

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

Our Ref: M/LRC 319

DECISION OF LEASEHOLD VALUATION TRIBUNAL

*ON AN APPLICATION UNDER SECTION 21(1) (ba)
OF THE LEASEHOLD REFORM ACT 1967*

Applicant: Mrs A A Clements

Respondent: Mansal Securities Ltd

Re: 430 Groveley Lane, Rednal, Birmingham, B45 8UQ

Date of Tenants Notice: 18 July 2001

Application to Tribunal dated: 16 November 2001

Heard at: The Panel Office

On: Wednesday 27 February 2002

APPEARANCES:

For the Applicant: Mr Paul Rocky FRICS

For the Respondent: Mr S J M Laing of Laing & Co

Members of the Leasehold Valuation Tribunal:

Mr N R Thompson FRICS (Chairman)
Mr J C Ritchie
Mrs N Jukes

Date of Tribunals decision:

11 APR 2002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 21 AND 21 (1) (ba) OF
THE LEASEHOLD REFORM ACT 1967
IN THE CASE
OF**

CLEMENTS v MANSAL SECURITIES LTD

**430 GROVELEY LANE
REDNAL
BIRMINGHAM
B45 8UQ**

Reference : M/EH2340c

Background

This is a determination under Section 9 of the Leasehold Reform Act 1967 (as amended) as to the price to be paid for the freehold interest in respect of a semi-detached house 430 Groveley Lane, Rednal, Birmingham, B45 8UQ. The Lessee, Mrs A A Clements, holds the property by way of a Lease for a term of 99 years from 24 June 1936, subject to a fixed annual ground rent of £7.25.

Property

The Tribunal inspected the property on Wednesday 27 February 2002 in the presence of the Lessee's Niece, Mrs K Ball. The property comprises a two storey semi-detached house of brick and tile construction with a side garage. The property has the benefit of gas fired central heating, which was installed by the Lessee who, together with her late Husband, has occupied the property since it was first built.

The accommodation comprises an Enclosed Entrance Porch; Hall; two Reception Rooms and Kitchen on the ground floor, with three Bedrooms and a Bathroom/WC on the first floor. Externally the property has both front and (sloping) rear gardens, as well as an original side garage which appears to have been extended at some time in the past by the Lessee.

Hearing

Prior to the Hearing there had been various exchanges of correspondence relating to the submission by the Landlords and their Solicitors that the Tenant's notice had been discharged by virtue of the fact that the Tenant had not complied with a Notice referring to the Leasehold Reform (Enfranchisement and Extension) regulations 1967, served by the Landlord.

Mr Laing submitted as a preliminary issue that the Tenant's had been discharged and that the Tribunal did not have jurisdiction to proceed.

The Tribunal duly considered the matter and ruled that it did have jurisdiction for the following reasons:-

- a) The formal Notice in Reply from Manal Securities Ltd, dated 10 September 2001, gave us the reasons for rejecting the Leaseholder's claim that her "title and status as Occupier as at the date of the Notice have not been proved, nor has the statutory deposit been paid. Part one of the Schedule to the Leasehold reform (enfranchisement and extension) regulations 1967, at any time after receipt of the Tenant's notice the Landlord may, by notice in writing given to the Tenant, require him to deduce his title to the tenancy and require him to deduce his title to the tenancy and to furnish a Statutory Declaration as to the particulars of occupation of the property, on which the Tenant relies on in the Tenant's Notice; and the Tenant shall within 21 days of the giving Landlord 's notice comply with the requirement Clause 2). It is clear from the wording of the regulations therefore, that it is not incumbent upon the Tenant to provide this information at the time a Notice of Claim is submitted in order for that claim to be valid. Consequently, the grounds given by the Landlord for rejecting the Tenant's Notice were invalid.
- b) Condition 10 (1) of part 1 of the Schedule to the Leasehold Reform (Enfranchisement & Extension) Regulations 1967 provides that, if either the Landlord or the Tenant shall neglect or fail to perform any of his obligations arising from the Tenant's Notice or arising out of any of these conditions, then the other party may give to the party in default at least two months notice in writing referring to this Condition, specifying the default and requiring him to make it good before the expiration of the Notice.

In the present case, neither the Notice served by the Landlord or the letter sending it referred to Condition 10 (1) and therefore that Notice had not been given to the tenant in accordance with the Regulations. Consequently the tenant's Notice of Claim had not been discharged.

At the Hearing the lessee was represented by Mr. Paul Rocky FRICS of Solihull. The Landlords were represented by Mr. S.J.M. Laing FRICS of Laing & Co., Chartered Surveyors of Birmingham. Mr. Laing declared an interest in Mansell Securities Limited.

The Hearing commenced with Mr. Rocky introducing his case on behalf of the lessee by submitting details of property and the following valuation:-

Term:

Ground Rent	:	£7.25	
YP for 34 years @ 7%		<u>12.8540</u>	
			£93

Reversion:

Entirety Value	:	£125,000	
Site Value @ 35%		£ 43,750	
S.15 Modern Ground Rent @ 7%	:	£ 3,062	
YP in perp. Def. 34 yrs. @ 7%	:	<u>1.4317</u>	
			<u>£4,385</u>
			<u>£4,478</u>

Mr. Rocky took the Tribunal through his valuation and in support of his Entirety Value of £125,000 cited comparable evidence concerning two properties in Ashmead Drive, Cofton Hackett, a short distance away from the subject premises. Sale particulars in both cases were tabled. The first property referred to by Mr. Rocky was No.47 Ashmead Drive, described in the agent's particulars as a traditional three bedroom semi detached house, having central heating and partial replacement double glazed windows. A sale of this property had been agreed in July 2001 at £111,500. The second comparable property referred to by Mr. Rocky was No.11 Ashmead Drive, which was broadly similar to No.47 and had been offered for sale in July 2001 at a figure of £115,000. From this evidence Mr. Rocky considered that an Entirety Value of £125,000 for the subject property was realistic and justified.

The proportion of that figure taken for the site value (35%) was, in Mr. Rocky's opinion slightly above the traditional "rule of thumb" which in his experience would suggest a figure of one third.

So far as the yield of 7% was concerned, Mr. Rocky suggested that this was in line with many previous decisions of the Tribunal.

In presenting is case on behalf of the freeholders, Mr. Laing submitted the following valuation (mathematically adjusted to show the correct ground rent of £7.25 per annum):-

Ground Rent	:	£ 7.25	
YP for 34 yrs. @ 7%	:	<u>12.85</u>	
Term Value			£93

Reversion:

Entirety Value	:	£160,000	
Site Apportionment 40%			
Site Value	:	£ 64,000	
Modern Ground Rent @ 7%	:	£ 4,480	
Y.P. @ 7% deferred 34 yrs. :	:	<u>£ 1.43</u>	
REVERSION VALUE			£6,499

Price (say)

£6,500

In support of his Entirety figure of £160,000, Mr. Laing described the subject property as "prime" being one of only a handful in Groveley Lane which had an uninterrupted view of the park. In addition, nearby properties were mainly detached rather than semi detached and both of these factors contributed, in Mr. Laing's opinion, to making the setting of 430 Groveley Lane particularly attractive.

In addition, Mr. Laing submitted comparable evidence concerning agreed sales in respect of three properties:-

- 1 11 Middle Drive – being a semi detached house on the same estate as 430 Groveley Lane, but without the advantages of being in close proximity to and having uninterrupted views over the park. The sale of this property had been agreed in September 2001 at £134,000.
- 2 9 Chestnut Drive – very similar in terms of size, type and location to 11 Middle Drive. A sale in this instance had been agreed in September 2001 at a figure believed to be £124,995.
- 3 39 Selly Park Road, Selly Park – being situated on the Selly Park Estate and comprising a semi detached inter-war three bedroom property, standing on a plot of approximately a quarter of an acre and having double glazed windows. This property had been sold via Mr. Laing's company and sale particulars were tabled for consideration by the Tribunal. Mr. Laing eluded to the fact that the owners had preferred to see a sale to buyers who had offered a price of £150,250 and had declined several other higher offers. In Mr. Laing's opinion 39 Selly Park Road was considered to be of slightly lesser value than the subject property, but to be "the best comparison available" to reflect the market for an "ordinary semi detached house" in a favoured location and when set amidst properties of a somewhat superior style and type.

It was against the background of these transactions that Mr. Laing considered an Entirety Value of £160,000 to be appropriate.

In cross examination, Mr. Laing accepted that he had not inspected 11 Middle Drive or 9 Chestnut Drive internally, but he believed the accommodation to be similar to that at 430 Groveley Lane. In relation to 39 Selly Park Road, Mr. Laing accepted that it some distance away from the subject property and whilst accepting that it had a quarter acre plot, central heating and double glazing, he did not believe that the location or the accommodation was superior to 430 Groveley Lane.

Cost

On the subject of the Landlord's legal costs, Mr. Rocky indicated that the freehold title of this property was not registered and he therefore felt that a figure of £250 plus VAT (if applicable) would be appropriate in this instance. So far as the Landlord's valuation fees were concerned, Mr. Rocky indicated that as no contact or valuation of the property had been carried out after service of the Notice of Claim on the 18th July 2001 or before the application to the Tribunal for determination on the 16th February 2001, the Landlord's were not entitled to recover any valuation costs from his client.

Mr. Laing suggested that whilst he was not a Solicitor, a figure of £250 plus VAT did not seem sufficient to reflect the amount of work which the Landlord's Solicitors would have to undertake in this case. In his view it was reasonable for the claimant to meet such costs as well as the Landlord's valuation fees.

In cross examination, Mr. Laing indicated that he had initially been asked to provide advice in December 2001, although Mr. Rocky pointed out that up to the 24th January 2002, he had not received any contact from Mr. Laing or any other valuer acting on behalf of the Landlords.

Decision

1 - Freehold

It is common ground between the parties that in terms of the yield rate, 7% should be adopted as the generally accepted approach method of valuation for enfranchisement of this type of property.

The points of difference between the parties concern the Entirety Value and the proportion of that figure to be adopted for the value of the site.

In relation to the Entirety Value, the Tribunal did not find the evidence of 39 Selly Park Road particularly helpful, given not only the distance of that property from 430 Groveley Lane, but also the location and size of the plot and facilities available.

The Tribunal found the remaining evidence of more assistance and whilst accepting that the location opposite the park was on the face of it a particularly attractive feature of 430 Groveley Lane, that was to some extent tempered by the traffic and (particularly) extensive parking along the relevant section of Groveley Lane at weekends and holiday time.

Taking all of these factors into account, the Tribunal concluded that the Entirety Value of the subject property on a freehold basis as at the date of Notice of Claim was £135,000.

In relation to the proportion of the Entirety Value attributable to the site, Mr Laing had offered no evidence or justification for the adoption of 40% and the Tribunal considered that the approach taken by Mr. Rocky was more appropriate. Consequently the site value was taken at 35%.

Accordingly the Tribunal determined the price to be paid for the freehold interest as follows:-

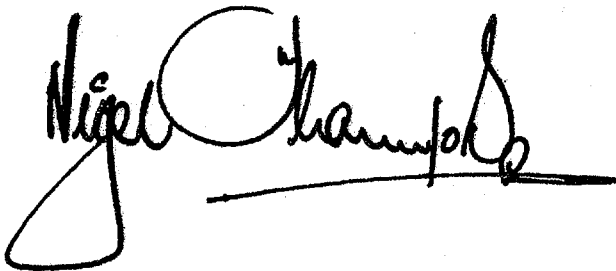
Ground Rent	:	£ 7.25	
Y.P. for 34 yrs. @ 7%		<u>12.1540</u>	£93
Reversion to Entirety Value		£135,000	
Site Value @ 35%		£ 47,250	
Sec. to rent		£ 3,307	
Y.P. in perp. def. 34 yrs. @ 7%		<u>1.4317</u>	
			<u>£4,735</u>
			<u>£4,828</u>

2 – Costs

In relation to costs, the lessee's application for a determination as to costs is pursuant to Section 21 (1) (ba) of the Leasehold Reform Act 1967 as the freeholder's reasonable costs payable under Section 9 (4) of that Act and Schedule 22 Part 1 (5) of the Housing Act 1980.

After careful consideration of the evidence presented, the Tribunal determined that the lessee should pay the freeholder's legal costs of £250 plus VAT (if applicable) pursuant to Section 9 (4) (a) – (d).

The Tribunal further determined that in relation to the valuation costs of the freeholders, no such costs should be payable by the lessee pursuant to Section 9 (4) (e) of the Act, given that valuation advice was not sought by the Landlords until after the date of the reference to the Leasehold Valuation Tribunal.

A handwritten signature in black ink, appearing to read 'Nigel R. Thompson', with a horizontal line underneath the name.

NIGEL R. THOMPSON
CHAIRMAN

11 APR 2002