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

Ref: BIR/00CN/OAF/2007/0067

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

Applicant: Mr. M.I. Afsar (leaseholder)

Respondent: Unknown (freeholder)

Subject property: 16 Lansdowne Road
Erdington
Birmingham
B24 8AP

Relevant Valuation Date: 18 June 2007

Application to the LVT: 9 July 2007

Hearing: 3 October 2007

Appearances:

For the Applicant: Mr. A.W.Brunt FRICS

For the Respondent: The Respondent is unknown

Members of the LVT: Mr. A.P. Bell MA LLB
Mr. S. Berg FRICS
Mrs. C.L. Smith

Date of determination: 15 NOV 2007

Introduction

1. This is a decision on an application under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr.M.I. Afsar, the leaseholder of the house and premises at 16 Lansdowne Road Erdington Birmingham B24 8AP ("the subject property"). The application is under section 21(1)(a) of the 1967 Act for the determination of the price payable under section 9 of the 1967 Act for both the freehold interest and the interest of the head leaseholder in the subject property as directed by paragraph 2 of the order of the Birmingham County Court dated 18 June 2007.
2. The relevant valuation date in respect of the Applicant's claim to acquire the freehold interest in the subject property under the terms of the 1967 Act was 18 June 2007 being the date of the application to the Birmingham County Court by the Applicant.
3. The Tribunal accepts that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.

Subject property

4. The subject property is held under a Lease dated 24 September 1925 for a term of 99 years (less three days) from 25 March 1911 at an annual rent of £6.50. The unexpired term at the relevant valuation date was 3 years.
5. The subject property comprises an end- terraced house of brick construction with a tiled roof house built in about 1911 and situated in an established residential area in Erdington on a narrow but average sized plot. There is a shared gate to the small front garden and a side entry to the rear garden.
6. The accommodation comprises a hall, two reception rooms, a breakfast room and a kitchen on the ground floor and three bedrooms and a small bathroom/ wc on the first floor.

Inspection and hearing

7. The Tribunal was not able to obtain access to inspect the subject property on 3 October 2007.
8. The subsequent hearing was attended by Mr. A. W. Brunt representing the Applicant. The Respondent and also the intermediate landlord are both unknown as is evidenced by an order of the Birmingham County Court dated 18 June 2007.

Representations of the parties

9. Mr. Brunt referred the Tribunal to two other properties in Lansdowne Road, namely a similar terraced house, number 6, sold on 28 February 2007 for £90,000 and a larger semi-detached house sold in July 2006 for £150,000 and also two other nearby houses, 78 Wood End Road under offer at £130,000 and 68 Hunton Road under offer at £121,000. In the light of these comparables and his own experience Mr Brunt submitted that a figure of £130,000 reflected the entirety value of the subject property. He submitted that the appropriate percentage to apply in calculating the site value on the standing house basis was 30% as the subject property was built on a narrow plot. Finally Mr Brunt explained that he had used a capitalisation rate of 10% because the unexpired term was so short and the rent payable so small that the value of the term had very little attraction to an investor.
10. With regard to the deferment rate Mr Brunt submitted that the most appropriate rate for a modest house in the West Midlands was 6.5%, although he had included in his report a valuation using both this yield rate and also the rate of 4.5% to reflect the guidance given in the Lands Tribunal case of *Cadogan v Sportelli* (LRA\9\2005) where the unexpired term was less than 20 years. In support of his submission that the appropriate rate was 6.5% Mr. Brunt contended there was a fundamental difference between a section 9(1) valuation and a section 9(1)(a) valuation under the 1967 Act since the latter took marriage value into account whereas the former did not, and also he contended that under section 9(1)(a) the “investor receives the whole property back with vacant possession at the end of the term rather than just a ground rent”, which he claimed was “a stark difference” leading to his conclusion that the higher vacant possession value in these circumstances would lead an investor to accept a lower yield. Hence his view was that a deferment rate of above 4.75% was appropriate. He also submitted that the housing market in Birmingham and the surrounding area was not of the same calibre as the London market and that regional variations in capital values did not alone make sufficient allowance between investment choices justifying valuers using identical deferment rates. In support of this contention Mr. Brunt referred to paragraphs 50 and 51 from the Lands Tribunal decision in *Cadogan v Sportelli* where the statement was made that “*as was pointed out in Arbib (paras 88 and 148) the deferment rate is a valuation tool to enable the vacant possession value as at the valuation date to be used for the purpose of arriving at the present value of the freeholder's reversionary interest*”.
11. Mr. Brunt's two valuations in accordance with section 9(1) of the 1967 Act based on the two different deferment rates referred to in his report, as mentioned in paragraph 10 above, were as follows:

(a) Deferment rate of 4.50%

Term:

Ground Rent:	£6.50 per annum	
YP 3 years @ 10%:	2.48685	16.16

Reversion:

Entirety value:	£130,000	
Site apportionment @ 30%	£39,000	
Section 15 modern ground rent @4.50%:	£1,755	
YP in perpetuity deferred 3 years @ 4.50%:	19.47326	<u>£34,175.57</u>
		£34,191.73

(b) Deferment rate of 6.50%

Term:

Ground Rent:	£6.50 per annum	
YP 3 years @ 10%:	2.48685	£16.16

Reversion:

Entirety value:	£130,000	
Site apportionment @ 30%	£39,000	
Section 15 modern ground rent @6.50%:	£ 2,535.	
YP in perpetuity deferred 3 years @ 6.50%:	12.73614	<u>£32,286.11</u>
		£32,302.27

Decision

12. The Tribunal agrees with Mr. Brunt that the entirety value is £130,000 and that the appropriate percentage to be applied to the standing house value in calculating the value of the site should be 30%. They also agree the capitalisation rate of 10% put forward by Mr. Brunt in view of the short unexpired term of the lease and the low rent.
13. With regard to the deferment rate the Tribunal do not consider that paragraphs 50 and 51 of Cadogan v Sportelli support the argument of Mr. Brunt that good reason exists in this case for adopting a higher rate than those used by the Lands Tribunal in Cadogan v Sportelli of 4.75% (for houses) and 5% (for flats) having regard to the directions given in that case as set out below by reference to the various paragraphs of that decision as set out below:

Paragraph 117

“The function of the Tribunal is thus to make decisions on points of law and on what may be called principles of practice to which regard should be had by the first-tier tribunals and by practitioners dealing with claims in any of the Tribunal's original or appellate jurisdictions”.

Paragraph121

“The prospect of varying conclusions on the deferment rate in different cases reached on evidence that was less comprehensive than that before us can therefore be avoided by LVTs adopting the practice of following the guidance of this decision unless compelling evidence to the contrary is adduced. This is justified because, as we have explained above, the deferment rate is unlikely to vary according to factors particular to the individual case. Some factors, including in particular the prospect of long-term growth, will not vary from case to case, while other factors, such as location and obsolescence, will already be reflected in the vacant possession value. Hope value would be a factor that could lead to different deferment rates for different lengths of term if it was not reflected elsewhere in the valuation: but we have concluded that hope value is excluded as a matter of law. The case for adopting a single deferment rate (with a standard adjustment for flats) for all reversions in excess of 20 years is thus, in our view, strong”.

Paragraph122

“In our judgment the deferment rate may be treated as stable over time unless a trend movement in the risk-free rate can be identified or it can be established that the long term prospects of growth in residential property have changed or that, for some other reason, the attraction of investment in residential reversions can be shown to have increased or diminished”.

Paragraph123

“The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate”.

The Tribunal have not found in this case any particular features that justifies a departure from the alternative rate of 4.50% contained in Mr. Brunt’s report (the reduction of the rate from 4.75% to 4.50% being made by Mr. Brunt to recognise the fact that the unexpired term is less than 20 years). The Tribunal are of the view that the argument by Mr. Brunt that, as under section 9(1A) *“the investor receives the whole property back with vacant possession at the end of the term rather than just a ground rent”* [under section 9(1)], the investor would accept a lower yield rate in a case under section 9 (1A) while expecting a higher yield rate under section 9(1) is flawed (if the Tribunal have understood his argument correctly), since on the expiry of any long tenancy at a low rent statutory security of tenure is conferred on the tenant

under Section 10 of the Local Government and Housing Act 1989 (the 1989 Act).

14. Adopting the lower yield rate of 4.50% contained in Mr. Brunt's report and applying figures of Years Purchase from Parry's Valuation Tables the Tribunal determines the price payable by the Applicants under section 9 of the 1967 Act for both the freehold interest in the subject property and the interest of the head leaseholder at **£34,191.73** in accordance with paragraph 11(b) above. In reaching its determination the Tribunal has had regard to the relevant law, their inspection of the subject property and the relevant comparables, the representations of the attending party and the Tribunal's own knowledge and experience as an expert tribunal, but not any special or secret knowledge.
15. The Tribunal finds that no amount is payable by the Applicant in respect of rent arrears under section 27 (5) of the 1967 Act because the landlord has not furnished the Applicant with a notice under section 46(1) of the Landlord and Tenant Act 1987.

..... *AP Bell*

A P Bell
Chairman

Dated **15 NOV 2007**