



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

Case Reference : MAN/00DA/OAF/2015/0007

Property : 30 Airedale Gardens, Leeds, LS13 1DN

Applicant : Mr Benjamin Bevis Dainton & Mrs Elizabeth Ann Dainton

Representative : Ison Harrison Limited

Respondents : Missing Landlord

Type of Application : Application for determination of the appropriate sum to be paid into Court under section 27(5) of the Leasehold Reform Act 1967

Tribunal Members : P J Mulvenna LLB DMA (Judge)
D Bailey FRICS

Date and venue of Hearing : 13 April 2015 at IAC Manchester Tribunal Office, 1st Floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester M1 4JB (Determination on the Papers)

Date of Decision : 13 April 2015

DECISION

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ORDER

That the purchase price for the freehold interest in 30 Airedale Gardens, Leeds, LS13 1DN, be determined at £60.00.

INTRODUCTION

1. Mr Benjamin Bevis Dainton & Mrs Elizabeth Ann Dainton ('the Applicants') made an application on 7 August 2014 to Leeds County Court for an order for permission to issue a Claim Form without naming the Defendants who were unknown. The Claim Form concerned an application for a vesting order under the provisions of the Leasehold Reform Act 1967 ('the Act') in respect of 30 Airedale Gardens, Leeds, LS13 1DN ('the Property').
2. An Order was made on 9 January 2015 by District Judge Pema sitting in Chambers at Leeds County Court in the following terms:
 1. It having been ordered that the claim form may be issued without naming a Defendant pursuant to CPR 8.2A and the court being satisfied that such order is appropriate. Service of the Claim Form is therefore dispensed with.
 2. The Court being satisfied that the Claimants, being tenants of the property at 30 Airedale Gardens Leeds, LS13 1DN registered at HM Land Registry under title number YWE41354 "the Property" under two leases dated 1652 for a term of 500 years between (1) The Right Honorable Thomas Lord Viscount Saville and Abraham Hinchcliffe ("the Leases") have a right under Part I of the Leasehold Reform Act 1967 ("the Act") to acquire the freehold of the Property and are prevented from giving notice in accordance with the Act of their desire to have the freehold of the Property because the identity of the person to be served with notice cannot be ascertained.
 3. With a view to the Property being vested in the Claimant for an estate in fee simple absolute in possession this Court nominates, pursuant to section 27 of the Act District Judge Puma or any other District Judge in Leeds in his absence to execute a TP1 of the Property in favour of the Claimant and containing proper provisions for giving effect so far as possible to the requirements of section 10 of the Act, the terms of the said conveyance to be settled by the court.
 4. That the matter is transferred to the First Tier Property Tribunal to determine the reasonable premium.
 5. Once the premium is determined the Solicitor for the Claimant is to submit a TP1 to the court for approval and execution.'
3. The matter was duly received by the Tribunal.

THE PROPERTY

4. The Property is a semi-detached house which satisfies the definition of a house for the under section 2(1) of the Act. It is held under two leases dated 24 August 1652 for a term of 500 years made between (1) The Right Honorable Thomas Lord Viscount Saville and (2) Abraham Hinchcliffe ('the Lease') which are a qualifying leases as defined by section 1 of the Act.
5. An Assignment dated 22 October 1877 made between (1) Edwin Tummon Barker and (2) William Groundwell refers to apportioned rents of 18s3d and £6.1s.3d.

6. The land comprised in the Leases was sold as building plots by Chartclose Limited in 1972. They have subsequently ceased trading.

PROCEEDINGS BEFORE THE TRIBUNAL

7. Directions were issued by Judge L Bennett, sitting as a procedural chairman, on 26 February 2015. The Applicants have complied with the Directions.
8. The Applicants did not request a hearing and the Tribunal proceeded by considering the matter on 13 April 2015 by reference to the papers placed before them. The Tribunal determined that, having regard to the nature of the matters to be determined, there was no need to inspect the Property.

THE LAW

9. The purchase price is to be determined in accordance with the provisions of section 9(1) of the Act which provides that 'the purchase price payable...shall be the amount which if sold on the open market by a willing seller (but excluding the tenant residing) might be expected to realise'.
10. Under section 9(3) of the Act, the tenant has the right on ascertaining the amount payable for the house (but not more than one month after the amount determined has been determined) to give written notice to the landlord that he is unable or unwilling to acquire the house.
11. The costs to be borne by the tenant by section 9(4) of the Act are the reasonable costs (insofar as they are incurred in the performance of the notice) incidental to the following matters:-
 - (a) any investigation by the landlord of the right to acquire the freehold
 - (b) any conveyance of the house
 - (c) deducing, evidencing and verifying the title to the house
 - (d) making out and furnishing such abstracts and copies as the person giving the notice may require
 - (e) any valuation of the house

These costs do not include costs incurred by the landlord in connection with a reference to a Tribunal (Housing Act 1980, Schedule 22(5)).

THE DETERMINATION OF THE PURCHASE PRICE

12. The Tribunal is unaware of any provisions in the Leases which might impact on the market value of the Property: the Leases are unavailable and no evidence has been put before the Tribunal which suggests that there are such provisions. In view of the length of the term still unexpired (137 years), the Tribunal considered that the value of the reversion was nil. The Tribunal considered that it was likely that the rent reserved exceeded the costs of collection.
13. The above factors will have an impact on the market perceptions of the ownership of the freehold interest in the Property and this will influence the return required by an investor as the sale of a single ground rent that is relatively dear to collect and will get dearer is not an attractive proposition. The Tribunal determined that the capital value to be determined equated to the amount required to yield the apportioned rents of £6.19s.6d without addition or deduction.

14. The Tribunal had the benefit of an expert report prepared by Mr Bruce T Collinson, FRICS, a director of Adair Paxton Limited, on the instructions of the Applicant. He inspected the Property and took account of his knowledge of the market in the area within which the Property is situated. He approached the calculation of the purchase price for the freehold interest by using an arbitrary 10% to capitalize the rent (as it was not worth collecting) and using 5% for reversionary rates. He has assumed a standing house approach with a modern ground rent of 35%. He calculated the purchase price at £106.36.
15. The Tribunal accepts the methodology adopted by Mr Collinson but considers that the introduction of a modern comparable is not justifiable as there has been no change to the position since 1877, even when the land was sold as building plots in 1972. In those circumstances, the Tribunal finds that a fair and reasonable price would be achieved by adopting Mr Collinson's multipliers, but omitting the reference to modern ground rents. On that basis, the Tribunal has determined a purchase price of £60.00. For the avoidance of doubt, the Tribunal does not consider that any costs need to be borne by the Applicants, save for those incurred on their behalf by those whom they have instructed.

COSTS

16. The Tribunal has power to award costs and/or reimburse fees under Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 which provides, insofar as it is material to the present case:
 - '(1) The Tribunal may make an order in respect of costs only –
 - ... (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –
 - ... (ii) a residential property case...
 - (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or any part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
 - (3) The Tribunal may make an order under this rule on an application or on its own initiative.'
17. No application has made for an award of costs, although there is still an opportunity to do so (see Rule 13(5)). The Tribunal has, however, considered the position on its own initiative and has determined that, on the basis of the evidence at the time of the Decision, and in the particular circumstance of this case, it would not be appropriate or proportionate to award costs to any party or to make an order for the reimbursement of any fees.