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

BIR/00CN/OAF/2005/0226

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr P J Colreavy (leaseholder)

Respondent: Caldix Ltd (freeholder)

Subject property: 15 Redbank Avenue
Erdington
Birmingham
B23 7JR

Date of tenant's notice: 8 June 2005

Applications to the LVT: 5 October 2005

Hearing: 9 December 2005

Appearances:

For the applicant: Mr A W Brunt FRICS

For the respondent: Mr G Dixon

Members of the LVT: Professor N P Gravells MA
Mr D J Satchwell FRICS
Mrs A Bartram

Date of determination: **21 DEC 2005**

Introduction

- 1 This is a decision on two applications under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr P J Colreavy, leaseholder of 15 Redbank Avenue, Erdington, Birmingham, B23 7JR ("the subject property"). The two applications are, first, under section 21(1)(a) for the determination of the price payable under section 9(1) for the freehold interest in the subject property; and, secondly, under section 21(1)(ba) for the determination of the reasonable costs recoverable under section 9(4).
- 2 The applicant leaseholder holds the subject property under a lease for a term of 99 years from 25 March 1958 at a ground rent of £16.00 per year. The lease devolved to and was vested in the applicant pursuant to a grant of probate dated 12 March 2004. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 52 years.
- 3 The applicant served on Caldix Ltd, the respondent freeholder, a tenant's notice dated 8 June 2005, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and he subsequently made the present application.

Subject property

- 4 The subject property is a detached house of brick and tile construction, located on Redbank Avenue in Erdington. The accommodation comprises, on the ground floor, hallway (with store off), reception room, kitchen and lean-to conservatory; and, on the first floor, three bedrooms, bathroom and separate wc. The property is double-glazed. Space heating to the ground floor is provided by a gas fire in the reception room; and there is gas-fired central heating to the first floor with radiators in the bedrooms and the bathroom. There is a small integral garage. Outside there are gardens to the front and rear of the property, with two sheds in the rear garden.

Inspection and hearing

- 5 The members of the Tribunal inspected the subject property on 9 December 2005 in the presence of a representative of the applicant leaseholder and Mr Brunt.
- 6 The subsequent hearing was attended by Mr Brunt, representing the applicant leaseholder, and by Mr Dixon, representing the respondent freeholder.

Representations of the parties

- 7 Mr Dixon declared his personal interest as a director of Caldix Ltd.

Price payable for the freehold interest in the subject property

- 8 Both Mr Brunt and Mr Dixon adopted as the basis of valuation under the 1967 Act the standard three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. 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 In addition to the facts outlined above, the following matters were specifically agreed by the parties for the purposes of the valuation calculation:
- The relevant date for the purposes of the valuation is 8 June 2005.
 - The unexpired term of the lease at the relevant date was 52 years.
 - The ground rent payable under the lease is £16.00 per year.
 - The freehold entirety value of the subject property at the relevant date was £130,000.
- 10 Since both parties apply the same established formula to determine the price payable for the freehold interest, the matters that remain in dispute between the parties are the two factors in that formula that are not agreed, namely:
- The percentage figure to be applied to the freehold entirety value of the subject property to determine the site value in accordance with the "standing house method".
 - The appropriate deferment or yield rate to be applied at all stages of the valuation calculation.
- 11 As to the site value percentage, Mr Brunt, on behalf of the applicant leaseholders, adopted the figure of 30 per cent, whereas Mr Dixon, on behalf of the respondent freeholder, adopted the figure of 37.5 per cent. As to the appropriate deferment or yield rate, Mr Brunt adopted the figure of 7 per cent, whereas Mr Dixon adopted the figure of 5.5 per cent.

Evidence and submissions on behalf of the applicant leaseholder

- 12 Mr Brunt submitted that in the present case the site value percentage should be towards the lower end of the range normally applied. He based that submission on the relatively higher development costs of the site consequent upon the need for deeper foundations and retaining walls to address the problems of the slope of the site and the sandy nature of the land. He drew attention to the properties on the slope below the subject property, where retaining walls had recently required replacement. He referred to two decisions of the Leasehold Valuation Tribunal (including the decision relating to 19 Redbank Avenue (BIR/00CN/2004/0067)) in which the Tribunal had adopted the figure of 30 per cent expressly in response to such factors. On the basis of that evidence, Mr Brunt submitted that the appropriate site value percentage in the present case is 30 per cent.
- 13 As to the appropriate deferment or yield rate, Mr Brunt acknowledged the recent decision in *Arbib v Earl Cadogan* and the other cases determined with that decision ("the *Cadogan* cases") in which the Lands Tribunal had adopted the figure of 4.5 per cent for a house in a prime area of central London. However, Mr Brunt referred to two post-*Cadogan* decisions of the Leasehold Valuation Tribunal in which, in relation to properties in the West Midlands, the Tribunal had adopted the figure of 7 per cent. He also stated that he had concluded twelve or more post-*Cadogan* settlements in all but one of which he and informed professional advisers (including three different chartered surveyors) had adopted the figure of 7 per cent. On the basis of that evidence, he submitted that the appropriate deferment or yield rate in the present case is 7 per cent.
- 14 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Brunt submitted the following valuation:

(i) *Capitalisation of existing ground rent to termination of lease*

Ground rent payable: £16.00 per year
Years Purchase: 52 years @ 7%: 13.8621
Capitalised ground rent: £16.00 x 13.8621 = £221.79

(ii) *Modern ground rent*

Standing house value of subject property: £130,000
Percentage attributable to site: 30%: £39,000
Annual equivalent @ 7% = £2,730

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,730
Years Purchase at 7% in perpetuity deferred 52 years: 0.42359
Capitalised modern ground rent: £2,730 x 0.42359 = £1156.40

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £1,378.

Evidence and submissions on behalf of the respondent freeholder

- 15 As to the site value percentage, Mr Dixon referred to the decision of the Leasehold Valuation Tribunal relating to 19 Redbank Avenue (in which the Tribunal had adopted the figure of 30 per cent) and submitted that that was an extreme case and that that property is very different from the subject property. Number 19 has a frontage of approximately 10 feet, whereas the subject property has a frontage of approximately 23 feet. The site of number 19 slopes steeply both from front to rear and from side to side, whereas the sloping of the subject property is much less acute. There are four flights of steps between the frontage of number 19 and the rear boundary of the property, whereas the subject property has only two flights of steps. Number 19 has no garage or off-street parking, whereas the subject property has a garage and further off-street parking. Mr Dixon also questioned the assertion by Mr Brunt that there are significant sand deposits in the immediate vicinity of the subject property. On the basis of that evidence, Mr Dixon submitted that the appropriate site value percentage in the present case is 37.5 per cent.
- 16 As to the appropriate deferment or yield rate, Mr Dixon referred to the recent decision of the Lands Tribunal in the *Cadogan* cases and to two earlier decisions of the Lands Tribunal relating to properties in the West Midlands, in which the Tribunal had adopted the figure of 6.5 per cent. He also referred to two ground rent sales relating to properties in the West Midlands at prices which "suggested" a yield rate below 6 per cent. On the basis of that evidence, Mr Dixon submitted that the appropriate deferment or yield rate in the present case is 5.5 per cent.
- 17 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Dixon submitted the following valuation (adjusted to reflect the change from Mr Dixon's original figure of 51.75 years for the unexpired term):

(i) *Capitalisation of existing ground rent to termination of lease*

Ground rent payable: £16.00 per year
Years Purchase: 52 years @ 5.5%: 17.0585
Capitalised ground rent: £16.00 x 17.0585 = £272.94

(ii) *Modern ground rent*

Standing house value of subject property: £130,000
Percentage attributable to site: 37.5%: £48,750
Annual equivalent @ 5.5% = £2,681.25

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,681.25
Years Purchase at 5.5% in perpetuity deferred 52 years: 1.12334
Capitalised modern ground rent: £2,681.25 x 1.12334 = £3,011.96

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £3,285.

Reasonable costs recoverable under section 9(4) of the 1967 Act

Evidence and submissions on behalf of the applicant leaseholder

- 18 Mr Brunt submitted that the legal costs recoverable by the respondent from the applicant should not exceed £300. He based that submission on three factors: first, that the freehold title to the subject property is registered; secondly, that the work involved is relatively straightforward; and, thirdly, that it is for the leaseholder (or his solicitor) to draft the transfer (so that the costs are borne by the leaseholder in any event).
- 19 As to valuation fees, Mr Brunt pointed out that Mr Dixon had only inspected the subject property on 30 November 2005, nearly two months after the application in the present case had been made to the Leasehold Valuation Tribunal, the implication being that any valuation fees were "costs [incurred] in connection with an application to a leasehold valuation tribunal" and thus not recoverable by virtue of section 9(4A) of the 1967 Act.

Evidence and submissions on behalf of the respondent freeholder

- 20 Mr Dixon expressed some surprise that a reasonable costs application had been made in the present case since he claimed that Mr Brunt was fully aware of the fees normally charged where Mr Dixon's company acted for a freeholder in an enfranchisement case.
- 21 As to legal costs, Mr Dixon indicated that the standard fee charged to his company was £325.
- 22 As to valuation fees, Mr Dixon indicated that his standard charge was £245 plus VAT. He pointed out that the subject property had been unoccupied for some time; but he did not claim that this had caused any difficulty in arranging an inspection.

Determination of the Tribunal

- 23 The Tribunal gave full consideration to the arguments and evidence of the parties.

Price payable for the freehold interest in the subject property

- 24 The Tribunal holds that the standard basis of valuation adopted by Mr Brunt and Mr Dixon properly reflects the principles of the 1967 Act.
- 25 As noted above, there are two factors in the valuation calculation on which the parties remain in dispute: the site value percentage and the appropriate deferment or yield rate to be applied at all stages of the valuation calculation.

Site value percentage

- 26 As to the site value percentage, both Mr Brunt and Mr Dixon rely on the decision of the Leasehold Valuation Tribunal relating to 19 Redbank Avenue, in which the Tribunal adopted the figure of 30 per cent. However, the Tribunal is not persuaded that that case provides support for either of the figures that Mr Brunt and Mr Dixon respectively argue should be adopted in the present case. As Mr Dixon argues, number 19 has a very narrow frontage and has very significant sloping both from front to rear and from side to side. However, the Tribunal in that case stated that, while those features created significant difficulties for the (re)development of the site, which in turn justified the adoption of the figure of 30 per cent, in the absence of such features, the appropriate figure would have been 33.33 per cent. It is therefore difficult to discern the basis for Mr Dixon's suggested figure of 37.5 per cent for the subject property. At the same time, the sloping of the subject property is significantly less severe than that of number 19, which makes it equally difficult to discern the basis of Mr Brunt's suggestion that the appropriate figure in the present case is also 30 per cent.
- 27 In the view of the Tribunal, the subject property does have (re)development difficulties similar in kind to those affecting number 19; but those difficulties are rather less acute in the case of the subject property. However, the Tribunal finds that those features still have an operative effect on the site value. The Tribunal therefore holds that the appropriate site value percentage in the present case is 32 per cent.

Deferment or yield rate

- 28 As to the appropriate deferment or yield rate to be applied at all stages of the valuation calculation, the starting point for the Tribunal must be the decision of the Lands Tribunal in the *Cadogan* cases. Although the Lands Tribunal reaffirmed the principle that previous decisions on questions of fact and opinion do not establish any conventions or precedents, it stated that decisions of the Lands Tribunal that set out general guidance on valuation principles may be applied or referred to in subsequent cases.
- 29 In the view of the Tribunal, the *Cadogan* cases do provide general guidance to which leasehold valuation tribunals should have regard. At the same time, the actual decisions in the *Cadogan* cases must be treated with extreme care since the properties in question were very high value properties in the Kensington and Chelsea London Borough, arguably one of the most sought after residential locations in the country.
- 30 The *Cadogan* cases reject any notion of a "conventional" deferment or yield rate and require that the rate must be individually determined on the evidence in each case. Moreover, the Lands Tribunal concludes that, as a matter of economic theory, it is unlikely that there would have been a constant deferment rate despite the changes that have occurred in the investment market and financial

indicators over the last ten years; and the implication is that the deferment or yield rate would have decreased. In the view of the Tribunal, therefore, the corollary of the rejection of a conventional rate would seem to be that the Tribunal should not even treat the conventional rate as the default rate, to be adopted in the absence of evidence pointing to a different rate.

- 31 The Tribunal therefore starts from the position that, in the absence of compelling evidence, the deferment rate will normally be lower than 7 per cent, which has arguably become the conventional rate adopted in determinations under the 1967 Act in relation to properties in the West Midlands.
- 32 Both Mr Brunt and Mr Dixon adduced evidence in support of their respective submissions as to the appropriate rate in the present case. However, none of that evidence can be regarded as wholly compelling.
- 33 Mr Brunt adduced evidence of settlements in which he and other chartered surveyors had adopted the figure of 7 per cent. However, as the Lands Tribunal stated in the *Cadogan* cases -
- "settlements are admissible as evidence but are subject to criticism, and will usually be given weight only where a detailed analysis of the price has been agreed and the agreement has not been influenced by the Delaforce effect."
- Mr Brunt provided no detailed analysis of the settlements on which he relied. Mr Brunt also referred to two post-*Cadogan* decisions of the Leasehold Valuation Tribunal in relation to properties in the West Midlands in which the Tribunal had adopted the figure of 7 per cent. However, as he fairly pointed out, in neither case was the freeholder present or represented.
- 34 Mr Dixon referred to two earlier decisions of the Lands Tribunal relating to properties in the West Midlands, in which the Tribunal had adopted the figure of 6.5 per cent; but he accepted that in neither case was the leaseholder present or represented. He also referred to two ground rent sales relating to properties in the West Midlands at prices which "suggested" a deferment or yield rate below 6 per cent. However, Mr Dixon's own use of the word "suggested" would seem to acknowledge the inevitable speculation involved in the extrapolation of the deferment or yield rate from ground rent sales prices. In any event, ground rent sales do not necessarily provide evidence of sales on the terms that must be assumed for valuation under the 1967 Act. Finally, it would seem reasonable to infer that the two sales referred to by Mr Dixon were the best that he could find to support his suggested figure of 5.5 per cent.
- 35 Although the Tribunal finds that the evidence adduced by the parties is not compelling, the evidence does point to a figure for the deferment or yield rate closer to the figure suggested by Mr Brunt. On the evidence, therefore, the Tribunal would be inclined to adopt the deferment or yield rate of 6.5 per cent.
- 36 In the view of the Tribunal, such a figure is consistent with the *Cadogan* cases. It reflects the implication of those cases that the conventional rate is probably too high. At the same time, it takes account of the fact that the subject properties in the present case are very different from the subject properties in the *Cadogan* cases - in respect of their location, size, nature, quality, value and, ultimately, in respect of the risk attached to an investment in such properties.
- 37 The Tribunal therefore holds that the appropriate deferment or yield rate in the present case is 6.5 per cent.

Valuation calculation

38 Applying those figures (and the agreed figures referred to in paragraph 9 above), the Tribunal calculates the price payable for the freehold interest in the subject property as follows:

(i) *Capitalisation of existing ground rent to termination of lease*

Ground rent payable: £16.00 per year
Years Purchase: 52 years @ 6.5: 14.8026
Capitalised ground rent: £16.00 x 14.8026 = £236.84

(ii) *Modern ground rent*

Standing house value of subject property: £130,000
Percentage attributable to site: 32%: £41,600
Annual equivalent @ 6.5% = £2,704

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,704
Years Purchase at 6.5% in perpetuity deferred 52 years: 13.7359
Capitalised modern ground rent: £2,704 x 0.58198 = £1,573.67

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £1,811.

39 Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £1,811.

Reasonable costs recoverable under section 9(4) of the 1967 Act

40 As to legal costs, the Tribunal is persuaded by the arguments of Mr Brunt. The Tribunal therefore holds that the reasonable legal costs recoverable by the respondent from the applicant are £300 (plus VAT if applicable).

41 As to valuation costs, on the weight of the evidence the Tribunal finds that Mr Dixon carried out his inspection and valuation of the subject property specifically to provide a valuation for the purposes of the leaseholder's application to the Tribunal and the scheduled hearing. The Tribunal therefore holds that the costs of Mr Dixon's valuation are "costs [incurred] in connection with an application to a leasehold valuation tribunal" and thus not recoverable by virtue of section 9(4A) of the 1967 Act.

Summary

42 The Tribunal determines as follows:

- The price payable by the applicant leaseholder for the freehold interest in the subject property is £1,811.
- The reasonable legal costs recoverable by the respondent freeholder from the applicant leaseholder are £300 (plus VAT if applicable).
- No valuation costs are recoverable by the respondent freeholder from the applicant leaseholder.

Nigel Gravells

Professor Nigel P Gravells
Chairman

23 DEC 2005