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MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/00CN/OAF/2003/0052

Leasehold Reform Act 1967

Housing 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**

Applicant Tenant: Mr M H Hession

Respondent Freeholder: Mr G Singh

Property: 78, Bryn Arden Road, South Yardley, Birmingham B26 1JX

Date of Tenants' Notice
claiming to acquire the
freehold: 11 July 2002

RV as at 1.4.1973: Less than £500

Application dated: 31 March 2003

Listed for hearing at: The Panel Office

On: 23 September 2003

APPEARANCES: None but written representations

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr D R Salter LLB
Mrs N Jukes

Date of Tribunal's decision: 17 OCT 2003

1. **Background:** Mr M H Hession is the tenant (the '**Tenant**') by a 99 year lease from 25 March 1937 of the dwelling house and premises at 78, Bryn Arden Road, South Yardley, Birmingham B26 1JX (the '**Property**'). The **Freeholder** is Mr G Singh. By a notice dated 11 July 2002 (the '**Date**') the Tenant claims to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 31 March 2003 the Tenant, by his agent, applies to us to determine the price payable on the acquisition of the freehold of the Property under sec 9(1) of the Act. Despite making an appointment, for 23 September 2003, to inspect the Property, we were unable to inspect the interior of it but we inspected the exterior and are satisfied that we are able to proceed without an interior inspection. A hearing was notified for the same day.
2. The Tenant holds the Property by a lease (the '**Lease**') for a term of 99 years from 25 March 1937 at a fixed ground rent of £6 pa.
3. The unexpired term of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 33 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.
4. The Property comprises a semi-detached house of traditional brick and tile construction, with a vehicular access at the rear, in an established residential area of similar properties. The site frontage is 6.1m; the width is maintained throughout the depth of the site and the total site area is 242m².
5. The hearing, listed and notified for 27 August 2003, was adjourned to the next available convenient date. The adjourned hearing was listed and notified for 23 September 2003. Mr Steele of Steeles Estate Agents and Valuers, having conduct of Mr Hession's case, lodged a valuation prior to the hearing. On enquiry to Mr Steele and Mr Singh, we were advised that neither of them wished to appear at the hearing. We, therefore, proceeded in the absence of both parties but, to give Mr Singh an opportunity to meet the opposing case, we adjourned our determination until after 1 October 2003 to take account of any written representations from Mr Singh. Mr Singh has made representations and the representations procedure has been completed.
6. **The valuation method:** Mr Steele 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 (£6 pa) from the Date for the unexpired term of the Lease (33 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. Hence we decide that neither party is prejudiced by us not being able to inspect the interior of the Property.

7. Mr Steele'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 Steele's valuation:** For the freehold interest - £3,293.55

9. More specifically:

Term			
Ground rent	£6 pa		
YP 33 years at 7%	<u>12.7538</u>		£76.52
Reversion			
Entirety value	£100,000		
Site value at 30%	£30,000		
Sec. 15 ground rent at 7%	£2,100 pa		
YP deferred 33 years at 7%	<u>1.53192</u>		£3,217.03
			£3,293.55

10. Mr Singh says that the entirety value should be £120,000 and that he has just sold the freehold of 37, Bryn Arden Road (in the same road as the Property), by public auction on 30 September 2003, for £5,250 - a 99 year lease from 25 December 1937 at £6 pa with 33 years unexpired - which supports his contention that the enfranchisement price should be £5,250.

11. **Our Decision:** Neither Mr Steele nor Mr Singh introduce any comparable evidence in support of the entirety value. As Mr Steele is a local estate agent and Mr Singh is not, Mr Steele should be more familiar with residential values in the locality. For this reason, we accept £100,000 as the entirety value, which, in any event, we find is consistent with our general knowledge, but not any special knowledge, as an expert tribunal.

12. Section 9(1) of the Act requires us to assume that the Tenant and members of his family are not buying or seeking to buy. We find that, on the balance of probability, the evidence of the sale of the freehold of no. 37 is not consistent with the assumption we must make. The purchaser of no. 37 may be the tenant, or a member of the family seeking to purchase for personal reasons (possibly an early sale of the freehold with vacant possession, possibly a re-mortgage, possibly to avoid a reference to us to determine a price with consequent costs and delay and possible anxiety) and, even if the purchaser is not the tenant or the tenant's family, it is reasonable to infer that the purchaser would be aware of the prospect of a possible eventual profitable sale to the tenant without a tenant's notice to. We decide that the evidence of the sale

by auction reflects an element of value to the tenant which we must exclude. Accordingly, we attach no significant weight to the sale price, preferring to derive the price payable by the generally accepted standing house method of valuation.

13. We find, as an expert tribunal, relying on our general knowledge and experience but not on any special knowledge, that Mr Steele's valuation is consistent with the principles of the acquisition on fair terms in the Act and generally accepted guidance derived from the Lands Tribunal and this tribunal. We accept his figures and the total price payable, at £3,293.55, which we round to £3,294.
14. **Conclusion:** We determine that, taking account of the limited 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 of the Leasehold Reform Act 1967, as amended, is £3,294 (Three thousand two hundred and ninety four pounds) plus the Freeholder's reasonable costs in accordance with section 9(4) of the Leasehold Reform Act 1967 and Schedule 22, Part I, para. 5. of the Housing Act 1980. In default of agreement over the amount of any costs payable under section 9(4) under the provisions of section 21(1)(ba), application may be made to the Leasehold Valuation Tribunal for a determination of such costs.

Date: 17 OCT 2003

T F Cooper
CHAIRMAN

