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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

Case No: LON/LVT/1475/02

Members of the Leasehold Valuation Tribunal

Mr D M Nesbit JP FRICS FCI Arb
Mr D Agnew, Solicitor
Mr J S McAllister FRICS

DECISION OF THE TRIBUNAL
on an application under
Section 21 (1), Leasehold Reform Act 1967

Re: 173 BLYTHE ROAD, LONDON W.14

Applicants: The Trustees of the H O NUNES WILL TRUST
(The freeholders and landlords)

Respondents: Joan FARRELL & Hassan SOUANI
(The tenants)

Appearances:

Mr C S R Marr-Johnson FRICS (Marr-Johnson & Stevens)
for the applicants

Mr C Coan, FRICS DipEstMan, DipProj.Man (Congreve Horner)
for the Respondents

Inspection: 9th September 2002

Hearing: 9th September 2002

Date of Decision: 26th November 2002

Introduction

- 1.1 This is an application, submitted on behalf of the freeholders by Parker Bullen, solicitors, for the determination of a rent review in respect of 173 Blythe Road, London W.14 ('The Property').
- 1.2 The Property is held under the terms of a lease dated 1st July 1974 ('The Lease'). The applicants gave notice dated 29th May 2001 that the rent payable under the Lease be reviewed as at 24th December 2001 ('The review Date').
- 1.3 As the Applicants' solicitors received no acknowledgement from the Respondent tenants, further Notices dated 18th December 2001 were issued, proposing a rent of £23,000 per annum. The Respondents, through their solicitors, Myers, Ebner & Deaner, by letter dated 8th January 2002 formally objected to that rent.
- 1.4 Due to a conflict of interest affecting the London Rent Assessment Panel, this matter was dealt with by members of the Southern Rent Assessment Panel & Leasehold Valuation Tribunal. The Tribunal issued Directions, and in respect of experts valuation reports.

Inspection

- 2.1 The Tribunal inspected the Property prior to the Hearing. The lessee, Mr Hassan Souani was present, as was Mrs A Griggs representing the freeholders.
- 2.2 Blythe Road is an established residential location in West London, close to Shepherds Bush Road. There are mixed commercial and vacant premises opposite.
- 2.3 The Property is a substantial Victorian semi-detached house of brick construction with a tiled roof, and triple rendered bay windows to the front elevation. There were steps leading up to the Hall floor, and a sideway. There was a front forecourt area. There was no garage or car parking space. There was a rear garden with mature trees.
- 2.4 Internally the accommodation was arranged as a basement flat, Hall floor flat (No 1), First floor flat (No 2). The top floor was converted into two studio flats, A & B. We inspected all flats. We noted an internal staircase had been constructed, by the tenant, from the kitchen of the hall floor Flat 1 to the rear room of the first floor Flat 2 above.
- 2.5 The Tribunal viewed externally comparable properties in the locality, to which reference had been made in the evidence.

The Legal Background

- 3.1 The Act for this determination is the Leasehold Reform Act 1967 ('The Act') and specifically Section 15 (2). We refer later in detail to that Section.

3.2 The Lease for the Property provides in the Second Schedule - Ascertainment of Rent -

"2 (1). The Landlord shall have the right to require a revision of the rent hereby reserved and payable as from the twenty fourth day of December two thousand and one on giving written notice claiming such revision to the Tenant before that date (but not earlier than twelve months prior thereto).

2 (2). Upon such notice being given the said rent payable as from the date aforesaid shall in accordance with Section 15 (2) of the Act be the ground rent as at that date aforesaid and in default of agreement between the Landlords and the Tenant shall be determined by the Lands Tribunal in accordance with Section 21 (1) of the Act.

3. The reasonable cost to the landlords of obtaining a valuation for the purposes of ascertaining the rent payable hereunder in accordance with paragraph 1 or 2 of (the) Schedule shall on each occasion be borne and paid by the Tenant."

3.3 The original lease was for a term of ninety nine years from 25th December 1877 at a yearly rent of £11.00. The current lease was granted by way of an extension under Part 1 of the Act and dated 1st July 1974, was granted for a term of 50 years from 25th December 1976 paying initially to 24th December 1976 the rent of £11.00 p.a. The rent payable is £600.00 p.a.

Hearing

- 4.1 The applicants were represented by Mr C S R Marr-Johnson FRICS, Chartered Surveyor, a partner in Marr-Johnson & Stevens of Bolton Street, London W.1. The respondents were represented by Mr C Coan FRICS, Chartered Surveyor, joint senior partner of Congreve Horner, Fulham Palace Road, London W.C.
- 4.2 Representatives of both parties attended the Hearing as observers, and gave no formal evidence.
- 4.3 Reports with valuations had been submitted by both experts prior to the Hearing, though not within the timetable incorporated in our Directions. Neither of the parties were represented by counsel or solicitors, both Mr Marr-Johnson and Mr Coan acted as experts and advocates.
- 4.4 Mr Marr-Johnson formally introduced his Proof of Evidence and outlined his extensive experience throughout his career of 43 years in London, and his specialist knowledge of valuations under the Act and of his wider professional experience for major landlord clients.
- 4.5 As a specialist surveyor, he was aware that there had only been a handful of ground rent reviews, but it was the effect of Section 15 of the Act which was at the heart of this case.
- 4.6 In prior negotiations with Mr Coan, there had been a difference of opinion which Mr Marr-Johnson had incorporated within his report.

4.7 Mr Marr-Johnson's view was that the landlords were entitled to achieve full ground rent value on the "standing house" basis at the review date. As evidence of sales of cleared sites was not available, he maintained that Tribunals had agreed that evidence should be based on the best notional house, modernised and improved within the lease terms and likely planning consent.

4.8 Mr Marr-Johnson had adopted a value of £850,000 for a fully improved property and he gave comments on comparable properties. Mr Marr-Johnson referred to the Land Tribunal decision in the Dulwich College case. That decision was calculated with a site value of 40% and a ground rent calculated at 6% of that figure. In respect of the site element percentage, he provided details of other ground rent negotiations, but probably less than half a dozen throughout his career. His report included a copy of the London Leasehold Valuation Tribunal decision - "The Mill House, Wimbledon Common, London SW19. LON/LVT/599" where he appeared for the tenants for a modern ground rent review. The site value was assessed at 50% and the ground rent calculated at 6%.

4.9 Mr Marr-Johnson submitted his formal valuation for the Property at the review date,

Standing house entirety value	-	£850,000
Site element	-	45%
Rental value @6%	=	£22,950
		say £23,000 p.a.

4.10 Mr Marr-Johnson's Proof contained a Practice Statement to comply with the RICS requirements. In conclusion, he indicated he would be raising the matter of costs.

4.11 Cross-examined by Mr Coan, Mr Marr-Johnson confirmed he had undertaken a handful of ground rent reviews, but they had been few. In respect of the interpretation of Section 15, Mr Marr-Johnson referred to the Wimbledon case, and two others in Norfolk Square, where he had acted. He indicated that he was familiar with Blythe Road and the Brook Green locality, and acknowledged that there were commercial elements opposite the property which was not in the best part of Blythe Road. Mr Coan commented "I cannot disagree with anything else you have said", but challenged the 45% standing house approach. Mr Marr-Johnson stated that location and size was more relevant than internal decoration and that his valuation of £850,000 for the property was an assumption of being done up and in good order.

4.12 Mr Marr-Johnson agreed that a rent for a lease with a shorter period would be less, but that the letting value was based on several criteria. He accepted that a ground rent for a 25 year period would be less than for 99 years without review.

4.13 In reply to questions from the Tribunal, Mr Marr-Johnson confirmed that the current rent was £600 per annum. The property was not Listed, but Blythe Road was within a Conservation Area and that all trees were subject to Tree Preservation Orders. Blythe Road, however, was still a pretty good road.

Evidence by Mr C Coan

5.1 Mr Coan introduced his report, confirmed his professional qualifications and outlined his experience, being familiar with Hammersmith and Fulham since 1990, and having undertaken various Leasehold Reform Act valuations, many in the immediate vicinity of Blythe Road.

5.2 Mr Coan confirmed that this was his first valuation of a Section 15 rent, and indicated that internal alterations by the construction of the staircase (from Flat 1 to Flat 2) though not substantial, had been undertaken without consent. Mr Coan pointed out that Section 15 (2) (b) included "If the landlord so requires" in relation to the rent review Notice. Mr Coan was surprised that the landlords had activated the rent review which would apply for the remaining 25 years of the lease. He maintained that a building lease for 25 years was unlikely to generate sufficient income to justify building costs, except where the land value was less than 25%. His valuation included extracts from Hague and other respected authorities.

5.3 Mr Coan's valuation and submission to the Tribunal was that the modern ground rent be £1 per annum. Within an Appendix to his report, Mr Coan had undertaken an alternative valuation -

Capital value of land and building	-	£650,000
Value of land @ 35%	-	£227,500
Decapitalised @ 7%	-	£15,925 p.a.

Mr Coan maintained his views that building costs and profit would not be recovered over 25 years, hence the nominal ground rent of £1 per annum.

5.4 Cross-examined by Mr Marr-Johnson, Mr Coan acknowledged his duty was to the Tribunal and his clients were so aware. Mr Coan confirmed the absence in his Proof of a reference to the RICS Practice Statement was a slip. Mr Coan was challenged that he should only take instructions as an expert if familiar with the subject matter of dispute, and Mr Coan confirmed he had not undertaken any Section 15 ground rent review valuations. Mr Coan was very familiar with the Brook Green locality and agreed he could not give any ground rent valuation in support of his contention. Mr Coan maintained it was unwise for the landlord to exercise the rent review option and he maintained the Wimbledon LVT decision was wrong.

5.5 Mr Coan denied he was importing words not within Section 15, and in relation to Mr Marr-Johnson's comparables he confirmed he had undertaken seven valuations in Blythe Road over a ten year period, that there were derelict properties opposite and that one property quoted as a comparable was vastly overpriced.

5.6 In answer to questions from the Tribunal, Mr Coan confirmed that his standing house valuation was included in case his understanding of the Act was wrong. He had not seen the comparables quoted for the landlords, but he would revise his valuation and accept £700,000. He was not prepared to revise his approach as to 35%.

- 5.7 When asked for his interpretation of a building lease, Mr Coan responded "Where a landlord grants consent to a building developer for building a property on it for a ground rent." Asked where in Section 15 (2) is there reference to a new building lease for 25 years, Mr Coan replied the new lease was a continuation of an original building lease and, therefore, the new lease was a building lease as it followed the same terms, and there are only 25 years of the lease now remaining.
- 5.8 In conclusion, Mr Marr-Johnson advised that his clients owned some 50 units in London, some were let and there were no void periods. He was personally aware, because of a local school, that French parents were keen tenants in the locality.
- 5.9 Mr Coan confirmed that the property had been very dilapidated and his clients had spent considerable sums on maintenance and improvements. It was inequitable for the landlord to receive a modern ground rent and to receive the property back in 25 years at the end of the lease.

Application for Costs

- 5.10 Mr Marr-Johnson stated that the Respondents had a radically new interpretation of the Act, and had ridiculed the Mill House, Wimbledon decision. The Respondents had produced no effective evidence and comparables were limited. He requested an Award for Costs in his favour for -
- i) the valuation fee being $\frac{1}{4}\%$ of £850,000
 - ii) solicitor's fees of £1,000 + VAT
 - iii) counsel's fees of £500 + VAT

Mr Marr-Johnson stated that the authority for his application was within Section 9 (4) (c) of the Act.

- 5.11 Mr Coan maintained that the costs authority cited by Mr Marr-Johnson related to enfranchisement cases and not the current matter. He denied ridiculing the London LVT decision. He had made personal enquiries with other professionals, and only one person had supported Mr Marr-Johnson's views. He had also made telephone enquiries with LEASE and other lawyers. His own valuation fee was calculated at 0.1% - £450 + VAT.
- 5.12 Subsequently we issued Directions requiring written representations with authorities in support of, or challenging, the application for costs and the amounts proposed. We received submissions from Mr Marr-Johnson, which included a copy of the London LVT decision re 1 Carlyle House, London, which related to the assessment of landlords' reasonable fees (LON/NL/117) and dated 2nd May 1997.
- 5.13 We received a response from Mr Coan, and an extended submission from Messrs Myers, Ebner & Deaner. All of that evidence was fully considered and to which we later refer.

CONSIDERATION

- 6.1 The Tribunal has undertaken a detailed review of all of the evidence, having regard to the substantial difference of opinion between the two valuers' experts. We have reviewed authorities and considered in detail all matters raised.

- 6.2 Section 15 (2) (a) of the Act states "The rent shall be a ground rent in the sense that it usually represents the letting value of the site (without including anything for the value of the buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy....."
- 6.3 Section 15 (2) (b) states "The letting value for this purpose shall be in the first instance the letting value at the date from which the rent based on it is to commence, but as from the expiration of 25 years from the original term date the letting value at the expiration of those 25 years shall be substituted, if the landlord so require, and a revised rent becomes payable accordingly;"
- 6.4 Section 15 (2) (c) states "The letting value at either of the times mentioned shall be determined not earlier than 12 months before that time (the reasonable cost of obtaining a valuation for the purpose being borne by the tenant) and there shall be no revision of the rent as provided by paragraph (b) above unless in the last of the 25 years there mentioned the landlord gives the tenant written notice claiming a revision."
- 6.5 The landlords chose to activate the ground rent review and issued an appropriate Notice dated 29th May 2001. The review date is 24th December 2001.
- 6.6 Learned, and professional authorities, have identified established methods for the valuation calculations -
- a) a "cleared site" approach
 - b) a "standing house" approach
 - c) a "new for old" approach
- 6.7 There was a fundamental difference of opinion between the parties' experts, but there had been few cases of ground rent review and consequently a dearth of authority. Mr Marr-Johnson had been involved in fewer than half a dozen cases, but which included the Mill House, Wimbledon decision. Mr Coan had no previous experience in a ground rent review. As Mr Marr-Johnson explained, tenants took the option to acquire their freeholds, rather than extending their leases by 50 years, and it would only be instances with a short period to run before extension that are now coming up for review. Mr Marr-Johnson's contention was the Tribunal was required to ascertain the letting value for a period of 25 years, of the site only without buildings, for the uses to which the land and premises had been put. This reflected the intention of the legislation as set out in the White Paper preceding the Act, whereby the freeholder was regarded as owning the land and the leaseholder owning the building.
- 6.8 Mr Coan argued that the lease was originally a building lease extended by the 1967 Act, and that no freeholder would be able to let the land on a new building lease with a term of only 25 years, and hence the ground rent had a nominal value of only £1 in his opinion. He accepted he was arguing from first principles, and he had no authority for this interpretation of the Act. He referred us to Hague "Leasehold Enfranchisement" at paragraph 8.03. On consideration we find that extract means only that it is the landlord who is given the right to initiate the rent review procedure, and there is nothing more that can or should be read into it.

- 6.9 We find no justification for Mr Coan's proposition that we were to establish the rent that could be achieved for a new building lease of 25 years. There is no such requirement to be found in Section 15 (2). We are to determine a rent review in a lease which commenced in 1974. That lease had, in effect, been imposed on the landlord by virtue of the tenants' rights conferred by the 1967 Act. But for the 1967 Act, the freeholder would have recovered the property with vacant possession, or could have let the property at a full market rent in December 1976. Section 15 (2) of the Act provides for the freeholder a modern ground rent at the review date, as in simple terms the freeholders' land is being used by the tenant having their house on it.
- 6.10 The use of land has a value, but we do not consider it correct to assume that a new building lease is to be entered into. The valuation process for the calculation of a modern ground rent may be artificial, but not so artificial as to assume a new building lease for 25 years.
- 6.11 The modern ground rent must reflect inflation generally, land values in particular, and the demand for the use of land and for residential purposes in the locality. We reject Mr Coan's arguments on this matter, and have proceeded to determine the rent on the conventional methods of valuation.
- 6.12 We are satisfied that in the absence of comparable evidence of the sale of cleared sites as Mr Marr-Johnson proposed, the "standing house" approach is appropriate, and which we will follow for the purposes of our determination. We looked at the specific elements involved -
- a) the current value
 - b) the site element proportion
 - c) the relevant percentage reduction
- 6.13 In respect of the current value, Mr Marr-Johnson proposed a figure of £850,000, in support of which he disclosed that 180 Blythe Road in 'fair condition' was sold for £725,000 in January 2002. A property in Caithness Road nearby, had been sold in September 2002 for £950,000. Local agents, Messrs Tate, had indicated that the subject property as fully improved would have a value of £850,000. A further property at 151 Blythe Road is currently available for sale at £1.35m, fully modernised and improved. To a very high specification that we noted from the agent's particulars provided.
- 6.14 Evidence at, or close to, the review date is more helpful and relevant. Asking prices are just that, and with no evidence of a confirmed sale are of limited assistance. We noted that Mr Coan adjusted his views as to value at the Hearing to £700,000. We took into account the immediate aspect from the subject property was to vacant commercial properties. We considered that 180 Blythe Road was a better property and in a more favourable location. Reflecting on all of the evidence, we determined that the correct entirety value was £725,000.
- 6.15 In respect of the site element proportion, Mr Marr-Johnson proposed 45%, and Mr Coan in his alternative valuation proposed 35%. We had regard to the extent of the physical structure on the total site area, and we particularly considered the West London locality and the percentages that had been adopted in other decisions, to which we had been referred in evidence. We determined that in all of the circumstances, the appropriate proportion should be 40%.

6.16 Finally, in relation to the rental percentage, Mr Marr-Johnson has taken 6% and Mr Coan had adopted 7%. At the Hearing, Mr Marr-Johnson agreed that with lower interest rates, the rent of 6/7% was appropriate. Mr Coan stated that 7% would be appropriate, having regard to the 25 year term outstanding. We agree and determine 7% would be appropriate.

6.17 Accordingly, for our determination we have made the following valuation:-

Entirety value	-	£725,000
Site element at 40%	-	£290,000
Rental value at 7%	-	£20,300 per annum

6.18 We therefore concluded that the revised ground rent payable as from the review date, 25th December 2001, shall be £20,300 per annum.

COSTS

7.1 We have reviewed the costs submissions. Mr Marr-Johnson contended that our authority regarding costs was to be found in Section 15 (2) of the Act, not under Section 9 (4) as he stated at the Hearing. In particular, he relied on the words "the reasonable cost of obtaining a valuation for the purpose being borne by the tenant", to be found in Section 15 (2) (c). The Respondents' solicitors contend that Section 15 (2) is not the appropriate authority, but that Section 14 (2) is, and which applies only to costs of valuation incurred before the grant of the new tenancy for the purpose of fixing the rent under that tenancy.

7.2 We have concluded that the wording in Section 15 (2) (c) of the Act, has the effect of requiring the tenant to bear the landlords' costs of the valuation, for the purposes of the rent review under Section 15 (2). However, paragraph 3 of the Second Schedule of the lease provides that "the reasonable costs of the landlord of obtaining the valuation for the purposes of ascertaining the rent payable hereunder in accordance with paragraphs 1 or 2 of the Schedule shall on each occasion be borne by the tenant". Section 15 (2) (c) therefore takes the matter no further. The Second Schedule of the lease simply reflects that statutory provision.

7.3 The question remains, whether the Leasehold Valuation Tribunal has jurisdiction to order any party to pay costs, and to determine what those costs should be? Mr Marr-Johnson contended that the Tribunal has that jurisdiction by virtue of Section 115, Housing Act 1996. That Section imported a new Section 21 (1) (ba) into the 1967 Act. That provides the following matters shall in default of agreement be determined by a Leasehold Valuation Tribunal, namely

"(ba) - the amount of any costs payable under Section 9 (4) or 14 (2)."

- 7.4 Section 9 (4) of the 1967 Act relates to a tenant's purchase of the freehold, and is not applicable of this case as Mr Marr-Johnson has conceded. Section 14 (2) relates as we have noted to the valuation incurred before the grant of the new extended tenancy, and not on the rent review after 25 years of that new tenancy. Had Parliament intended a Leasehold Valuation Tribunal to have jurisdiction to determine costs payable on a rent review, we would have expected a specific mention in Section 21 (1) (ba). It may be the authority has mistakenly been omitted or that the legislation is defective in that regard. A Tribunal is required to reach a determination on authorities that exist, and not to invent jurisdiction which has not been specifically conferred by Parliament.
- 7.5 We considered that it would be most helpful for Leasehold Valuation Tribunals to be given authority to determine those specific points, especially where, as in this case, we have heard the parties and their representations.
- 7.6 We find that a Leasehold Valuation Tribunal has no jurisdiction to determine the costs of the valuation incurred for the purposes of a rent review under Section 15 (2). The parties are, however, bound by the Second Schedule of the lease and the tenant is liable to pay the reasonable costs of the landlord of obtaining the valuation for the purposes of the rent review. Despite the submissions and hearing all of the evidence, the Tribunal regrets that the question as to what costs properly fall within the wording of "costs of the valuation" and the reasonableness of such costs, were matters which in default of agreement between the parties, must be determined by a further application to the Court.

DETERMINATIONS

- 8.1 a) We determine that the revised rent payable from the review date shall be £20,300 per annum (Twenty thousand three hundred pounds per annum).
- b) We make no Order as to the liability for costs.



DAVID M NESBIT

Chairman