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**LEASEHOLD VALUATION TRIBUNAL**

**OF THE**

**MIDLAND RENT ASSESSMENT PANEL**

BIR/00CN/OAF/2004/0008

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL*

*ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT  
1967*

**Applicant:** Mr C P Moxon & Mrs K H Moxon (leaseholders)

**Respondent:** The Trustees of the Calthorpe Estate (freeholders)

**Subject property:** 19 Euan Close  
Edgbaston  
Birmingham B17 8PL

**Date of tenant's notice:** 21<sup>st</sup> October 2004

**Application to the LVT:** 5<sup>th</sup> January 2005

**Hearing:** 17<sup>th</sup> February 2005

**Appearances:**

*For the applicant:* Mr. AW Brunt

*For the respondents:* Mr J K Willson BSc MRICS

**Members of the LVT:** Mr. D.B. Power FRICS  
Mr. P J Waller  
Mr G Chidlow ACIS

**Date of determination:** 17<sup>th</sup> February 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 Mr and Mrs C P Moxon, leaseholders of the house and premises at 19 Euan Close, Edgbaston Birmingham ("the subject property"). The applications are under section 21(1)(a) of the 1967 Act for the determination of the price payable under section 9 for the freehold interest in the subject property and under section 21(1)(b) for the amount of any costs payable under section 9(4).
2. The Applicant leaseholders hold the property by virtue of an underlease for a term of 99 years (less three days) from the 29<sup>th</sup> of September 1975 at a ground rent of £60 per annum with an increase to £90 per annum in 2008 and to £120 per annum in 2041 until the end of the underlease. The intermediate leasehold and the freehold interests have now merged and are held by the Trustees of the Calthorpe Estates. The unexpired term at the date of the Tenants' claim to acquire the freehold interest was approximately 70 years.
3. The Applicants served a tenants' notice dated the 21<sup>st</sup> of October 2004 on the respondent freeholder to acquire the freehold interest in the subject property under the terms of the 1967 Act, and the present applications were made on behalf of the Applicants by Anthony Brunt and Co, Valuers.
4. Lambert Smith Hampton, instructed on behalf of Calthorpe Estates, indicated, by a letter dated the 29<sup>th</sup> November 2004 the proposed price to be paid should be £26,500, together with the freeholders proper legal costs and valuation fees. The transfer of the freehold interest would be made subject to the terms of the Scheme of Management granted to the Estate Trustees.
5. Anthony Brunt and Co had proposed, on behalf of the leaseholders, a price in the vicinity of £15,185.
6. Experts reports were received by the Tribunal office prior to the hearing from which it was apparent that the only outstanding valuation issue was the assessment of the open market value of the leasehold interest.
7. The Tribunal and the parties accept that the qualifying conditions for enfranchisement under the 1967 Act are satisfied and that the assessment of the value is to be made in accordance with Section 9 (1C) of the Act.

## **Inspection**

8. The Tribunal inspected the property on the morning of the hearing in the presence of the Applicants and their surveyor Mr Brunt. The freeholder did not attend and was not represented.

## **Hearing**

9. Prior to the hearing, reports had been forwarded to the Tribunal and between the parties in which the surveyor acting for the freeholder concluded that the price to be paid for the freehold should be £20,185 and the surveyor for the leaseholders that it should be £15,185.

10. The hearing was attended by Mr John K. E. Willson BSC, MRICS as consultant to Lambert Smith Hampton for the freeholders and Mr A W. Brunt of Anthony Brunt & Co, for the leaseholds.
11. Following consideration of the evidence submitted by Mr Willson, Mr Brunt presented a further submission as he was of the opinion that his assessment of the freehold value at £475,000, which had been previously agreed with Mr Willson, was excessive. Agreed settlements of the enfranchisement prices in respect of numbers 5 and 11 Euan Close, based upon freehold values of £430,000 and £400,000, after adjustment for the larger plot size, indicated a proper figure for number 19 should be £440,000 resulting in a revised enfranchisement price of £15,781. Mr Willson was given the opportunity to consider this new evidence and confirmed he was prepared to proceed with the hearing without further adjournment.
12. At the hearing, Mr Brunt supported his revised view by confirming that the notice of enfranchisement in respect of number 5 Euan Close was dated 14th of September 2004, some five weeks before that of 19. The lease had 70 years unexpired. It was similar in size and location but a mirror image of the subject property, although the site was smaller, that of the subject property had a steeply sloping drive, problems with flooding and suffered from reduced security from the Chad Valley public access land adjoining. Although the property market was rising rapidly in the first half of 2004, he did not consider there would have been a material rise in the five weeks between the dates of the two notices. The property at number in 11 Euan Close, where the notice of enfranchisement was dated November 2003, was again similar but the plot had a limited frontage and widened towards the rear. Both transactions had been the result of the negotiations for the agreement of the enfranchisement price where expert chartered surveyors had represented both parties.
13. Responding to a question from Mr Willson, Mr Brunt had submitted evidence of 70 Wellington Road. It was some distance away and although it is understood to have been sold subject to contract, the indicated selling price of £385,000 was not confirmed
14. Mr Willson discounted the disadvantages of number 19 Euan Close as against number 5 and observed that the subject property was on a spacious plot, well back from the road and had a building on one side only whereas number 5 was in relatively close proximity to the neighbouring houses for a property of this type. Chad Valley could be a drawback but the land to the side and rear were unlikely ever to be developed. Weighing these factors, he was of the opinion that number 19 was significantly better than number 5. With hindsight he thought perhaps the agreement on number 5 was slightly on the low side. He agreed the plot configuration of number in 11 was less advantageous but in any event the valuation date was earlier.
15. Mr Willson had submitted evidence of relativity between the valuation of the freehold and that of the leasehold interests in respect of 14 properties where enfranchisement had been agreed under the terms of the Leasehold Reform Act 1967 which varied between 92% and 94.74% dependent upon the unexpired term. For number 5 Euan Close, the relativity figure was 93.95% and number 11, 94%. Mr Brunt accepted these figures. Mr Willson had also submitted an extensive schedule of settlements pre-dating the right to

enfranchise for properties of this level of rateable value under the 1967 Act, to illustrate relativity not bounded by the Act.

16. Mr Willson also submitted evidence of sales on the Calthorpe Estate at 62 Anstruther Road, 24 Finlarigg Drive and 22 Greening Drive in respect of which the freehold prices were uplifted to reflect inflation between the sale date and the valuation date. Sales achieved subject to a leasehold interest and the price obtained for a similar property with a freehold interest provided the best available evidence where this was available but, if it was not, then it was necessary to fall back on the transactions negotiated between competent surveyors.
17. In his submission he referred to the Lands Tribunal case of *Delaforce v Evans* which established the principle that a party's anxiety to settle should be disregarded. This had little effect in this case
18. On the issue of costs, Mr Brunt asked the Tribunal to set legal fees at £300 plus VAT if applicable and valuation fees of £300 plus VAT if applicable. The market was competitive for professional services of this nature and he considered fees proposed figures to be reasonable.
19. Mr Willson indicated that the legal fees usually paid by his client were £475 plus VAT. Because the Calthorpe Estate was the subject of an approved Scheme of Management, unusually the draft transfer was prepared by them. He proposed £325 plus VAT in respect of the valuation fee, at a higher level than usual because of the need to assess marriage value.

#### **Determination**

20. The Tribunal gave careful consideration to all the evidence submitted by both parties. Although it was appreciated why the selling prices of properties sold in the open market had been submitted, the time the difference between those sales and the valuation date in some cases was quite large and in any event little evidence was provided about comparability with the subject property. The Tribunal concluded that the best evidence of property values in the near vicinity was that of transactions agreed between properly qualified surveyors, and was to be preferred. However, it was considered that the adjustment for differences between particularly number 5 and the subject property as assessed by Mr Brunt was an understatement as the latter enjoyed a much larger plot, stood better and had a more attractive appearance. Having regard for all the evidence and their own knowledge and experience, the Tribunal determines that the value of the unencumbered freehold interest, is £450,000.
21. The principle behind relativity is accepted and whilst the Tribunal has noted that the different figures provided in respect of values achieved prior to the effect of the 1967 Act and those agreed subsequently by agreement, of the former are now somewhat historic and may not reflect changes in the market since then. The Tribunal has therefore adopted the alternative schedule and determines that the percentage applied should be similar to that for 5 Euan Close at 93.95% resulting in a value for the leasehold interest of £422,775.
22. There is no dispute as to of the valuation process and the Tribunal therefore concludes that the enfranchisement price should be calculated as follows:

### Valuation of freehold interest subject to existing lease

Current ground rent p.a.		£60.00	
Years purchase 4 years @7%		3.387	
Capitalised ground rent			£203.23
Fixed increase in ground rent (1)		£90.00	
Years purchase 33 years @ 7%	12.754		
Present value of £1 in 4 years @7%	0.7629	9.730	
Capitalised ground rent			£875.69
Fixed increase in ground rent (2)		£120	
Years purchase 33 years @ 7%	12.754		
Present value of £1 in 37 years @7%	0.0818	1.0433	
Capitalised ground rent			£125.19
Total capital value of ground rent			£1,204.11

### Reversion

Value of unencumbered freehold interest excluding tenants' improvements		£450,000	
Present value of £1 in 70 years @7%		0.00877	£3,946.50
Total			£5,150.61

### Marriage Value

Value of unencumbered freehold interest excluding tenants' improvements		£450,000	
Value of freeholders interest subject to existing lease	£5,150.61		
Value of leaseholders interest ignoring lessees improvements	£422,775		
Total of above		£427,925.61	
Gain on marriage		£22074.39	
Freeholders share 50%			£11,037.19
Value of freeholders current interest plus share of marriage value			£16,187.81
Say			£16,200

23. On the question of costs, the Tribunal considered the submissions of the parties and determined that because of the nature of this case, the valuation fee should be £325 in view of the need to assess marriage value. The legal fees should be

£475 because of the additional complication of the Scheme of Management applying to the Calthorpe Estate.

**Decision**

24. The decision of the Tribunal is therefore that the price to be paid for enfranchisement shall be £16,200 and the purchaser shall pay valuation fees of £325 plus VAT if applicable and legal fees of £475 plus VAT if applicable.

Signed.....



Chairman

Date.....

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