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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CAM/00KA/OCE/2018/0013
County Court Claim No : D03EC410

Property : 16 Hillborough Road, Luton LU1 5EY

Applicants 1 Mohammed Saleem
2 Augusta Ifeanichukwu Evans

Representative : Silverman Peake Solicitors

Respondent : Sandra Marie Williams [not served]

Type of Application : to determine the appropriate sum payable on enfranchisement where the landlord cannot be found [LRHUDA 1993, s.26]

Tribunal : G K Sinclair, D S Brown FRICS
& M Wilcox BSc MRICS

Hearing date and venue : Friday 6th July 2018 at Luton Magistrates Court

Date of decision : 20th July 2018

DECISION

- Price to be paid into court paras 1–2
- Background paras 3–5
- Inspection paras 6–9
- Applicable valuation principles paras 10–14
- Valuation evidence and hearing para 15
- Findings paras 16–20
- Schedule 6 valuation Schedule

1. For the reasons given below the tribunal determines that the sum to be paid into court is £5 100, being the sum of £2 550 each for the ground floor flat and first floor flat.
2. The form of transfer is as drafted in form TR1, which is item 2 j. at pages 135–137 in the application bundle, subject to :
 - a. the insertion of the price
 - b. any reasonable requisitions raised by the Land Registry, and
 - c. the execution block for the transferor being amended to state that the document is executed by a County Court District Judge.

Background

3. The subject premises comprise two flats; one on the ground floor and another on the first floor. Each is let for a term of 125 years from 1st July 1989, with a stepped ground rent rising from an initial £25 to £50 after 25 years, and then by a further £50 every 25th anniversary. Unusually, although registered as freehold proprietor as recently as March 1990, the landlord has vanished. Her only address registered at the Land Registry is that of flat 16A, despite the fact that she granted the current lease of that flat on 23rd November 1990. Two enquiry agents have been employed and those bearing similar names have been tracked down and visited, but each has denied having anything to do with the property.
4. On 23rd August 2017 the two applicants issued a claim in the County Court under Part 8 of the Civil Procedure Rules 1998, seeking a transfer to them of the freehold title to the property. By order dated 27th February 2018 District Judge Rand ordered that service of the claim on the respondent landlord be dispensed with, that the premises be vested in the applicants on such terms as determined by the tribunal, and that there be liberty to restore for any further directions thereafter.
5. On 14th May 2018 directions were issued by the tribunal, including for the filing of a valuation report containing a detailed calculation of the price plus a list with detailed agents' particulars of comparables relied upon.

Inspection

6. The tribunal inspected the front exterior of the property and the interior of each flat on the morning of the hearing. Hillborough Road is a quiet residential cul-de-sac accessed from and uphill of Russell Rise, and just west of Farley Hill. Located on the inside of a bend, the property is a typical mid-terrace house in a residential area comprising fairly similar properties, although it is unusual in enjoying off-street parking. Access to the rear should be gained by a shared

arched passageway between this and the property immediately to the left, but the rather poor quality door at the front was immovable.

7. The condition and layout of the property and each flat are as set out in the report of Stephen R Jones BA (Hons) MRICS dated 31st May 2018. As explained, the premises have been converted from a single house to two flats, with the result that the original small kitchen remains on the ground floor and the bathroom on the upper floor. The upstairs flat therefore has a new, larger kitchen/diner at the front – facing the road, while a small bathroom extension has been built on the shared pathway side on the ground floor – probably using as access the corridor to the former side entrance door. The only rear exit from the ground floor flat is through the patio window of the slightly extended rear bedroom. Above this the upper flat enjoys a very flimsy balcony accessed by stepping through a window.
8. A key was obtained to gain entry to the upper flat, but the occupants of the flat downstairs were present and allowed the tribunal in. In each flat three rooms were occupied by double beds, with a large number of adults and some small children present in the downstairs flat.
9. As the tribunal had arrived early the members were able to walk to the adjoining street and view the exterior of 65 Russell Rise. There was no time to view the others, although Mr Jones' report and on-line property websites provided enough information about them to enable the tribunal to assess their validity.

Applicable valuation principles

10. By section 27(5) of the Act :
 - ...the appropriate sum which is to be paid into court in respect of any interest is the aggregate of :
 - (a) such amount as may be determined by the appropriate tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and
 - (b) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).
11. By paragraph 2 of Schedule 6 the price payable for the acquisition of the premises ...shall be the aggregate of –
 - (a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
 - (b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and
 - (c) any amount of compensation payable to the freeholder under paragraph 5.
12. An important element in calculating the price is the appropriate deferment rate. The default position here is the rate for flats of 5% set by the Lands Tribunal (and

upheld by the Court of Appeal) in the leading case of *Cadogan v Sportelli*.¹ In certain circumstances, however, tribunals have been prepared to venture beyond that, with two possible reasons being argued for and upheld in the particular circumstances of *Zuckerman and others v Trustees of the Calthorpe Estates*.² The first is that if the subject premises are outside the PCL area, and of much lower value, they are much more likely to become obsolescent than expensive flats in Belgravia. The second is that since the decision in *Sportelli* the property management world had woken up to the increased importance of complying with the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.³ As failure to do so could be financially calamitous, so management had in turn become more onerous. This should be reflected in an increased risk factor of say 0.25%.

13. *Sportelli* was appealed on another point to the House of Lords⁴, which determined (Lord Hoffman dissenting) that hope value could constitute part of the price payable to the freeholder in relation to non-participating flats on a collective enfranchisement. In the instant case both lessees jointly comprise the nominee purchaser, so hope value does not apply.

14. In most cases where there is a missing landlord, but perhaps surprisingly not in all, there will have been no rent paid for a substantial period before the date of the application. Section 27(5) requires that the applicant must pay into court not only the price payable, as determined by the tribunal, but also the amount or estimated amount remaining unpaid of any pecuniary rent payable for the house and premises up to the date of the conveyance. Section 166 of the Commonhold and Leasehold Reform Act 2002⁵ may, however, impose a restriction upon that by providing that :

A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is that specified in the notice.

The limitation period for recovery of unpaid rent is 6 years, so that is the maximum rent which could ever be recoverable under the head-lease.

Valuation evidence and hearing

15. Although originally listed for an oral hearing, so that the tribunal could question Mr Jones on his report, the applicants' solicitor contacted the tribunal a few days before the hearing to ask if, to avoid the cost of instructing counsel and calling witnesses and expert to attend, the case could be dealt with on paper. The tribunal replied by stating that it wished to inspect and that, while a matter for

¹ [2007] EWCA Civ 1042; [2008] 1 WLR 2142

² [2009] UKUT 235 (LC); [2011] L&TR 12 – otherwise known as the *Kelton Court* decision

³ This level of concern has reduced since the Supreme Court's decision in *Daejan Investments Ltd v Benson* [2013] UKSC 14 on the principles applicable to the exercise of the tribunal's powers to grant dispensation under section 20ZA

⁴ [2008] UKHL 71; [2010] 1 AC 226

⁵ In force from 28th February 2005

her, it was desirable if the tribunal could put questions directly to the expert – the only person required – rather than ask him later. The solicitor misunderstood and no-one attended the hearing, although an agent attended the premises to ensure access.

Findings

16. The tribunal agrees with the deferment and capitalisation rates used by Mr Jones. With regard to his assessment of “freehold” value of the flats, it does not agree with some of Mr Jones’ figures.
17. Mr Jones has applied a £10 000 differential when valuing the two flats, excluding tenants’ improvements, apparently on the sole basis of purported difference in size. The tribunal considers that any difference in floor areas is balanced out by Flat B having the convenience of a ground floor entrance and the significant benefit of a rear garden area immediately adjacent to the flat and accessible via a patio door.
18. With regard to Mr Jones’ comparable evidence :
 - a. The flat at 65 Russell Rise is close to the subject property. It was on the market with an asking price of £124 500 and a figure stated in the sale particulars of “Extension of Lease £15 000 (to return lease to 125 years)”. The tribunal assumes that the sale price of £133 500 quoted by Mr Jones is for an extended lease. This flat is in a less salubrious location, being on a busier road not enhanced by trees. It stands well above the street, necessitating inconvenient access up a number of relatively steep steps. It does not have the benefit of off-street parking (which is a valuable asset in this location) and it was unmodernised. Mr Jones assesses it as inferior. The tribunal considers that this indicates a value in excess of £165 000 for Flat B .
 - b. Flat 6 at Maple Court, which sold for £140 000, is smaller than Flat A and has no garden area. Also, it was on a 70 year lease and so the likely cost of acquiring a lease extension must be taken into account. It is closer to the town centre, but by a small margin which does not affect the value. Mr Jones assessed it as inferior. The tribunal considers that this sale indicates a value for Flat A of around £170 000.
 - c. Flat 2 at 6 Stockwood Crescent is in a more attractive terrace, but without the benefit of trees lining the street and with more passing traffic. It is smaller than Flat A and has no garden area or off-street parking. Mr Jones refers to the closer proximity to the town centre but the tribunal does not agree that this is sufficient to materially affect the value and certainly does not offset Flat A’s advantages of parking space and garden. Mr Jones states that the sale price of £187 000 includes “share of freehold”. In the tribunal's assessment, the difference in value between this flat and Flat A, is not as much as £22 000, and that this indicates a value for Flat A of around £170 000.
 - d. The tribunal attaches little weight to the sale of Flat B in November 2015. Extrapolating values two years from a sale date by use of indices is notoriously unreliable.
19. It is regrettable that Mr Jones did not attend the hearing to explain and discuss any of the above issues. Taking all of the factors into account, the tribunal

assesses the 'freehold' value of the flats, excluding tenants' improvements but assuming properly maintained interiors, is £170 000 each.

20. Applying the above criteria to each flat, as shown in the schedule attached, the tribunal assesses the purchase price for each flat to be £2 550. The total to be paid into court is therefore the combined sum of £5 100.

Dated 20th July 2018

Graham Sinclair

Graham Sinclair
Tribunal Judge

SCHEDULE

Valuation date	23 rd August 2017
Freehold market value of each flat	£170 000
Unexpired term of lease (to 30 th June 2114)	96.83 years
Deferment rate (<i>Sportelli</i>)	5.0%
Capitalisation of current ground rent : yield	6.5%
Value of current unpaid ground rent	Nil

1. Value of freeholder's present interest

a.	Term – ground rent		
	Ground rent 1 = £50		
	YP 21.83 yrs @ 6.5%	11.4938	£575
	Ground rent 2 = £100		
	YP 25 yrs @ 6.5%	12.1979	
	deferred 21.83 yrs @ 6.5%	0.2529	£308
	Ground rent 3 = £150		
	YP 25 yrs @ 6.5%	12.1979	
	deferred 46.83 yrs @ 6.5%	0.0524	£96
	Ground rent 4 = £200		
	YP 25 yrs @ 6.5%	12.1979	
	deferred 71.83 yrs @ 6.5%	0.0108	£26
b.	Deferred value of freehold reversion		£170 000
	PV of £1 x 96.83 yrs @ 5.0%	0.0088765	£1 509
c.	plus share of appurtenant parts		£50
	Sub-total		£2 564

2. Share of marriage value nil

3. Compensation under paragraph 5 nil

Sum payable into court for each flat **£2 564**

but say **£2 550**