

6044

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

BIR/OOCN/OAF/2008/O469

**DECISION**

On an application under sections 21(1)(a) to determine the price payable for the freehold interest and section 21(1)(ba) to determine the landlord's costs under section 9(4) of the Leasehold Reform Act 1967

Applicant: Mr. Stephen James Murray Laing (Leaseholder)

Respondent: Langley Green Property Co. Limited (Freeholder)

Subject property: 61, Kitchener Road, Selly Park, Birmingham. B29 7QE.

Date of tenant's notice: 17<sup>th</sup> January 2008

Application to the LVT: 20<sup>th</sup> May 2008

Hearing date: 28<sup>th</sup> August 2008

Venue: The Tribunal's Offices in Birmingham

Appearances:

*For the Leaseholder* Mr. Stephen James Murray Laing FRICS

*For the Freeholder* Mr. Kenneth F. Davis FRICS

Members of the LVT Mr.R.Healey (Chairman)

Mr.W.J.Martin

Mr D.J.Satchwell

Date of determination **11 SEP 2008**

## **Introduction**

1. This is a decision on an application under section 21(1)(a) of the Leasehold Reform Act 1967 ("the Act") made to the Leasehold Valuation Tribunal by Lawcare, Solicitors on behalf of Roland Agostino Borriello in his capacity as Executor to the late Alan King relating to the house and premises known as 61 Kitchener Road, Selly Park, Birmingham B29 7QE (the subject property) for the determination of the price payable under section 9 of the Act for the freehold interest in the subject property and the amount of the Respondent Freeholder's reasonable costs.
2. At the date of death of the late Alan King he held the subject property under a lease dated 9<sup>th</sup> April 1957 and made between the Respondent Freeholder (1) and Christopher John Cummins and Kathleen Winifred Cummins (2) whereby the subject property was demised for a term of 99 years from 25<sup>th</sup> December 1956 at a ground rent of £8.00 per annum ("the Lease").
3. At the date of his death the late Alan King had held the leasehold interest in the subject property for a period in excess of two years.
4. Roland Agostino Borriello as executor to the late Alan King served on the Respondent Freeholder a Notice of Claim dated 17<sup>th</sup> January 2008 and by Notice dated 25<sup>th</sup> March 2008 Cottons as agents for the Respondent Freeholder acknowledged his right to acquire the freehold.
5. On 4<sup>th</sup> April 2008 Roland Agostino Borriello transferred the leasehold interest in the subject property to Stephen James Murray Laing "the Applicant Leaseholder."
6. The parties do not dispute and the Tribunal accepts that the qualifying conditions for enfranchisement under the Act are satisfied.
7. The unexpired term of the Lease for valuation purposes is 48 years. The valuation date is 17<sup>th</sup> January 2008 ("the Date").

## **Subject property**

8. The subject property is an inner terrace house comprising two reception rooms, kitchen and separate bathroom with three bedrooms on the first floor. The front elevation abuts the pavement. There is a rear garden providing garage space abutting the rear boundary. The frontage is 12 feet. The subject property appeared in fair condition and the site appeared fully developed.

## **Inspection and hearing**

9. The Tribunal was unable to gain access and their inspection was limited to the exterior of the subject property. By consent of the parties the Tribunal inspected the interior of number 41 Kitchener Road on 28<sup>th</sup> August 2008.
10. At the subsequent hearing the Applicant Leaseholder Stephen James Murray Laing appeared in person. The Respondent Freeholder was represented by Mr. Kenneth F. Davis FRICS.

### **The valuation method**

11. The parties adopt and we accept the generally recognised section 9(1) valuation method to derive the price payable for the freehold interest by:

(1) capitalising the ground rent from the Date for the unexpired term of the Lease (48 years) and

(2) capitalising the modern ground rent (section 15 of the Act) as at the Date as if in perpetuity but deferred for the unexpired term of the Lease – as if in perpetuity – because although the value of the modern ground rent is for a term of 50 years (as an extension to the Lease) with a rent review after 25 years the value of the freehold reversion in possession at the end of the fifty years extension (subject to the tenant's right to remain in occupation at the end of the tenancy (*Schedule 10 Local Government and Housing Act 1989*) is generally ignored as being too remote to have a separate material value.

The modern ground rent is derived from either:

(a) **The standing house method** which is achieved by decapitalising the site value which is calculated as a proportion of the entirety value of the subject property. The entirety value is the value of the freehold interest in the subject property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided that the potential identified is realistic and not fanciful or

(b) **The cleared site method** which is obtained by reference to the prices of sites for development for comparable uses.

(3) The price payable on this basis is the sum of the capitalisations at (1) and (2) above.

12. It is common ground in this case between the valuers firstly that in the absence of evidence of sales of building land in the vicinity the standing house method is to be adopted and secondly that the valuation does not include a claim for a *Haresign* addition. We accept this approach.

### **The submissions of Mr. S J M Laing - the Applicant Leaseholder**

13. Mr. Laing addressed the Tribunal and went through his written statement. With regard to Entirety Value Mr. Laing gave evidence of two completed sales in the locality of the subject property. Firstly 41 Cecil Road; sale completed on 20<sup>th</sup> March 2008 for 125,000.00 and secondly 23 Fashoda Road; sale completed on 4<sup>th</sup> June 2008 for £124,000.00. Both these properties are two bedroom terraced properties but different from the subject property as Mr Laing considered them to be superior on account of them having their front elevations set back from the road due to the presence of a small garden. Mr. Laing referred to 41 Kitchener Road which he submitted had been on the market since approximately August 2007 at an asking price of £119,000.00. This property was submitted to be directly comparable to the subject property. On 4<sup>th</sup> August an offer of £95,000.00 was received for 41 Kitchener Road. Mr. Laing informed the Tribunal that the leasehold interest in the subject property had been acquired by him in April 2008 for £91,500.00.

14. With regard to calculating the site value by reference to the "standing house method" Mr. Laing submitted that the Tribunal should apply a 27.5% figure to the Entirety Value.

15. With regard to capitalising the ground rent Mr. Laing submitted for 6.5% and for capitalising and deferring the modern ground rent at 5.5%

16. In his supplementary report Mr. Laing submits that Site Value may be arrived at by adopting a Residual Value Approach and having regard to the reinstatement value for building insurance and deducting that figure - £102,000.00 - from an appropriate Entirety Value.

17. On the basis of those figures Mr. Laing submitted a valuation of £2,324.00

#### **Cross Examination of Mr. Laing by Mr. Davis**

18. Mr Laing confirmed that his valuation was at 17th January 2008 and he stood by his valuation of £105,000.00. He accepted that the comparables in Mr. Davis's report were in close proximity. Mr. Laing confirmed that he completed the purchase of the leasehold estate in the subject property in April 2008. He confirmed that the subject property needed improvement. He agreed that the original third bedroom had been turned into a bathroom. It was acknowledged that number 41 needed attention and that the subject property was in similar condition when purchased. It was acknowledged that the site apportionment percentage was based on the size of the site. When questioned concerning the capitalisation and deferment rates Mr. Laing said that 5.5% for capitalisation of the modern ground rent and subsequent deferment had been accepted by previous LVT's.

#### **The submissions of Mr. Kenneth F. Davis on behalf of the Respondent Freeholder.**

19. Mr. Davis referred to his previous written statement. With regard to Entirety Value he takes the following evidence into account:

- (a) Freehold sale of number 13 on 23<sup>rd</sup> May 2008 at £122,500.00. An identical house but close to the Pershore Road. Believed the house does not have garage space.
- (b) Freehold sale of number 55 on 22<sup>nd</sup> May 2008 at £141,000.00. An identical house which appears to have had a loft conversion. Also has garage space.
- (c) Leasehold sale of number 61 on 4<sup>th</sup> April 2008 at £95,000.00. Since completion the Applicant Leaseholder has completely refurbished.
- (d) Freehold sale of number 60 on 10<sup>th</sup> March 2008 at £140,000.00. An identical house which appears to have had a loft conversion but no garage space.

20 Mr. Davis submits that all the above freehold sales were concluded in a falling market.

21. He draws attention to one of Mr. Laing's comparables - Kitchener Road - being in a quiet backwater with a park to the rear

22. Mr. Davis advises that Laing & Co. are currently offering number 41 at £119,000.00 but it should be borne in mind that this is eight months after the date of notice and there has been a major decline in the property market due to the credit crunch.

23. With regard to calculating the site value by reference to the standing house method Mr. Davis submitted the Tribunal should apply a 30% figure to the Entirety Value and supported the calculation by reference to the following LVT decisions all of which he said had narrow sites:-

- (a) 74 Abbey Road Smethwick. A missing landlord case. A small site of 183 sq. yds. with rear vehicular access.
- (b) 12 Beeston Road Handsworth. A contested case with Mr. Arnold Shepherd FRICS.
- (c) 225 Newcombe Road Handsworth. A missing landlord case.
- (d) 112 Imperial Road Bordesley Green. A missing landlord case conducted by Mr. Keith Chew FRICS Lawrence & Wightman.

24. With regard to capitalising the ground rent Mr. Davis submits for 5.25%.

25. With regard to capitalising the modern ground rent he submits for 4.75% and his argument may be summarised as follows. He submits that the Tribunal should follow the guidance given to LVTs in the Lands Tribunal decision in "*Sportelli (Earl Cadogan and Cadogan Estates Limited) (1) and Michelle Francesco Sportelli and Lara-Lynne Victoria Lamont Sportelli (2) LRA/50/2005: (2007) (EWCA) CIV1042*" (*the Sportelli decision*). He submits that the Sportelli decision was a landmark decision and his interpretation is that the Lands Tribunal sought to find a generic rate to apply to the whole country. He submits that the Sportelli decision accepted the principle of volatility and having decided upon the generic rates of 4.75% for houses and 5.00% for flats then went on to deal with special factors such as risk and the growth rate. Mr Davis further submits that there is little or no risk in holding a ground rent which over time will appreciate.

26. Mr Davis submits that there is no justification for a different deferment rate for section 9(1) and section 9(1A) valuations. He has never seen a 9(1A) ground rent offered for sale. He drew attention to LVT decisions on the outskirts of London where the determined growth rate was 2% and submitted that this rate (as part of the valuation calculation) should apply to the West Midlands.

27. On the basis of those figures Mr Davis submitted a valuation of £4,343.00.

#### **Cross Examination of Mr. Davis by Mr. Laing**

28. Comment was made on the comparable properties and the figure for site apportionment.

29. Mr Laing put to Mr Davies that an appropriate way of valuing Site Value was to adopt the Residual Valuation Approach as submitted in his supplementary statement. Mr. Davis replied that he preferred the "contractors method" whereby the land was valued at one third of the vacant possession value. Mr Davis added that the

costs of building from a cleared site was not the same as an insurance valuation figure

#### **Questions from the Tribunal**

30. Mr. Davis was asked if he accepted that there was any difference in the risk levels of holding a ground rent within the section 9(1) definition and 9(1A). He considered the risk to be the same.

31. Mr. Davies was asked if he accepted that since the 1970's on the basis of available statistics there had been greater growth in London house prices than in the Provinces. He did not accept this and said that the statistics may include studio flats which may distort the figures. He said that valuation was an art and not a science.

32. The parties were asked if the properties referred to today were to be considered "fully developed" if they did not have a loft conversion. Mr. Laing replied that a loft conversion took it beyond that assumption. Mr Davis said that the loft is very restricted in space. It could be useful as an office but not for putting children in. He considered that a loft conversion took the property beyond the definition of "fully developed".

#### **Costs**

33. In respect of legal fees Mr Laing offered £250.00 plus VAT and Mr Davis submitted for £350 although he said the anticipated legal fees of the freeholder were estimated at £420 to £450 plus VAT. With regard to valuation fees Mr Laing said that they were inappropriate and Mr Davis submitted for £250.00 plus VAT.

#### **The Tribunal's determination**

##### **34. Entirety Value**

The Tribunal considered the evidence submitted by both parties and using its general knowledge and experience as an expert tribunal but no special or secret knowledge the Tribunal finds that the Entirety value of the subject property is £120,000.00. (One hundred and twenty thousand pounds)

##### **35. Site Value**

In the light of the evidence put forward by Mr. Davis the Tribunal determine that the correct site apportionment is 30% which gives a site value of £36,000.00 (thirty six thousand pounds)

##### **36. Yield Rates**

(a) The approach to a section 9(1) valuation involves firstly the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term and secondly the capitalisation of a modern ground rent (by decapitalising the site value) and the capitalisation of the modern ground rent as in perpetuity deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the two capitalisations.

(b) The approach to a section 9 (1A) (and under the Leasehold Reform, Housing and Urban Development Act 1993) is different. The income stream from the existing

rent is valued in the same way as a section 9(1) valuation. The property itself is then valued at current market rates less tenant's improvements and (if appropriate) a deduction for the tenant to remain in possession, and deferred, using the deferment rate, to the end of the term with vacant possession. There is no separate calculation of a section 15 modern ground rent. The landlord is also entitled to 50% of the marriage value calculated in accordance with the act. As it is in only section 9(1A) and 1993 Act valuations that the deferment rate is to be applied to vacant possession the Tribunal determine that they are not bound by the Sportelli decision.

(c) The Tribunal considers that the essential difference between the two methods of valuation is that as under a section 9(1) valuation the final reversion to vacant possession is subject to a 50 year lease extension and under section 9 (1A) the reversion to vacant possession is at the end of the original term. In the hypothetical market which is required to be adopted by the act, and in the absence of any reliable evidence that it is inherently more likely on the balance of probabilities that the hypothetical market would find the reversion to freehold vacant possession more attractive than to a 50 year lease extension, and this should be reflected in the rates used to assess the price to be paid.

(d) As to the capitalisation rate for the existing ground rent, bearing in mind its nominal amount the Tribunal determine that in this case they will adopt the same rate as for the capitalisation and deferment of the section 15 rent.

(e) As a matter of judgment, and bearing in mind the factors outlined above the Tribunal determine that a rate of 5.5% will be used for the decapitalisation, re-capitalisation and deferment of the section 15 rent as outlined in paragraph 36(a) above. The Tribunal find that the rate of 5.5% properly reflects the principles of a section 9(1) valuation and is not inconsistent in general with the guidance give in the Sportelli decision.

### **The Tribunal's Valuation**

37. Applying their determinations as above the Tribunal's calculation of the amount payable to the Respondent Freeholder is as follows:

#### *(1) Capitalisation of Ground Rent*

Ground Rent payable	£ 800	
Y.P for 48 years @ 5.5%	16.7002	
<b>Term Value</b>		<b>£ 134.00</b>

#### *(2) Modern Ground Rent*

Entirety Value	£120,000.00
Site apportionment	30%
Modern Ground Rent @ 5.5%	£ 1,980.00

#### *(3) Capitalisation of Modern Ground Rent*

Modern Ground Rent (above)	£ 1,980.00
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Y.P in perpetuity deferred  
48 years at 5.5%

1.39162

**Reversion Value**

**£ 2,756.00**

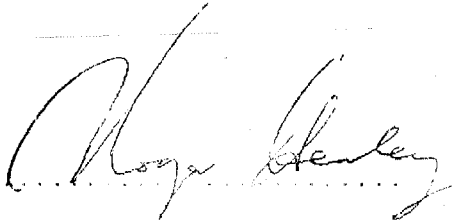
**Price**

**£ 2,890.00**

### SUMMARY OF THE DETERMINATION

39. The Tribunal determines that the price payable by the Applicant under section 9(1) of the Act is £2,890 00 (two thousand eight hundred and ninety pounds) and the professional fees under section 9(4) of the Act are £175 in respect of valuer's fees and £350.00 in respect of legal fees.

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



Roger Healey

Chairman