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Case Ref. BIR/00CN/OAF/2007/0025

**MIDLAND RENT ASSESSMENT PANEL**

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Leasehold Reform Act 1967**

**On an application under Section 21(1)(a) to determine the price payable for the Freehold interest under Section 9(1A) of the Leasehold Reform Act 1967**

**134 ALBERT ROAD, BIRMINGHAM, WEST MIDLANDS, B21 9JU**

Applicant	Gurmail Singh (Freeholder)
Respondent	Mohammed Rashid Khan (Leaseholder)
Date of Notice	17th February 2004
Date of Application to Tribunal	16th March 2007
Heard at	The Panel Office
On	16th August 2007

Members of the Leasehold Valuation Tribunal:

Mr I.D. Humphries  
Mr J.Dove  
Mr D.Underhill

Date of Tribunal Determination:

Determination: Freehold Premium £52,900

## **1 Introduction**

- 1.1 This is an application by Gurmail Singh who owns the Freehold interest in a terraced house known as 134 Albert Road, Handsworth, Birmingham to the Leasehold Valuation Tribunal (LVT) to determine the price of the Freehold payable by the Lessee in accordance with the Leasehold Reform Act 1967.

## **2 Legal Provisions**

- 2.1 The property is held on lease for a term of 50 years from 29th September 1992 at a ground rent of £665 per annum subject to rent review after 25 years to a new rent based on either the passing rent or 2% of the freehold vacant possession value, whichever is the greater. The lease had been granted following an earlier application to extend the lease under the Leasehold Reform Act 1967 where the rent had been set by the LVT.
- 2.2 On 17th February 2004 the lessee served Notice to acquire the Freehold interest from the landlord.
- 2.3 The landlord's agents Messrs Cottons acknowledged the tenant's right to acquire the freehold by notice dated 1st March 2004.
- 2.4 On 16th March 2007 the landlord's agents applied to the Leasehold Valuation Tribunal to determine the price under sections 21(1)(a) and 9(1A) of the Act.

## **3 Facts Found**

- 3.1 The Tribunal inspected the property on 16th August 2007.
- 3.2 It comprises a Victorian three storey brick and slate terraced house with two storey rear wing and single storey extension. There is an entry to the side of the house leading to a rear yard.
- 3.3 The accommodation comprises on the ground floor a hall with access to a cellar, three reception rooms, kitchen and bathroom; on the first floor a landing, four bedrooms and bathroom and on the second floor two further bedrooms.
- 3.4 The house was partly occupied by sub-tenants but the parties' representatives agreed at the Hearing that it constituted a house for the purposes of the Leasehold Reform Act and that the tenant had the right to acquire.

## **4 Hearing**

- 4.1 A Hearing was held at the Midland Rent Assessment Panel offices in Birmingham on 16th August 2007 at which the applicant Freeholder was represented by Mr K.F.Davis FRICS and the respondent Leaseholder by Mr D.H.Hackett B.Sc. FRICS.

4.2 The Tribunal are grateful to Mr Davis and Mr Hackett for the professional way in which they presented their cases, the research carried out and assistance given to the Tribunal by providing their true and honest opinions.

4.3 The parties had prepared a Statement agreeing the following prior to the Hearing:

Date of Notice 17th February 2004.

Lease Term 50 years from 29th September 1992.

Unexpired Term 38.5 years.

Ground Rent £665.00 per annum.

Rent Review Date 29th September 2017.

Rent Review Clause Clause 7 of the lease dated 14th October 1999.

Valuation Basis Section 9(1A) of the Act.

Leasehold Value £80,000 (Eighty Thousand Pounds) at 2004.

Freehold Value £140,000 (One Hundred and Forty Thousand Pounds) at 2004.

Marriage Value 50:50

4.4 The disputed items were:

Capitalisation Rate	Landlord:	5%
	Tenant:	6%

Deferment Rate	Landlord:	4.75%
	Tenant:	6%

The parties' submissions on each point and our determinations are set out below.

#### 4.4 ***Capitalisation Rate***

##### *Submissions*

Mr Davis for the Freeholder contended for 5% based on factors discussed in an earlier case where he had appeared for a different landlord before the Lands Tribunal, LRA/29/2066, regarding the premium for an extended lease of Flat 1, Cropthorne Court, Calthorpe Road, Edgbaston. In that case dated 8th January 2007, Mr Davis had initially submitted for a capitalisation rate of 6% but later reduced it to 5.5% and again to 5% following the decision of the Lands Tribunal in *Cadogan v Sportelli* (Lands Tribunal reference LRA/50/2005).

In that case, the Tribunal had adopted the same rate for capitalisation and deferment but this was purely for practical reasons as it made little difference to the outcome and significantly

the Lands Tribunal held that different considerations applied to the capitalisation and deferment rates and that there was no rationale for adopting the same rate throughout.

Mr Davis said the factors he considered particularly relevant to the capitalisation rate were the length of the unexpired lease, the size of ground rent, the rent review pattern and security of recovery.

In respect of 134 Albert Road he considered an unexpired term of 38.5 years to be relatively short and therefore attractive to investors, the ground rent of £665 was larger than general ground rents and 'worthy of collection', there was a rent review 13.5 years after the valuation date where the landlord could expect a substantial rent increase and the ground rent was well secured. Taking these points together he considered it an attractive investment and that the appropriate rate of return should be 5%.

Mr Hackett for the leaseholder gave a different view. He pointed out that the Minimum Lending Rate had changed 10 times from February 2004 to July 2007 during which time it had risen from 3.75% to 5.5% which would be bound to affect the return an investor would expect on his income. He gave no specific property market comparisons but in his experience the appropriate rate should be 6%.

#### *Determination*

The Tribunal respect the opinions of the parties, both are Chartered Surveyors with many years' market experience and we have no doubt that they gave their true and honest opinions to assist the Tribunal.

However, on balance, we prefer the evidence of Mr Hackett and using our own knowledge and experience find that interest rates were expected to rise by the valuation date and that investors would have taken this into account. We therefore find the appropriate capitalisation rate in this case to be 6%.

#### 4.4 *Deferment Rate*

##### *Submissions*

Mr Davis drew the LVT's attention to the *Sportelli* case and in particular paragraphs 122 and 123 of the decision. In his view there were no special reasons for departing from *Sportelli* in this case and that the location, condition and age of 134 Albert Road were all reflected in the agreed freehold vacant possession value. He therefore contended for the *Sportelli* rate of 4.75%.

As further evidence, he referred to auction sale results of two properties in Birmingham in 2007, 119 Katherine Road, Bearwood and 54 Towyn Road, Moseley, both of which had unusually been subject to 50 year lease extensions under the 1967 Act. In cross examination Mr Hackett pointed out that the analyses produced negative marriage values that had been disregarded and that the results may not be reliable without knowing the full background.

Mr Hackett valued the deferment rate at 6%. In his opinion the same rate should apply throughout the valuation and the expectation of rising interest rates at the valuation date again

pointed to a deferment rate of 6%. He disregarded the *Sportelli* decision as it was subject to appeal.

*Determination*

We have considered the Lands Tribunal decision in the *Sportelli* case and in particular the guidance given in the following paragraphs from the judgment:

121: The prospect of varying conclusions on the deferment rate in different cases reached on evidence that was less comprehensive than that before us can therefore be avoided by LVTs adopting the practice of following the guidance of this decision unless compelling evidence to the contrary is adduced. ... The case for adopting a single deferment rate ... for all reversions in excess of 20 years is ... in our view, strong.

123: The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to be generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself and can be shown to make a departure from the rate appropriate.

Having carefully considered the parties' written submissions and oral evidence at the Hearing we are not convinced that there are compelling reasons to justify a departure from the deferment rate of 4.75% contended for by Mr Davis and accordingly find for this figure.

(Cont.) /6

## 5 Determination

### 5.1 Premium

Applying the points above we value the premium as follows:

Term			
Ground Rent	£	665	
Years purchase 13.5 years @ 6%		<u>9.073</u>	
			£ 6,033
Ground Rent at Review			
Standing House Value	£	140,000	
Modern Ground Rent 2%	£	2,800	
Years Purchase 25 years @ 6%		12.783	
Present Value £1 @ 6% deferred 13.5 yrs		0.4555	
			<u>£16,303</u>
			£22,336
Reversion			
Open Market Value		£140,000	
PV £1 38.5 yrs 4.75%		<u>0.1676</u>	
			<u>£23,464</u>
			£45,800
Marriage Value			
Open Market Value		£140,000	
Less			
Present Leasehold Value	£	80,000	
Freehold Value	£	<u>45,800</u>	
		£ 14,200	
Marriage Value		<u>0.5</u>	
			<u>£ 7,100</u>
Premium			<u>£52,900</u>

5.2 In summary, we determine the price of the Freehold interest in accordance with s.9(1A) of The Leasehold Reform Act 1967 at £52,900 (Fifty Two Thousand Nine Hundred Pounds).



I.D. Humphries B.Sc.(Est.Man.) FRICS  
Chairman

Dated: - 4 OCT 2007