

BIR/00CT/0LR/2005/0043

62 MALLABY CLOSE, SHIRLEY, SOLIHULL, WEST MIDLANDS, B90 2PW

BACKGROUND

1. The Tribunal was considering an application by the Applicant tenant, Mr A G White, to determine (a) the price payable to the Respondent landlord, Midland Freeholds Ltd., for a new lease of No 62, Mallaby Close, Shirley, Solihull, B90 2PW (hereinafter referred to as "the subject property") and (b) the landlord's recoverable costs.
2. The application was made under Sections 48 and 91 of the Leasehold Reform , Housing and Urban Development Act 1993 (hereinafter referred to as "the Act").
3. The subject property is held under a lease dated 20 October 1975 for a term of 99 years from 25 March 1964 at a ground rent of £35 per annum rising to £52.50 per annum at the end of the thirty third year and then to £70 per annum at the end of the sixty sixth year of the term.
4. The tenant's Notice of Claim was served on 4 November 2004. At that time, the tenant was Mrs HRWhite.
5. The landlord's Counter Notice was served on 6 January 2005.
6. On 28 February 2005, the lease was assigned by Mrs HRWhite to her son, the Applicant, together with the benefit of the Notice of Claim.
7. The Applicant was represented by Sydney Mitchell, Solicitors.
8. The Respondent was represented by Fell Estates Ltd.

INSPECTION

9. The Tribunal inspected the subject property externally and internally on the morning of 7 October in the presence of the Applicant, Mr AG White . It was a ground floor purpose built flat c 1975 overlooking a communal green within a small and well tended estate in a quiet residential area approximately eight miles from Birmingham City. The subject property was double glazed, modernised and comprised three rooms with a small kitchen and bathroom/wc, both of which had been recently refitted. The property was heated with night storage heaters. There was an attractive enclosed garden to the rear, backing on to a wooded area. There was also a side access. The subject property had the benefit of a single garage in a separate block.
10. The Tribunal also inspected, externally only, the Applicant's comparables at Nos 24, 38, 60 and 66 Mallaby Close, which appeared to be of a similar condition to the subject property. The Tribunal considered Nos 38 and 66 to be the closest comparables, since both were ground floor flats (Nos 24 and 60 being first floor flats). No 66 was in a similar superior location as that enjoyed by the subject property with its open aspect and distance from a

through road, Bills Lane.

HEARING

11. Although a Hearing had been arranged for 7 October 2005, there were no appearances and neither the Applicant nor Respondent were represented. Written submissions dated 24 August 2005 and 4 October 2005 were received from Sydney Mitchell, Solicitors, on behalf of the Applicant. No submissions were received from Fell Estates Ltd. on behalf of the Respondent. Fell Estates had previously made a request for the application to be dismissed or adjourned, which had been refused by the Tribunal.

SUBMISSIONS

12. In their written submissions, the Applicant's solicitors suggested a deferment rate of 7.5% as *"the almost universally accepted practice of the Tribunal in recent times when dealing with comparable cases"*, although this was revised to 7% in their later submissions in the light of a recent Lands Tribunal Decision in respect of Cadogan Estates and Rosary Gardens cases. They said that £130,000 was paid for the subject property with the benefit of the Notice of Claim. Although they acknowledged that this may not be considered an arms length transaction, being a transfer from mother to son, the price was supported by the prices achieved for the sale of No 66 in March 2004 at £127,500 and No 60 in May 2004 for £125,000. No 38 had been sold in April 2005 for £140,000 and No 24 had been sold in September 2005 for £142,950. A valuation figure of £132,500 was adopted from which a deduction of 4% was made to reflect *"the distortion this process introduces in trying to establish the value of the existing leasehold interest as contemplated by the Act"*. A notional value of the existing lease as at November 2004 was £127,500 which was then reduced to £123,200 to take account of tenant's improvements comprising full double glazing and night storage heaters. An uplift of 5.75% was made to reflect the value of the subject property with the benefit of a new lease. This uplift was derived from a schedule compiled following a number of settlements and LVT decisions over four/five years.

13. The Applicant's solicitors contended for a premium of £4,532 and their valuation is attached as Appendix B.

14. As stated above, no written submissions were received from or on behalf of the Respondent, but in its Counter Notice dated 6 January 2005, a premium of £6,000 had been suggested.

THE TRIBUNAL'S DETERMINATION

15. The Tribunal was hampered by the absence of full explanations in respect of some of the evidence provided on behalf of the Applicant and the absence of any evidence from or on behalf of the Respondent. The Tribunal has taken into account the written submissions received, its own inspection and its knowledge and experience as an expert Tribunal.

16. With regard to the yield rate, although a rate of 7.5% was initially suggested on behalf of the Applicant, this was later revised to 7% in view of a recent Lands Tribunal Decision. However, each case must be considered on its own merits, and the Lands Tribunal Decision

related solely to properties in prime Central London locations. In the view of this Tribunal, there is no persuasive reason in this case, bearing in mind its location, to revise the deferment rate. The Tribunal determines the deferment rate at 7.5%

16. With regard to the existing and extended lease values, no information was provided as to the length of leases of the comparables. The Tribunal bases its valuation on an assumption that all the lease lengths are similar to that of the subject property.

17. The Tribunal places little weight on the price paid by the Applicant to his mother, which may not be a wholly arms length transaction. The Tribunal is of the opinion that the ground floor flats which have the benefit of the garden are more valuable than the first floor flats. This is supported by the sales of No 66, a ground floor flat, in March 2004 at £127,500 and No 60, a first floor flat, in May 2004 at £125,000. Both flats are situated in a similar position within the estate and are very close to the subject property. No 38, another ground floor flat, sold in April 2005 for £140,000. This flat is closer to the through road and does not enjoy the open aspect across the communal green.


18. Taking these factors into account, the Tribunal determines that the open market value of the existing lease value of the subject property is £137,000. However, this figure must be adjusted for the lessee's rights under the Act and tenant's improvements. The Tribunal accepts both the Applicant's adjustment of 4% for the lessee's rights under the Act and also £4,000 for improvements. The existing lease value is therefore £127,500.

19. The Applicant submitted a schedule of agreements which indicated that for a lease of approximately 68 years unexpired, uplifts of between 6.25% and 5.2% have been adopted. It is unclear whether the component parts of the premiums shown on the schedule or merely the premiums had been agreed. In the opinion of the Tribunal, an uplift at the higher end of this range is appropriate and the tribunal determines the extended lease value at £135,000.

20. The Tribunal determines that the premium to be paid for the lease extension of the subject property is £4,567, and its valuation is attached as Appendix A.

21. With regard to costs, the Applicant has proposed a figure of £350 plus VAT if appropriate in respect of legal costs and £300 plus VAT if appropriate in respect of valuation costs. The Tribunal considers these figures to be reasonable.

CHAIRMAN.....



DATE..... 18 OCT 2005

APPENDIX A

62 Mallaby Close Shirley Solihull B90 2PW

Valuation date 4 November 2004
 Lease 99 years from 25 March 1974
 Ground Rent profile:
 £35 pa for 1st 33 years
 £52.50 pa next 33 years
 £70 pa remainder of term

		£	£
Ground Rent		35	
YP 2.39 years @ 7.5%		<u>2.1164</u>	74
Review to		52.5	
YP 33 years @ 7.5%	12.107		
x PV of £1 for 2.39 years @ 7.5%	<u>0.8413</u>	<u>10.186</u>	535
Review to		70	
YP 33 years @ 7.5%	12.107		
x PV of £1 for 35.39 years @ 7.5%	<u>0.0773</u>	<u>0.9359</u>	66
Reversion to market value		135000	
x PV of £1 for 68.39 years @ 7.5%		<u>0.0071</u>	<u>959</u>
Value of Landlords interest			1633
Marriage Value			
Extended lease		135000	
less			
Landlords current interest	1633		
Tenant's current interest	<u>127500</u>	<u>129133</u>	
Marriage Value		5867	
Marriage Value split 50:50			<u>2934</u> <u>4567</u>
Enfranchisement price			£4,567

Appendix B

**62 Mallaby Close, Shirley – Revised Valuation by Sydney Mitchell
4th October 2005**

Term & Reversion:

Ground Rent:	£35	
YP 2.25 years @7.5%:	<u>1.996825</u>	
		£ 70

Ground Rent:	£52.50	
YP 33 years @7.5%:	12.1074	
PV £1 2.25 years @7.5%:	<u>0.8502396</u>	
	<u>10.29419</u>	
		£ 540

Ground rent:	£70	
YP 33 years @ 7.5%	12.1074	
PV £1 35.25 years @7.5%	<u>0.0781739</u>	
	<u>0.94648</u>	
		£ 66

Reversion to extended leasehold value:	£130,300	
PV £ in 68.25 years at 7%:	<u>0.0098796</u>	
		<u>£1,287</u>

Value of freeholders' present interest:	£1,963
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Marriage Value:

Extended leasehold value:	£130,300
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Less:

(a) Leaseholder's present interest: £123,200	
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(b) Freeholder's present interest: <u>£ 1,963</u>	
	<u>£125,163</u>

Marriage Value:	£ 5,137
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50%	<u>£2,569</u>
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