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Our Ref: M/EH 2506

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 Sajid Mahmood
Respondent: Mr Mohammed Sadiq
Re: 13 Nansen Road, Alum Rock, Birmingham, B8 3LD

Date of Tenants Notice: 3/1/02
RV as at 1.4.73: £139.00
Application dated: 6/8/02
Heard at: The Panel Office
On: 28/11/02

APPEARANCES:

For the Tenant: Mr Kevin Foreman
For the Landlord: Mr Kenneth Davis

Members of the Leasehold Valuation Tribunal:

Mr N R Thompson FRICS (Chairman)
Mr P J Waller
Mr D Underhill

Date of Tribunals decision:

E8 JAN 2003

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21 AND 21 (1) (BA) OF
THE LEASEHOLD REFORM ACT 1967

IN THE CASE OF
MAHMOOD v SADIQ

13 NANSEN ROAD
ALUM ROCK
BIRMINGHAM
B8 3LD

Reference : M/EH.2506

Background

This is a determination under Section 9 of the Leasehold Reform Act 1967 (as amended) as to the price to be paid for the freehold interest in respect of an inner terraced house, 13 Nansen Road, Alum Rock, Birmingham, B8 3LD. The Lessee, Mr Sajid Mahmood holds the property by virtue of a Lease dated the 9th July 1962 for a term of 99 years (less three days) from the 25th December 1898 at an annual ground rent of £6. The Tenant's Notice of Claim to acquire the freehold interest was dated 3rd January 2002 and was served on 7th February 2002. The Tribunal accepted that the qualifying conditions for entitlement to enfranchise under the Act had been fulfilled.

Property

The Tribunal inspected the property on the 28th November 2002 and found it to comprise a two story inner terraced house of brick and slate construction, built just over 100 years ago and situated approximately 4 miles to the East of Birmingham City Centre in an area of predominantly similar residential properties. The house had been the subject of a Local Authority Improvement Scheme some ten years ago, involving the replacement to the roof covering; windows; doors; and various internal improvements.

The accommodation comprises two Reception Rooms, Kitchen and Bathroom (within a rear, single storey extension) on the ground floor with three bedrooms at first floor level. Externally there is a small front garden and a rear (concrete slabbed) garden, with a rear pedestrian access. There is no on site car parking or garaging.

Hearing

At the Hearing the Lessee was represented by Mr K Foreman BSc. MRICS of Kevin Foreman & Associates, and the Landlord was represented by Mr Kenneth F Davis FRICS.

The Hearing commenced with Mr Foreman introducing his case on behalf of the Lessee by submitting details of the property and the following valuation:-

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

Ground rent payable: £6.00 per annum
Expired lease so no capitalisation factor
Capitalised ground rent: nil

b) Modern Ground rent

Standing house value of subject: £58,000
Percentage of attributable to site @ 30%: £17,400
Annual equivalent @ 6.5%: £1,131

c) Capitalisation of modern ground rent

Modern ground rent (as above): £1,131
Years purchase @ 6.5% in perpetuity: 15.3846
Capitalised modern ground rent: £1,131 x 15.3846 = **£17,400**

In support of his standing house value of £58,000, Mr Foreman cited evidence of two properties – firstly, 120 Tarry Road, Saltley, having two Reception Rooms and a Kitchen at ground floor level plus two Bedrooms and a Bathroom at first floor level, currently on the market at £74,950, and secondly, 8 Cremore Avenue, Saltley, having two Reception Rooms, Kitchen and Bathroom at ground floor level and two bedrooms at first floor level, recently “reserved at close to the asking price” of £69,950.

Having regard to the location of the subject property, its size and accommodation, Mr Foreman was of the view that the current value (i.e. at November 2002) was of the order of £70,000 which, using the Halifax House Price Index, he had rebased to the date of the Notice of Claim (January 2002) at a figure of £58,000.

In addition, Mr Foreman had undertaken an internet search in the same postcode area based on Land Registry records for the period July to September 2002, which had produced an average price for a terraced property (taken from 26 sales) of £53,436.

Mr Foreman had then considered whether an “Haresign Addition” would be appropriate in this instance but he had concluded that it would not.

Consequently, he had adopted what he described as a conventional valuation approach i.e. valuing the term and the reversion, using the Standing House method to determine the value of the site.

Under cross examination by Mr Davis, Mr Foreman agreed that it seemed clear that the property had been subject to a comprehensive “envelope scheme” involving both external and internal elements of the property. He also accepted that backdating of current values by use of statistical information and indices was not always likely to be entirely accurate.

In presenting this case on behalf of the freeholder, Mr Davis presented a proof of evidence and a first valuation (incorporating an “Haresign Addition” as follows:-

Value of Term	-	Nil	
Open Market Value	-	£ 60,000	
Site Value 30%	-	£ 18,000	
Decapitalise @ 6%	-	£ 1,080	
YP for 50 years @ 6%	-	15.56	£ 17,020
Reversion to Standing House Value		£ 60,000	
P.V. of £1 for 50 years @ 6%		.0542	£ 3,252
			£ 20,272

In relation to his adopted yield rates, Mr Davis argued that 6% was appropriate in the present case, quoting from “Statutory Valuations” by Boum and Sands. Based on this, Mr Davis suggested that no investor would place his capital in property for a low yield unless that property had growth potential. The growth potential in the case of 13 Nansen Road was reflected in the secure nature of the modern ground rent; the fact that it would be subject to a review in 25 years; and the improvement in vacant possession value which could be expected over a period of time. In view of these factors and market conditions existing in 2002, as well as current interest rates, Mr Davis therefore felt that a yield of 6% was not an unreasonable figure.

In terms of the open market value of the property, Mr Davis quoted the sale in April 2002 of 24 Chartist Road, Alum Rock – a property having identical accommodation and being located approximately half a mile from the subject premises. 24 Chartist Road was in poor condition at the time of the sale and in the view of Mr Davis

required between £8,000 and £10,000 spending on it to bring it up to a reasonable condition. Coupled with the sale price achieved of £51,000 this suggested that the open market value of that property on a freehold basis was £60,000 as at April 2002.

Mr Davis also drew attention to the fact that the Notice of Claim was actually served on the 7th February 2002, even though it was dated almost one month before then.

Mr Davis also suggested an alternative form of valuation, taking into account the requirements of Section 82 of the Housing Act 1969 that the Tenant and his family are deemed not to be in the market to purchase the freehold interest, so that no element of marriage value is to be included in the enfranchisement price. Applying that assumption to the present situation, Mr Davis suggested that his Client owned the freehold of a property where the Lease had expired some years ago and in respect of which he therefore needed to "correct the situation" by the service of the appropriate Notice to convert the existing tenure to an Assured Tenancy.

As a consequence of this Mr Davis tabled a second valuation ignoring the Tenant's bid and taking into account the situation described above. This valuation is set out below:-

VALUATION IGNORING TENANT'S BID AND CONVERTING TO AN ASSURED TENANCY

Gross	-		£ 60.00
			£ 3,120.00
Annual Rent	-	£3,120.00	
Less Management 10%	-	£ 312.00	
Repairs at 10%	-	£ 312.00	
Insurance	-	£ 100.00	
Gas Test	-	£ 100.00	£ 824.00
			<hr/>
			£2,296.00
YP in perpetuity @ 6%	-		£ 16.66
			<hr/>
			£38,266.00
P.V. of £1 for 2 years @ 6%			£ 8,899.00
			<hr/>
			£34,053.00
			<hr/> <hr/>

Mr Davis suggested that this was the conventional investment valuation approach using a gross rent of £60 per week, less the usual deductions for management repairs, insurance and annual gas test, thus producing a net income of £2,296 taken at a yield in perpetuity of 6%. In order to take account of the fact that the Landlord would need to serve the appropriate Notice, and would have to either negotiate an assured Tenancy or have the rental decided by the Rent Assessment Panel, a deferment period of 2 years had been adopted. Mr Davis then referred to examples of rental growth and yield rates elsewhere in support of the figures which he had adopted.

As a check to this approach, Mr Davis suggested that at the present time, investors would be prepared to pay between 50% and 60% of open market value (estimated in his opinion to be £60,000) for a property such as this, if it was subject to an Assured Tenancy in favour of a relatively young tenant with a family. This produced a price in the range of £30,000 - £36,000.

Mr Davis therefore concluded that in his view, the value of the freehold interest was £34,053.

Decision

It is common ground between the parties that the date on which the Notice of Claim was served was 7th February 2002 and for the purposes of the current application, that is therefore the date of valuation.

In relation to the second valuation prepared by Mr Davis, the Tribunal did not accept that an investment valuation approach was correct in this instance, given that it presupposed that any freeholder faced with a Tenant holding over under a long lease would automatically serve the appropriate notice under Schedule 10 to the Local Government and Housing Act 1989 to convert the lease to an Assured Tenancy. Given that the original term of the long lease in this case expired on the 22nd December 1997, it would have been open to a freeholder to take that action at any time over the following 4 years – until the leaseholder served formal Notice of Claim to have the freehold under the 1967 Act (as amended) in February 2002. No freeholder had in fact chosen to do so, which suggested that automatic and prompt conversion to an Assured Tenancy would not necessarily be in the forefront of the mind of any prospective investor purchasing the freehold interest of the property as at that date.

Accordingly, the Tribunal rejected the second method of valuation adopted by Mr Davis, and therefore the “check” approach which supported it.

In considering the first valuation submitted by Mr Davis and the correspondingly similar approach adopted by Mr Foreman, the Tribunal considered three areas of difference between the parties – whether or not an Haresign Addition was appropriate; the yield to be adopted and the entirety value of the subject property as at the date of valuation.

So far as the first element was concerned - the possible application of an Haresign Addition (so called after *Haresign v St. John The Baptist College Oxford LR/18/1079 (V G Wellings QC)*) - the Tribunal did not feel it to be appropriate in this instance. In the Haresign case, the property which had been the subject of that appeal, 54 Southmore Road, Oxford, comprised a substantial 3 storey late Victoria house, with a Lease then having 3 years unexpired. It was situated within a Conservation Area (with the implications that would have for redevelopment) and was valued at £195,000 in 1995, thereby confirming its very substantial nature. Although the Landlord in that instance had been represented by both Counsel and a qualified Surveyor, Mr Haresign had acted for himself. The circumstances in the Haresign case were therefore considered to be significantly different.

So far as the second element was concerned, the Tribunal considered that a yield of 6.5% would be appropriate.

In relation to the third element i.e. the entirety value of the subject property, the parties' respective opinions were £58,000 and £60,000. On balance the Tribunal preferred the figure adopted by Mr Davis of £60,000.

Taking all of these matters into account, the Tribunal's valuation was as follows:-

Entirety Value	:	£60,000	
Site Value taken at 30%	:	£18,000	
Section 15 rent at 6.5%	:	£ 1,170pa	
YP in perp. at 6.5%	:	<u>15.3846</u>	
			£18,000

Accordingly the Tribunal determined the price to be paid for the freehold interest of 13 Nansen Road at £18,000 (eighteen thousand pounds) plus the landlord's reasonable costs calculated in accordance with Section 9 (4) of the Leasehold Reform Act 1967 and Schedule 22 Rule 1 (5) of the Housing Act 1980.



Nigel R Thompson
Chairman

8 JAN 2003