

(256)

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTION 21 AND 21 (1) (ba) OF
THE LEASEHOLD REFORM ACT 1967**

IN THE CASE

OF

HICKMAN v DIVIS

49 BILSTON ROAD

TIPTON

WEST MIDLANDS

DY4 0BY

References : BIR/00CS/0AF/2004/0032 & BIR/00CS/0C6/2004/0030

Background

This 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 49 Bilston Road, Tipton, West Midlands DY4 0BY. The lessees, Mr & Mrs R S Hickman hold the property by way of a lease dated 28th June 1973 for a term of 99 years from 29th September 1970 at an initial yearly ground rent of £40 rising to £66 with effect from 25th March 2003 and £96 with effect from 25th March 2036. The tenants' Notice of Claim to acquire the freehold interest was dated 12th December 2003, when approximately 65.75 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 22nd April 2004 in the presence of Mrs Hickman and found it to comprise a two storey link detached house of brick and tile construction with an integral tandem garage, forming part of a substantial development of similar houses constructed some thirty years ago.

The centrally heated and double glazed accommodation comprises a hall, lounge with archway to a dining room, conservatory and kitchen on the ground floor, with three bedrooms, bath room and separate W.C. on the first floor. Externally the property has modest front and rear gardens and a tandem garage, part of which has been converted to provide a utility area.

Hearing

At the Hearing, the lessees were represented by Mr. J. Moore MA of Midland Valuations Ltd. And the landlord was represented by her agent, Mr David Thomas.

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

Term

Annual Ground Rent :	£66	
YP 32.25 years @ 7%	<u>(12.67)</u>	
		£ 836.22

Increased Ground rent from 25/3/2036:	£96	
YP 33.5 yrs deferred 32.25 yrs @7%	<u>(1.44)</u>	
		£ 138.24

Reversion

Entirety Value :	£127,500	
Site Value @ 33.3% :	£ 42,457.50	
Sec.15 Rent @ 7% :	£ 2,972.03	
YP deferred 65.75 years @ 7% :	<u>(0.167)</u>	
		<u>£ 496.33</u>
		£1,470.79

Say **£1,471**

In support of his Entirety Value, Mr. Moore referred to the sale of a three bedroomed detached house at 34 Myrtle Terrace, in March 2004 (some three month after the date of the Notice of Claim in the current case), at "close to the asking price of £140,000". Mr Moore emphasised that, in his view, this was a more individual and desirable property than the subject property because it was completely detached, and not situated on a busy main road. In addition, Mr Moore referred to the recent sale of a freehold, semi detached house at 50 Bilston Road at £119,950 which, when adjusted for the difference in timing and the physical characteristics of the two properties, he felt supported the adoption of a figure of £127,500 for the entirety value in the current case.

Mr Moore submitted a detailed case to support the adoption of a Site Value based on 33.3% of the Entirety Value, and quoted a number comparable cases determined by the Tribunal.

In relation to his adopted yield of 7%, Mr Moore submitted that this was a generally accepted rate in cases such as this, and had been widely adopted by the Tribunal and the Lands Tribunal. He acknowledged however, that the Tribunal had in certain instances adopted a rate of 6.5% where the lease was short or the ground rent escalated over the term of the lease. He did not feel this was appropriate in the current case on the basis that the next increase in the ground rent was not for 32.25 years and then only to £96, which would be fixed for the remainder of the term (33.5 years). On behalf of the landlord, Mr Thomas did not argue with the basic valuation approach adopted by Mr Moore, but referred to the schedule submitted by his client at Appendix 3 showing, in

chronological order, the sale of the freehold interest of eight properties on the development since January 2000. The schedule showed a gradual increase in price of individual freeholds from £1,500 in 2000, rising to £1,800 in 2001 and 2002, and then £2,000 by 2003. In addition, Mr Thomas indicated that there were two other cases currently nearing completion in which a price of £2,000 had been agreed between the parties, and he submitted that this was clear market evidence for the Tribunal to take into account in its consideration of the price to be paid for the freehold in the current case.

Mr Thomas also referred the Tribunal to Appendix 2 of his client's written submission (a plan showing the original layout of the development), and in the context of the site value, provided details of the agreed sale of a single building plot adjoining Plot 54 as shown on the plan. The plot was of comparable size to the existing plots; it had planning permission for the construction of a three bedroomed link detached house of comparable size and character to the existing houses; and the price had been agreed shortly prior to Christmas 2003 at a figure of £35,000.

In terms of the entirety value of the property, Mr Thomas had ascertained from the relevant estate agents the price for two houses on the development – one in Diane Close and one in Myrtle Terrace. Both houses were leasehold and were being sold for £123,000.

In concluding his submission, Mr Thomas alluded to the relationship between the vacant possession value of the properties at the development and the price at which individual freeholds had been sold over the last thirty years. He contended that originally, the houses had been sold for around £12,000 and at that time, the freeholds were available at £1,000 (8.5%). By 2000, the vacant possession market value of the houses was circa £75,000 and the freeholds were selling for £1,500 (2%). In late 2003/ early 2004, vacant possession prices were approximately £123,000, and it was therefore consistent for the freeholds to be worth £2,000 (1.6%).

Under cross examination, Mr Thomas confirmed that the eight transactions shown on Appendix 3 and the two further cases nearing completion, had all been undertaken on a voluntary, and informal basis, without the service of a Notice of Claim under the Act. In each case, the freehold sale had been negotiated personally by the freeholder with the relevant lessee.

Costs

On the subject of the landlords' legal costs, Mr. Moore suggested a reasonable fee for the work involved would be £275 (plus VAT if applicable) and disbursements, based on the level of award made by the Tribunal in other similar cases. Mr Thomas did not dispute that figure which he said was approximately what his client's solicitors had already advised him would be the level of their charges.

In relation to the landlords' valuation fees, Mr. Moore confirmed that neither he nor his clients had received any indication of a formal valuation having been undertaken by the freeholder as a consequence of the service of the Notice of Claim and prior to the application to the Tribunal. He therefore submitted that the landlords were not entitled to recover any valuation costs from his clients.

Decision

1 – Freehold

The evidence of the sale of other freeholds on the development was not felt to be of particular help to the Tribunal, given that these had all be undertaken on a voluntary and informal basis, outside the scope of the Leasehold Reform Act 1967 (as amended). In the present case, a formal Notice of Claim had been served, and the determination of the price therefore had to be considered within the statutory framework laid down by the Act. For the same reason, the mathematical correlation alluded to by Mr Thomas between the vacant possession prices of the houses and the amount paid for the freeholds as a result of voluntary negotiation over the years, was also not considered to be an appropriate method of valuing the freehold interest in the present case.

The valuation approach adopted by Mr Moore broadly followed the accepted method of valuation in cases such as this, and conformed in all material respects with the principles laid down by the legislation. In terms of the detailed elements of the valuation, however, the Tribunal considered that:

- because of the rising nature of the ground rent, a yield rate of 6.5% was appropriate.
- the evidence of the two properties being sold currently in Diane Close and Myrtle Terrace at £123,000 on a leasehold basis lent support to the (notional freehold) Entirety Value adopted by Mr Moore of £127,500
- the details supplied by Mr Thomas as to the sale of the building plot adjoining Plot 54 on Appendix 2, suggested that the site value to be adopted should be somewhat less (27.5%) than the figure of £42,457.50p used by Mr Moore and derived by him from using 33.3% of the Entirety Value. However, it was recognised by the Tribunal that the details of the sale of the building plot adjoining Plot 54 were not necessarily complete and therefore had to be regarded with a degree of caution. The Tribunal therefore adopted 30% of the Entirety Value as representing the Site Value.

Accordingly, the Tribunal determines the price to be paid for the freehold interest at £1,499 in accordance with the following valuation:

Term

Annual Ground Rent :	£66	
YP 32.25 years @ 6.5%	<u>(13.365)</u>	
		£ 882
Increased Ground rent from 25/3/2036:	£96	
YP 33.5 yrs deferred 32.25 yrs @ 6.5%	<u>(1.774)</u>	
		£ 170

Reversion

Entirety Value :	£127,500	
Site Value @ 30% :	£ 38,250	
Sec.15 Rent @ 7% :	£ 2,677	
YP deferred 65.75 years @ 7% :	<u>(0.167)</u>	
		£ 447
		£1,499

2 – Costs

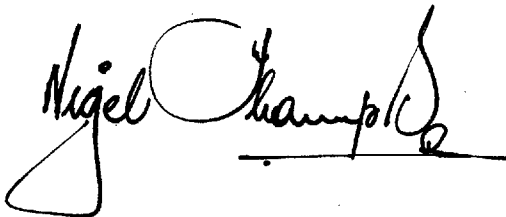
In relation to costs, the lessees' application for a determination is pursuant to Section 21 (1) (ba) of the Leasehold Reform Act 1967 as the freeholders' reasonable costs payable under Section 9 (4) of that Act and Schedule 22 Part 1 (5) of the Housing Act 1980.

Legal:

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. There was agreement between the parties that a reasonable level of fee payable by the tenants in this instance would be £275 (plus VAT if appropriate) and any Land Registry fee for Office Copies. The Tribunal accepts that this would be reasonable in the circumstances and therefore determines the landlord's recoverable legal costs (payable by the claimants) accordingly.

Valuation:

In the absence of any evidence that a valuation had been undertaken by or on behalf of the landlords in consequence of the tenant's Notice of Claim dated 12th December 2003 and prior to the date of the reference to the Tribunal on 12th February 2004, no valuation costs are payable by the Lessee pursuant to Section 9 (4) (e) of the Act.

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

Nigel R Thompson
Chairman

12 MAY 2004