

Leasehold Reform Act 1967

Commonhold and Leasehold Reform Act 2002

DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL

On an application under s.21 1967 Act to determine:

- (1) The price payable on enfranchisement by the tenant under s.9(1) 1967 Act; and
- (2) Reasonable costs under s.9(4) 1967 Act (adjourned at the hearing)

Applicant Tenant: Mr Donovan Michael Perry

Respondent Freeholder: Mrs Tarinder Sidhu

Property: 43, Dalbury Road, Hall Green, Birmingham B28 0NE

Date of Tenant's Claim to acquire the Freehold: 12 October 2004

RV on 31 March 1990: £227

Application dated: 9 February 2005

Heard at: The Panel Office

On: 27 April 2005

APPEARANCES:

For the Tenant: Mr A W Brunt FRICS

For the Freeholder: Mr A P Herbert FRICS

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)  
 Mr P J Waller, Solicitor  
 Mr M H Ryder

Date of Tribunal's decision:

11 MAY 2005

**Background:**

- 1 Mr D M Perry is the **Tenant** by a 99 year lease less 3 days from 1929 of the dwelling house and premises at 43, Dalbury Road, Hall Green, Birmingham B28 0NE (the '**Property**'). The **Freeholder** is Mrs T Sidhu. By a notice (the '**Notice**') dated 12 October 2004 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 9 February 2005 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, adjourned at the hearing, (b) the Freeholder's reasonable costs under s.9(4). We inspected the Property on 27 April 2005 and a hearing was held on the same day.
- 2 The Tenant holds the Property by an underlease (the '**Lease**') for a term of 99 years less 3 days from 29 September 1929 at a fixed ground rent of £5 pa. The head leasehold interest has merged with the freehold interest.
- 3 The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 24 years.
- 4 The Property comprises a semi-detached house of traditional brick (part rendered) and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - hall, through living room/dining room, kitchen; on the first floor - 3 bedrooms, bathroom, separate wc. There is gas central heating to radiators and parking space for a car. The site frontage is about 8m and the width is maintained throughout the depth of the site. The site slopes steeply downwards from front to back.
- 5 **Mr A W Brunt** FRICS appeared for the applicant Tenant; **Mr A P Herbert** FRICS for the Freeholder. Both, helpfully, provided a written valuation and skeleton of their cases.

**Jurisdiction:**

- 6 The Freeholder's notice in reply to the Tenant's Notice, given by the Freeholder's solicitor, does not admit the Tenant's right; on the grounds: (a) that the Notice failed to give particulars of the date the tenancy commenced; (b) failed to give particulars relevant to when the tenant of the house died (in this case Mrs Perry deceased) and Mr Perry (the Tenant) becomes tenant; and (c) failed to give [unspecified] particulars required by subparas 6(1) and (2) Part II Schedule 3 the Act. The Freeholder's solicitor also points out that if the Tenant is a joint surviving tenant, the Notice is not correct because it says, in box 10., that s.7 applies. Mr Brunt, in correspondence before the hearing, says the Notice is valid despite the inaccuracy(ies) alleged. ~~At the hearing we invited Mr Herbert to address us on our jurisdiction. He declined, saying this is a matter for the Freeholder's solicitor, not him.~~
- 7 We recognise that we do not have the jurisdiction to determine our jurisdiction on the Tenant's application to us conclusively to bind the parties. Only the Court can do that. We decide our jurisdiction solely for the purpose of deciding whether to proceed. On considering the prescribed form of the Notice, we hold and find that the failures alleged and the representation that s.7 applies are an inaccuracy in the particulars and do not invalidate the Notice. Accordingly we proceeded with the hearing.

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

**The valuation method:**

- 8 Mr Brunt and Mr Herbert adopt, and we accept, the generally recognised valuation method to derive the price payable for the freehold interest, by: (i) capitalising the apportioned ground rent (£5 pa) from the Date for the unexpired term of the Lease (24 years); (ii) capitalising 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.
- 9 It is common ground that the 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 Lease. We accept the approach.

- 10 **Valuations:**  
By Mr Brunt for the Tenant - £10,703  
By Mr Herbert for the Freeholder - £12,542

It is common ground:

- 11 (a) That the value of the term (the value of £5 pa for 24 years) is £57.35.  
12 (b) The yield rate throughout the valuation is 7%.

The two issues in dispute:

- 13 By reference to our valuation at para 22 below there are two issues in dispute:  
(a) the entirety value; and  
(b) the site value apportionment.

(a) The entirety value:

- ~~14 Mr Brunt says £180,000; Mr Herbert £190,000.~~

- 15 While both Mr Brunt and Mr Herbert introduce 18 Dalbury Road (a similar house sold in February 2004 for £173,000) and 11, Dalbury Road (for sale in January 2005 at £189,950), they both place greatest reliance on the sale of 66 Dalbury Road, sold 23 August 2004 for £188,500. Three sales (between May and December 2004) of semi-detached houses in Egginton Road (the next road to Dalbury Road) are introduced (between £159,950 and £188,950) and Mr Brunt refers us to 19 February 2005 press advertisements of five semi-detached houses for sale in Hall Green (between £171,950 and £186,950). We attach only very limited weight to evidence of houses for sale (including 11 Dalbury Road) as it is not evidence of a transaction. We

have looked at the exteriors of the three houses in Dalbury Road and the three in Egginton Road; we attach limited weight to those in Egginton Road, save that we find the evidence is not inconsistent with our decision on the entirety value, reflecting the principle that it assumes 'good condition and full development' (see para 8 above).

- 16 It is accepted, and we agree, that 66 Dalbury Road is the most helpful comparable (£188,500 in August 2004). Mr Brunt stresses the differences between the sites of 66 and the Property: 66 slopes upwards from the road (the house is elevated) and is relatively flat at the rear; the Property slopes downwards from front to back, with steps from the side door of the house down to the garden and steps downwards in the rear garden. In cross-examination Mr Herbert admits he has not inspected the interior of the Property nor the rear of its site but relies on the notes made by his assistant, Mr Pitt, who has looked at the interior and the rear. We accept Mr Brunt's opinion in evidence that the site contours of 66 (sloping up from the front) are more attractive than the Property and that the steeply sloping site of the Property is a detraction and, having regard to the fact that Mr Brunt has inspected relevant parts of the Property and Mr Herbert has not, we find £190,000, contended for by Mr Herbert is too high but £180,000, contended for by Mr Brunt, is slightly low and, as a matter of judgment on the evidence and from what we saw at our inspection, that the entirety value of the Property is £182,500.

The site value apportionment:

- 17 Mr Brunt says 30%; Mr Herbert 1/3<sup>rd</sup>.
- 18 Mr Brunt says that, if the site had been relatively level, 1/3<sup>rd</sup> to 34% would have been appropriate. But, because of the inherent additional costs of development associated with the steeply sloping site, we should adopt 30%. Mr Herbert says that, in adopting 1/3<sup>rd</sup>, it is slightly less than he would adopt for a non-sloping site to reflect nominally increased building costs. He refers us to four previous determinations of the LVT between July 2004 and March 2005: the Tribunal adopted 33.33% in two cases and 32% in the other two. Mr Herbert says we should reflect the increase in house values over the last three to five years and, in periods of rapid increase, prevalent in the case before us, the proportion attributable to the site is greater because increases in house values are greater than construction and ancillary costs. Mr Herbert accepts that a substantial retaining wall is required to develop the site of the Property and that, although not seen by him, there is currently a retaining wall.
- 19 We heard evidence on the different characteristics of the sites being the subject of the LVT's previous four determinations but we hold that findings of fact in those cases are not evidence which assist us unless it can be truly said that unequivocal guidance can be established. We find no such guidance is established relevant to the unusual sloping site of the Property and accept Mr Brunt's opinion evidence of 30% as the site apportionment. We accept, and take account of, Mr Herbert's evidence on the relativities of site value to entirety value in a rapidly rising market.
- 20 To allay any suggestion of double counting - by reflecting the sloping site in both the entirety value and the site apportionment - our decision on the entirety value takes account of a property with the detraction of a downwards sloping site compared with a level or upwards sloping site; and our decision on the site apportionment takes account of the inherent additional costs of development.

**Our decisions on the two issues in dispute:**

21 The entirety value is £182,500. The site apportionment is 30%.

22 **Our valuation:**

Term:

Ground rent	£5.00 pa	
YP 24 years at 7%	<u>11.46933</u>	£57.35

Reversion:

Entirety value	£182,500	
Site value at 30%	£54,750	
Sec. 15 ground rent at 7%	£3,832.50 pa	
YP deferred 24 years at 7%	<u>2.81638</u>	
	£10,793.78	
	(To nearest £)	£10,851

**Conclusion on the price payable:**

23 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 £10,851 (Ten thousand eight hundred and fifty one pounds).

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

24 While the Tenant's application to us includes, under the provisions of subs 21(1)(ba), our determination on the amount of any costs payable by the Applicant, Mr Brunt and Mr Herbert agree an adjournment and that a hearing on costs shall be re-listed for the first available date, if costs are not agreed.

Date: 11 MAY 2005

T F Cooper  
CHAIRMAN

