

MIDLAND RENT ASSESSMENT PANEL

Ref:- BIR/00CN/OAF/2008/0547

Leasehold Reform Act 1967**DECISION of LEASEHOLD VALUATION TRIBUNAL  
On Applications under Section 21 of the Leasehold Reform Act 1967**

Applicant: Ms Jeanne Elizabeth Taylor

Respondent: Sidewalk Properties Limited

Re: 35 Terry Drive, Walmley, Sutton Coldfield B76 8PT

Date of Tenants Notice: 14<sup>th</sup> May 2008

Application dated: 24<sup>th</sup> November 2008

Considered at: The Tribunal's Offices in Birmingham

There was no hearing at the request of the representatives,  
each relying on written submissions.

REPRESENTATIVES:

For the Tenant: Mr. J. Moore, Midland Valuations Limited

For the Landlord: Mr. N. Plotnek, nickplotnek associates

MEMBERS OF THE LEASEHOLD VALUATION Tribunal:

Dr A. J. VERDUYN (Chairman)  
Mr R. BROWN FRICS

Date of Tribunals decision: 22<sup>nd</sup> April 2009

DETERMINATION

- (1) That the price payable by the Applicants to the Respondent under Section 9 (1) of the Leasehold Reform Act 1967 ('the Act') is £5,265.
- (2) That conveyancing costs of £350 (excluding value added tax) plus reasonable disbursements under Section 9 (4) of the Act shall be payable in addition, but no valuation costs.

## REASONS FOR THE TRIBUNAL'S DECISION

1. On 14<sup>th</sup> May 2008 Mr Moore of Midland Valuations Limited for Ms Jeanne Elizabeth Taylor (the 'Applicant') served a Notice of Claim (the 'Notice') on Sidewalk Properties Limited (the 'Respondent') to acquire the freehold of 35 Terry Drive, Walmley, Sutton Coldfield B76 8PT (the 'Property') under Part 1 of the Act.
2. On 24<sup>th</sup> November 2008 Mr Moore submitted an application to the Leasehold Valuation Tribunal for a determination as to the price payable for the freehold of the Property under Section 9 of the Act.
3. The Applicant is the current leaseholder of the Property which is held under a Lease (the 'Lease') dated 26<sup>th</sup> January 1966 and made between Walton & Gilmore Estates Limited (1) and Terence Ronald Vining (2) whereby the Property was demised for a term of 99 years from 25<sup>th</sup> December 1964 at a ground rent of £32 per annum.
4. The unexpired term of the Lease for valuation purposes is therefore 55.61 years.
5. All aspects of freehold valuation were agreed between the parties in the sums appearing below prior to the hearing with the exception of the deferment rate and the conveyancing costs. Inspection was dispensed with.
6. Mr Moore in helpful written submissions contends for a deferment rate of 5.5%. He distinguishes the case of Cadogen Estates and another v Sportelli and another LRA/50/2005: [2007] EWCA Civ 1042 ('Sportelli') by observing that it is not an authority on Section 9(1), but Section 9(1A) and prime central London properties. Section 9(1A) is a valuation to a vacant possession but Section 9(1) is to a 50 year lease reversion with a fixed modern ground rent (subject to review after 25 years). Drawing on evidence from the gilts market he contends that this extended period of time would lead an investor to demand a higher yield. He also relies on the precedent of other Midland region Leasehold Valuation Tribunals departing from the Sportelli rate of 4.75% in favour of 5.5%.
7. Following the decision of the Lands Tribunal in Re 512 Haslucks Green Road LRA/185/2007 dated 24<sup>th</sup> February 2009, further written submissions were elicited from Mr Moore. By letter of 23<sup>rd</sup> March 2009, he contends that the Lands Tribunal case (which applied a deferment rate of 5%) should not be followed, since it gives "insufficient weight to the disadvantages of a reversion to a modern ground rent as opposed to a reversion to vacant possession". He contends that a 50 year delay in obtaining vacant possession would lead an investor to seek a greater yield differential than the 0.25% determined in that case. Mr Moore also observes that the decision referred to insufficient evidence to differentiate deferment rates on the grounds of location, but such a finding could credibly be made.

8. Mr Plotnek also assisted with helpful written submissions. He, too, cited Midland region Leasehold Valuation Tribunal cases which suggested that Sportelli ought to be followed. He suggested that the difference between Section 9(1) and Section 9(1A) ought to be disregarded as valuation is in a “no act” world. He also suggested that prime central London is comparable in market performance with Sutton Coldfield, particularly in respect of volatility and obsolescence. Consistent practice supports following Sportelli, he argues. He concluded by identifying attractive features of a modern ground rent for 50 years with a review after 25.
9. Following the decision of the Lands Tribunal in Re 512 Haslucks Green Road, further written submissions were elicited from Mr Plotnek and he responded to Mr Moore’s comments on 27<sup>th</sup> March 2009. By that letter, he observed that the appeal had been intended to resolve issues around Section 9(1) and deferment rates and should accordingly be followed.
10. This Tribunal has decided to follow the decision in Re 512 Haslucks Green Road and to adopt the deferment rate of 5%. The decision of the Lands Tribunal provides clear and persuasive authority for guidance in Section 9(1A) cases to be applied, as appropriate, in Section 9(1) cases; as well as re-emphasising the laudable objective of promoting consistent practice in land valuation matters (at paragraphs 14 and 16). A distinction exists in the risk premium element of the calculation of the deferment rate, so the deferment rate may be slightly higher under Section 9(1) than under Section 9(1A), as more fully explained in paragraphs 26 and 27 of that decision, but otherwise the calculation would be the same between those sections.
11. Location may be a relevant factor in determining the deferment rate, but it was made clear by Carnwath LJ in the Court of Appeal in Sportelli (at paragraph 102) and by the Lands Tribunal in Re 512 Haslucks Green Road (at paragraphs 28 to 33) that this is a matter of evidence and such evidence must be sufficient to prove on the balance of probabilities that the rate otherwise applicable (4.75% in Sportelli and 5% in Re 512 Haslucks Green Road) should be displaced. This Tribunal considers that the evidence presented by Mr Moore has been insufficient to overcome this hurdle. He cites a case in his report predating Re 512 Haslucks Green Road where such a finding was made, but its evidential basis was not before us. He observes that the Lands Tribunal did have evidence in Re 512 Haslucks Green Road from Nationwide Building Society statistics, but that was insufficient before that Tribunal and not submitted to us.
12. Accordingly there is no sufficient basis to depart from Re 512 Haslucks Green Road and that deferment rate of 5%.
13. In respect of the freeholder’s conveyancing costs, Mr Moore contended for £350 plus VAT and Mr Plotnek for £400 plus VAT. The former sum has commonly been applied and there is no reason given for departing from it. Given the state of the conveyancing market, where demand is very low, it is reasonable to expect that the work can be done for the lower sum.

### The Tribunal's Valuation

14. Applying their determinations as above the Tribunal's calculation of the amount payable by the Applicant is as follows:

Ground rent:	£32.00	
Lease end:	December 25, 2063	
Valuation date:	May 14, 2008	
Unexpired term:	55.61	
Yield: Cap.	7.00%	
Yield: Def	5.00%	
Freehold entirety:	£190,000.00	
Site %:	38.00%	
<b>VALUATION</b>		
Ground Rent	£32.00	
YP	13.95401	£477.36
Reversion	£190,000.00	
Site Value	£72,200.00	
s 15	£3,610.00	
YP def	1.32620	£4,787.58
		<u>£5,264.94</u>

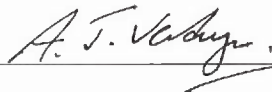
To the nearest whole pound: **£5,265**

### DETERMINATION

15. The Tribunal determine that the price payable by the Applicant under section 9 (1) of the Act is £5,265 and that the section 9 (4) costs amount in total to £350 exclusive of VAT, there being no valuation costs.

16. In reaching their determination the Tribunal had regard to the evidence and 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

  
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**Dr. A. J. Verduyn – Chairman** Dated 22<sup>nd</sup> April 2009