

NORTHERN RENT ASSESSMENT PANEL
Decisions/Reasons of a
LEASEHOLD VALUATION TRIBUNAL

LEASEHOLD REFORM ACT 1967 SECTIONS 9 & 21

APPLICATION FOR A DETERMINATION OF PRICE & COSTS PAYABLE UNDER
SECTION 9 OF THE LEASEHOLD REFORM ACT 1967

PROPERTY: 23 Chelsea Close, Shaw Oldham OL2 7TL

APPLICANTS: Mr MSH Kershaw and Ms SJ Fletcher (Mellor & Jackson)

RESPONDENTS: Beachley Properties Ltd (David Conway & Co)

TRIBUNAL MEMBERS: Mrs E Thornton-Firkin
Mr A Robertson

1. Background

- 1.1** On 14 April 2008 the Applicants served notice under part 1 of the Leasehold Reform Act 1967 (the Act) on the Respondents of their desire to have the freehold interest of the Property.
- 1.2** The Respondents replied admitting the Applicants right by notice dated 9 June 2008.
- 1.3** The Applicants applied to the Leasehold Valuation Tribunal by notice dated 11 June 2008 for a determination of the price payable under section 9 of the Act. This application states the price, which the Applicant considers to be appropriate as £250 - £350 (VAT inclusive).
- 1.4** A further application to the Tribunal was made on the same date (11 June 2008) for a determination of the reasonable costs payable under section 9 (4) of the Act. The amount in dispute was stated to be Surveyors costs of £650 and Legal Fees of £770. The applicant considered £300 (presumably for the total of both surveyors and legal fees) to be appropriate.
- 1.5** Directions were issued to the parties on 20 June 2008 indicating that the Tribunal would determine the matter on or after 18 August 2008 on the basis of documentary and other written evidence in the absence of a request for a hearing. No such request was made.

2. The Law

- 2.1** Section 9 (1) of the Act provides that the price payable shall be the amount which the house and premises, if sold in the open market by a willing seller

(with the tenant and members of his family not buying or seeking to buy) might be expected to realise.

2.2 Section 9 (4) provides that an applicant shall bear the reasonable costs of the landlord in inter alia, investigating the right to have the freehold, proving title, and valuation costs.

2.3 Section 21 (1) lists matters, which shall be determined by a leasehold valuation tribunal and includes (a) the price payable under section 9 and (ba) the amount of any costs payable under section 9 (4).

3. The Lease

3.1 The leasehold interest is for a term of 999 years from 9 September 1987 created by a lease dated 9 September 1987 at a ground rent of £35 per annum payable in advance on 1 December each year. There are no unusual or onerous covenants, save that the ground rent of £35 shall reduce to £25 if the latter sum is paid within 14 days of the due payment date and there is on the payment day no breach of any tenants covenant.

3.2 The unexpired term is therefore 978 years. There is no provision in the lease for rent review.

4. The Submissions

4.1 The Tribunal received copies of correspondence between the parties solicitors, copy lease, notices of claim to acquire freehold and reply, applicants skeleton arguments, applicants valuation, land registry entries, respondents statement of case including valuation, applicants statement in reply and respondents response.

4.2 On the question of the price payable, the Applicants quote 3 cases of properties in Oldham where leasehold valuation tribunals recently determined prices for remote freehold reversions based on 10 years purchase of the passing fixed ground rent.

4.3 The Respondents rely on the valuation of Paul Rose whose report is dated 18 July 2007 and adopts a years purchase of 21.67. This he selects on the basis of one comparable sale, that of 33 Leesbrook Park, Salem, Oldham in March 2002. He analyses the sale to the lessee at a price of £975 to demonstrate a yield of 4.61% (and a years purchase of 21.67).

4.4 The parties agreed that the reversion was too remote to have present day value and that the price payable was based solely on the right to receive ground rent.

4.5 The parties had conflicting views on the amount of ground rent to be capitalised. The lease provides that the ground rent of £35 per annum shall reduce to £25 per annum if paid within 14 days of the due date and in the absence of breach of tenants' covenant. The Respondents submit that this

should be ignored in that there should be no presumption of early payment in each year nor of absence of breaches. The Applicants asked that the Tribunal bear in mind the rent actually paid during their period as lessees which would appear to show that in 5 years, 4 payments of £25 and one of £35 had been made, and accepted.

- 4.6 On the question of costs the Respondents claim £650 plus VAT, the fee of Mr Rose, as valuers costs, and legal costs of £833.50 representing 4 hrs 18 mins at an hourly rate of £180 plus VAT.

5. The Tribunal's Decision as to the Price Payable

- 5.1 There are two matters of disagreement between the parties regarding the price payable. The first is the amount of ground rent to be capitalised, and the second is the figure of year's purchase to be applied to the amount of ground rent.
- 5.2 On the question of the amount of ground rent to be capitalised, the Tribunal determine that the appropriate figure is £25 per annum. The lease provides that it shall be £35 per annum or £25 per annum and evidence shows that it has in fact been each of those figures over the years, although mainly £25 per annum. The Tribunal are of the view that the 'open market' will not pay a full price for a yearly income of £35 per annum when there is nothing an owner can do to prevent a discount of some 30% per annum being obtained by the payee.
- 5.3 The Tribunal determine that the appropriate years purchase to be applied to the figure payable of £25 per annum is 10.
- 5.4 The price payable as defined in section 9 (1) is a hypothetical figure and 'evidence' of open market sales is often unreliable, as it does not meet the criteria set out in the Act. In particular, section 9 (1) says that the tenant and members of his family are not to be considered as part of the market. For that reason alone the comparable of Mr Rose is not safe, and as he has based his valuation on that single transaction (now 6 years old) the Tribunal do not have confidence in it.
- 5.5 For the reasons stated by Mr Rose in paragraphs 1.6 and 1.7 of his report, and because of the general nature of the letter from Roger Hannah and Co. of 6 March 2006 which seems to be concerned as much, if not more, with the leasehold in possession value than the freehold reversion value, the Tribunal does not consider this letter as helpful evidence.
- 5.6 Essentially, the hypothetical market are being invited to buy a fixed income of perhaps £35 per annum, but more likely £25 per annum, for a term of 900 plus years. In time, costs of collecting such income are likely to exceed the income, and the Tribunal are of the view that the sale of such an investment would attract little interest in the open market.

5.7 The Tribunal determines that the price payable under section 9 (1) of the Act is £250 (two hundred and fifty pounds).

6. The Tribunals Decisions as to Costs

6.1 The Tribunal has carefully considered the representations made by both parties. The Respondent says that section 9 (4) of the Act makes no distinction as to the level of costs by reference to the amount of the enfranchisement price. But Section 9 (4) places the obligation on the Applicant to pay only the 'reasonable' costs.

6.2 The Tribunal are of the view that where the consideration is determined at £250, costs amounting to in excess of £1500 cannot be reasonable, and would be a significant deterrent to a would-be applicant seeking to exercise his right to a Tribunal determination.

6.3 The Tribunal believe that the Respondent is entitled to reasonable costs but has a duty to limit these to levels which have some regard to the level of consideration. A case such as this, with a remote reversion and a fixed ground rent is unlikely to produce figures substantially in excess of those herein determined. Whilst it may be that the arithmetic by which the landlords costs are calculated is reasonable, the resultant figure is not.

6.4 The Tribunal determine that legal costs and the valuation fee payable by the Applicant to the Respondent be £400 plus VAT if payable in each case.

Signed 

(A Robertson)

Chairman of the Leasehold Valuation Tribunal