



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

- Case Reference** : **MAN/OOCG/OC6/2016/0005**
- Property** : **198 Psalter Lane, Sheffield, S11 8UT**
- Applicants** : **Mr Simon Lawrence Wood and
Mrs Susan Catherine Wood**
- Respondents** : **Korax LLP**
- Type of
Application** : **Leasehold Enfranchisement, application for a
determination as to the price to pay. Section
21 (1)(a) of The Leasehold Reform Act 1967
and an application for determination of a
reasonable costs order, Section 21 (1)(ba) of
The Leasehold Reform Act 1967.**
- Tribunal Members** : **Judge C. P. Tonge, LLB, BA
Mrs S. A. Kendall, BSc, MRICS**
- Date of Decision** : **12 April 2017**

DECISION

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The Tribunal's determination of the price to be paid by the Applicants under section 21 (1)(a) of the Leasehold Reform Act 1967 ("the Act") is £80, with a reasonable costs order under section 21 (1)(ba) of "the Act" to be paid by the Applicants of £603, plus V. A. T.

Background

1. The Applicants are the long leaseholders of 198 Psalter Lane, Sheffield, S11 8UT("the property"). They hold the remainder of an 800 year lease on "the property", commencing on 25 March 1906. The lease provides for a fixed ground rent of £5 per year.
2. The Respondents are the freeholders of "the property".
3. On 13 November 2015 the Applicants', pursuant to section 5 of "the Act", sent to the Respondent notice of their intention to acquire the freehold of the property. That notice is in the form prescribed by the Leasehold Reform (Notices) Regulations 1997 (SI 1997/640).
4. The Respondent failed to respond to the Applicants' notice, resulting in a delay, but has subsequently negotiated in a manner that clearly accepts the Applicants' right to purchase the freehold.
5. By applications dated 5 December 2016 and received by the Tribunal on the 7 December 2016, the Applicants asked the Tribunal for a determination as to the price to be paid for the freehold of the property and an order as to what reasonable costs are to be paid to the Respondent.
6. Directions were given on 4 January 2017. The Directions were to the effect that the Deputy Regional Judge had decided that the case could be dealt with without the need for an oral hearing and required the parties to notify the Tribunal should either party require an oral hearing to be held. The parties did not request an oral hearing. The remainder of the directions were in the standard form.
7. On 23 March 2017 both parties were informed by letters sent to them by the Tribunal that the case would be determined on 12 April 2017. The parties were informed that there would be a determination upon the papers only, there being no need for an inspection of "the property".
8. The Tribunal met in Sheffield on 12 April 2017, to determine the issues.

The Law

The Leasehold Reform act 1967

Section 9 Purchase price and cost of enfranchisement, and tenant's right to withdraw

(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family not buying or seeking to buy) might be expected to realise on the following assumptions:--

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

(b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this 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;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

Section 21 Jurisdiction of leasehold valuation tribunals

(1) The following matters shall, in default of agreement, be determined by a tribunal namely,--

- (a) the price payable for a house and premises under section 9 above;
- (b) the amount of the rent to be payable (whether originally or on a revision) for a house and premises in accordance with section 15(2);
- (ba) the amount of any costs payable under section 9(4) or 14(2);
- (c) the amount of any compensation payable to a tenant under section 17 or 18 for the loss of a house and premises.

The written case on behalf of the Applicants

9. The Applicants' relied upon a report from Mr J. A. Swann a Sheffield based Member of the Institution of Chartered Surveyors. The report contains a certificate as to the truth of the content of the report and Mr Swann describes himself as an expert witness who has an overriding duty to be impartial and objective.
10. Mr Swann provides a nine page analysis of the relevant factors to be taken into account in the case, but primarily aimed at determination of the price to be paid for the freehold. The report contains 12 annexed areas in the appendix, providing supporting evidence to be considered by the Tribunal. Mr Swann indicates that since the lease on the property has about 700 years to run, The only relevant issue is the value of the ground rent and he uses Parry's Valuation Tables to determine a value of £80, rounding up (appendix 11 of Mr Swann's report).

The written case on behalf of the Respondent

11. The Respondent seeks to rely upon a document of less than one and a half pages in length, written by Jeremy Davies for Korax LLP. This does not contain a statement as to the truth of the content of the document. It does not exhibit any documents at all. Mr Davies seeks to value the freehold at £179.85, without the use of Parry's Valuation Tables, but by reference to the National Loan Fund Rate.

12. Mr Davies informs the Tribunal that his solicitors costs to date are (for a London based solicitor) £472 plus V. A. T. There is no invoice produced to assist the Tribunal in deciding whether or not such fees relate to work and advice given (so far as they are incurred in pursuance of the notice) see Section 9 (4) of "the Act". Mr Davies indicates that the solicitor examined the Applicants Notice of claim, but does not suggest that he responded to that Notice as required by "the Act".
13. With regard to solicitor's costs for the conveyance, Mr Davies asks that this be assessed at a later date, if not agreed between the parties. He does not provide an estimate as to the cost of such work. He seeks to refer the Tribunal to two previously decided First-tier Tribunal cases, which he does not provide copies of, thus preventing the Applicants having notice of the content of those cases.
14. Mr Davies informs the Tribunal that his surveyor's costs are calculated at £600 per hour, plus V.A.T. He does not inform the Tribunal how many hours of work have been carried out and hence does not ask the Tribunal to consider any figure as paid by him or charged by the surveyor. He does not provide an invoice.

The determination

15. The first issue for the Tribunal to decide is to what extent may it rely upon the Respondent's document? The Tribunal has an overriding objective to be fair and just (Rule 3 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, SI 2013/1169.) That is fair and just towards both parties. The Tribunal determines that it will treat the document as a statement of the Respondents case, unsupported by any invoices or estimates and without a certificate as to the truth of the contents of the statement of case. As such the Tribunal admits the statement of case, but can give it very little evidential weight.
16. On the other hand the report from Mr Swann is such that it is accepted by the Tribunal as an expert report, provided with an overriding duty to be impartial and objective, supported by a certificate as to the truth of the content of it and with 12 appendix of evidence to support the case of the Applicants.
17. As such the Tribunal determines that it may place reliance on the content of Mr Swann's Expert Report. He states that the price for the freehold should be say £80. He has used the approved method of dealing with the ground rent, which calculation has been checked by the Tribunal.

18. The Applicants' sent their Notice of their intention to by the freehold to the respondent on 13 November 2015. The Respondent indicates that it received that notice on 15 November 2015. For the purpose of the calculations to be made in this case it does not matter which date is used.
19. In relation to the price to be paid for the freehold of "the property" the Tribunal considers the history of this case as set out in the various appendix to the Experts Report. The Respondent has indicated that it will accept £500 for three freeholds on Psalter lane, £1799, £1200 and in the statement of case £179.95 (the last three figures relating only to "the property").
20. In the statement of case, dated 26 January 2017, a calculation is made to arrive at the figure of £179.95 that is wholly incorrect and casts doubt on the quality of the advice that the Respondent has been given by his solicitor and surveyor.
21. In relation to costs that will only be borne by the Applicants if they are incurred "in pursuance of the notice" (Section 9 (4) of "the Act"), there is no way that the Tribunal can be satisfied that the costs applied for have been spent, when they were incurred or whether they are reasonable.
22. In relation to price to be paid for the freehold, the Tribunal agrees with the expert Mr Swann that since the lease has approximately 700 years to run, the only relevant calculation is that for the ground rent. The Tribunal Agree's that this is £80.
23. The Tribunal determines that it would be wrong, unjust and unfair to adjourn this case or give liberty to apply regarding conveyancing costs. The Respondent has had plenty of time to submit an estimate for the Tribunal to consider. Having failed to do so, the Tribunal will not permit that failure to result in anything other a determination of all the issues before the Tribunal.
24. The Tribunal notes that the Respondent on 17 October 2015 was prepared to accept £700 in relation to reasonable costs (Appendix 5 of the Expert Report). This being a figure suggested by the Respondent and without any evidence upon which the Tribunal can rely, the Tribunal considers this figure to see if it is reasonable.

25. The Tribunal determines that 3 hours of work by a solicitor in total is reasonable. Further it is reasonable to determine those costs as costs outside London, this being a Sheffield property. The Tribunal determines that a grade A (Sheffield) solicitor fees are appropriate and therefore limits costs to be borne by the Applicants to three hours at £201 per hour, being £603, plus V. A. T. (Solicitors' guideline hourly rates, H. M. C. T.S.). The total figure of £723.60, roughly according with the figure requested by the Respondent on 17 October 2015.
26. The Tribunal notes the previously decided First- tier Tribunal Decisions referred to by the Respondent, which are not in any event binding on this Tribunal. However, the difficulty here is that the Respondent has simply failed to support its case with anything that might have assisted it like invoices and estimates. As such this case must turn on its own facts.

The Decision

27. The Tribunal's determination of the price to be paid under section 21 (1)(a) of "the Act" is £80, with a reasonable costs order under section 21 (1)(ba) of "the Act" to be paid by the Applicants of £603, plus V. A. T.