

210

MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/44UC/OAF/2002/0113

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S.21 OF THE LEASEHOLD REFORM ACT 1967

TO DETERMINE THE PRICE PAYABLE BY THE TENANT

ON ENFRANCHISEMENT UNDER S.9 L R ACT 1967

AND ADJOURNMENT OF THE DETERMINATION OF S.9(4) L R ACT 1967 COSTS

Applicant Tenant: Barry Childs and Pauline Margaret Childs

Respondent Freeholder: Freehold Estates Limited

Respondent Intermediate Head Leaseholder: Freehold Estates Limited

Property: 18, Oldany Way, Nuneaton, Warwickshire CV10 7LN

Date of Tenant's Notice: 2 October 2002

RV as at 1 Apr. 1973: Less than £500

Application dated: 2 December 2002

Heard at: The Panel Office

On: 11 March 2003

APPEARANCES:

For the Tenant: Mr J Moore MA

For the Freeholder: No appearance

For the Intermediate Head Leaseholder: No appearance

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr P J Waller
Mrs C L Smith

Date of Tribunal's decision: 25 March 2003

1. **Background:** Barry Childs and Pauline Childs are the tenants (the '**Tenant**') by a 99 year lease (less three days) from 24 June 1965 of the dwelling house and premises at 18, Oldany Way, Nuneaton, Warwickshire CV10 7LN (the '**Property**'). The **Freeholder** and the **Intermediate Head Leaseholder** are Freehold Estates Limited. By a notice dated 2 October 2002 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 2 December 2002 the Tenant applies to us to determine the price payable on the acquisition of the freehold of the Property under section 9 of the Act. We inspected the property on 11 March 2003 and a hearing was held on the same day.
2. The Tenant holds the Property by an underlease (the '**Underlease**') for a term of 99 years (less three days) from 24 June 1965 at a fixed ground rent of £25 pa. The head lease (the '**Head Lease**') is for a term of 99 years from 24 June 1965 at an apportioned fixed ground rent which is a negligible difference from £25 pa.
3. The unexpired term of the Underlease and the Head Lease on the Date - which is the relevant date for the determination of the price payable - was about 61¾ years. We accept that the qualifying conditions for entitlement to enfranchise under the Act have been met.
4. The Property comprises a link-detached house (linked by the garage) of traditional brick and tile construction in an established residential area of similar properties but with car sales and workshop premises at the rear of the Property. The accommodation includes: on the ground floor - hall, living room, kitchen with dining area; on the first floor - 3 bedrooms, bathroom with wc. Central heating is from a gas warm air system. The site frontage is about 7.62m; the width is maintained throughout the depth of the site and the total site area is about 205m².
5. Mr J Moore MA appeared for the applicant Tenant; the Freeholder and the Intermediate Head Leaseholder were not represented. We thank Mr Moore for the careful attention he has given to this matter and for his written statement of case delivered to us immediately prior to the hearing.

The valuation method: Mr Moore adopts, and we accept:

6. For the freehold interest: the generally recognised valuation method to derive the price payable for the freehold interest, accepted in *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. The method is: (i) capitalise the apportioned ground rent (£17.78 pa) from the Date for the unexpired term of the Head Lease (61¾ 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 Head 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 Head 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.

7. Mr Moore'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. For the intermediate head leasehold interest: The value of the profit rent (the rent reserved in the Underlease minus the rent reserved, as an apportioned amount, in the Head Lease) for the unexpired term of the Underlease.
9. **Mr Moore's valuations and evidence:** For the freehold interest - £939
For the head leasehold interest - £Nil (*de minimis*)

More specifically:

10. The freehold interest

Term			
Ground rent	£25.00 pa		
YP 61¼ at 7%	<u>14.066</u>		
		£351.65	
Reversion			
Entirety value	£115,000		
Site value at 33.3%	£38,295		
Sec. 15 ground rent at 7%	£2,680.65 pa		
YP deferred 61¼ years at 7%	<u>0.219</u>		
		£587.06	
			£938.71
		Say	£939.00

11. The head leasehold interest

The difference between the rent reserved in the Underlease and the apportioned amount in the Head Lease is either £Nil or *de minimis*, to the effect that the head leasehold interest has no value.

12. In support of 7% as the yield rate in his valuations Mr Moore says that 7% is consistent with previous decisions of this tribunal when the unexpired term of the lease is relatively long - relative to the assumed 25 year rent review in the assumed 50 year lease extension.
13. In support of his entirety value (£115,000) he refers us to: the recent sale of a link-detached house close by, sold for £99,950 but with an asking price of £105,000, freehold but no room extensions; a similar house but with a two storey extension, recently withdrawn from the market, at an asking price of £120,000; the general

increase in values from the Date to the dates of the sale at £99,950 and the asking prices. Mr Moore says that the evidence, with adjustments for the time difference, points to £115,000 as the entirety value, reflecting the principles which we refer to above.

14. He says that a 33.3% site apportionment is consistent with two determinations of this tribunal for not dissimilar sites and is not inconsistent with three other determinations, within 1.3% of 33.3%.
15. In respect of the head leasehold interest, Mr Moore says that, from the limited information that he has, the rents reserved in the Underlease and the Head Lease (after apportionment of the Head Lease rent) are no different or the difference is *de minimis*.

Our Decisions:

16. Despite no representations from the two Respondents, Mr Moore clearly recognises his duty to us, to provide truly independent evidence to assist us to achieve a just result. As an expert tribunal, relying on our general knowledge but not on any special knowledge, we find that Mr Moore's valuations are consistent with the principles in the Act and accepted guidance derived from the Lands Tribunal and this tribunal. We accept his figures and the price payable, at £939.
17. **Conclusion:** We determine that taking account of all the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge and our inspection, that the sum to be paid by the Tenant for the acquisition of the freehold and head leasehold interests in the Property in accordance with section 9 of the Leasehold Reform Act 1967, as amended, is £939 (Nine hundred and thirty nine pounds), namely £939 for the freehold interest, £Nil for the head leasehold interest.
18. **Section 9(4) costs:** Our determination of the reasonable costs, if not agreed, in accordance with section 9(4) of the Leasehold Reform Act 1967 and Schedule 22, Part I, para. 5. of the Housing Act 1980, is the subject of a separate application.

Date: 25 March 2003

T F Cooper
CHAIRMAN