LEASEHOLD VALUATION TRIBUNAL

OF THE

MIDLAND RENT ASSESSMENT PANEL

BIR/47UB/LAC/2005/0001

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER

(i) *SECTION 21(1)(a) OF THE LEASEHOLD REFORM ACT 1967*
(ii) *SECTION 21(1)(ba) OF THE LEASEHOLD REFORM ACT 1967*
(iii) *SCHEDULE 11 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002*
AND
(iv) *SECTION 20C OF THE LANDLORD AND TENANT ACT 1985*

Applicants:	Mr D P and Mrs M F Dawson (leaseholders)
Respondent:	Speedwell Estates Ltd (intermediate leaseholder)
Subject property:	26 Hazel Road Rubery Birmingham B45 9DX
Date of tenant's notice:	27 May 2004
Date of applications to LVT:	(i) and (ii): 14 June 2005 (iii) and (iv): 29 June 2005
Hearing:	1 September 2005
Appearances:	
For the applicants:	Mr A W Brunt FRICS FNAEA
For the respondent:	Not represented
Members of the LVT:	Professor N P Gravells MA Mr J E Ravenhill FRICS Miss B Granger
Date of determination:	20 SEP 2005

Introduction

1 This is a decision on four applications made to the Leasehold Valuation Tribunal by Mrs D P and Mrs M F Dawson, leaseholders the house and premises at 26 Hazel Road, Rubery, Birmingham B45 9DX ("the subject property"). The four applications are:

(i) under section 21(1)(a) of the Leasehold Reform Act 1967 ("the 1967 Act") for the determination of the price payable under section 9(1) for the intermediate leasehold interest in the subject property;
(ii) under section 21(1)(ba) of the 1967 Act for the determination of the reasonable costs payable under section 9(4);
(iii) under paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") for the determination of the liability to pay an administration charge; and
(iv) under section 20C of the Landlord and Tenant Act 1985 ("the 1985 Act") for an order for limitation of costs.

2 The applicant leaseholders hold the subject property under an underlease dated 25 August 1972 for a term of 99 years less three days from 29 September 1935 at a ground rent of £20.00 per year. The unexpired term of the underlease at the date of valuation (27 May 2004) was 30 years and four months.

3 The respondent intermediate leaseholder is Speedwell Estates Ltd, one of the Dennis Fell Companies.

4 On 24 October 2003 the applicants wrote to Bigwood, to whom they paid their ground rent, indicating their interest in purchasing the freehold interest in the subject property and seeking information as to how to proceed. That letter was passed to the respondent, who wrote to the applicants on 13 November 2003. In its letter, the respondent stated that its agent had carried out a "preliminary exterior inspection [of the subject property] for valuation" and had noted certain alterations to the property – the knocking through of the original lounge and dining room to create a single room and the addition of a dormer roof to the garage, front porch and lounge front window. The respondent requested the payment of £350 "in accordance with the lease", which appears to be a reference to the tenant covenants in clause 5(I) of the underlease ("to maintain the present appearance of the exterior of the property") and clause 5(J) ("not to erect any permanent or temporary building ... without the consent of the [intermediate landlord]". The respondent stated that "upon receipt of this we will then be in a position to quote terms for the sale of the freehold to you". On 2 December 2003 the respondent wrote again to the applicants, making it clear that the £350 was a "retrospective consent fee" and that until it was paid no price for the freehold would be quoted. On 14 December 2003 the applicants sent a cheque for £350 "to cover the retrospective consent fee" and requested the terms for the purchase of the freehold interest. On 17 December 2003 the respondent acknowledged receipt of the £350 and confirmed "retrospective consent regarding the lounge and dining room being knocked through and the dormer roof added to the porch, garage and lounge". By separate letter the respondent quoted a price of £9,950 for the freehold interest.

5 There was an inconclusive exchange of letters between the parties during the next five months. Then on 27 May 2004 Mr Brunt, having been instructed by the applicants in connection with their proposed purchase of the freehold, served a Notice of Tenant's Claim on the respondent. On 24 June 2004 the respondent replied to Mr Brunt, indicating that the respondent was only the intermediate leaseholder, although it was stated that the respondent had "arranged to purchase the freehold from the Bournville Village Trust several months ago".

6 The applicants subsequently agreed terms for the purchase of the freehold interest from the Bournville Village Trust; but, having failed to agree terms with the respondent for the purchase of the intermediate leasehold interest, on 14 June 2005 they applied to the Leasehold Valuation Tribunal for the determination of the price payable under section 9(1) and for the determination of the reasonable costs payable under section 9(4).

7 On 29 June 2005 the applicants made further applications for the determination of their liability to pay the "retrospective consent fee" and for an order for limitation of costs.

Subject property

8 The subject property is a semi-detached house on Hazel Road, in a residential area of Rubery. The accommodation comprises, on the ground floor, an entrance hallway, through lounge and dining room and kitchen; and, on the first floor, three bedrooms and combined bathroom/wc. In 1974 the applicants knocked through the original separate lounge and dining room to create a large single reception room; they also demolished the original wooden garage and built a new garage (extended to the front and rear of the property) and a front porch. In 1999 the applicants replaced the flat roofs of the garage, porch and front bay window with a pitched tile roof that extended across the full width of the property.

Inspection and hearing

9 The members of the Tribunal inspected the subject property on 1 September 2005 in the presence of the applicant leaseholders and Mr Brunt.

10 The subsequent hearing was attended by Mr Brunt, representing the applicant leaseholders. The respondent intermediate leaseholder did not attend and was not represented.

Representations of the parties

11 Although the respondent was not represented at the hearing, it had submitted a brief skeleton argument. In addition, the Tribunal referred to the documentation in the case file for further elaboration.

Price payable for the intermediate leasehold interest

12 Mr Brunt, on behalf of the applicant leaseholders, submitted that, in accordance with the standard approach to valuation under the 1967 Act, the price payable for the intermediate leasehold interest was to be determined by capitalising the profit rent of the intermediate leaseholder for the remaining unexpired term of the existing lease. Since the ground rent payable by the applicants is £20 per year and the rent payable by the intermediate leaseholder to the freeholder is £5 per year, the profit rent in the present case is £15 per year. In capitalising that profit rent Mr Brunt argued for a yield rate of 8 per cent (rather than the commonly adopted 7 per cent) on the ground that the intermediate lease was a wasting asset. Applying those figures, Mr Brunt submitted the following valuation:

Profit rent: £15 per year
Years Purchase: 30 years @ 8%: 11.6546
Capitalised profit rent: £15 x 11.6546 = (say) £175

Mr Brunt therefore submitted that the price payable for the intermediate leasehold interest should be £175.

13 The respondent submitted that the price payable for the intermediate leasehold interest should be £350, arguing that "the calculations should take into account the value of the asset in addition to the amount of the improved ground rent". No further elaboration was given.

Reasonable costs payable under section 9(4)

14 Mr Brunt accepted as reasonable a fee of £30 for inspecting the Notice of Tenant's Claim. He expressed the view that the figure of £250 (plus VAT) for conveyancing fees (as claimed by the respondent) was excessive but he did not specify what in his view would be a reasonable figure. In relation to valuation fees, he submitted that in the present case the valuation required only a simple arithmetical calculation and that a reasonable fee would be £50.

15 The respondent claimed £30 for inspecting the Notice of Tenant's Claim, £250 (plus VAT) for conveyancing fees and £150 for valuation fees. However, the respondent provided no breakdown of those figures nor evidence that those costs had been (or would be) incurred.

Liability to pay an administration charge

16 As noted above, the respondent demanded and the applicants paid the sum of £350 by way of a "retrospective consent fee" in respect of the alterations made to the subject property.

17 In the circumstances of the present case Mr Brunt sought to challenge the liability of the applicants to pay that sum by reference to the provisions on administration charges contained in Part 1 of Schedule 11 to the 2002 Act. His arguments may be summarised as follows:

- That the respondent demanded the retrospective consent fee as a pre-condition to quoting terms for the purchase of the freehold, which the respondent did not own.
- That the demand was not accompanied by a summary of the rights and obligations of the appellants in relation to administration charges, as required by paragraph 4(1) of Schedule 11.
- That the appellants had in fact obtained consent for the alterations made to the subject property in 1974 and had paid a fee.

18 Mr Brunt accepted that no consent appeared to have been obtained for the construction of the pitched tiled roof in 1999; and, in the event of the Tribunal holding that a consent fee was properly payable in respect of that work, he suggested that a reasonable fee would be £50.

Limitation of costs

19 On the basis of the first two arguments referred to in paragraph 17 above, Mr Brunt submitted that the respondent should not be permitted to recover from the applicants any costs incurred in connection with the proceedings before the Tribunal.

Determination of the Tribunal

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

Price payable for the intermediate leasehold interest

21 The Tribunal endorses the approach of Mr Brunt on behalf of the applicant leaseholders as properly reflecting the valuation principles of the 1967 Act. The interest of the intermediate leaseholder is limited to the receipt of the profit rent during the remaining unexpired term of the existing lease; and the price payable is the capitalised value of that profit rent.

22 However, the Tribunal is not persuaded by Mr Brunt's argument that the yield rate to be applied in the valuation calculation should be 8 per cent. In the absence of any compelling argument to the contrary, the Tribunal therefore applies that the usual yield rate of 7 per cent. Moreover, in accordance with its usual practice, the Tribunal takes as the remaining unexpired term of the existing lease the more precise term of 30 years and four months.

23 Applying those figures to the profit rent of £15, the Tribunal calculates the price payable as follows:

Profit rent: £15 per year
Years Purchase: 30 years and four months @ 7%: 12.4499
Capitalised profit rent: £15 x 12.4499 = (say) £187

The Tribunal therefore determines the price payable for the intermediate leasehold interest at £187.

Reasonable costs payable under section 9(4)

24 The Tribunal determines that a reasonable fee for inspecting the Notice of Tenant's Claim is £30.

25 In the absence of any breakdown of the conveyancing fees claimed by the respondent and of any evidence that those costs had been (or would be) incurred, the Tribunal determines, in accordance with its usual practice in relation to intermediate leaseholder costs, that reasonable conveyancing fees should not exceed £125 (plus VAT if applicable).

26 The Tribunal accepts the argument of Mr Brunt in relation to the nature of the valuation exercise in the present case and determines that reasonable valuation fees should not exceed £50 (plus VAT if applicable).

Liability to pay an administration charge

27 For the purposes of this determination, the Tribunal assumes that the "retrospective consent fee" demanded by the respondent and paid by the applicants is properly characterised as an "administration charge" within the meaning of under paragraph 1(1) of Schedule 11 to the 2002 Act.

28 The difficulty faced by the applicants in challenging their liability to pay that charge is that, by virtue of paragraph 5(4) of Schedule 11, no application may be made to the Tribunal in respect of a matter which has been agreed or admitted by the applicants. In the present case, the payment of the charge and the terms of the correspondence between the applicants and the respondent would prima facie appear to support a finding that the applicants have indeed agreed or admitted that the £350 retrospective consent fee was payable.

29 In his first two arguments advanced on behalf of the applicants (see paragraph 17 above) Mr Brunt implicitly seeks to question the validity of that apparent agreement or admission.

30 In relation to the first argument, the Tribunal finds that the respondent in its correspondence with the applicants during the period November 2003 to June 2004 was misleading in that it led the applicants reasonably to believe that the respondent was in a position to transfer the freehold interest in the subject property. The Tribunal also finds that as a consequence the applicants believed that their proposed purchase of the freehold would not proceed unless they paid the £350 demanded by the respondent as a "retrospective consent fee" for work carried out on the property. However, the Tribunal is not persuaded that the apparent agreement of the applicants is vitiated on that basis since the respondent was prima facie still entitled to demand the consent fee *in its capacity as intermediate leaseholder*.

31 In relation to the second argument, the failure of the respondent to include with the demand for the administration charge a summary of the applicants' rights and obligations certainly provided the applicants with grounds for withholding payment of the charge: see paragraph 4(3) of Schedule 11. However, where payment has been made, such failure does not provide the payer with grounds for recovering the payment.

32 The Tribunal therefore holds that neither of the first two arguments advanced by Mr Brunt succeeds in challenging the validity of the apparent agreement or admission of the applicants that the administration charge was payable.

33 It is therefore necessary to consider the third argument, that the appellants had in fact obtained consent for the alterations made to the subject property in 1974 and had paid a fee.

34 Mr Brunt put in evidence a letter dated 25 September 1974, signed by Mr Dawson and addressed to Fellden Investments Ltd (which was (and may still be) another of the Dennis Fell Companies). In that letter Mr Dawson rehearsed that he had visited the office of Fellden Investments Ltd, where a representative of the company had inspected professionally-drawn building plans for the extended garage and front porch and had given verbal permission for Mr Dawson to carry out the work; and he stated that "as requested" a cheque for £5.50 was enclosed. The letter sought written confirmation of the verbal permission and, in addition, permission to knock through the lounge and dining room so as to create a single reception room. Mr Dawson has no recollection of having received a reply to his letter. However, as already indicated, he proceeded to carry out all the works referred to in the letter.

35 The stance of the respondent in relation to the obtaining of consent has not been consistent. In the letter dated 13 November 2003, in which the respondent first demanded the retrospective consent fee, reference was made to the knocking through and the pitched tile roof. However, in a letter dated 29 July 2005 and addressed to the Tribunal, the respondent accepted that the applicants had obtained consent for the knocking through of the lounge and dining room but denied that consent had been obtained in respect of the construction of the extended garage and the front porch.

36 On the evidence, the Tribunal finds that consent was obtained for the knocking through of the lounge and dining room (although it is arguable that the relevant provisions of the lease did not require the applicants to obtain consent for such *internal* works). The Tribunal finds that consent was also obtained for the construction of the extended garage and front porch. However, the Tribunal finds (and the finding is not disputed) that consent was not obtained for the replacement of the flat roofs of the garage, porch and front bay window with the pitched tile roof.

37 In the view of the Tribunal it is against that background that the payment of the consent fee by the applicants and the terms of the correspondence between the applicants and the respondent must be viewed. Thus, although it is difficult to avoid the conclusion that the applicants agreed or admitted that they were liable in principle to pay a consent fee for relevant works, it is also difficult to maintain that they agreed or admitted any liability to pay a consent fee in respect of works for which they had already obtained consent. Since the Tribunal finds that the respondent demanded the sum of £350 on the basis that consent had not been obtained for the construction of the extended garage and front porch (although the Tribunal finds that such consent had in fact been obtained), that amount was not wholly attributable to the consent for the subsequent construction of the pitched tile roof (the only work for which consent had not been obtained); and it follows that there could be no agreement or admission on the part of the applicants that £350 was the amount so attributable.

38 In the circumstances, the Tribunal has jurisdiction to determine the reasonable amount payable for consent for that work for which consent was required but had not been obtained, namely the replacement of the flat roofs of the garage, porch and front bay window with the pitched tile roof. The Tribunal determines that amount at £50.

Limitation of costs

39 In the view of the Tribunal the application under section 20C of the 1985 Act for an order for the limitation of costs is misconceived. The purpose of such an order is to limit the amount of any costs incurred by the landlord in connection with the proceedings before the Tribunal that can be recovered from the tenants through service charges. In the present case, there is no service charge provision in the underlease and therefore no opportunity for the respondent to recover costs from the applicants.

Summary

40 In summary the decision of the Tribunal is as follows:

- Premium payable by the applicants for the intermediate leasehold interest in the subject property: £187
- Reasonable costs recoverable by the respondent from the applicants:
  - £30 for inspecting the Notice of Tenant's Claim
  - Maximum of £125 (plus VAT if applicable) for conveyancing fees
  - Maximum of £50 (plus VAT if applicable) for valuation fees
- Administration charge payable for retrospective consent: £50
- Limitation of costs: no order

NIGEL P GRAVELLS
CHAIRMAN