4268

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/34UF/OCE/2015/0024**
Property	:	**1A, B & C Salisbury House, Park Avenue North, Northampton NN3 2HT**
Applicant	:	**Mr Anthony Nicholas Ducker, Nominee Purchaser**
Representative	:	**Goodchild Vizard & Smart although at the Hearing Mr Ducker appeared in person accompanied by his fellow lessees**
Respondent	:	**John Robert Baucott**
Representative	:	**Brignalls, Balderstone Warren Solicitors although at the hearing Mr Baucott represented himself**
Type of Application	:	**Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr N Maloney FRICS** **Mr G Smith MRICS FAAV REV**
Date and venue of Hearing	:	**Holiday Inn, Northampton on 19th January 2016**
Date of Decision	:	**4th March 2016**

DECISION

DECISION

1. **The Tribunal determines that the price payable for the freehold of Salisbury House, Park Avenue North, Northampton NN3 2HT (the property) is £21,000 as set out on the attached valuation schedule.**
2. **The application in respect of costs under Section 33 of the Leasehold Reform, Housing and Urban Development Act (the Act) and under the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules) will be considered in due course.**

BACKGROUND

1. By an application dated 8th September 2015 Mr Ducker on his own behalf as the owner of 1C Salisbury House and on behalf of his co-lessees Mr Thomas the owner of 1A Salisbury House and Mrs Tinston the owner of 1B Salisbury House sought a determination as to the price payable for the property. More than one initial notice was issued on behalf of Mr Ducker but the last one dated 17th July 2015 suggested a purchase price of £9,000. In a counter notice purportedly dated 15th June and responding it would seem to an earlier initial notice a counter proposal of £16,000 was made by the Respondent.

2. In preparation for the hearing we received a bundle on behalf of the Applicants containing copies of the freehold and leasehold titles and correspondence passing between the parties and their representatives. We were also provided with a valuation report by Miss Howe BSc FRICS Dip Arb a Chartered Surveyor of Kirkby Diamond dated 4th December 2015 and a letter from Richard Greener estate agents, the author being Nick Paterson a director of that company purporting to be an expert witness in the valuation for the collective enfranchisement of the property.

3. It is perhaps worth just dealing with some of the correspondence and in particular the apparent confusion that had arisen over a suggested sale of the freehold by Mr Baucott at a price of £250. To suggest that this somehow constituted an agreement is somewhat disingenuous because on 14th September 2013 Mr Baucott had written to Mr Ducker saying that he could not sell the freehold until the leases had been extended. That never occurred and accordingly no agreement was ever reached.

4. It should be noted that the bundle did not include the leases of the three flats which was unhelpful.

INSPECTION

5. We inspected the exterior of the property on the morning of the hearing. We were not met by anybody and did not make an internal inspection of the flats. This appeared to be of some concern to the Applicants but because, as we will explain in this decision, there appeared to be an agreement as to the market value of the long lease of the subject flats, an internal inspection was not felt to be required.

6. The external inspection confirmed that the property consisted of a three storey purpose built block somewhat incongruous in the surrounding area. It was of brick construction with a tiled roof. It had a small front garden and fronted a busy main road. It was in close proximity to Northants Cricket ground but was a pleasant location. To the rear was a cobbled access road with three garages and car parking in front and a gate to the rear garden.

HEARING

7. The hearing was attended by Mr Baucott and his friend Miss Payne as well as Mr Thomas and Mr Wilson on behalf of Mrs Tinston. Mr Baucott represented himself and was accompanied by his sister Mrs Higgins. Unfortunately, we had no professional representation available to us. Neither party had solicitors nor did they see fit to call the parties who had made the reports before us, namely Miss Howe and Mr Paterson.

8. We firstly heard from Mr Ducker who wished to give a history of attempts to extend the lease going back to 2010. He admitted that no notices under the Act had been served. Unfortunately, it appears that Mr Ducker was until late 2014 under the Court of Protection and was not released until that time. Mr Wilson representing Mrs Tinston said that a settlement offer had been put forward requiring acceptance the following day at over £23,000. We explained the procedure to the parties. Mr Baucott then sought to address us on the question of costs suggesting that his solicitors had met the requirements whereas the Applicants had not.

9. Mr Thomas thought that Mr Patterson's report was relevant as he had experience in the local market. He himself had purchased in 2014 and had negotiated with the estate of the late Mr and Mrs West the freehold owners that he would obtain a lease extension without paying additional funding.

10. We explained to the parties the process that we would need to go through and adjourned for 15 minutes to give the Applicants a chance to consider their position. Mr Ducker on behalf of all Applicants upon returning told us that he would leave the Tribunal to deal with the calculation. As to the transfer, a draft of which had not been included in the bundle, we were told that this would be resolved between the parties.

11. Mr Baucott then gave some evidence as to the costs that he had incurred in the process and we were directed to a letter from Brignalls Balderstone and Warren (BBW) dated 19th November 2015 when solicitors' costs with VAT of £1,848 and a surveyor's fee of £1,440 inclusive of VAT.

12. Mr Wilson for the Applicant said that they could not comment on the costs but he thought that they were supposed to be paying something in the region of £900 plus VAT. An application by Mr Baucott for an order of costs against the Applicants under Rule 13 of the Rules was left for the moment, the application to be proceeded with in due course. That concluded the hearing.

THE LAW

13. We have applied the provisions of the Act in reaching the valuation and in particular schedule 6 governing the price payable by the Nominee Purchaser.

FINDINGS

14. It was not helpful to us that neither party had thought it appropriate to arrange for the attendance of their experts to explain their reports. We were left, therefore, to plough our own furrow. Dealing firstly with the Applicant's report, we must say with all respect to Mr Patterson that it really was of little use other than assisting us in determining the long lease value for each of the flats. His letter of 17th December purports to be an expert witness valuation and whilst it confirms he is conversant with legal protocol and practice directions CPR Part 35, it is not clear he has understood his obligations to undertake the valuation with regard to the Act. His report appears to be given on the understanding that it relates to the open market values laid down by the RICS in the Appraisal and Valuation Manual introduced in January 2006. This of course is not of great assistance to us in this matter. As we have indicated, his report is helpful in that he has estimated the current market value of the flats at £135,000. It is not clear whether this is on the basis of the existing lease lengths but it is a figure that accords with the valuation put forward by Miss Howe for the long lease figure in respect of the flats. The remainder of the report fails to deal with any issues with regard to ground rent, capitalisation or deferment rates or relativity.

15. By contrast the Respondent's report prepared by Miss Howe at least has the benefit of dealing with those matters which one would have expected to have been covered in a chartered surveyor's report required in respect of a valuation of this nature. We have no particular quibble with any of the figures put forward by Miss Howe in this report. As we have indicated she has assessed the unimproved long lease value at £135,000 at the valuation date of 28th April 2015 which was the date of the first notice. In respect of capitalisation rate she has adopted a 7% which is acceptable to us and has not departed from the Sportelli deferment rate of 5%. Indeed no evidence was given to use to suggest that such departure should take place. As to relativity, she had taken the average of those graphs commissioned, in effect, by the Upper Tribunal and the RICS and concluded in her report at least, that that relativity figure is 91.21%. In her valuation in fact she has applied a relativity of 92.21%. The marriage value of 50% for two of the flats is not in dispute. Her figure for the price payable for the freehold was £16,648.

16. We have reviewed the valuation which Miss Howe prepared and, as can be seen from the valuation sheet attached, there are some errors which have crept into her assessment. These relate to her miscalculation of the capitalised ground rent due to the landlord and a failure it would appear to add that figure properly calculated to the landlord's interest in the subject premises. We have adopted her relativity rate in the valuation of 92.21% as that seems to us to be reasonable having regard to the graphs to which she refers. We have also applied an uplift in respect of the long lease to freehold of 1%. Correcting these errors/omissions results in us determining that the price payable for the freehold should be £21,000. This is considerably in excess of the amount that the Respondent's valuer argued for.

17. As a result of this we wrote to the parties asking for them to make submissions before we finalised our decision. The letter from BBW dated 12th February confirms that the Respondent, not unsurprisingly, accepted our assessment of the valuation. That letter went on to raise the claim for costs under the Rules which we will deal with separately. For the Applicants we had a letter from Mr Wilson dated 16th February 2016 and one from Goodchild Vizard and Smart dated 18th February 2016. Somewhat surprisingly these appeared to be identical letters. We do not know who is the original author. Suffice to say that the correspondence from the Applicants does nothing to assist us in departing from the valuation that we have reached. It merely reiterates the historical attempts to resolve this issue and rejects the valuation which we propose. The final response in both letters is that the leaseholders believe the total cost to them for purchasing the freehold should not exceed £16,000 plus reasonable cost of fees identified above.

18. For the reasons set out above we find that the valuation that we have produced showing a price of £21,000 for the freehold is correct and that is the sum that will be payable should the Applicants wish to proceed with their purchase. It will be for them to determine how this is divided between the three leases but of course Mr Thomas's property was not the subject of any form of marriage value payment. We have addressed the position on costs and issued directions in letter form. Assuming those directions are complied with we will consider both the costs under the Act and under the Rules in due course.

Judge: *Andrew Dutton*

A A Dutton

Date: 4th March 2016

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

SALISBURY HOUSE, PARK AVENUE, NORTHAMPTON, NN3 2HT
CAM/34UF/OCE/2015/0024

		From	To	Amount		
Ground Rent (1a)					Lease Date	11/03/1983
Original Term	(expired)	21/02/2014	27/04/2015	£ -	Variation Date	21/02/2014
Current Term		28/04/2015	20/02/2047	£ 100.00	Term	99 yrs
1st Reversion		21/02/2047	20/02/2080	£ 150.00	Commencement Date	21/02/2014
2nd Reversion		21/02/2080	20/02/2113	£ 200.00	Termination Date	20/02/2113
Ground Rent (1b)		From	To	Amount	Lease Date	21/01/1983
Original Term	(expired)	01/12/1982	27/04/2015	£	Variation Date	
Current Term		28/04/2015	30/11/2032	£ 105.00	Term	99 yrs
1st Reversion		01/12/2032	30/11/2057	£ 400.00	Commencement Date	01/12/1982
2nd Reversion		01/12/2057	30/11/2081	£ 600.00	Termination Date	30/11/2081
Ground Rent (1c)		From	To	Amount	Lease Date	23/12/1983
Original Term	(expired)	01/12/1982	27/04/2015	£ -	Variation Date	
Current Term		28/04/2015	30/11/2032	£ 105.00	Term	99 yrs
1st Reversion		01/12/2032	30/11/2057	£ 400.00	Commencement Date	01/12/1982
2nd Reversion		01/12/2057	30/11/2081	£ 600.00	Termination Date	30/11/2081

Lessee's Notice Date	28/04/2015
Valuation Date	28/04/2015

		Rates	
Freehold Equivalent Value	£ 135,000.00	Capitalisation	7.00%
New Lease Value	£ 133,650.00	Deferment	5.00%
Existing Lease Value (No Act World)	£ 124,483.50	NLV comparison to FH	99.00%
		ELV comparison to FH	92.21%

Value of Income/Reversion

Current Total Ground Rent						per annum	£ 310.00		
Unexpired Years				17 years					
Unexpired Additional days				216 days					
Unexpired Term				17.59178082 years					
Interest Rate				7.00%					
PV £1 @	7.00%				0.304149441				
YP Single Rate	7.00% for	17.59 years					9.9407223		
							£ 3,081.62	28/04/2015 to	30/11/2032
First Reversion Ground Rent						per annum	£ 900.00		
Unexpired Years				14					
Unexpired Additional days				81					
Unexpired Term				14.22191781 years					
Interest Rate				7.00%					
PV £1 @	7.00%				0.382037794				
YP Single Rate	7.00% for	14.22 years				8.8280315			
Deferred	17.59 years								
PV £1 @	5.00%					0.42387958	3.7420223		
							£ 3,367.82	01/12/2032 to	20/02/2047
Second Reversion Ground Rent						per annum	£ 950.00		
Unexpired Years				10 years					
Unexpired Additional days				282 days					
Unexpired Term				10.77260274 years					
Interest Rate				7.00%					
PV £1 @	7.00%				0.482458804				
YP Single Rate	7.00% for	10.77 years				7.3934457			
Deferred	31.81 years								
PV £1 @	5.00%					0.21178247	1.5658022		
							£ 1,487.51	21/02/2047 to	30/11/2057
Third Reversion Ground Rent						per annum	£ 1,350.00		
Unexpired Years				22 years					
Unexpired Additional days				81 days					
Unexpired Term				22.22191781 years					
Interest Rate				7.00%					
PV £1 @	7.00%				0.222349475				
YP Single Rate	7.00% for	22.22 years				11.1092932			
Deferred	47.59 years								
PV £1 @	5.00%					0.12520628	1.3909533		
							£ 1,877.79	01/12/2057 to	20/02/2080
Fourth Reversion Ground Rent						per annum	£ 1,400.00		
Unexpired Years				1 years					
Unexpired Additional days				283 days					
Unexpired Term				1.775342466 years					
Interest Rate				7.00%					
PV £1 @	7.00%				0.886816432				
YP Single Rate	7.00% for	1.78 years				1.6169081			
Deferred	64.81 years								
PV £1 @	5.00%					0.04234082	0.0684612		
							£ 95.85	21/02/2080 to	30/11/2081
Final Reversion Ground Rent						per annum	£ 200.00		
Unexpired Years				31 years					
Unexpired Additional days				81 days					
Unexpired Term				31.22191781 years					
Interest Rate				7.50%					
PV £1 @	7.50%				0.104560466				
YP Single Rate	7.50% for	31.22 years				11.9391938			
Deferred	66.58 years								
PV £1 @	5.00%					0.03882764	0.46357D7		
							£ 92.71	01/12/2081 to	20/02/2113
Capitalised Income from Leases									£ 10,003.30
Reversion of 1a to Capital Value						£ 133,650.00			
PV £1 deferred		97.81 years @		5.00%		0.0084639			
							£ 1,131.20		
Reversion of 1b & 1c to Capital value						£ 267,300.00			
PV £1 deferred		66.58 years @		5.00%		0.0388276			
							£ 10,378.63		
Reversion of Leases									£ 11,509.83

Marriage Value

Tenant Interest after Enfranchisement		£ 135,000.00	
No of Flats		2	
Less		£ 270,000.00	
Reversion	£ 270,000.00		
Relativity	92.2%		
Tenant Current Interest	£ 248,967.00		
Landlord's Current Interest	£ 21,513.13		
		£ 270,480.13	
Marriage Value Total			£ 480.13
Distributable Share			50%

TOTAL PAYABLE TO LANDLORD ON ENFRANCHISEMENT £ 21,273.07

Years Purchase of a Reversion to a Perpetuity (Single Rate)

Rate of Interest				5.49%
No of Full Unexpired Years			2	
No of Additional Unexpired Days			300	
Equivalent No of Years				2.82
PV £1				0.8600346
Years Purchase				18.2195824
Deferred (PV £1)	2.82 years	@	5.49%	0.8600346
YP in Perp Deferred				15.6694706

Present Value of £1 Table

Rate of Interest		6.0000%
No of Full Unexpired Years	58	
No of Additional Unexpired Days	16	
Equivalent No of Years		58.04
PV £1		0.0339743