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LVT 9

Our Ref: M/EH2342c

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr E.J. Stirch & Mrs J.A. Stirch

Respondent: St Ermins Property Co Ltd

Re: 54 Claremont Road, Coton Green, Tamworth, Staffordshire, B79 8EW

Date of Tenants Notice: 17th September 2001

RV as at 1.4.73: £199.00

Application dated: 19th November 2001

Heard at: The Panel Office

On: Tuesday 26th March 2002

APPEARANCES:

For the Tenant: Mr J. Moore

For the Landlord: Not Present

Members of the Leasehold Valuation Tribunal:

Chairman: Mr T.F. Cooper BSc FRICS FCI Arb
Mr D.R. Salter LLB
Mrs N. Jukes

Date Of Tribunals Decision 25 APR 2002

UNEXPIRED LEASE 60.9 YEARS
ANNUAL GROUND RENT £ 15.00
VALUE OF PROPERTY £95.000

LVT 96/5

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

Our Ref: M/LRC320

DECISION OF LEASEHOLD VALUATION TRIBUNAL

*ON AN APPLICATION UNDER SECTION 21(1) (ba)
OF THE LEASEHOLD REFORM ACT 1967*

Applicant: Mr E.J. Stirch & Mrs J.A. Stirch

Respondent: St Ermins Property Co Ltd

Re: 54 Claremont Road, Coton Green, Tamworth, Staffordshire, B79 8EW

Date of Tenants Notice: 17th September 2001

Application to Tribunal dated: 19th November 2001

Heard at: The Panel Office

On: Tuesday 26th March 2002

Appearances:

For the Applicant: Mr J. Moore

For the Respondent: Not Present

Members of the Leasehold Valuation Tribunal:

Chairman: Mr T.F. Cooper FRICS FCI Arb
Mr D.R. Salter LLB
Mrs N. Jukes

Date of Tribunals decision: 25 APR 2002

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON
THE PRICE PAYABLE ON ENFRANCHISEMENT AND
THE REASONABLE COSTS PAYABLE
IN THE CASE OF**

**STIRCH
V
ST ERMINS PROPERTY CO LIMITED**

RE: 54, CLAREMONT ROAD COTON GREEN TAMWORTH STAFFS B79 8EW

Background: Mr E J Stirch and Mrs J A Stirch are the Tenants (the 'Tenant') of the dwelling house and premises at the above property (the 'Property'). The Freeholder is St Ermins Property Co Limited. By a notice dated 17 September 2001 (the 'Date') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the 'Act'). By an application dated 19 November 2001 the Tenant applies to us to determine the price payable on the acquisition of the freehold of the Property under sec 9 of the Act. By an application dated 19 November 2001 the Tenant also applies to us for a determination of the Freeholder's costs. We inspected the property on 26 March 2002.

The Tenant holds the Property by a lease (the 'Lease') for a term of 99 years from 24 June 1963 at a ground rent of £15 pa.

The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 60¾ years. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.

The Property comprises a semidetached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes:- on the ground floor – hall, living room (extended at the rear), kitchen,; on the first floor – three bedrooms, bathroom with wc. There is a single garage to the side. The site frontage is 7.62m, the width is maintained throughout the depth of the site and the total site area is 238m².

A hearing was held on 26 March 2002. Mr J Moore appeared for the applicant Tenant; the Freeholder did not appear and was not represented but provided written representations by CHP Management Limited.

[Continued]

Tenant's Valuation: By Mr Moore £724.28 - more specifically:

The term:

Ground rent	£15.00 pa	
YP 60¾ years at 7%	<u>14.051</u>	
		£210.77

The reversion (by the Standing House method):

Entirety value	£95,000	
Site proportion at 33% of entirety value	£31,350	
Section 15 modern ground rent at 7% of £31,350	£2,194.50 pa	
YP in perpetuity deferred 60¾ years at 7%	<u>0.234</u>	
		<u>£513.51</u>
	Price	£724.28

Freeholder's valuation: In written representations CHP Management Limited says that £1,050 is the appropriate figure, with a 35% site apportionment and a 7% yield.

Submissions and evidence: Mr Moore derives the price by the standing house method of valuation. He recognises the limitations of this method but says that there is no reliable evidence of comparable sales of cleared sites to derive the value of the reversion.

In support of his entirety value of £95,000 he refers us to a recent sale of an extended semidetached house in the locality at £83,000 and a similar house in the locality on the market at £94,950 which we had been advised - and we disclosed to Mr Moore for comment - had very recently been sold for about £1,000 less than the asking price. In particular he takes account of the principle that the entirety value should reflect the value of the Property in good condition and fully reflecting the potential of its site provided always that the potential identified is realistic and not fanciful.

In support of his 33% site apportionment he refers us to several decisions of the LVT, saying that 33% is consistent with those decisions reflecting the characteristics of the Property.

Helpfully, he refers us to other LVT and Lands Tribunal determinations and court authorities on the principles which he applies in his valuation.

CHP Management Limited says that it is aware that properties are being sold in the area for in excess of £125,000 with local estate agents feeling [*sic*] that prices could achieve up to £130,000.

Valuation of the Tribunal: We do not find CHP's evidence persuasive. It is based on unsupported hearsay general propositions. We find that it is not consistent with what is more inherently likely.

We accept the principles recognised in the cases Mr Moore refers us to. Applying the generally accepted valuation principles to derive a price for the Tenant to acquire the freehold on fair terms we find and hold that Mr Moore's valuation is consistent with those principles. However we round the valuation to £724.

Conclusion on the price payable: We determine that the sum to be paid by the Tenant for the acquisition of the freehold interest in accordance with section 9 of the Leasehold Reform Act 1967, as amended, is £724 (Seven hundred and twenty four pounds) plus the Freeholder's reasonable costs in accordance with section 9(4) of the Leasehold Reform Act 1967 and Schedule 22, Part I, para. 5. of the Housing Act 1980, the amount of which we determine below.

OUR DETERMINATION OF COSTS

Background: Section 9(4) of the Act contains the provisions for the Freeholder's recovery of specified reasonable costs.

Section 9(4) of the Act provides as follows:

Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:

- (a) any investigation by the landlord of that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

The costs which a person may be required [to bear] under section 9(4) . . . of the 1967 Act . . . do not include costs incurred by a landlord in a connection with a reference to a leasehold valuation tribunal.

Vat: All figures we refer to are exclusive of vat. We have no jurisdiction to determine conclusively vat matters as they are a matter for HM Customs and Excise. Therefore we make our determination exclusive of vat, save that vat shall be added at the appropriate rate if applicable.

Submissions and evidence generally: Mr Moore, for the Tenant, explained his representations at the hearing. CHP, for the Freeholder, had made no written representations.

The substantive issues on costs:

(i) Section 9(4)(a) costs: Mr Moore, for the Tenant, says that we have no evidence that any costs contemplated by subsection (4)(a) have been incurred by the Freeholder. We accept Mr Moore's submission and in so doing recognise that, in any event, the Freeholder would be unable to recover any such costs incurred in connection with this reference to us. We therefore find that no section 9(4)(a) costs have been incurred.

(ii) Section 9(4)(b)(c) and (d) costs: After an oral exchange on the meaning and effect of these three subsections we hold and find that, in the case before us, (b), (c) and (d) costs may not be distinguishable and may be incurred by Freeholder after the date of this determination. We, therefore, treat them as one item and determine a maximum amount that is recoverable from the Tenant. Mr Moore says that these costs should not exceed £200 plus office copy register entries' disbursements as

the title is registered. We find that, as the title of the Property will be a part of the Freeholder's title of several properties, a slightly higher amount is reasonable. We determine £225.

(iii) Section 9(4)(e) costs: Mr Moore says that we have no evidence that the Freeholder has incurred any such valuation costs. We accept his evidence and find that no valuation costs are recoverable.

Summary of our determinations on the issues of costs:

- (i) Section 9(4)(a) costs: No costs have been incurred.
- (ii) Section 9(4)(b) to (d) costs: Shall not exceed £225 (plus vat if appropriate), plus the actual disbursements incurred in obtaining the office copy register entries.
- (iii) Section 9(4)(e) costs: No costs have been incurred.

Conclusion on costs: As our final determination on section 9(4) of the Act: no amount is payable by the Tenant to the Freeholder in respect of subsection (4)(a) and (e) costs; and the Tenant shall bear the Freeholder's subsection (4) (b) (c) and (d) costs, as follows:

A total sum not exceeding £225 plus vat, if appropriate, plus the actual disbursements incurred in obtaining the office copy register entries.

Date: 25 APR 2002



T F Cooper
CHAIRMAN

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