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

BIR/OOCU/OAF/2004/0266

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967*

Applicants: Mr S R and Mrs L A Morris (leaseholders)

Respondent: Trendgrove Properties Ltd (freeholder)

Subject property: 148 Marsham Road
King's Heath
Birmingham
B14 5HF

Date of tenant's notice: 8 June 2004

Applications to the LVT: 10 September 2004

Hearing: 12 November 2004

Appearances:

For the applicants: Mr A W Brunt FRICS

For the respondent: Not represented

Members of the LVT: Professor N P Gravells MA
Mr D J Satchwell FRICS
Mrs N Jukes

Date of determination: 13 DEC 2004

Introduction

- 1 This is a decision on two applications under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr and Mrs Morris, leaseholders of the house and premises at 148 Marsham Road, King's Heath, Birmingham, B14 5HF ("the subject property"). The two applications are, first, under section 21(1)(a) for the determination of the price payable under section 9(1) for the freehold interest in the subject property; and, secondly, under section 21(1)(ba) for the determination of the reasonable costs payable under section 9(4).
- 2 The applicant leaseholders hold the subject property under an underlease, dated 9 December 1937, for a term of 99 years less three days from 24 June 1936 at a ground rent of £5.50 per year. The underlease was assigned to the applicants on 28 October 1989. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 31 years. (The head leasehold interest has been acquired by the applicants; and the ground rent payable by the applicants to the freeholder appears to be £4.30 per year: see paragraph 8 below.)
- 3 The applicants served on the respondent landlord a tenant's notice dated 8 June 2004, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and they subsequently made the present applications.

Subject property

- 4 The subject property is a semi-detached house of brick and tile construction, located on Marsham Road in a residential area of King's Heath. The accommodation (which has been extended) comprises, on the ground floor, hall, through sitting room and kitchen; and, on the first floor, three bedrooms and bathroom/wc. The property is double-glazed. Outside there are gardens to the front and rear of the property. There is car-parking to the rear of the property, accessed over a right of way approximately 40 metres along Marsham Road. The frontage of the property is approximately 5.8 metres and the total site area is approximately 300 square metres.

Inspection and hearing

- 5 The Tribunal inspected the subject property on 12 November 2004 in the presence of Mr Morris, one of the applicant leaseholders, and Mr Brunt.
- 6 The subsequent hearing was attended by Mr Brunt. The respondent freeholder did not attend and was not represented. Mr Brunt informed the Tribunal that the price payable for the freehold had in fact been agreed at a figure of £6,200; and that agreement was confirmed in a letter dated 11 November 2004 from Mr P F Gunby MRICS, acting on behalf of the respondent freeholder. Nonetheless, Mr Brunt requested the Tribunal to make a formal determination.

Representations of the parties

The price payable for the freehold interest in the subject property

- 7 Mr Brunt adopted as the basis of valuation under the 1967 Act the standard three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the

identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity, deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).

- 8 Mr Brunt submitted in evidence an invoice raised by CHP Management Ltd on behalf of the respondent freeholder in respect of ground rent for the subject property. That invoice clearly showed a figure of £2.15 for the half-yearly rent.
- 9 Mr Brunt gave evidence of current asking prices for a number of similar properties on Marsham Road. The prices ranged from £145,000 to £149,950. He acknowledged that the current state of the market rendered the determination of the entirety value of the subject property at the relevant date difficult; but, on the basis of his evidence, he submitted that the Tribunal should adopt the figure of £150,000. He applied a 33 1/3 per cent figure in calculating the site value on the standing house basis; and he applied a 7 per cent yield rate in capitalising the existing ground rent at stage (i) of the valuation calculation and in calculating and capitalising the modern ground rent at stages (ii) and (iii).
- 10 On the basis of those figures, he submitted the following valuation:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £4.30 per year
Years Purchase: 31 years @ 7%: 12.5318
Capitalised ground rent: £4.30 x 12.5318 = £53.89

(ii) Modern ground rent

Standing house value of subject property: £150,000
Percentage attributable to site: 33 1/3%: £50,000
Annual equivalent @ 7%: £3,500

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £3,500
Years Purchase at 7% in perpetuity deferred 31 years: 1.7539
Capitalised modern ground rent: £3,500 x 1.7539 = £6,138.65

The addition of the capitalised existing ground rent and the capitalised modern ground rent produces a figure of (say) £6,200.

- 11 On behalf of the respondent freeholder, Mr Gunby had submitted a written report in which he had calculated the price payable for the freehold interest at £11,600. He had adopted the same basis of calculation as Mr Brunt; but he had adopted different figures at each stage of the calculation. He adopted £175,00 as the entirety value and 40 per cent to calculate the site value; and he had applied a yield rate of 6 per cent in capitalising the existing ground rent and in calculating and capitalising the modern ground rent. However, as indicated above, Mr Gunby subsequently agreed a price of £6,200.

Reasonable costs

- 12 In a letter to the Tribunal dated 11 November Mr Gunby indicated that the respondent freeholder's legal costs would be "in the region of £750" plus VAT; and that the valuation and inspection costs were £450 plus VAT.

- 13 In relation to legal costs under section 9(4) of the 1967 Act, Mr Brunt submitted that, in the absence of any evidence of actual costs incurred by the respondent, the reasonable costs recoverable from the applicants should be limited to £300 (plus VAT if applicable). He submitted that that figure was in line with recent determinations of the Leasehold Valuation Tribunal. He suggested that the figure of £750 (plus VAT) quoted by Mr Gunby might reflect the instruction of London solicitors; and he argued that it was unreasonable to incur the higher charges of London solicitors in the present case.
- 14 In relation to valuation costs under section 9(4)(e) of the 1967 Act, Mr Brunt acknowledged that Mr Gunby had advised the respondent freeholder as to the enfranchisement price of the subject property; but he questioned whether Mr Gunby's report constituted a valuation for the purposes of the section. He argued (i) that, according to a letter dated 6 September 2004 from CHP Management Ltd (on behalf of the respondent freeholder) to Mr Brunt, Mr Gunby had been instructed "in anticipation of a hearing at the Leasehold Valuation" and that such costs are not recoverable by reason of section 9(4A); (ii) that, since Mr Gunby's report stated that "the report is for the use of our contractual client only and we accept no responsibility to any third party", that disclaimer limited the weight that could properly be attached to the report; and (iii) that the enfranchisement price originally quoted by Mr Gunby was "hopelessly inaccurate" and, given that Mr Gunby subsequently agreed a price of £6,200, could not be regarded as a valuation in accordance with the terms of the 1967 Act. Mr Brunt further argued that, if the Tribunal found that Mr Gunby had carried out a valuation for the purposes of section 9(4)(e), it was unreasonable for the applicant leaseholders in the present case to bear the higher costs and travel expenses of an Essex-based valuer.

Determination of the Tribunal

The price payable for the freehold interest in the subject property

- 15 The Tribunal holds that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.
- 16 The Tribunal holds that the basis of valuation adopted by the parties properly reflects the principles of the 1967 Act applicable in the present case.
- 17 The Tribunal examined the figures submitted by Mr Brunt and by Mr Gunby in respect of the entirety value of the subject property, the percentage to be applied to the entirety value in calculating the site value and the percentage yield rate to be applied at the various stages of the valuation calculation.
- 18 The Tribunal considered the evidence of asking prices submitted by Mr Brunt; and, using its general knowledge and experience (but no special knowledge) the Tribunal finds that the entirety value of the subject property at the relevant date was £150,000.
- 19 Bearing in mind the previous practice of Leasehold Valuation Tribunals in the Midland Rent Assessment Panel area, and in the absence of any circumstances suggesting a departure from that practice, the Tribunal holds that the appropriate percentage to be applied to the entirety value in calculating the site value is 33 1/3 per cent; and that the appropriate percentage yield rate to be applied at all stages of the valuation calculation is 7 per cent.
- 20 Since the Tribunal agrees with the figures submitted by Mr Brunt, the Tribunal endorses and adopts the calculation submitted by Mr Brunt and detailed in paragraph 10 above.

21 Accordingly, the Tribunal determines the price payable under section 9(1) of the 1967 Act for the freehold interest in the subject property at £6,200.

Reasonable costs

22 In relation to legal costs under section 9(4) of the 1967 Act, in the absence of any evidence of actual costs incurred by the respondent freeholder, the Tribunal accepts the submissions of Mr Brunt and holds that the legal costs recoverable from the applicant leaseholders should not exceed £300 (plus VAT if applicable).

23 In relation to valuation costs under section 9(4)(e) of the 1967 Act, it is not disputed that Mr Gunby provided a valuation of the subject property for the respondent freeholder; and the Tribunal is not persuaded by Mr Brunt that the respondent freeholder is not entitled to recover the reasonable costs of that valuation from the applicant leaseholders. In relation to Mr Brunt's first argument, although section 9(4A) precludes the respondent freeholder from recovering costs "in connection with an application to a leasehold valuation tribunal", the Tribunal finds that that provision does not preclude the recovery of costs incurred pursuant to instructions given before the date of the application to the leasehold valuation tribunal. In relation to Mr Brunt's second and third arguments, section 9(4)(e) refers to the (recovery of the) costs of "any valuation of the house and premises", provided that those costs are incurred in pursuance of the leaseholder's Notice of Claim. However, although the Tribunal finds that the latter arguments do not affect the recoverability of reasonable costs, the Tribunal is of the view that those arguments are relevant to the reasonableness of the costs recoverable. In addition, the Tribunal accepts Mr Brunt's submission in relation to the higher costs and travel expenses of an Essex-based valuer.

24 The Tribunal determines the reasonable costs recoverable for the inspection and valuation - to which Mr Gunby attached an express limitation of responsibility and which resulted in a figure nearly twice the figure subsequently agreed by Mr Gunby - at £150 plus VAT (if applicable).

Summary

25 The Tribunal determines that the price payable by the applicant leaseholders for the freehold interest in the subject property is £6,200; that the respondent freeholder's legal costs recoverable from the applicant leaseholders should not exceed £300 (plus VAT if applicable); and that the valuation costs recoverable from the applicant leaseholders are £150 (plus VAT if applicable).

Nigel Gravells

NIGEL P GRAVELLS
CHAIRMAN

13 DEC 2004