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H.M. COURTS & TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")

Case Number:	CHI/45UC/OCE/2012/0018
Property:	Flats 1-4, Woodlands Court, Woodlands Avenue, Rustington, West Sussex BN16 3EU
Applicant:	Woodlands Court Rustington Limited
Respondents:	Edmund Harry Greenfield and Donald Phillip Leonard Greenfield
Appearances for Applicants:	Andrew Boyd, Solicitor, instructed by Marian L Marland, Solicitor for the Applicant Mr Alan Houghton also in attendance
Appearances for Respondent:	None
Date of hearing	2 July 2012
Tribunal:	Ms E Morrison LLB JD (Lawyer Chairman) Miss C D Barton BSc MRICS (Valuer Member) Mr A O Mackay FRICS (Valuer Member)
Date of the Tribunal's Decision:	5 July 2012

Summary of Decision

1. The price payable by the Applicants as Nominee Purchaser for the acquisition of the freehold of the subject premises is £435.00.

Background

2. On 3 October 2011 the Applicant nominee purchaser applied to the court for an order under section 26 of the Act dispensing with the need to serve a section 13 initial notice on the ground that the freeholders/landlords (who are named as the Respondents in these proceedings) could not be found. On 8 February 2012 the court made an order granting the application and directing that the terms of acquisition of the freehold be determined by the Tribunal in accordance with the Act.

The Law

3. The price to be paid by a nominee purchaser for the freehold is governed by Schedule 6 of the Act. Paragraph 2 states:
 - (1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of:
 - (a) the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,
 - (b) the freeholder's share of the marriage value as determined in accordance with paragraph 4, and
 - (c) any amount of compensation payable to the freeholder under paragraph 5.
4. Where the freeholder is missing, Section 27 of the Act provides that the Tribunal shall determine the terms of acquisition of the freehold. The sum to be paid into court shall comprise the price and any other sums due to the transferor from any of the leaseholders at the time the freehold interest is transferred.
5. Section 34 and Schedule 7 contain provisions relating to the form and content of the transfer of the freehold interest.

The Freehold Title

6. The copy Abstract of Title provided to the Tribunal established that the Respondents acquired the freehold title by a conveyance in April 1957. That title remains unregistered. The extent of the land acquired is described as the land "... edged green with its boundaries and abutments on the plan attached thereto and formed part of land conveyed to Arthur Holden and Dorothy Holden by a Conveyance dated 29th Sept 1950". The copy abstract contains an undated copy plan showing land edged green.

The Leases

7. The counterpart leases for each flat were produced at the Tribunal for inspection. Granted by the Respondents on dates between 16 November 1957 and 23 February 1959, each is for a term of 999 years from date of grant at a ground rent of £5 per annum throughout the term. Each demise includes a garage, and in the case of Flats 1 & 2 the demise includes a specified garden area. The leases for

Flats 3 & 4 do not include a garden area. Each lease grants rights of way over the common areas, which the landlord is responsible for maintaining and repairing.

Inspection

8. The Tribunal inspected the subject property on the morning of the hearing. The lessees of Flats 3 & 4 were also present. Woodlands Court is a purpose-built two-storey block of 4 self-contained flats, constructed of brick with a pitched roof. Flats 1 and 2, situated on the ground floor, have their own external entrances. Flats 3 and 4 on the upper floors share a ground floor entrance and stairway leading to a lobby off which there is a small storeroom not included in the flat demises. Externally there are gardens belonging to Flats 1 & 2 to the front and sides. At the rear there is a further garden area belonging to Flat 2 and a driveway leading to a turning area and the garages, with a bin store area beyond. On the far side of the driveway is a strip of land, part of which has been divided by a fence and is being used by the leaseholders of Flats 3 & 4 as gardens.

Representation and Evidence at the Hearing

9. The Applicant was represented by Mr Boyd in respect of the conveyancing aspects only. On the valuation issue, the Tribunal had been provided with a report from Mr M D Rackham FRICS dated 11 January 2011. He did not attend the hearing but submitted a further email confirming that his valuation figure of £285 continued to apply notwithstanding the date for valuation was 3 October 2011 (the date of application to the court) and notwithstanding that there were areas of land at the property that were not included in any of the flat demises. Mr Houghton attended as representative for the nominee purchaser but did not give any formal evidence.

The Determination – General Points

10. The Tribunal determines that the price to be paid under Schedule 6 of the Act is £435.00. Mr Rackham's figure of £285.00 is accepted as a valuation of the freeholder's interest in the rental stream. 7% is fair capitalisation rate given the low rent level with no provision for review. The Tribunal also agrees that with 999 year terms there is no freehold reversion value or marriage value. However the value of the freeholder's interest must include the value of the undemised common parts which will also be acquired. These common parts include the paths, driveway and other external common areas, and the stairway, lobby and store room referred to above. Having regard to the extent of these areas, the existing rights over them, and the limited use to which they may be put, the Tribunal, using its own knowledge and expertise, values them at £150.00
11. There is no compensation payable under paragraph 2(1) c) of Schedule 6.
12. The Tribunal determines there are no other sums due to the freeholders. Rent has not been paid for many years but is not due because the Respondents have not complied with section 48(1) of the Landlord and Tenant Act 1987 and section 166 of the Commonhold and Leasehold Reform Act 2002.

13. Neither the draft transfer originally submitted to the Tribunal nor the revised version provided on the morning of the hearing by the Applicant's solicitor Ms Marland was in a form that the Tribunal could approve as there were errors and omissions in both. Fortunately Mr Boyd was able, upon being given time by the Tribunal to review the freehold abstract and to make further searches with the Land Registry, to draft a further transfer which is attached to this decision in its approved form.
14. The Tribunal notes that the extent of the land edged green conveyed to the freeholder in 1957 may not include all or part of the strip of land to the east of the driveway, some of which is being used as garden area for Flats 3 & 4. That land is therefore outside the scope of the acquisition.

Chairman 
E Morrison LLB JD

Dated: 5 July 2012