DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION

UNDER SECTION 27 (5) OF THE LEASEHOLD REFORM ACT 1967

IN RESPECT OF

60 JEPHSON DRIVE, SHELDON, BIRMINGHAM B26 2HW

BIR/OOCN/OAF/2004/0122

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Background

This is a determination under Section 27(5) the Leasehold Reform Act 1967 ("the 1967 Act"), as amended by Section 148 and 149 of the Commonhold & Leasehold Reform Act 2002 ("the 2002 Act") as to the appropriate sum, which, because the landlord cannot be found, is to be paid into court for the freehold interest in respect of 60 Jephson Drive, Sheldon, Birmingham B26 2HW. The lessees, Mr S N & Mrs A J Mills hold the property by way of a lease dated 13th October 1958 for a term of 99 years from 29th September 1958 at a yearly ground rent of £12.50. The deemed date of the tenants' notice to acquire the freehold is March 2004, being the date of the application to the court, when approximately 53.5 years of the term remained unexpired.

Section 27(5) of the 1967 Act states:

"(5) The appropriate sum which, in accordance with subsection (3) above, is to be paid into court is the aggregate of:

(a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9 above; and

(b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid."

Property

The Tribunal carried out an inspection of the premises on 10th July 2004, in the presence of Mr & Mrs Mills.

The property comprises a two storey semi-detached house of brick and tile construction, built in the late 1950s, occupying a corner position within a development of largely similar properties in a well established residential area some five miles south east of Birmingham City Centre. It has been extended by the present lessees to provide a large kitchen/diner on the ground floor and a correspondingly enlarged (third) bedroom on the first floor.

The accommodation is centrally heated and double glazed and comprises a hall; through living room (originally two separate rooms) and a spacious kitchen/diner on the ground floor, with three good sized double bedrooms and a combined bathroom/W.C. on the first floor. Externally the property has modest front and rear gardens (the latter having a depth of only around 5 metres). There is also a detached precast-concrete single garage with "up and over" door. Because of its corner position, the property has a restricted road frontage, and the total site area is also relatively modest at around 200 square metres.

Approximately five years ago, the current tenants (who have owned and been in occupation of the property for about twelve years) purchased an additional area of circa 232 square metres of freehold garden land from the owner of the property adjoining their southern boundary. This area does not form part of the subject application.

Hearing

At the hearing, the tenants were represented by Mr Paul Rocky FRICS, Chartered Surveyor.

Mr. Rocky introduced his evidence on behalf of the lessees by submitting details of the property and the following valuation:-

Term

Annual Ground Rent :	12.50	
YP 53 years @ 7%	13.8898	
		£ 174

Reversion

Entirety Value :		£160,000	
Site Value @ 33%	:	£ 52,800	
Sec 15 Modern Ground Rent @ 7%	:	£ 3,696	
YP in perp. deferred 53 years @ 7% :		.39588	
			£ 1,463
			£ 1,637

In support of his entirety value, Mr. Rocky had taken the recently agreed sale price of £194,000 from which he had initially deducted £4,000 in respect of various fixtures and fittings e.g. carpets, curtains, light fittings and play shed; thus leaving a net figure for the property of £190,000 – including the additional freehold garden area.

In considering what deduction should then be made to reflect the value of the freehold garden area, Mr Rocky had considered the sale in February 2004 (three months before the deemed date of application in the subject case) of 55 Jephson Drive for £168,625 on a freehold basis. Mr Rocky referred to the Land Registry Title of that property and a plan showing the location and size of the plot. He also alluded to a conversation with the occupier of that property by whom he had been told that the property was in good condition, is double glazed throughout, has full central heating and a recently refitted kitchen, as well as a conservatory. To allow for the value of the conservatory, Mr Rocky considered a deduction of £3,625 should be made, therefore resulting in a comparative value of £165,000. However, as Mr Rocky considered that No: 55 has a better site than No:60, he had made a further deduction of 15%, resulting in a figure of £140,250 for No: 60. An additional adjustment had then been made of plus £15,000 to reflect the superior accommodation of No:60, and a further uplift of 3% to reflect the difference in timescale between the date of the sale of No:55 and the deemed date of valuation of No:60. This resulted in a net value of No60 of £160,000.

As an alternative approach, Mr Rocky had taken the adjusted sale price of £190,000 for No:60 from which he had deducted 15% for the inferior site, which produced a figure of £161,500 when comparing it with No:55.

In the circumstances, Mr Rocky considered that an entirety value of £160,000 was therefore fair and reasonable.

Turning to the question of the site value, Mr Rocky indicated that he had considered whether something less than the widely adopted 33% for semi detached properties of the nature of the subject property would be appropriate, but he had concluded that this would not be correct and he had therefore used 33% of the entirety value.

In relation to the yield rate, Mr Rocky submitted that 7% had been adopted by the Tribunal for a long time in the vast majority of 1967 Act cases and this was a figure which he had negotiated on many occasions with surveyors representing a number of different freeholders.

In response to questions from the Tribunal, Mr & Mrs Mills confirmed that:

(a) they had purchased the additional freehold garden land approximately five years ago, and had paid circa £5,000 for it, and

(b) since they purchased 60 Jephson Drive some twelve years ago, they had not received any demand for the ground rent reserved under the lease (£12.50 pa), and had therefore not paid any such rent.

Decision

1 – Freehold price in accordance with Section 27(5) (a) of the 1967 Act:

The three main areas of consideration for the Tribunal were the entirety value of the property as at the deemed date of claim; the proportion of that figure to adopt as the value of the site, and the yield rate to be used in the valuation.

In relation to the first of these, the Tribunal considered that the evidence of the sale of the property was the most appropriate starting point. From that figure (£194,000) it was accepted that £4,000 should be deducted for the various "extras" included in the sale price, to give a net value for the entire property (including the additional freehold garden land) of £190,000. Rather than taking the multiple adjustment approach to that figure adopted by Mr Rocky, (which was considered to offer scope for a significant element of distortion in arriving at an appropriate net entirety value), the Tribunal preferred to consider the more simple approach of considering the amount which should be deducted from £190,000 to reflect the value of the additional garden land.

The Tribunal considered that £15,000 was the correct figure to deduct, thus resulting in an adjusted entirety value of £175,000.

In relation to the second issue, the Tribunal considered that the nature of the site was such that, although 33% would be appropriate to take for the site value of a more regularly shaped and larger site, the restricted road frontage, corner position and restricted site area of the subject premises should be reflected in the proportion of the entirety value to be adopted for the site. The Tribunal therefore determined that this should be 30%.

In relation to the third issue, the Tribunal agreed with Mr Rocky's submission that 7% was the appropriate rate.

Finally, it was noted that Mr Rocky had used an unexpired term of 53 years in his valuation, apparently based on a deemed date of valuation of May 2004 - being the date of the decision of the court (i.e. the date of the Order). In accordance with Section 27(1) of the 1967 Act, the deemed date of valuation is actually the date of the application to the court, which would appear to have been March 2004, when 53.5 years of the lease remained unexpired.

The Tribunal therefore determined that the amount to be paid into court in accordance with Section 27 (5)(a) of the 1967 Act should be:

Term

Annual Ground Rent :	12.50	
YP 53.5 years @ 7%	13.9028	
		£ 174

Reversion

Entirety Value :	£175,000	
Site Value @ 30% :	£ 52,500	
Sec 15 Modern Ground Rent @ 7% :	£ 3,675	
YP in perp. deferred 53.5 years @ 7% :	.38293	
		£ 1,407
		£ 1,581

2 – The amount of any unpaid pecuniary rent in accordance with Section 27 (5) (b) of the 1967 Act:

As indicated by Mr & Mrs Mills, no ground rent has been paid since they purchased the property some twelve years ago. However, the arrears payable under the present circumstances are limited to six years (£12.5 x 6 = £75) in accordance with *Re: Howell's Application [1972]*, which are not statute-barred under section 19 of the Limitations Act 1980.

Summary:

In accordance therefore with section 27 (5) of the 1967 Act, the total amount to be paid into court in respect of the subject property is the aggregate of £1,581 and £75, i.e. £1,656

Nigel R Thompson
Chairman

Date: 19th August 2004