

**LEASEHOLD VALUATION TRIBUNAL**  
**OF THE**  
**MIDLAND RENT ASSESSMENT PANEL**

BIR/41UD/OAF/2006/0171

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL*

*ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967*

Applicants: Mr P J and Mrs S Tottey (leaseholders)

Respondent: Mr I H Sheikh (freeholder)

Subject property: 21 School Lane  
Burntwood  
Walsall  
WS7 1LB

Date of tenant's notice: 24 August 2006

Applications to the LVT: 15 November 2006

Hearing: 16 January 2007

Appearances:

*For the applicants:* Mr A W Brunt FRICS

*For the respondent:* Not represented

Members of the LVT: Professor N P Gravells MA  
Mr S Berg FRICS  
Mrs C L Smith

Date of determination:

**30 JAN 2007**

## **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 P J and Mrs S Tottey, leaseholders of the house and premises at 21 School Lane, Burntwood, Walsall, WS7 1LB ("the subject property"). The two applications are, first, under section 21(1)(a) for the determination of the price payable under section 9(1) for the freehold interest in the subject property; and, secondly, under section 21(1)(ba) for the determination of the reasonable costs recoverable under section 9(4).
- 2 The applicant leaseholders hold the subject property under a lease dated 3 October 1963 for a term of 99 years from 25 March 1963 at a ground rent of £15.00 per year. The assignment of the lease to the applicants was registered at the Land Registry on 16 February 1979. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately 55.5 years.
- 3 The applicants served on Mr I H Sheikh, the respondent freeholder, a tenant's notice dated 24 August 2006, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and they subsequently made the present applications.

## **Subject property**

- 4 The subject property is a semi-detached house of brick and tile construction, located on School Lane in Burntwood. The accommodation comprises, on the ground floor, hallway, reception room (extended to approximately twice the original size) and kitchen; and, on the first floor, three bedrooms and combined bathroom/wc. Space heating is provided by gas-fired central heating and the property is double-glazed throughout. There is an integral garage and gardens to the front and rear of the property.

## **Inspection and hearing**

- 5 The members of the Tribunal inspected the subject property on 16 January 2007 in the presence of the applicant leaseholders and Mr A W Brunt FRICS, who was representing them.
- 6 The subsequent hearing was attended by Mr Brunt, representing the applicants. The respondent did not attend and was not represented.

## **Representations of the parties**

- 7 Written representations were submitted by Mr Brunt, on behalf of the applicants, and by Mr D H Linnell FRICS MEWI, on behalf of the respondent.

### Price payable for the freehold interest in the subject property

- 8 Although Mr Brunt and Mr Linnell adopted different approaches to the valuation, two matters were not in dispute:
  - The relevant date for the purposes of the valuation is 24 August 2006.
  - The ground rent payable under the lease is £15.00 per year.

*Evidence and submissions on behalf of the applicant leaseholders*

- 9 Mr Brunt adopted as the basis of valuation under the 1967 Act the standard 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 capitalisations at stages (i) and (iii).
- 10 For the purposes of the valuation calculation envisaged by that approach, Mr Brunt made representations on the following matters:
- The freehold entirety value of the subject property at the relevant date.
  - The percentage figure to be applied to the freehold entirety value to determine the site value in accordance with the "standing house method".
  - The yield and/or deferment rates to be applied at various stages of the valuation calculation.
- 11 As to the freehold entirety value, Mr Brunt stated that the applicants had recently agreed a sale of the subject property on the basis that they would acquire the freehold interest from the respondent and would transfer to the purchaser the merged freehold and leasehold interests. Mr Brunt submitted that the agreed price of £140,000 provided the best evidence of the freehold entirety value of the subject property. Although that price was agreed later than the relevant date, he was content to use that figure in his valuation calculation.
- 12 As to the percentage figure to be applied to the freehold entirety value to determine the site value, Mr Brunt submitted that, on the basis of his professional experience and judgment, there was no reason to depart from the figure of 33.33 per cent normally applied to properties of the type exemplified by the subject property.
- 13 As to the appropriate yield and deferment rates, Mr Brunt acknowledged the recent decision in *Earl Cadogan v Sportelli* (LRA/50/2005) and the other cases determined with that decision ("the *Sportelli* cases"), in which the Lands Tribunal had adopted a deferment rate of 4.75 per cent for a house. Although the *Sportelli* cases concerned properties in a prime area of central London, Mr Brunt accepted that the Lands Tribunal had given a clear indication that the guidance in those cases was in principle equally applicable across the country. He stated that he had difficulty in accepting the correctness of a single, generally applicable, deferment rate; he also noted that none of the *Sportelli* cases involved valuation under section 9(1); but he acknowledged that he had no evidence to support a departure in the present case from the figure adopted by the Lands Tribunal. Having accepted, albeit with some reluctance, that the applicable deferment rate in the present case was 4.75 per cent, he adopted the same figure for capitalising the ground rent for the remainder of the existing lease and for calculating the modern ground rent.
- 14 Applying those figures (and the agreed matters referred to in paragraph 8 above), Mr Brunt submitted the following valuation:

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

Ground rent payable: £15.00 per year

Years Purchase: 55.5 years @ 4.75%: 19.45028

Capitalised ground rent: £15.00 x 19.45028 = £291.75

*(ii) Modern ground rent*

Freehold entirety value of subject property: £140,000

Percentage attributable to site: 33.33%: £46,662

Modern ground rent @ 4.75% = £2,216.45

*(iii) Capitalisation of modern ground rent*

Modern ground rent (above): £2,216.45

Years Purchase at 4.75% in perpetuity deferred 55.5 years: 1.60235

Capitalised modern ground rent: £2,216.45 x 1.60235 = £3,551.52

The addition of the capitalised existing ground rent and the capitalised modern ground rent produce a figure of (say) £3,843.

*Evidence and submissions on behalf of the respondent freeholder*

- 15 Although the respondent did not attend, and was not represented at, the hearing, Mr D H Linnell FRICS MEWI submitted a valuation report on his behalf. The Tribunal did not receive the report until two working days before the hearing; and Mr Brunt did not see the report until the hearing. Nonetheless, he agreed to read it and to comment on it.
- 16 As his primary submission, Mr Linnell adopted a basis of valuation that involves (i) assuming that the valuation must be carried out in the context of a "no Act world", (ii) taking into account the value of the entire freehold interest that the freeholder would have received at the end of the existing lease in such a "no Act world" and (iii) assuming the generation and apportionment of marriage value: see paragraphs 9.5-9.6 of his report.
- 17 For reasons explained below (see paragraphs 29-30), the Tribunal holds that that basis of valuation is wholly misconceived; and it is therefore not necessary to set out the detailed valuation calculation. However, the figures included in that calculation (freehold entirety value of £180,000 and existing lease value of 75 per cent of that figure (£135,000)) produce a final figure for the price to be paid for the freehold interest in the subject property of £30,400 (compared to Mr Brunt's figure of £3,843).
- 18 Mr Linnell also submitted a valuation calculation that followed the standard approach adopted by Mr Brunt. However, many of the figures used by Mr Linnell in that calculation are markedly different from those used by Mr Brunt and consequently result in a significantly higher figure for the price to be paid for the freehold interest in the subject property.
- 19 As to the freehold entirety value, Mr Linnell adopted the figure of £180,000. Mr Linnell included in his report a list of sale prices achieved for properties on School Lane. He observed that the prices appeared to demonstrate a range of values and inconsistencies which he was unable to explain. However, the figure of £180,000 appears to be based on a projection of the price paid for the leasehold interest in 28 School Lane on two successive sales in November 2004 (£165,000) and July 2006 (£175,000).
- 20 As to the percentage figure to be applied to the freehold entirety value to determine the site value, Mr Linnell included in his calculation the figure of 50 per cent; but the report offered no explanation or justification for that figure.

21 As to the appropriate deferment rate, following the guidance from the Lands Tribunal in the *Sportelli* cases, Mr Linnell adopted the figure of 4.75 per cent. He adopted the same figure as the yield rate for capitalising the ground rent for the remainder of the existing lease. However, he adopted the figure of 10 per cent for calculating the modern ground rent, although again the report offered no explanation or justification for that figure.

22 Applying those figures (and the agreed matters referred to in paragraph 8 above), Mr Linnell submitted the following valuation:

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

Ground rent payable: £15.00 per year

Years Purchase: 55.42 years @ 4.75%: 19.44

Capitalised ground rent: £15.00 x 19.44 = £292

*(ii) Modern ground rent*

Freehold entirety value of subject property: £180,000

Percentage attributable to site: 50%: £90,000

Modern ground rent @ 10% = £9,000

*(iii) Capitalisation of modern ground rent*

Modern ground rent (above): £9,000

Years Purchase at 4.75% in perpetuity deferred 55.42 years: 1.66

Capitalised modern ground rent: £9,000 x 1.66 = £14,940

The addition of the capitalised existing ground rent and the capitalised modern ground rent produce a figure of £15,232.

Reasonable costs recoverable under section 9(4) of the 1967 Act

*Evidence and submissions on behalf of the applicant leaseholders*

23 In relation to legal costs under section 9(4) of the 1967 Act, Mr Brunt submitted that, in the absence of any evidence of actual costs incurred by the respondent, the respondent's costs recoverable from the applicants should not exceed £325 (plus VAT if applicable).

24 In relation to valuation costs Mr Brunt submitted that the respondent was precluded from recovering valuation costs under section 9(4)(e) of the 1967 Act.

25 He referred to section 9(4A) of the 1967 Act, which provides:

"Subsection (4) above does not require a person to bear the costs of another person in connection with an application to a leasehold valuation tribunal."

26 Mr Brunt pointed out that the valuation report prepared by Mr Linnell on behalf of the respondent stated that Mr Linnell was instructed on 7 January 2007. Since the applications to the Tribunal in the present case were made on 15 November 2006, Mr Brunt submitted that the clear inference was that Mr Linnell had been instructed specifically for the purposes of the application; and that his fees were costs "in connection with an application to a leasehold valuation tribunal" and thus not recoverable by virtue of section 9(4A) of the 1967 Act.

*Evidence and submissions on behalf of the respondent freeholder*

- 27 In his covering letter accompanying his valuation report, Mr Linnell confirmed that the respondent would require the applicants "to pay the legal and surveyor's costs incurred in dealing with these matters as provided for in the legislation".

**Determination of the Tribunal**

- 28 The Tribunal gave full consideration to the evidence and submissions of the parties.

Price payable for the freehold interest in the subject property

- 29 The Tribunal rejects the basis of valuation adopted by Mr Linnell as his primary submission. Contrary to his submission (in paragraph 9.5 of his report), the relevant basis of valuation does not assume a (wholly) "no Act world". Since the subject property complies with the relevant qualifying conditions as to rent and rateable values, the Tribunal holds that the property is to be valued under section 9(1) of the 1967 Act. Section 9(1)(a) makes it clear that, although it is to be assumed that the Act conferred no right to acquire the freehold, it is to be assumed that, if the tenancy has not been extended under the Act, it was to be so extended. In the view of the Tribunal, the position is correctly stated in *Hague on Leasehold Enfranchisement* (4th edition) at paragraph 9.05:

"[That assumption] requires that the freehold reversion that must be valued, is the reversion to an extended lease under the 1967 Act. ... [T]he rent under the 50-year extension is the letting value of the site of the house and premises, without including anything for the value of the buildings on the site."

An exception to this "site-only valuation" has been recognised in the form of the so-called "*Haresign* addition": see the decision of the Lands Tribunal in *Haresign v St John the Baptist's College, Oxford* (1980) 255 EG 711. However, more recently, the Lands Tribunal has acknowledged that the circumstances in which the "*Haresign* addition" will be appropriate are likely to be exceptional - where the unexpired term of the existing lease is short and house is substantial: see *Re Marlodge (Monnow) Ltd* (LRA/28/2002). The Tribunal is of the view that there is nothing in the circumstances of the present case that would justify a departure from the "site-only valuation" approach.

- 30 The Tribunal also holds that, contrary to the submission of Mr Linnell (in paragraph 9.6 of his report), a valuation under section 9(1) of the 1967 Act excludes any element of marriage value from the price to be paid for the freehold interest. His argument for taking marriage value into account appears to overlook the amendment of section 9(1) by section 82 of the Housing Act 1969, as a result of which the tenant and members of his family are expressly excluded from the hypothetical open market postulated by section 9(1).
- 31 The Tribunal holds that the basis of valuation adopted by Mr Brunt properly reflects the principles of the 1967 Act. It is therefore necessary to determine the figures to be included in the valuation calculation.
- 32 As to the freehold entirety value of the subject property, the evidence clearly supports the figure of £140,000 adopted by Mr Brunt. The list of sale prices achieved for properties on School Lane provided by Mr Linnell fails to indicate that it includes properties quite different from the subject property (and that fact may provide the explanation for the "inconsistencies" to which Mr Linnell refers). For

example, the particular property relied upon by Mr Linnell (28 School Lane) is a detached house and larger than the subject property. In fact, only three of the properties listed are similar to the subject property. The freehold interest in 13 School Lane was sold in February 2003 for £94,500; the freehold interest in 79 School Lane was sold in September 2004 for £139,000; and the freehold interest in 69 School Lane was sold in October 2005 for £130,000. Those prices are clearly in line with the agreed sale price of £140,000 for the subject property. The Tribunal therefore determines that the freehold entirety value of the subject property at the relevant date was £140,000.

- 33 As to the percentage figure to be applied to the freehold entirety value to determine the site value, in the absence of any explanation or justification, the Tribunal rejects the figure of 50 per cent adopted by Mr Linnell. The Tribunal agrees with Mr Brunt that there is no reason to depart from the figure of 33.33 per cent normally applied to properties of the type exemplified by the subject property.
- 34 As to the appropriate yield and deferment rates to be applied at various stages of the valuation calculation, the starting point for the Tribunal must be the decision in the *Sportelli* cases in which the Lands Tribunal adopted a deferment rate of 4.75 per cent for a house. Although the *Sportelli* cases concerned properties in a prime area of central London, the Lands Tribunal gave a clear indication that the guidance in those cases was in principle equally applicable across the country. At paragraph 121 of the decision, the Lands Tribunal stated:

"It is obviously undesirable, and indeed it would be impossible, for the sort of financial and valuation evidence that we have heard to be called and considered in every enfranchisement case. ... The prospect of varying conclusions on the deferment rate in different cases reached on evidence that was less comprehensive than that before us can therefore be avoided by LVTs adopting the practice of following the guidance of this decision unless compelling evidence to the contrary is adduced. This is justified because ... the deferment rate is unlikely to vary according to factors particular to the individual case. Some factors, including in particular the prospect of long-term growth, will not vary from case to case, while other factors, such as location and obsolescence, will already be reflected in the vacant possession value."

And at paragraph 123:

"The application of the deferment rate of 5 per cent for flats and 4.75 per cent for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate."

The Tribunal is of the view that there is neither "compelling evidence" nor "particular features" in the present case such as to justify a departure from the deferment rate of 4.75 per cent.

- 35 The Lands Tribunal in the *Sportelli* cases expressly stated (at paragraph 8) that nothing in the decision had any direct application to capitalisation rates; and in the subsequent decision in *Re 1 Crophorne Court* (LRA/29/2006) the Lands Tribunal noted (at paragraph 10) that the factors that are relevant to the determination of the ground rent are "so manifestly different from those that are relevant to the deferment rate that there can be no valuation rationale to justify adopting a rate for capitalisation simply because that rate is taken for deferment".

However, in the present case both Mr Brunt and Mr Linnell are content to adopt the rate of 4.75 per cent for the capitalisation of the existing ground rent; and, in the view of the Tribunal, there is no reason not to adopt that figure.

- 36 However, while Mr Brunt also applied the rate of 4.75 per cent to the site value of the subject property to calculate the modern ground rent, Mr Linnell adopted the figure of 10 per cent, although he offered no explanation or justification for that figure. The latter figure appears to be the reverse of the "adverse differential", according to which it has been argued that the rate to be applied to calculate the modern ground rent should be *lower* than the deferment rate. In any event, the "adverse differential" argument, which was used to justify a departure from the standard adoption of the same rates, has largely been discredited: see *Windsor Life Assurance Company Limited v Austin* [1996] 2 EGLR 169. The Tribunal therefore adopts the figure of 4.75 per cent to calculate the modern ground rent.
- 37 It follows that the Tribunal adopts the figure of 4.75 per cent at all stages of the valuation calculation.
- 38 Finally, Mr Linnell's calculation includes the very precise figure of 55.42 years for the unexpired term of the existing lease at the relevant date. However, that figure must be incorrect because at the relevant date the unexpired term was 55 years and seven months. The Tribunal therefore adopts the figure of 55.5 years (which marginally favours the respondent).
- 39 Applying those figures (and the agreed matters referred to in paragraph 8 above), the Tribunal calculates the price payable as follows:

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

Ground rent payable: £15.00 per year  
Years Purchase: 55.5 years @ 4.75%: 19.44985  
Capitalised ground rent: £15.00 x 19.44985 = £291.75

*(ii) Modern ground rent*

Freehold entirety value of subject property: £140,000  
Percentage attributable to site: 33.33%: £46,666  
Modern ground rent @ 4.75% = £2,216.64

*(iii) Capitalisation of modern ground rent*

Modern ground rent (above): £2,216.64  
Years Purchase at 4.75% in perpetuity deferred 55.5 years: 1.602785  
Capitalised modern ground rent: £2,216.64 x 1.602785 = £3,552.80

The addition of the capitalised existing ground rent and the capitalised modern ground rent produce a figure of (say) £3,845.

Reasonable costs recoverable under section 9(4) of the 1967 Act

- 40 As to legal costs under section 9(4) of the 1967 Act, the Tribunal notes that the market for conveyancing services remains very competitive. The Tribunal therefore accepts the submission of Mr Brunt, that, in the absence of any evidence of actual costs incurred by the respondent, the respondent's costs recoverable from the applicants should not exceed £325 (plus VAT if applicable).



- 41 As to valuation costs under paragraph (e) of section 9(4), the Tribunal notes the statement of Mr Linnell (in paragraph 7.1 of his report) that he received instructions from the respondent on 7 January, nearly two months after the applications in the present case were made to the Tribunal. The Tribunal is satisfied on a balance of probabilities that the inference to be drawn is that Mr Linnell was instructed specifically to provide a valuation for the purposes of the application, notwithstanding that the initial instructions were to negotiate an agreement with Mr Brunt. The Tribunal therefore holds that the costs of Mr Linnell's valuation are costs incurred "in connection with an application to a leasehold valuation tribunal" and thus not recoverable by virtue of section 9(4A) of the 1967 Act.

## Summary

- 42 The Tribunal determines as follows:

- The price payable by the applicant leaseholders for the freehold interest in the subject property is £3,845.
- The legal costs recoverable by the respondent freeholder from the applicant leaseholders must not exceed £325 (plus VAT if applicable).
- No valuation costs are recoverable by the respondent freeholder from the applicant leaseholders.



Professor Nigel P Gravells  
Chairman

30 JAN 2007