

Midland Rent Assessment Panel

Decision of

Leasehold Valuation Tribunal

On an application under section 21(1)(a) of the Leasehold Reform Act 1967 to determine the price payable under section 9(1), in respect of the tenant's acquisition of the freehold.

Reference: BIR/00CR/OAF/2008/0558

Property: 14 Bosworth Close, Woodsetton, Dudley, DY3 1BJ.

Applicant: Mr P and Mrs J Allan

Respondent: Unknown

Deemed date of tenant's notice: 11<sup>th</sup> September 2008

Date of Application: 22<sup>nd</sup> December 2008

Date of Court Order: 11<sup>th</sup> September 2008

Considered at a Hearing: Birmingham Panel Office

On 17<sup>th</sup> February 2009

**Submissions**

For the Tenant Mr J Moore of Midland Valuations

For the Landlord None

Members of the Tribunal: Mr R Brown FRICS (Chairman)

Mr W Hatcher lawyer

Mrs N Jukes

**Determination**

The Tribunal determines that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience, but not any special knowledge, the price payable by the tenants for the acquisition of the freehold interest in the property in accordance with section 9(1) of the Leasehold Reform Act 1967 as amended is **£612.97**.

### **Introduction**

1. By an Order dated 11<sup>th</sup> September 2008 the Birmingham County Court ordered that the applicant has the right to acquire the freehold in the subject property, but is prevented from giving notice in accordance with the Act because the person to be served cannot be identified. The Court directed the applicant to apply to the Tribunal to certify a fair valuation of the price to be paid pursuant to the Act.
2. This application was received from agents Midland Valuations Ltd, on behalf of the Applicant, on 22<sup>nd</sup> December 2008. A copy of the Court Order, the lease, office copy entries was lodged with the application together with an expert witness report as to valuation.

### **Inspection**

3. The members of the Tribunal inspected the subject property on 17th February 2009.

### **The property**

4. The property is a c.1980s inner terrace house. It has front and back gardens. The accommodation is Living Room, Breakfast kitchen (with w/c off), three bedrooms and bathroom. There is no off road parking. The site has a frontage of approximately 4.5 metres and slopes steeply from the road. .
5. The lease is for a period of 380 years from 26 April 1712 at a rent of 1 peppercorn. At the valuation date there were approximately 83.5 years unexpired.

### **Consideration**

6. Following the inspection of the property a hearing was held in Birmingham attended by Mr Moore of Midland Valuations Ltd.
7. The Court Ordered the Tribunal to determine the value, accordingly there was no other matter before us and we have not settled the terms of the transfer.

### **Substantive Issues re valuation**

Mr Moore's valuation relied heavily on the evidence of two previous decisions of this Tribunal relating to properties on the same estate. 5 Bosworth Close (BIR/00CR/OAF/2007/0101) and 14 Tamar Drive (BIR/CR/OAF/2007/0100). Both these decisions were 'missing landlord determinations' where the Freeholder was unrepresented.

Entirety value.

8. The Tribunal finds that the entirety value on the valuation date is £110,880. The Tribunal had regard to its general knowledge and experience of values in the locality concerned and the evidence of Mr Moore who had derived his valuation by adjusting (downwards) the previous valuation of this Tribunal (BIR/00CR/OAF/2007/0101) to reflect the downturn in the market. The Tribunal accepted this method of valuation.

#### Site Value

9. The Tribunal confirmed Mr Moore's site value apportionment for this property in this location at 32.5%. This produces a site value of £3036.00.

#### Capitalisation rate

10. There was no ground rent payable and it was not therefore necessary to determine this part of the valuation.

#### Deferment rate

11. The proposition that the case of Sportelli does not apply to this type of valuation is a position recognised in recent cases of the LVT. The Lands Tribunal guidance set out in Sportelli is properly applied to section 9(1A) valuations. This is a section 9(1). There is a difference between the scenarios that the different sections cover which justifies a distinction in approach. In summary the Sportelli guidelines apply, as per Carnworth LJ in the Court of Appeal in that case, "to the proper deferment rate to be applied to the vacant possession value". The exercise under the section relevant to this matter, section 9(1), is not for vacant possession but instead assumes that the term will be extended for 50 years, with vacant possession only following after that subject to Schedule 10 1989 Act tenant's rights. Therefore, the valuation exercise involves the determination of the present value of the modern ground rent (by decapitalising or "rentalising" the site value) and the determination of the present value of that rent (by recapitalising the rent, normally as if in perpetuity, deferred for the unexpired term of the existing lease).

12. The two decisions referred to above made a further adjustment of 0.5% to the deferment rate to reflect:

- the absence of any ground rent.
- the absence of a freeholder who can enforce covenants against the leaseholder.

13. Mr Moore contends that the adjustment should be an additional 0.1% to reflect the above and the fact the lease still has some 83.5 years to run. He relies on the Lands Tribunal in 1 Wrekin Road (LRA/070/97) which referred to the 'Windsor Life' decision (LRA/8/1999) which acknowledged the principle that 'the longer the period for which the rental income is the less will be its attractiveness to an investor purchaser and thus the higher will be the yield rate which the investor will require'.

Mr Moore acknowledges that this was determined in relation to capitalisation rates as opposed to deferment rates but considers it is applicable.

14. The tribunal distinguish these decisions because:

- a. The absence of the Freeholder may have both advantages and disadvantages and the tribunal finds that the absence does have an ascertainable effect on value and

- b. The absence of the ground rent does not effect the subsequent deferment of the Freeholders eventual reversion and
  - c. The 'Windsor Life' decision considered the capitalisation rate not the deferment rate.
15. Following the hearing but before the tribunal had concluded its deliberations the Lands Tribunal published its decision in the case of 512 Haslucks Green Road, Hall Green, Birmingham (LRA/185/2007 and others). The Lands Tribunal in that case concluded that the correct deferment rate for S9(1) was 5% after taking account a risk premium increased from 4.5% to 4.75%. They decided any guidance on the deferment rate given in Sportelli should be followed by LVTs under section 9(1) as well as 9(1a) of the Leasehold Reform Act 1967 subject to this increase in the risk premium. There would have to be specific persuasive evidence to displace the rate on the grounds of location.
16. Mr Moore was invited to make further submissions and did so in letter to the tribunal dated 19<sup>th</sup> March 2009. In summary Mr Moore maintained his original position:
- a. He considered the Lands Tribunal had given insufficient weight to the disadvantages of a reversion to a modern ground rent as opposed to vacant possession.
  - b. The decision at paragraph 32 'does state there is some evidence that shows price growth was significantly lower in the West Midlands than Central London over some 55 years'.
  - c. He considered it was inappropriate for Section 27 applications (missing landlord) to have the same deferment rate. There is case evidence that the LVT deems it appropriate to determine a higher deferment rate where there is no landlord.
  - d. In the same way that the deferment rate might be reduced to reflect the shortness of an unexpired term, a very long lease should have a higher deferment rate.
17. We find as a matter of judgement as an expert Tribunal
- a. We are not bound by previous decisions of the LVT.
  - b. That Mr Moore has not persuaded us that we should depart from the decision of the Lands Tribunal in 512 Haslucks Green Road.
18. Accordingly we determine the appropriate rate to be applied at stages (4) and (5) of the valuation calculation is 5.00 percent.

**The Tribunal's valuation**

19. Applying those findings to the determination the Tribunal calculates the price payable and hereby certifies to the Court as follows:

(1)Term.		£00.0
Reversion		
(2) Standing House value:	£110,880.00	
(3)Site apportionment @ 32.5%	£36036.00	
(4)Section 15 Ground Rent @ 5.00%	£1801.80 pa	
(5)Years purchase @ 5.00% in perpetuity deferred for 83.5 years:	<u>0.3402</u>	<u>= £612.97</u>

  
Robert T Brown FRICS

Chairman

Dated 28 APR 2009.....