

440f



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

Case Reference : **CHI/21UD/OCE/2017/0001**

Property : **87 St. Helen's Road, Hastings, East Sussex
TN34 2LJ**

Applicant : **Mr. Peter David Levey
Mr. David Levey & Ms. Patricia Levey
Mr. Terence Arthur Hollamby**

Represented by : **Tolhurst & Fisher LLP**

Respondents : **Mr. Kenneth Whitehead**

Type of Application : **Collective Enfranchisement (Missing
Landlord) S.26 and 27 Leasehold Reform
Housing and Urban Development Act 1993**

Tribunal Member : **Mr. R. A. Wilkey FRICS**

Date of Decision : **Friday 10th March 2017**

DECISION

DECISION IN SUMMARY

1. The Tribunal has determined for the reasons set out below that the appropriate sum to be paid is £27,840
2. The draft TR1 is approved.

BACKGROUND

3. On 11 November 2016, District Judge K. Harper, sitting at the County Court at Hastings, made an order directing that the First-tier Tribunal (Property Chamber) should determine the appropriate terms of acquisition under paragraph 1 of the order.
4. Directions for the conduct of the matter were issued by the Tribunal on 4th January 2017. Amongst other things, the directions indicated that the application would be dealt with on the papers unless an objection was received.
5. No objection has been received and the matter is therefore determined on the basis of the information contained in the bundle provided by the applicant which includes an expert report dated 27th January 2017 from Oliver Dyer MRICS which values the premium to be paid at £27,300
6. The Tribunal has not inspected the property

EVIDENCE

7. The bundle contains two valuation reports prepared by Mr. Dyer
8. The first is dated 15th November 2016 and was prepared for the Applicants. This document is a “preliminary report and valuation to assess the possible purchase price that should be payable by a nominee purchaser, as defined by Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 as amended”
9. The second report is dated 27th January 2017. The report cover states that it is for the existing leaseholders but at the top contains the words “Report for Tribunal”. The purpose of this report was to “assess the value of the freeholder’s interest for the purposes of collective enfranchisement”. It ends with the Declaration of Truth.
10. The valuation date was amended to August 2016 in the second report.

11. The property is described in Mr. Dyer's report as a "substantial converted(sic) mid terraced Victorian villa now containing 5 residential units." Each flat has one bedroom and Flat 2 has a large enclosed rear garden.
12. No comment is made in either report upon the condition of the flats or whether any improvements have been carried out since the grant of the leases. However, the first report contains the words "The standard of maintenance is considered to be below average externally"
13. Each of the 5 flats is held under the terms of a lease for 99 years from 25th March 1986. The ground rent is £50 per annum for the first 33 years, rising to £100 per annum for the next 33 years and then to £150 per annum for the balance of the term. Each Leaseholder is responsible for 20% of the insurance premium and of the annual expenditure by the Landlord as defined in the lease.
14. The tenant of the top flat is not participating in the current application for collective enfranchisement
15. Mr. Dyer has made enquiries of local selling agents and, in addition, refers to the following information obtained from the Land Registry as at 13th October 2016:
 - Flat 18 Kenrith Court, St. Helen's Crescent. Leasehold purpose built 1 bedroom flat sold in September 2016 for £96,000
 - 61 St. Helen's Road, Leasehold 1 bedroom flat sold February 2016 for £77,000
 - 31 St. Helen's Road, Leasehold 2 bedroom flat in better location, specification and condition sold in January 2016 for £205,000
 - Ground Floor, 81 St. Helen's Road, Leasehold 2 bedroom flat in better condition sold in October 2015 for £138,000
16. Based on the information obtained as above, Mr. Dyer formed a view that the values of the flats within the building were as follows:

Basement	£78,000
----------	---------

Ground	£97,500
First	£85,000
Second	£82,000
Top	£79,000

17. Mr. Dyer has not provided information in his report as to how he came to his conclusions and there is no information regarding adjustments to sale prices
18. He then takes relativity at 91.5% by reference to “the published material (See Graphs of Relativity in the Appendix)” He considers that the published information from Messrs. Austin Gray and Andrew Pridell was the most relevant to the subject property as he is aware that both of these practices deal with a substantial number of properties in Sussex.
19. He capitalises the ground rent at 7% and the “Sportelli” deferment rate of 5%
20. The top flat is not participating in the enfranchisement process. Mr. Dyer has provided calculations, which appear on page 220 of the bundle that he describes as “calculations for lease extension”. There is no further explanation in either report but item 9 of the second valuation states “the Tribunal should consider a reduction to take account of the risk that the Leaseholder of the Top Flat may not extend the lease for some considerable time.
21. Applying all the above variables and information, he arrives at a premium of £27,300

TERMS OF TRANSFER

22. A draft TR1 is in the bundle at pages 207-211

DECISION

23. The Expert report does not consistently reflect the unexpired terms resulting from the change in the valuation date which is stated to be August 2016
24. The report provides no information regarding improvements to the flats and no allowance has been made in the valuations.

25. The Tribunal accepts the figure of 5% for deferment yield and 7% for capitalisation yield as submitted by Mr. Dyer
26. There are other errors in the Expert Valuation report which have been corrected in the attached valuation
27. The Tribunal has considered Mr. Dyer's suggestion that an arbitrary deduction should be made in respect of the valuation of the top flat. The only information on this aspect which is before the tribunal is the fact that the leaseholders have chosen not to participate in the current application for collective enfranchisement. In the absence of any evidence or a reasoned argument, the tribunal has decided not to make a deduction in this respect.
28. Applying the findings set out above the tribunal has concluded that the appropriate figure for the premium payable to the absent landlord in this case should be £27,840 (twenty seven thousand eight hundred and forty pounds)
Copies of the valuations are appended to this decision.
29. The tribunal also approves the draft transfer

Dated: Friday 10th March 2017

Roger A. Wilkey FRICS

Appeals

38. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
39. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
40. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend the time limit, or not to allow the application for permission to appeal to proceed.
41. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
42. If the First-tier Tribunal refuses permission to appeal, in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

Top Flat 87 St. Helen's Road, Hastings TN34 2U
Calculations for Lease Extension

Valuation of existing lease 72,285

Value of extended lease 79,000

Freeholder's present interest

Ground rent receivable £50 per annum for 2.5 years

YP for 2.5 years @ 7% 2.216 110.80

Ground rent increases to £100 per annum for 33 years

YP for 33 years @ 7% 12.754

Present value of £1 after 2.5 years @ 7% 0.8448683 1,077.55

Ground rent increases to £150 per annum for 33 years

YP for 33 years @ 7% 12.754

Present value of £1 after 35.5 years @ 7% .0905992 163.33
1,361.68

Reversion to £79,000

PV £1 @ 5% in 68.5 years 0.0353722 2,794.40
4,156.08

say £4,155

Valuation for enfranchisement
37 St. Helen's Road, Hastings TN34 2LJ

Value of Freeholder's interest

Present value of ground rent income

4 flats each @ £50 per annum
£200 for 2.5 years @ 7% YP 2.216 443.20

Increase to £400 per annum for 33 years @ 7% YP 12.754
Deferred for 2.5 years PV £1 @ 7% 0.8448683 4310.18

Increase to £600 per annum for the last 33 years YP 12.754
Deferred for 35.5 years PV £1 @ 7% 0.1811984 1,386.60

Value of reversion

4 flats with a total value of £342,500
in 68.5 years @ 5% 0.0353722 12,114.97
18,254.95

Marriage Value

Value of property with extended leases 342,500.00
(participating flats only)

Less total of:

Freeholder's present interest	18,254.95	
Leaseholder's present interest (91.5%)	<u>313,387.50</u>	<u>331,642.45</u>
	10,857.55	

Freeholder's share of marriage value @ 50% 5,428.78

Compensation for other losses
Nil 23,683.73

Compensation for top flat (see attached sheet) 4,155.00
27,838.73

Total payable say £27,840