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MAN/OOCH/OAF/2005/0023

**NORTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

THE LEASEHOLD REFORM ACT 1967 (AS AMENDED)

**APPLICATION UNDER SECTIONS 9 AND 21(1) FOR DETERMINATION OF PRICE
PAYABLE**

PROPERTY : 34 Celandine Way
Whitehills
Gateshead
Tyne & Wear
NE10 8QP

APPLICANTS: Peter Joseph Fleming and Maureen Fleming

RESPONDENT: Freehold Properties Limited

DATE OF HEARING : 2nd September 2005

**MEMBERS OF
THE TRIBUNAL :** Mr B Wake, LL.B., FCI Arb (Chairman)
Mr J N Morris, FRICS
Mrs. A R Paterson

Background

1. This is a determination of the price payable for the semi-detached bungalow and premises known as 34 Celandine Way, Whitehills, Gateshead, Tyne & Wear NE10 8QP (the Premises) referred to below in accordance with Section 9 of the Leasehold Reform Act 1967, as amended, (the Act), upon the grant of the Premises for an estate in fee simple, subject to the subsisting tenancy of Peter Joseph Fleming and Maureen Fleming (the Applicants) and to such tenant incumbrances as may exist but otherwise free from incumbrances.
2. The Applicants had served a notice dated 9th March 2005 in Form 1 in the Schedule to the Leasehold Reform (Notices) Regulations 1997 on Freehold Properties Limited (the Respondent).
3. By a Notice in Reply to the Applicants' claim dated 9th May 2005 the Respondent by its solicitors admitted their right to have the freehold of the Premises.

4. An Application dated 23rd May 2005 was made by the Applicants for the Leasehold Valuation Tribunal to determine the price. The Tribunal was not asked to determine any other matter.

Inspection

5. The Tribunal inspected the Premises on 2nd September 2005.

The Lease

6. The lease of the Premises dated 28th June 1983 between Barratt Newcastle Limited (1) and Jillian McIntyre (2) granted a term of 99 years from 1st March 1982 at a yearly rent of £35.00 (thirty five pounds) payable yearly in advance and contains no unusual or restrictive covenants. There is no provision for review of the rent.

Preliminary Matters

7. Directions dated 13th July 2005 were issued to the solicitors for the parties.
8. Notwithstanding those Directions no previously agreed bundle was supplied to the Tribunal although the solicitors for the Applicants supplied a bundle of the documents they wished to rely upon. Further submissions were received by the Tribunal from the solicitors for each party as late as the day of the hearing itself.
9. It was eventually agreed between the parties that documents numbered 25, 26, 28, 29 and 30 of the Applicants' bundle should not be taken into account by the Tribunal as being Without Prejudice documents. The Tribunal accordingly did not take them into account. Had the parties agreed a bundle as directed that element of the matter need never have arisen.
10. There was a dispute between the solicitors for the parties as to whether the Tribunal should give a determination as to the costs of the Respondent of and in connection with the acquisition of the freehold under Section 9 (4) of the Act. The Solicitors for the Respondent contended that no application had been made. The Tribunal agreed with that contention. The Applicants' solicitors may have assumed that an application for a determination of the price would or could automatically include an assessment of the Respondent's costs. That is not so. A specific application as to costs is necessary. The Tribunal therefore did not consider or make any determination as to such costs.
11. The solicitors for both the parties had notified the Tribunal that they would not be attending the hearing to represent their respective clients.

Hearing

12. A hearing was held at the Gateshead Central Library, Prince Consort Road, Gateshead, Tyne & Wear at 2.15 p.m. on 2nd September 2005. As previously indicated, neither party was professionally represented but Mr. Fleming attended the hearing and gave evidence which can be summarised as follows:
 - The reason he and his wife wanted to buy the freehold was to do with the insurance provisions in the Lease and the cost of obtaining retrospective consent for works they had carried out.

- Originally he had been told that it would cost some £1,600 made up as to some £900 as the price of the freehold and the remainder as to the landlord's costs;
- He had not had sight of the valuation carried out on the Applicants' behalf nor any relevant communication from his solicitors;
- The proximity of shops, schools and bus services.

Evidence as to price

13. The Applicants relied on a valuation report of Mr. David Irvin, MRICS of Finn and Irvin Chartered Surveyors dated 18th August 2005 who took the view that the price of enfranchisement should be £700 having used the Standing House approach and valued the Premises at £140,000 with vacant possession.
14. The Respondent relied on a valuation from a firm of Interdisciplinary Property Consultants named 'bureau', the valuation having been prepared by Mr. Geraint Evans, B.Sc. (Hons.) MSt. (Cantab.) Dip.Surv. FRICS, the property having been inspected by a Mr. Cecil Gillis. Mr. Evans, having dealt with various preliminary matters including a description of the property, a reference to the inspection, and some details as to the locality in which the Premises are situated gave a freehold open market value of the Premises of £160,000, and a valuation 'under' - presumably he meant 'for the purposes of' - Section 1 of the Act as £960.

Matters in dispute

15. The matters in dispute were:-

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|---------------------------|--|--------------------------------|
| a) The entirety value | Respondent said £160,000 | Applicants said £140,000 |
| b) The site apportionment | Respondent said 30% | Applicants said 25% |
| c) The yield rates | Respondent said 7% for the site apportionment and 6.5% for capitalisation of unexpired term and reversion. | Applicants said 7% throughout. |

Decision on issue (a)

16. The Applicants submitted no evidence to support the entirety value of £140,000 whereas the Respondent's valuer referred to an historic sale of a similar bungalow earlier this year in the sum of £160,000. No details were submitted in respect of the comparable property as to address; number of bedrooms; size of plot; whether the property had a garage or indeed central heating or double glazing. Reference to the sale of a nearby four bedroom detached house for £210,000 was noted but again no details were provided in respect of that property. The Tribunal had regard to the evidence as submitted and with the benefit of its own knowledge of property values in the area concluded that the entirety value of the subject property was £150,000.

Decision on issue (b)

17. Whilst previous decisions on composite parts of a valuation are not strict evidence, the Tribunal recognised that when a number of previous decisions plainly and clearly provide guidance on the percentage which parties would expect it to adopt, it should adopt that

percentage. It found that, in this case, no clear guidance had been established. In weighing the conflicting opinion evidence of the parties, the Tribunal held that it was not bound to adopt either of their specific percentages (30% and 25%) and that, within the opposing contentions, the Respondent contended for a percentage as high as possible and the Applicants as low as possible. Weighing the evidence with the objective of deciding the value of the site as part of the valuation as a matter of judgement as an expert tribunal, it found the site apportionment to be 30%.

Decision on issue (c)

18. The recognised and established method, which has been consistently used in previous cases and on which the parties may be expected to rely as guidance, did not include a variation in the yield rate in the valuation of the reversion. Whereas it was noted that the Respondent's valuer valued the end reversion, after a 50 years' lease it is not usually valued separately. It is included in the valuation of the reversion to the 50 years' lease by valuing the Section 15 modern ground rent in perpetuity, not for 50 years only - see *Haresign v St. John the Baptist's College, Oxford* [1980] 255 EG 711. The Applicants' valuer did not put forward any supporting evidence in relation to the yield rate of 7% and whereas the tribunal noted the key factors as submitted by the Respondent's valuer in support of 6.5% they did not accept all the points put forward but did find that the yield rate for the unexpired term; site apportionment and the capitalisation of it to be 6.5%.

Summary of Decision on the issues in dispute

- 19 Issue (a) the entirety value is £150,000
 Issue (b) the site apportionment is 30%
 Issue (c) The yield rate throughout the valuation of the reversion is 6.5%

Valuation of the Tribunal

20. Adopting the decisions on the issues, the valuation of the Tribunal is:-

The term:

Ground rent	£35.00pa	
Years purchase 76 yrs (The unexpired term) @ 6.5%	<u>15.26</u>	
		£534

The reversion by the 'Standing House method'

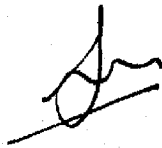
Entirety value	£150,000	
Site Apportionment @ 30%	£45,000	
S 15 modern ground rent @ 6.5%	£2,925	
Years purchase in perpetuity deferred 76 yrs @ 6.5%	<u>0.128</u>	
		£374

£908

Say£900

Summary decision

21. The price to be paid for the acquisition of the freehold of the Premises is determined to be nine hundred pounds (£900.00).



MR B WAKE LL.B FCI Arb
Chairman of the Leasehold Valuation Tribunal

21st September 2005