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

Case Reference : **MAN/00CK/OAF/2016/0003**

Property : **19 Dalton Court, Wallsend, Newcastle upon Tyne NE28 9TN**

Applicants : **Alan Thompson and Diane Thompson**

Representative : **Clarke Mairs LLP**

Respondent : **Freehold Securities Limited**

Representative : **Stevensons Solicitors**

Type of Application : **Determination of price payable and costs - section 21(1)(a) and (ba) Leasehold Reform Act 1967**

Tribunal Members : **Mr S Moorhouse LLB
Mr I D Jefferson FRICS**

Date of Paper Determination : **6 June and 14 June 2016**

Date of Decision : **23 June 2016**

DECISION

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The price payable by the Applicant pursuant to Section 9(1) of the Leasehold Reform Act 1967 is £2,380.

Costs of £578.49 plus VAT (Legal) and £400 plus VAT (Valuation) together with a disbursement of £1.73 are payable by the Applicants pursuant to Section 9(4) of the Leasehold Reform Act 1967.

REASONS

The Application

1. The Application is made under Section 21(1)(a) and (ba) of the Leasehold Reform Act 1967 ('the Act') to determine the price payable by the Applicants upon enfranchisement and the Applicant's liability for costs pursuant to section 9(4) of the Act. The Application sought additionally a determination of the terms of transfer pursuant to Section 21(2)(a) of the Act however, having received written confirmation from both parties that these are now agreed, the Tribunal is no longer required to determine this aspect of the Application.
2. The Property is held by the Applicants under the terms of a lease ('the Lease') dated 18 July 1983 and made between Leech Homes (North East) Limited (1) and Charles William Davison and Paula Isla Davison (2) for a term of 99 years calculated from 1 March 1982 at an annual ground rent of £30.

Inspection and Paper Determination

3. On 6 June 2016 the Tribunal inspected the Property. It was noted at inspection that the Property comprises a detached house with integral garage originally built with a single reception room, ground floor kitchen and, to the first floor, 2 bedrooms (1 small) and bathroom, but extended 12-13 years ago to create a new kitchen to the rear of the garage allowing for the conversion of the original kitchen to a second reception room, the addition of 2 new bedrooms (one single and one three-quarter sized) above the garage/new kitchen and the conversion of the 2 original bedrooms to form a large master bedroom that has subsequently been divided up to form a small study at the rear. The Tribunal notes that the bathroom has been recently updated to a modern family shower room. The Property benefits from a small garden area to the rear and a short driveway (space for 1 car) and garden to the front.
4. The gross internal floor area of the Property has been measured by the Applicant's surveyor as being 61.316 sq m (original house and garage) and 82.868 sq m (extended). These measurements are not disputed by the Respondent.
5. Following its inspection the Tribunal convened to consider by way of paper determination the submissions of the parties, reconvening to complete its deliberations on 14 June 2016.

Price Payable

Valuation Reports

6. Valuation reports have been submitted on behalf of the Applicants by Mr A J Tucker BSc (Hons) MRICS and on behalf of the Respondent by Mr G. Evans MSt (Cantab.) FRICS. The Tribunal also has the benefit of an additional report in response by each valuer. Finally, a further statement in reply (outwith Directions) has been submitted by Mr Evans.
7. Two issues are determined by the Tribunal as preliminary matters. First, whether to accept the various reports as 'expert evidence' within the meaning of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and secondly whether to admit into evidence the further statement outwith Directions submitted on behalf of the Respondent.
8. On the first issue, the Tribunal finds that the reports qualify as expert evidence in accordance with Rule 19 of the Tribunal Procedure Rules. On the second issue, the Tribunal admits in part the additional statement submitted on behalf of the Respondent. The Tribunal does not wish to encourage submissions that go beyond the scope of the Tribunal's Directions but on this occasion, the statement does assist the Tribunal by clarifying a previous error made by Mr Evans in the context of his comparable evidence. It is therefore taken into consideration to this extent whilst elements of the statement that reiterate points previously made or introduce new evidence are excluded.

Areas of common ground

9. Both parties have applied the method of valuation prescribed by Section 9(1) of the Act and in accordance with the Upper Tribunal decision in the case of *Clarise Properties Limited [2012] UKUT 4 (LC)* have adopted a 3 stage approach: the value of the present rental income for the unexpired term **plus** the current value of a modern ground rent for a 50 year lease extension (in accordance with Section 15 of the Act) **plus** the value of the second reversion (i.e. the value of the reversion at the end of the 50 year extension). The Tribunal finds that a Section 9(1) valuation is appropriate and that the 3 stage approach (as per *Clarise*) is correct.
10. A statement of agreed facts has been presented by the parties. The following facts and variables are agreed:

Date of valuation:	11 June 2015
Lease Term:	99 Years expiring 28 February 2081
Unexpired Term:	65.72 Years
Ground Rent:	£30 pa without review
Deferment Rate:	5%
11. Additionally, in the context of decapitalising site value and recapitalising the Section 15 rent the parties have by default used the same figure of 5% throughout which the Tribunal does not intend to interfere with.

12. The parties' submissions on those aspects of the valuation that remain to be determined, together with the Tribunal's findings, are summarised below.

Entirety Value

13. The Applicants put forward a detailed schedule of eight residential properties that are geographically close to the Property and of broadly similar type and with fairly recent sales dates. In addition the submission includes photographs of each and there is an analysis in £ per m² of each sale based on floor area.
14. The Applicants analysed this evidence in detail and with adjustments concluded that an entirety value of £140,000 is reasonable.
15. The Respondent put forward only three comparables, one with some individual room measurements the other two with only brief descriptions of accommodation. All have sale figures and dates. The Respondent makes some very significant subjective adjustments to the agreed sale prices, for example in respect of 14 Sutton Court which was sold on 15 October 2015 for £135,000, the adjustments made to reflect the nature of the Property raise its value to a figure of £178,750. Similar large end allowances and adjustments are made to the other two comparables. The Respondent puts forward an entirety value of £175,000.
16. In the additional statement submitted on behalf of the Respondent, the Respondent acknowledges that it has been in error in its facts: one of its three comparables (14 Sutton Court) which it held out to be leasehold, it now acknowledges following commentary from the Applicants, is freehold.
17. The Tribunal finds the comparables presented on behalf of the Applicants to be well researched, and detailed, including reference to tenure, accommodation, floor areas, date of sale and sale price.
18. In contrast those presented on behalf of the Respondent are based on poor quality information and subjective analysis: for example the Respondent seems unaware of the floor areas of its comparables and has made no adjustment whatsoever for the very significant differences and, as noted above, the Respondent's analysis of one of its comparables is flawed because the Respondent mistakenly believed it to be leasehold. The Respondent determined in an analysis of its comparables that the entirety value of the Property was £175,000. The Tribunal notes that none of the comparables identified by the parties were sold for such a high price.
19. It also became clear that the Respondent's Surveyor had not personally inspected the Property, nor probably any of the comparables. It is entirely up to each Surveyor to determine the appropriate level of inspection for the task but the Tribunal was not able to give the same weight to the evidence presented by the Respondent due to its lack of detail and the subjective nature of its analysis.
20. From the evidence of comparables the Tribunal noted that the average sale price achieved on the sale of five 3 bedrooled properties came to £1515 per m². Applying this to the floor area of the extended Property (82.9 m²), produces £125,593. It is right to make an adjustment to this to reflect the fact that the Property is detached,

albeit on a very small plot, and the Applicant added 10% to reflect the smaller size of the Property compared to the average comparable and further rounded this up to arrive at £140,000. The Tribunal finds this to be a logical analysis.

21. The Respondent also makes reference to an extract from the publication *Hague on Leasehold Enfranchisement* which refers to the concept of a 'fully developed plot'. The Tribunal is aware of the passage referred to by the Respondent but considers the Respondent's view that the site in question is not fully developed to be incorrect. The Property has already been significantly extended, the frontage is almost the full width of the plot, and the Property has been transformed from a single reception two bedroom property to a two reception three bedroom property still with garage. In the Tribunal's view, the plot is to all intents and purposes fully developed. It would be possible to erect a conservatory but that is, in the Tribunal's view, one of personal taste. Indeed the Respondent in its own submissions seems to infer that with small gardens the erection of a conservatory can then detract from the value of the diminished garden.
22. The Respondent also argues that the roof space should be built out. The Tribunal inspected the roof space and finds that it is of truss rafter construction, and of relatively low pitch with low head room and determines that, as with many of the properties on this particular estate of similar construction, it would be inordinately difficult and expensive to convert the roof space. Doubtless the Respondent's Valuer would have come to the same conclusion had he personally inspected the Property. The Tribunal therefore determines that to all intents and purposes the site is already fully developed and no additional adjustment in valuation terms is required.
23. The Tribunal is grateful to both sides for the evidence presented. Following its inspection of the Property and external inspection of all of the comparables cited and detailed consideration of the written submissions and, using its general knowledge and experience, the Tribunal determines the entirety value of the Property at £142,500.

Capitalisation Rate for the Unexpired Term

24. In short the Applicants adopt 8% albeit acknowledging that it is more usual to adopt a rate of 6% or 7%. They do present an argument that the premiums payable to extend leases under the Leasehold Reform, Housing and Urban Development Act 1993 are more valuable than the purchase of freeholds under the Act in justification.
25. The Respondents argue for 6% stating that is usual.
26. The Tribunal taking into account the arguments presented before them in submissions and using their general knowledge and experience determine 7%.

Site Value

27. The Applicants put forward evidence for a residential site in Winlaton Gateshead which was for 27 units indicating a value of £18,500 per plot. Precise details on service provision for the entire site were not known the Tribunal.
28. The Respondent was not able to find any site sale evidence.

29. The Tribunal acknowledges that where evidence of actual sales of individual plots is available then that would generally produce the best evidence but was not convinced that the price for a much larger 27 unit site in Winlaton was particularly relevant to a single plot in Hadrian Lodge Wallsend, without significant adjustment.
30. Further, the Applicants' site value percentage of 15% is considerably below the norm following the standing house approach. The Tribunal was not however convinced by the Respondent's arguments for 35%. That sort of percentage may well often feature for a detached house on a reasonably sized plot but the Property is a fairly small house on a small plot and the Tribunal taking into account the evidence and their own general knowledge and experience determine a site value percentage of 30% reflecting the characteristics of the subject site.

Second Reversion

31. The Applicants put forward a view that tenants improvements were to be disregarded as distinct from 1993 Act valuations.
32. The Respondent disagrees for the reasons put forward in their submission.
33. The Tribunal does not intend to recite those arguments other than to find that the Applicants are wrong in law and that in respect of 1967 Act Section 9(1) valuations tenants improvements are not to be disregarded.
34. The Respondent quoted various sections of *Hague on Leasehold Enfranchisement*. Much was unnecessary, save for the passage on the treatment of tenants improvements.
35. The parties considered at length the starting point for the value in the second reversion and indeed Mr Evans had appeared before the Upper Tribunal in *Clarise*. The Respondent argued in essence that *Clarise* was wrongly decided and it would not follow it.
36. The Tribunal does not intend to disregard *Clarise*, rather it follows that precedent entirely. It should however be noted by both parties that the disparity in their views as to *Clarise* is to some extent of little relevance as the value whilst not de minimus is fairly low for the second reversion on this subject property. Applying *Clarise* gives rise to an adjusted freehold value of £114,000.

Determination of Price Payable

37. The Applicants contended for a price of £1,450 and the Respondent for a price of £3,340. Applying its findings the Tribunal sets out its valuation as a separate Appendix and simply records here that the global figure for the premium payable is determined at £2,380.

Costs

38. The Applicants are required pursuant to Section 9(4) of the Act to contribute to the Respondent's costs. Section 9(4) states as follows:

'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of the Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:-

(a) any investigation by the landlord of that person's right to acquire the freehold;

(b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;

(c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;

(d) making out and furnishing such abstracts and copies as the person giving the notice may require;

(e) any valuation of the house and premises.'

39. The Respondent seeks the reimbursement of the sum of £723.11 plus VAT in legal fees, together with a disbursement for postage of £1.73 and, the sum of £495.00 plus VAT in valuation fees.

40. A summary of legal fees has been submitted encompassing a range of work all of which appears to the Tribunal to concern, or be incidental to, the matters identified in Section 9(4) of the Act. The time incurred totals 3 hours 39 minutes. The time is charged at an hourly rate of £265 plus VAT for an experienced Solicitor (qualified 1983), being the Principal of the law firm, and £195 plus VAT for a Licensed Conveyancer (qualified 2004).

41. In the Tribunal's experience the charge rates applied are high and rates in the region of £220 plus VAT for the Solicitor and £150 plus VAT for the Licensed Conveyancer might be considered more reasonable for a firm outside London, taking into consideration the nature of the work. It is reasonable to assume that there have been other similar transactions on the same estate given the number of freehold properties evident in the title information supplied and the statement by the Respondent's valuer that he has conducted 12 valuations on the estate within the last 5 years. Therefore, even if the rates quoted by the Respondent are charged by its legal advisors as the norm, it would be reasonable to expect some sort of discount for volume or to reflect the fact that, to a certain extent, the work involved is of a routine nature.

42. The recent Upper Tribunal case of *Sinclair Gardens Investments (Kensington) Limited -v- Paul Kenneth Charles Wisby and Lesley Barbara Mary Wisby* [2016] UKUT 203 (LC) relates to costs recoverable on a lease extension under the Leasehold Reform, Housing and Urban Development Act 1993. In that case also it appeared that there had been, or there was the prospect of, further transactions on the same estate. In the absence of any reason as to why a quantum discount in legal fees or a discounted fixed fee arrangement would not have been available, it was considered that the appellant might reasonably have been expected to negotiate a substantial reduction in the nature of a discount or fixed fee. A discount of 20% was applied by the Upper Tribunal.

43. The Tribunal has not referred the *Sinclair* decision to the parties for comment and is mindful that not all of the circumstances in the *Sinclair* case are entirely consistent

with those in the present case. Nevertheless, the Tribunal's own experience suggests that a reduction in legal fees in the order of 20% is appropriate in the present case (without relying on *Sinclair* as authority) and the Tribunal accordingly determines legal fees in the sum of £578.49 plus VAT (and disbursements of £1.73) to be reasonable and to be payable by the Applicants.

44. The valuation fee is set out in a copy invoice and it states that the work involved is 'to provide a report under the Leasehold Reform Act 1967'. The Respondent is entitled to recover the reasonable fees incurred in valuing the Property. In the Tribunal's view the fee of £495 plus VAT might be considered to be reasonable had the Valuer personally inspected the Property. As it is, the valuation was conducted as a desktop exercise with reliance on a subcontracted physical inspection. This contributed to the Tribunal giving less weight to the Respondent's valuation.
45. Applying the Tribunal's own knowledge and experience, even allowing an element of the fee to cover a subcontracted physical inspection of the Property, the Tribunal considers that the fee is excessive for a valuation otherwise conducted as a desktop exercise and that a fee of £400 plus VAT would be reasonable.

APPENDIX

Tribunal Valuation

19 Dalton Court, Hadrian Lodge West,
Wallsend NE28 9TN

Valuation Date 11/06/2015

Lease Details:

Commencement Date: 01/03/1982
Term: 99.00 years
Expiry Date: 01/03/2081
Unexpired Term: 65.72 years
Ground Rent per annum (fixed) £30.00

Term

Ground Rent Reserved £30.00
YP for 65.72 years @ 7% 14.111 £423

First Reversion To Section 15 Modern Ground Rent

Entirety Value £142,500
Amount Attributable to Site 30%
Site Value £42,750
S.15 modern ground rent @ 5% £2,137
YP for 50 years @ 5% 18.256
£39,020
PV of £1 in 65.72 years @ 5% 0.040
£1,561

Second Reversion

Adjusted Freehold Value £114,000
PV of £1 in 115.72 years @ 5% 0.0035
Total Value of Landlord's Proposed Interest £399
Total = Premium Payable (excluding costs) £2,383
Say £2,380