

Midland Leasehold Valuation TribunalBIR/00CN/OAF/2007/0021In the matter of 45 Benedon Road, Sheldon, Birmingham B26 2NL
Leasehold Reform Act 1967, Sections 9, 21(1) (ba)

John Hansell

Applicant

and

Freehold Properties Limited

RespondentDate of application:-5th March 2007Date of hearing:-10th May 2007Tribunal:Mr J.H.L. de Waal
Mr. V. Chadha MRICS
Mrs. N. JukesAttendances:

For the Applicant:

Mr. A.W. Brunt

For the Respondent:

Mr. J.G. Evans, FRICS

DECISION

1. This is the Tribunal's decision on Mr. Hansell's application for determination of the price payable under section 9 of the Leasehold Reform Act 1967 ("the Act") for the house and premises at 45 Benedon Road, Sheldon, Birmingham B26 2NL ("the Property") and for determination of the amount of any costs payable under sections 9 and 21(1)(ba) of the Act.
2. Mr Hansell's application was heard together with application BIR/00CN/OAF/2007/0019, In the matter of 130 Hollydale Road, Erdington, Birmingham B24 8LS (Applicant Douglas Edward Watts; Respondent: Freehold Properties Ltd) where the issues were the same. The parties in the 130 Hollydale Road application benefited from the same representation as here, Mr Brunt for the Applicant, Mr Evans for the

Respondent. It also appropriate to record that a separate panel of the Midlands Leasehold Valuation Tribunal sitting on the same day heard two further applications in which the issues were the same – those were in relation to premises at 1 Cardington Avenue, Birmingham and 181 Mildenhall Road, Birmingham. Again, the representation was the same. At the start of the hearing we informed Mr Brunt and Mr Evans that we intended to consult with the Tribunal hearing the other two applications before sending out our decisions. Of course, had any matter which had not been raised in the two applications heard by this panel been drawn to our attention by the other panel we would have given Mr Brunt and Mr Evans an opportunity to make further submissions to us. In the event there was no such matter.

This application

3. On 2nd January 2007 Mr Hansell (who acted by his agent Anthony Brunt & Co. Valuers) gave Notice of Claim to the freeholder Freehold Properties Limited (who instruct Olswang solicitors) of his claim to acquire the freehold of the Property. On 26th February 2007 Olswang served their client's Notice of Reply which admitted the right to enfranchise.
4. On 5th March 2007 Mr Hansell applied for determination of the price payable under section 9 of the Act and for determination of the amount of any costs payable. Directions were given on 15th March 2007 and the application was heard by the Tribunal on 10th May 2007.

The hearing

5. At the hearing Mr Hansell was represented by Mr. A.W. Brunt and Freehold Properties Ltd by Mr. J.G. Evans FRICS. Both had made written submissions. By the time of the hearing the parties had agreed all but two of the principal issues in dispute. The Tribunal is indebted to Mr Brunt and Mr Evans both for their co-operative approach to identifying and resolving most the issues in dispute and also for the clear and cogent arguments which were put forward in relation to the two principal matters left for the Tribunal to decide.

6. On the morning of the hearing the Tribunal inspected the Property. The subject property comprises a traditional semi detached house in a good residential area. The house is of two storey brick constructions with a pitched tiled roof. The accommodation comprises on the ground floor a hall, lounge and a kitchen and on the first floor a landing, three bedrooms and a combined bathroom/wc. There are medium sized landscaped garden at the rear.
7. The Property is held under a lease dated 4th June 1937. The lease is for a term of 99 years from 24th June 1936. It was agreed that at the date of the application there were 28.50 years of the lease unexpired.
8. It had been agreed that the reversion should be valued on the standing house approach; that the entirety value of the reversion was £150,000; and that the site apportionment was 33.33%, i.e. £50,000.
9. It had also been agreed that current value of the ground rent of £5.25 p.a. deferred for the unexpired term of 28.50 years should be capitalised at £67, this conclusion following on from Mr Brunt's concession at the hearing that the yield rate should be 6.5%.
10. What was in issue was (a) the capitalised value of the section 15 rent; and (b) whether there should be a Haresign addition.

Section 15 ground rent

11. In the light of the now well-known decision of the Lands Tribunal in Cadogan v Sportelli (case no. LRA/50/2005) Mr Brunt and Mr Evans had sensibly agreed that the appropriate deferment rate was 4.75%. Mr Brunt argued that the same percentage should be applied to the decapitalisation rate, Mr Evans that the rate should be higher – he suggested possibly in double figures but asked for 6.5%. This was an important issue because in money terms the difference in the price payable would be about £3,000.

12. It was Mr Evans' contention that as a matter of principle there was no valuation rationale to justify adopting a rate of capitalisation simply because it was the rate taken for deferment. His contention was simply that the 6.5% agreed in respect of the yield rate for the current ground rent should therefore be applied also to the section 15 (modern) ground rent. In support of this submission he relied upon passages in the decision of the Lands Tribunal in Sportelli and Nicholson v Wilks (case no. LRA/29/2006). In Wilks the Lands Tribunal approved the submission made on behalf of the freeholder (para. [6]) that the factors relevant to the capitalisation rate were: length of lease term, security of recovery, the size of ground rent (a larger ground rent being more attractive), whether there was provision for the review of ground rent. We note that the submission continued as follows:

"Mr Davis said that, where the ground rent was substantial, there was a case for considering the capitalisation rate separately from the deferment rate, but where, as here, the ground rent was small it was appropriate to apply the convention of taking the same rate for each."

It is important to note that the rent in the case under appeal was £50 p.a.

13. The effect of Mr Evans' submission, if accepted, would be that there would be what we might call a 'beneficial differential' (to the freeholder) between the decapitalisation and deferment rates (cf. the discussion of and disapproval of what was called the 'adverse differential' in the decision of the Court of Appeal in Wilkes v Larcroft Properties Ltd [1983] 268 EG 903). His was an interesting and novel submission but the Tribunal could not accept it. It seemed to us that on the facts of this application, where the ground rent was £5.25 and the unexpired term 28.50 years, we should not disturb the convention approved in Wilks v Larcroft Properties. We noted that the Lands Tribunal in Wilks also confirmed that it was not appropriate to consider the deferment and capitalisation rates separately when the ground rent was small. Therefore we determined that the capitalised value of the section 15 ground rent should be £13,322 based upon a rate of 4.75%.

Haresign addition

14. A 'Haresign' addition is appropriate if the unexpired term of the existing lease is short and there is evidence that the house will remain standing at the end of the 50 year extension. The question is whether a hypothetical purchaser would value the reversion to standing house value. The unexpired term of the lease was 28.50 years. Bearing in mind the tenant's right to remain in occupation at the end of the term under Schedule 10 to the Local Government and Housing Act 1989 it is the view of this Tribunal that a Haresign addition will only be appropriate when two conditions are satisfied: (i) the unexpired term of the lease is very short and (ii) the house is substantial. Neither consideration applies here and therefore we determine the price payable at £13,389 (£67 + £13,322) with no further addition.

The decision

15. Our calculation of the price payable therefore proceeds as follows:

Term

| | |
|---------------------------|------------|
| Ground rent p.a. | £5.25 |
| YP for (yrs) 28.50 @ 6.5% | 12.828 |
| | £67 |

Reversion

| | |
|-----------------------------|----------------|
| Entirety Value | £150,000 |
| Site apportionment @ 33.33% | £50,000 |
| Section 15 rent @ 4.75% | £2,375 |
| YP in perp 28.5 yrs @ 4.75% | 5.609 |
| | £13,322 |

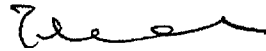
Price **£13,389**

16. We therefore determine that the price payable for the acquisition of the freehold under section 9 of the Act shall be £13,389.

17. In relation to the application under section 21(1)(ba) of the Act we consider that the Freeholder's reasonable legal costs should be £400 and the valuation fee £350.

22 MAY 2007

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Date



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John de Waal
Chairman, Midland
Leasehold Valuation Tribunal