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Ref:- BIR/00CU/OAF/2005/0074

MIDLAND RENT ASSESSMENT PANEL
Leasehold Reform Act 1967 **Housing Act 1980**

**DECISION OF LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER S21 OF THE LEASEHOLD REFORM ACT 1967**

Applicants: Walter Thomas Russell and Pauline Lilian Russell
Respondent: Rock One Limited
Re: 73 Stonehurst Road, Great Barr, Birmingham, West Midlands
Date of Tenants Notice: 17th January 2005
RV as at 1.4.73: Less than £500
Applications dated: 14th March 2005
Heard at: The Tribunal's Offices in Birmingham
On: 20th July 2005

APPEARANCES:

For the Tenant: Mr A Brunt (of Anthony Brunt and Co. Valuers)
For the Landlord: No appearance

MEMBERS OF THE LEASEHOLD VALUATION TRIBUNAL:

Mr W. J. MARTIN (Chairman)
Mr I. D. HUMPHRIES F.R.I.C.S.
Mrs C. SMITH

Date of Tribunals decision: 20th July 2005

DETERMINATION

- (1) That the price payable by the Applicants to the Respondent under Section 9 (1) of the Leasehold Reform Act 1967 ('the Act') is £1804**
- (2) That the sum of £325 plus vat and reasonable disbursements shall be allowed as the reasonable conveyancing costs under Section 9 (4) (b) of the Act**

REASONS FOR THE TRIBUNAL'S DECISION

BACKGROUND

1. On 17th January 2005 Anthony Brunt and Co for the Applicants served a Notice of the Applicants claim to acquire the freehold of the subject property upon the Respondent under Part 1 of the Act.

2. On 14th March 2005 Anthony Brunt and Co submitted an application to the Leasehold Valuation Tribunal for a determination as to the price payable for the freehold under Section 9 of the Act and as to the amount of the freeholder's costs under Section 21(1) (ba) of the Act.

WRITTEN SUBMISSIONS

1. The Applicants submitted a valuation prior to the hearing but this was amended on 20th July 2005 (using the same standing house value as the Respondent). The Amended figures are as follows:

Lease:		
99 years from 25.03.1956 ground rent		£13.00
Ground Rent Valuation:		
Years Purchase for 50 years at 7% (13.80075)		£179.41
Reversion:		
Standing House Value:	£145,000.00	
Site Value (33%):	£47,850.00	
S.15 Rent: at 7%	£3,349.50	
Years Purchase in perpetuity deferred 50 years at 7% (0.48497)		<u>£1624.40</u>
Price	(say)	<u>£1804.00</u>

As to costs the Applicant suggested a conveyancing charge not exceeding £300. A valuation fee was to be proven.

2. The Respondent argues strongly that the yields used should not be 7% , which is the rate used in LVT decisions for the past five years, but should be 6% for the initial yield and 5.75% reversionary yield. In support of this Mr. Stuart Goldstein MRICS produced evidence in the form of a contract for sale of fourteen ground rents in Stonehurst Road to A.H. Field (Developers) Ltd., each subject to identical lease terms to the subject property. This sale averaged £3,250 per property including a flat rate conveyancing fee of £60. The overall price paid reflects an initial yield of 6% and a reversionary yield of 5.75%. This is concrete evidence of the yields being paid by freehold investors on ground rent residential properties. In further support of this he produced details from an auction catalogue of 9 Hilton Avenue, Hall Green, Birmingham with a ground rent of £5 per annum and a reversion in 2028. This property was sold for £24,657.48 and in a submission faxed on the date of the hearing Mr. Goldstein provided an analysis of the sale which, using an entirety value of £215,000, supports the above yield rates. He also provided an analysis of the agreed enfranchisement prices for Nos. 75 and 81 Stonehurst Road which coincide exactly with his valuation of the subject property set out a 3 below.

3. The Respondent's valuation is as follows:

Ground Rent	£13	
YP: 50 years @ 6%	15.76	£204.88
Entirety Value	£145,000	
Site value 33.5 %	£48,575	
Section 15 rent	£2,793.27	
YP in perp @ 5.75% deferred 50 yrs	1.06	<u>£2,960.87</u>
Total		<u>£3165.75</u>

4. The Respondent claims £325 in respect of conveyancing costs.

INSPECTION

1. The Tribunal inspected the property on 20th July 2005 in the presence of the Applicants and Mr. Brunt. It is a semi-detached house of traditional construction located in an established residential area to the north of Birmingham. The accommodation comprises on the ground floor an entrance hall, through lounge and a small kitchen. On the first floor are two double bedrooms, a single bedroom and a bathroom. The house stands on medium to small plot with gardens to front and rear. There is a garage at the rear of the property which is accessed by a shared access way. The house is in good

repair, both inside and out, it has central heating, double glazing and the site is fully developed.

HEARING

1. Mr. Brunt attended the hearing on behalf of the Applicants. The Respondent was neither present nor represented but had faxed apologies on the date of the hearing.

2. Mr. Brunt opened his submission by referring the Tribunal to his written submission and confirming that in making his valuation he had used the 'standing house' method. This involves valuing the house as if it were freehold, in good condition and assuming the site is fully developed. He had looked at nearby properties such as 47 Stonehurst Road which is on the market at £160,000. Initially he had thought the property was worth £150,000, but on reviewing the evidence agreed with the Respondent's value of £145,000.

3. Mr. Brunt considered the site apportionment for this type of property was 33%. He referred the Tribunal to other cases determined by the Leasehold Valuation Tribunal in the area in which a uniform percentage of 33% had been applied. He did not agree with the Respondent's suggestion that it should be 33.5%.

4. On the question of the yield rates Mr. Brunt reminded the Tribunal that the vast number of decisions and agreed settlements are on the basis of a uniform yield of 7% for the ground rent and the reversion. It is quite likely that a property company such as A.H. Field will pay more than the figures reached using 7% when they purchase a block of ground rents because they know that not all purchasers will seek professional advice, or be prepared to argue before the Leasehold Valuation Tribunal. Fields act for themselves and always charge a valuation fee when selling. This is a further profit they derive. When people purchase from property companies they sometimes pay more than they should because of the so-called 'Delaforce' effect. All of these factors will affect the market for freehold investors, which is not on all fours with the statutory framework which the Tribunal must work under.

5. On the question of costs Mr. Brunt considered £300 plus office copies of the Register should be allowed, and that no other costs under Section 9 should be awarded, particularly no valuation costs as there was no evidence of any valuation having been done prior to the application to the Tribunal.

DECISION OF THE TRIBUNAL

1. THE PURCHASE PRICE

The Tribunal find that the price to be payable for the freehold falls to be determined under Section 9 (1) of the Act. They considered the arguments from both parties

regarding the yield rates but determined that the proper yield rate for them to use is 7% for the ground rent and the reversion. In this regard they accepted the submissions of Mr. Brunt. They therefore determine that the proper basis for such their valuation is to:

- (a) value the ground rent of £13 pa for the unexpired term (50 years) at 7%

They agree with the Applicants that this sum is £179.41

- (b) ascertain a modern ground rent under Section 15 of the Act by valuing the entirety, apportioning the entirety between the site and the building and calculating the rent at 7% of the site value. The entirety value is the freehold value of the house assuming it to be in good condition and that the site is fully developed.

The Tribunal determine the entirety value at £145,000. This figure is agreed by both parties and the Tribunal agree with them. They agree with Mr. Brunt that the correct site apportionment is 33% which gives a site value of £47,850.00. Seven percent (7%) of this sum produces a modern ground rent of £3,349.00 per annum

- (c) value the modern ground rent in perpetuity but deferred for the unexpired term of the lease (50 years) at 7%. This produces a figure of £1624.40.

- (d) add the existing ground rent value of £179.41 under (a) above to the modern ground rent value of £1624.40 under (c) above which gives a total of £1803.81. The Tribunal round this to £1804.00 and determine this sum as the price payable for the freehold under Section 9 (1) of the Act

2. SECTION 9 (4) COSTS

- (a) The Tribunal determine the conveyancing costs under section 9 (4) (b) of the Act at £325.00 plus V.A.T. and reasonable disbursements

- (b) The Tribunal accept the submission of Mr. Brunt that there is no evidence of valuation and in the absence of any claim for valuation or any other Section 9 costs determine that no valuation or other section 9 costs are payable.

Signed _____

(W. J. Martin – Chairman)

Dated **3rd** AUG 2005

Leasehold Reform Act 1967
Commonhold and Leasehold Reform Act 2002

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

On an application under section 175 Commonhold and Leasehold reform Act 2002

FOR LEAVE TO APPEAL TO THE LANDS TRIBUNAL AGAINST

The Determination of the Leasehold Valuation Tribunal under section 21 of the Leasehold Reform Act 1967 ('the 1967 Act') of the price payable by the Applicant for the freehold of the Property under section 9 (1) and of the costs payable by the Applicant under section 9(4) of the 1967 Act

APPLICANTS: Walter Thomas Russell and Pauline Lilian Russell

RESPONDENT: Rock One Limited

PROPERTY: 73 Stonehurst Road, Great Barr, Birmingham

DETERMINATION: Dated 20th July 2005

1. Section 175 (1) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') provides that *'a party to proceedings before a leasehold valuation tribunal may appeal to the Lands Tribunal from a decision of the leasehold valuation tribunal.'* Section 175 (2) goes on to provide that such appeal may only be made with the permission of: (a) the leasehold valuation tribunal, or (b) the Lands Tribunal. The Respondent has made application to the leasehold valuation tribunal for permission to appeal within the time limit provided by the Leasehold Valuation Tribunals (Procedure) Regulations 2003.

2. The decision of the tribunal ('the Determination'), which was made on 20th July 2005, was in respect of an application under section 21 of the 1967 Act for a determination by the tribunal in respect of the price to be payable by the Applicants for the freehold of the Property. The tribunal determined that the price payable under section 9(1) of the 1967 Act is £1804.00 and that the sum of £325.00 plus value added tax and reasonable disbursements should be payable in addition as the Respondent's conveyancing costs under section 9(4) of the 1967 Act.

3. The Respondent has provided no grounds for requesting permission to appeal.

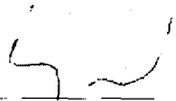
4. The tribunal dismiss the Application for the following reasons:
 - (a) At the hearing on 20th July 2005, which the Respondent did not attend, the tribunal considered all of the arguments put forward by the Respondent in its written submission
 - (b) The Determination cannot be reasonably be shown to have wrongly interpreted or wrongly applied the law or to have taken account of irrelevant considerations or failed to take account of relevant considerations or that there was a procedural defect.
 - (b) There are no exceptional circumstances.
 - (c) No ground have been put forward by the Respondent which identify any issue involved which is of general importance or which, in the public interest, ought to be examined by the Lands Tribunal.
 - (d) The costs of an appeal would be disproportionate to the outcome of an appeal.
 - (e) An appeal would involve re-examination of the oral evidence of the Applicants on the primary facts.
 - (g) The tribunal has not exceeded its jurisdiction.

5. In accordance with section 175 of the 2002 Act, further application may be made for permission to appeal to the Lands Tribunal.

Dated 19 OCT 2005

2005

Signed _____



(W.J. Martin - Chairman)