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LVT 9

Our Ref: M/EH 2365c

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967

Housing Act 1980

DECISION OF LEASEHOLD VALUATION TRIBUNAL

ON AN APPLICATION UNDER S21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr A Turner

Respondent: Mr C Christo

Re: 17 Hadrian Drive, Coleshill, Birmingham,
B46 1HW

Date of Tenants Notice: 20 September 2001

RV as at 1.4.73: £159.00

Application dated: 7 January 2002

Heard at: Panel Office

On: Tuesday 7 May 2002

APPEARANCES:

For the Tenant: Mr J Moore – Midland Valuations

For the Landlord: Not represented

Members of the Leasehold Valuation Tribunal:

Mr R T Brown FRICS (Chairman)
Mr J H Dove
Mr D Underhill

Date of Tribunals decision: 18 JUN 2002

DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL

In respect of the price to be paid and reasonable costs under Section 9 of the Leaseholder Reform Act 1967

**M Timmins –v- C Christo, 5 Hadrian Drive, Coleshill B46 1HW0
A Turner –v- C Christo, 17 Hadrian Drive, Coleshill B46 1HW
K J Bomford –v- C Christo, 3 Hadrian Drive, Coleshill, B46 1HW**

BACKGROUND

These are determinations under Section 9(1) and (9)(4) of the Leasehold Reform Act 1967 (as amended) and paragraph 5 of Part 1 of Schedule 22 to the Housing Act 1980.

The lessees hold the property by way of following leases.

1. No 6 Hadrian Drive a lease dated the 9th March 1981 for a term of 99 years on the 25th day of March 1978 paying a rent of £55 per annum until the 25th Day of March 2011. From the 25th day of March 2011 until the 25th March 2044, a yearly rent of £110 and for the remainder of the said term, a yearly rent of £220.
2. No 17 Hadrian by a lease dated the 27th February 1981 for a term of 99 years from the 25th day of March 1978 paying a yearly rent of £40.00 until the 25th day of March 2011. From the 25th day of March 2011 until the 25th day of March 2044 a yearly rent of £80.00 and for the remainder of the said term, a yearly rent of £160.
3. No 23 Hadrian Drive by a lease dated the 3rd February 1981 for a term of 99 years from the 25th day of March 1978 paying a yearly rent of £40.00 until the 25th day of March 2011. From the 25th day of March 2011 until the 25th day of March 2044, the yearly rent of £80.00 and for the remainder of the said term, a yearly rent of £160.

The lessees Notices of Claim are dated as follows:-

- | | | |
|----|---------------------|---------------------------------|
| 1. | No 6 Hadrian Drive | 10 th October 2001 |
| 2. | No 17 Hadrian Drive | 20 th September 2001 |
| 3. | No 23 Hadrian Drive | 20 th September 2001 |

The Tribunal inspected the properties on the 7th May 2002 in the presence of the lessees.

THE PROPERTIES

No 6 Hadrian Drive:

Comprises a detached house constructed circa 1978 in traditional materials and subsequently extended. Accommodation is as follows:-

Ground floor; hall, living room/dining, kitchen (fully fitted and extended), w.c. off and access to garage. First Floor: one single bedroom (child size only), three double bedrooms, bathroom (full suite). Outside; gardens to front and rear, single car garage.

By reference to the lease plan the site extends to an area of approximately 254 sq yards (232 metres approx)

No 17 Hadrian Drive:

The property comprises an end town house constructed circa 1978 in traditional materials, centrally heated, double glazed. Accommodation is as follows:-

Ground floor; hall, kitchen fitted, living room and the first floor; one single and one double bedroom, bathroom (full suite). Outside; gardens to front and rear.

By reference to the lease plan the site extends to an area of approximately 114 sq yards (104 metres approximately)

No 23 Hadrian Drive:

The property comprises of a semi detached house constructed circa 1978 in traditional materials, centrally heated, double glazed, accommodation is as follows:-

Ground floor; hall, kitchen fitted, living room and the first floor; one single and one double bedroom, bathroom (full suite). Outside; gardens to front and rear.

By reference to the lease plan the site extends to an area of approximately 130 sq yards (118 metres approximately)

THE HEARING

Mr J Moore BSc of Midlands Valuations appeared for the lessees.

The freeholder was neither present nor represented.

Mr Moore presented his valuations as follows:-

Valuation:

6 Hadrian Drive

Term:

Current Ground Rent	£ 55.00	
YP 9 ¹ / ₂ years @ 6 ¹ / ₂ %	6.923	£380.77
Increased ground rent from March 2011	£110.00	
YP 33 years deferred 9 ¹ / ₂ yrs @ 7%	6.710	£738.10
Increased ground rent from March 2044	£220.00	
YP 33 yrs deferred 42 ¹ / ₂ yrs @ 7%	0.719	£158.18

Reversion:

Entirety Value £140,000

Site Value 33.3%	£ 46,620		
Section 15 Rent @ 7%	£3,263.40		
YP deferred 75 ¹ / ₂ years @ 7%		0.086	£280.65

			<u>£1,557.70</u>

Valuation:

17 Hadrian Drive

Term:

Current Ground Rent	£ 40.00		
YP 9 ¹ / ₂ years @ 6 ¹ / ₂ %		6.923	£276.92
Increased ground rent from March 2011	£ 80.00		
YP 33 years deferred 9 ¹ / ₂ yrs @ 7%		6.710	£536.80
Increased ground rent from March 2044	£160.00		
YP 33 yrs deferred 42 ¹ / ₂ yrs @ 7%		0.719	£115.04

Reversion:

Entirety Value	£95,000		
Site Value @30%	£28,500		
Section 15 Rent @ 7%	£ 1,995		
YP deferred 75 ¹ / ₂ years @ 7%		0.086	£171.57

			<u>£1,100.33</u>

Valuation:

No 23 Hadrian Drive

Current Ground Rent	£ 40.00		
YP 9 ¹ / ₂ years @ 6 ¹ / ₂ %		6.923	£276.92
Increased ground rent from March 2011	£ 80.00		
YP 33 years deferred 9 ¹ / ₂ yrs @ 7%		6.710	£536.80
Increased ground rent from March 2044	£160.00		
YP 33 yrs deferred 42 ¹ / ₂ yrs @ 7%		0.719	£115.04

Reversion:

Entirety Value	£95,000		
Site Value 30%	£28,500		
Section 15 Rent @ 7%	£ 1,995		
YP deferred 75 ¹ / ₂ years @ 7%		0.086	£171.57

			<u>£1,100.33</u>

In support of his valuation, Mr Moore explained how he had arrived at the various parts of his valuation as follows:-

1. Yield Rate

In all three cases he had adopted the method of valuation determined in Windsor Life -v- Austin LRA/4/1994 although he had increased the yield rate for the term from 5½ to 6½ %. He regarded this as the generally accepted method of valuing escalating ground rents. He had adopted this method for all three calculations.

2. Entirety Value:

In respect of No. 6 he had adopted an entirety valuation of £140,000 based on current asking prices in the area and the effective valuation date. He drew the Tribunal's attention to the Decision in Cardogan -v- Howes [1989] 2 E.G.L.R.216 with regard to the extension.

In respect of numbers 17 and 23 he had adopted an entirety value of £95,000 based on the recent sale of No.11 at £87,500.

3. Site Value

In respect of No 6, Mr Moore had adopted a site value apportionment of 33.3% and in support of this he referred to three recent cases of the Leasehold Valuation Tribunal namely 70 Elizabeth Road, Moseley (M/EH2218), 25 Falstaff Road, Hollywood (M/EH2235) and Averil Drive, Rugeley (M/EH2215-7).

In respect of Nos 17 and 23 Mr Moore adopted 30% and in support of this he referred to three cases of this Tribunal namely 7 Darley Way, Streetly (M/EH2291) 3 Ferney Hill Avenue, Redditch (M/EH2208C) and 37 Hazelwell Road, Stirchley (M/EH2063C).

4. Reversion

Mr Moore explained that the Midlands LVT have been consistent in its use of 7% for the reversionary yield for all but the shortest leases, or where the reversion is so far distant as to be of negligible value and thus ignored altogether. However, more recently the reversion has been valued (in particular Windsor Life -v- Austin referred to above) and accordingly he attributes value to it.

In support of this he referred to:-

1. Lord Denning in Gallagher Estates Limited -v- Walker [1973] 28 P & CR 113
2. 177 Sandyhill Road, Shirley (M/EH2261)
3. 1 Wrekin Road, Perry Barr (LRA/070/1997) (unreported)
4. 163 Wagon Lane, Solihull (LRA/30/1999)

THE DECISION IN RESPECT OF THE PRICE TO BE PAID

1. The Tribunal treats with caution extracts quoted from case law without a satisfactory explanation as to the context.

2. Comparable Evidence

The Tribunal acknowledges that there is little direct comparable evidence of entirety values available and in the light of this and using their knowledge (but not any special knowledge) judgement and experience adopt the entirety value of £140,000 in respect of No. 6, however, in respect of numbers 17 and 23 we do not consider that Mr Moore has interpreted the available evidence of No. 11 correctly and in the light of this adopt an entirety value in respect of No. 17 of £87,500 and in respect of No.23 £90,000.

3. After due consideration of the yield rates put forward by Mr Moore, the Tribunal adopt those without alteration, thus the Tribunal's valuations are as follows:

Valuation

6 Hadrian Drive

Term:

Current Ground Rent	£ 55.00	
YP 9 ¹ / ₂ years @ 6 ¹ / ₂ %	6.923	£380.77
Increased ground rent from March 2011	£110.00	
YP 33 years deferred 9 ¹ / ₂ yrs @ 7%	6.710	£738.10
Increased ground rent from March 2044	£220.00	
YP 33 yrs deferred 42 ¹ / ₂ yrs @ 7%	0.719	£158.18

Reversion:

Entirety Value	£140,000	
Site Value 33%	£ 46,620	
Section 15 Rent @ 7%	£3,263.40	
YP deferred 75 ¹ / ₂ years @ 7%	0.086	£280.65

		£1,557.70

Valuation:

17 Hadrian Drive

Term:

Current Ground Rent	£ 40.00	
YP 9 ¹ / ₂ years @ 6 ¹ / ₂ %	6.923	£276.92
Increased ground rent from March 2011	£ 80.00	
YP 33 years deferred 9 ¹ / ₂ yrs @ 7%	6.710	£536.80
Increased ground rent from March 2044	£160.00	
YP 33 yrs deferred 42 ¹ / ₂ yrs @ 7%	0.719	£115.04

Reversion:

Entirety Value	£87,250		
Site Value @30%	£26,175		
Section 15 Rent @ 7%	£ 1,832.26		
YP deferred 75 ¹ / ₂ years @ 7%		0.086	£157.57

			£1,086.33

Valuation:

No 23 Hadrian Drive

Current Ground Rent	£ 40.00		
YP 9 ¹ / ₂ years @ 7%	6.923		£276.92
Increased ground rent from March 2011	£ 80.00		
YP 33 years deferred 9 ¹ / ₂ yrs @ 7%	6.710		£536.80
Increased ground rent from March 2044	£160.00		
YP 33 yrs deferred 42 ¹ / ₂ yrs @ 7%	0.719		£115.04

Reversion:

Entirety Value	£90,000		
Site Value 30%	£27,000		
Section 15 Rent @ 7%	£ 1,890		
YP deferred 75 ¹ / ₂ years @ 7%		0.086	£162.54

			£1,091.30

THE COSTS ISSUE

Section 9(4) of the Act provides as follows:-

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 following matters:

- (a) *any investigation by the landlord of that person's right to acquire the freehold;*
- (b) *any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;*
- (c) *deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;*
- (d) *making out and furnishing such abstracts and copies as the person giving the notice may require;*
- (e) *any valuation of the house and premises;*

but so that this subsection 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.

Para 5 of Part I of Schedule 22 to the Housing Act 1980 provides that:

The costs which a person may be required [to bear] under section 9(4) ... of the 1967 Act ... do not include costs incurred by a landlord in a connection with a reference to a leasehold valuation tribunal.

Mr Moore submitted that the title to all three properties was registered and that an appropriate figure under 9(4)(b) would be £200 (plus VAT if applicable).

In support of this he quoted three recent cases:-

73 Stanley Avenue, Quinton	(M/LRC235)
4 Bromwich Drive, Sutton Coldfield	(M/LRC233)
Shawhurst Lane, Hollywood	(M/LRC222)
40 Frankburn Road, Streetley	(M/LRC221)

With regard to Section 9(4)(a), (c) and (d) it appeared that no work had been carried out by the Landlord, or any agent under these headings and that no costs should be payable.

Mr Moore submitted that no valuation fees should be payable under Section 9(4)(e) as no valuation of the reversionary interest appears to have been carried out by either the freeholder or any agent appointed by them.

THE DECISION AS TO COSTS

The Tribunal after due consideration of the evidence submitted accept Mr Moore's submission as to costs and award the sum of £200 (plus VAT if applicable) in respect of conveyancing costs only. The Tribunal make no award in respect of Section 9(4)(a)(c)(d) and (e).

CONCLUSION

We determine that with the benefit of our inspection, and use of our knowledge (but not any special knowledge) and experience in the evaluation of the evidence adduced that the sums to be paid for the freehold interest in the above properties in accordance with Section 9 (1) of the Leasehold Reform Act 1967 as amended are as follows:-

1. No. 6 Hadrian Close - £1,557.70 (one thousand five hundred and fifty seven pounds and seventy seven pence)
2. No.17 Hadrian Close - £1,086.33 (one thousand and eighty six pounds and seventy eight pence)
3. No.23 Hadrian Close - £1,091.30 (one thousand and ninety one pounds and thirty pence)

In accordance with Section 9(4)(b) the Leasehold Reform Act 1967 and Schedule 22 Part 1 Para 5 of the Housing Act 1980 Tribunal award conveyancing costs of £200 (plus VAT if applicable) in respect of each conveyance. No other award of costs is made under Section 9(4).

Signed:-

Robert T Brown.....

Robert T Brown FRICS
Chairman

18 JUN 2002