

460

**LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL**

Ref: BIR/41UD/OAF/2005/0275

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 21(1) OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr. D.M.Ferbrache (leaseholder)

Respondents: Covent Garden Group Limited and Fell Estates Limited
(freeholders)

Subject property: 57 Francis Road
Lichfield
Staffordshire
WS 13 7JX

Date of tenant's notice: 30 September 2005

Application to the LVT: 8 December 2005

Hearing: 28 February 2006

Appearances:

For the Applicant: Mr. A. Brunt FRICS

For the Respondents: Mr. M. Fell

Members of the LVT: Mr. A. P. Bell MA LLB
Mr. S. Berg FRICS
Mrs. C.L. Smith

Date of determination: 09 MAR 2006

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 Mr. D.M. Ferbrache, leaseholder of the bungalow and premises at 57 Francis Road Lichfield Staffordshire WS13 7JX ("the subject property"). The application is under section 21(1)(a) 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. This decision also deals with an application by the Applicant for the determination of the Respondents' costs under section 21(1) (ba) of the 1967 Act.
2. The subject property is held under a Lease dated 4 September 1973 for a term of 99 years from 25 June 1972 at an annual ground rent of £60 until 29 September 2038 and at an annual ground rent of £80 for the remainder of the term. The unexpired term at the date of the notice of tenant's claim to acquire the freehold ("the relevant date") was 66 years.
3. The Applicant served on the Respondents a tenant's notice dated 30 September 2005 claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act, and he 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 subject property comprises a link-detached bungalow built in the early 1970's with a site area of 255 square yards. The surrounding area is entirely residential consisting of a mixture of linked-detached and semi-detached houses and linked-detached bungalows. The bungalow is of brick construction with a pitched tiled roof. The accommodation comprises a hall, lounge, kitchen, two bedrooms, and a combined bathroom/ wc. The garage has been converted into an additional room, which can only be accessed from either the front or rear gardens of the subject property and is therefore restricted in use. Outside there is a parking area in front of the former garage and an average sized garden at the rear of the subject property.

Inspection and hearing

6. The Tribunal inspected the subject property on 28 February 2006 in the presence of the Applicant.
7. The representatives of both parties agreed prior to the hearing that:
 - the unexpired term was 66 years

- the relevant date was 30 September 2005
- the same yield rate should be applied at all stages of the calculation
- the legal costs of the Respondents should be £300 (plus VAT if applicable) and the valuation fee should be £300 (plus VAT if applicable)

9. The matters in dispute are the entirety value, the site apportionment and the yield rate to be applied at the different stages of the calculation of the price.

Representations of the parties

10. Mr. Brunt, 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. 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).
11. Mr. Brunt submitted that a figure of £145,000 reflected the entirety value based on the fact that the next door bungalow, number 55 Francis Road, had been put on the market in March 2005 at an initial asking price of £155,000 which had later been reduced to £149,950 and had then been the subject of a negotiated sale at a price of £145,000 only for the buyer recently to withdraw from the purchase. With regard to the contention of Mr. Fell that a two storey link-detached house would best maximize the value of the site Mr. Brunt pointed out the uncertainty as to whether the planning authority would permit this.
12. Mr. Brunt submitted that the appropriate percentage to apply in calculating the standing house value was 35% to reflect what he regarded as a compact site.
13. Mr. Brunt submitted that the appropriate percentage yield to be applied at all stages of the calculation exercise should be 7% which was the rate at which he had settled prices in numerous cases (details of which he provided to the Tribunal) following the Lands Tribunal decision in *Arbib v Earl Cadogan* (LRA/62/2004) (*Cadogan*). Mr. Brunt did not consider that the allowance that the Lands Tribunal made in *Cadogan* of 1% for liquidity was enough for a lower priced property in Lichfield where an estate agent's fees would be likely to be 1.5% or more plus VAT, and he suggested that 2% rather than 1% was the appropriate adjustment for illiquidity. Mr. Brunt also referred as settlement evidence to an analysis of the sale of a single freehold ground rent secured on 32 Frankburn Road where a yield rate of 6.9% had been achieved.

14. On the basis of his figures Mr. Brunt submitted the following valuation:

<u>Term:</u>		
Current Ground Rent:	£60 per annum	
YP 33 years @ 7%:	12.75379	£765.23
Ground rent from 29 September 2038:	£80 per annum	
YP 33 years @ 7%:	12.75379	
PV £1 in 33 years @ 7%:	0.10723	£109.41
<u>Reversion:</u>		
Entirety value:	£145,000.00	
Site apportionment @ 35%:	£ 50,750.00	
Section 15 modern ground rent @ 7%:	£ 3,552.50	
YP in perpetuity deferred 66 years @ 7%:	0.16428	£583.59
		£1,458

15. Mr. Fell in his submission adopted a deferment and capitalization rate of 6% following the recent Lands Tribunal decision in *Cadogan* having adjusted the rate in *Cadogan* of 4.5% to 5.5 % to reflect the benefit of the international money market that central London attracts and with a further adjustment of 0.5% to 6% to reflect the longer unexpired term in the case of the subject property compared with the properties in *Cadogan*.
16. Mr. Fell submitted that the site of the subject property should be valued as a cleared site serviced and ready for development and on this basis the property that would maximize the value of the site would be a two storey link-detached house. He referred the Tribunal to two leasehold linked-detached houses in Francis Road both with a near identical site area to the subject property, number 25 being on the market at £ 169,950 and number 44 on the market at £174,950. To reflect the fact that the freehold values would be slightly higher but also that the prices in both cases were asking prices only Mr. Fell considered that the entirety value of the subject property was £170,000.
17. Mr. Fell took a site value percentage of 40% on the basis of his contention that site percentages of 35% to 40% had been adopted in recent years by tribunals for semi-detached and detached properties on similar regular and well accessed sites.
18. On the basis of his figures Mr. Fell submitted the following valuation:

<u>Term:</u>		
Current Ground Rent:	£60 per annum	
YP 33 years @ 6%:	14.230	£853.80
Ground rent from 29 September 2038:	£80 per annum	
YP 33 years @ 6%:	14.230	
	£1,138.40	
PV £1 in 33 years @ 6%:	0.2137	£243.28
<u>Reversion:</u>		

Entirety value:	£170,000	
Site apportionment @ 35%:	£ 68,000	
Section 15 modern ground rent @ 6%:	£ 4,080	
YP in perpetuity deferred 66 years @ 6%:	0.35617	£1,453.17
		£2,550.25

Decision

19. With regard to the submission made by Mr. Fell as to the method of calculating the entirety value referred to in paragraph 16 above The Lands Tribunal in *Farr v Millerson Investments Ltd* [1971] 22 P & CR 1055 stated that a possible approach to the valuation of a site was “the new for old approach” in a situation “where the house has an indeterminate future economic life”, and that, if the approach was adopted, the site would be determined “by what the property as a whole would be worth if a new building were substituted for the existing building and then taking a proportion of that value or alternatively subtracting the present day cost of putting up such a building”. In paragraph 8-12 of *Hague on Leasehold Enfranchisement* (4th Edn) reference is made to the “new-for-old” approach as suggested in *Farr v Millerson Investments Ltd* with the comment that “in practice this approach has been little used by valuers”. Hague also concludes that “this approach is inherently unsatisfactory, containing too many imponderables to be dependable”. The Tribunal agrees with Hague’s conclusion in the particular circumstances of this case. If the house had a small floor area in relation to the overall size of the site, or the house was nearing the end of its economic life the “new-for-old” approach suggested by Mr. Fell would have had more to recommend it. The Lands Tribunal in *Marlodge (Re Monnow) Ltd* (Lands Tribunal LRA/15/2002, unreported) stated that the entirety value was “the value of the property in a good condition and fully developing the potential of the site provided always that the potential identified is realistic and not wholly fanciful”. It is the view of the Tribunal that it is wholly fanciful in the present case to adopt an approach which involves valuing the subject property on the assumption that there is a two storey link-detached house on the site rather than the existing link-detached bungalow.
20. The Tribunal find that the best evidence of the entirety value of the subject property is the next door bungalow, 55 Francis Road, where a sale at the asking price of £145,000 was recently negotiated, although the sale had fallen through. On the basis of this evidence the Tribunal agree with Mr. Brunt that the entirety value is £145,000.
21. The Tribunal consider that the percentage of the standing house value of 40% claimed by Mr. Fell is too high and would only be appropriate if the site contributed a materially above average proportion of the standing house value by reason of having a well above averaged sized garden. This does not apply in the case of the subject property where the site is of no more than an average size. The Tribunal determine that the appropriate percentage in this case is 35%.
22. The Lands Tribunal’s decision in *Cadogan* does give a very clear ruling that the yield

rate should not be established by convention, whether 6% in London or 7% (or any other rate) elsewhere. They also state in paras 115 and 116 of *Cadogan* that, while LVT decisions on questions of fact or opinion could be given little or no weight in other LVT proceedings and in proceedings of the Lands Tribunal, a decision of the Lands Tribunal "may be referred to when general guidance has been given on valuation principles or procedure". The decision in *Cadogan* should be regarded as such general guidance. For this reason the Tribunal, in determining the yield, have given the decision in *Cadogan* careful consideration. The starting point in *Cadogan* in calculating the yield rate was by reference to index-linked gilts yielding 2%, this representing a risk-free investment to which the Lands Tribunal added 1% to allow for the comparative illiquidity of an investment in a freehold reversion reflecting as it did the combined cost of purchase and sale of the reversion and some costs for delay (para 151). In addition, the Lands Tribunal added an additional 1½% for the costs of management of the investment, the fact that the asset might be destroyed and might be expensive to realise at the end of the term (para 152) making a total of 4½% as a yield rate, which the Lands Tribunal adopted in four of the five cases the subject of the decision in *Cadogan*.

23. The decision in *Cadogan* (para 148) recognises that it may be necessary to make further adjustments to have "regard to factors which make the investment particularly attractive or more risky than some notional norm". The Tribunal have carefully considered what these factors might be in the light of *Cadogan*, and conclude that these include the location of the property (para 154), the condition (para 156), the age of the property with the greater risk of obsolescence (para 185), the length of the unexpired term (paras 167 and 168), and the size of the property (para 171).
24. The Tribunal consider that Mr. Brunt may have a valid point in his submission that a greater adjustment should be made for illiquidity in Lichfield as compared with a property in a prime central London location, but in order to make such an adjustment the Tribunal would need to be provided market evidence of the combined costs of purchase and sale of an investment in a freehold reversion to support Mr. Brunt's contention.
25. While the subject property is a linked-detached bungalow house in a good residential area in Lichfield, it is not in any significant way, whether in its location, value or attractiveness, comparable to the properties in prime locations in central London which were the subject of *Cadogan*. Having regard to the various factors referred to in *Cadogan*, as set out in paragraph 23 above, the Tribunal consider that the appropriate adjustment to make in this case is to increase the yield rate of 4½% (adopted in four of the five cases in *Cadogan*) to 6½% to achieve a fair and just result, reflecting as it does the difference between not only the value and quality but also the risk attaching to an investment in the subject property in Lichfield as compared with an investment in the quite exceptionally desirable and expensive high class properties in prime central London residential locations, which were the subject of the decisions in *Cadogan*. Accordingly the Tribunal determine that the appropriate yield rate in this case is 6½%.