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DECISION OF LEASEHOLD VALUATION TRIBUNAL  
LEASEHOLD REFORM ACT 1967

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Applicant: BRIAN ANTHONY ATKIN and ROSALYN ATKIN  
Respondent : CYREC PROPERTIES LIMITED  
Property : 31 Jarvis Crescent, Oldbury, West Midlands B69 4QH  
Valuation Date : 17th February 2006  
Heard at : Birmingham Panel Offices  
On : 17th August 2006  
Appearances :  
  
For the Applicant : Mr A W Brunt FRICS  
For the Respondent : Mr A I Shepherd FRICS  
Members of the Tribunal : Mr D Jackson (Chairman)  
Mr S Berg FRICS  
Mr J Arain  
Date of decision :

1. BACKGROUND

This is a decision of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel on an application to determine the price payable for enfranchisement under section 21 of the Leasehold Reform Act 1967 ("the Act") in relation to 31 Jarvis Crescent, Oldbury, West Midlands B69 4QH ("the Property").

2. The property is held under the terms of an under-lease dated 7th February 1946 and made between Arthur Harris (1), Annie Jeffs and Alfred Jeffs (2), Lyon Clark (3) and Marjorie Dalzell and Lee Bridges (4) whereby the Property was demised for a term of 97 years less 3 days from 26th June 1938 at an annual rent of £4.50.

3. The Tribunal was advised by both parties that the intermediate leasehold interest had been acquired by the Respondent and merged with their freehold interest.
4. By Notice ("the Tenant's Notice") dated 17th February 2006 the Applicant gave "Notice of Tenant's Claim to Acquire the Freehold" of the Property.
5. By Notice dated 25th April 2006 the Applicant applied to the Tribunal for determination of the price payable under section 9 of the Act and for determination of the Landlord's Costs payable under section 9(4) of the Act.

6. INSPECTION

The Tribunal inspected the Property on the morning of the hearing. The Property is an extended semi-detached house in a quiet cul-de-sac located within an established residential area. The Property has the benefit of double-glazing and gas central heating. Due to the irregular nature of the plot the Property has a large rear garden but a restricted frontage of 7ft 9ins (2.34 metres). The frontage at the building line is 22ft 10ins (6.94 metres).

The accommodation comprises on the ground floor, a small entrance lobby, living room, rear hallway with bathroom (separate WC) and store under stairs. The rear living room has been extended to include a dining room and kitchen comprising a single storey extension with a flat roof.

There are 3 bedrooms located on the first floor.

Outside, due to an informal but longstanding arrangement, there is access to a detached garage with on site parking.

7. AGREED MATTERS

- 7.1 Valuation in accordance with section 9 (1) of the Act.
- 7.2 Valuation date – 17th February 2006.
- 7.3 Entirety Value - £130,000.
- 7.4 Straightforward term and reversion valuation. In the absence of any evidence of cleared site sales the Standing House Method was used to determine the section 15 ground rent.

8. ISSUES FOR DETERMINATION

- 8.1 Site apportionment (Applicant – 30%; Respondent – 33%)
- 8.2 Deferment Rate – (Applicant – 7%; Respondent – 6.5%)
- 8.3 Costs payable under section 9(4) of the Act.

9. APPLICANT'S SUBMISSIONS

The Tribunal had the advantage of reading a valuation date of 26th May 2006 prepared by Mr Brunt on behalf of the Applicant.

At the hearing Mr Brunt indicated that he had visited the Property again recently and had been surprised at the number of properties for sale in the area. He had spoken to local residents and estate agents who had drawn his attention to the presence of a nearby Bail Hostel in Clay Lane/Sycamore Road. Mrs Smith who is in the process of moving out of 18 Jarvis Crescent told Mr Brunt that she had worked at the Bail Hostel for a number of years. The Bail Hostel had been at Clay Lane for approximately 17 years. Typically its residents had committed offences of burglary and there had been a spate of thefts of bicycles. However recently, as a result of publicity both national and local, there had been considerable concern and speculation about the accommodation of paedophiles at the Hostel. Local agents spoken to by Mr Brunt indicated that young families with knowledge of the Hostel might be deterred from purchasing in the area.

- 10. Mr Brunt's evidence was that prospects for capital growth were less than elsewhere because of the nature of the district. Mr Brunt, when questioned by Mr Shepherd, accepted that this was a "nice little cul-de-sac" but felt that the presence of industry in the area and the nearby Bail Hostel meant that in his opinion he could see restricted capital growth.
- 11. In relation to site apportionment Mr Brunt adopted 33% as his starting point for a semi-detached property but felt that this was not appropriate for this shape of plot. Mr Brunt accepted that there was a good rear garden but argued that site apportionment should be limited because of the frontage. He accepted that the frontage was no narrower than others in the Crescent. However if the neighbours reinstated the fence between the properties at the front it would be extremely difficult to get motor vehicles onto the Property. Balanced against this was the Property's position at the head of a cul-de-sac. Accordingly Mr Brunt maintained a figure of 30% for site apportionment as set out in his report.

12. Mr Brunt argued that in this case the appropriate deferment rate should be 7%. He referred to an LVT decision in relation to Shady Lane where there was nearby industrial use where a deferment rate of 7% had been adopted. He accepted that there had been substantial body of LVT decisions in this area adopting 6.5% but in his professional opinion concerns about the district and the presence of a Bail Hostel meant that the appropriate deferment rate to reflect these increased risks and limited prospects of capital growth should be 7%.

13. RESPONDENT'S SUBMISSIONS

The Tribunal had the advantage of considering a report dated 15th June 2006 prepared by Mr Shepherd on behalf of the Respondent. In relation to site apportionment Mr Shepherd told the Tribunal that in reality semi-detached properties a figure of 33 – 34% would be appropriate depending on frontage. For properties with a side garage 34% was not as popular as 35%. In relation to the Property there was a detached side garage and a long standing agreement between neighbours to allow access. Mr Shepherd accepted that there had been "the occasional problems" and that although with a large frontage the Property should be valued using a figure of 34% he felt that using a sensible "allowance" the appropriate figure should be 33%

14. In relation to deferment rates Mr Shepherd criticised Mr Brunt's approach as involving an element of double counting. All the disadvantages of the Property had already been taken into account in dealing with capital values. He did not accept that there was anything wrong with the district which was an entirely typical established residential area in the West Midlands. He disagreed with Mr Brunt's proposition that growth rates were less in the district than in other areas. Investors would take a reasonably long-term view and would take the good with the bad. There was no reason in Mr Shepherd's opinion to depart from 6.5%.

15. Mr Brunt provided the Tribunal with details of a number of properties in Jarvis Road which had been sold during the period 2004 – 2006. Mr Shepherd therefore argued that as properties had been and were still being sold there was "no evidence to that effect" to support Mr Brunt's contention that demands for properties were being reduced because of the presence of the nearby Bail Hostel.

16. TRIBUNAL'S DETERMINATION – SITE APPORTIONMENT

The Tribunal had inspected the Property and noted the very narrow frontage and odd shape of the plot. The Tribunal had the opportunity of considering the under-lease. Unfortunately

no plan was attached and the clause in the under-lease referring to the square yardage comprised in the demise had not been completed. However the parties confirmed that the "spur" of land at the rear of 124 Tilford Road shown on the map at appendix 1 of Mr Shepherd's report was not included in the demise.

The Tribunal noted that the position of the property at the head of the cul-de-sac and the long standing albeit informal arrangement with neighbours over parking. There is a side detached garage and the only issue is a question of access to it which depended to some extent on the goodwill and co-operation of neighbours. The Tribunal agreed with Mr Shepherd that a sensible allowance should be made for this reason.

The advantage of the plot was that it had a good sized rear garden and a detached garage. The Tribunal felt that it might have adopted a figure of 35% had it not been for the restricted frontage. Accordingly the Tribunal made an appropriate reduction and determined a site apportionment at 33%.

17. TRIBUNAL'S DECISION – DEFERMENT RATE

The Tribunal had regard to the decision of the Lands Tribunal in *James Ashley Arbib v Earl Cadogen* (2005) LRA/23/2004 and other consolidated appeals. In particular the Tribunal had regard to the summary and general conclusions contained at paragraph 180 of the Lands Tribunal decision.

18. The Tribunal noted Mr Brunt's submissions in relation to the Bail Hostel and the character of the district. From its inspection and the maps provided the Tribunal noted that although there was a Bail Hostel in the vicinity it was not very close to the Property and had been in existence for 17 years. Although the Tribunal were grateful to Mr Brunt for the efforts he had taken to obtain the additional information the Tribunal felt that only limited weight could be attached to it. The evidence was hearsay evidence from the estate agents and residents. It was not supported by market evidence that demand in this area was reduced because of the Hostel. Indeed Mr Brunt's own evidence of sales during the period 2004 – 2006 suggested that properties were still being sold. Any reduction in demand would be as a result of cooling in the market rather than a direct result of the proximity of the Bail Hostel. Further the Tribunal did not accept that the prospects of capital growth were any lower than for other comparable established residential areas in the West Midlands. The Tribunal from its own

inspection did not see any evidence of nearby industrial use which would affect the market property in this area.

The Tribunal was mindful of the decision of the Lands Tribunal in *Arbib v Earl Cadogan* (see above) and in particular paragraph 185:

“Any differential would be the result of a difference in security of the investment, that is to say a greater comparative risk of obsolescence or greater volatility in values or reduced growth rates. Other purely locational differences would reflect themselves in capital values as opposed to deferment rates.”

The Tribunal's determination is that there is no evidence before it to support Mr Brunt's contention in relation to reduced growth rates and accordingly Mr Brunt's submissions in relation to the Bail Hostel and the nature of the area, insofar as those submissions are accepted by the Tribunal, would affect capital values only.

19. Accordingly the Tribunal adopted as a starting point risk-free investment best represented by index-linked gilts making allowance for general risks inherent in freehold residential management and illiquidity. In addition the Tribunal using its knowledge and experience made a further allowance to take into account the specific costs of management, risks of obsolescence, volatility in values and growth rates in the West Midlands property market. This allowance also takes into account the risks of destruction, the possible difficulty and expense in realising the investment at the end of the term.
20. The Tribunal determined that the appropriate deferment rate both for term and reversion should be 6.5%.

21. TRIBUNAL'S VALUATION

Term

Ground rent p.a	£4.50	
YP 29 yrs at 6.5%	12.907	
		<u>£58</u>

Reversion

Entirety Value	£130,000	
Site Apportionment @ 33%	£ 42,900	
Section 15 rent @ 6.5%	£ 2,789	
YP in perp def'd 29 yrs @ 6.5%	2.477	
		<u>£6,907</u>
Price (say)		<u>£6,966</u>

22. COSTS

The Tribunal was invited to exercise its jurisdiction under section 21 (ba) of the Act to determine the amount of the reasonable costs payable by the Applicant.

The parties had agreed a valuation fee of £300 plus VAT.

In relation to legal costs, Mr Shepherd indicated that his clients had London solicitors who would charge in the region of £400 – 450 plus VAT. Mr Brunt accepted that the Respondents had free choice as to the solicitors they instructed and were not necessarily bound to choose the cheapest. He accepted there was no reason why they should not use a London firm of solicitors but felt that reasonable costs should be limited to £350 plus VAT. Mr Brunt has informed the Tribunal that the freehold title is not registered.

23. The Tribunal using its own knowledge and experience determines that the Respondent's reasonable costs of or incidental to the conveyancing of the Property should be £400 plus VAT.

24. DETERMINATION

- 24.1 The price payable by the Applicant under section 9(1) of the Act is £6,966.
- 24.2 The reasonable costs payable by the Applicant under section 9(4) of the Act are £400 plus VAT in relation to legal fees and £300 plus VAT in relation to valuation fees.
- 24.3 In reaching its determination the Tribunal had regard to the submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

Signed ..... 

MR D JACKSON – Chairman

22 SEP 2006

**LEASEHOLD VALUATION TRIBUNAL**

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**PERMISSION OF LEASEHOLD VALUATION TRIBUNAL  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

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Applicant : Brian Anthony Atkin and Rosalyn Atkin  
Respondent : Cyrec Properties Limited  
Property : 31 Jarvis Crescent, Oldbury, West Midlands B69 4QH  
Respondents' Application : 4th October 2006  
Date of Decision :

1. **BACKGROUND**

This is a decision of a Leasehold Valuation Tribunal of the Midland Rent Assessment Panel ("the Tribunal") on an application by the Respondent for permission to appeal against the decision of the Tribunal dated 22nd September 2006 ("the Tribunal's Decision") to the Lands Tribunal.

2. On 17th August 2006 a hearing was held at Birmingham Panel Offices to determine the price payable for enfranchisement under Section 21 of the Leasehold Reform Act 1967 ("the 1967 Act") in relation to the Property.
3. The Tribunal's Decision was that the price payable by the Applicant under section 9 (1) of the 1967 Act is £6,966.
4. In determining the price payable the Tribunal adopted a deferment rate of 6.5% for both term and reversion (see paragraphs 17 – 20 of the Tribunal's Decision).
5. At the hearing Mr Brunt on behalf of the Applicant spoke to a deferment rate of 7%. Mr Shepherd for the Respondent expressed the view there was no reason to depart from a figure of 6.5%.



6. At the hearing both parties addressed the Tribunal in relation to the decision of the Lands Tribunal in James Ashley Arbib v Earl Cadogan (2005) LRA23/2004 (the "Arbib case").
7. The Applicant's submissions in relation to deferment rate are set out in Mr Brunt's valuation of 26th May 2006 and summarised at paragraph 12 of the Tribunal's Decision.
8. The Respondent's submissions in relation to the deferment rate are set out in a report dated 15th June 2006 prepared by Mr Shepherd and summarised at paragraph 14 of the Tribunal's Decision.

9. RESPONDENT'S APPLICATION

The Respondent's application is set out in a letter dated 4th October 2006 from Messrs Bigwood Chartered Surveyors to the Panel Office as follows :-

"The basis of the Appeal relates to the recent Cadogan/Sportelli case, where the deferment rate has been set at 4.75% as against 6.5% used by the Tribunal in coming to their decision."

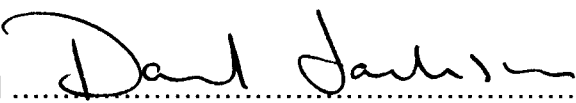
10. A copy of the application has been forwarded to the Applicant's representative Mr Brunt. Mr Brunt has not provided the Tribunal with any observations on the Respondent's application despite being invited to do so. Neither party has requested an oral hearing.
11. SPORTELLI  
The Respondents seek permission to appeal to the Lands Tribunal on the basis of the Lands Tribunal's decision in Earl Cadogan and Cadogan Estates Limited v Michele Francesco Sportelli (1) Lara-Lynn Victoria Lamont Sportelli (2) LRA/50/2005 ("Sportelli").
12. The Decision in Sportelli is dated 15th September 2006 and not therefore referred to in argument by either of the parties at the hearing on 17th August 2006. At the hearing the Respondent did not argue for a figure other than 6.5%. The Applicant argued for 7%. Accordingly the Tribunal did not have the benefit either of the decision in Sportelli or argument for a lower deferment rate from either of the parties at the hearing. The Tribunal's Decision is dated 22nd September 2006 being the date, in accordance with usual practise, that it was despatched from the Panel Office.

13. DECISION

In light of the clear guidance of the Lands Tribunal set out in paragraphs 113 – 123 “General effect of conclusions” in Sportelli, the Tribunal is of the opinion that the Decision dated 27th September 2006 could reasonably be shown to have wrongly interpreted the Arbib case.

14. PERMISSION

Accordingly pursuant to Section 175 of the Commonhold and Leasehold Reform Act 2002 and Regulation 20 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 the Tribunal grants permission for the Respondent to appeal to the Lands Tribunal limited to the question of the effect of Sportelli on the deferment rate adopted by the Tribunal.

Signed ..... 

MR D JACKSON – Chairman