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LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

Ref: BIR/00CN/OAF/2005/0120

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Allmid Limited (leaseholder)

Respondent: Mr A. Khan (freeholder)

Subject property: 52 Third Avenue
Bordesley Green
Birmingham
B9 5RJ

Date of tenant's notice: 24 January 2005

Application to the LVT: 16 May 2005

Hearing: 18 August 2005

Appearances:

For the applicants: Mr. A.P. Herbert FRICS

For the respondent: Mr. Khan (the brother of the respondent) *[Sara do we have his initial?]*

Members of the LVT: Mr. A. P. Bell MA LLB
Mr. S. Berg FRICS FSVA
Mrs. N. Jukes

Date of determination: 22 OCT 2005

Introduction

1. This is a decision on an application under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Allmid Limited, the leaseholder of the house and premises at 52 Third Avenue Bordesley Green Birmingham B9 5RJ ("the subject property"). The application is under section 21(1) of the 1967 Act for the determination of the price payable under section 9 of the 1967 Act for the freehold interest in the subject property and also the determination of the respondent's legal costs.
2. The subject property is held under a Lease dated 22 July 1957 for a term of 55 years from 25 March 1957 at a ground rent of £4.50 per year. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was just over 7 years.
3. The applicant served on the respondent a tenant's notice dated 24 January 2005 claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act, and it subsequently made the present application.
4. The Tribunal accepts that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.

Subject property

5. The property comprises a mid-terraced house built on an average sized plot surrounded by similar houses as the subject property. The area of the site is approximately [] square metres and has a frontage of approximately 3.81 metres to the road. The house is a two storey brick construction with a pitched tiled roof. The accommodation comprises a hall, two living rooms, kitchen, bathroom and separate wc on the ground floor and three bedrooms on the first floor. The subject property has a small garden at the front and a garden at the rear of above an above average depth compared with many terraced houses in Birmingham.

Inspection and hearing

6. The Tribunal inspected the subject property on 18 August 2005 in the presence of Mr. Allmid and Mr. Khan, the brother of the respondent. *[Mr. Khan's initial to insert if we have this]*
7. The subsequent hearing was attended by Mr. A.P. Herbert (representing the applicant) and Mr. Khan (the brother of the respondent representing him).

Representations of the parties

8. Mr. Herbert on behalf of the applicant adopted as the basis of valuation under the 1967 Act the generally recognised three-stage approach normally attributed to *Farr v Millerson Investments Ltd* [1971] 22 P & CR 1055; [1971] 218 EG 1177. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern

ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisations at stages (i) and (iii).

9. Mr. Herbert referred the Tribunal to two comparable terraced houses in the same road as the subject property (number 44 with two bedrooms and number 32 with three bedrooms) which he had been informed had been sold, subject to contract, in July 2005 for £97,000 and £113,000 respectively. On the basis of this evidence Mr Herbert submitted that the standing house value of the subject property at the relevant date was £87,000 which he submitted reflected the fact that values had enhanced slightly since the date of the tenant's notice (24 January 2005) and also the improved condition of the comparable properties compared with the subject property. Mr. Herbert submitted that the Tribunal should apply a 28 per cent figure in calculating the site value on the standing house basis having regard to the fact that the frontage of the subject property to the road was only 3.81 metres. Mr. Herbert referred the Tribunal to a decision of the Midland Rent Assessment Panel in respect of 43 Dalbury Road Hall Green Birmingham (Case No. BIR/00CN/OAF/2005/0051) heard on 27 April 2005 when the Tribunal had determined the appropriate percentage was 30% where the frontage of the property (about 8 metres) was considerably more than that of the subject property. Finally he submitted that the appropriate percentage yield rate to be applied in capitalising the ground rent at stage (i) and decapitalising and recapitalising the site value at stages (ii) and (iii) of the valuation exercise should be 6.5 per cent in view of the fact of the short unexpired term of the lease, but he acknowledged that the Tribunal might choose to adopt a rate of 7 per cent at stages(ii) and (iii).

10. On the basis of those figures Mr. Herbert submitted the following valuation:

Term:

Ground Rent	£4.50	
YP 7.16 years @ 6.5%	5.58380	£25.13

Reversion

Entirety Value	£87,000	
Site apportionment @ 28%	£24,360	
Section 15 Rent @ 6.5%	£1,583.40	
YP in perpetuity deferred 7.16 years @ 7%	9.80080	£15,518.59
		£15,543.71

Say £15,500

11. Finally Mr. Herbert submitted that the respondent's legal costs should be capped at £350 plus vat. He pointed out that no formal valuation had been submitted to justify an award of surveyors' costs.
12. Mr. Khan (representing the respondent as his brother) informed the Tribunal that his brother had bought the subject property by auction in 2002 for £15,000. He submitted that the subject property was worth over £100,000 and in support of this he produced the sales particulars 26 Third Avenue Bordesley

Green which was currently on the market at offers of around £120,950. Also the Tribunal received a letter from the respondent's solicitor, Mr. G.S. Sira, dated 11 August 2005 which stated that it was believed that the subject property was worth more than £110,000.

[Mr. Khan's initial]

Decision

12. The Tribunal conclude that the it is not correct to adjust the value of the subject property by reference to the prices negotiated, subject to contract, for the two comparable properties as submitted by Mr. Herbert (see paragraph 9 above) "to reflect the improved condition of these sales relative to the subject property". Hague on Leasehold Enfranchisement (4th edition) at paragraph 8.09 states as follows;

"The entirety value in this context must represent the value of the property assumed to be modernised, otherwise the letting value of the site (without including anything for the value of the buildings ion the site) would differ for identical sites in the same street that happened to be modernised on some sites but unmodernised houses on other. For similar reasons, the property must be assumed to be in good condition and any tenant's improvements must be included in its value".

14. Using its general knowledge and experience (but no special knowledge) of property prices in the locality of the subject property, and taking into account the positive and negative features of the subject property and all other relevant factors and considerations, the Tribunal determines that the standing house value of the subject property at the relevant date was £100,000. The Tribunal determines the appropriate percentage to be applied to the standing house value in calculating the value of the site should be 30 % taking account of the above average depth of the plot. The Tribunal did note that the decision in respect of 43 Dalbury Road Hall Green, which Mr. Herbert referred to in his submissions, did make reference to "the unusual sloping site of the Property " which is not a feature of the subject property. Finally the Tribunal agrees with Mr. Herbert that the percentage yield rate to be applied in capitalising the existing ground rent at stage(i) of the valuation exercise should be 6.5 per cent in view of the short unexpired term, but determine that the appropriate yield rate at stages (ii) and (iii) of the calculation should be 7 per cent.

15. Adopting those figures, and applying figures of Years Purchase from Parry's Valuation Tables, the Tribunal calculates the price payable as follows:

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

Ground rent payable: £4.50 per year

Years Purchase: 7 years @ 6.5 %: 5.4845

Capitalised ground rent: £4.50 x 5.4845:

£24.68

(ii) Modern ground rent

Standing house value of subject property: £100,000

Percentage attributable to site @ 30%: £30,000

Annual equivalent @ 7%: £2,100

(iii) Capitalisation of modern ground rent

Modern ground rent (above):	£2,100	
Years Purchase at 7% in perpetuity deferred 7 years: .18682		
Capitalised modern ground rent: £2,100 x .18682:		<u>£18,682.00</u>
		£18,706.68
		Say £18,706

The addition of the capitalised existing ground rent of £24.68 and the capitalised modern ground rent of £18,682 produces a figure of £18,706 rounded down to the nearest pound.

16. Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £18,706.

Summary

17. The Tribunal determines the price payable by the applicant for the freehold interest in the subject property at £18,706 and determines, in accordance with the recent practice of Leasehold Valuation Tribunals of the Midland Rent Assessment Panel, that the sum of £300 plus VAT (if applicable) and the cost of the official entries at the Land Registry (if any) be awarded for the respondent's legal costs.

A.P. Bell

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A P Bell
Chairman

Dated **22 OCT** 2005