LEASEHOLD VALUATION TRIBUNAL

OF THE

MIDLAND RENT ASSESSMENT PANEL

BIR/00CN/OAF/2004/0251c

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant:	Mr A B Tranter (leaseholder)
Respondent:	Marden Limited (freeholder)
Subject property:	102 Westminster Road Selly Park Birmingham B29 7RS
Date of tenant's notice:	15 March 2004
Applications to the LVT:	31 August 2004
Hearing:	23 November 2004
Appearances:	
For the applicant:	Mr S J M Laing
For the respondent:	Mr J Moore
Members of the LVT:	Professor N P Gravells MA Mr M Williams FRICS Mr M H Ryder

Date of determination: 07 DEC 2004

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 Tranter, leaseholder of the house and premises at 102 Westminster Road, Selly Park, Birmingham, B29 7RS ("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 payable under section 9(4).

2 The applicant leaseholder holds the subject property under an underlease for a term of 99 years less three days from 29 September 1905 at a ground rent of £5.50 per year. The underlease was assigned to the applicant on 21 November 1991. The unexpired term at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") was approximately six months. (It appears that the freehold interest and the head leasehold interest have merged.)

3 The applicant served on the respondent freeholder a tenant's notice dated 15 March 2004, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and he subsequently made the present application.

4 The parties do not dispute and the Tribunal accepts that the qualifying conditions for enfranchisement under the 1967 Act are satisfied.

Subject property

5 The subject property is a mid-terraced house located on Westminster Road in a residential area of Selly Park. The accommodation comprises, on the ground floor, two reception rooms, kitchen and bathroom/wc; and, on the first floor, three bedrooms. The property has neither central heating nor double-glazing. Outside there is a small paved area to the front of the property and a garden to the rear of the property. There is no garage or off-street parking.

Inspection and hearing

6 The Tribunal inspected the subject property on 23 November 2004 in the presence of Mr Tranter, the applicant leaseholder.

7 The subsequent hearing was attended by Mr Laing of Laing & Co, representing the applicant leaseholder, and by Mr Moore of Midland Valuations Ltd, representing the respondent freeholder.

Representations of the parties

The price payable for the freehold interest in the subject property

8 Both Mr Laing and Mr Moore 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).

9 The following matters relevant to the valuation calculation were agreed by the parties:

- The valuation date for the purposes of determining the price payable for the freehold interest in the subject property is 15 March 2004 and the unexpired term of the underlease at the relevant date was six months.
- The ground rent payable under the underlease was £5.50 per year.

10 Since both parties apply the same established formula to determine the price payable for the freehold interest, the matters that remain in dispute between the parties are the four factors in that formula that are not agreed, namely:

- the value of the ground rent for the remainder of the unexpired term;
- the freehold entirety value of the subject property at the relevant date;
- the percentage figure to be applied to the entirety value to calculate the site value of the subject property on the standing house basis;
- the appropriate yield rate to be applied in capitalising the existing ground rent and in calculating and capitalising the modern ground rent.

Evidence and submissions on behalf of the applicant leaseholder

11 Mr Laing included a nil value in respect of the capitalisation of the existing ground rent for the remainder of the unexpired term.

12 Mr Laing put in evidence agreed sale prices and asking prices for a number of properties in the vicinity of the subject property. The agreed sale prices ranged from £110,100 to £129,000; and the current asking prices ranged from £115,000 to £129,950. On the basis of those figures, Mr Laing submitted that the freehold entirety value of the subject property on the relevant date was £120,000.

13 In relation to the percentage figure to be applied to the entirety value to calculate the site value of the subject property on the standing house basis, Mr Laing accepted that the normal figure was in the range of 33%-35%. However, he argued that, where the property has a particularly narrow frontage (and the subject property has a frontage of less than four metres), a lower percentage figure was normally adopted. In the present case, he submitted that 30 per cent was the appropriate figure.

14 In relation to the appropriate yield rate to be applied in capitalising the existing ground rent and in calculating and capitalising the modern ground rent, Mr Laing adopted the "standard" yield rate of 7 per cent. Notwithstanding the very short unexpired term in the present case, he was not persuaded that a lower yield rate should be applied.

15 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Laing submitted the following valuation:

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

Capitalised ground rent: (say) Nil

(ii) *Modern ground rent*

Standing house value of subject property: £120,000
Percentage attributable to site: 30%: £36,000
Annual equivalent @ 7% = (say) £2,500

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,500
Years Purchase at 7% in perpetuity deferred 0.5 years: 13.82
Capitalised modern ground rent: £2,500 x 13.82 = £34,546

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £34,500.

Evidence and submissions on behalf of the respondent freeholder

16 Mr Moore calculated the capitalised value of the existing ground rent for the remainder of the unexpired term; and, although the resultant figure is small, he included it in his valuation.

17 Mr Moore put in evidence agreed sale prices for a number of properties in the vicinity of the subject property. The prices ranged from £123,000 to £129,950. He submitted that the lower-priced properties were located on less desirable roads than Westminster Road. He also submitted (i) that there were a consideration number of properties to let in the vicinity of the subject property; (ii) that those properties were aimed at the student market; and (iii) that in such a market three-bedroomed properties (even with a bathroom on the ground floor) represented a substantially better investment (and would therefore command a higher purchase price) than two-bedroomed properties (with a bathroom on the first floor). On the basis of those figures and submissions, Mr Moore adopted for the purposes of his valuation a freehold entirety value for the subject property on the relevant date of £140,000. However, in the course of the hearing he acknowledged that that figure might be marginally high and that the value might have been nearer to £135,000.

18 In relation to the percentage figure to be applied to the entirety value to calculate the site value of the subject property on the standing house basis, Mr Moore argued that, in order to reflect the fact that property prices had increased at a greater rate than building costs, it was appropriate to apply higher figures than had previously been applied. He also referred to a number of recent decisions of Leasehold Valuation Tribunals involving mid-terraced houses, in which the Tribunal had applied a figure of 32 per cent. He submitted that that was therefore the appropriate figure in the present case.

19 In relation to the appropriate yield rate to be applied in capitalising the existing ground rent and in calculating and capitalising the modern ground rent, Mr Moore referred to a number of recent decisions of Leasehold Valuation Tribunals involving unexpired terms between two years and eleven years, in which the Tribunal had applied a figure of 6.5 per cent. He submitted that that was therefore the appropriate figure to apply in the present case.

20 Applying those figures (and the agreed figures referred to in paragraph 9 above), Mr Moore submitted the following valuation:

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

Ground rent payable: £5.50 per year
Years Purchase: 0.5 years @ 6.5%: 0.47
Capitalised ground rent: £5.50 x 0.47 = £2.59

(ii) *Modern ground rent*

Standing house value of subject property: £140,000
Percentage attributable to site: 32%: £44,800
Annual equivalent @ 6.5% = £2,912

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,912
Years Purchase at 6.5% in perpetuity deferred 0.5 years: 14.915
Capitalised modern ground rent: £2,912 x 14.915 = £43,432.87

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of £43,435.46.

Reasonable costs

21 Mr Laing, on behalf of the applicant leaseholder, submitted that a reasonable figure for legal costs would be £250 (plus VAT if applicable). In relation to valuation costs, Mr Laing submitted that any valuation that had been carried out would probably have been carried out "in-house" by the respondent leaseholder; but that, in any event, the valuation would have involved a minimal amount of work for which a nominal sum only should be charged.

22 Mr Moore, on behalf of the respondent freeholder, submitted that the normal figure for legal costs was now £275 (plus VAT if applicable). In relation to valuation costs, Mr Moore submitted that the early correspondence between the respondent and the applicant's solicitor clearly indicated that a detailed valuation had been carried out by or on behalf of the respondent; that a reasonable fee was therefore recoverable from the applicant leaseholder under section 9(4) of the 1967 Act; and that a reasonable fee would be £275 (plus VAT if applicable).

Determination of the Tribunal

The price payable for the freehold interest in the subject property

23 The Tribunal gave full consideration to the arguments and evidence of the parties in relation to the issues in dispute.

24 The Tribunal holds that the standard basis of valuation adopted by Mr Laing and Mr Moore properly reflects the principles of the 1967 Act. Although the capitalised value of the existing ground rent is minimal in the context of the total price payable, the Tribunal determines that it should be shown in the valuation.

25 In determining the freehold entirety value of the subject property at the relevant date, the Tribunal is of the view that the best evidence is provided by the agreed sale prices of properties similar to the subject property and in the immediate vicinity of the subject property. On the other hand, the Tribunal accepts that the current state of the property market creates some difficulties; and the evidence adduced by Mr Laing and Mr Moore is far from being unequivocal. However, the Tribunal is not persuaded by the submission of Mr Moore that the location of the subject property is a student letting area, in which there is likely to be a substantial difference in price between three-bedroomed properties and two-bedroomed properties. First, the fact that there are a significant number of "to let" boards to be seen in late November undermines the suggestion that the location is a student letting area. Secondly, the Tribunal is of the opinion that, in

the non-student market, a property with only two bedrooms but with a first floor bathroom may command a rent (and sell at a price) not significantly lower than that for a property with three bedrooms but with a ground floor bathroom in an extension beyond the kitchen. Thirdly, the available evidence of sales prices does not support the conclusion of Mr Moore. As he admitted in cross-examination, Mr Moore had been unable to find any sales prices or asking prices in excess of £130,000. Thus, although the evidence is not unequivocal, it suggests a freehold entirety value for the subject property at the relevant date closer to the figure adopted by Mr Laing. Using its general knowledge and experience (but no special knowledge) the Tribunal finds that the freehold entirety value of the subject property at the relevant date was £125,000.

26 In relation to the percentage figure to be applied to the entirety value to calculate the site value of the subject property on the standing house basis, the Tribunal accepts the force of Mr Moore's argument based on the relative increases in property values and building costs; and it would accept that figures below 30 per cent may no longer be appropriate. However, the Tribunal also accepts Mr Laing's argument that, where, as in the present case, the property has a particularly narrow frontage, the figure of 30 per cent is appropriate.

27 In relation to the percentage yield rates to be applied in capitalising the existing ground rent and in calculating and capitalising the modern ground rent, the Tribunal accepts that, where the unexpired term is short (a fortiori where it is as short as six months), it is standard practice to apply a lower figure than the standard 7 per cent. The Tribunal therefore finds that in the present case the appropriate yield rate to be applied at all stages of the valuation calculation is 6.5 per cent.

28 Applying those figures (and the agreed figures referred to in paragraph 9 above), the Tribunal calculates the price payable as follows:

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

Ground rent payable: £5.50 per year
Years Purchase: 0.5 years @ 6.5%: 0.47
Capitalised ground rent: £5.50 x 0.47 = £2.59

(ii) *Modern ground rent*

Standing house value of subject property: £125,000
Percentage attributable to site: 30%: £37,500
Annual equivalent @ 6.5% = £2,437.50

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,437.50
Years Purchase at 6.5% in perpetuity deferred 0.5 years: 14.915135
Capitalised modern ground rent: £2,437.50 x 14.915135 = £36,355.64

The addition of the capitalised existing ground rent and the capitalised modern ground rent produced a figure of (say) £36,360.

29 Accordingly, the Tribunal determines the price payable under section 9(1) of the 1967 Act for the freehold interest in the subject property at £36,360.

Reasonable costs

30 The Tribunal determines that, in accordance with the recent practice of Leasehold Valuation Tribunals in the West Midlands region, the respondent freeholder's legal costs recoverable from the applicant leaseholder under section 9(4) of the 1967 Act should not exceed £275 (plus VAT if applicable).

31 The Tribunal is satisfied that a valuation was carried out by or on behalf of the respondent and that the reasonable costs of that valuation are recoverable from the applicant leaseholder. The Tribunal determines that those costs should not exceed £250 (plus VAT if applicable).

Summary

32 The Tribunal determines the price payable by the applicant leaseholder for the freehold interest in the subject property at £36,360. The Tribunal further determines that the respondent freeholder's legal costs recoverable from the applicant leaseholder should not exceed £275 (plus VAT if applicable); and that the respondent freeholder's valuation costs recoverable from the applicant leaseholder should not exceed £250 (plus VAT if applicable).

Nigel Gravells

NIGEL P GRAVELLS
CHAIRMAN

07 DEC 2004