

126

LVT 9

Our Ref: M/EH 2367c

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 J.C. Cutler

Respondent: D & D Properties

Re: 28 Northside Drive, Streetly, Sutton Coldfield, West Midlands, B74 3QQ

Date of Tenants Notice: 30th October 2001

RV as at 1.4.73: £290.00

Application dated: 07th January 2002

Heard at: The Panel Office

On: Wednesday 06th March 2002

APPEARANCES:

For the Tenant: Mr A.W. Brunt

For the Landlord: Not Present

Members of the Leasehold Valuation Tribunal:

Chairman: Mr T.F. Cooper BSc FRICS FCI Arb
Mr J.C. Ritchie
Mrs M.A.L. Mckenzie

Date Of Tribunals Decision 25 APR 2002

UNEXPIRED LEASE	51.10 YEARS
ANNUAL GROUND RENT	£ 3.70
VALUE OF PROPERTY	£ 125,000

LVT 96/5

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

Our Ref: M/LRC 343

DECISION OF LEASEHOLD VALUATION TRIBUNAL

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

Applicant: Mr J.C. Butler

Respondent: D & D Properties

Re: 28 Northside Drive, Streetly, Sutton Coldfield, B74 3QQ

Date of Tenants Notice: 30th October 2001

Application to Tribunal dated: 07th January 2002

Heard at: The Panel Office

On: Wednesday 06th March 2002

Appearances:

For the Applicant: Mr A.W. Brunt

For the Respondent: Not Present

Members of the Leasehold Valuation Tribunal:

Chairman: Mr T.F. Cooper FRICS FCI Arb
Mr J.C. Ritchie
Mrs M.A.L. McKenzie

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**

**CUTLER
V
D AND D PROPERTIES (A FIRM)**

RE: 28, NORTHSIDE DRIVE, STREETLY, SUTTON COLDFIELD B74 3QQ

Background: Mr J C Cutler is the **Tenant** of the dwelling house and premises at the above property (the **Property**). The **Freeholder** is D and D Properties (a Firm). By a notice dated 30 October 2001 (the **Date**) the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the **Act**). By an application dated 7 January 2002 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 7 January 2002 the Tenant also applies to us for a determination of the Freeholder's costs. We inspected the property on 6 March 2002.

The Tenant holds the Property by an underlease (the **Lease**) for a term of 99 years less three days from 29 September 1954 at a ground rent of £3.70 pa.

The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 52 years. We are advised that the headlessee's intermediate interest has merged with the freehold. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.

The Property comprises a semi detached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes:- on the ground floor – hall, through lounge, kitchen, rear porch/utility room, outside wc; on the first floor – three bedrooms, bathroom with wc. There is a single garage. The site frontage is 10.82 m.

A hearing was held on 6 March 2002. Mr A W Brunt FRICS appeared for the applicant Tenant; the Freeholder did not appear and was not represented but its solicitor had indicated that it would sell the freehold for £9,000 plus costs.

[Continued]

Tenant's Valuation: Mr Brunt had adopted £14.70 pa as the ground rent payable in his valuation of the term. On receiving a copy of the underlease we find that the ground rent reserved for the Property is £3.70 pa, not £14.70 pa. We infer that Mr Brunt may have derived £14.70 pa as the ground rent payable by the head lessee to the Freeholder but, as the head leasehold interest has merged with the freehold, it is the ground rent payable by the underlease (£3.70 pa) which is the ground rent to be valued for the term. After adjustment to Mr Brunt's valuation, to reflect the correct ground rent, his valuation is £1,346 - more specifically:

The term (after amendment to £3.70 pa, previously believed to have been £14.70 pa):	
Ground rent	£3.70 pa
YP 52 years at 7%	<u>13.86</u>
	£51.28

The reversion (by the Standing House method):		
Entirety value	£125,000	
Site proportion at 35% of entirety value	£43,750	
Section 15 modern ground rent at 7% of £43,750	£3,062.50 pa	
YP in perpetuity deferred 52 years at 7%	<u>0.423</u>	
	<u>£1,295.00</u>	
	Price	£1,346.28
	Say	£1,346.00

Submissions and evidence: Mr Brunt derives the price by the standing house method of valuation.

He says: that, after his detailed enquiries, there is a dearth of evidence of sales of helpful similar properties in the locality; that his opinion evidence of the entirety value, at £125,000, is supported by a determination by the Leasehold Valuation Tribunal of the price on enfranchisement for 30, Northside Drive (next door to the Property) which included an entirety value of £115,000; that a site apportionment of 35% is consistent with the characteristics of the Property's relatively wide plot; and that 7% is an accepted yield rate for the valuation.

Valuation of the Tribunal: We attach no weight to the indicated price (£9,000) at which the Freeholder would sell, as we have no factual evidence in support of it and it is not evidence from an expert witness. 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 Brunt's valuation, at £1,346, is consistent with those principles.

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 £1,346 (One thousand three hundred and forty six 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.

The substantive issues on costs:

(i) Section 9(4)(a) costs: Mr Brunt, for the Tenant, says that we have no evidence that any of these specified costs have been incurred by the Freeholder. We accept Mr Brunt's submission and find that no section 9(4)(a) costs have been incurred.

(ii) Section 9(4)(b)(c) and (d) costs: After a helpful 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 Brunt 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 Brunt 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 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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