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**HM COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL**

Property : 5 Clifton Road, Sutton Coldfield, West Midlands, B73 6DH

Applicants : Eric Charles Higgs and Mary Louise Higgs

Respondent : Friends Provident Life and Pensions Limited (First Respondent)
The Halliard Property Co. Limited (Second Respondent)

Case number : BIR/00CN/OAF/2012/0016

Date of Application : 7th February 2012

Type of Application : Determination of price payable to purchase the Freehold and Leasehold interests in a residential house under s.9(1) of the Leasehold Reform Act 1967

The Tribunal : I.D. Humphries B.Sc.(Est.Man.) FRICS (chair)
P.J. Hawksworth (Lawyer)

Date of Decision : 23rd May 2012

DECISION

- 1 The price payable to purchase the Freehold interest is determined at £3,350 (Three Thousand Three Hundred and Fifty Pounds).
- 2 The price of the Leasehold interest had been agreed by the parties prior to the Hearing at £553 (Five Hundred and Fifty Three Pounds) according to a letter received by the Tribunal from Wallace & Co. LLP dated 21st May 2012.

REASONS

Background

- 3 The Applicants hold a sub-Leasehold interest in the property and are entitled to acquire the Freehold and Leasehold interests under the Leasehold Reform Act 1967. Their agent served Notice on the Freeholder on 5th September 2011 and the Leaseholder served notice dated 14th November 2011 that they wished to act independently, rather than be represented by the Freeholder.

- 4 Negotiations took place between the sub-Leaseholders' agent, A.W. Brunt FRICS, and the Leaseholder's agent, S.Prichard B.Sc.(Est.Man.) FRICS of Messrs CP Bigwoods, and the price was agreed at £553. The Leaseholder's costs had not been agreed and are the subject of a separate application to the Tribunal that has yet to be determined.
- 5 Negotiations took place between Mr Brunt and the Freeholder's agent, Mr O.French of Messrs Savills but were unsuccessful and Mr Brunt asked for the case to be listed for Hearing. On the evening before the Hearing, the Freeholder's Solicitors faxed a note to the Tribunal after the office had closed advising that the price had been agreed but when the Hearing was convened the following day, Mr Brunt was adamant that no such agreement had been reached and issues as to price were still outstanding. As a result, the Hearing took place as planned. Mr Brunt represented the sub-leaseholders but there was no-one present for the Freeholder and they made no representations although they had been advised of the Hearing.

The Law

- 6 The Tribunal are satisfied that the price is to be determined in accordance with s.9(1) of The Leasehold Reform Act 1967.

The Lease

- 7 The property is held by 99 year sub-lease less 3 days from 25th March 1963 at a fixed ground rent of £40 per annum. Unusually, the lease requires the tenant to pay a service charge towards the cost of maintaining the grounds and communal areas around the estate.

Facts Found

- 8 The property was inspected by the Tribunal on the day of the Hearing with Mr and Mrs Higgs and Mr Brunt present.
- 9 It is a two storey end-terrace 1960s house in an attractive and popular development in Sutton Coldfield, West Midlands. It is within easy walking distance of the railway station making it commutable to Birmingham city centre and close to the town centre.
- 10 It is part of an estate of houses with communal landscaped gardens that are well maintained and subject to a service charge.
- 11 The house is brick and tile construction with the front elevation rendered to ground floor level and tile hung to the first floor. The accommodation comprises a hall, lounge, dining area and kitchen on the ground floor with a landing, three bedrooms and bathroom on the first floor. The demise is entirely within the four walls of the house. The garden and pathways are part of the general estate communal area and outside the demise. There is no garage included in the demise.
- 12 The house has been well maintained. It has double glazing, central heating, refitted kitchen and bathroom suites and considered to be 'fully developed' for valuation purposes.

Facts Agreed

- 13 As recorded above, the value of the Leasehold interest had been agreed at £553 (Five Hundred and Fifty Three Pounds).

14 No facts have been agreed with the Freeholder's agent.

Facts Disputed and the Parties' Submissions

15 Mr Brunt provided the Tribunal with a copy of his Valuation Report complying with RICS requirements but we received no representations from the Freeholder's agent. It is therefore assumed that all the elements of the Freehold valuation are disputed and our findings on each are set out below.

Apportioned Ground Rent

16 *Mr Brunt's Submission:*

The plot is part of an estate where the ground rent payable by the Leaseholder to the Freeholder is £5.00 p.a. Mr Brunt has carried out some research and for valuation purposes submits that the apportioned ground rent would be 10p p.a.

Tribunal Determination:

17 The amount is de minimis but for valuation purposes we accept it to be 10p p.a.

Capitalisation Rate

18 *Mr Brunt's Submission:*

In his view, bearing in mind the minimal rent it ought to be 7%.

19 *Tribunal Determination:*

The Tribunal accept that 7% is fair in this instance due to the fixed term rent and minimal figure.

The Value of the Term

20 *Mr Brunt's Submission:*

Mr Brunt submitted that in practice it would probably have no value as the cost of collection would exceed any income but for the sake of completeness he valued the term at £1.38.

21 *Tribunal Determination:*

We agree.

Entirety Value

22 *Mr Brunt's Submission:*

The house had been advertised on the open market for several months at an asking price of £159,950. A copy of the current sale particulars was produced that made no reference to whether it was Freehold or Leasehold but Mr Brunt said his clients had received only one offer in the sum of £120,000. He (and his clients) considered it too low and he felt a fair value would be £150,000 Freehold.

23 *Tribunal Determination:*

The market has been tested by local agents and using our general knowledge and experience (but no special or secret knowledge) we agree that £150,000 would have been a fair figure for a fully developed Freehold house on this plot at the date of notice, taking into account the ongoing requirement to contribute to communal areas and grounds upkeep.

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Site Apportionment

24 *Mr Brunt's Submission:*

Mr Brunt adopted the 'standing house' method of valuation and assumed the plot to be worth 30% of the value of a fully developed house on the plot.

25 *Tribunal Determination:*

The house is terraced and any development of the plot would need the adjoining house to be supported during construction. We agree 30% of entirety value to be fair in this instance.

Plot Value Decapitalisation Rate and Deferral Rate

26 *Mr Brunt's Submission:*

It was submitted that the 'standard' rate for a house in the West Midlands would be 5.5% but as the owners would be left with a property subject to a service charge to cover the cost of maintaining the garden, Mr Brunt considered it to be more akin to a maisonette and added 0.25% to cover the potential cost to the landlord of complying with the consultation requirements of s.20 of the Housing Act 1985. He submitted for 5.75%.

27 *Tribunal Determination:*

We appreciate the point but disagree for the following reasons:

1 The enfranchising purchaser will have to continue to contribute to the cost of communal gardening but the cost will not be a 'service charge' within the meaning of the 1985 Act as there will be no landlord and tenant relationship. It will be an estate rent charge over which the Tribunal have no jurisdiction with no requirement for the Estate Owner to comply with s.20. Accordingly, we do not add the requested 0.25% to cover the risk of having to comply with s.20.

2 We find the disadvantage of the potential estate rent charge to be already reflected in the entirety value of £150,000 and make no further allowance as this would be double counting.

3 Unlike a maisonette, the property is entirely within its plot, it has nothing above or below which again suggests that it should not be assessed at the maisonette rate.

We find the starting point for assessment of the deferral rate to be the *Sportelli* case (LRA/50/2005). We adopt a risk free rate of 2.25%, deduct 2.00% for real growth and add 4.50% risk premium. Taking account of *Zuckerman v Trustees of Calthorpe Estate* (LRA/97/2008), we add 0.25% to reflect the greater risk of obsolescence and deterioration in the West Midlands compared to prime central London and 0.50% for poorer growth in the West Midlands to assess a deferral rate of 5.5%.

Second Reversion

28 *Mr Brunt's Submission:*

Following *Clarise Properties* [2012 UKUT 4 (LC)], Mr Brunt adds a second reversion representing the present value of the Standing House value less 20%.

29 *Tribunal Determination:*

In the absence of any contrary evidence, we agree.

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Tribunal Valuation

30 Having inspected the property and considered the evidence, we assess the price payable under the 1967 Act to be based on the standing house method of valuation.

We find the price of the Freehold interest in 5 Clifton Road, Sutton Coldfield under s.9(1) of the Leasehold Reform Act 1967 to be £3,350 (Three Thousand Three Hundred and Fifty Pounds) at the date of Notice as set out below:

Term

Ground Rent £0.10 pa	£	0.10		
Years Purchase 50.54 yrs @ 7%		<u>13.8182</u>		
	£	1.38	say	£ 1

Reversion 1

Entirety Value	£	150,000		
Site Apportionment 30%	£	45,000		
Section 15 Ground Rent @ 5.5%	£	2,475		
Y.P. 50 yrs @ 5.5%		16.9315		
P.V. £1 50.54 yrs 5.5%		<u>0.06680</u>		
				£ 2,799

Reversion 2

Standing House value	£	150,000		
Less 20%	£	120,000		
P.V. £1 100.54 yrs 5.5%		<u>0.00459</u>		
				£ 551
				<u>£ 3,351</u>
			say	£ 3,350



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

Date 12 JUN 2012