

MIDLAND RENT ASSESSMENT PANEL

Case No BIR/00CN/OAF/2008/0067

LEASEHOLD VALUATION TRIBUNAL

DECISION OF LEASEHOLD VALUATION TRIBUNAL
LEASEHOLD REFORM ACT 1967

Applicant : Trustees of the Calthorpe Estate
Respondent : Halima Bibi and Yasmin Bibi
Property : 56 Odell Place, Edgbaston B15 7RQ
Valuation Date : 1st September 2007

Heard at : Birmingham Panel Offices
On : 23rd October 2008

Appearances -
For the Applicant : Mr K Davis
For the Respondent : Mr A Brunt

Members of the Tribunal : Mr D Jackson (Chairman)
Mr R Follwell FRICS
Mr J Arain

Date of decision :

1. PRELIMINARY

This is a decision of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel on an application under Section 21 of the Leasehold Reform Act 1967 ("the Act") for determination of the price payable on enfranchisement under section 9 and for a determination of the Landlords costs under section 21(1)(ba).

2. The Property is held by the Respondent under the terms of a lease dated 20th February 1981 and made between Bryant Homes Limited (1) and Mohammed Monzur and Nicola Plant (2) whereby the Property was demised for a term of 99 years (less 3 days) from 29th September 1976 at a rent of £75 per annum. The rent reserved rises to £100 per annum in

September 2026 for 25 years and rises again in 2051 to £125 for the last 24 years of the term. The intermediate Landlord is Taylor Wimpey Developments Limited (formerly known as Bryant Homes Central Limited). Under the current rent the freeholder receives £44 p.a. leaving a profit rent to Taylor Wimpey Developments Limited of £31 p.a. until September 2026. Upon review the freeholder will receive £58.75 p.a. and Taylor Wimpey a profit rent of £41.25 p.a. For the last 24 years of the term the freeholder will receive £73.50 per annum leaving a profit rent of £51.50 p.a. to Taylor Wimpey.

3. The Respondent gave Notice of Claim on 1st September 2007.

4. On 27th February 2008 the Applicant applied to the Tribunal for a determination.

5. INSPECTION

The Tribunal inspected the Property on the morning of the hearing. The Property is a 3 bedroom house of modern brick and tile construction with integral garage. Accommodation comprises lounge, kitchen and conservatory. There are 3 bedrooms, and a house bathroom upstairs. The Property has central heating and double glazing. The Property is located on a corner plot at the end of a cul de sac with gardens to the front, side and rear.

6. AGREED MATTERS

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

6.2 Valuation Date – 1st September 2007.

6.3 Unexpired term – 68 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 (capitalised in perpetuity – no separate value attributed to the freeholder's reversion at the end of the 50 year extension).

6.5 Entirety Value - £178,000.

6.6 Site Apportionment – 35%.

6.7 Term valuation of freeholder's interest - £887.

7. MATTERS FOR DETERMINATION

7.1 Deferment Rate for Reversion – Respondent 5.5%; Applicant 4.75%.

7.2 Value of Intermediate Landlord's interest.

8. DEFERMENT RATE

The Tribunal has considered the decisions of the Lands Tribunal and Court of Appeal in Sportelli (Earl Cadogan and the Cadogan Estates Limited (1) and Michele Francesco Sportelli and Lara-Lynn Victoria Lamont Sportelli (2) LRA/50/2005; [2007] EWCA Civ.1042).

9. Mr Davis submits that based on the guidance in Sportelli, LVT decisions, auction results and his day to day experience in the market place that the correct deferment rate is 4.75%. Further the Respondent has not produced statistical information to satisfy the burden of evidence to prove a difference in the growth rate between Prime Central London and the West Midlands. Mr Davis relied on decisions of the Lands Tribunal and Midland LVT showing that there is clearly no difference in the growth rate between London and the West Midlands. The differences between section 9 (1) and section 9(1A) are in reality negligible. In the auction room section 9(1) valuation ground rents are being traded for which there is a ready and substantial market at 4.75%. The West Midlands has an advantage over Prime Central London as the base value of property is lower this allows more investors to enter the market and larger investors to spread any perceived risk across a portfolio.

10. For the Respondent it was argued that since October 2007 there have been a large number of Midland LVT decisions adopting 5.5%. The guidance in Sportelli is not applicable to section 9(1) valuations as that case was concerned with "the proper deferment rate to be applied to vacant possession value" which is only relevant to section 9 (1A) valuations. Nothing was said in Sportelli which applies to the determination of the present value of an income flow (modern ground rent) in the future. Mr Brunt argues that this is a matter which falls outside the vacant possession value of the Property. When an investor has a chance of obtaining vacant possession he has options open to him. He is likely to be willing to pay a higher price hence the lower deferment rate which is why section 9(1) valuations should incorporate a rate higher than 4.75%.

11. The Tribunal determines that the appropriate rate is 5.5% following the numerous Midland LVT decisions on this point.

12. Both the Lands Tribunal and the Court of Appeal in Sportelli made it clear that they were dealing with section 9 (1A) valuations (higher value properties) and that the central issue for their consideration was "the proper deferment rate to be applied to vacant possession value."

A section 9(1A) valuation requires the application of a deferment rate to a vacant possession value. Under section 9(1) the Tribunal is required to determine the present value of the modern ground rent after the end of the unexpired term (usually in perpetuity). These are clear and significant differences in the basis of valuation.

13. The Tribunal agrees with the Respondent that a section 9 (1A) valuation is considerably more attractive to an investor particularly as the investor is theoretically receiving vacant possession in relation to a higher value property rather than simply a modern ground rent in perpetuity. The hypothetical investor would, to reflect that difference, adopt an increased "risk premium" in his/her decision making under section 9(1). It is a matter of common sense and accepted valuation practice that an investor would be willing to pay a higher price for more attractive investment (higher value property in Prime Central London) resulting in a lower deferment rate than for a less attractive investment (lower value property in the West Midlands). This is clearly a matter that falls outside the vacant possession value of the property and which the Tribunal using its knowledge and experience as an expert Tribunal feels should be reflected in an increase of 0.75% in the risk premium identified in Sportelli resulting in a deferment rate of 5.5%.

14. INTERMEDIATE LANDLORD'S INTEREST

The Tribunal has considered a written submission dated 23rd September 2008 prepared by Mr S Prichard FRICS on behalf of Taylor Wimpey Developments Limited. Mr Prichard has adopted a capitalisation rate of 4.75% following the Guidance in Sportelli.

15. Mr Brunt has followed the guidance in Nicholson & Others –v- Goff LRA/29/2006. Over time the ground rent will reduce in value because of inflation but in this case it is subject to review. It is not therefore a particularly attractive investment because the rents are still nominal. Collection can be time consuming. The intervening lease is a wasting asset and should therefore command a higher capitalisation rate of 7%.

16. The Tribunal is not persuaded by Mr Prichard's submissions. The correct guidance on capitalisation rates is set out in Nicholson-v- Goff. The rent will be eroded by inflation but there is a provision for review albeit fixed. The Tribunal determines a capitalisation rate of 6.5%.

17. TRIBUNAL VALUATION - FREEHOLD

Term:			
Agreed			£ 887.00
Reversion:			
Entirety value	£178,000		
Site value at 35%	£ 62,300		
Sec.15 modern ground rent at 5.5%	£ 3,426.50 pa		
YP perp. after 68 years at 5.5%	<u>0.47695</u>		<u>£1,634.26</u>
			£2,391.26
		Say	<u>£2,521</u>

18. TRIBUNAL VALUATION – HEAD LEASE

Ground rent	£31 pa		
YP for 19 years at 6.5%	10.7347		£332.78
1st Review to	£41.25 pa		
YP for 25 years @ 6.5%	12.1979		
PV of £1 in 19 years @ 6.5%	0.30224		£152.08
2nd Review to	£51.50		
YP for 24 years @ 6.5%	11.9907		
PV of £1 in 44 years @ 6.5%	0.062606		<u>£ 38.66</u>
			£523.52
		Say	<u>£ 524</u>

19. COSTS

The Tribunal gave leave at the hearing for the parties to produce written submissions on the question of legal costs. The Tribunal has considered a letter dated 10th November 2008 from Messrs Mills & Reeve who act for the Applicant. They indicate their fees are £535 plus VAT and disbursements. It is open to a freeholder to instruct solicitors of its own choosing and accordingly to instruct those whom it believes will best serve its interests. Matters under the 1967 Act are often not straightforward and do require the attention of a practitioner with suitable expertise.

Mr Brunt replied by letter dated 11th November. There is no mention by Mills & Reeve of hourly rate or the level of fee earner dealing with the conveyancing. Much of the work will be carried out by the tenants' solicitors. In a highly competitive market £535 is more than double what some firms now charge.

The Tribunal notes that Mr Brunt accepts that the freeholder can instruct a solicitor of its own choosing. The issue for the Tribunal is whether Mills & Reeve's costs are reasonable. The Tribunal agrees with what was said in 16 Leigham Drive, Edgbaston (BIR/44UB/OAF/2008/0470):

"What was required was an assessment of reasonable costs, and that these would be within a range, rather than simply the lowest available."

Leasehold Enfranchisement cases are not straightforward. However Mills & Reeve's fees are higher than other firms for this kind of work and no breakdown of time or hourly rate has been provided. On that basis the Tribunal determines £450 plus VAT and disbursements as being reasonable.

In relation to valuation fees Mr Davis asks for £385 plus VAT. No internal inspection was carried out. Mr Brunt suggests £300 plus VAT. The Tribunal agrees that as only an external valuation was carried out Valuation Costs should be limited to £300 plus VAT.


20. In relation to the Intermediate Landlord's costs Messrs Bigwood wrote to the Tribunal on 17th March 2008 indicating their costs in the sum of £200 plus VAT. No indication was given as to the level of legal fees. Mr Brunt suggests in his written submissions a valuation fee of £200 and legal fees in the region of £200 - £250.

The Tribunal determines valuation fees of £200 as agreed and legal fees of £200 on the basis that the bulk of the work will be carried out either by the freeholder's solicitors or the tenant's solicitors.

21. DETERMINATION

- 21.1 The price payable by the Applicant under section 9(1) of the Act is £2,521 to the freeholder and £524 to the Intermediate Landlord.
- 21.2 The reasonable costs payable by the Applicant to the freeholder under section 9(4) of the Act are not to exceed £450 plus VAT in relation to legal fees and £300 plus VAT in relation to the valuation fees.
- 21.3 The reasonable costs payable by the Applicant to the Intermediate Landlord under section 9(4) of the Act are not to exceed £200 plus VAT in relation to legal fees and £200 plus VAT in relation to the valuation fees.

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

Signed 

MR D JACKSON – Chairman

22 DEC 2000