

Leasehold Reform Act 1967

Commonhold and Leasehold Reform Act 2002

DETERMINATIONS OF LEASEHOLD VALUATION TRIBUNAL

On an application under s.21 1967 Act to determine the price payable on enfranchisement by the tenant under s.9(1) 1967 Act

Determination of reasonable costs under s.9(4) 1967 Act

Applicant Tenant: Mr G D Adney

Respondent Freeholder: Mr S Khan of Pearl Technology Limited

Respondent Intermediate Head Leaseholder: Mrs M R Howell

Property: 132, Cooks Lane, Tile Cross, Birmingham B37 6NP

Date of Tenant's Claim to acquire the Freehold: 27 July 2004

RV on 31 March 1990: £212

Application dated: 12 November 2004

Heard at: The Panel Office

On: 3 February 2005

APPEARANCES:

For the Tenant: Mr A W Brunt FRICS

For the Freeholder: No appearance

For the Intermediate Head Leaseholder: No appearance

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Ms N Jackson BA Law
Mr M H Ryder

Date of Tribunal's decision:

25 FEB 2005

Background:

- 1 Mr G D Adney is the **Tenant** by a 99 year lease less 3 days from 1935 of the dwelling house and premises at 132, Cooks Lane, Tile Cross, Birmingham B37 6NP (the '**Property**'). The **Freeholder** is Mr S Khan of Pearl Technology Limited. The **Head Leaseholder** is Mrs Howell. By a notice (the '**Notice**') dated 27 July 2004 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 12 November 2004 the Tenant applies to us: (a) to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act; and (b) the Freeholder's reasonable costs under s.9(4). No application is made for a determination that a party shall pay the costs incurred by another party in connection with the proceedings under para 10. Schedule 12 Commonhold and Leasehold Reform Act 2002. We inspected the Property on 3 February 2005 and a hearing was held on the same day.
- 2 The Tenant holds the Property by an underlease (the '**Underlease**') for a term of 99 years less 3 days from 24 June 1935 at a fixed ground rent of £6.25 pa. The head lease (the '**Head Lease**') is for a term of 99 years from 24 June 1935 at an apportioned fixed ground rent of £6 pa.
- 3 The unexpired terms of the Underlease and the Head Lease on the Date - which is the relevant date for the determination of the price payable - was about 30 years.
- 4 The Property comprises a semi-detached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - porch, hall, through living room with conservatory, kitchen, side porch and utility area; on the first floor - 3 bedrooms, bathroom with wc. There is no central heating. The site frontage is about 8.53m; the width is maintained throughout the depth of the site and the total site area is about 468m².
- 5 **Mr A W Brunt** FRICS, assisted by Mr H Brunt, appeared for the applicant Tenant. The Freeholder and Head Leaseholder did not appear and were not represented; save that Allsopp & Co, solicitors for the Head Leaseholder, made written representations on the value of the head leasehold interest and costs.

THE PRICE PAYABLE UNDER S.9(1) 1967 ACT

The valuation method:

Mr Brunt adopts, and we accept:

- 6 For the freehold interest: the generally recognised valuation method to derive the price payable for the freehold interest, accepted in *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. The method is: (i) capitalise the apportioned ground rent (£6 pa) from the Date for the unexpired term of the Head Lease (30 years); (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 Head 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 Head 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

material value for it (namely no *Haresign* addition - see below). As no evidence of cleared sites is adduced, 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 Mr Brunt's valuation does not include a *Haresign* addition - recognised in *Haresign v St John The Baptists' College, Oxford* [1980] 255 EG 711 when specific account was taken of the reversion to the full value of the dwelling after the expiration of the assumed fifty years' extension of the Head Lease. We accept his approach.

8 For the intermediate head leasehold interest: The value of the profit rent (the rent reserved in the Underlease minus the rent reserved, as an apportioned amount, in the Head Lease - £6.25 pa – £6.00 pa = £0.25 pa) is, by Schedule 1 para 7A(2) the Act, a minor superior tenancy and the purchase price of it is by application of the formula in subpara 7A(5) of Schedule 1.

9 **Mr Brunt's valuations and evidence:** For the freehold interest - £6,643
For the head leasehold interest - £0.24p

More specifically:

10 The freehold interest

Term

Ground rent	£6.00 pa	
YP 30 years at 7%	<u>12.409</u>	£75

Reversion

Entirety value	£150,000	
Site value at 1/3 rd	£50,000	
Sec. 15 ground rent at 7%	£3,500 pa	
YP deferred 30 years at 7%	<u>1.87667</u>	£6,568

£6,643

11 The head leasehold interest

By the formula, with 237.6p middle market price of 2½% Consolidated Stock £0.24

12 Total price payable - £6,643.24 [£6,643 + £0.24]

13 Adopting 7% as the yield rate in his valuations, Mr Brunt says 7% is consistent with previous decisions of this tribunal when the unexpired term of the lease is relatively long - relative to the assumed 25 year rent review in the assumed 50 year lease extension.

14 In support of his entirety value (£150,000) he refers us to two not dissimilar houses: the provisional sale of 270 Cooks Lane at £155,000 and 137, Cooks Lane for sale at £149,500; saying this evidence supports his opinion of the entirety value, reflecting the principles which we refer to above.

- 15 He says that a 1/3rd site apportionment is consistent with decisions of this tribunal for not dissimilar sites.
- 16 In respect of the head leasehold interest, Mr H Brunt helpfully provides his calculation of the formula for this minor superior tenancy at £0.24p. Allsopp and Co, for Mrs Howell, says £100 is more appropriate than the original amount of £10 indicated by Mr Brunt.

Our Decisions:

- 17 Despite no representations from the two Respondents - other than £100 for the head leasehold interest which we reject because we are directed to derive the value by the statutory formula - Mr Brunt clearly recognises his duty to us, to provide truly independent evidence to assist us to achieve a just result. As an expert tribunal, relying on our general knowledge but not on any special knowledge, we find that Mr Brunt's valuations and Mr H Brunt's calculation of the formula are consistent with the principles in the Act and accepted guidance derived from the Lands Tribunal and this Tribunal. We accept their figures and the total price payable, at £6,643.24.

Conclusion on the price payable:

- 18 We determine that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge and our inspection, the sum to be paid by the Tenant for the acquisition of freehold and head leasehold interests in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967, as amended, is £6,643.24 (Six thousand six hundred and forty three pounds and twenty four pence), namely £6,643 for the freehold interest, £0.24p for the head leasehold interest.

COSTS TO BE BORNE BY THE APPLICANT UNDER SUBSS.9(4) AND (4A) THE ACT:

- 19 Subs.9(4) of the Act provides:

'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the [matters in subs.(4)(a) to (d) as to "legal costs" and in subs.(4)(e) as to "valuation costs"]; but [subs.9(4)] shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.'

- 20 Subs.9(4A), added by s.176 Commonhold and Leasehold Reform Act 2002, Sch. 13 para 2, provides:

'[A person is not required] to bear the costs of another person in connection with an application to a [LVT].'

- 21 Mr Brunt submits "legal costs" should be limited to £300 and we should determine the "valuation costs" costs at £Nil because we have no evidence that a valuation has been carried out. Allsopp and Co submit its costs in selling the head leasehold interest are £300 plus VAT plus appropriate disbursements. The Freeholder is silent.
- 22 On the question of the Head Leaseholder's "legal costs", Mr Brunt says subpara 5(6) Schedule 1 effectively provides that it is the Freeholder's solicitors which deal with the legal requirements, not the Head

Leaseholder's solicitors, as the Head Leaseholder is required to contribute to the Freeholder's costs. He says the Head Leaseholder's contribution should be £25, within the £300 he contends for.

- 23 VAT: All figures we refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters as they are a matter for HM Customs and Excise. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable.
- 24 Disbursements: we find actual disbursements incurred in obtaining office copy register entries shall be added to the amounts of "legal costs" we determine.
- 25 We accept we have no evidence of any valuation carried out in pursuance of the Notice and find that no "valuation costs" shall be borne by the Tenant.
- 26 Reading para 5 as a whole, we do not accept Mr Brunt's Head Leaseholder's 'contribution' submission. Allsopp and Co, in its written submission, says it is acting for the Head Leaseholder in selling her interest. We hold that Allsopp and Co may deal direct with the Tenant/his solicitor and that, if it does not deal direct, the Freeholder may, on behalf of and in the name of the Head Leaseholder, deal with the head leasehold interest.
- 27 We find that the "legal costs", in respect of the head leasehold interest, borne by the Tenant are not materially different whether incurred or to be incurred by the Head Leaseholder or the Freeholder.
- 28 We find £25, submitted by Mr Brunt, falls short of the Head Leaseholder's reasonable "legal costs" and that £300, submitted by Allsopp and Co, is not reasonable. Using our general knowledge and experience of what may reasonably be expected, we find £125 is the reasonable amount.
- 29 We find £275 is the reasonable amount of the Freeholder's "legal costs".

Our determination of the subs.9(4) costs:

- 30 We find and hold the Tenant shall not bear any subs.9(4)(e) "valuation costs".
- 31 We find and hold that in so far as subs.9(4)(a) to (d) "legal costs" are incurred and are to be incurred by the Freeholder in respect of the freehold interest, the Tenant shall bear a sum not exceeding £275 (Two hundred and seventy five pounds) plus actual disbursements incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs.
- 32 We find and hold that in so far as subs.9(4)(a) to (d) "legal costs" are incurred and are to be incurred by the Head Leaseholder or the Freeholder on behalf of and in the name of the Head Leaseholder in respect of the head leasehold interest, the Tenant shall bear a sum not exceeding £125 (One hundred and twenty five pounds) plus actual disbursements incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs.

Permission to appeal:

- 33 Under Regulation 20. *Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003* (SI 2003/2099) either party may make an application to the LVT for permission to appeal this determination to the Lands Tribunal within the period of 21 days starting with the date of this determination.

Date: 25 FEB 2005

T F Cooper
CHAIRMAN

A handwritten signature in black ink, appearing to read 'T F Cooper', with a long horizontal stroke extending to the right.