

MIDLAND RENT ASSESSMENT PANEL

BIR/47UB/OAF/2007/0135

LEASEHOLD VALUATION TRIBUNAL

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

Applicants: MR. ANTHONY WILLIAM SANDERS AND MRS. IRENE JOAN SANDERS

Respondent: NADAN DEVELOPMENT COMPANT LIMITED

Property: 46, Clent Road, Rednal, Birmingham, B45 9XE

Valuation Date: 22 May 2007

Heard at: Birmingham Panel Offices

On: 17 March 2008

Appearances:

For the Applicants: Mr. A. W. Brunt (FRICS)

For the Respondent: No appearance

Members of the Tribunal: Mr. S. A. Rowlands
Mr. S. Berg (FRICS)
Mrs. C. Smith

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 and costs under sections 21(1)(a) and 21(1)(ba) of the Leasehold Reform Act 1967 ("the Act") in relation to 46, Clent Road, Rednal, Birmingham, B45 9XE ("the Property").

- 2. The Property is held under the terms of a Lease dated 30 August 1956 whereby the property was demised for a term of 99 years from 25 March 1954 at an annual ground rent of £15 fixed for the term of the lease.

3. By the Tenant's Notice dated 22 May 2007 the Applicant gave Notice of Tenant's Claim to Acquire the Freehold..
4. On 4 December 2007 the Applicant applied to the Tribunal for determination of the price payable under section 9(1) of the Act and for determination of the Landlord's Costs payable under section 9(4) of the Act.

5. INSPECTION:

The Tribunal inspected the property on 17 March 2008 in the presence of the applicants and Mr. Brunt. The property is a two storey semi detached house. On the ground floor there is a porch, hall, lounge and kitchen. On the first floor are three bedrooms (one extended) and a bathroom. At the front of the property there is a drive leading to an integral garage and a front garden. There is a large rear garden and a side entrance.

The Tribunal disclosed to Mr. Brunt at the inspection that external inspections of the following nearby recently sold properties would then be carried out by the Tribunal:-

- a. 29 Clent Road (sold for £190,000 December 2007)
- b. 9 Clent Road (sold for £194,000 in December 2007)
- c. 14 Clent Road (sold for £220,000 in May 2007)
- d. 52 Clent Road (sold for £222,500 in November 2006)

6. SUBMISSIONS - RESPONDENT:

No written submissions were received from the Respondent. The Respondent did not attend, nor was represented, at the hearing.

7. THE APPLICANTS' SUBMISSIONS:

- i. Detailed written submissions, and Skelton Arguments, are contained in a document dated 4 March 2008 prepared, and submitted, by Mr. Brunt (FRICS) on behalf of the applicants. The contents of that document have been taken into account by this Tribunal.
- ii. The following oral submissions were made on behalf of the applicants at the hearing:-
 - Number 52 Clent Road differed from the subject property in that it is a substantially extended property. The property had not sold readily, remaining on the market for some 18 months.
 - Number 9 Clent Road has a wider frontage than the subject property and has been extended at the rear.
 - Number 14 Clent Road differs from the subject property in that it has been extended across the front width of the property at first floor level.

- Mr. Brunt conceded that the subject property could be extended, but that the costs of any such extension would at least equal, if not exceed, the value added to the property, and would not be economic from a valuation point of view. He stated that the majority of properties in the area remained more or less, as originally built, and a large extension would be out of character with these and the area. Mr. Brunt stated that the subject estate had good houses, however, over the last 3-4 years the area had changed and not for the better. There were social problems in the vicinity and properties had not been selling as well as previously since the closure of a large local manufacturing base. He stated that the position would be different if one was considering a 3 bedroom detached house on a similar plot in a different area.
- iii. In respect of the correct rate to be applied to the term rent, Mr. Brunt submitted that the ground rent payable was nominal, and fixed, and therefore reducing in terms of real value. He stated that some freeholders do not collect such small ground rents. He referred the Tribunal to the decision regarding 67 Berkeley Road (detailed in paragraph 8 of the written submissions).
- iv. In respect of valuer's costs, Mr. Brunt stated that Mr. Dixon had inspected the property before date of the notice in May 2007, but there was no evidence that any valuation had been carried out subsequent, nor pursuant, to the notice. He submitted that there was no evidence that the applicants should, therefore, be liable for any valuer's fees under section 9(4)
- v. Mr. Brunt submitted that the Respondent's reasonable legal fees would be in the sum of £325 (with VAT if applicable and disbursements).

8. APPLICANTS' VALUATION:

Based upon the above submissions, Mr. Brunt submitted that the appropriate price payable by the applicants for the freehold would be £5870. Full details of the valuation are set out in the written submission referred to above.

9. FINDINGS/DECISION:

- i. The Tribunal determines that the relevant date for valuation is 22 May 2007 – the date of the tenant's notice.
- ii. The Tribunal determines that the unexpired term of the lease is 46 years.
- iii. The Tribunal is satisfied that the valuation should be in accordance with section 9(1) of the Act.

- iv. In the absence of any evidence of cleared sites in the vicinity of the subject property, the Tribunal determines that the "standing house method" be used to determine the section 15 ground rent.
- v. The Tribunal received no submissions, nor evidence, that a Haresign Addition is relevant in this case, and determines that it is not.
- vi. In relation to the capitalisation rate for the unexpired term, the Tribunal is assisted by the case of Nicholson and Others v Goff (2007) LRA/29/2006- at paragraph 9 – which states:-

"The factors relevant to capitalisation rate: 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".

In relation to the subject property the rent is small (£15 per annum) and there is no provision for increase. The tribunal agrees with Mr. Brunt that such a nominal ground rent would not be attractive to investors. The tribunal finds that the correct rate to be applied to the term rent is 7%.

- vii. The Tribunal is satisfied that the correct entirety value for the subject property at the valuation date, is £190,000. In reaching that decision, the Tribunal is assisted by 2 valuation reports accompanying the detailed written submissions filed on behalf of the applicants. The Tribunal finds, and it was conceded by Mr. Brunt at the hearing, that the subject property could be further extended. However, when considering whether the potential of the site has been fully developed, the Tribunal must be satisfied that any additional building works must be feasible in practical terms and their cost, when compared with the extra value to be created, must not be so high as to deter a reasonably prudent owner from proceeding. In view of the nature of the property, surrounding properties, and the area, the Tribunal agrees with the submission that the cost of any additional building works would only possibly equal, and could exceed, any added value. The Tribunal is satisfied, that it is appropriate for the property to be valued as seen.
- viii. The Tribunal is satisfied that the correct site apportionment is 35%.
- ix. The Tribunal determines that the correct deferment rate is 5.5% because:-
 - a. No mention of section 9(1) valuations is made in Earl Cadogan and Cadogan Estates Ltd (1) and Michele Francesco Sportelli and Lara-Lynn Sportelli (2) LRA/50/2005 (2007) EWCA Civ 1042 (hereinafter referred to as "Sportelli")

The Lands Tribunal decision, describing the background to its decision, states:-

“The price payable on such enfranchisement of the higher value houses bought within the leasehold enfranchisement provisions under section 9(1)(a) of The Leasehold Reform Act 1967, and of flats, whether by way of collective enfranchisement or a single extended lease, under The Leasehold Reform Housing and Urban Development Act 1993”.

Paragraph 6 of The Lands Tribunal’s decision describes the preliminary issue as:- “ the proper Deferment Rate to be applied to vacant possession value”.

With paragraph 8 emphasising that:-

“Nothing that is said in this decision has any direct application to Capitalisation Rates”.

b. The judgement of The Court of Appeal confirms that the 1st preliminary issue to be considered by it was:-

“The proper Deferment Rate to be applied to vacant possession value”.

c. A section 9(1) valuation is the aggregate of:-

The present value of the rent reserved for the unexpired term, and the present value of a section 15 modern ground rent for a 50 year extension after the end of the unexpired term.

Unlike a section 9(1)(A) valuation, therefore, a Tribunal is not required to apply a Deferment Rate to vacant possession value. Under section 9(1) what is required is the determination of a modern ground rent and not the application of a Deferment Rate to a vacant possession value.

d. It follows, that the Tribunal is not required to apply a Deferment Rate to vacant possession value and is not therefore bound by guidance in “Sportelli”.

e Mr. Brunt referred the Tribunal to paragraph 102 of the Court of Appeal judgement in “Sportelli” where Carnwath L.J. states:-

“The Tribunal’s later comments on the significance of their guidance do not distinguish in terms between the PCL area and other parts of London or the country. However there must in my view be an implicit distinction. The issues within the PCL were fully examined in a fully contested dispute between directly interested parties. The same cannot be said of other areas”.

The Tribunal finds that the subject property is of a class very different to that in prime central London where demand is much stronger and capital values offer greater security.

- f. The tribunal finds that, despite the absence of truly reliable market evidence and recognising the difficulties of the hypothetical market postulated by the Act, including the assumption that there are no rights to acquire the freehold, the deferment rate for the reversion on a subs 9(1) basis is more than on a subs 9(1)(A) basis. On both bases the deferment rate is applied to the reversion at the end of the unexpired term. The subs 9(1)(A) reversion is, applying valuation methodology, the freehold vacant possession value after deduction, if any, for the tenant's right to remain in possession at the end of the tenancy – subs 9(1)(A)(b). The subs 9(1) reversion is subject to a 50 year extension at a s.15 ground rent, thereafter the freehold with vacant possession; but, to derive the price payable, the reversion subject to a 50 year lease is more usually taken as a reversion to lease in perpetuity. Despite the inclusion of the marriage value element in the subs 9(1)(A) basis (absent in the subs 9(1) basis) resulting in a higher subs 9(1)(A) value, the deferment rate for a reversion to effective vacant possession ('effective' because any allowance for subs 9(1)(A)(b) rights is taken in the vacant possession value, not the deferment rate) is lower (resulting in higher value) than the rate for the reversion subject to a 50 year lease at a fixed ground rent (subject to review after 25 years) and, thereafter, vacant possession. A reversion to vacant possession is more attractive than a reversion subject to a 50 year lease extension.
- x. The Tribunal considers the reasonable figure for the landlords legal costs is £325 plus VAT (if applicable) and disbursements. For the landlord's valuation costs to be recoverable for the tenant, they must have been incurred after the date of the tenant's notice, but before the date of the landlord's application to the Tribunal. No evidence has been adduced to show that this was the case here. The Tribunal determines, therefore, that the tenant is not responsible for any of the landlord's valuation costs.
10. Applying our determination as above, the amount payable by the applicant is £5870 calculated as follows:-

Term

Ground rent p.a.	£15.00	
YP for (yrs) 46 @ 7%	13.65	
		£205

Reversion

Entirety Value	£190,000	
Site apportionment @ 35.00%	£66,500.00	
Section 15 rent @ 5.50%	£3,657.50	
YP in perp def'd (yrs) 46 @ 5.50%	1.5489	
		£5,665
Price (say)		£5,870

11. DETERMINATION:

The Tribunal, therefore, determines that the price payable by the Applicant under section 9(1) of the Act is £5870 and that the section 9(4) legal costs are £325 (plus VAT (if appropriate) plus disbursements.

In reaching our determination, the Tribunal has had regard to the evidence and submission of the parties, the relevant law, and our own knowledge (but no secret knowledge) and experience as an expert Tribunal.


S. A. Rowlands
Chairman

Dated 19/3/08