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First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	:	**CAM/00KF/OCE/2017/0027**
Property	:	**5 & 5a Cromer Road, Southend-on-Sea, Essex SS1 2DU**
Applicants	:	**Leigh Elvin Trang Ngoc-Cleeve & Nicolaus Benjamin Trang Cleeve**
Represented by		**Mike Stapleton FRICS**
Respondents	:	**Ground Rent (Regis) Ltd.**
Represented by		**Jeremy Levy BSc (Hons) MRICS**
Date of Application	:	**29th August 2017**
Type of Application	:	**To determine the terms of acquisition and costs of the enfranchisement of the property**
Tribunal	:	**Bruce Edgington (lawyer chair)** **Evelyn Flint DMS FRICS IRRV**
Date and place of hearing	:	**28th November 2017 at The Court House,80 Victoria Avenue, Southend-on-Sea, Essex SS2 6EU**

ORDER

UPON the Tribunal being told that the form of transfer TR1 (save for the price payable) and the costs payable by the Applicants pursuant to section 33 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act") had been agreed between the parties.

IT IS DETERMINED that:

1. The total purchase price of the property is £28,775.00.

Reasons

Introduction

2. This application is for the Tribunal to determine (a) the terms (including the price) of the collective enfranchisement of the freehold of the property to include (b) the amount of legal costs payable by the Applicant to the

Respondents pursuant to section 33 of the 1993 Act and (c) the valuation fees payable pursuant to the same section of the 1993 Act.

3. This followed the service of an Initial Notice dated 20th April 2017 and a Counter-Notice by the Respondent dated 27th June 2017.

4. On the 19th September 2017, the Tribunal issued a directions order timetabling the case to a final hearing. This ordered the parties to file and serve expert valuers' reports by 6th October 2017 and for such valuers to meet and prepare a joint statement setting out matters agreed and disputed by 27th October 2017.

5. The hearing was fixed for the 28th November 2017 but the expert evidence was not included and it became evident that the directions had simply not been complied with. The reports arrived at the very last minute and were dated 22nd and 23rd November 2017.

The Inspection

6. The members of the Tribunal inspected the property in the presence of the 2 valuation experts and another person said to be from the Respondent. It is as described by the Applicants' expert, Mike Stapleton FRICS but work to convert the building into a single dwelling had progressed further. On the ground floor, the bedroom was a dining room. On the first floor, the lounge was a bedroom and the kitchen had been completely removed. It was an overcast morning with some rain. The location is in a central position within walking distance of Southend town centre and a railway station with commuter trains into central London.

7. The property is brick built under concrete interlocking tiled pitched roofs and in relatively poor external decorative order, particularly to the first and second floors. The staircase into the garden from the first floor had been removed and a new window had been installed at the rear of the first floor but the exterior had not been finished. The majority of the windows were uPVC but there were still wooden frames for some of the windows.

The Law

8. The price to be paid on collective enfranchisement is calculated in accordance with the provisions of Schedule 6 of the 1993 Act. As far as development potential is concerned, the basic premise is that when there is a collective enfranchisement by long lessees, the terms of the leases of the participating lessees can be renewed on favourable terms to them and the door is also open for any potential development value to be realised.

9. Put another way, the Respondent landlord says in this case that the Applicants and, indeed, any potential purchaser would be interested in turning the property into one dwelling and this must be taken into account. That the property was going through this transformation was evident on inspection. If this were not taken into account, there would be a windfall profit for the Applicants which would not be reasonable. It is a well established valuation principle which both parties accept and is supported by case law. The difference between the parties is that the Applicants say that the Respondent's view of property values is wrong and there is, in effect, no potential development value as suggested as at the valuation date.

The Hearing

10. At the hearing, both parties were represented by their respective expert valuers which was unfortunate in that they were in obviously in conflict and their roles and duties as witnesses and advocates are different. Laura Cleasby LLB (Hons), a solicitor who had previously represented the Respondent in other cases, was present but she took no part in the hearing.

11. As is becoming more prevalent, the 2 witnesses gave evidence together. One prime example of the different duties of the individuals emerged. Mr. Levy, on behalf of the Respondent put his case which, from his report, was to recover the full potential development value of £50,000. Mr. Stapleton, on behalf of the Applicants had produced a report of the case of **Padmore v Barry and Peggy High Foundation** [2013] UKUT 0646 (LC) which said, in effect, that any potential value should be part of the marriage value and split 50/50 between the parties.

12. Mr. Levy acknowledged that he had received this case report prior to the hearing and had read it. However, he did not acknowledge that his client could only recover a proportion of the potential value until he was cross questioned by Mr. Stapleton. When giving his evidence in chief he had clearly momentarily forgotten his duty to the Tribunal to acknowledge matters which were against his client's case.

13. The main arguments advanced by the parties were in respect of the basic 'no-Act' value of the leases, how those values should be inserted and dealt with in the calculation of the premiums and the value of the property as a single residential unit. All other matters such as capitalisation and deferment rates, relativity etc. were agreed.

Discussion

14. In essence, the Tribunal had to determine whether it accepted either of the expert's evidence and, if so, which. The Applicant's expert is well known to the Tribunal as being a surveyor with a great deal of experience in dealing with enfranchisements cases in the Southend area over a number of years. Mr. Levy is a chartered surveyor but acknowledges that he has less experience in dealing with this sort of case in Southend. He estimated that he had dealt with some 30 such cases. His office is in London NW9.

15. The difference in the 2 reports was startling. It was explained to the Tribunal that another valuer had been instructed to give evidence for the Respondent but he had been unable to attend the hearing. This was surprising as witnesses' dates to avoid are always obtained before a hearing date is fixed. Mr. Levy had been instructed only 3 weeks before the hearing.

16. Mr. Levy's report was some 12 pages long to include a front sheet and 5 pages of Appendix including the 2 page calculation of his valuation. He agreed that he had not inspected either the subject property (save for the brief inspection with the Tribunal members before the hearing) or any comparables. Very little information was given about the comparables e.g. the length of leases sold, internal floor area, lay-outs, whether parking was included etc. At least one of the comparables was occupied by assured shorthold tenants on sale bringing it/them into the realm of commercial sales which are not really comparable for these purposes. His proposed

premium was £74,970.00 including £50,000.00 for potential development. His concession as to potential development being part of the marriage value presumably reduced this by £25,000.00 leaving a net figure of £49,970.00.

17. On the other hand, Mr. Stapleton's report was some 39 pages long including, where available, copies of the Land Registry titles and sales particulars of comparables. Each valuation of a comparable contained the appropriate indexing to the valuation date, lease terms etc. His proposed premium was £28,775.00 and did not include any amount for potential development.

Potential for Development

18. Before dealing with the issues raised in **Padmore** the Tribunal considered whether, in fact, anything should be taken into account for potential development. Mr. Levy said that it is perfectly obvious that there was no 'hope' value because the work to convert was well advanced.

19. Interestingly, Mr. Stapleton's view was that the flats were worth much more than Mr. Levy thought. Mr. Stapleton gave a total extended lease value of £358,000 which is just £2,000 short of Mr. Levy's value following conversion to a house. Mr. Levy's view of the value of the flats themselves was just £205,000. For some reason, he does not consider that there is any difference between the value of leases with a little over 80 years and extended leases.

20. Mr. Levy's 3 comparables of similar properties sold as single units had prices of £350,000, £340,000 and £340,200. Mr. Stapleton provided sales particulars for a property in the same road as the subject property which had been on the market for some weeks at the price of £325,000 although this property only has 4 bedrooms as opposed to the 5 in the subject property.

21. The Tribunal looked carefully at the 4 comparable ground floor lease sales and the 3 comparable first floor lease sales provided by Mr. Stapleton. Details were provided for most of them and such details showed them to be reasonable comparables in the same locality as the subject property. Mr. Levy also provided 4 ground floor and 3 first floor comparables but without any real detail of the properties involved or their titles. He gave verbal evidence of lease terms for some of the properties. He was questioned by Mr. Stapleton who had, in the past, inspected 11 Kilworth Avenue and his view was that this was not a comparable because (a) it only covered half the ground floor and (b) there was no garden. The ground floor of the subject property covered virtually the whole of the ground floor and there was a relatively large garden to the rear.

Conclusions

22. The Tribunal was impressed by the thorough approach of Mr. Stapleton and his efforts to give the Tribunal the maximum possible information about his thought processes and comparables. On all relevant issues, it preferred his evidence to that of Mr. Levy.

23. Mr. Levy was hampered by the fact that he had been instructed quite late in the day although he had had 3 weeks and should have inspected the property in that time. To give what he put forward as an expert valuation with so little information based on what was only a desktop assessment was far from helpful. As a side issue, his assessment of the costs of conversion

was just a round figure of £5,000 without any real thought having been given to how that cost was arrived at other than to state that the works would be minimal consisting of the removal of 2 stud walls and the 2 inner front doors serving each of the flats. He did not appear to address the question of internal layout e.g. the ground floor bathroom being accessed via the utility room and the effect on value of such a minimal conversion. No details were given at all. In cross examination, he kept asking for any alternative figures to be put to him, but it was said, rightly in the Tribunal's view, that it was his case and it was for him to prove it.

24. His assertion that there is no 'hope' value because the conversion work is well under way is not relevant. That was considered in the **Padmore** case in paragraphs 79 and 80 where the Deputy President of the Upper Tribunal recounted that *"as matters stood before the valuation date, the Building could not be returned to use as a single house without breaching some of the covenants in the appellant's two leases.....The alterations necessary to bring about the amalgamation would certainly be prohibited by the covenant against structural alterations without the consent of the landlord....On acquiring the freehold the appellant will effectively be free of the restrictions in her leases and will be entitled to carry out any alterations she chooses, and use the Building as she likes"*.

25. Similarly in this property, at the valuation date, the position would have been precisely the same. The fact that the Respondent has not apparently objected to the breaches does not change that.

26. The Tribunal's view is that the evidence it accepted for the Schedule 6 valuation simply did not support the contention that there is a greater value in the property as a single house as opposed to the 2 flats as they were.

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Bruce Edgington
Regional Judge
30th November 2017

ANNEX - RIGHTS OF APPEAL

i. 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 Tribunal at the Regional office which has been dealing with the case.

ii. 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.

iii. If the application is not made within the 28 day time limit, such application must include a request for 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.

iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.