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MIDLAND RENT ASSESSMENT PANEL

Case No: BIR/OOCN/OAF/2004/0350

Leasehold Reform Act 1967

Commonhold and Leasehold Reform Act 2002

DETERMINATION OF LEASEHOLD VALUATION TRIBUNAL

On an application under section 21 to determine the price payable on enfranchisement by the tenants under section 9(1)

Applicant Tenants: Michael John Norton and Denise Anita Norton

Respondent Freeholder: Miss L M M Adcocks

Property: 36, Lomaine Drive, Kings Norton, Birmingham B30 1AJ

Date of Tenant's Claim to acquire the Freehold: 14 September 2004

RV on 31 March 1990: £233

Application dated: 19 November 2004

Heard at: The Panel Office

On: 1 March 2005

APPEARANCES:

For the Tenant: Mr A W Brunt FRICS

For the Freeholder: No appearance but written representations from her solicitor, Adcocks

Members of the Leasehold Valuation Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)
Mr J H Dove Solicitor
Mr M H Ryder

Date of Tribunal's decision: -1 MAR 2005

Background:

- 1 Michael John Norton and Denise Anita Norton are the **Tenants** by a 99 year lease from 1962 of the dwelling house and premises at 36, Lomaine Drive, Kings Norton, Birmingham B30 1AJ (the '**Property**'). The **Freeholder** is Miss L M M Adcocks. By a notice (the '**Notice**') dated 14 September 2004 (the '**Date**') the Tenants claim to acquire the freehold under the Leasehold Reform Act 1967 (as amended) (the '**Act**'). By an application dated 19 November 2004 the Tenants apply to us to determine the price payable on the acquisition of the freehold of the Property under s.9(1) of the Act. We inspected the Property on 1 March 2005 and a hearing was held on the same day.
- 2 The Tenants hold the Property by a lease (the '**Lease**') for a term of 99 years from 25 March 1962 at a fixed ground rent of £25 pa.
- 3 The unexpired terms of the Lease on the Date - which is the relevant date for the determination of the price payable - was about 56½ years.
- 4 The Property comprises an inner terrace town house of traditional brick and tile construction in an established residential area of similar properties. The accommodation includes: on the ground floor - porch, hall, living room, kitchen; on the first floor - 3 bedrooms, bathroom with wc. Space heating is from a gas fire and one night storage heater - there is no central heating. The site roughly rectangular with a frontage of about 5.6m and an area of about 185m².
- 5 **Mr A W Brunt** FRICS appeared for the applicant Tenants. The Freeholder did not appear and was not represented but her solicitor, Adcock and Company ('**Adcock**'), provides written representations.

Jurisdiction:

- 6 Adcock's notice in reply to the Tenants' Notice of claim does not admit the Tenants' right on the grounds that the Tenants have failed: (a) to supply adequate evidence of their title; and (b) to provide sufficient evidence of their right to claim to have the freehold interest. Adcock submits that it cannot be acceptable for us to proceed where it alleges we have no jurisdiction and without the Freeholder's rights being considered; saying the proper course is for the Tenants to issue an application in the court for a jurisdiction determination. In support, Adcock refers us to the Leasehold Enfranchisement Booklet (the '**Booklet**') issued by the Residential Property Tribunal Service; saying jurisdiction issues must be referred to the court. In response Mr Brunt says office copy entries of the Tenants' leasehold title and an ownership statutory declaration have been sent to, and acknowledged by, Adcock.
- 7 We accept that we cannot determine our jurisdiction conclusively; only the court can do that, but we should decide whether to proceed or not. We find and hold that there is a real prospect that we do have jurisdiction and any alleged failures by the Tenants or 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 booklet does not conflict with our ruling that we shall proceed; it confirms that only the court (not us) can determine conclusively our jurisdiction but a court's determination is not a pre-condition to us proceeding. Clearly, a party may apply to the court for a determination but this is in the hands of a party, not us, and we have no evidence that an application has been made to suggest we might stay our determination.

The valuation method:

8 Mr Brunt adopts, and we accept, the generally recognised valuation method to derive the price payable for the freehold interest, accepted in *Farr v Millerson Investments Ltd* (1971) 22 P & CR 1055. The method is: (i) capitalise the ground rent (£25 pa) from the Date for the unexpired term of the Lease (56½ years); (ii) capitalise the modern ground rent (s15 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 (namely no *Haresign* addition - see below). 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.

9 Mr Brunt's valuation does not include a *Haresign* addition - recognised in *Haresign v St John The Baptists' College, Oxford* [1980] 255 EG 711 when specific account was taken of the reversion to the full value of the dwelling after the expiration of the assumed fifty years' extension of the Head Lease. We accept his approach.

10 **Mr Brunt's valuation and evidence:** For the freehold interest - £1,298
More specifically:

11 Term

Ground rent	£25 pa	
YP 56½ years at 7%	<u>13.973</u>	£349

Reversion

Entirety value	£130,000	
Site value at 1/3 rd	£43,333	
Sec. 15 ground rent at 7%	£3,033 pa	
YP deferred 54½ years at 7%	<u>0.313</u>	£949

£1,298

12 Adopting 7% as the yield rate in his valuation, Mr Brunt says 7% is consistent with previous decisions of this tribunal when the unexpired term of the lease is relatively long - relative to the assumed 25 year rent review in the assumed 50 year lease extension.

13 In support of his opinion evidence of the entirety value (£130,000), he refers us to particulars of two semidetached houses for sale at £129,950 and £108,950, saying £108,950 is not consistent with the general level of values in the locality. More particularly, he refers us to the provisional sale of a very similar house in Lomaine Drive (number and date of sale not known as the information is from the internet) but sold subject to contract before Christmas 2004. He says this limited evidence points to £130,000 as the entirety value, reflecting the principles which we refer to above.

14 He says that a 1/3rd site apportionment is consistent with decisions of this tribunal for not dissimilar sites.

Our Decision:

15 Despite no representations on the price payable from the Respondent Freeholder, Mr Brunt clearly recognises his duty to us, to provide truly independent evidence to assist us to achieve a just result. As an expert tribunal, relying on our general knowledge but not on any special knowledge, we find that Mr Brunt's valuation is consistent with the principles in the Act and accepted guidance derived from the Lands Tribunal and this Tribunal. We accept his figures and the price payable, at £1,298.

Conclusion on the price payable:

16 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 £1,298 (One thousand two hundred and ninety eight pounds) plus the Freeholder's reasonable costs in accordance with section 9(4) of the Leasehold Reform Act 1967. In default of agreement over the amount of any costs payable under section 9(4) under the provisions of section 21(1)(ba), application may be made to the Leasehold Valuation Tribunal for a determination of such costs.

Date: 01 MAR 2005

T F Cooper
CHAIRMAN

