

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/47UB/OAF2003/0106

BIR/47UB/OC62003/0074

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicants: David MacKemmie Bremner
Elizabeth Bremner (leaseholders)

Respondent: Churchgate Properties (freeholder)

Subject property: 53 Winds Point, Hagley,
Stourbridge, West Midlands DY9 0PL

Date of tenant's notice: 30 May 2003

Applications to the LVT: 30 July 2003

Hearing: 26 September 2003

Appearances:

For the Applicants: Mr J Moore, Midland Valuations Limited

For the respondent: Mr A Soni

Members of the LVT: Mr S Duffy MRICS, Barrister

Mr S Berg FRICS

Mr G Chidlow

Date of determination: - 3 NOV 2003

Introduction

1. This is a decision on two applications under the Leasehold Reform Act 1967 ("the 1967 Act") made to the Leasehold Valuation Tribunal by Mr David Mackemmie Bremner and Mrs Elizabeth Bremner, leaseholders of the house and premises 53 Winds Point, Hagley, Stourbridge, West Midlands DY9 0PL ("the subject property"). The two applications are, first, under section 21(1)(a) for the determination of the price payable under section 9 for the freehold interest in the subject property; and, secondly, under section 21(1)(ba) for the determination of the reasonable costs payable under section 9(4).
2. The applicant leaseholders hold the subject property under a lease, dated 5 March 1968, for a term of 99 years from 25 March 1964 at a ground rent of £25.00 per year. The lease was assigned to the applicants on 29 November 1979. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 59 $\frac{3}{4}$ years.
3. The applicants served on the respondent landlord a tenant's notice dated 30 May 2003, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and they subsequently made the present applications.
4. The Tribunal accepts that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.

Subject Property

5. The subject property is a modern mid terraced house of brick and tile construction, located on Winds Point, a road on a modern estate approximately 13 miles from Birmingham. The property did not appear to have been partly modernised since it was built. The accommodation comprises, on the ground floor, porch, living room and kitchen; and, on the first floor, three bedrooms and a bathroom with wc. Space heating is by gas-fired central heating with radiators in the principal rooms. There is an integral single garage to the front of the property. The frontage of the property is approximately 6.1 metres and the total site area is approximately 160 square metres.

Inspection and hearing

6. The Tribunal inspected the subject property on 26 September 2003 in the presence of one of the applicant leaseholders, Mrs Bremner
7. The subsequent hearing was attended by Mr Moore (representing the applicant leaseholder) and Mr Soni (for the respondent). Mr Soni also explained that he had been instructed by the Respondent to appear on its behalf, although he was not a qualified lawyer or valuer. Mr Soni explained that the Respondent's Solicitors had recently been taken over by the Law

Society. The Tribunal asked Mr Soni if he wished to continue or whether he required an adjournment to allow the respondent to instruct a new firm of solicitors. Mr Soni declined and confirmed that he was content to continue.

8. Mr Moore had made written submissions on behalf the Applicants on 22 September 2003 some 4 days before the hearing and had provided further written submissions on the morning of the hearing.
9. According to the Tribunal's pre-hearing directions sent to both parties, documents, including expert reports, a statement of facts and issues and an agreed paginated bundle were to be lodged with the Tribunal 14 days prior to the hearing of the application. The Tribunal admonished both parties for their failure to comply with the directions and informed them that the Tribunal would, in future, take action against parties failing to comply with directions

Representations of the parties

The price payable for the freehold interest in the subject property

10. Mr Moore on behalf of the Applicants leaseholders, adopted as the basis of valuation under the 1967 Act the generally recognised three-stage approach normally attributed to *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. That approach involves (i) the capitalisation of the ground rent payable under the existing lease for the remainder of the unexpired term; (ii) the identification of a modern ground rent (by decapitalising the site value); and (iii) the capitalisation of the modern ground rent as if in perpetuity, deferred for the remainder of the unexpired term. The price payable on this basis is the sum of the capitalisation at stages (i) and (iii).
11. In order to support his standing house valuation of the subject property, Mr Moore submitted evidence of the sale price actually achieved in respect of 65 Winds Point Hagley which was reported to be £115,000 in the autumn of 2002 and the asking price for a town house in Winchester Close which was being marketed in July 2003 at a sale price of £149,500. Mr Moore expressed the view that the sale of 65 Winds Point highlighted what he claimed to be an excessive asking price of the property in Winchester Close and that at the time the Winchester Close property was being marketed buoyant market conditions prevailed. However, Mr Moore claimed these buoyant conditions did not prevail at the relevant date. The Tribunal noted that in his letter of 22 September 2003 Mr Moore relied on an entirety value of £ £125,000. However, at the hearing, on the basis of the above evidence Mr Moore submitted that the standing house value of the subject property at the relevant date was £142,500.
12. Mr Moore made reference to previous decisions by this Panel where the Leasehold Valuation Tribunals had awarded figures ranging from 25% to 30% and submitted that the Tribunal should apply a 30 per cent figure in calculating the site value on the standing house basis; and that the appropriate percentage yield rate to be applied in capitalising the ground

rent at stage (i) and decapitalising and recapitalising the site value at stages (ii) and (iii) is 7 per cent.

On the basis of those figures, he submitted the following valuation:

(i) Term

Ground rent payable per year: £25.00

Years Purchase: 59 ³/₄ years @ 7%: 14.035

£350.87

(ii) Reversion

Entirety value: £142,500

Site value @ 30%: £ 42,750

Section 15 rent @ 7%: £ 2,992.50

Years Purchase deferred

59 ³/₄ years @ 0.250 £ 748.13

£1,099.00

13. The respondent freeholder submitted no written representations. However, Mr Soni was in agreement with the years purchase and site apportionment figures suggested by Mr Moore but disputed the entirety value and put forward a figure of £149,950 as a figure. When questioned as to why he relied on this figure Mr Soni stated that he was of the view that property valuation was a matter of opinion.

Reasonable costs

14. Mr Moore submitted written representations on this point and confirmed them with his oral submissions. Mr Moore submitted that an appropriate figure for the freeholder's legal costs would be £225 (plus VAT if applicable). Mr Moore relied on the decision of this Panel in 6 Cheviot Drive and referred to the fact that this case was being heard together with 64 Winds point. He submitted that no valuation costs had been incurred by the freeholder.
15. The respondent freeholder submitted no written representations. Mr Soni had nothing to say on the valuation point but submitted that the legal fees should be £300.

Determination of the Tribunal

The price payable for the freehold interest in the subject property

16. The Tribunal holds that the basis of valuation adopted by Mr Moore properly reflects the principles of the 1967 Act.
17. The Tribunal examined the figures submitted by Mr Moore in respect of the percentage to be applied to the standing house value in calculating the site value and the percentage yield rate to be applied at all stages of the valuation calculation. The Tribunal considered whether those figures were open to challenge on their face or in the light of the evidence of Mr Moore in response to questions from the Tribunal.
18. The Tribunal finds that the evidence submitted by Mr Moore supports his figure for the standing house value of the subject property. The Tribunal accepts Mr Moore's assessment of the operation of the market at the relevant date and is of the view that the price achieved for the property at 65 Winds Point provided the most reliable comparable evidence. In the light of that evidence, and its general knowledge and experience (but no special knowledge) of property prices in the locality of the subject property, and taking into account the positive and negative features of the subject property and all other relevant considerations, the Tribunal determines that the standing house value of the subject property at the relevant date was £142,500.
19. The Tribunal finds that evidence of site apportionment put forward by Mr Moore does not support a site apportionment of 30% in this case. The evidence put forward by Mr Moore, immediately before the hearing, was historic and too outdated, indeed 3 of the 7 decisions referred to applications which were determined over 3 years ago. Accordingly, consistent with previous practice, the Tribunal holds that the appropriate percentage to be applied to the standing house value in calculating the site value of a mid terrace property such as this is 33 1/3 per cent, and that the appropriate percentage yield rate to be applied at the various stages of the valuation calculation is 7 per cent.
20. Adopting those figures, and applying figures of Years Purchase from Parry's Valuation Tables, the Tribunal calculates the price payable as follows:

(i) Capitalisation of existing ground rent to termination of lease

Ground rent payable:	£25.00 per year	
Years Purchase: 59 ¾ years @ 7%	14.035	
Capitalised ground rent: £25.00 x 14.035 =		£350.87

(ii) Modern ground rent:

Standing house value of subject property: £142,500

Percentage attributable to site: 33 1/3 %: £ 47,500

Annual equivalent @ 7%: £ 3,325

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £3,325

Years Purchase a@ 7% in perpetuity deferred 59 3/4 years : 0.250

Capitalised modern ground rent: £3,150 x 0.250 = £831.25

£1,182.12

(say) £1,182.00

21. The addition of the capitalised existing ground rent and the capitalised modern ground rent produces a figure of £1,182. Accordingly, the Tribunal determines the price payable under section 9 of the 1967 Act for the freehold interest in the subject property at £1,182.

Reasonable costs

22. This case is being heard together with another property in Winds Point, there will inevitably be some duplication in the transfer documents. Accordingly, relying on the recent practice of Leasehold Valuation Tribunals in the West Midland region in relation to determinations in similar circumstances, the Tribunal determines the reasonable costs recoverable under section 9(4) of the 1967 Act at £225 (plus VAT if applicable).
23. In the absence of any evidence that a valuation has been undertaken by or on behalf of the Landlords in consequence of the Tenant's Notice and prior to the date of the reference to the Tribunal, no valuation costs are payable by the Lessee pursuant to Section 9 (4) (e) of the 1967 Act.

Summary

24. The Tribunal determines the price payable by the Applicants leaseholders for the freehold interest in the subject property at £1,182 and the freeholder's reasonable costs at £225 (plus VAT if applicable).



Simon Duffy

President Midland Rent Assessment Panel

Date: - 3 NOV 2003