

200

LVT 9

Our Ref: M/EH 2523

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 Ashmore

Respondent: Coleshill & District Investments Company Limited

Re: 37 Radstock Avenue, Hodge Hill, Birmingham,
B36 8HD

Date of Tenants Notice: 17 October 2001

RV as at 1.4.73: £305

Application dated: 29 August 2002

Heard at: The Panel Office

On: 28 November 2002

APPEARANCES:

For the Tenant: Mr A W Brunt

For the Landlord: Mr K Davies

Members of the Leasehold Valuation Tribunal:

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

Date of Tribunals decision:

ES 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

ASHMORE v COLESHILL & DISTRICT INVESTMENT COMPANY LIMITED

**37 RADSTOCK AVENUE
HODGE HILL
BIRMINGHAM
B36 8JR**

Reference : M/EH.2523

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 a semi-detached house, 37 Radstock Avenue, Hodge Hill, Birmingham B36 8JR. The Lessee, Mr Ashmore, holds the property by virtue of an underlease dated 26 March 1938 for a term of 99 years less 3 days from 25 March 1936 at a fixed annual rent of £8. The Tenant's Notice of Claim to acquire the freehold interest was dated 17 October 2001 when approximately 33¹/₂ years of the term remained unexpired. 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 28 November 2002 in the presence of Mr Ashmore. The property comprises a two storey semi-detached house of brick and tile construction fronting onto a road of largely similar properties approximately 5 miles east of Birmingham City Centre.

The centrally heated accommodation comprises an Entrance Porch; Hallway; two Reception Rooms and Kitchen (with understairs Pantry) on the ground floor, with three Bedrooms; a Bathroom and separate WC on the first floor. Externally the property has both front and rear gardens as well as a side Garage. The site of the subject property has a road frontage of approximately 9.54 metres and an area of circa 522 square metres.

Hearing

At the Hearing the Lessee was represented by Mr A W Brunt FRICS and the Landlords were represented by Mr Kenneth F Davis FRICS.

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

Term

Ground Rent	£8	
Y.P. for 33 ¹ / ₂ years @ 7%	<u>12.8</u>	£102
Standing House Value :	£125,000	
Plot Value @ 33% :	£ 41,250	
Section 15 Rent @ 7% :	£ 2,887.50 p.a.	
Y.P. in perp. deferred 33 ¹ / ₂ yrs @ 7% :	<u>1.48</u>	£ 4,273
		£ 4,375

In support of his Entirety Value, Mr Brunt referred to a number of comparable properties in the locality which were either for sale or had been sold within a few months of the date of the Tenant's claim (17 October 2001) and he tabled various advertisements in connection with those properties. In particular, he drew the Tribunal's attention to:

- ◆ 37 Ventnor Avenue, Hodge Hill on offer at £149,950 as at February 2002;
- ◆ A property similar in appearance to the subject premises but located in Primley Avenue which had been offered at £141,950 and had been sold (subject to contract) by the 21 February at an unknown price;
- ◆ 36 Radstock Avenue on offer as at 30 May 2002 at £159,950;
- ◆ A further property in Primley Avenue on the market at £153,950 as at May 2002;
- ◆ A property in Sandhurst Avenue offered at £139,950 as at June 2002; and
- ◆ 452 Bromford Road on offer as at 21 February 2002 at £129,950 and still believed to be available.

A number of these properties had been the subject of conversion and extension schemes normally to provide additional ground floor accommodation and therefore required a degree of interpretation in relating them to 37 Radstock Avenue. In addition, he emphasised that the date of the Notice of Claim was 17 October 2001 and that following a fairly flat period over Christmas 2001 the market had risen from February onwards both strongly and rapidly. Therefore working back he had deduced the Entirety Value of 37 Radstock Avenue as at the 17 October 2001 to be £125,000.

In relation to the percentage of the Entirety Value to be taken for the plot, Mr Brunt had obtained advice from a former colleague operating in the Sutton Coldfield and Lichfield area, Mr Bill Tandy, who had sold a number of small development plots and in whose experience a single/double plot was likely to command around ¹/₃ of the Entirety Value of the finished house. Mr Brunt also suggested that the adoption of 33% (or ¹/₃) was consistent with previous LVT Decisions.

Under cross examination by Mr Davis, Mr Brunt confirmed that where otherwise not stated specifically, he was confident the comparables he had cited were all freehold since they would otherwise be unmortgageable and the asking prices would therefore be unrealistically excessive for leasehold properties having only some 33¹/₂ years unexpired.

Mr Brunt also agreed with the suggestion that 37 Radstock Avenue occupied a large plot.

He also confirmed that he had not obtained any evidence or comment from Bill Tandy in writing, but emphasised that he had known Mr Tandy for some 25 years and knew him to be experienced in the sale of single plots and small development sites.

Mr Davis then referred to a signed contract for the sale of 54 Radstock Avenue which he had tabled at the start of the Hearing. That contract related to the sale of 54 Radstock Avenue on a freehold basis at a figure of £150,000 and was dated 4 May 2001. Mr Davis indicated that the garage had been converted into an additional room and there was an extension at the back of the property. Nevertheless he asked Mr Brunt if he would like to comment on this evidence of the sale of a nearby property in the same road at such a figure. In response, Mr Brunt pointed out that this document had just been produced at the start of the Hearing and as such he felt unable to comment on it without having had the opportunity of considering it properly.

Mr Davis then introduced his case on behalf of the Landlord by submitting his own Proof of Evidence and the following valuation :-

Ground Rent	:	£8	
YP for 33 ¹ / ₂ years @ 7%	:	12.8039	£ 102.43
Plot Value based on reduced plot size 375 sq yds @ £160 per sq yd :		£ 60,000	
Modern Ground Rent @ 7% :		£ 4,200	
YP in perpetuity deferred 33 ¹ / ₂ years @ 7%	:	<u>1.4818</u>	<u>£6,223.60</u>
			£6,326.03
			=====
		SAY :	£6,325

In support of his plot value Mr Davis cited :-

1. The sale of some 755 sq yds of building land with a frontage of 67' at Whitecrest, Great Barr, Birmingham in September 2001 at a figure which devalued to £160 per sq yd. The property was sold at auction and had the benefit of planning consent for the erection of two residential dwellings.

2. The proposed sale at auction of a building plot comprising land adjacent to 47 Melbourne Road, Bromsgrove in respect of which planning permission had been granted on 12 March 2002 for the erection of a three bedroomed detached house. The guide price given in the auctioneers particulars was £70,000 - £90,000.
3. The proposed sale by auction of a freehold building plot at Ashmead Drive, Cofton Hackett, having planning permission granted by Bromsgrove District Council in April 2002 for the erection of a four bedroomed detached house. No indication was given on the sale particulars or the planning application/plans as to the area of the site although the road frontage was shown as approximately 9 metres. The guide price indicated on the auctioneers sale particulars was £80,000 - £100,000.

Mr Davis emphasised that the site of 37 Radstock Avenue was an above average plot of some 624 sq yds compared with "the norm ... usually between 375 and 400 sq yds". For the purposes of his valuation therefore Mr Davis had assumed a notional area of 375 sq yds to which he had then applied the devalued rate per sq yd from the sale of the freehold building land at Whitecrest of £160 to arrive at a plot value of £60,000.

Mr Davis suggested that the proposed sale of the two building plots referred to earlier in his evidence support such a figure even allowing for the appropriate adjustments which would have to be made for the fact that the proposed auction was scheduled for 3 December 2002 and the date of the Notice of Claim was 17 October 2001. In his Proof of Evidence Mr Davis suggested that even if land values had risen by 20% between those two dates then the guide prices suggested by the auctioneer for the two building plots still supported the adoption of a site value for the subject property of £60,000.

As referred to in his cross examination of Mr Brunt earlier at the Hearing, Mr Davis then considered the signed contract for the sale of 54 Radstock Avenue dated 4 May 2001 at a figure of £150,000 for the freehold interest. Mr Davis considered that this demonstrated that the Entirety Values adopted by Mr Brunt were insufficient and that given the general rise in property prices between May 2001 and the date of Claim (17 October 2001) the contracted sale of 54 Radstock Avenue supported his submission regarding the site value.

Under cross examination Mr Davis confirmed that he had seen the houses being built on the Whitecrest site at Great Barr but he had not been inside them. Mr Brunt indicated that when carrying out an inspection of the site he had coincidentally met the developers and had therefore been given an opportunity of looking round the properties, both of which had five bedroomed accommodation and were being offered for sale at £250,000 each. In response to this Mr Davis pointed out that those prices had to be adjusted for the significant increase in the housing market since both the sale of the land in September 2001 and more particularly the date of the Lessee's Notice of Claim on the 17 October 2001.

Mr Brunt went on to question whether Mr Davis considered the two building plots referred to in his evidence were truly comparable with Radstock Avenue given that they were the other side of the City. Mr Davis confirmed that they were in his opinion comparable sites and therefore good evidence.

By way of clarification Mr Brunt asked for confirmation that Mr Davis did not consider one third of the Entirety Value to be an appropriate proportion to take in order to arrive at the plot value. Mr Davis confirmed that this was his view, at which point Mr Brunt questioned why therefore he had argued for precisely that proportion of the Entirety Value when appearing before the Tribunal in the

case involving 1097 Alcester Road South , Birmingham. Mr Davis explained that had been an uncontested case; that he had been acting for the Tenant; and he had produced a Proof of Evidence which he had left to the freeholder to prove wrong.

Mr Davis also confirmed in response to a further question from Mr Brunt that he had been aware of the sale of the Whitecrest building land in Great Barr at the time of his appearance in the case of 1097 Alcester Road South. In that event, Mr Brunt questioned why he did not feel the disclosure of that sale to be relevant. Mr Davis indicated that he had produced a Proof of Evidence in context of settlements then available. He also pointed out that there had been a right of way along the side of the Alcester Road South property and it had occupied a particularly narrow plot.

Turning to 54 Radstock Avenue and the signed contract tabled at the beginning of the Hearing, Mr Brunt asked if there was a selling agent involved and if so who it was. Mr Davis did not know; he had simply been presented with the exchanged contract as tabled. Mr Brunt asked if there was any relationship between the vendor and the purchaser in this case, to which Mr Davis again replied that he did not know.

Mr Brunt then enquired if Mr Davis had any explanation as to why, at the time of a rapidly and strongly rising market, this property should have apparently sold for a figure that was not being achieved in respect of similar properties in the locality even twelve months later. Mr Davis offered no comment but simply reiterated that there was as a matter of fact, a signed contract which he had tabled for the consideration of the Tribunal for the sale of 54 Radstock Avenue in May 2001 at a figure of £150,000.

Mr Brunt then questioned how Mr Davis came across the document given that it was not known whether the transaction was at "arms length" on the open market. Mr Davis responded by saying that it had come to him during the course of buying the freehold when a Notice of Claim had been served after exchange of contracts and the contract itself had been produced to his clients as part of the Lessee's Statutory Declaration. Beyond that he had no further information apart from the fact that the property had been extended.

Mr Brunt concluded his cross examination about this particular aspect of Mr Davis's evidence by questioning the apparent evidence of the sale of number 54 in May of 2001 at £150,000 when twelve months later, number 36 – a much extended property on a particularly wide plot – had only sold for £159,950. Taking into account the substantial rise in the market over the twelve months between the two sales, he found the sale price of number 54 incomprehensible – especially when seen against the background of the sale of a number of other houses in Radstock Avenue and the surrounding roads.

Mr Brunt then turned his cross examination to the estate agents particulars for the building plots at Bromsgrove and Cofton Hackett and asked Mr Davis whether he had been given any estimate of the selling prices for the finished developments in either case. Mr Davis indicated that he had no specific information although clearly the details of the proposed new houses indicated that it would be possible to build a four bedroomed detached house on the site of 37 Radstock Avenue given that the relatively narrow plot in Ashmead Drive, Cofton Hackett had a frontage of only 28'.

Mr Brunt concluded his cross examination by asking Mr Davis what the Entirety Value of number 37 Radstock Avenue would be in his opinion if the standing house approach was to be adopted. Mr Davis responded that as at October 2001 he would regard the correct figure as being £150,000.

Decision

It is common ground between the parties that the term should be valued at £102 and the yield rate adopted throughout the appropriate valuation should be 7%.

It is also agreed between the parties that the Tribunal need only determine the price to be paid for the freehold interest on the basis that the freeholders and headleaseholders will negotiate between themselves the apportionment of the price in order to reflect their respective interests.

The areas where there are divergences of view are the site value to be adopted and the method of ascertaining it.

The "standing house approach" has become fairly common place in recent years and has been accepted by both this Tribunal and the Lands Tribunal on numerous occasions when market evidence of appropriate land sales has not been available.

In this instance Mr Davis presented evidence of an actual land sale and two proposed land sales which he considered to be comparable with the subject property in terms of establishing a site value.

Dealing firstly with the proposed sales of the individual building plots at Melbourne Road, Bromsgrove and Ashmead Drive, Cofton Hackett, the Tribunal felt that these needed to be regarded with caution given that they are located across the other side of the City over ten miles away from the subject property. Furthermore, Bromsgrove and its environs are generally considered a much more desirable and expensive area in which to live than Hodge Hill. It also needs to be borne in mind that as at the date of the Hearing these two properties were simply being offered for auction and whilst the Tribunal would have no reason to doubt the opinion of the auctioneer regarding the achievability of the suggested guide prices, they were at that stage no more than that.

In considering the sale of the Whitecrest land at Great Barr in September 2001 it was noted that the price represented a figure of just over £60,000 per plot for what Mr Davis (in his own Proof of Evidence) described as two "substantial five bedroom houses". Notwithstanding the fact that the current prices of £250,000 are firstly no more than asking figures, and secondly would have to be adjusted to the date of claim nearly twelve months ago, they nevertheless indicated a very different and larger form of house than could realistically be contemplated on the site of 37 Radstock Avenue. Consequently the Tribunal did not consider the adoption of a site value of £60,000 as proposed by Mr Davis to be realistic.

In determining the value of the notional building plot when using the standing house approach it has to be assumed that the site would be redeveloped to maximum advantage. However that does not extend to a form of development which is unrealistic or fanciful. It must represent and reflect what somebody might realistically contemplate building on the site given not only its dimensions and frontage but also the proximity of its neighbours, the character of the locality and perhaps most importantly of all the size, character and value of the other properties in the immediate vicinity.

Against that background, the Tribunal preferred the standing house approach adopted by Mr Brunt.

In considering the Entirety Value of the property much of the evidence submitted required interpretation and adjustment to reflect the varying specifications of the different properties and therefore their comparability with 37 Radstock Avenue. In this context careful consideration was given to the evidence submitted by Mr Davis regarding the sale of 54 Radstock Avenue but the Tribunal felt this needed to be regarded with considerable caution given that the price appeared to

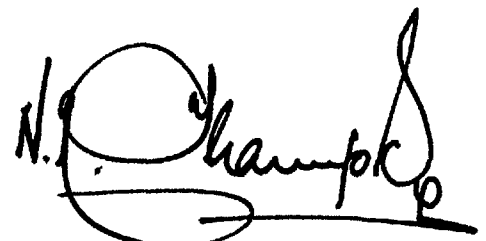
be significantly at variance with all of the other evidence about property prices in the area of Radstock Avenue and the fact that little or no information was available regarding the transaction.

The Tribunal therefore concluded that the Entirety Value of the subject property as at the date of the Notice of Claim was £132,500 of which 35% should be taken as the site value to reflect the size of the plot.

The Tribunal therefore determined the price to be paid for the freehold interest in accordance with the following valuation :-

Ground Rent	:	£8 p.a.	
Y.P. 33 ¹ / ₂ years @ 7%	:	<u>12.8</u>	
			£ 102
Reversion to Entirety Value	:	£132,500	
Site Value @ 35%	:	£ 46,375	
Section 15 Rent	:	£ 3,246 p.a.	
Y.P. in perp. deferred			
33 ¹ / ₂ years @ 7%	:	<u>1.48</u>	
			<u>£4,810</u>
			£4,912

Accordingly the Tribunal determined that the price to be paid for the freehold interest of the subject property should be £4,912 plus the Landlords reasonable costs calculated in accordance with Sections 9 (4) of the Leasehold Reform Act 1967 and Schedule 22 Rule 1 (5) of the Housing Act 1980.



N R THOMPSON
Chairman

6-9 JAN 2003