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Our Ref: M/EH 2431c

**MIDLAND RENT ASSESSMENT PANEL**

Leasehold Reform Act 1967

Housing Act 1980

**DECISION OF LEASEHOLD VALUATION TRIBUNAL**

**ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967**

Applicant: Mr R Dudley

Respondent: Seedcare Limited

Re: 56 Brean Avenue, Sheldon, Birmingham, B26 1JS

Date of Tenants Notice: 19 February 2002

RV as at 1.4.73: £202.00

Application dated: 25 March 2002

Heard at: The Panel Office

On: 12 September 2002

APPEARANCES:

For the Tenant: Mr A W Brunt & Co

For the Landlord: Mr K Davies FRICS

Members of the Leasehold Valuation Tribunal:

Mr N R Thompson FRICS (Chairman)  
Mr J Dove  
Mrs N Jukes

Date of Tribunals decision:

14 OCT 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**

**DUDLEY v SEEDCARE LIMITED**

**56 BREAN AVENUE  
SHELDON  
BIRMINGHAM  
B26 1JS.**

**Reference : M/EH.2431C & M/LRC400**

### **Background**

This an application for 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, 56 Brean Avenue, Sheldon, Birmingham, B26 1JS.. The Lessee, Mr. R.S. Dudley holds the property by way of a Lease dated 6<sup>th</sup> December 1938 for a term of 99 years from 25<sup>th</sup> March 1937 at a yearly ground rent of £6. The Tenant's Notice of Claim to acquire the freehold interest was dated 19th February 2002, when 34 years of the term remained unexpired. The Tribunal accepted that the qualifying conditions for entitlement to enfranchise under the Act had been fulfilled.

### **Property**

The Tribunal inspected the property on 12<sup>th</sup> September 2002 in the presence of Mr. Dudley. The property comprises a two storey semi-detached house of brick and tile construction with rendered elevations. It occupies a triangular shaped plot with a frontage of 3.45 metres and an area of circa 252 square metres and lies at the head of cul-de-sac a short distance from the main A45 Coventry Road.

The property has the benefit of central heating installed by the Lessee.

The accommodation comprises an Entrance Hall; Through Lounge-Dining Room and Kitchen on the ground floor, with three Bedrooms and a combined Bathroom/W.C. on the first floor. Externally the property has a front garden with parking space and a rear garden with a (dilapidated) Garage accessed via a right of way leading from the head of Brean Avenue to the rear of the subject (and other) properties.

### **Hearing**

At the Hearing the Lessee was represented by Mr. A.W. Brunt, FRICS, and the Landlords were represented by Mr. K.F. Davis, FRICS.

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

### Term

Annual Ground Rent :	£ 6.00
YP 60 <sup>1</sup> / <sub>2</sub> years @ 7%	<u>12.85</u>

£77.10

### Reversion

Entirety Value :	£90,000
Site Value @ 33 <sup>1</sup> / <sub>3</sub> % :	£30,000
Sec.15 Rent @ 7% :	£ 2,100
YP deferred 34 years @ 7% :	<u>1.43</u>

£3,003

**£3,080**

In support of his Entirety Value of £90,000, Mr. Brunt referred to copies of various advertisements which had appeared in the local press in January and February of 2002. In particular, he drew the Tribunal's attention to two properties in Aldershaw Road, South Yardley on offer at that time for £79,950 and £81,950 respectively, the second of these properties having subsequently been reduced in price to £79,950 in an advertisement appearing in the Solihull Times on February 22<sup>nd</sup> 2002. Mr. Brunt also referred to advertisements for properties in Saxondale Avenue and Sunnymead Road, Yardley at £96,950 and £94,950 respectively, although he emphasised that these properties were on the north side of Coventry Road and were, in his opinion, in a better location. He also pointed out that both of these properties had the benefit of double glazing and central heating. Mr. Brunt therefore felt that the Aldershaw Road properties represented more directly comparable evidence to support his conclusion that the Entirety Value of 56 Brean Avenue as at the date of the Notice of Claim was £90,000.

Mr. Brunt also referred the Tribunal to the sale of 91 Steyning Road in November 2001 at a figure of £91,950. This was a similar property which the Tribunal was familiar with following an application to determine the price for the freehold of that property as at the 15<sup>th</sup> October 2001.

Under cross examination, Mr. Brunt confirmed that he was not aware (apart from Steyning Road) as to whether the properties referred to in the various advertisements were freehold or leasehold and he accepted that the quoted figures were simply asking prices rather than agreed sale prices.

Mr. Davis then introduced his case on behalf of the Landlords by submitting his own Proof of Evidence and the following valuation:-

Ground Rent	:	£6
Y.P. 34 years @ 6.5%	:	<u>13.57</u>

£ 81

Revert to OMV Freehold	:	£110,000
Site Value @ 35%	:	£ 38,500
Modern Ground Rent @ 6.5%	:	£ 2,502
Y.P. in perp. 34 years @ 6.5%	:	<u>1.808</u>

£4,524

£4,605

In support of his standing house value, Mr. Davis referred to assistance provided to him by a local firm of Chartered Surveyors by whom he had been informed that they had recommended a sale figure of £110,000 in March 2002 in respect of an unidentified "scruffy" semi-detached freehold house in Brean Avenue. He had also been advised that 9 Brean Avenue (a semi-detached house identical to the subject property) had been sold subject to contract on 6<sup>th</sup> May 2001 at £91,000.

Mr. Davis also referred to a number of transactions in Gilbertstone Avenue, which in his view was an inferior road to Brean Avenue. The detailed transactions were an agreed sale in November 2000 of No.98 Gilbertstone Avenue at £78,000; the agreed sale in April 2001 of No.37 Gilbertstone Avenue at £85,000; the sale, subject to contract, in February 2002 of No.56 Gilbertstone Avenue at £94,500 and the completed sale of No.148 Gilbertstone Avenue on the 23<sup>rd</sup> July 2002 at £116,000.

In support of his adopted site value of 35%, Mr. Davis referred to the sale of building land in September 2002 at Whitecrest, Great Barr, Birmingham 43, particulars of which were tabled. A devaluation of the sale price produced a figure of £160 per sq.yd. for the site and although Mr. Davis conceded that it was more attractive than Brean Avenue, applying a price of £160 per sq.yd. to the site area of Brean Avenue (302 sq.yds.) produced a site value of £48,160, i.e. rather more than Mr. Davis was contending for in his valuation.

With regard to the adoption of a 6.5% yield throughout the calculation, Mr. Davis referred the Tribunal to the Decision in the case of 177 Sandy Hill Road, Shirley (M/EH2261) and the fact that there were several instances when the Tribunal had accepted a 6.5% yield in cases where there had been escalating ground rents or leases with unexpired terms of below 10 years. Although the lease of the subject premises had some 36 years unexpired, Mr. Davis considered this should still be regarded as "a short leasehold interest" for which a 6<sup>1</sup>/<sub>2</sub>% yield would be appropriate.

Mr. Davis then referred the Tribunal to the recent sale of the freehold ground rent in respect of 9 Mulberry Walk, Streetly at auction, when he had been one of the auctioneers. This sale had been in respect of a leasehold interest expiring on the 25<sup>th</sup> March 2063 at a ground rent of £30 per annum with the purchaser being required to pay a contribution towards the Vendor's legal costs of £250 plus VAT. The freehold interest had been sold at a figure of £2,600, which was considerably more than the reserve and from the evidence in the Auction Room at the time there were underbidders. Mr. Davis pointed out that if a standing house value of £165,000 was adopted for that property, together with a site value of 35% and a 7% yield through the calculation, then the resultant figure came out at £1,291, i.e. less than half the amount for which the freehold interest was actually sold.

Even adopting a site value of 40% and a yield rate of 6<sup>1</sup>/<sub>2</sub>% throughout the valuation, the resultant figure was only £1,866.

Under cross examination, Mr. Davis confirmed that he had not been inside the subject property. He also confirmed that two large five bedroomed houses were now nearing completion on the Whitecrest building land. These had apparently been valued at £250,000 per property.

Mr. Davis also confirmed that he was not aware that the decision of this Tribunal in the case of 177 Sandy Hill Road, Shirley (M/EH2261) had been the subject of an appeal to the Lands Tribunal, and he acknowledged that speculators had been active in the purchase of freehold ground rents over the last twelve months – some of whom had suffered financial loss when the onward sale of those freehold ground rents to qualifying occupiers had been referred to the Tribunal.

### **Costs**

On the subject of the Landlord's legal costs, Mr. Brunt suggested a reasonable fee for the conveyancing work involved would be £275 plus VAT and pointed out that there was previous Tribunal authority for the adoption of that – and indeed lesser – figures. In response to this, Mr. Davis drew the Tribunal's attention to the letter from his client's Solicitors, Messrs. Shallcross & Co., dated 24<sup>th</sup> July 2002, confirming that their minimum legal charge relating to the Transfer of a freehold reversion under the Leasehold Reform Act 1967 was £400 plus VAT and disbursements of £8. Whilst accepting that legal costs might be more in St. Albans than they were in Birmingham, Mr. Davis referred to other cases with which he had been involved in London where costs had been £450 plus VAT and further cases in Hall Green, Birmingham where costs had been £350 plus VAT.

In relation to the Landlord's valuation fee, Mr. Brunt submitted that as no valuation of the property had been carried out prior to the application to the Tribunal, then the Landlord's were not entitled to recover any valuation costs from his client. For his part, Mr. Davis highlighted the considerable amount of correspondence which he had been involved with and confirmed that his normal fee in cases such as this was £245 which he considered to be reasonable. Mr. Davis confirmed that he had been instructed at the end of May 2002 and that he had provided a valuation to his client on the 8<sup>th</sup> June 2002.

### **Decision**

#### **1 – Freehold**

The Tribunal was grateful to both Mr. Davis and Mr. Brunt for the detailed submissions and evidence which had been provided for the benefit of the Tribunal.

The points of difference between the parties concerned, the Entirety Value of the property; the proportion of that figure to be adopted for the value of the site; and the yield to be adopted in the valuation.

In relation to the Entirety Value of the property, much of the evidence submitted required interpretation and adjustment to reflect varying specifications of the different properties and therefore their comparability with 56 Brean Avenue. Equally the timing of a number of the transactions referred to in evidence required adjustment and interpretation in order to relate them to the date of the Notice of Claim.

Furthermore, much of the evidence was based on asking prices in sale particulars and advertisements; recommended sale figures; agreed sale prices; and figures at which properties had been sold subject to contract. All of these expressions do not necessarily constitute the same thing as completed transactions.

Having considered all of the evidence very carefully, the Tribunal concluded that the Entirety Value of 56 Brean Avenue as at the date of the Notice of Claim was £90,000.

So far as the site value was concerned, the Tribunal considered that in view of the relatively small area of the site, the narrow frontage and awkward shape, the percentage of Entirety Value adopted by Mr. Brunt ( $33\frac{1}{3}$ ) was to be preferred.

In relation to the yield, the Tribunal did not agree with the contention by Mr. Davis that a 36 year unexpired term at a fixed ground rent was comparable with either an escalating ground rent or an unexpired leasehold term of below 10 years. The Tribunal therefore determined that a yield of 7% would be appropriate in the present case.

In considering the question of the proportion of the Entirety Value to be adopted for the site; the yield rate; and the relevance of the sale of individual ground rents, the Tribunal took into account the Decision of the Lands Tribunal in the case referred to by Mr. Davis of 177 Sandy Hill Road, Shirley, Solihull (LRA/15/2002) given by P.R. Francis FRICS on the 25<sup>th</sup> June this year.


Accordingly, the Tribunal determined the price to be paid for the freehold interest in respect of the subject property in accordance with the valuation produced by Mr. Brunt showing a figure of £3,080.

## 2 – Costs

In relation to cost, the Lessee's application for a determination 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.

In cases of this type, the conveyancing is normally of a very straightforward nature, which many Solicitors are prepared to undertake on a competitive basis. At the present time a reasonable charge is considered to be £275 (plus VAT) and disbursements and the Tribunal determined such costs to be payable by the Lessee in the present case.

So far as the freeholder's valuation fees are concerned, it is clear from the evidence given by Mr. Davis himself that he was instructed sometime after the initial application to the Tribunal for a determination as to the price to be paid for the freehold interest (25<sup>th</sup> March 2002). Accordingly, the Landlords are not entitled to recover their valuation fees from the Lessee, and therefore no valuation costs are payable in this instance pursuant to Section 9 (4) (e) of the Act.

  
NIGEL R. THOMPSON  
CHAIRMAN

14 OCT 2002