

Ref: BIR/47UG/0AF/2004/0365

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

**DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER S21 OF THE LEASEHOLD REFORM ACT 1967**

Applicant: Mrs N. Birt

Respondent: Thrift Investments Limited

Re: 401, Stourbridge Road, Kidderminster, West Midlands DY10 2PP

Date of Tenant's Notice: 5th October 2004

RV as at 1.4.73: Less than £500

Applications dated: 6th December 2004

Heard at: The Panel Office

On: 10th March 2005

APPEARANCES:

For the Tenant: Mr Moore (Midland Valuation Limited)

For the Freeholder: Mr Lee (Shaw Gilbert & Froggatt)

Members of the Leasehold Valuation Tribunal:

Mr. A.J.ENGEL (Chairman)

Mr. I.HUMPHRIES

Mrs. N.JUKES

Date of Tribunals decision: **12 APR 2005**

BACKGROUND

1. Mrs Birt is the Tenant of the dwellinghouse and premises at 401, Stourbridge Road, Kidderminster, West Midlands DY10 2PP (the Property). The Freeholder is Thrift Investments Limited.
2. The Property is held under a 99 year Lease from 25th March 1964 at a fixed ground rent of £20 per annum.
3. By Notice, dated 5th October 2004 (the relevant date), the Tenant gave notice of her desire to have the freehold of the property.
4. Thus, the unexpired term of the lease, as at the relevant date, was 58.5 years.
5. By Notices, both dated 6th December 2004, the Tenant applied to the Tribunal, under Section 21 of the Leasehold Reform Act 1967 (the Act) for its determination of:-
 - (a) The price payable for the freehold (under Section 9 of the Act); and
 - (b) The Freeholder's reasonable costs (under Section 9(4) of the Act).

WRITTEN REPRESENTATIONS

6. The Tribunal received written representations from Mr Moore on behalf of the Tenant and Mr Lee on behalf of the Freeholder. The Tribunal also saw correspondence between Mr Moore and the Freeholder's Solicitors (Edwards Geldard).

INSPECTION

7. The Tribunal members inspected the Property on 10th March 2005.

HEARING

8. A hearing was held at the Panel Office, 10th March 2005, when Mr Moore appeared on behalf of the Tenant and Mr Lee appeared on behalf of the Freeholder. Both Mr Moore and Mr Lee gave expert evidence and made oral representations to the Tribunal.
9. The following matters were agreed:-
 - (i) Ground Rent £20 p.a.
 - (ii) Term 58.5 years

(iii) Entirety Value £120,000

10. In correspondence, Mr Moore had originally proposed a Site Value of 32%, which was agreed by the Freeholder's Solicitors and Mr Lee.
11. However, after this agreement was made, Mr Moore sought to resile from it and contend for a site value of 30%; Mr Lee maintained that departure from the agreement should not be permitted..
12. At the hearing both Mr Moore and Mr Lee agreed that the Tribunal had a discretion to allow Mr Moore to depart from the agreement.
13. Mr Moore requested that the Tribunal exercise its discretion to permit him to re-open the issue of the Site Value. Mr Lee opposed this request and indicated that he was likely to apply for an adjournment if Mr Moore was permitted to depart from the agreement.
14. After some discussion, the Tribunal indicated that it would retire to discuss whether it should exercise its discretion to allow Mr Moore to depart from the agreement and if it did exercise its discretion, whether it would grant Mr Lee an adjournment (if he so requested).
15. At this juncture, Mr Moore stated that he withdrew his application to re-open the agreement and would accept 32% in respect of the Site Value.
16. On the issue of the correct per centage to be used for the yield, Mr Moore contended for 7% and Mr Lee for 6%.
17. Mr Moore submitted that 7% was the usual figure adopted by Leasehold Valuation Tribunals and the Lands Tribunal and that 7% was the appropriate long term rate of return.
18. Mr Lee submitted that the trend of interest rates was downwards. He also adduced evidence of auction results for the sale of freehold ground rents. However, it was unclear whether or not the purchasers had special interests (e.g. sitting tenants - who are excluded under Section 9(1) of the Act).
19. Mr Lee submitted (correctly) that there was a link between ground rent and the sale value of freehold interests but he also agreed (again correctly) that other factors (on which no evidence was adduced) should be taken into account
20. Both Mr Moore and Mr Lee agreed that the Freeholder's costs under Section 9(4) of the Act should be limited to legal costs of £275 (plus VAT, if applicable).
21. Although Mr Lee had carried out a valuation, this was done in connection with these proceedings and is, therefore, excluded by reason of Paragraph 5 of Schedule 22 to the Housing Act 1980.

VALUATION

22. The generally recognised valuation method to derive the price payable for the freehold interest, accepted in *Farr v Millerson Investments Ltd* (1971) is:

- (i) capitalise the ground rent from the Date for the unexpired term of the Lease (58.5 years);
- (ii) capitalise the modern ground rent (s15 of the Act), as at the relevant 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 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. 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.

23. A *Haresign* addition - see *Haresign v St John The Baptist's College, Oxford* (1980) - is not appropriate in this case and indeed is, unlikely to be appropriate in any case having regard to the change in the law brought about by Section 143(1) of the Commonhold and Leasehold Reform Act 2002.

24. On the basis of our own experience, expertise and general knowledge and taking into account the evidence adduced to us and the representations made to us, the Tribunal considers that 7% is the correct per centage to be used for the yield. Thus we preferred the evidence/ representations of Mr Moore to the evidence/representations of Mr Lee.

25. The Tribunal's valuation is as follows:-

Term		
Ground Rent	£20	
YP 58.5 years @ 7%	<u>14.0127</u>	
		£280
Reversion		
Entirety Value	£120,000	
Site Value (32%)	£38,400	
Section 15 ground rent @ 7%	£2,688	
YP in perpetuity deferred		
58.5 years @ 7%	<u>0.273025</u>	
		<u>£733</u>
		<u>£1,013</u>

COSTS


12. As agreed by the parties, the Freeholder's costs are limited to legal costs of £275 (plus VAT, if applicable).

DECISION

13. We determine the sum to be paid by the Tenant for the acquisition of the freehold interest in the Property to be £1,013 (One thousand and thirteen pounds).

14. The amount of costs payable by the Tenant under Section 9(4) of the Act shall be limited to £275 (Two hundred and seventy five pounds) in respect of legal costs (plus VAT thereon, if applicable). No other costs are payable by the Tenant under Section 9(4) of the Act.

Dated **12 APR 2005**



(A.J.ENGEL - Chairman)