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

BIR/00CN/OAF/2004/0217

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr P Durnall (leaseholder)

Respondent: Miss K K Bindra (freeholder)

Subject property: 82 Victoria Road
Handsworth
Birmingham
B21 0SJ

Date of tenant's notice: 28 May 2004

Application to the LVT: 19 August 2004

Hearing: 19 October 2004

Appearances:

For the applicant: Mr A W Brunt FRICS

For the respondent: Mr A P Herbert FRICS

Members of the LVT: Professor N P Gravells MA
Mr I D Humphries BSc FRICS
Mrs N Jukes

Date of determination:

03 NOV 2004

Introduction

- 1 This is a decision on an application under section 21(1)(a) of the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr P Durnall, leaseholder of the house and premises at 82 Victoria Road, Handsworth, Birmingham B21 0SJ ("the subject property") for the determination of the price payable under section 9 for the freehold interest in the subject property.
- 2 The applicant leaseholder holds the subject property under an underlease for a term of 99 years less three days from 25 March 1907 at a ground rent of £6.00 per year. The underlease was assigned to the applicant on 9 January 1998. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 1.8 years.
- 3 The applicant served on Miss K K Bindra, the respondent freeholder, a tenant's notice dated 28 May 2004, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and he subsequently made the present application.
- 4 The parties do not dispute and the Tribunal accepts that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.

Subject property

- 5 The subject property is a mid-terraced house located on Victoria Road, on the south side of Soho Road in Handsworth. The accommodation comprises, on the ground floor, two reception rooms and kitchen; and, on the first floor, two bedrooms and bathroom/wc (converted from a third bedroom). The property is part double-glazed. Space heating is by gas-fired central heating with radiators in all rooms. Outside there is a small garden area to the front of the property and a garden and an outbuilding to the rear of the property. There is no garage or off-street parking.

Inspection and hearing

- 6 The members of the Tribunal inspected the subject property on 19 October 2004 in the presence of Mr Durnall, the applicant leaseholder, and Mr Brunt.
- 7 The subsequent hearing was attended by Mr Brunt, representing the applicant leaseholder, and by Mr Herbert, representing the respondent freeholder.

Representations of the parties

- 8 Both Mr Brunt and Mr Herbert adopted as the basis of valuation under the 1967 Act the standard three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity, deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).

- 9 In addition to the facts outlined above, the following matters relevant to the valuation calculation were also agreed by the parties:
- The valuation date for the purposes of determining the price payable for the freehold interest in the subject property is 3 June 2004 (the date that the respondent received the Notice of Tenant's Claim) and the unexpired term of the underlease is 1.8 years.
 - The ground rent payable under the underlease is £6.00 per year.
 - The site value of the subject property is to be calculated in accordance with the "standing house method", adopting a figure of 33 1/3 per cent of the freehold entirety value.
 - The appropriate yield rate to be applied in capitalising the existing ground rent is 6½%.
- 10 Since both parties apply the same established formula to determine the premium payable for the freehold interest, the matters that remain in dispute between the parties are the two factors in that formula that are not agreed, namely:
- the freehold entirety value of the subject property at the relevant date; and
 - the appropriate yield rate to be applied in calculating and capitalising the modern ground rent.
- 11 Although both parties acknowledged that the current property market created some difficulty in determining the freehold entirety value of the subject property at the relevant date, Mr Brunt, on behalf of the applicant leaseholders, adopted the figure of £90,000 while Mr Herbert, on behalf of the respondent freeholders, adopted the figure of £110,000. As to the yield rate to be applied in calculating and capitalising the modern ground rent, Mr Brunt adopted the figure of 6½ per cent while Mr Herbert adopted the figure of 6 per cent.

Evidence and submissions on behalf of the applicant leaseholder

- 12 Mr Brunt put in evidence agreed sale prices and asking prices of two properties on Victoria Road and six properties on Tew Park Road (which is immediately to the south of, and runs parallel to, Victoria Road). The recent agreed sale prices ranged from £84,950 to £100,000; and the current asking prices ranged from £89,950 to £114,950. On the basis of those figures, Mr Brunt submitted that the freehold entirety value of the subject property on the relevant date was £90,000.
- 13 In relation to the appropriate yield rate to be applied in calculating and capitalising the modern ground rent, Mr Brunt accepted that it is normally appropriate to apply a yield rate below the "standard" yield rate of 7 per cent where the unexpired term is less than twenty years. However, he referred to his considerable experience of settled claims under the 1967 Act and stated that he had never agreed a yield rate below 6½ per cent, even in a case where the unexpired term was less than one year. He also referred to two recent decisions of the Leasehold Valuation Tribunal of the Midland Rent Assessment (BIR/00CN/OAF/2003/0210 (14 Regent Street, Stirchley)) and BIR/00CN/OAF/2004/0049 (42 Westminster Road, Selly Park)) in which the Tribunal had declined to apply a yield rate below 6½ per cent. He placed particular reliance on the latter case, where the unexpired term was similar to that in the present case. On the basis of that evidence, he submitted that the appropriate yield rate in the present case is 6½ per cent.

- 14 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Brunt submitted the following valuation:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £6.00 per year
Years Purchase: 1.8 years @ 6½%: 1.6487
Capitalised ground rent: £6.00 x 1.6487 = £9.89

(ii) Modern ground rent

Standing house value of subject property: £90,000
Percentage attributable to site: 33 1/3%: £30,000
Annual equivalent @ 6½% = £1,950

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £1,950
Years Purchase at 6½% in perpetuity deferred 1.8 years: 13.74
Capitalised modern ground rent: £1,950 x 13.74 = £26,793

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £26,800.

Evidence and submissions on behalf of the respondent freeholder

- 15 Notwithstanding the availability of evidence of agreed sale prices and asking prices of properties similar to the subject property and in the immediate vicinity of the subject property (on the south (Winson Green) side of Soho Road), Mr Herbert relied on evidence of achieved and agreed sale prices of properties on the north (Handsworth Wood) side of Soho Road. The prices ranged from £115,000 to £129,950; and, on the basis of those figures, Mr Herbert submitted that the freehold entirety value of the subject property on the relevant date was £110,000.
- 16 In relation to the appropriate yield rates to be applied where the unexpired term is short, Mr Herbert argued that an investor would pay more for the freehold because the prospect of the increased income is closer in time. He therefore submitted not only that a reduced yield rate should be applied in capitalising the existing ground rent but also that the rate to be applied in calculating and capitalising the modern ground rent should be further reduced. Since the rate to be applied in capitalising the existing ground rent had been agreed at 6½ per cent, he submitted that the rate to be applied in calculating and capitalising the modern ground rent should be 6 per cent.
- 17 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Herbert submitted the following valuation:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable: £6.00 per year
Years Purchase: 1.8 years @ 6½%: 1.64764
Capitalised ground rent: £6.00 x 1.6487 = £9.89

(ii) Modern ground rent

Standing house value of subject property: £110,000
Percentage attributable to site: 33 1/3%: £36,666.30
Annual equivalent @ 6% = £2,200

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,200

Years Purchase at 6% in perpetuity deferred 1.8 years: 15.00710

Capitalised modern ground rent: £2,200 x 15.00710 = £33,015.62

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of £33,025.51.

Determination of the Tribunal

- 18 The Tribunal gave full consideration to the arguments and evidence of the parties in relation to the issues in dispute.
- 19 The Tribunal holds that the standard basis of valuation adopted by Mr Brunt and Mr Herbert properly reflects the principles of the 1967 Act.
- 20 The Tribunal accepts that the current state of the property market creates some difficulty in determining the freehold entirety value of the subject property at the relevant date. However, in those circumstances the Tribunal is of the opinion that the best evidence is provided by the agreed sale prices of properties similar to the subject property and in the immediate vicinity of the subject property. Indeed, the Tribunal derived very limited assistance from the evidence, adduced by Mr Herbert, of sale prices of properties on the north side of Soho Road. Mr Herbert accepted, in response to questions from the Tribunal, that Handsworth Wood is a superior location with better quality housing than that found on the south side of Soho Road and exemplified by the subject property. Moreover, on the basis of an external inspection, the Tribunal finds that the properties referred to by Mr Herbert were larger properties than the subject property and superior in design and location. The Tribunal therefore considered the evidence, presented by Mr Brunt (with some further clarification by Mr Herbert), of properties similar to the subject property and in the immediate vicinity of the subject property. Although that evidence is not wholly unequivocal, it suggests a freehold entirety value for the subject property at the relevant date closer to the figure adopted by Mr Brunt. Using its general knowledge and experience (but no special knowledge) the Tribunal finds that the freehold entirety value of the subject property at the relevant date was £95,000.
- 21 In relation to the percentage yield rates, the Tribunal holds that it would be inappropriate to interfere with the agreed rate of 6½ per cent to be applied in capitalising the existing ground rent. In any event, such a reduction from the "standard" yield rate of 7 per cent is consistent with the figure generally applied in decisions of Leasehold Valuation Tribunals in the Midland region (and of the Lands Tribunal in appeals from the region), where the unexpired term is short. However, the Tribunal is not persuaded by the argument of Mr Herbert that there should be a further reduction in the yield rate to be applied in calculating and capitalising the modern ground rent. Indeed, where, as in the present case, the unexpired term is very short, the Tribunal is not persuaded that the risk to the hypothetical investor is any greater as between the immediate income of the existing ground rent and the modern ground rent coming on stream in less than two years. The Tribunal therefore finds that the appropriate yield rate to be applied at all stages of the valuation calculation is 6½ per cent.

22 Applying those figures (and the agreed figures referred to in paragraph 9 above), the Tribunal calculates the price payable as follows:

(i) *Capitalisation of existing ground rent to termination of lease*

Ground rent payable: £6.00 per year
Years Purchase: 1.8 years @ 6½%: 1.6487
Capitalised ground rent: £6.00 x 1.6487 = £9.89

(ii) *Modern ground rent*

Standing house value of subject property: £95,000
Percentage attributable to site: 33 1/3%: £31,666.67
Annual equivalent @ 6½% = £2,058.33

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,058.33
Years Purchase at 6½% in perpetuity deferred 1.8 years: 13.7359
Capitalised modern ground rent: £2,058.33 x 13.7359 = £28,273.02

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £28,280.

23 Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £28,280.

Summary

24 The Tribunal determines the price payable by the tenants for the freehold interest in the subject property at £28,280 plus the freeholder's reasonable costs calculated in accordance with section 9(4) and (4A) of the 1967 Act.

Nigel Gravells

Professor Nigel P Gravells
Chairman

03 NOV 2004