17 Mr Dixon says that, in his personal experience as an auctioneer for very many years, he has sold multiple and single ground rents to, mainly, skilled investors and does not accept that such investors should be assumed to be naive, not knowing a tenant's right to acquire the freehold at a price payable in the hypothetical market constrained by s.9. Accordingly, he says we should not ignore auction results.
- 18 Citing *Windsor Life Assurance Company Limited v David and Daphne Austin* [1995] LRA/4/1994 (LT) and *Wager v Hanlo Holdings Limited* [1999] WM/EH/1899 (Midland LVT), Mr Dixon contends the money market is a persuasive factor: the Member, in *Austin* at p28 para 25, accepted that base rates can be

influential over a period which was referred to in *Wager*. Mr Dixon introduces statistical evidence, comparing substantially higher base rates at the time of *Austin* and *Wager* than the Date and the relative stock market indices (lower on the Date), saying they support a 5½% yield.

19 Our decision on Issue (b): We find that, on the balance of probability, the analysed lower yield rates prevalent in auction sales of a ground rent(s) is a reflection of investors' dissatisfaction with lower (than previously) money market returns and, mainly owing to a greater awareness of purchasers, the opportunity to seek a speculative gain. This is consistent with Mr Dixon's statistical evidence but we do not accept that investors would not, at auction, bid a higher figure than could reasonably be expected on a reference on the price payable to a Leasehold Valuation Tribunal; we find, as argued by Mr Brunt, that the perception of a speculative gain is prevalent. We are not persuaded that the investment land market, in the hypothetical market directed in s.9, points to a yield less than 6½%.

20 We hold and find, relying on common law, that we should be cautious in relying on yield rates adopted in previous decisions, unless clear guidance has been established on which parties may be expected to rely to assist them to settle their differences. We do not accept that the money market is persuasive; it has been criticised by the Court of Appeal and, in contrast to Mr Dixon's reliance on *Austin* and *Wager*, there are other cases in which the Lands Tribunal has decided that the money market is an unsafe guide to property yields.

21 **Valuation of the Tribunal:** Adopting the parties' common ground and our decision on the Issue, the valuation of the Tribunal is:

Term:	£	Nil
Reversion:		
Entirety value	£	122,500
Site value at 1/3 entirety value	£	40,833
Section 15 modern ground rent at 6½%	£	2,654 pa
YP perp deferred 11½ years at 6½%		<u>7.46</u>
	£	<u>19,799</u>
		£19,799
	Say	£19,800

22 **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, our inspection, that the sum to be paid by the Tenant for the acquisition of the freehold interest in 14, Regent Street Stirchley, Birmingham B30 2LG in accordance with section 9 of the Leasehold Reform Act 1967, as amended, is £19,800 (Nineteen thousand eight hundred 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: 12 MAY 2004

T F Cooper
CHAIRMAN

