MIDLAND RENT ASSESSMENT PANEL Case No: BIR/47UD/OAF/2004/0357

Leasehold Reform Act 1967

DETERMINATIONS OF LEASEHOLD VALUATION TRIBUNAL

On an application under s.21 1967 Act to determine the price payable on enfranchisement by the tenant under s.9(1) 1967 Act
Determination of reasonable costs under s.9(4) 1967 Act

Applicant Tenants:	Haydn Brian Fielding and Lynette Rosanne Fielding
Respondent Freeholder:	Speedwell Estates Limited
Property:	23, Shakespeare Avenue, Lodge Park, Redditch Worcestershire B98 7LB
Date of Tenant's Claim to acquire the Freehold:	26 August 2004
RV on 31 March 1990:	£342
Application dated:	25 November 2004
Heard at:	The Panel Office
On:	1 March 2005
APPEARANCES: For the Tenant:	Mr A W Brunt FRICS
For the Freeholder:	No appearance but written representations

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCIArb (Chairman)
Mr J H Dove Solicitor
Mr M H Ryder

Date of Tribunal's decision: -- 1 MAR 2005

Background:

1 Haydn Brian Fielding and Lynette Rosanne Fielding are the **Tenants** by a 99 year lease from 1960 of the dwelling house and premises at 23, Shakespeare Avenue, Lodge Park, Redditch Worcestershire B98 7LB (the '**Property**'). The **Freeholder** is Speedwell Estates Limited. By a notice (the '**Notice**') dated 26 August 2004 (the '**Date**') the Tenants claim to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 25 November 2004 the Tenants apply to us: (a) to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act; and (b) the Freeholder's reasonable costs under s.9(4). We inspected the Property on 1 March 2005 and a hearing was held on the same day.

2 The Tenants hold the Property by a lease (the '**Lease**') for a term of 99 years from 25 March 1960 at a fixed ground rent of £25 pa.

3 The unexpired terms of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 54½ years.

4 The Property comprises a detached house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - hall with small study and wc/shower room off, through living room, dining room, kitchen, store area to single garage; on the first floor - 3 bedrooms, bathroom with wc. There is gas fired central heating to radiators. The site is rectangular with a frontage of about 12.15m and an area of about 440m^2.

5 **Mr A W Brunt** FRICS appeared for the applicant Tenants. The Freeholder did not appear and was not represented and expressly advised the Tribunal that no appearance would be made but its director, **Mr D W S Fell**, makes written representations challenging our jurisdiction and applying for an adjournment.

Our jurisdiction:

6 Mr Fell says the Tenants' failure, in the Schedule to their Notice, to include a specific Rateable Value ('**RV**') as at 23 March 1965, does not establish the Tenants' right to enfranchise and the Notice is ineffective. The response in box 8 of the Schedule of the Notice says 'As at 23 March 1965 the rateable value was less than £200'. Mr Brunt provides written evidence in a letter from the Valuation Officer that the Valuation Office no longer has records for 23 March 1965 but the RV list shows RV £282 as at 1 April 1973. Mr Brunt says it is clearly implicit, from the 1 April 1973 RV, that the 23 March 1965 RV must be less than £200; and he produces a copy of the 2004/2005 water services bill stating the RV as £342 (31 March 1990). Mr Brunt refers us to *Speedwell Estates Ltd v Dalziel* [2001] EWCA Civ 1277, [2002] 02 EG 104 (CA) as authority that the failure to provide the actual RV as at 23 March 1965 is an 'inaccuracy' within the meaning of para 6(3) Schedule 3 to the Act and does not invalidate the notice. Box 8 of the Notice (the prescribed Form 1 of the Schedule to the Leasehold Reform (Notices) (Amendment) (England) Regulations 2003 provides for the same information as box 7, referred to in *Speedwell*, when the Leasehold Reform (Notices) Regulations 1997 were applicable. Mr Fell says *Speedwell* is clear authority that RVs are required to validate the Tenants' claim to enfranchise.

7 We do not accept Mr Fell's submission and can find no 'clear authority', in *Speedwell*, that RV responses are required for a valid Notice. As we read the judgment, the court distinguished the procedural provisions in

para 6(1) Part II Schedule 3 to the Act (particulars/information required) from box 8 (in the case before us); box 8 does not ask for information specified in para 6(1). It may be argued the response to box 8 is not a proper, meaning specific, answer but it is an answer and on the facts it is obvious to us, and should have been to Mr Fell as a person experienced in enfranchisement matters, that the rent was less than two-thirds of the 23 March 1965 RV. We accept that, despite no specific RV in the response to box 8, Mr Brunt, on behalf of the Tenants, has made reasonable enquiry, evidenced by the letter from the Valuation Officer, to complete the response to box 8. It is not contested that the RV as at 31 March 1990 (£342 - the response to box 9) is to determine the basis of valuation of the price payable.

8 We accept that we cannot determine our jurisdiction conclusively; only the court can do that, but we should decide whether to proceed or not. For the reasons given in para 7 above, we find and hold that there is a real prospect that we do have jurisdiction and any alleged failure by the Tenants or prejudice to the Freeholder does not, on the facts before us, persuade us to stay our determination pending a possible application to the court to determine jurisdiction. Clearly, a party may apply to the court for a determination but this is in the hands of a party, not us, and we have no evidence that an application has been made to suggest we might be minded to stay our determination.

Application for an adjournment:

9 Relying on Mr Fell's submissions that the Tenants' Notice is not valid and that only the court can determine the validity conclusively, he says we should stay our determination until the court determines the validity; effectively, a court determination should be a pre-condition to our determination of the price payable. Mr Brunt disagrees. We dismiss the application and hold that a court determination on validity is not a pre-condition to us proceeding.

THE PRICE PAYABLE UNDER S.9(1) 1967 ACT

The valuation method:

10 Mr Brunt adopts, and we accept, the generally recognised valuation method to derive the price payable for the freehold interest, accepted in *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. The method is: (i) capitalise the apportioned ground rent (£25 pa) from the Date for the unexpired term of the Lease (54½ years); (ii) capitalise the modern ground rent (s15 of the Act), as at the Date, as if in perpetuity but deferred for the unexpired term of the Lease - 'as if in perpetuity' because, although the value of the modern ground rent is for a term of 50 years (as the extension to the Lease), the value of the freehold reversion in possession at the end of the fifty years' extension is ignored as being too remote to have a separate material value for it (namely no *Haresign* addition - see below). As no evidence of cleared sites is adduced, the modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value. The entirety value is the value of the freehold interest in the Property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful.

11 Mr Brunt's valuation does not include a *Haresign* addition - recognised in *Haresign v St John The Baptists' College, Oxford* [1980] 255 EG 711 when specific account was taken of the reversion to the full value of the

dwelling after the expiration of the assumed fifty years' extension of the Head Lease. We accept his approach.

12 **Mr Brunt's valuation and evidence:** For the freehold interest - £1,970

More specifically:

13 Term

Ground rent	£25 pa		
YP 54½ years at 7%	13.9278		
		£348	
Reversion	£185,000		
Entirety value	£64,750		
Site value at 35%	£4,532.50 pa		
Sec. 15 ground rent at 7%	0.35788		
YP deferred 54½ years at 7%		£1,622.09	
		Say	£1,970

14 Adopting 7% as the yield rate in his valuation, Mr Brunt says 7% is consistent with previous decisions of this tribunal and analyses of negotiated settlements he has made on behalf of very many tenants when the unexpired term of the lease is relatively long - relative to the assumed 25 year rent review in the assumed 50 year lease extension.

15 In support of his entirety value (£185,000), he refers us to: two three bedroom detached house for sale at £179,950 and £184,950; and two four bedroom houses both for sale at £189,950. More particularly, he says we should place greatest reliance on the sale of 3, Park Court, Lodge Park in July 2004 at £185,000. He says all the evidence points to £185,000 as the entirety value, reflecting the principles which we refer to above.

16 Mr Brunt says that a 35% site apportionment is consistent with decisions of this tribunal for sites with a similar frontage.

Our Decision:

17 Despite no representations from the Respondent Freeholder on the price payable, Mr Brunt clearly recognises his duty to us, to provide truly independent evidence to assist us to achieve a just result. As an expert tribunal, relying on our general knowledge but not on any special knowledge, we find Mr Brunt's valuation is consistent with the principles in the Act and accepted guidance derived from the Lands Tribunal and this Tribunal. We accept his figures and the price payable, at £1,970.

Conclusion on the price payable:

18 We determine that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge and our inspection, the sum to be paid by the Tenant for the acquisition of freehold interest in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967, as amended, is £1,970 (One thousand nine hundred and seventy pounds).

COSTS TO BE BORNE BY THE APPLICANT UNDER SUBSS.9(4) AND (4A) THE ACT:

judgment - recognising that the amount of Mr Fell's in-house costs should represent some reasonable discount from what would otherwise have been paid to an outside contractor and accepting Mr Brunt's evidence that the market for enfranchisement professional advice is competitive - we find £100 is the amount of the reasonable costs incurred.

25 As to (b) (requiring statutory declaration) and (d), in para 22 above, we find such costs were not reasonably incurred. We accept Mr Brunt's submission that the 2002 Act has removed the Tenants' occupation of the Property requirement.

26 As to (f), in para 22 above, we hold and find, from Mr Fell's evidence that the ten letters are connected with the application to us, that the costs are specifically excluded by subs.9(4A) the 2002 Act.

27 Mr Brunt says subs.9(4)(b) conveyancing costs should be limited to £250, reflecting the competitive market in conveyancing and that it is the Tenants' solicitor who will prepare the transfer. Mr Fell is silent. We find Mr Brunt's evidence is consistent with general expectations and find £250 is the reasonable amount and that actual disbursements, if any, incurred in obtaining office copy register entries shall be added.

28 As to "valuation costs", Mr Brunt says we have no evidence that any valuation in pursuance of the Notice has been carried out; accordingly we should determine £Nil. Mrs Fielding, the joint Tenant present at the hearing, says that between 26 August and 25 November 2004 a member of Mr Fell's family called at the Property but we have no evidence that a valuation was subsequently carried out; the only reference by Mr Fell is 'Freehold valuation fee £280' in his 'time and costing sheet' lodged with us. We are not persuaded, by his claim for £280, that a valuation was actually carried out pursuant to the Notice. We, therefore, find no "valuation costs" have been incurred.

29 VAT: All figures we refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters as they are a matter for HM Customs and Excise. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable.

Our determination of the subs.9(4) costs:

30 We find and hold that the amount of the subs.9(4) costs payable by the Tenants are:

(a) £100 (One hundred pounds) for subss. 9(4)(a), (c) and (d), plus VAT if appropriate, as the reasonable or incidental costs;

(b) In so far as subs.9(4)(b) conveyancing costs are incurred and are to be incurred by the Freeholder, a sum not exceeding £250 (Two hundred and fifty pounds) plus actual disbursements, if any, incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs; and

(c) £Nil for subs.9(4)(e) valuation costs.

Date: -1 MAR 2005

T F Cooper
CHAIRMAN