

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: Elizabeth Jane Widdowson

Respondent Freeholder: K Cockbill Properties Limited

Property: 47, Cambrian Lane, Rugeley, Staffordshire WS15 2XH

Date of Tenant's Claim to acquire the Freehold: 18 October 2004

RV on 31 March 1990: £203

Application dated: 22 December 2004

Heard at: The Panel Office

On: 13 April 2005

APPEARANCES:

For the Tenant: Mr S G Langford MRICS

For the Freeholder: Mr K Cockbill, a Director of the Freeholder

Members of the Leasehold Valuation Tribunal:

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

Date of Tribunal's decision:

21 APR 2005

Background:

- 1 Ms Elizabeth Jane Widdowson is the **Tenant** by a 99 year lease of the dwelling house and premises at 47, Cambrian Lane, Rugeley, Staffordshire WS15 2XH (the '**Property**'). The **Freeholder** is K Cockbill Properties Limited. By a notice (the '**Notice**') dated 18 October 2004 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 22 December 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 and the exterior of the comparables which we find assist us on 13 April 2005 and a hearing was held on the same day.
- 2 The Tenant holds the Property by a lease (the '**Lease**') for a term of 99 years from 25 March 1965 at a fixed ground rent of £25 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 59½ 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, living room, kitchen; on the first floor - 3 bedrooms, bathroom with wc. There is gas fired central heating to radiators. The site frontage is about 6.25m; the width is maintained throughout the depth of the site and the total site area is about 220m².
- 5 **Mr S G Langford** MRICS appeared for the applicant Tenant. **Mr K Cockbill**, a Director of the Freeholder appeared for it. Both had made prior written representations.

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

- 6 It is accepted, at the hearing, that the unexpired term, for valuation purposes, is 59½ years.

The valuation method:

- 7 Mr Langford adopts, and we accept, the generally recognised valuation method to derive the price payable for the freehold interest: (i) capitalise the apportioned ground rent (£25 pa) from the Date for the unexpired term of the Lease (59½ years); (ii) capitalise the modern ground rent (s.15 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 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.

8 Mr Langford'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.

9 **Mr Langford's valuation and evidence:**

For the freehold interest (amended for 59½ years unexpired and rounded up) - £887

More specifically:

10 **Term**

Ground rent	£25.00 pa	
YP 59½ years at 7%	<u>14.03055</u>	£350.76

11 **Reversion**

Entirety value	£100,000	
Site value at 1/3 rd	£30,000	
Sec. 15 ground rent at 7%	£2,100 pa	
YP deferred 59½ years at 7%	<u>0.25516</u>	£535.84
		£886.60
	Say	£887.00

12 Mr Cockbill is uncertain on the generally accepted method of valuation but we explained the principles to him, including the use of valuation tables, to understanding the method. He does not provide an arithmetic valuation but questions the entirety value and the percentage site apportionment adopted by Mr Langford.

13 Adopting 7% as the yield rate in his valuation, Mr Langford says 7% is consistent with previous decisions of this tribunal and is not contested by Mr Cockbill. We accept 7% is appropriate.

14 In support of his entirety value (£100,000) Mr Langford he refers us to two similar houses close by, on the same estate: 20, Daywell Rise, for sale at £99,500 leasehold; and 11, Cocketts Nook, for sale at £98,500 leasehold; saying this evidence supports his opinion of the entirety value, reflecting the principles which we refer to above. Mr Cockbill refers us to: 18 Pine View (on the same estate), for sale at £126,950 tenure not disclosed; 7 Chievley Close, for sale at £136,995 tenure not disclosed; a print out of a website address showing four results for Cambrian Lane between 1 March 2003 and 28 February 2005 and relying primarily on 22 Cambrian Lane reported as sold for £104,995 in October 2004. This information, says Mr Cockbill, supports £105,000 as the entirety value. In response, Mr Langford points out we have no information on the circumstances of the sale of 22, Cambrian Lane and we agree with him, attaching only limited weight to this evidence. We find 7 Chievley Close does not really assist us as it is significantly more distant from the Property than other comparables introduced on which we rely. From what we saw at our external inspections, we find that, while 18 Pine View is a semidetached house (as is the Property), it appears larger and is on a site with a wider frontage; and that the most helpful comparables are 20, Daywell Rise (£99,500

leasehold) and 11, Cocketts Nook (£98,500 leasehold) and, despite them being asking prices, not actual transactions, they are very similar to the Property and support our finding that the entirety value is £100,000.

- 15 As to the percentage site apportionment, Mr Langford says 30% is consistent with the Leasehold Valuation Tribunal's determination in *Hawkins v Aulak* [2004] BIR/41UB/OAF/2003/0158, re 47 Bower Lane which is close to the Property. Mr Cockbill relies on the written comment from his solicitor that site values are somewhere between 30% and 50% and, in his experience as a developer, it is difficult to find a residential development site representing less than 40% of the value of the completed development. Mr Langford questions the valuation expertise of Mr Cockbill's solicitor. We find 30% is more consistent with a valuation to derive a fair and just price payable than the higher percentage submitted by Mr Cockbill.
- 16 Mr Langford's valuation of the term (£350.76) is not contested and we accept it.

Our Decision on the price payable:

- 17 As an expert tribunal, weighing the evidence introduced and relying on our general knowledge but not on any special knowledge, we find that Mr Langford's valuation is consistent with the principles in the Act and accepted guidance derived from the Lands Tribunal and this Tribunal. We accept his figure and the total price payable, at £887.

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 interest in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967, as amended, is £887 (Eight hundred and eighty seven pounds).

COSTS TO BE BORNE BY THE APPLICANT UNDER SUBS.9(4) AND (4A) THE 1967 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 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.
- 22 Mr Langford submits "legal costs" should be limited to £225 (being subs.9(4)(b) "conveyancing costs" only) being consistent with previous determinations (referring to in an October 2002 case at £225) but, on enquiry

from us, he accepts that the Freeholder will have incurred additional but relatively nominal costs by investigating the Tenant's right to acquire the freehold, evidenced by the Freeholder's counter-notice admitting the Tenant's right. Mr Cockbill refers us to a letter from his solicitor to the Tenant's solicitor saying his solicitor's costs are £425.

- 23 It is not contested that the title is registered. We find £225 submitted by Mr Langford falls short of the Freeholder's reasonable "legal costs" costs and that £425, Mr Cockhill's submission, is excessive. Using our general knowledge and experience of what may reasonably be expected, we find £300 is the reasonable amount.
- 24 Disbursements: we find actual disbursements incurred in obtaining office copy register entries shall be added to the amount of "legal costs" we determine.
- 25 It is not contested that no valuation in pursuance of the Notice has been carried out.

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

- 26 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 £300 (Three hundred pounds) plus actual disbursements incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs.
- 27 We find and hold the Tenant shall not bear any subs.9(4)(e) "valuation costs".

Date:

21 APR 2005

T F Cooper
CHAIRMAN

