

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

BIR/OOCN/OAF/2005/0138

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967*

Applicants: Mr J R Gee and Mrs J M Chew
(personal representatives of Mrs E V Gee (leaseholder))

Respondent: Freeholder unknown

Subject property: 74 Kings Road
Kings Heath
Birmingham
B14 6TT

Date of application to the county court: 23 March 2005

Date of court order referring matter for determination by the LVT: 4 June 2005

Application to the LVT: 9 June 2005

Hearing: 8 July 2005

Appearances:

For the applicant: Mr H Brunt

For the respondent: Not represented

Members of the LVT: Professor N P Gravells MA
Mr D J Satchwell FRICS
Mr D Underhill

Date of determination: 14 JUL 2005

Introduction

- 1 This is a decision on an application under section 21(1)(c) of the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr J R Gee and Mrs J M Chew, the personal representatives of Mrs E V Gee, the former leaseholder of the house and premises at 74 Kings Road, Kings Heath, Birmingham, B14 6TT ("the subject property"), for the determination of the amount of the appropriate sum to be paid into court under section 27(5) of the 1967 Act.
- 2 Mrs Gee held the subject property under a lease for a term of 99 years less six days from 25 March 1884 at a ground rent of £5.00 per year. The lease therefore expired in 1983 but was continued by way of statutory extension under Part I of the Landlord and Tenant Act 1954. Mrs Gee died on 26 October 2003; and probate was granted on 21 May 2004.
- 3 The applicants, in their capacity as personal representatives of Mrs Gee, were prevented from giving notice of their desire to acquire the freehold interest in the subject property because the person to be served with the notice could not be found and/or his identity could not be ascertained. On 23 March 2005, the applicants therefore applied to the Birmingham County Court under section 27(1) of the 1967 Act with a view to the subject property being vested in them by court order.
- 4 By order dated 4 June 2005, Deputy District Judge Forrester referred the determination of the appropriate sum to be paid into court under section 27(5) of the 1967 Act (being the price payable for the freehold interest in the subject property in accordance with section 9(1) of the 1967 Act) to the Leasehold Valuation Tribunal; and the applicants subsequently made the present application.

Subject property

- 5 The subject property is a mid-terrace house of brick and tile construction, located on Kings Road in a residential area of Kings Heath, approximately eight kilometres from Birmingham city centre. The accommodation comprises, on the ground floor, two reception rooms, kitchen and enclosed veranda; and, on the first floor, two bedrooms and bathroom/wc. The only space heating is provided by an electric fire in the front reception room and a gas fire in the rear reception room. There is no garage or off-street parking. Outside there are narrow gardens to the front and rear of the property. The frontage of the property is approximately 3.75 metres and the total site area is approximately 125 square metres.

Inspection and hearing

- 6 The Tribunal inspected the subject property on 8 July 2005 in the presence of Mr H Brunt, representing the applicants.
- 7 The subsequent hearing was attended by Mr Brunt.

Representations of the parties

- 8 Mr Brunt, on behalf of the applicants, referred in his written submission to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055 which endorses as the normal basis of valuation under the 1967 Act the generally recognised three-stage approach. That approach involves (i) the capitalisation of the ground rent payable

under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity, deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).

- 9 However, since in the present case the lease has expired and there is no ground rent payable, Mr Brunt acknowledged that in effect the price payable is the value of the site. In the absence of direct evidence of building land values, he approached the assessment of the value of the site using the standing house method.
- 10 Mr Brunt submitted that 23 March 2005, the date of the application to the court under section 27(1) of the 1967 Act, was the relevant date for the valuation.
- 11 Mr Brunt provided evidence of agreed sale prices and asking prices for a number of properties on Kings Road. He agreed that the better evidence was provided by agreed sale prices; and on the basis of that evidence, he submitted that the Tribunal should adopt the figure of £120,000 as the entirety value of the subject property at the relevant date.
- 12 Mr Brunt submitted that the Tribunal should apply a 28 per cent figure in calculating the value of the site on the standing house method. He submitted that that figure was in line with negotiated settlements and with previous decisions of Leasehold Valuation Tribunals of the Midland Rent Assessment Panel. In particular, he referred to the decision in relation to 14 Dormy Drive (BIR/00CN/OAF/2004/0322), in which the Tribunal had adopted a 30 per cent figure in respect of a mid-terrace property with a frontage of 5.3 metres; and in the light of that decision he submitted that the appropriate figure in the present case, where the subject property has a frontage of only 3.75 metres, was 28 per cent.
- 13 On the basis of those figures, he submitted that the price payable for the freehold interest in the subject property was £33,600.

Determination of the Tribunal

- 14 The Tribunal holds that the basis of valuation adopted by Mr Brunt properly reflects the principles of the 1967 Act applicable in the present case.
- 15 The Tribunal accepts that 23 March 2005, the date of the application to the court under section 27(1) of the 1967 Act, is the relevant date for the valuation.
- 16 The Tribunal notes that, although this is a "missing landlord" case, Mr Brunt clearly and properly recognised his duty to the Tribunal to provide objective evidence so as to assist the Tribunal in reaching a fair determination.
- 17 In the absence of any evidence on behalf of the missing landlord, the Tribunal examined the figures submitted by Mr Brunt in respect of the entirety value of the subject property and the percentage to be applied to the entirety value in calculating the site value on the standing house basis. The Tribunal considered whether those figures were open to challenge on their face or in the light of the evidence of Mr Brunt in response to questions from the Tribunal.
- 18 In relation to the entirety value of the subject property, the Tribunal holds that the best evidence available is provided by the agreed sale prices. The Tribunal considered the evidence of sales particulars and agreed sale prices provided by Mr Brunt. Of the three properties for which Mr Brunt provided sales particulars and

agreed sale prices, only one (16 Kings Road) was similar to the subject property, although the details of the other two properties provided the Tribunal with a check. On the basis of that evidence, and its general knowledge and experience (but no special knowledge), the Tribunal finds that the entirety value of the subject property at the relevant date was £115,000.

- 19 In relation to the percentage to be applied to the entirety value in calculating the site value, the Tribunal was not persuaded that a figure as low as 28 per cent was appropriate. The general trend of escalating property prices over the last few years has been reflected in an upwards movement in the percentage figures for site apportionment adopted by Leasehold Valuation Tribunals of the Midland Rent Assessment Panel. In the past four years, no Tribunal has adopted a figure below 30 per cent. Although the frontage of the subject property is very narrow, and accordingly the adoption of a low percentage figure is appropriate, the Tribunal does not accept that there is a direct proportional relationship between the two factors. The Tribunal is therefore not persuaded that the previous decision to which Mr Brunt referred necessarily requires that the Tribunal should adopt a lower percentage figure in the present case. The Tribunal holds that the appropriate percentage to be applied to the standing house value in calculating the site value is 30 per cent.
- 20 Accordingly, adopting the figure of £115,000 for the entirety value of the subject property on the relevant date and the figure of 30 per cent for the percentage to be applied to the entirety value in calculating the site value, the Tribunal determines the price payable under section 9(1) of the 1967 Act for the freehold interest in the subject property, and therefore the amount of the appropriate sum to be paid into court under section 27(5) of the 1967 Act, at £34,500.

Nigel Gravells

NIGEL P GRAVELLS
CHAIRMAN

14 JUL 2005