

379

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BIRMINGHAM DISTRICT REGISTRY

CLAIM NO: 4BM30090

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CS/OAF/2005/0211

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 the price payable on enfranchisement by the tenant under s.9(1) 1967 Act

Pursuant to the Order of District Judge Davies in the Birmingham District Registry 15 September 2005

Applicant Tenants: Mohinder Kaur and Gurnam Singh

Respondent Freeholder: Person or Persons unknown

Property: 74, Abbey Road, Smethwick, West Midlands B67 5LH

Date of Court Order
requiring this determination: 15 September 2005

RV on 31 March 1990: Less than £500

Application dated: 14 September 2005

Heard at: The Panel Office
On: 10 November 2005

APPEARANCES:
For the Tenants: Mr K F Davis FRICS

For the Freeholder: No appearance

Members of the Leasehold Valuation Tribunal:
Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr D Jackson BA, Solicitor
Mrs N Jukes

Date of Tribunal's determination: 24 NOV 2005

Determination: The total price payable for the freehold and intermediate head leasehold interests is £14,671

Background:

- 1 Mohinder Kaur and Gurnam Singh are the **Tenants** by a 99 year underlease from 1918 of the dwelling house and premises at 74, Abbey Road, Smethwick, West Midlands B67 5LH (the '**Property**'). The person to be served with a Tenants' notice claiming the right to acquire the freehold cannot be found or his identity ascertained.
- 2 By the order (the '**Order**') of District Judge Davies in the Birmingham District Registry 15 September 2005 an application be made to the Leasehold Valuation Tribunal to determine a fair valuation [the price payable - s.149(1) Commonhold and Leasehold Reform Act 2002] by the Tenants for the purpose of s.27 Leasehold Reform Act 1967 (as amended by the Commonhold and Leasehold Reform Act 2002) (the '**Act**') in respect of the **Property**.
- 3 By an application 14 September 2005 (copy Order provided 12 October 2005) the Tenants' solicitor applies to us to determine the price payable on the acquisition of the freehold of the **Property** under s.9(1) of the **Act**. We inspected the **Property** on 10 November 2005 and a hearing was held on the same day.
- 4 The Tenants, by title no WM743642, hold the **Property** by an underlease (the '**Underlease**') made between Frederick George Hughes (1) and Jacob Baldwin Carr (2) for a term of 99 years (less three days) from 25 March 1918 at a fixed rent of £3 pa. The only information we have in respect of the head lease (the '**Head Lease**') is that recited in the Underlease: a lease dated 9 November 1918 made between Albert Eade and John Eade (1) and Alfred Reuben Jennens (2) for a term of 99 years from 25 March 1918 at a fixed rent of £13 pa for the 735 square yards site with dwellings and outbuildings thereon and numbered 74, 76, 78 and 80 Abbey Road. The relevant date for our determination is, by s.27(1), the date of the Tenants' application to the Court, namely 12 March 2005.
- 5 The unexpired term of the **Head Lease** and the **Underlease** on the **Date** - which is the relevant date for the determination of the price payable - was about 12 years.
- 6 The **Property** comprises a terraced house of traditional brick and composite tile construction in an residential area of similar properties. The accommodation includes: on the ground floor – hall, two living rooms, kitchen, bathroom with wc; on the first floor - 3 bedrooms, wc. There is gas fired central heating to radiators. The site is roughly rectangular with a frontage of about 4.7 m and an area of about 154 m². It has vehicular access at the rear boundary from a right of way.
- 7 **Mr K F Davis FRICS** appeared for the applicant Tenants. His valuation does not include a separate valuation of the intermediate head leasehold interest as he has no information about it; he apportions his valuation of the freehold interest between it and the intermediate head leasehold interest. In the absence of information that the intermediate interest has, in fact, merged with the freehold interest, we determine the price payable by valuation methods for both the freehold and intermediate head leasehold interests.

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

The valuation method:

8 For the freehold interest: We accept the generally recognised valuation method to derive the price payable for the freehold interest, namely: (i) capitalise the apportioned ground rent (£13 pa apportioned equally between four dwellings (see para 4 above) equals £3.25 pa) from the Date for the unexpired term of the Head Lease (12 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 Head 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 Head 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 Mr Davis'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.

10 For the intermediate head leasehold interest: The value of the profit rent (the rent reserved in the Underlease minus the rent reserved, as an apportioned amount, in the Head Lease - £3.00 pa - £3.25 pa = £Nil pa) is, by Schedule 1 para 7A(2) the Act, 'a minor superior tenancy' and the purchase price of it is by application of the formula in subpara 7A(5) of Schedule 1.

Mr Davis's valuation and evidence:

11 For the freehold and intermediate head leasehold interests - £14,669. More specifically:

Term			
Ground rent		£3.00 pa	
YP 12 years at 7%		<u>7.94</u>	£24
Reversion			
Entirety value	£110,000		
Site value at 30%	£33,000		
Sec. 15 ground rent at 7%	£2,310 pa		
YP deferred 12 years at 7%	<u>6.34</u>		
			<u>£14,645</u>
			£14,669

Apportioned: £14,645 to the freeholder, £24 to the head leaseholder.

Our Decision:

12 Despite the 'absent freeholder' and lack of information on the intermediate head leasehold interest, Mr Davis clearly recognises his duty to us, to provide truly independent evidence to assist us to achieve a fair and just result and consistent with the RICS protocols. However, as an expert tribunal we find and hold we should

derive the price payable by aggregating separate valuations of the freehold and intermediate interests, doing the best we can in respect of the lack of information on the intermediate interest.

- 13 From Mr Davis's evidence of sales of not dissimilar properties in the locality, we accept his entirety value at £110,000 and find that his 30% site apportionment is correct in this case. While it may be argued a 7% deferment rate for the valuation of the relative short reversion (12 years relative to the mid-term rent review after 25 years in the 50 years lease extension of the Head Lease) is slightly high, we accept that 7%, in this case, will result in the Tenants' acquisition of the freehold on fair terms (s.1(1)).
- 14 From the information we have the intermediate interest is a 'a minor superior tenancy' (see para 10 above). There is no profit rent (Head Lease apportioned rent £3.25 pa, Underlease rent £3 pa) and by application of the formula the value of the intermediate head leasehold interest is £Nil.

Our valuation of the price payable:

15 Freehold

Term

Ground rent (apportioned)	£3.25 pa	
YP 12 years at 7%	<u>7.94</u>	£26

Reversion

Entirety value	£110,000	
Site value at 30%	£33,000	
Sec. 15 ground rent at 7%	£2,310 pa	
YP deferred 12 years at 7%	<u>6.34</u>	£14,645

£14,671

16 Intermediate head leasehold

By the formula in subpara 7A(5) of Schedule 1 (profit rent £Nil) - £Nil

Conclusion on the price payable:

- 1 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 Tenants for the acquisition of freehold and intermediate head leasehold interests in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967, as amended, is £14,671 (Fourteen thousand six hundred and seventy one pounds).

Date: **24 NOV 2005**

T F Cooper
CHAIRMAN

