

MIDLAND RENT ASSESSMENT PANEL

Case Nos: BIR/41UB/OAF/2003/0103
BIR/41UB/OC6/2003/0071Leasehold Reform Act 1967Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S.21 THE LEASEHOLD REFORM ACT 1967
TO DETERMINE THE PRICE PAYABLE ON ENFRANCHISEMENT BY THE TENANT
UNDER S.9(1) L R ACT 1967 AND
DETERMINATION OF REASONABLE COSTS
UNDER SECTION 9(4) LEASEHOLD REFORM ACT 1967

Applicant Tenants: Mr Terence Tilsley and Mrs Susan Tilsley

Respondent Freeholder: Mr Jagjit Aulak

Property: 45, Bower Lane Rugeley Staffordshire WS15 2RD

Date of Tenants' Notice claiming to acquire the freehold: 13 May 2003

RV as at 1.4.1973: Less than £500

Applications dated: 29 July 2003

Hearing at: The Panel Office

On: 30 September 2003

APPEARANCES:

For the Tenants: Mr P Rocky FRICS

For the Freeholder: No appearance

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr P J Waller LLB
Mrs N Jukes

Date of Tribunal's decision: 29 OCT 2003

1. **Background:** Mr Terence and Mrs Susan Tilsley are the tenants (the '**Tenant**') by a 99 year lease (the '**Lease**') from 25 March 1965, at a fixed ground rent of £21 pa, of the dwelling house and premises at 45, Bower Lane Rugeley Staffordshire WS15 2RD (the '**Property**'). The **Freeholder** is Mr Jajit Aulak. By a notice dated 13 May 2003 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 29 July 2003 from the Tenant's agent, applications are made to us to determine: (i) the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act; and (ii) the Freeholder's reasonable costs under s.9(4). We inspected the property on 30 September 2003 and a hearing was held on the same day.
2. The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 61 years, adopted in the valuation for the Tenant and not contested. We and the parties accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.
3. The Property comprises a semi-detached house, with an integral single garage, of traditional brick and tile construction on a corner plot in an established residential area of similar properties. The accommodation includes: on the ground floor - hall, Living room, kitchen/breakfast room; on the first floor - 3 bedrooms, bathroom with wc. The site is roughly rectangular in shape with a frontage of 6.4m; the width varies (one side boundary is curved) and the total site area is 231m².
4. At the hearing Mr P Rocky FRICS appeared for the Tenant; the Freeholder, who had had notice of the hearing and without showing sufficient cause, did not appear and was not represented.

THE PRICE PAYABLE - S.9(1):

5. **The valuation method:** Mr Rocky adopts, and we accept that, the generally recognised valuation method to derive the price payable for the freehold interest is: (i) capitalise the ground rent (£21 pa) from the Date for the unexpired term of the Lease (61 years); (ii) capitalise the modern ground rent (s15 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 the extension to the Lease), the value of the freehold reversion in possession at the end of the fifty years' extension is ignored as being too remote to have a separate value for it. As no evidence of cleared sites is adduced, the modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value. The entirety value is the value of the freehold interest in the Property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful.
6. Mr Rocky's valuation does not include a *Haresign* addition - recognised in *Haresign v St John The*

Baptists' College, Oxford [1980] 255 EG 711 when specific account was taken of the reversion to the full value of the dwelling after the expiration of the assumed fifty years' extension of the lease. We accept his approach.

8. **Mr Rocky's valuation:** For the freehold interest - £803

9. More specifically:

Term			
Ground rent		£21 pa	
YP 61 years at 7%		<u>14.0553</u>	£295.00
Reversion			
Entirety value		£90,000	
Site value at 35%		£31,500	
Sec. 15 ground rent at 7%		£2,205 pa	
YP deferred 61 years at 7%		<u>0.2304</u>	<u>£508.00</u>
			£803

10. **Our Decision:** We are satisfied that Mr Rocky clearly recognises his duty to us and that his valuation is generally not inconsistent with the principles in the Act. However, recognising our duty to seek to achieve a just price as representative of acquiring the freehold on fair terms, we questioned his use of 35% as the site apportionment, suggesting that 30% might be more sustainable. Our reason is that, despite the site being a corner site overlooking fields at the front, it is on an estate of generally lower values (as opposed to high value) and is small (231m²). Mr Rocky accepts our proposition and, in consequence our valuation of the reversion is:

Entirety value	£90,000	
Site value at 30%	£27,000	
Sec. 15 ground rent at 7%	£1,890 pa	
YP deferred 61 years at 7%	<u>0.2304</u>	<u>£435.00</u>

The resultant price is £730 [the term - £295 plus the reversion - £435]

11. **Conclusion on the price payable:** We determine that, as an expert tribunal, taking account of the evidence adduced and our evaluation of it, using our general knowledge and experience but not any special knowledge and our external inspection, the sum to be paid by the Tenant for the acquisition of the freehold interest in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967, as amended, is £730 (Seven hundred and thirty pounds).

[continued]

THE REASONABLE COSTS - S.9(4):

12. 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 [matters in subs.(4)(a) to (d) as to "legal costs" and in subs.(4)(e) as to "valuation costs"]'

13. 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 connection with a reference to a leasehold valuation tribunal.'

14. **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.

15. **The 'legal costs':** Mr Rocky introduces a letter from the Respondent Freeholder's solicitors, saying that £250 is the amount required for legal costs, and says that this is a reasonable amount. We accept Mr Rocky's submission as representative of the reasonable subs.(4)(a) to (d) costs incurred or to be incurred.

16. **The valuation costs:** Mr Rocky says that neither we nor he has any evidence that the Freeholder has incurred any subs.(4)(e) valuation costs in pursuance of the Notice. We accept his submission.

Our determination of the costs:

17. In so far as subs.9(4)(a) to (d) 'legal costs' are incurred and are to be incurred by the Respondent Freeholder, the Applicant tenants shall bear a sum not exceeding £250 (Two hundred and fifty pounds) plus actual disbursements incurred in obtaining office copy register entries, plus vat if appropriate, as the reasonable or incidental costs.

18. The Respondent Freeholder has not incurred any subs.9(4)(e) 'valuation costs' and the Applicant tenants shall not bear any.

19. This our final determination on the subs.9(4) costs to be borne by the Applicant.

Date: 19 OCT 2003

T F Cooper
CHAIRMAN

