

821

HM COURTS & TRIBUNALS SERVICE

MIDLANDS LEASEHOLD VALUATION TRIBUNAL

BIR/00CN/OAF/2011/0045

DECISION

On an application under sections 21(1)(a) to determine the price payable for the freehold interest and section 21(1)(ba) to determine the landlord's costs under section 9(4) of the Leasehold Reform Act 1967

Applicant: Kathryn Mary Strickland (as assignee of Lilian Rosa Burd
("the Applicant Leaseholder"))

Respondent: Hanlo Holdings Limited ("the Respondent Freeholder")

Subject property: 61 Abbey Road, Erdington, Birmingham, B23 7QQ

Date of tenant's notice: 18th March 2011

Application to the LVT: 12th July 2011

Hearing date: 6th December 2011

Venue: The Tribunal's Offices in Birmingham

Appearances:

For the Leaseholder Mr K Chew FRICS

For the Freeholder None – Paper submission by Mr.G Dixon of Jack Dixon
and Company

Members of the LVT Mr.R.Healey LLB (Chairman)
Mr.D.J.Satchwell FRICS

Date of determination **3 1 JAN 2012**

Introduction

1. This is a decision on an application under section 21(1)(a) of the Leasehold Reform Act 1967 ("the Act") made to the Leasehold Valuation Tribunal ("the tribunal") relating to the house and premises known as 61 Abbey Road Erdington, Birmingham B23 7QQ ("the subject property") for the determination of the price payable under section 9 of the Act for the freehold estate in the subject property and the amount of the freeholder's reasonable costs.

Background

2. The leasehold estate in the subject property is described in a lease dated 29th November 1956 made between Mayfly Limited of the one part and Ian Ross Burd of the other part whereby the subject property was demised for a term of 55 years from 29th September 1956 subject to a ground rent of £5.50 per annum. ("the Lease").

3. On 18th March 2011 a Notice of Tenant's Claim ("the Claim Notice") under Part 1 of the Act to acquire the freehold in the subject property was served by the then leaseholder Lilian Rosa Burd upon the then freeholder **Hanlo Holdings Limited ("the Respondent Freeholder")**

4. On the 29th March 2011 by Counter Notice the Respondent Freeholder admitted the right of Lilian Rosa Burd to acquire the freehold estate under the terms of the Act.

5. On the 1st April 2011 Lilian Rosa Burd transferred the leasehold estate in the subject property and assigned the Claim Notice to **Kathryn Mary Strickland ("the Applicant Leaseholder")**.

6. On the 22nd April 2011 The Respondent Freeholder transferred the freehold estate to Nadan Developments Limited ("Nadan") for a consideration of £25,000.00 and Nadan was registered at the Land Registry as Registered Proprietor of the freehold estate on 4 May 2011.

7. On the 12th July 2011 the Applicant Leaseholder applied to the tribunal under section 21 of the Act for a determination of the price payable under section 9 and for determination of the Respondent Freeholder's costs under section 9(4).

8. By letter dated 16 July 2011 the Respondent Freeholder's solicitors wrote to the tribunal advising that the freehold estate had been transferred to Nadan and the Claim Notice had not been protected by registration at the Land Registry. It was submitted that the Claim Notice was therefore not valid against Nadan and the tribunal had no jurisdiction to determine the Claim Notice.

9. On the 6th September 2011 the tribunal held a preliminary paper hearing to determine whether it had jurisdiction to proceed with the Claim Notice.

10. On 28th September 2011 the tribunal determined it had jurisdiction to proceed.

11. The Applicant Leaseholder proceeded to make the present applications.

Inspection

12. The Tribunal inspected the subject property on the morning prior to the hearing on 6th December 2011. It is a traditional style pre 1919 middle of terrace house comprising a two storey main building, two storey wing building attached to the rear left hand side and single storey extension attached to the rear elevation of the wing building. The accommodation comprises front reception room, rear reception room, kitchen, bathroom and separate w.c with central stairway between the two reception rooms leading to first floor accommodation comprising landing, front double bedroom, rear double bedroom and additional rear single bedroom. There are gardens front and rear with additional pedestrian access to the rear. The subject property appeared the subject of recent and on going renovation and fully developed for the purposes of the Act.

Hearing

13. Mr K Chew FRICS appeared for the Applicant Leaseholder and assisted the tribunal by elaborating on his helpful written submissions. The tribunal noted his practical experience, qualifications, the statement of truth as required by RICS regulations and the comparables produced in support of his written submissions.

14. Mr G Dixon of Jack Dixon & Company, Auctioneers, Estate Agents, Surveyors and Valuers submitted "a set of figures and calculations" for the hearing. Prior to the hearing the tribunal requested a statement of truth be made by the maker of the "figures and calculations". None was forthcoming. The "figures and calculations" did not make reference to any comparables. Mr Dixon did not produce to the tribunal any evidence of his experience and professional qualifications. There was no representation at the hearing for the Respondent Freeholder and the evidence before the tribunal was therefore limited simply to the "figures and calculations".

15. In their submissions neither party disputes and the Tribunal accepts that the qualifying conditions for enfranchisement under the Act are satisfied. At the request of the Chairman Mr Chew confirmed that he was not aware of any proceedings to challenge the jurisdiction of the tribunal.

Agreed Matters

16. The unexpired term of the Lease for valuation purposes is six months. The valuation date is 18th March 2011 ("the Date").

The valuation method

17. The generally recognised section 9(1) valuation method to derive the price payable for the freehold interest is determined by:

(1) capitalising the ground rent from the Date for the unexpired term of the Lease (In the present case six months) and

(2) capitalising the modern ground rent (section 15 of the Act) payable from the Date until the expiry of the 50 year extension due regard being had to the provision for review after the first 25 years of the extension. If there is no significant value in the landlord's reversion the modern ground rent may in practice be deferred in perpetuity and

(3) if significant, the value of the landlord's reversion after the expiry of the 50 year lease extension on the basis that Schedule 10 of the Local Government and Housing Act 1989 applies to the tenancy (entitlement of the tenant to an assured tenancy under the Housing Act 1988 at a market rent) as allowed in *Haresign v. St. John's College Oxford* (1980) 255 EG 711 ("*Haresign addition*")

The parties accepted that the modern ground rent in this particular case is derived from **the standing house method** which is achieved by decapitalising the site value which is calculated as a proportion of the entirety value of the subject property. The entirety value is the value of the freehold interest in the subject property with vacant possession assuming it to be in good condition and fully developing the potential of its site provided that the potential identified is realistic and not fanciful.

(3) The price payable on this basis is the sum of the capitalisations at (1) and (2) and if appropriate the further addition of (3) above.

18. It is common ground in this case between the valuers that the valuation does not include a claim for a *Haresign addition* and simply comprises items (1) and (2) and in the case of the modern ground rent in (2) deferred in perpetuity instead of for 50 years. In light of the evidence and submissions of the parties that a two stage valuation was appropriate in this case, the Tribunal accepted that a *Haresign addition* was not to be included in the valuation.

Disputed Issues

- 19.1 Capitalisation of the term.
- 19.2 The Entirety Value.
- 19.3 The Site Value Apportionment.
- 19.4 Deferment rate.

Capitalisation of the Term

20. Mr Chew for the Applicant Leaseholder noted that the ground rent payable is a nominal £5.50 and fixed for the remainder of the term. He submitted for capitalisation at 6.5% giving a figure of £2.58. Mr Dixon fairly conceded that the figure was insignificant. The tribunal determined the calculation to be £2.58.

Entirety Value

21. Mr Chew produced comparables. He referred to a sale of number 55 in October 2010 at £92,000 and number 75 in July 2009 at £95,000. Both were submitted to be similar to the subject property. Mr Chew utilised the Nationwide House Prices Index to update the prices achieved and submitted for an Entirety Value of £90,000. Mr Dixon submitted for an Entirety Value of £115,000 and no comparables were adduced by him in support. The tribunal determined the Entirety Value at £90,000.

Site Apportionment

22. Mr Chew submitted the plot was narrow (3.86m), the foregarden was raised from the pavement, the rear garden sloped upwards from the back of the house and

situated in an average quality residential area which had an impact on land values. On this evidence Mr Chew submitted for a site apportionment of 28% based on the Entirety Value. Mr Dixon submitted for a site apportionment of 33%. The tribunal determined a site apportionment of 28%.

Deferment Rate

23. Mr Chew relied on the case of Zuckerman (Ref LRA/97/2008) and applied it to section 9(1) valuations under the Act. He took the 6% deferment rate from Zuckerman, deducted 0.25% for the increased management risks for flats, and a further deduction of 0.25% from the risk premium to reflect the perceived lower risk for houses as opposed to flats and submitted for a deferment rate of 5.00% as a starting point. Mr Chew acknowledged that Sportelli and Zuckerman related to leases with unexpired terms greater than 20 years and submitted that having regard to the short period of the unexpired lease of the subject property the appropriate rate for calculating the modern ground rent and then capitalising in perpetuity was 5%.

24. Mr Dixon submitted for deferment rates of 4% in respect of the modern ground rent and 5% in respect of the reversion. No submissions were made in support. The tribunal preferred the submissions of Mr Chew and determined the deferment rate at 5%.

Reasonable Costs recoverable under section 9(4) of the Act

25. The Tribunal accepted Mr Chew's submissions and determined a reasonable figure for the Respondent Freeholder's legal fees at £400.00 plus VAT plus proper disbursements.

26. The Tribunal did not award any valuation fees as it was not satisfied on a balance of probabilities that any work as defined by section 9(4) of the Act was conducted after service of the Claim Notice.

DETERMINATION

The Tribunal's Valuation

27. Applying their determinations as above the tribunal's calculation of the amount payable to the Respondent Freeholder is as follows:

61 Abbey Road, Birmingham B23 7QQ

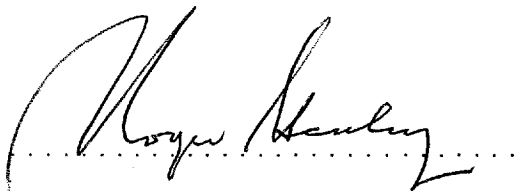
Term	£	£	£
Ground rent	5.5		
YP 6 months @ 6.5%	<u>0.4695</u>		
		2.58	
Reversion			
Entirety value	90,000		

Site value @ 28%	25,200	
Modern ground rent @ 5%	1,260	
YP in perp def 6 months @ 5%	<u>19.5238</u>	
		<u>24,599.99</u>
		<u>24602.57</u>
		say £24,600. 00

SUMMARY OF THE DETERMINATION

28. The Tribunal determined that the price payable by the Leasehold Applicant under section 9(1) of the Act was £24,600.00 (Twenty four thousand six hundred pounds). In addition the legal fees payable under section 9(4) of the Act are £400 plus VAT (if applicable) and proper disbursements. No valuers fees are payable.

29. 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.



Roger Healey

Chairman

3 1 JAN 2012