LVT 9

Our Ref:

MIDLAND RENT ASSESSMENT PANEL

Leasehold Reform Act 1967 **Housing Act 1980**

DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER S21(1)(a) & 21(1)(ba) OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mrs Lynda Brown

Respondent: Sidewalk Properties Limited

Re: 118 Rowood Drive, Solihull, B92 9NN

Date of Tenants Notice: Taken as 6th January 2004

RV as at 1.4.73: Less than £500

Application dated:

Heard at: The Tribunal Offices in Birmingham

On: 26th August 2004

Appearances:

For the Tenant: Mr Richard Bakewell FRICS of Acres, Surveyors

For the Landlord: Mr Nick Plotnek LL B of Nick Plotnek Associates, Surveyors

Members of the Leasehold Valuation Tribunal:

N R Thompson (Chairman)
Mrs C L Smith
W J Martin

Date of Tribunals decision:

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 21 (1) (a) AND 21 (1) (ba) OF THE LEASEHOLD REFORM ACT 1967

BROWN v SIDEWALK PROPERTIES LIMITED

118 ROWOOD DRIVE, SOLIHULL, WEST MIDLANDS, B92 9NN

BIR/OOCT/OAF/2004/0109 & BIR/OOCT/OC6/2004/0033

Background

This is a determination under Section 9 of the Leasehold Reform Act 1967 [as amended] (referred to hereafter as "the Act") as to the price to be paid for the freehold interest in respect of 118 Rowood Drive, Solihull, West Midlands B92 9NN.

The lessee, Mrs Lynda Brown holds the property by way of a lease dated 17th June 1968 for a term of 99 years from 25th March 1966 at a yearly ground rent of £40 in respect of the house; a lease of the same date and for the same term but at a yearly ground rent of £3 in respect of a parking space (both elements comprising Title Number WK89719 at HM Land Registry); and an underlease including both the house and parking space dated 16th June 1994 for the full term (less three days) at a variable ground rent (comprising Title Number WM595534 at H M Land Registry). A copy of the underlease was not made available to the Tribunal, nor were any representations made concerning the acquisition of the headleaseholder's interest. A copy of the underlease document was however forwarded to the Tribunal after the hearing.

The lessee's Notice of Claim to acquire the freehold interest was dated 21st January 2003, but it was accepted by the parties and the Tribunal that the date of service was 6th January 2004. At that time, the unexpired term of the lease(s) was approximately 61 years. The Tribunal accepted that the qualifying conditions for entitlement to enfranchise under the Act had been fulfilled.

Property

The Tribunal carried out an inspection on 26th August 2004 in the presence of Ms Fei Ho – a friend of the lessee, and the freeholder's agent, Mr Nick Plotnek.

The property comprises a two storey end terraced house of brick and tile construction with a part timber boarded front elevation, and a frontage of approximately 5.939m (19′ 6″). It forms part of a large development of mixed types and styles of residential properties constructed in the mid 1960s, some three miles north east of the centre of Solihull.

The centrally heated and double glazed accommodation comprises a small hall (with staircase); two living rooms, conservatory and a kitchen (with pantry off), on the ground floor, with three bedrooms and a combined bathroom/W.C. on the first floor. Externally the property has modest sized front and rear gardens and pedestrian access only from the front. The property occupies a site overlooking a grassed amenity area to the front, and there is a communal parking area some twenty metres away. The parking space is located within a separate area which is visually within approximately six metres (20′) of the house, but is accessed via Milholme Green – some 40 metres away.

Hearing
At the hearing the lessee was represented by Mr Richard Bakewell FRICS of Acres, Surveyors, and the freeholder was represented by Mr Nick Plotnek LL B of Nick Plotnek Associates, Surveyors.

The Hearing commenced with Mr. Bakewell introducing his case on behalf of the lessee by submitting details of the property and the following revised valuation:-

Term

Total Annual Ground Rent :	£43.00	
YP 61 years @ 7%	14.0553	
		£604.37

Reversion

Capital Value (inc. parking space):	£140,000		
Site Apportionment at 33.3% :	£ 46,666		
Modern Ground Rent @ 7%:	£ 3,266-66		
YP in perp. deferred 61 years @ 7% :	0.2304		
		£752.63	
			£1,357

Mr Bakewell indicated that apart from valuing the ground rent of both the house and the parking space (£43 pa), as opposed to the approach of Mr Plotnek in valuing the ground rent in respect of the house alone (£40), their two valuations were virtually the same - the difference of £45 between their respective figures being attributable solely to this element. Consequently, all other aspects of the valuation were agreed between the parties; the only matters in dispute now being the extent of the property to be enfranchised and the freeholder's legal and valuation costs properly recoverable from the lessee.

In addressing the first of those two points, Mr Bakewell submitted that the car parking space was an obvious and integral part of the demise to his client, given that it was a designated space within the car park area, notwithstanding the fact that it was physically removed from the house. In support of his submission, Mr Bakewell cited:

- *Wolf v Crutchley and another [Court of Appeal (1971) 1 All ER 520]* dealing with the case of one house being connected to an adjoining house by a doorway, and whether the adjoining house could therefore be regarded as "other premises" for enfranchisement purposes under the Act. In particular, the case hinged largely on the interpretation of Section 3 (6) of the Act and the decision that " the word premises is not *(to be)*used in a wide sense so as to include another house but in a narrow sense to denote a garage or outbuilding or suchlike, ancillary to the house".

- *15 Millhaven Avenue, Stirchley, Birmingham B30 2QH [West Midland Rent Assessment Panel WM/EH/1156]* dealing with the question of "whether or not a garage let at the same time on similar terms could be considered as "with" the house and therefore enfranchiseable" in the context of Sections 2.(3) and 3.(6) of the Act. In that instance, the Tribunal found that the garage should be included, firstly on the basis that it was clearly the intention of the parties at the time the lease was granted and secondly, in accordance with Wolf v Crutchley (ante).

Consequently, Mr Bakewell maintained that the parking space should be included in the freehold transfer and the valuation should therefore reflect the ground rent receivable under the relevant lease of £3 per annum.

On presenting his case on behalf of the freeholders, Mr Plotnek submitted the following valuation:

Term

Ground Rent:	£40 pa	
YP for 61years @7%	14.0553	
		£ 562
Reversion		
Value of property freehold with VP:	£140,000	
Site Value at 1/3rd	£ 46,667	
PV £1 in 61 years at 7%	0.01613	
		£ 753
		£1,315

In light of this, Mr Plotnek confirmed the view expressed earlier by Mr Bakewell that the only areas of dispute between the parties were the extent of the property to be included for enfranchisement purposes and the amount of the freeholder's recoverable costs.

In relation to the extent of the property to be enfranchised, Mr Plotnek emphasised that the land in question was solely a parking space so far as the lessee was concerned. There was an absolute prohibition in the lease against any building being erected on the demised premises, and the user clause clearly stipulated that it was to be used for parking purposes only. It was only a potential garage site to the landlord, who was able to determine the lease at any time during the term, upon giving three months notice in writing to expire on a quarter day if the lessor wanted to build a garage on the demised land. Mr Plotnek also submitted that the lessee's claim had been made in respect of the house and premises only, and no mention had been made of the parking space until a recent telephone conversation with Mr Bakewell. It was also pointed out that the parking space lease had not been copied to the Tribunal with the current application.

In support of his contention, Mr Plotnek cited Page 30 of the Fourth Edition of "Hague on Leasehold Reform" (referred to hereafter as "Hague") in confirming that the right to acquire the freehold extended to the relevant "house and premises", the "premises" being further defined as any "garage, outhouse garden yard or appurtenances". Hague goes on to state that, "garage" does not extend to a parking space (although no authority is quoted for that statement), but it may be part of a "yard" or "appurtenance".

Mr Plotnek therefore contended that the parking area fell outside the definition of "premises" and should therefore be excluded from the property to be enfranchised. As a consequence, the valuation should reflect a ground rent of £40 per annum only.

Costs:

Legal Costs:

On the subject of the freeholder's recoverable legal costs, Mr. Bakewell suggested that a reasonable fee would be £250 (plus VAT if applicable) and disbursements. The freehold title was registered and as further authority, he referred to three cases determined on such a basis by the Tribunal between May 2003 and July 2004.

Mr Plotnek referred to two recent cases before the Tribunal, namely *Varley v Calthorpe Estates (BIR2004/0072) and Hill v Calthorpe Estates (2003/0046)*, both of which had been determined on the basis of recoverable legal fees of £300 plus VAT. These were amounts he considered to be appropriate in the present case.

Valuation Fee:

In relation to the landlords' valuation fees, Mr Bakewell suggested that as there had not been any internal inspection of the property by Mr Plotnek until the day of the hearing, the figure of £250 was excessive, and should be reduced to £150 (plus VAT if appropriate).

Mr Plotnek confirmed that he had not carried out an internal inspection of the property until earlier in the day, but emphasised that because of his involvement over a period of time with various other enfranchisement claims at the development for his clients, he was very familiar with the area and also the particular house type. He also stated that he had carried out an external inspection prior to the applications to the Tribunal.

Decisions

1 – Extent of the property to be enfranchised & the price to be paid by the lessee for the freehold

The one significant area of dispute between the parties was the extent of the property to be enfranchised; Mr Bakewell claiming the parking space should be included, and Mr Plotnek contending that it should be excluded.

Section 2 (3) of the Act defines, inter alia, the extent of the (house and) premises which can be enfranchised. The argument advanced by Mr Plotnek that, by virtue of this section, the parking space could not be regarded as part of the house and premises is too narrow an interpretation of the position, given the later provisions in the Act under Section 3 (6), which state:

"Where at any time there are separate tenancies, with the same landlord and the same tenant, of two or more parts of a house, or of ***a house*** *or part of it* ***and land*** [Tribunal emphasis] *or other premises occupied therewith, then in relation to the property comprised in such of those tenancies as are long tenancies this part of this Act shall apply as it would if at that time there were a single tenancy of that property, and the tenancy were a long tenancy…. "*

Expressed in terms more specific to the case under consideration, where there are two concurrent long tenancies, with the same landlord and the same tenant of the house and land occupied with it, then for the purposes of the Act, there is deemed to be a single long tenancy of all the property comprised in all the long tenancies. (Notwithstanding the lessor's three-month break clause, the parking space lease still falls within the definition of a long lease by virtue of section 3 (1) of the Act.)

The position is reinforced by the fact that the house lease and the parking lease were granted: -

- on the same day
- for the same term
- from the same commencement date
- by the same parties, and
- are described as the leases for "Plot Number 708" and "Parking Space number 708" respectively.

In addition, the Tribunal noted that:

a) both leases are collectively comprised in the same leasehold Title Number WK89719 in the Property Register of H M Land Registry and,

b) according to HM Land Registry, the Underlease dated 16th June 1994 is (a) held by the claimant, Mrs Brown under leasehold Title Number 595534, and (b) is described as: -

"(5th July, 1994). The leasehold land shown edged red on the plan of the above title (No. 595534) filed at the registry and being 118 Rowood Drive, Damson Wood (B92 9NN) ***and parking space."*** [Tribunal emphasis]

While these matters may not be conclusive in terms of the requirements of the Act, they support the proposition that in reality, the parking space is used in conjunction with the house and that was both the intention and expectation of the original parties to the two leases granted on 17th June 1968.

In considering the issues raised by Mr Plotnek that the parking space lease was not included in the Notice of Claim, it is clear that no specific or direct reference to it was made on the Schedule to the Notice. However, whether by design or otherwise, the particulars of the tenancy and (of somewhat less relevance) the particulars of when the tenancy was acquired, are both expressed by reference to the leasehold Title Numbers WM 89719 and WM 595534 which, as set out above, clearly include the parking space lease.

Accordingly, taking all of the above matters into consideration, the Tribunal is satisfied that the lessee is entitled to enfranchise both the house and the parking space.

In terms of the price to be paid by the lessee, certain consequences arise from this determination.

Firstly, the "Term" element of the valuation should include the capitalised value of the right to receive £40 per annum for 61years and £3 per annum for three months.

Secondly, the reversion of the house is 61 years after the relevant valuation date, but the 3 month break clause in the parking space lease means that while the lessee has a long lease not due to expire for another 61 years, the lessor could – at any time – serve notice to terminate that lease on a following Quarter Day. Consequently, the lessee has a lease of the parking space for a term certain of only 3 months, and the value of the reversion in that case must reflect that situation.

Thirdly, dealing separately with the value of the reversion in respect of the parking space necessitates deducting the value of that land on a notional freehold basis as a potential site for the construction of a garage i.e. the position the lessor would be in at the time of the reversion. Using their own knowledge and experience (but not any special knowledge) the members of the Tribunal determine the value of the site in those circumstances to be £1,500, being one third of the value which the Tribunal considers appropriate for a garage in this location.

Fourthly, (and not directly related to the issues above), the Tribunal considers that, in accordance with a number of previous cases dealt with by the Tribunal involving terraced houses with frontages of less than 6 metres (20'), the correct proportion of the entirety value to adopt for the value of the site (on the terms and assumptions contemplated by the Act) should be 30%.

Taking these four factors into account, the Tribunal values the freehold interest as follows:

Term:

Ground Rent [House]:		£40	
YP 61 years @ 7%		14.0553	
			£562
Ground Rent [Parking Space]:	£3		
YP 0.25 years @ 7%	say	£ 1	
			£563

Reversion:

House: Standing House Entirety Value:	£138,500		
Site Value @ 30%:	£41,550		
Section 15 Rent @7%:	£2,908		
YP in perp. @7% def 61 yrs:	0.2304		
			£670
Garage Space: Entirety Value:	£4,500		
Site Value @ 33.33%:	£1,500		
Section 15 Rent @7%:	£ 105		
YP in perp. @7% def 0.25years:	14.053		
			£1,476
			£2,709

The Tribunal therefore determines that the freehold transfer should include the separate parking space, and that the price to be paid for the freehold by the lessee should be £2,709.

2 - Costs

In relation to costs, the application for a determination falls to be considered under Section 21 (1) (ba) of the Leasehold Reform Act 1967, as the freeholder's reasonable costs payable under Section 9 (4) of that Act and Schedule 22 Part 1 (5) of the Housing Act 1980.

Legal:

In cases of this type, the work is normally of a very straightforward nature which many solicitors are prepared to undertake on a competitive basis. Particularly as in this instance there is more than one lease to deal with, a reasonable charge is considered to be £300 (plus VAT, if applicable) together with any Land Registry fee for Office Copies.

Valuation:

The claimant lessee is only responsible for payment of the freeholder's valuation fee in respect of a valuation undertaken as a consequence of the service of a Notice of Claim. Furthermore, the Tribunal would normally only award a "full" valuation fee where the freeholder's surveyor had actually carried out an internal inspection of the property. A valuation based on just an external inspection would attract a somewhat lesser fee, to reflect the more limited time taken by the valuer, and the correspondingly limited nature and scope of the valuation.

In this instance, Mr Plotnek confirmed that he did not undertake an internal inspection of the property to produce his valuation. Consequently, a reasonable valuation fee is considered to be £150 + VAT (if appropriate).

Nigel R Thompson
Chairman

Date: 19 OCT 2004