

371

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CS/OAF/2005/0152

Leasehold Reform Act 1967

Commonhold and Leasehold Reform Act 2002

DETERMINATIONS OF LEASEHOLD VALUATION TRIBUNAL

On applications:

- (1) under s.21(1)(a) 1967 Act to determine the price payable on enfranchisement by the tenant under s.9(1) 1967 Act; and
- (2) under s.21(1)(ba) 1967 Act to determine the amount of any costs payable by the Tenant under s.9(4) 1967 Act

Applicant Tenant: Doris Ruby Bayliss

Respondent Freeholder: Purefleet Limited

Property: 131, Delhurst Road, Great Barr, Birmingham B44 9UT

Date of Tenant's Claim to acquire the Freehold: 19 April 2005

RV on 31 March 1990: £202

Applications dated: 21 June 2005

Heard at: The Panel Office

On: 27 September 2005

APPEARANCES:

For the Tenant: Mr T M Thursfield FRICS of Harveys, Estate Agents

For the Freeholder: Mr P G Dixon, Director and Accountant of the Respondent company with Mr L Ali (Director) in attendance

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCIArb (Chairman)

Mr P J Waller LLB

Mrs E Everett

Date of Tribunal's decision: 11 OCT 2005

Background:

- 1 Doris Ruby Bayliss is the **Tenant** by a 99 year lease from 1946 of the dwelling house and premises at, 131, Delhurst Road, Great Barr Birmingham B44 9UT (the '**Property**'). The **Freeholder** is Purefleet Limited. By a notice (the '**Notice**') dated 19 April 2005 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 21 June 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 (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 on 27 September 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 December 1946 at a fixed ground rent of £6 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 40 years. As pointed out by us it is, to the nearest year, 41 years but Mr Thursfield stressed we should adopt 40 years, giving the benefit to the Freeholder; Mr Dixon does not object; so, we accept the valuation to derive the price payable shall adopt 40 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, after adaptation by the Tenant: on the ground floor - hall, through living room/dining room/kitchen; on the first floor - 3 bedrooms, bathroom with wc. A single storey rear extension with a corrugated metal roof provides additional accommodation. There is gas fired central heating to radiators and double glazed PVCu windows. The site is roughly triangular in shape with a frontage of about 3.9m, a rear width of about 11m and a depth of about 56m. There is a rear vehicular access to a single concrete panel garage.
- 5 **Mr T M Thursfield** FRICS of Harveys, Estate Agents appeared for the applicant Tenant; **Mr P G Dixon** (Director and Accountant of the Respondent company) appeared for the Respondent.

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

The valuation method:

Mr Thursfield adopts, Mr Dixon does not object and we accept the generally recognised valuation method to derive the price payable for the freehold interest, accepted in *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. The method is: (i) capitalise the apportioned ground rent (£6 pa) from the Date for the unexpired term of the Lease (40 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.

7 Mr Thursfield'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.

8 Mr Dixon does not produce a valuation, saying he is not familiar with the method of valuation and, in any event, the Respondent acquired the Freehold interest at an auction held on 13 February 2003 for £5,000, not appreciating the facts of the Tenant's leasehold interest nor the effect of the Act. Mr Dixon says he relies on our general knowledge and experience as an expert tribunal to arrive at a fair and just determination but asks that we take account of £5,000 paid by the Respondent. We explained that evidence of the price paid in February 2003 does assist us as it is not evidence of 'the price payable' on the assumptions in s.9 of the Act.

9 **Mr Thursfield's valuation and evidence:** For the freehold interest - £1,747
More specifically:

10	Term			
	Ground rent	£6 pa		
	YP 40 years at 7%	<u>13,332</u>		£80
	Reversion			
	Entirety value	£130,000		
	Site value at 33%	£42,900		
	Sec. 15 ground rent at 7%	£3,003 pa		
	YP deferred 40 years at 7%	<u>0.95401</u>		
			<u>£2,865</u>	£2,985
		Say		£3,000

11 Mr Thursfield adopts 7% as the yield rate which we accept is consistent with established guidance.

12 In support of his entirety value (£130,000) he refers us to two similar nearby houses, both for sale (freehold) at £112,000 in February 2005 but they both have only two bedrooms, unlike the Property which has three. He also refers us to his negotiated settlement with a chartered surveyor on the price payable on enfranchisement for no. 141 Delhurst Road (a very similar house five houses away from the Property and having not dissimilar lease terms with a tenant's notice to enfranchise 21 February 2005); saying £3,250 as the agreed price payable is consistent with his valuation of the price payable for the Property (£3,000) reflecting no. 141 is a slightly better property. We accept Mr Thursfield's opinion evidence on the entirety value and accept his factual evidence which supports his opinion.

13 Mr Thursfield adopts 33% as the site apportionment which we accept is appropriate in this case.

Our Decision on the price payable:

14 Despite no valuation representations for Respondent Freeholder, Mr Thursfield clearly recognises his duty to us, to provide truly independent evidence to assist us to achieve a just result. As an expert tribunal, relying

on our general knowledge but not on any special knowledge, we find that Mr Thursfield's valuation is consistent with the principles in the Act and accepted guidance derived from the Lands Tribunal and this Tribunal. We accept his figures and the price payable, at £3,000.

Conclusion on the price payable:

- 15 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 £3,000 (Three thousand pounds).

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

- 16 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.'

- 17 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].'

- 18 Mr Thursfield submits, and Mr Dixon does not contest, that "legal costs" should be limited to £300 plus VAT if applicable; consistent with the general level of local solicitors' costs. It is common ground that "valuation costs" costs are £Nil because we have no evidence that a valuation has been carried out.

- 19 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.

- 20 Disbursements: we find actual disbursements incurred in obtaining official copy register entries shall be added to the amounts of "legal costs" we determine.

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

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

Date: 11 OCT 2005

T F Cooper (Chairman)

