

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT
PANEL

Case Number: CAM/300MC/OAF/2006/0002

Leasehold Reform Act 1967 ("the Act")

Parties:	Andrew Kirkwood	Applicant
	Terrace Investment Limited	Respondent

Hearing Date: 22nd June 2006.

In Attendance:

For the Applicant:	
Mr A Kirkwood	
For the Respondent:	
Mr Reifer (Senior)	
Mr Reifer (Junior)	

Tribunal members:

Mrs H Bowers MRICS
Mr J J Sims LLM
Mr R Petty FRICS

Decision Date: 14th July 2006

Decision: Premium to be paid for the enfranchisement £1,100.

1. Introduction

- 1.1 This matter relates to 20 Hill Brow, Whitley Wood, Reading (the subject property) and an application under the Leasehold Reform Act 1967 ("the Act"). An application dated 16th January 2006 was made to the Tribunal for the determination of the premium to be paid for the purchase of the freehold interest in the subject property and in respect of the terms to be included in the relevant transfer.

2. The Law

- 2.1 Section 1 of the Act provides tenants of leasehold houses the right to enfranchise, if the tenancy is a long tenancy and at a low rent. Section 9 sets out the provisions to be considered for the calculation of the premium to be paid.

3. Inspection

- 3.1 Prior to the hearing the Tribunal had the opportunity to carry out an inspection of the interior and exterior of the subject property. There was also an opportunity to make an external inspection of one of the estate.
- 3.2 The subject house is an end terrace house dating from approximately the 1960's. The house is three storey and the accommodation comprises a kitchen and dining area, a cloakroom and access to the garage on the ground floor, two rooms used as bedrooms and a bathroom on the first floor and two further bedrooms and a small drying room on the second floor. The property has gas fired central heating.
- 3.3 There is a small garden to the front and to the rear of the property. There is an integral garage and off street parking for one car. The house is situated on a small estate of similar three storey town houses and flats. There are some blocks of garages, but these only serve the flats.

4. The Lease

- 4.1 A copy of the lease dated 29th September 1964 was made available to the Tribunal. The lease is for a term that expires on 25th March 2063 and with an annual rent of £25. The clauses in the lease are in the form that is normally expected in a lease of this nature.

5. Hearing

- 5.1 As an initial issue, Mr Reifer (Senior) raised the question whether the subject property should fall within the provisions of the Leasehold Reform Act 1967, or whether the provisions of the Leasehold and Urban Reform Act 1993 should apply. The Tribunal stated that as the subject property is a house and fell within the definition provided in Section 2 of the Act, they were fully satisfied that the Leasehold Reform Act 1967 applied. It was additionally noted that both the initial notice and the Respondent's counter notice had been served under the provisions of the Leasehold Reform Act 1967.

5.2 Valuation.

Mr Kirkwood produced the valuation report provided by Mr Christopher Moore FRICS of Haslams. The report confirmed the details of the accommodation and the situation of the property. Mr Moore had researched and found that the rateable value of the subject property as at 31st March 1990 was £347 and accordingly the valuation for enfranchisement purposes would be under Section 9(1) of the Act. The report did not provide any supporting evidence in respect of capital values, yields or the site value percentage that Mr Moore had adopted. Mr Moore's valuation is shown in Appendix 1 and the premium he has calculated is £1,050.

- 5.3 Messrs Reifer stated that they did not have a valuation of the subject property, although Mr Symon Smith had been acting on their behalf in carrying out negotiations with Mr Kirkwood. They had initially assumed that there would have been some element of marriage value, but appreciated that the property had to be valued under the provisions of the 1967 Act. The Respondents

requested the Tribunal in acting as an expert tribunal, to put the correct value on the property.

5.4 Terms of the Transfer.

Initially there were six inclusions in the third schedule of TP1 to which Mr Kirkwood had objected and these will be dealt with in order.

i) “as a private residence of one family only” in Paragraph 1 of the Third Schedule.

Mr Kirkwood argued that this phrase would be inappropriate as the modern letting market includes many sharers and that the proposed wording is far more restrictive than is present in the transfer for 18 Hill Brow.

Mr Reifer suggested that the current definition of family was far wider than in the past and therefore the clause was quite flexible. The main concern is that properties on the estate would be used as Houses in Multiple Occupation and as such the condition of the property and the area could decline and the estate would become far more difficult to manage.

ii) “No writing drawing signboard plate of any kind shall be put on or in any window on the exterior of the property” in Paragraph 3 of the Third Schedule.

Mr Kirkwood considered that this was unreasonable and would prevent flags and decorations from being displayed on special occasions.

Mr Reifer explained that whilst they would not object to temporary items such as flags and decorations, it was the general principle to allow for good estate management.

iii) “... no clothes or other article shall be hung or exposed in such a manner as to be visible from the outside the property” in Paragraph 3 of the Third Schedule.

Mr Kirkwood felt this clause was unreasonable. Mr Reifer stated that the clause was necessary for good estate management.

iv) “No flower box or flower pot or other like object shall be placed outside the property” in Paragraph 3 of the Third Schedule. Mr Reifer conceded this point and this clause will be removed from the transfer.

v) “no mat shall be shaken out of the window” in Paragraph 3 of the Third Schedule. Mr Reifer conceded this point and this clause will be removed from the transfer.

vi) “Not to permit any vehicle to remain parked or become an obstruction upon any part of the Reserved Property intended for the use as exit or entrance to any garage.” in paragraph 5 of the Third Schedule. Mr Kirkwood accepted that this clause related to land retained by the Respondent and as such it was reasonable for this clause to remain in the Transfer.

5.5 Fees

Mr Kirkwood feels that the legal costs could spiral upwards. A lot of the legal costs incurred appear to relate to giving specific advice to the client. In Mr Kirkwood’s opinion the reasonable legal fees would be £750 plus VAT for all issues relating to this matter including the conveyancing. Valuation fees of £250 plus VAT would appear to be reasonable.

Mr Reifer explained that the legal costs were high due to the Respondent’s solicitors having had to correspond with Mr Kirkwood personally, rather than dealing directly with another solicitor. The hourly rate of £125 is very reasonable in comparison to many London firms that charge £250 per hour. Symon Smith’s fees of £250 plus VAT do not relate to a valuation, but relate to the taking of instructions and for dealing with enquires.

6. **Determination**

6.1 Valuation

We are satisfied that the investigations carried out by Mr Moore showed that the criteria for a valuation under Section 9(1) had been met and the property was to be valued in accordance with the assumptions of Section 9(1).

6.2 However, we were disappointed not to have any comparable evidence in order to test the assumptions that Mr Moore had made in carrying out his valuation. However, given the nature of the house, the very limited site, the character of the surrounding area and our knowledge of the market in Reading we are quite satisfied that all the elements in the valuation suggested by Mr Moore were entirely reasonable. We did find that there was a mathematical error in the calculation and this has been amended in the Tribunal’s valuation. The Tribunal have determined that a price of £1,100 is the correct premium to be

paid for the subject property under the provisions of the 1967 Act. The Tribunal's valuation is attached in Appendix 1.

6.3 Terms of the Transfer

i) "as a private residence of one family only" in Paragraph 1 of the Third Schedule.

We have determined that the appropriate phrase to be used in this clause is "as a single Private Residence" The word "single" needs to be inserted before "a private residence" and the words "in the occupation of one family only" should be deleted. The revised wording should provide the correct balance between the parties and allows the house to be used by sharers but prevents the house being used as a HMO and therefore assists with the management of the estate.

ii) "No writing drawing signboard plate of any kind shall be put on or in any window on the exterior of the property" in Paragraph 3 of the Third Schedule.

The word "permanent" is to be inserted after the word "No". We considered that this would allow the intentions of both parties to be recognized.

iii) "... no clothes or other article shall be hung or exposed in such a manner as to be visible from the outside the property" in Paragraph 3 of the Third Schedule.

iv) The Tribunal have determined that the following amendment would be entirely reasonable and still accord with good estate management. After the words "outside of the Property transferred" the following words should be inserted "other than clothes hanging on a ground level washing line located in the rear garden".

6.4 Fees

In relation to Symon Smith's fees, it was clearly explained that these were not valuation costs, but administrative charges. We have made an allowance in the legal fees for any work done in checking the leaseholder's right to enfranchise, any such work undertaken by Mr Smith would have been a duplication. We can see no area in Section 9(4) of the Act to place these fees and as such we determine that these fees should not be recovered from the Applicant.

Regarding the legal costs, we were provided with a schedule showing the costs that had been incurred, but it was difficult to identify the actual work that had been undertaken. Clause 9 (4) sets out the costs that can be recovered by the landlord in respect of an enfranchisement. It is the opinion of the Tribunal that this matter should not have taken any more than six hours and this would include the necessary investigations, the conveyance the deducing, evidencing and verifying of the title and making and furnishing any abstracts and copies that are required. Given the charging rate of £125 per hour, we determine a total legal cost of £750 plus VAT.



Chairman

Helen C Bowers

14/7/06.

Date

Appendix 1

Valuation of 20 Hill Brow, Reading, Berkshire.

Valuation Date: 13th May 2004

Existing Ground Rent	£25	
YP 58.83 years @ 8%	<u>12.365</u>	£309

Reversion to Modern Ground Rent
Full Freehold Value £180,000

Site Value @ 40% £72,000

Decapitalized @8% £5,760

YP 50 yrs after 58.83 yrs @ 8%	<u>0.13</u>	£749
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Reversion to unimproved value £175,000

PV of £1 after 108.83 years @ 8%	<u>0.00023</u>	£40
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Total Premium	£1,098
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Say £1,100