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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE MIDLAND RENT ASSESSMENT PANEL ON APPLICATIONS UNDER S21(1)(a) AND 21(1) (ba) OF THE LEASEHOLD REFORM ACT 1967

Property: **17 Abnalls Croft, Lichfield, Staffordshire WS13 7BP**

Applicants: Mr Mark Forman and Ms Carmel Jane Tatlock (tenants)

Respondent: Cairntows Limited (freeholder)

Place of hearing: Birmingham

Date of hearing: 8 February 2005

Appearances: Mr J Moore (Midland Valuations Limited) for the applicants

Mr W J Dornan TD FRICS (W J Dornan & Company) for the respondent

Rateable value on appropriate day: less than £500

Members of the leasehold valuation tribunal:

Lady Wilson
Mr David Satchwell FRICS
Mr David Underhill

Date of the tribunal's decision: 4 April 2005

Background

1. These are applications under section 21 of the Leasehold Reform Act 1967 ("the Act") to determine the price to be paid for the freehold of 17 Abnalls Croft, Lichfield ,and the freeholder's recoverable costs.

2. 17 Abnalls Croft is a two storey semi-detached house, built about 1962, with two living rooms, kitchen and conservatory on the ground floor and three rooms, a bathroom and separate wc on the first floor. The property has a single garage and small gardens to the front and rear. It is held on a lease for a term of 99 years from 26 March 1962 at a fixed ground rent of £25 per annum. Approximately 56.5 years remained unexpired on the valuation date which is 9 September 2004, the date of the tenants' notice of claim.

3. The tribunal inspected the property on 8 February 2005, before the hearing. At the hearing the tenants were represented by Mr Moore of Midland Valuations Limited and the landlord by Mr Dornan TD FRICS of W J Dornan & Company, property consultants, surveyors and valuers. Mr Moore and Mr Dornan agreed that the entirety value of the property was £180,000. The issues were: the proportion of the entirety value to be used to establish the value of the site,. yield, and costs.

Decision

i. Site value proportion

4. Mr Moore for the tenants proposed a site value proportion of 33.3% of the entirety value. He said that this proportion was consistent with settlements and leasehold valuation decisions in

relation to similar plots. There were, he said, two conventional methods of arriving at the value of the site: as a proportion of the entirety value, and by reference to the value of cleared sites. In the absence of direct evidence of the value of comparable cleared sites it was customary and correct to take a proportion of the entirety value as representing the value of the site. One third, he said, was realistic and fair proportion for this relatively small plot, and in line with similar cases. The sum produced by applying such a proportion was 40% of the entirety value of £150,000 which he had originally proposed.

5. Cross-examined by Mr Dornan for the landlord, Mr Moore said that he had not carried out a residual valuation based on an analysis of building costs, such as that prepared by Mr Dornan; he preferred to base his valuation of the site on the customary method in accordance with the great majority of settlement evidence and tribunal decisions. He did not dispute that Mr Dornan's figure for building costs was accurately based on the relevant Index, but he preferred to base the proportion on a tried and tested method, and his figure of 33.3% was appropriate for this small site.

6. Mr Dornan proposed a residual site value of 40%. He arrived at this proportion by taking a gross external floor area of 110 sq m for the house, and rebuilding costs of £719 per sq m, giving a building cost of, say, £80,000, plus £10,000 for a garage. He had based the rebuilding costs on the costs for the West Midlands in the Building Cost Information Service Guide to House Rebuilding Costs for 2004, published by the RICS. These costs, he said, included demolition and clearance of the site and all fees. He said that his approach produced a site proportion of 48%, which he had reduced to 40%. In his view the argument that the site proportion had always in the past been arrived at by a different method was a bad one.

7. We are satisfied that 33.3% is the appropriate proportion of the entirety value by which to arrived at the value of the site. This is a small site, the potential of which is fully exploited by

the existing building. 33.3% is consistent with almost all the settlement evidence and all the leasehold valuation tribunal decisions of which we are aware for sites of this size and in this type of location. We accept that the approach which Mr Moore and this tribunal adopt is to some extent conventional and artificial, but in our view it produces a result which is not only in line with other cases but is realistic, whereas Mr Dornan's residual valuation produces too high a value for this somewhat cramped site and takes no account of the fact that a developer of the site would require a significant profit on his investment. We have not attached weight to Mr Moore's alternative argument that the entirety value which he initially proposed, combined with Mr Dornan's proposed site proportion, equated to his proposed lower proportion of the higher entirety value. The entirety value is agreed, and we do not consider it appropriate to hypothesise about the consequences of applying a different value.

ii. Yield

8. Mr Moore proposed a yield of 7% to capitalise the ground rent and to decapitalise the site to arrive at the section 15 ground rent and to defer the reversion. He said that this was the rate established as appropriate by a large body of settlement evidence and tribunal decisions. In his view a lower rate might be appropriate where the unexpired term was very short or the ground rent subject to increase, but for this investment 7% was correct. Although, he said, financial investment yields were low at the valuation date, investors in property were likely to take a long term view and would not assume that rates would remain as they were at the valuation date. The ground rent, though very secure, was low and fixed, and the section 15 ground rent was not as secure and was deferred for 56.5 years. An investor would, he said, require a higher yield for such investments than he might obtain in the money market. 7% was a "good, average, long term return" such that the hypothetical purchaser would accept for this investment. Moreover, as the Court of Appeal had said (*Gallagher Estates v Walker* (1973) 28 P & CR 113) that the land

market was a more suitable guide to yields than the money market.

9. Mr Dornan proposed 7% to decapitalise the site to arrive at the site value, but 6.5% to capitalise the existing ground rent and to defer the reversion. He said that 6.5% reflected the quality of the investment and the fact that investment yields had come down in the past year or two. He said that yields should be based on open market transactions. The money market was, he said, relevant, because an investor would look for a similarly secure investment to replace this ground rent investment, and such secure investments had, at the valuation date, universally lower yields than 7%. It was, he said, impossible to buy a freehold ground rent investment at 7% in the open market. Asked by the tribunal, he said he was unable to provide concrete evidence of sales of ground rent investments in the open market. Asked by Mr Moore, he said that he did not have and did not seek to rely on specific evidence of settlements at the yields he proposed, although he said that he had agreed yields of 6.5% in two or three cases in the last six months, and he had sold ground rent investments with 999 year leases at 5 - 5.5%. It was his opinion that landlords were put under pressure to settle at the conventional rate because of the risk of costs associated with applications to the tribunal and Lands Tribunal.

10. We have come to the conclusion that 7% is the appropriate yield rate for all the relevant aspects of this investment. That rate is very well supported by a mass of settlement evidence and decisions of the leasehold valuation tribunal and Lands Tribunal in similar cases. Cogent evidence would in our view be required to displace such a well established yield and none has been put before us in this case. We are aware that the Lands Tribunal has said (notably in *Cadogan Holdings v Pockney (Re 57 Shawfield Street)* (LRA/27/2003), and *Day's Appeal (Re Flat 6, 32 Brechin Place SW7* (LRA/28/2003), that deferment yields should be reduced because of a general downward trend in yields, including (in *Day's Appeal*) the "downward trend in yields on residential lettings". This tribunal must, however, act on the evidence put before us, and yields applied and observations made, even by the Lands Tribunal, in other cases, are not

binding on us. In any event, yields applied for investments of much higher quality in Central London are inconsistent with a yield of 6.5% (or even, arguably, of 6%) for the present investment. We agree with Mr Moore that an investor in property would be likely to take a long term view, and that 7% is a realistic rate for this modest investment.

iii. Costs

Valuation

10. Mr Moore had, in his written statement submitted before the hearing, contended that there was no evidence that any formal valuation had been carried out on the landlord's behalf between the date of the notice of claim and the date of the application to the tribunal. Certainly, he said, there had been no internal inspection between those dates. He therefore contended that no valuation fee was payable by the tenants.

11. Mr Dornan said that he had carried out a valuation when the notice of claim was received. To do so he had himself driven from London on 29 September 2004 and had driven by the property to check what type of property it was. He had returned to the property in December 2004, after the application to the tribunal, when he had seen that the tenants' valuer was contending for a site value proportion of 33%. He asked for a valuation fee of £400 for his first visit, based on half a day away from his office and half a day searching the internet for comparables and considering value, plus VAT and out of pocket expenses and a mileage allowance of 64 pence per mile for his journey from his office in London and back. Having heard Mr Dornan's evidence, Mr Moore accepted that he had visited the property on 29 September 2004 and had carried out a drive-by inspection, but said that it would have been reasonable for the landlord to instruct a local valuer to do this work, and that the reasonable fee

for what was done should be no more than £150 plus VAT, but that, if the tribunal considered that it was reasonable for Mr Dornan to have done the work himself, his reasonable fee for so doing was not more than £250 plus VAT.

12. In our view the landlord should reasonably have instructed a local valuer to carry out an external inspection and obtain comparables in this straightforward case, and the reasonable and recoverable valuation fee is £200 plus VAT, which would in our view have been a reasonable fee for the preliminary valuation work carried out by an experienced local valuer.

Legal

13. Mr Dornan said, in his written statement submitted before the hearing, that the fee quoted by the landlord's Sheffield solicitors for "the conveyance of the property and dealing with the Notices" was £300 plus VAT. At the hearing he said that he had been informed by the landlord's solicitors that their fee would be £300 plus VAT for conveyancing and an additional £400 for checking the validity of the notice and serving the counter-notice. Mr Moore submitted that a reasonable fee for serving the counter-notice would be £25 plus VAT and, for the conveyance, £275 plus VAT. He said the landlord had not asked the tenants to deduce title or to make any statutory declarations. He considered that £275 plus VAT would be a reasonable fee for conveyancing. Mr Dornan asked for an opportunity to obtain information from the solicitors to confirm the work they had carried out prior to and including the service of the counter-notice and we gave him leave to submit written evidence in this regard and for Mr Moore to comment upon it.

14. Mr Dornan accordingly submitted a letter dated 14 February 2005 from Mr Revitt of Irwin Mitchell, solicitors, together with an invoice from that firm to the landlord for £154 plus VAT

and disbursements, a total of £184.95. In his letter, Mr Revitt apologised for his firm's previous incorrect estimate of £400 for the recoverable non-conveyancing costs and said that the actual recoverable fee was as in this invoice. He gave a breakdown of these costs which comprised 6 units of 6 minutes at a rate of £110 per hour for considering the notice, opening the file and preparation of terms of business and documentation required to comply with ISO 9001, and 2 units of 6 minutes at the same rate for obtaining copies of the lease, checking the validity of the notice and the eligibility of the applicants to acquire the freehold and accessing the Land Registry for up to date official entries confirming title and the time the tenants had been in occupation.

15. In his response, Mr Moore said that £154 plus VAT and disbursements was excessive. There had been no request for the tenants to deduce title and the counter-notice was incorrect in that it stated that the house should be valued under section 9(1A) of the Act. Items such as opening the file and documentation required to comply with ISO 9001 were not recoverable under section 9(4) of the Act. A number of decisions of the tribunal had allowed £25 plus VAT for this work.

16. We are satisfied that a fee of £275 plus VAT is reasonable and recoverable for the conveyancing work involved. Under section 9(4)(a), we accept that it is reasonable to obtain copies of official entries from the Land Registry and a copy of the lease, but we do not accept that peripheral, though necessary, work involved in opening the file and dealing with money-laundering legislation is recoverable under the Act. In our view 30 minutes at £110 per hour is reasonable and recoverable under this head, and we therefore allow £55 plus VAT and £4 disbursements.

CHAIRMAN

DATE