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BIR/OOCN/OAF/2005/0055

## Decision

of the Leasehold Valuation Tribunal  
in respect of applications for:

- (i) a determination of the price payable upon enfranchisement under Section 9 of the Leasehold reform act 1967 ('the Act'), and
- (ii) a determination of the freeholder's costs under Section 21(1)ba of the Act

**PROPERTY: 8 PICKENHAM ROAD, HOLLYWOOD, BIRMINGHAM B14 4TG**

**Mrs. D.E. Hale**

**(Applicant)**

**and**

**Cressingham Properties Limited**

**(Respondent)**

### **DETERMINED:**

- (1) On the preliminary issue: that the Assent dated 27<sup>th</sup> September 2004 operated to vest the subject property in the Applicant as personal representative and that accordingly the Applicant's notice dated 9<sup>th</sup> December 2004 is valid under Section 6A of the Act.
- (2) That the price to be payable by the Applicant to the Respondent for the freehold under Section 9 (1) of the Act is £2,275.00.
- (3) That the sum of £275.00 plus V.A.T. and reasonable disbursements be allowed in respect of the Respondent's conveyancing costs under Section 9 (4) (b) of the Act, and that the sum of £150.00 be allowed as the valuation fee under Section 9 (4) (e) of the Act and a further £100.00 in respect of the Respondent's other Section 9 (4) costs.

Date of Decision: **1 JUN 2005**

## REASONS FOR THE TRIBUNAL'S DECISION

### BACKGROUND

1. On 9<sup>th</sup> December 2004 the Applicant served a Notice of her claim to acquire the freehold of the subject property upon the Respondent under Part 1 of the Leasehold Reform Act 1967 ('the Act'). The Applicant claimed as personal representative of her late husband, Graham Victor Hale.

2. On 28<sup>th</sup> January 2005 the Respondent served a Notice in Reply to the Applicant's Notice stating that:

'notwithstanding the terms of the Assent the Applicant is not holding the property as personal representative of the deceased but in her own capacity as owner under the terms of the will and that the Assent vested the leasehold interest in the Applicant's name personally'.

3. Section 6A of the Act provides:

#### ***6A Rights of Personal Representatives***

*(1) Where a tenant of a house dies, and immediately before his death, he had under this part of the Act-*

*(a) the right to acquire the freehold, or*

*(b) the right to an extended lease,*

*the right is exercisable by his personal representatives while the tenancy is vested in them (but subject to subsection (2) below); and, accordingly, in such a case references in this Part of this Act to the tenant shall, in so far as the context permits, be to the personal representatives.*

*(2) The personal representatives of a tenant may not give notice of their desire to have the freehold or an extended lease by virtue of subsection (1) above later than two years after the grant of probate or letters of administration.*

3. The entitlement of the late Graham Victor Hale to enfranchisement arises from a Building Lease dated the 5<sup>th</sup> June 1957 whereby the plot of land upon which the subject

property was subsequently constructed was demised to Graham Victor Hale for a term of 99 years from the 25<sup>th</sup> December 1956 at a rent of £12.00 per annum. The Applicant's Notice of the 9<sup>th</sup> December 2004 contains the particulars required by the Act to establish that Graham Victor Hale had the right to enfranchise under the Act and that the valuation falls to be made under Section 9 (1) of the Act. These particulars are not challenged by the Respondent. Graham Victor Hale died on the 16<sup>th</sup> October 2003 and Probate of his will was granted to the Applicant on the 17<sup>th</sup> August 2004 out of the Birmingham District Probate Registry. On the 27<sup>th</sup> September 2004 the Applicant executed an Assent vesting the subject property in herself 'as Executor and Personal Representative of the late Graham Victor Hale'. The Assent is the Land Registry Form 'AS1' and in Box 10 of that Form marked 'Declaration of Trust' it is stated that 'the Transferees (sic) are to hold the property as Executor and Personal Representative of Graham Victor Hale and subject to the terms of the trusts of his Will dated the 21<sup>st</sup> August 1998'.

4. On the 16<sup>th</sup> February 2005 Anthony Brunt & Co. Valuers, on behalf of the Applicant, submitted an application to the Leasehold Valuation Tribunal for a determination as to the price payable for the freehold under Section 9 of the Act and as to the amount of the freeholder's costs under Section 21(1)(ba) of the Act. The letter of application also requested a ruling as to administration costs, but no further details of what these amounted to were provided until the hearing.

#### **WRITTEN SUBMISSIONS**

1. In reply to the Respondent's Notice in reply dated the 9<sup>th</sup> December 2004, the Applicants provided a copy of a letter sent from the Applicant's solicitors, Hadgkiss Hughes and Beale, to the Respondent's solicitors, Grove Tompkins and Bosworth, which is dated the 14<sup>th</sup> February 2005. In this letter the Applicant's solicitors give their reasons for the execution of the Assent vesting the legal estate in the Applicant. They refer to the provisions of Section 6A of the Act and note particularly that to exercise the right to enfranchise the legal estate in the property must be vested in the Personal Representatives. They refer also to Section 36(1) of the Administration of Estates Act 1925 which (inter alia) states that a Personal Representative may assent to the vesting in any person who may be entitled thereto either beneficially or as a Trustee or Personal Representative of any estate or interest in real estate to which the testator was entitled. They contrast the wording of Section 6A with that in the corresponding Section 3(A) of the Leasehold Reform, Housing and Urban Development Act 1993 which provides that:

*' on the death of a person who has for two years before his death been a qualifying tenant of a flat, the right conferred by this chapter is exercisable subject to and in accordance with this chapter by his personal representatives... '.*

Because Section 3(A) does not refer to the property being 'vested' in the Personal Representatives, they came to the view that the Assent was required to ensure that the Personal Representatives in this case could take advantage of Section 6(A) of the Act.

2. The Respondent made no further representations regarding the validity of the Applicant's Notice until their letter to the Tribunal Office of the 26<sup>th</sup> April 2005. This letter states that the last information received by the Respondent was earlier that month when they instructed their solicitors to apply for a County Court Determination as to whether the Notice was good or not, and that the solicitors had not completed their application to the Court. In the circumstances they therefore forwarded their Case and evidence to the Tribunal Office.

3. The Applicant's Case as to the price payable is as follows:

Lease:	
99 year from 25.12.1957 ground rent	12.00
Ground Rent Valuation:	
Years Purchase for 51 years at 7% (13.83)	166.00
Reversion:	
Standing House Value:	180,000.00
Site Value (35%):	63,000.00
Ground Rent: at 7%	4,410.00
Years Purchase in perpetuity deferred 51 years at 7% 0.453	<u>1,998.00</u>
Price (say)	<u>£2164.00</u>

4. The Respondent's Case as to the price payable is as follows:

Ground Rent Years purchase at 13.83	165.96
Entirety Value	200,000.00
Site @ 35%	70,000.00
Section 15 Rent	4,900.00
Year's Purchase in perpetuity deferred 51 years @ 7% x .453	<u>2,219.70</u>
L.R.A Valuation	<u>2,385.66</u>

5. It is apparent from the above that the parties are in agreement upon all the elements of the calculations except the valuation of the entirety, or 'standing house'. In support of their figure of £180,000.00 Anthony Brunt & Co refer to Number 26 Pickenham Road which was sold in October 2003 for £137,300 freehold and Number 12 sold in December 2003 for £195,000 freehold. They also referred to an agreed enfranchisement price for Number 20 Pickenham Road in 2005 at £2,200. The respondents cite Number 353 Highter's Heath Lane which was sold subject to contract in December 2004 at £200,000.

6. On the question of costs the Respondent claims £275.00 plus V.A.T. for the conveyancing fees and the following 'in house' additional costs:

Receiving and inspecting LRA notice	£30.00
Preparing and serving counter notice requiring deposit	£30.00
Preparing Landlord's Notice requiring title	£30.00
Receiving and verifying title (not satisfactory)	£30.00
Freehold valuation fee	<u>£275.00</u>
	<u>£395.00</u>

7. The Applicant suggested that the solicitor's fee should be £250.00 but that a valuation fee remained to be proven and that other Section 9 fees may be payable.

## **INSPECTION**

1. The Tribunal inspected the property on the 3<sup>rd</sup> May 2005 in the presence of Mr. Anthony Brunt and the Applicant. It is a semi-detached house of traditional construction located in an established residential in the southern suburbs of Birmingham. The accommodation comprises on the ground floor an entrance hall, through lounge and kitchen. On the first floor are two double bedrooms, a single bedroom and a bathroom. The house stands on medium to small plot with gardens to front and rear. There is a garage with a lean to conservatory at the rear of it. The house is in good repair, both inside and out.

2. The Tribunal also made external inspections of the properties referred to in the submissions of the parties.

## **HEARING AND DETERMINATION OF THE PRELIMINARY ISSUE**

1. Because it was clear from the Respondent's letter of the 26<sup>th</sup> April 2005 that it had not withdrawn its contention regarding the Applicant's position as Personal

2. The Tribunal also made external inspections of the properties referred to in the submissions of the parties.

### **HEARING AND DETERMINATION OF THE PRELIMINARY ISSUE**

1. Because it was clear from the Respondent's letter of the 26<sup>th</sup> April 2005 that it had not withdrawn its contention regarding the Applicant's position as Personal Representative, the Tribunal decided that they must make a determination upon this point before hearing any submissions regarding the price to be paid because if the Applicant's Notice was invalid they would have no jurisdiction. The Applicant was represented by Mr. Brunt at the hearing but the Respondent did not attend and was not represented. Mr. Brunt was asked if he had any representations to make on the preliminary issue but he had nothing to add to the written submissions already referred to.

2. The Tribunal withdrew to determine the preliminary issue. They determined that the Assent dated the 27<sup>th</sup> September 2004 operated to vest the subject property in the Applicant as Personal Representative and that accordingly the Notice dated the 9<sup>th</sup> December 2004 is valid. They therefore determined that they had jurisdiction to proceed but in doing so they recognised that they did not have the power to determine jurisdiction conclusively as only the court has that power.

3. At the reconvened hearing Mr. Brunt opened by stating that the only difference between the parties was the £20,000.00 between the Respondent's opinion of the entirety value of £200,000.00 and the £180,000.00 suggested by Mr. Brunt in his written submission. There was a dearth of evidence of completed sales in Pickenham Road. He had knowledge of a sale of No. 26 for £137,000 and No. 12 at £195,000 in December 2003. However, neither of these properties are of the same type. He had looked at nearby roads such as Arundel Road but these are narrower plots with rear access via a service road. He had recently negotiated a Section 9 price for No. 20 Pickenham Road at £2,200.00 where he had put forward a figure of £175,000.00 and the landlord a figure of £189,000.00 based on a comparable in Highters Heath Lane.

4. When questioned by the Tribunal, Mr. Brunt said he would need to check the Respondent's comparable of No. 353 Highters Heath Lane on the internet but other than that he had no comment.

5. On the question of costs Mr. Brunt stated that if it assisted the Tribunal he would concede a conveyancing fee of £275.00 plus V.A.T. and disbursements. Mr. Brunt maintained that the Respondent had not inspected the property internally after the service of the Applicant's notice and that in these circumstances a full valuation fee should not be allowed. The Respondent's representative had inspected the property in the summer of 2004 and accordingly the valuation must have been prepared based upon that

payability of administration charges. Mr. Brunt asked the Tribunal to give a ruling on this point.

## **DECISION OF THE TRIBUNAL**

### **1. THE PURCHASE PRICE**

The Tribunal find that the price to be payable for the freehold falls to be determined under Section 9 (1) of the Act and that the proper basis for such determination is to:

- (a) value the ground rent of £12 per annum for the unexpired term (51 years) at 7%.

They agree with both parties that this sum is £165.96

- (b) ascertain a modern ground rent under Section 15 of the Act by valuing the entirety, apportioning the entirety between the site and the building and calculating the rent at 7% of the site value.

They agree that there is not a lot of evidence of completed sales, but based upon Mr. Brunt's evidence, and also the comparable in Highters Heath Lane cited by the Respondent and using their own knowledge and experience (but not any secret knowledge) as an expert Tribunal, they determine the entirety value at £190,000.00. They agree with both parties that the correct site apportionment is 35% which gives a site value of £66,500.00. Seven percent (7%) of this sum give the modern ground rent of £4,655.00 per annum

- (c) value the modern ground rent in perpetuity but deferred for the unexpired term of the lease (51 years) at 7 %. This produces a figure of £2109.83.

(d) add the existing ground rent value of £165.96 under (a) above to the modern ground rent value of £2109.83 under (c) above which gives a total of £2275.79. The Tribunal round this to £2275.00 and determine this sum as the price payable for the freehold under Section 9 (1) of the Act

### **2. SECTION 9 (4) COSTS**

- (a) The Tribunal determine the conveyancing costs under section 9 (4) (b) of the Act at £275.00 plus V.A.T. and reasonable disbursements

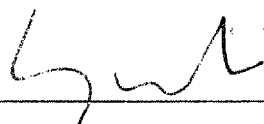
(b) The Tribunal accept the submission of Mr. Brunt that no internal inspection of the property was made following the Applicant's notice. However, a proper valuation was provided by the Respondent and in the circumstances the Tribunal determine the valuation charge under section 9 (4) (e) of the Act at £150.00.

(c) The Tribunal limit the other Section 9 (4) costs of £120.00 claimed by the Respondent to £100.00.

### **3. ADMINISTRATION CHARGES**

The Tribunal made no determination on the administration charges referred to by Mr. Brunt. They do not regard the oblique reference to them in his letter of the 16<sup>th</sup> February 2005 as a proper application to the Tribunal under Paragraph 5 of schedule 11 of the Commonhold and Leasehold reform Act 2002. Until the hearing the Tribunal were not aware that the charge for retrospective building consent was being challenged, and the Respondent has not had a proper opportunity to put forward any representations on the matter.

Signed \_\_\_\_\_



**(W. J. Martin – Chairman)**

**- 1 JUN 2005**

Dated \_\_\_\_\_

**Members of the tribunal:**

**W. J. Martin  
S. J. Berg F.R.I.C.S.  
Mrs. C. L. Smith**