

Leasehold Reform Act 1967

DETERMINATIONS OF LEASEHOLD VALUATION TRIBUNAL

On an application under s.21 1967 Act to determine:

- (1) under subs.21(1)(a) the price payable on enfranchisement by the tenant under subs.9(1); and
- (2) under subs.21(1)(ba) the amount of any costs payable under s.9(4)

Applicant Tenants: Craig Ian Holland and Naomi Ruth Holland

Respondent Freeholder: Sidewalk Properties Limited

Property: 15, Mitford Drive, Solihull, West Midlands B92 9PE

Date of Tenants' Claim to acquire the Freehold: 12 October 2004

RV on 31 March 1990: £217

Application dated: 14 December 2004

Heard at: The Panel Office

On: 23 February 2005

APPEARANCES:

For the Tenant: Mr J Moore, Midlands Valuations Limited

For the Freeholder: Mr N Plotnek LLB, Nick Plotnek Associates

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr A P Bell MA LLB, Solicitor
Mr D Underhill

Date of Tribunal's decision: **13 APR 2005**

Background:

- 1 Craig Ian Holland and Naomi Ruth Holland are the **Tenants** by a 99 year lease (the '**House Lease**') from 25 March 1966 of 15, Mitford Drive, Solihull, West Midlands B92 9PE (the '**Property**'), being the house and land described in the House Lease (Tenants' title number WK45676) at a fixed ground rent of £40 pa. They also have a 99 year lease (the '**Parking Lease**') from the same date of 'Parking Space 846' (the '**Parking Space**') - as described in the same Tenants' title number - at a fixed rent of £3 pa. **The Freeholder** is Sidewalk Properties Limited. By a notice (the '**Notice**') dated 12 October 2004 (the '**Date**') the Tenants claim to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By applications dated 14 December 2004 the Tenants apply to us: (a) to determine the price payable on the acquisition of the freehold under subs.9(1) of the Act; and (b) the Freeholder's reasonable costs under subs.9(4). We inspected the Property and the Parking Space (on which a garage has been built) on 23 February 2005 and a hearing was held on the same day.
- 2 The unexpired terms of the House and the Parking Leases on the Date - which is the relevant date for the determination of the price payable - was about 60½ years.
- 3 The Property comprises an end of terrace house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - hall, living room, dining area, kitchen, conservatory; on the first floor - 3 bedrooms, bathroom with wc. There is gas fired central heating to radiators. The site is rectangular with a frontage of about 5.79m and an area of about 138m² (excluding the Parking Space). The Parking Space is at the rear of the Property, with vehicular access to it (in common with others) from a surfaced rear private roadway and with private pedestrian access through a gateway from the Property;; the Parking Space has a single brick and corrugated roof garage which, say the Tenants, was there when they acquired their leasehold interest.
- 4 **Mr J Moore** appeared for the applicant Tenants; **Mr N Plotnek LLB** for the Freeholder. At the hearing there was some uncertainty on which parking space the Tenants' have title. With the representatives' agreement, we stayed our determinations for Mr Plotnek and Mr Moore to make further sequential written submissions to clarify their cases; that procedure has been completed.

Our jurisdiction:

- 5 Initially, at the hearing, Mr Plotnek questioned our jurisdiction to determine that the price payable shall include what he believed to be the Tenants' parking space no. 805 (not adjoining and several parking spaces from the rear boundary of the Property); saying that, within the meaning of subs.2(3), it cannot be said that parking space 805 (believed by Mr Plotnek to be the Tenants' parking space) is within the definition of 'house and premises' as parking space no. 805 was, on the Date, not let with the 'house'. Mr Moore submits that, as space no. 846 (adjoining the rear of the Property) is part of the same Tenants' leasehold title, we shall include it in the price payable. We

are referred to para 2-18 *Hague on Leasehold Enfranchisement* (4th Edn.) in which the author says the premises (the Parking Space in the case before us), to be within the 'house and premises', must have been let as part of the same transaction as the House Lease of the Property or subsequently by way of addition (eg by way of a supplemental lease). Later, at the hearing, Mr Plotnek accepted that the 'house and premises' shall include a parking space (whether no 805 or 846). In subsequent written submissions, Mr Plotnek argues the 'parcels' are such that we do not have jurisdiction; Mr Moore maintains his submission that the Tenants' title is conclusive. Mr Plotnek now accepts that, probably owing to an historic change of parking spaces, Parking Space (no. 846 adjoining the rear of the Property) is part of the Tenants' leasehold title no. WK45676.

- 6 We cannot determine our jurisdiction conclusively; only the court can do that, but we should decide whether to include the Parking Space or not in our determination of the price payable. We find and hold that there is a real prospect that the Parking Space (no. 846) is included in the 'house and premises' and we do have jurisdiction and any alleged prejudice to the Freeholder does not, on the facts before us, persuade us to stay our determination pending a possible application to the court to determine jurisdiction.

THE PRICE PAYABLE UNDER S.9(1) 1967 ACT

The valuation method for the Property:

- 7 It is common ground, and we accept, that the method to derive the price payable for the freehold interest is: (i) capitalise the ground rent from the Date for the unexpired term of the Lease; (ii) capitalise the modern ground rent (s.15 of the Act), as at the Date, as if in perpetuity but deferred for the unexpired term of the Lease - 'as if in perpetuity' because, although the value of the modern ground rent is for a term of 50 years (as the extension to the Lease), the value of the freehold reversion in possession at the end of the fifty years' extension is ignored as being too remote to have a separate material value for it. As no evidence of cleared sites is adduced, the modern ground rent is derived by the standing house method: by decapitalising the site value, as a proportion of the entirety value. The entirety value is the value of the freehold interest in the Property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful.

The valuation method of the Parking Space:

- 8 Mr Moore says it should be valued in the same way as, and as part of, the Property, namely an additional £3 pa (added to £40 pa for the Property) for 60½ years; with a reversion, by the standing house method, to a modern ground rent in perpetuity; adopting £155,000 as the entirety value including the Parking Space.
- 9 Mr Plotnek says that, because the Parking Lease has the Freeholder's option to determine it for the

purpose only of erecting a garage on the Parking Space on giving three months' written notice, £3 pa should be valued for 3 months only with a reversion (after three months) to a modern ground rent, adopting £4,500 as the entirety value of the Parking Space. He refers us to this LVT's determination - in which Mr Plotnek appeared for the same Freeholder - in *Brown v Sidewalk Properties Limited* [2004] BIR/00CT/OAF/2004/0109; saying that on not dissimilar facts the LVT valued the Freeholder's reversion in the parking space after three months to reflect the Freeholder's option to determine to erect a garage. Mr Moore distinguishes *Brown* from the Parking Space; saying there is a garage on the Parking Space, whereas, in *Brown*, there was not and, therefore, the Freeholder's option to break in the Parking Lease is unenforceable. At the hearing we indicated we would be minded to consider when the garage was built. On enquiry from us, Mr Moore cannot say, with certainty, when it was built but, from the information he has and from an inspection of the garage, he estimates it was built about 25 to 30 years ago.

- 10 From what we saw at our inspection, we accept the garage was probably built about 25 years ago and, certainly more than 12 years before the Date. We hold that *Brown* does not assist us, because there was no garage built on the parking space and the Freeholder could have exercised its option to determine the lease to build a garage. We hold that, as the garage is built on the Parking Space and was certainly built more than 12 years before the Date thereby outside the limitation period, the Freeholder is statute barred from exercising its option to determine the Parking Lease and is estopped from arguing that consent was not obtained to build the garage. It necessarily follows that we assume, for the valuation, that the Parking Lease continues until the end of its term (co-terminus with the House Lease) and we value in the same way as the Property.

The valuation:

- 11 Mr Moore adopts 60½ years as the unexpired term of the Lease; Mr Plotnek adopts 60 years. We find 60½ years more correctly reflects the unexpired term.
- 12 As to the entirety value (of the Property with the Parking Space): Mr Moore says £155,000, Mr Plotnek says £159,500 (attributing £4,500 to the Parking Space). In the absence of persuasive evidence supporting either figure, we find the entirety value is £157,500.
- 13 Helpfully, Mr Moore and Mr Plotnek agree:
- (a) the site apportionment, of the entirety value, is 30%;
 - (b) the yield rate is 7%
- 14 Applying our decisions on the contested issues and accepting the common ground is consistent with

the provisions of the Act, our valuation of the price payable is:

Term:

Ground rent	£43 pa	
YP 60½ years at 7%	<u>14.04725</u>	
		£604.03

Reversion:

Entirety value	£157,500	
Site value at 30%	£47,250	
Sec. 15 ground rent at 7%	£3,307.50 pa	
YP deferred 54½ years at 7%	<u>0.23847</u>	
		£788.74

Say £1,392.77
£1,393

Conclusion on the price payable:

- 15 We determine that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience but not any special knowledge and our inspection, the sum to be paid by the Tenants for the acquisition of freehold interest in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967, as amended, is £1,393 (One thousand three hundred and ninety three pounds).

COSTS TO BE BORNE BY THE APPLICANT UNDER SUBS.9(4) AND (4A) THE ACT:

16 Subs.9(4) of the Act provides:

'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the [matters in subs.(4)(a) to (d) as to "legal costs" and in subs.(4)(e) as to "valuation costs"]; but [subs.9(4)] shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.'

17 Subs.9(4A), added by s.176 Commonhold and Leasehold Reform Act 2002, Sch. 13 para 2, provides:

'[A person is not required] to bear the costs of another person in connection with an application to a [LVT].'

18 VAT: All figures we refer to are exclusive of VAT. We have no jurisdiction to determine conclusively VAT matters as they are a matter for HM Customs and Excise. Therefore, we make our determination exclusive of VAT, save that VAT shall be added at the appropriate rate if applicable.

19 Mr Moore says the freehold title is registered and submits "legal costs" should be limited to £300 to £325. He says this reflects the market in conveyancing and is consistent with previous determinations of this Tribunal at £275 but allowing a small addition for the fact there are two leases. Mr Plotnek says £350 is more reasonable. We find £325 is the reasonable amount and that actual disbursements, if any, incurred in obtaining office copy register entries shall be added.

20 As to "valuation costs", it is common ground that none have been incurred pursuant to the Notice. We, therefore, determine no "valuation costs" have been incurred.

Our determination of the subs.9(4) costs:

21 We find and hold that the amount of the subs.9(4) costs payable by the Tenants are:

- (a) In so far as subs.9(4)(a) to (d) costs are incurred and are to be incurred by the Freeholder, a sum not exceeding £325 (Three hundred and twenty five pounds) plus actual disbursements, if any, incurred in obtaining office copy register entries, plus VAT if appropriate, as the reasonable or incidental costs; and
- (b) £Nil for subs.9(4)(e) valuation costs.

Date: **13 APR 2005**

T F Cooper
CHAIRMAN

