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**HM Courts
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Service**

Leasehold Valuation Tribunal

In the matter of
S.48 Schedule 13 Leasehold Reform,
Housing & Urban Development Act 1993 ("the Act")

DECISION AND REASONS

Case Number: CHI/21UH/OLR/2012/0123

Applicant: Messrs David Edward Forster
Jane Elizabeth Mary Rose
Jennifer Mary Hoppen
Christopher Hugh Watkin Richards
as Trustees for William Henry Rose deceased

Represented by: Mr C H W Richards BSc (Hons) MRICS
Richards & Co, Reigate and
Thomas Eggar LLP Solicitors, London (not in
attendance at Hearing)

First Respondent: Sinclair Gardens Investments (Kensington) Ltd

Represented by: G P Holden FRICS, Parsons Son & Basley, Brighton

Second Respondent: Brincliffe Management Company Limited

Represented by: Mr I D Buick, Director

Property: Flat 8 Brincliffe
St Johns Road
Crowborough
East Sussex
TN6 1RW

Date of Application: 4 April 2012

Date of Inspection & Hearing: Tuesday 21 August 2012

Date of this Decision: 26 November 2012

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr R T A Wilson LLB (Legal Member)
Mr A O Mackay FRICS (Valuer Member)

THE DECISION

1. The amount determined to be the price payable for the extended lease is £6,378 apportioned as £4,249 to the First Respondent and £2,129 to the Second Respondent.
2. Other matters in respect of the terms of the lease and the landlord's costs to be determined at a later date.

BACKGROUND

3. This is an application to determine the premium payable for a new lease in respect of the property at Flat 8 Brincliffe in Crowborough. Provisional Directions for the conduct of the case were issued on 11 April 2012 and became substantive Directions on 2 May 2012. Both parties produced valuers' reports and a bundle of documents was received containing a draft of the proposed new lease, copies of the notice of claim and the counter-notice, together with Land Registry registers of title and the occupational lease.
4. The Applicant was not represented at the Hearing and Mr Richards confirmed that he was content for the Tribunal to deal with the matter by way of his written representations. Mr Holden attended the Hearing and gave oral evidence in addition to his written valuation. Mr Buick attended the Hearing on behalf of the Second Respondent and made some brief comments and sought clarification from the Tribunal on some procedural matters.
5. The Hearing took place at Boship Farm Hotel near Hailsham.
6. On 20 October 2009 another Tribunal had determined the premium to be paid for the extended lease on the same property. However, the Applicants did not pursue the matter and the new lease was not granted, hence the application now being determined.
7. At the conclusion of the Hearing the Tribunal determined that further documents might have a bearing on the valuation and made Further

Directions for the receipt of written statements and further documents including the head lease and a Deed of Variation. Following receipt of this additional evidence the Tribunal reconvened to make its determination.

INSPECTION

8. Prior to the Hearing the Tribunal members were given access to the property by Mr Michael Brooker of Michael Brooker Estate Agents, and he attended during the inspection. Mr Buick (for the Second Respondent) was present on site but did not inspect the interior of the property.
9. The property comprises a first floor flat with a self-contained ground floor entrance lobby, storage cupboard and staircase. There are two bedrooms, a living room, kitchen, and bathroom with WC. The second bedroom has a restricted floor area caused by the staircase bulkhead.
10. Brincliffe is a small self-contained development of 16 flats located in two two-storey blocks, each built of brick with part cement rendered elevations under a pitched tile covered roof. There is a private area for car parking and the buildings are surrounded by communal gardens. Access is direct from St Johns Road.

FACTS AGREED

11. Negotiations have taken place between the valuers appointed by the Applicant and the First Respondent and the following matters are agreed:
 - The deferment rate for valuing the diminution in the freeholder's interest is to be at 5%.
 - The capitalisation rate for valuing the diminution in the value of the head lessee's interest is to be at 5.5%.
 - Relativity 93%.
 - Having considered the Head Lease dated 10 September 1986 and the Deed of Variation dated 21 September 1987 there are no

alterations required to the valuations prepared and submitted to the Tribunal at the Oral Hearing.

12. The following matters are not agreed:

- The valuation date. The Applicant contends for 25 August 2011 and the First Respondent 26 August 2011.
- The unexpired term of each lease. The Applicant states 73.86 for the occupation lease and the First Respondent 73.83 years. The Applicant has not differentiated the term of the head lease but the First Respondent states this is 73.86 years.
- The vacant possession value of the short leasehold flat. The Applicant argues for £100,000 and the First Respondent £109,000.
- The price payable. The Applicant values the price payable at £3,874 for the First Respondent freeholder and £2,087 for the Second Respondent head lessee. The First Respondent values the price payable at £4,320 for the First Respondent freeholder and £2,136 for the Second Respondent head lessee.

N.B The Second Respondent did not participate in these negotiations or agreements.

THE HEARING

13. At the Hearing, by way of written representations and oral evidence on behalf of the First Respondent each disputed matter was discussed in detail. We will now deal with each of these in turn.

The Valuation Date

14. Mr Richards and Mr Holden agree that the valuation date is when the Notice of Claim is given. Mr Richards takes the date on the Notice being 25 August 2011 whereas Mr Holden takes the date that the Notice was received by his client being 26 August 2011. As the First Respondent adduced evidence of receipt the Tribunal concluded that the notice was given on the date was

received. This follows *Moskovitz v Worpole Road RTM Company Ltd* (1) (2010) UKUT393(LC). The valuation date is therefore 26 August 2011.

The Unexpired Term of Each Lease

15. Initially the Head Lease was not made available to the Tribunal or, it would appear, to Mr Richards. It is the finding of fact, having inspected the document, that the Head Lease is for a term of 99 years plus 10 days starting from 24 June 1986 with an unexpired term therefore of 73.86 years at the valuation date.
16. The occupational lease is for a term of 99 years from 24 June 1986 leaving an unexpired term at the valuation date of 73.83 years.
17. Although the lease lengths have still not been formally agreed the Tribunal finds as a matter of fact that these unexpired terms stated are correct.

Vacant Possession Value of the Short Leasehold Flat

18. In support of his valuation of £100,000 Mr Richards refers to figures sourced from the Mouseprice Website which he understands to be a reliable source of information. The five properties are all within Brincliffe and the details are summarised as follows:

Flat 5 (2 bedroom)	Sold 4 June 2009	£95,000
Flat 7 (2 bedroom)	Sold 28 January 2010	£110,000
Flat 14 (2 bedroom)	Sold 16 September 2010	£110,000
Flat 1 (1 bedroom)	Sold 12 January 2011	£110,000
Flat 6 (1 bedroom)	Sold 21 June 2011	£112,500

19. Mr Richards also refers to the fact that the subject premises are being marketed by Michael Brooker Estate Agents and an offer has recently been accepted by the Applicant for a sale at a figure of £105,000 on the basis that the statutory lease extension is completed. This sale is not complete.

20. Mr Richards had not inspected the interior of any of the comparables offered but he believes, having spoken to the intermediate landlord, that the other flats have been modernised to a greater or lesser extent and have at least all benefited from replacement double glazing. The subject flat is relatively unusual being un-modernised and without replacement windows.
21. On the basis of this information Mr Richards concludes that the existing leasehold value of the flat in its current unimproved condition is £100,000.
22. Mr Holden produced a formal proof of evidence and a skeleton argument. He based his valuation on flats sold since May 2005. These include the comparables produced by Mr Richards together with an earlier sale of Flat 6 on 15 January 2010 at £115,000. Earlier sales being too historical were not specifically considered by Mr Holden who concentrated on the five sales since January 2010.
23. He produced two graphs for the East Sussex Council area from which he deduced that the house prices in East Sussex probably peaked in about January 2008 and then fell sharply until the summer of 2009. They then recovered during 2009/2010 and since around January 2011 prices have been relatively static.
24. Mr Holden's calculation of the average price for the three one bedroom ground floor flats is £112,500 and the average price for the two one bedroom first floor flats is £110,000. All these flats are held on original leases.
25. He then makes adjustments based upon the sales particulars for Flats 1, 6 and 14. Flat 1 has just one double glazed window, there were no improvements for Flat 6, and Flat 14 seems to have double glazing throughout. On the basis of this information, derived from estate agent's property particulars, he believes that the only improvement to be disregarded is double glazing and he assesses this at £1,000.

26. Starting from £110,000 as an improved leasehold value for a two bedroom flat he deducts £1,000 for improvements, arriving at his assessment of £109,000.
27. It is not clear from Mr Richard's written statement whether any adjustment has been made for improvements. He does however rely heavily on the offer made to purchase the property at £105,000 but concludes that the true value for the flat in an unimproved state is £100,000. He may therefore have made an adjustment of £5,000.

The Price Payable

28. Having agreed the basic facts both parties produced valuations based upon their opinion of the variables that were not agreed.

Apportionment

29. It is then necessary to apportion the total price payable between the First Respondent freeholder and the Second Respondent head lessee. At the previous hearing the parties agreed that the price payable for the intermediate leasehold interest should be £15. Mr Holden was questioned as to why he now had a different approach to this part of the valuation. He explained that since the previous case had been decided the question of apportionment had been clarified in the case of **Nailrile Ltd v L Cadogan and Others**. The principle to be followed is to compare the value place on the freeholder's interest with the value placed on the head lessees interest and share the marriage value in accordance with those proportions.

CONSIDERATION

30. At the hearing Mr Holden suggested that Mr Richards, the Applicant's representative should not be considered by the Tribunal as an expert as he was a party to the application in his capacity as a Trustee. Mr Richards also did not attend the hearing and could not be cross examined on his evidence. The Tribunal took into account these matters when it weighed the evidence before it and applied a greater weight to Mr Holden's expert evidence.

31. Mr Buick attended the hearing as a Director of the intermediate landlord but made no representations.
32. The Tribunal has settled the valuation date at 26 August 2011 and the unexpired terms as 73.86 years for the head lease and 73.83 years for the occupational lease at the valuation date.
33. We have no doubt that the price paid for the sales of the flats offered as comparables will have been influenced by the updating of the internal fittings. The unimproved windows are showing their age so unless there have been modern windows installed in the subject premises there would be no need for an adjustment. The properties used as comparables have been improved by the addition of some double glazing so it is necessary to adjust the prices obtained to allow for this.
34. The range of adjustments for improvements would appear to be £1,000 by Mr Holden and possibly £5,000 by Mr Richards. The evidence before us is patchy, to say the least. In our view, a hypothetical purchaser would have a greater regard to the layout of the flat and the finish of the kitchen and bathroom as much as the provision of double glazing. On this basis we find that an appropriate adjustment for improvements would be £2,500.
35. Mr Richards' assessment of the comparable evidence relies heavily upon the agreed price for the sale of the subject premises. This transaction has been in hand for some time and, as it is not a completed transaction, the Tribunal applies little weight to it as evidence of value.
36. We prefer the approach by Mr Holden and his analysis towards a base price of £110,000 but this needs a greater adjustment for improvements than he applied. We deducted our adjustment of £2,500 to arrive at £107,500 as an appropriate value for the flat at the valuation date.
37. Mr Holden was asked about the possible adjustment for "a no act world" and he indicated that the valuers had considered this issue but decided that no further adjustment was required.

38. Without any detailed contemporaneous evidence we are satisfied that we have taken the best approach on the evidence presented to us.
39. The Tribunal's calculation is attached and this produces a total price payable of £6,378 made up of the value of the freeholder's interest at £3,108, the value of the head lessee's interest at £1,557, and the 50% share of marriage value at £1,713.

Apportionment

40. In order to calculate the apportionment payable by each Respondent it is necessary to calculate the proportion that the value of each separate interest bears to the total value. This produces a determination that the freeholder should receive 66.62% of the marriage value and the head lessee 33.38%.
41. The price is therefore apportioned at £4,249 for the freeholder and £2,129 for the head lessee.
42. The Tribunal was not asked to determine the terms of the transfer or the relevant costs and these matters may be agreed or determined at a later date.

[signed]

Brandon H R Simms FRICS MCI Arb – Chairman

26 November 2012

Appendix

The Tribunal's Calculations

Address: Flat 8, Brincliffe, St Johns Road, CROWBOROUGH - Tribunal's Calculations**Facts used**

Value of existing lease (unimproved)	£107,500			
Value of new long lease	£115,591			
Relativity	93	%		
Valuation date	26/08/12			
distant reversion yield	5.00%			
Freeholders reversion yield	5.50%			
Unexpired term at valuation date	73.86			
Unexpired term of headlease at valuation date	73.83	years		
Ground Rent	50.00	for	7.83	yrs
increasing to	100.00	for	33	yrs
increasing to	150.00	for	33	yrs

Value of Freeholder's interest

Capital value of new lease/virtual freehold	115,591			
x Pv 5.00% 73.86 years	<u>0.0272244</u>			
Value of landlord's existing interest lost				3,147
Less value of landlord's existing interest retained				
Capital value of new lease	115,591			
x Pv 5.00% 163.86 years	<u>0.0003372</u>			<u>39</u>
				£3,108

Value of intermediate landlord's (head lessee) interest

Capitalise ground rent for current term						
			Ground rent	£50.00		
YP	5.50%	7.83 years		<u>6.22624</u>		311.31
			Increase to	£100.00		
YP	5.50%	33 years		15.07507		
x Pv	5.50%	7.83 years		<u>0.65756</u>	<u>9.91271</u>	991.27
			Increase to	£150.00		
YP	5.50%	33 years		15.07507		
x Pv	5.50%	40.83 years		<u>0.11236</u>	<u>1.69380</u>	254.07
						£1,557

Marriage value

Capital value of new extended lease	115,591			
Retained freehold value	<u>39</u>			115,630
Less Capital value of existing lease	£107,500			
Value of landlord's interest lost	3,147			
Existing headlessee value	<u>£1,557</u>	<u>£112,204</u>		
Marriage value		<u>3,427</u>		
Share of marriage value at 50%				£1,713
Total price payable				£6,378

Apportionment of Marriage Value

As diminution of part to whole	£3,108/£4,665 (3,108+1,557) = 66.62% = £1,141
	£1,557/£4,665 (3,108+1,557) = 33.38% = £572
Freeholder:	£3,108 + £1,141 = £4,249
Headlessee:	£1,557 + £572 = £2,129