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**DECISION OF LEASEHOLD VALUATION TRIBUNAL  
LEASEHOLD REFORM ACT 1967**

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Applicant: : MR R A A UNWIN

Respondent : SOUNDMANOR LIMITED

Property : 213 NUTHURST ROAD, BIRMINGHAM B31 4TG

Valuation Date : 12th DECEMBER 2007

Heard at : Birmingham Panel Offices

On : 1st MAY 2008

Appearances

For the Applicant : Mr A Brunt FRICS

For the Respondent : Mr K Davis FRICS

Members of the Tribunal : Mr D Jackson (Chairman)  
Mr V Ward FRICS  
Mrs E Everett

Date of decision :

1. BACKGROUND

This is a decision of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel on an application to determine the price payable for enfranchisement under section 21 of the Leasehold Reform Act 1967 ("the Act") in relation to 213 Nuthurst Road, Birmingham, B31 4TG ("the Property").

2. The property is held under the terms of a Lease dated 19th May 1954 and made between Cofton Common Estate Limited (1) Trust Estates (Birmingham) Limited (2) G N Southall Securities Limited (3) Wansax Traders Limited (4) and Hasia Limited (5) whereby the Property was demised for a term of 99 years from 29th September 1953 at an annual rent of £6.

3. By Notice ("the Tenant's Notice") dated 12th December 2007 the Applicant gave "Notice of Tenant's Claim to Acquire the Freehold ". No Counter Notice has been served.

4. On 12th February 2008 the Applicant applied to the Tribunal for determination of the price payable under section 9 of the Act and also for determination of the Landlord's Costs payable under section 9(4) of the Act.

5. INSPECTION

The Tribunal inspected the Property on the morning of the hearing. The Property is situated in a slightly elevated position, the plot sloping upwards from front to back. The Property is a two storey mid-terraced house built in the early 1930s of traditional brick and tile construction. The original accommodation comprised lounge and breakfast/kitchen. The Property now has a single storey extension at the rear which provides an extension to the lounge area and separate fitted kitchen. On the first floor there are 3 bedrooms and a house bathroom (one of the bedrooms occupies a "dog-leg" above the shared side entrance). There is a rear garden with shared side access. The front garden is used for car parking (there is no garage). The Property has gas central heating and new PVC double-glazing.

6. VALUATION – AGREED MATTERS

6.1 Valuation in accordance with section 9 (1) of the Act.

6.2 Valuation date – 12th December 2007.

6.3 Unexpired term 44.75 years.

6.4 Straightforward term and reversion valuation. In the absence of any evidence of cleared site sales the Standing House Method was used to determine the section 15 ground rent.

6.5 Value of ground rent receivable during the remainder of the term - £94.75

6.6 Entirety value - £127,500.

6.7 Site Apportionment – 33.33.

6.8 Capitalisation rate to be applied to section 15 Modern Ground Rent – 5.5% (agreed by Mr Davis subject to proviso that if the Tribunal does not adopt a Haresign addition then he seeks to argue for 4.75%).

7. ISSUES FOR DETERMINATION

7.1 Haresign Addition – should a separate value be attributed to the Respondent freeholder's reversion at the end of the 50 year extension (Mr Davis) or should the section 15 rent be capitalised in perpetuity (Mr Brunt).

7.2 Deferment rate to be applied to Respondent's ultimate reversion – Mr Davis 4.75%; Mr Brunt 5.5%.

8. HARESIGN ADDITION

Mr Davis both in his oral submissions at the hearing and his written submissions dated 25th April 2008 supports his argument that there should be a separate valuation for his client's ultimate reversion as follows:-

8.1 A Haresign Addition must be a substantial sum. Index linking the figure of £349 in Haresign itself (*Haresign v St John the Baptist's College, Oxford* (1980) 225 EG 711). Mr Davis submits that his figure of £1568 is substantial.

8.2 There has been major refurbishment of the inner suburbs of Birmingham either by local authorities, landlords or tenants improving the quality of properties and their life expectancy.

8.3 The Lease contains a covenant by the leaseholder "well and substantially to repair" (clause 2(6) of the Lease) and the freeholder is entitled to receive his property back at the end of the 50 year extension "in repair."

8.4 Mortgage companies will lend to properties built in the early 1900s and are prepared to do so for terms of up to 45 years.

9. Mr Brunt argues that Haresign is a "risky valuation tool" and invites the Tribunal to value the section 15 modern ground rent as if in perpetuity. Mr Brunt submits that the issue is not whether the Property will be standing at the end of the 50 year but whether a hypothetical purchaser would attribute value to the ultimate reversion. Mr Brunt relies on section 143 of Commonhold and Leasehold Reform Act 2002 which abolished the prohibition on tenants' right to enfranchise after the end of the original lease term and also extends security of tenure on the end of long residential tenancies under schedule 10 the Local Government and Housing Act 1989 to leases extended within the Act. Having regard to those provisions a hypothetical purchaser "dare not hope" to get vacant possession at the end of the lease extension. Finally Mr Brunt submits that with 44.75 years remaining of the existing term any investor would be looking 95 years into the future at the end of the lease extension and Mr Brunt could not see that as being a basis for a sensible objective claim to be added to a valuation. Put simply the ultimate reversion is too remote for a hypothetical purchaser to take into account.

10. TRIBUNAL'S DETERMINATION - HARESIGN ADDITION

The Tribunal has had regard to the decision of the Lands Tribunal in *Marlodge (Monnow) Limited* (LRA/28/2002) at paragraph 15:

"The essential question to my mind, is not whether the subject Property will still be standing 62 years after the valuation date, but whether the purchaser in the hypothetical sale envisaged in 9(1) of the 1967 Act would value the reversion to standing house value? The usual practice is to capitalise the modern ground rent in perpetuity, ignoring both the rent review at the 25th year and the landlord's right to possession at the end of the extended lease. The so-called Haresign Addition is an exception to this practice. The circumstances must warrant this exception. I accept that 11 Park Avenue will still be standing at the end of the extended lease but I cannot accept that the hypothetical purchaser would include in his price any additional value for the house in excess of the capitalised ground rent in perpetuity which forms part of a standard enfranchisement valuation under section 9(1). I can accept the Haresign Addition might be included where the house is substantial (as in the Haresign decision itself) but not where it is a small terraced house."

11. The Property is an unexceptional inner terrace property built in the early 1930s. The 99 year lease expires in 2052 and a 50 year extension would not expire until 2102. Having inspected the Property the Tribunal is not satisfied that the Property is either exceptional or substantial. It is properly described as a small terraced house. The Tribunal doubts that whether refurbished or not, it will still be standing in 2102. However as set out in Marlodge above, that is not the test that the Tribunal is required to apply.

12. Applying the "essential question" whether a purchaser in a hypothetical sale would attribute value for the ultimate reversion, the Tribunal determines that the ultimate reversion, in nearly 95 years time, is too remote and that for a small terraced house of this sort, having regard to the risk that the tenant may remain in occupation at the expiration of the term (schedule 10 above), the Tribunal determines that it is inappropriate to attribute a separate value to the landlord's ultimate reversion and therefore in accordance with usual practice the section 15 rent will be capitalised in perpetuity.

13. DEFERMENT RATES/CAPITALISATION RATES

Mr Davis relies on the decisions of the Lands Tribunal and the Court of Appeal in Sportelli (Earl Cadogan and the Cadogan Estates Limited (1) and Michele Francesco Sportelli and Lara-Lyn Victoria Lamont Sportelli (2) LRA/50/2005; [2007] EWCA Civ1042) and further submits that the evidence given by the financial experts to the Lands Tribunal applies not only to prime central London but also as the country as a whole (see paragraph 20, 22, 23 and 79 of the Lands Tribunal decision). He further submits that Mr Brunt has not called any of the evidence envisaged by the Lands Tribunal at paragraph 123 or by the Court of Appeal at paragraph 102.

14. Mr Brunt invited the Tribunal to capitalise the deferred modern ground rent at 5.5% "in line with my personal knowledge of more than 24 settlements and recent LVT determinations" (see written submissions dated 16th April 2008 paragraph 8).

15. DEFERMENT/CAPITALISATION RATE – TRIBUNAL'S DETERMINATION

The Tribunal has determined not to include a Haresign Addition in its valuation and have not therefore gone on to consider the appropriate deferment rate that would have been applied under those circumstances.

16. The Tribunal has some difficulty in reconciling Mr Davis' position that if there is to be a Haresign Addition then he accepts 5.5% "in the valuation of the income stream" (see paragraph 9.11 of his written submissions) but that if there is not to be a Haresign Addition then 4.75% should be applied to the modern ground rent in perpetuity.

17. The Tribunal notes the recognised method of approach to the calculation to determine the current value of the section 15 modern ground rent in perpetuity is in two stages as set out in Hague on Leasehold Enfranchisement (4th edition 2003) as follows:-

17.1 The site value when agreed or determined must be "decapitalised" or "rentalised" to arrive at the section 15 rent (see paragraph 8-13 of Hague);

17.2 The section 15 rent must be capitalised as if in perpetuity, deferred for the period of the unexpired term of the existing tenancy, not seeking to quantify any different rent that might become substituted at the expiration of 25 years from the original term date, and not quantifying separately the value in reversion at the expiration of 50 years from the original term date (see paragraph 9-10 of Hague).

In summary the approach under section 9(1) involves firstly decapitalisation and secondly a recapitalisation and deferment.

The Tribunal in carrying out its valuation under section 9(1) is not concerned with "the proper deferment rate to be applied to vacant possession value" which is only relevant to valuations under section 9(1A) or under the 1993 Act. Both the Lands Tribunal (at paragraphs 1 and 6) and the Court of Appeal (at paragraph 2) confirm that they were concerned only with the preliminary issue as to deferment rate to be applied to vacant possession rate and were not concerned with the issue of capitalisation rates. Accordingly the Tribunal in determining the price payable under section 9(1) is not required to apply a deferment rate to the vacant possession value and is not therefore bound by the guidance in Sportelli.

18. The Tribunal has however been assisted by the factors relevant to capitalisation rate as set out in the Lands Tribunal decision in *Nicholson and others v Goff* [2007] LRA29/2006 (at paragraph 9)

“the length of the lease term, the security of recovery, the size of the ground rent (a larger ground rent being more attractive), whether there were provisions for review of the ground rent and, if there was such provision, the nature of it.”

Weighing the parties' evidence and submissions as a matter of judgment as an expert Tribunal, the Tribunal determines that an appropriate rate for both decapitalisation and subsequent recapitalisation and deferment of the modern ground rent is 5.5%.

19. TRIBUNAL'S VALUATION

Term:	Agreed	£ 94.75
Reversion:		
Entirety value	£127,500	
Site value @ 33.33	£ 42,500	
Sec.15 modern ground rent at 5.5%	£ 2,337.50 pa	
YP perp. after 44.75 years at 5.5%	<u>1.65611</u>	
		<u>£ 3,871.16</u>
		£ 3,965.90
	Say	£3,966

20. COSTS

At the hearing the parties were able to agree a valuation figure of £325 plus VAT. In relation to legal costs Mr Brunt argues for £325 plus VAT. Mr Davis indicates that his clients' solicitors will charge £500 plus VAT. The Tribunal determines that the appropriate figure for legal costs for conveyancing work of this sort is not to exceed £400 plus VAT and disbursements.

21. DETERMINATION

- 21.1 The price payable by the Applicant under section 9(1) of the Act is £3,966.
- 22.2 The valuation costs payable under section 9(4) of the Act are agreed at £325 plus VAT.
- 22.3 The Tribunal determines reasonable legal costs not to exceed £400 plus VAT and disbursements.

In reaching its determination the Tribunal has had regard to the evidence and submissions of the parties, relevant law and its own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

Signed ..... 

MR D JACKSON – Chairman

**- 4 JUN 2008**