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MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/OOCN/OAF/2004/0342

Leasehold Reform Act 1967

Commonhold and Leasehold Reform Act 2002

**DETERMINATIONS OF LEASEHOLD VALUATION TRIBUNAL**

On an application under s.21 1967 Act to determine the price payable on enfranchisement by the tenant under s.9(1) 1967 Act

Determination of reasonable costs under s.9(4) 1967 Act

Applicant Tenants: Mr R L Dewick and Mrs G K Dewick

Respondent Freeholder: Mr K H Garpinar

Property: 29, Shrewley Crescent, Tile Cross, Birmingham B33 0HU

Date of Tenant's Claim to acquire the Freehold: 2 September 2004

RV on 31 March 1990: £253

Application dated: 11 November 2004

Heard at: The Panel Office

On: 3 February 2005

APPEARANCES:

For the Tenant: Mr A W Brunt FRICS

For the Freeholder: No appearance

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)  
Ms N Jackson BA Law  
Mr M H Ryder

Date of Tribunal's decision:

25 FEB 2005

**Background:**

- 1 Mr R L Dewick and Mrs G K Dewick are the Tenants by a 99 year lease from 1960 of the dwelling house and premises at 29, Shrewley Crescent, Tile Cross, Birmingham B33 0HU (the 'Property'). The Freeholder is Mr K H Gurpinar. By a notice (the 'Notice') dated 2 September 2004 (the 'Date') the Tenants claim to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the 'Act'). By applications dated 11 November 2004 the Tenants apply to us: (a) to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act; and (b) the Freeholder's reasonable costs under s.9(4). No application is made for a determination that a party shall pay the costs incurred by another party in connection with the proceedings under para 10. Schedule 12 Commonhold and Leasehold Reform Act 2002. We inspected the Property on 3 February 2005 and a hearing was held on the same day.
- 2 The Tenants hold the Property by a lease (the 'Lease') for a term of 99 years from 25 March 1960 at a fixed ground rent of £17.50 pa.
- 3 The unexpired terms of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 54½ years.
- 4 The Property comprises a semi-detached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - hall, through living room, kitchen, dining area (converted from the former garage), side porch and utility area; on the first floor - 3 bedrooms, bathroom with wc. There is gas fired central heating to radiators. The site roughly rectangular with a frontage of about 9m and an area of about 296m<sup>2</sup>.
- 5 Mr A W Brunt FRICS appeared for the applicant Tenants. The Freeholder did not appear and was not represented.

THE PRICE PAYABLE UNDER S.9(1) 1967 ACT

**The valuation method:**

Mr Brunt adopts, and we accept, the generally recognised valuation method to derive the price payable for the freehold interest, accepted in *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. The method is: (i) capitalise the apportioned ground rent (£17.50 pa) from the Date for the unexpired term of the Lease (54½ years); (ii) capitalise the modern ground rent (s15 of the Act), as at the Date, as if in perpetuity but deferred for the unexpired term of the Lease - 'as if in perpetuity' because, although the value of the modern ground rent is for a term of 50 years (as the extension to the Lease), the value of the freehold reversion in possession at the end of the fifty years' extension is ignored as being too remote to have a separate material value for it (namely no *Harestign* addition - see below). As no evidence of cleared sites is adduced, the modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value. The entirety value is the value of the freehold interest in the Property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful.

7 Mr Brunt's valuation does not include a *Haresign* addition - recognised in *Haresign v St John The Baptists' College, Oxford* [1980] 255 EG 711 when specific account was taken of the reversion to the full value of the dwelling after the expiration of the assumed fifty years' extension of the Head Lease. We accept his approach.

8 **Mr Brunt's valuation and evidence:** For the freehold interest - £1,747

More specifically:

9 Term

Ground rent	£17.50 pa	
YP 54½ years at 7%	<u>13.9278</u>	£244

Reversion

Entirety value	£180,000	
Site value at 1/3 <sup>rd</sup>	£60,000	
Sec. 15 ground rent at 7%	£4,200 pa	
YP deferred 54½ years at 7%	<u>0.35788</u>	£1,503

£1,747

10 Adopting 7% as the yield rate in his valuation, Mr Brunt says 7% is consistent with previous decisions of this tribunal when the unexpired term of the lease is relatively long - relative to the assumed 25 year rent review in the assumed 50 year lease extension.

11 In support of his entirety value (£180,000) he says there is little available evidence but £180,000 is not inconsistent with the apparent level of values in the locality and the asking price for 99 Tile Cross Road, close by, at £183,950 freehold, reflecting the principles which we refer to above.

12 He says that a 1/3<sup>rd</sup> site apportionment is consistent with decisions of this tribunal for not dissimilar sites.

**Our Decision:**

13 Despite no representations from the Respondent Freeholder, Mr Brunt clearly recognises his duty to us, to provide truly independent evidence to assist us to achieve a just result. As an expert tribunal, relying on our general knowledge but not on any special knowledge, we find that Mr Brunt's valuation is consistent with the principles in the Act and accepted guidance derived from the Lands Tribunal and this Tribunal. We accept his figures and the price payable, at £1,747.

**Conclusion on the price payable:**

14 We determine that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge and our inspection, the sum to be paid by the Tenant for the acquisition of freehold interest in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967, as amended, is £1,747 (One thousand seven hundred and forty seven pounds).

**COSTS TO BE BORNE BY THE APPLICANT UNDER SUBSS.9(4) AND (4A) THE ACT:**

15 Subs.9(4) of the Act provides:

'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of

this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the [matters in subs.(4)(a) to (d) as to "legal costs" and in subs.(4)(e) as to "valuation costs"]; but [subs.9(4)] shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.'

- 16 Subs.9(4A), added by s.176 Commonhold and Leasehold Reform Act 2002, Sch. 13 para 2, provides:  
[A person is not required] to bear the costs of another person in connection with an application to a [LVT].
- 17 Mr Brunt submits "legal costs" should be limited to £250 plus VAT if applicable. He says that the only material costs for our consideration are subs.9(4)(b) conveyance costs and the market in conveyancing is very competitive, referring to three firms charging £250 plus VAT and plus actual office copy disbursements. He submits we should determine the "valuation costs" costs at £Nil because we have no evidence that a valuation has been carried out. The Freeholder is silent.
- 18 VAT: All figures we refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters as they are a matter for HM Customs and Excise. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable.
- 19 Disbursements: we find actual disbursements incurred in obtaining office copy register entries shall be added to the amounts of "legal costs" we determine.
- 20 We accept we have no evidence of any valuation carried out in pursuance of the Notice and find that no "valuation costs" shall be borne by the Tenant.
- 21 We find £250, in the case before us, as submitted by Mr Brunt, is the reasonable amount of the Freeholder's "legal costs".

**Our determination of the subs.9(4) costs:**

- 22 We find and hold the Tenants shall not bear any subs.9(4)(e) "valuation costs".
- 23 We find and hold that in so far as subs.9(4)(a) to (d) "legal costs" are incurred and are to be incurred by the Freeholder, the Tenants shall bear a sum not exceeding £250 (Two hundred and fifty pounds) plus actual disbursements incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs.

**Permission to appeal:**

- 24 Under Regulation 20. *Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003* (SI 2003/2099) either party may make an application to the LVT for permission to appeal this determination to the Lands Tribunal within the period of 21 days starting with the date of this determination.

Date:

TF Cooper  
CHAIRMAN



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