

LEASEHOLD VALUATION TRIBUNAL
OF THE
MIDLAND RENT ASSESSMENT PANEL

BIR/00CU/OAF/2006/0179

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

ON APPLICATIONS UNDER SECTION 21 OF THE LEASEHOLD REFORM ACT 1967

Applicant: Mr A R Heath (leaseholder)

Respondent: Mr B Leach (freeholder)

Subject property: 209 Watling Street
Brownhills
Walsall
WS8 7JU

Date of tenant's notice: 4 August 2006

Applications to the LVT: 11 November 2006

Hearing: 16 January 2007

Appearances: .

For the applicant: Mr J Moore

For the respondent: Mr F M Kenchington FRICS

Members of the LVT: Professor N P Gravells MA
Mr S Berg FRICS
Mrs C L Smith

Date of determination:

30 JAN 2007

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 A R Heath, leaseholder of the house and premises at 209 Watling Street, Brownhills, Walsall, WS8 7JU ("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 recoverable under section 9(4).
- 2 The applicant leaseholder held the subject property under a lease dated 1 December 1907 for a term of 99 years from 29 September 1907 at a ground rent of £1.58 per year. At the date of the application the lease had expired; but at the date of the Notice of Tenant's Claim to Acquire the Freehold ("the relevant date") the unexpired term was approximately two months.
- 3 The applicant served on Mr B Leach, the respondent freeholder, a tenant's notice dated 4 August 2006, claiming to acquire the freehold interest in the subject property under the terms of the 1967 Act; and he subsequently made the present applications.

Subject property

- 4 The subject property is a semi-detached house of brick and tile construction, located on Watling Street in Brownhills (which forms part of the A5 trunk road). The accommodation comprises, on the ground floor, hallway, reception room (apparently created from the original two original rooms) and kitchen; and, on the first floor, two bedrooms and combined bathroom/wc. Space heating is provided by gas-fired central heating and the windows to the front of the property are double-glazed. There is an outside store attached to the rear of the property. There is car standing to the front of the property and gardens to the rear of the property (access to which is along a shared passageway).

Inspection and hearing

- 5 The members of the Tribunal inspected the subject property on 16 January 2007 in the presence of the applicant and Mr J Moore, representing the applicant.
- 6 The subsequent hearing was attended by Mr J Moore, representing the applicant, and Mr F M Kenchington FRICS, representing the respondent.

Representations of the parties

- 7 Written representations were submitted by Mr Moore, on behalf of the applicant, and by Mr Kenchington, on behalf of the respondent.

Price payable for the freehold interest in the subject property

- 8 Both Mr Moore and Mr Kenchington 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). However, since the unexpired term of the existing lease at the relevant date was less than two months, neither party included the value of ground rent for the remainder of the term in their calculations.

- 9 In addition to the facts outlined above, the following matters were specifically agreed by the parties for the purposes of the valuation calculation:
- The relevant date for the purposes of the valuation is 4 August 2006.
 - The unexpired term of the lease at the relevant date was two months (although Mr Kenchington used the period of 56 days in his valuation calculation).
 - The yield and/or deferment rate to be applied at all stages of the valuation calculation is 4.75.
- 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 two factors in that formula that are not agreed, namely:
- The freehold entirety value of the subject property at the relevant date.
 - The percentage figure to be applied to the freehold entirety value of the subject property to determine the site value in accordance with the "standing house method".

Evidence and submissions on behalf of the applicant leaseholder

- 11 As to the freehold entirety value, Mr Moore referred to three properties in Brownhills: 121A Watling Street, which was sold in October 2006 for £140,000, 93 Watling Street, on offer at a price in the region of £124,950, and 190 Lichfield Road, on offer at £127,500. However, he based his submissions principally on the first of those properties. He argued that the subject property should be valued at a lower price than that property to reflect a number of negative factors. In particular, the subject property is located very close to the roundabout at the junction of the A5 and the A452, both roads are very busy and there is significant noise from vehicles approaching, negotiating and exiting the roundabout; there are two public houses in the immediate vicinity of the subject property; there is a public sector housing estate to the rear of the subject property, which gives rise to incidents of antisocial behaviour; and the subject property has only two bedrooms (whereas 121A Watling Street has three bedrooms). Mr Moore submitted that these factors should be reflected in a discount from the price achieved for 121A Watling Street and that the freehold entirety value of the subject property at the relevant date was £130,000.
- 12 As to the percentage figure to be applied to the freehold entirety value to determine the site value, Mr Moore submitted that, although the figure of 33.33 per cent would normally be applied to properties of the type exemplified by the subject property, that figure should be discounted in relation to the subject property to reflect its location and the difficulties of development. In particular, Mr Moore argued that the difference in ground levels between the subject property and the road to the rear would make it difficult to construct access to a garage. For those reasons Mr Moore argued that the percentage figure to be applied to the freehold entirety value of the subject property to determine the site value in accordance with the "standing house method" should be 31 per cent.
- 13 Applying those figures (and the agreed matters referred to in paragraph 9 above), Mr Moore submitted the following valuation:

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

To be disregarded

(ii) Modern ground rent

Standing house value of subject property: £130,000

Percentage attributable to site: 31%: £40,300

Modern ground rent @ 4.75% = £1,914.25

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £1,914.25

Years Purchase at 4.75% in perpetuity deferred 2 months: 20.89

Capitalised modern ground rent: £1,914.25 x 20.89 = (say) £40,000

Evidence and submissions on behalf of the respondent freeholder

14 As to the freehold entirety value, Mr Kenchington referred to the same three properties to which Mr Moore had referred; and he also based his submissions principally on the sale price achieved for 121A Watling Street. However, he questioned the significance of the supposed differences between that property and the subject property. He argued that many people had no objection to living close to a main road, especially with the availability of double-glazing to counteract traffic noise. He also pointed out that the site area of the subject property is larger than that of 121A Watling Street; that the subject property has an Edwardian character; and that those factors render the subject property ripe for development, including the creation of a bedroom and en suite bathroom in the loft space. He also noted that at least one of the neighbouring properties has the benefit of a garage with access from the road to the rear of the property. On that basis Mr Kenchington submitted that any negative features of the subject property (as compared with 121A Watling Street) were balanced by positive features; and that the freehold entirety value of the subject property at the relevant date was £140,000.

15 As to the percentage figure to be applied to the freehold entirety value to determine the site value, Mr Kenchington submitted that, because of the size of the plot and the potential for development, the figure should be 35 per cent.

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

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

To be disregarded

(ii) Modern ground rent

Standing house value of subject property: £140,000

Percentage attributable to site: 35%: £49,000

Modern ground rent @ 4.75% = £2,327.50

(iii) Capitalisation of modern ground rent

Modern ground rent (above): £2,327.50

Years Purchase at 4.75% in perpetuity deferred 56 days: 20.96465

Capitalised modern ground rent: £2,327.50 x 20.96465 = (say) £48,795

Reasonable costs recoverable under section 9(4) of the 1967 Act

- 17 The parties have agreed the valuation costs but not the legal costs.
- 18 Mr Moore accepted that, since the freehold title is unregistered, a somewhat higher conveyancing fee might be justified than would be reasonable if the title were registered; and he suggested that the respondent's costs recoverable from the applicant should not exceed £325 (plus VAT if applicable).
- 19 Mr Kenchington submitted that a reasonable figure for legal costs would be £400 (plus VAT if applicable).

Determination of the Tribunal

- 20 The Tribunal gave full consideration to the evidence and submissions of the parties.

Price payable for the freehold interest in the subject property

- 21 The Tribunal holds that the basis of valuation adopted by Mr Moore and Mr Kenchington properly reflects the principles of the 1967 Act. It also holds that it is appropriate to disregard the value of ground rent for the remainder of the term.
- 22 As noted above, there are two factors in the valuation calculation on which the parties remain in dispute: the freehold entirety value of the subject property and the percentage figure to be applied to the freehold entirety value to determine the site value in accordance with the "standing house method".
- 23 As to the freehold entirety value of the subject property, the Tribunal finds that the sale price achieved for 121A Watling Street provides a good starting point. However, in considering whether that price should be discounted to arrive at the freehold entirety value of the subject property, the Tribunal finds the arguments of Mr Moore more persuasive. Notwithstanding the potential for some development, the Tribunal finds that the location and the immediate environs of the subject property are serious negative factors that must be reflected in a significant discount. The Tribunal therefore determines that the freehold entirety value of the subject property at the relevant date was £130,000.
- 24 As to the percentage figure to be applied to the freehold entirety value to determine the site value, the Tribunal is of the view that both Mr Moore and Mr Kenchington had to some extent fallen into the trap of double counting. Mr Moore sought to rely on the poor location of the subject property both to discount the freehold entirety value and to reduce the percentage figure used to determine the site value. Mr Kenchington sought to rely on the size of the plot and the development potential to support both a higher freehold entirety value and a higher percentage figure in determining the site value. The Tribunal holds that there is no reason to depart from the figure of 33.33 per cent normally applied to properties of the type exemplified by the subject property.
- 25 Applying those figures (and the agreed matters referred to in paragraph 9 above), the Tribunal calculates the price payable as follows:

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

To be disregarded

(ii) *Modern ground rent*

Standing house value of subject property: £130,000
Percentage attributable to site: 33.33%: £43,333
Modern ground rent @ 4.75% = £2,058.33

(iii) *Capitalisation of modern ground rent*

Modern ground rent (above): £2,058.33
Years Purchase at 4.75% in perpetuity deferred two months: 20.893521
Capitalised modern ground rent: £2,058.33 x 20.893521 = (say) £43,000

Reasonable costs recoverable under section 9(4) of the 1967 Act

- 26 The parties have agreed the valuation costs.
- 27 As to legal costs under section 9(4) of the 1967 Act, the Tribunal agrees that, since the freehold title is unregistered, it would be reasonable to determine a marginally higher conveyancing fee than would be appropriate if the freehold title were registered. The Tribunal therefore determines that the respondent's legal costs recoverable from the applicant should not exceed £350 (plus VAT if applicable).

Summary

- 28 The Tribunal determines as follows:
- The price payable by the applicant leaseholder for the freehold interest in the subject property is £43,000.
 - The legal costs recoverable by the respondent freeholder from the applicant leaseholder should not exceed £350 (plus VAT if applicable).



Professor Nigel P Gravells
Chairman

30 JAN 2007