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

**Case Reference** : **MAN/00BT/OAF/2013/0018**

**Property** : **18 Thornley Rise  
Audenshaw  
Manchester M34 5JX**

**Applicants** : **S P McDaid and A M Bowley**

**Representative** : **Orme Associates**

**Respondent** : **RMB Trading Limited**

**Representative** : **CP Bigwood**

**Type of Application** : **Leasehold Reform Act 1967 – s 21(1)**

**Tribunal Members** : **Judge J Holbrook  
Mr J Faulkner FRICS**

**Date and venue of  
Hearing** : **20 January 2014  
Determined without a hearing**

**Date of Decision** : **20 January 2014**

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**DECISION**

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## DECISION

- A. **The price payable under section 9(1) of the Leasehold Reform Act 1967 for the freehold interest in the Property is £4,800.00.**
- B. **The amount of the costs payable by the Applicants under section 9(4) of that Act is £925.00 plus VAT (comprising valuation costs of £525.00 plus VAT and legal costs of £400.00 plus VAT).**

## REASONS

1. On 19 August 2013 the Applicants, Mr S P McDaid and Ms A M Bowley, both of 18 Thornley Rise, Audenshaw, Manchester M34 5JX (“the Property”), gave notice to the Respondent, RMB Trading Limited, of their desire to acquire the freehold of the Property. The freehold is currently vested in the Respondent.
2. On 2 October 2013 the Respondent sent a notice in reply admitting the Applicants’ right to acquire the freehold in accordance with the provisions of Part 1 of the Leasehold Reform Act 1967 (“the Act”).
3. On 24 October 2013 an application was made to the Tribunal under section 21 of the Act for a determination of the price payable under section 9 of the Act.
4. By Directions issued on 13 November 2013 the Tribunal informed the parties that it intended to determine the application on the basis of a consideration of written evidence alone, without an oral hearing, unless it received notice that either party required a hearing to take place. No such notice was received. Accordingly, the Tribunal convened to determine the application in the absence of the parties on 20 January 2014. The Tribunal did not inspect the Property.
5. The Tribunal had previously been provided with written submissions and valuation evidence on behalf of each party. On behalf of the Applicants, the submission received from Mr Orme of Orme Associates requested that, in addition to determining the price payable under section 9(1) of the Act, the Tribunal determine the amount of the costs payable under section 9(4). On behalf of the Respondent, Mr Prichard of CP Bigwood had stated his client’s proposed costs in his own submission and he subsequently made additional representations about costs in a supplementary submission. The Tribunal treated Mr Orme’s submission as a request to amend his clients’ application and decided that granting the request would assist in achieving the overriding objective of dealing with the case fairly and justly.

## **The Property and the Lease**

6. The Property comprises a two storey semi-detached house constructed within the last ten years.
7. The Applicants hold the Property under a lease ("the Lease") dated 15 October 2006 made between Loxley Developments Limited (1) and the Applicants (2). The Lease granted a term of 999 years from 1 January 2006.
8. The initial annual rent reserved by the Lease is £190. However, the Lease provides for the annual rent to be reviewed on 1 January 2016 and thereafter on every 10<sup>th</sup> anniversary of that date. On review, the revised rent is to be determined by uplifting the passing rent by a percentage which equates to any increase in the Retail Prices Index. On completion of the rent review process, the outcome is to be recorded in memoranda and any costs incurred in the process are normally to be borne equally between landlord and tenant.

## **Law**

9. Section 9(1) of the Act provides, in effect, that the price payable shall be the amount which the freehold of the Property, 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.
10. Under section 9(3) of the Act, the Applicants have the right, within one month of ascertaining the amount payable for the Property, to give written notice to the Respondent that they are unable or unwilling to acquire it.
11. By virtue of section 9(4), the Applicants are liable to bear the Respondent's reasonable costs (insofar as they are incurred in pursuance of the Applicants' notice of their desire to acquire the freehold) incidental to the following matters:
  - a) any investigation by the Respondent of the right to acquire the freehold;
  - b) any conveyance of the Property;
  - c) deducing title to the Property; and
  - d) any valuation of the Property.
12. Nevertheless, section 9(4) does not require the Applicant to bear the Respondent's costs in connection with an application to the Tribunal.

## **Price payable under section 9(1) of the Act**

13. The parties agree that the price payable for the freehold interest in the Property should be determined in accordance with section 9(1) of the Act. They also agree that the reversion to the Lease is so remote that its monetary value is negligible. The valuation date is the date on which

the Applicants gave notice of their desire to acquire the freehold; namely, 19 August 2013.

14. The price for the freehold interest will therefore equate to the capitalised value of the rent. This will depend on the yield which an investment purchaser would expect to receive if it acquired the freehold reversion and also on the treatment of the rent review mechanism in the Lease in the valuation of the capitalized rent.
15. Mr Orme argues that a yield of 6.0% in perpetuity should be adopted, producing a total price of £3,166. On the other hand, Mr Prichard argued that the appropriate yield is 4.75%. He also argued that the valuation should take account of the anticipated increase in the rent (valued in "today's terms") as from January 2016. Mr Prichard therefore values the freehold interest at £5,066.
16. Mr Orme argues that a capitalisation rate of 6.5% is commensurate with previous tribunal decisions concerning "nominal ground rents albeit worth collecting" and that a reduction from 6.5% to 6.0% is sufficient to reflect the added value to an investor of the ten-yearly rent review.
17. Mr Prichard also cites previous tribunal decisions in support of his contention that the capitalisation rate should be 4.75%. He also states his view that this is the appropriate rate given that, as at the valuation date, the yield from 2.5% Consolidated Stock (undated Government Securities) was 4.43%.
18. Neither party provided market evidence as to yields actually achieved upon sale of comparable ground rent investments. Decisions about capitalisation rates in previous tribunal cases will have depended upon the particular facts of each case, and are likely to have been influenced by the strength of the arguments advanced by the parties. This is not equivalent to market evidence and such decisions do not bind the Tribunal on this occasion. However, we agree that the yield from gilts provides a useful starting point when ascertaining the yield which an investor would expect to receive from the freehold interest: an investor would clearly require a greater yield than that offered by gilts due to the risk premium associated with the ground rent investment.
19. We disagree with the view that the current rent for the Property is "nominal": it is a reasonable sum and would be potentially attractive to an investor. There appear to be no unusual features (of either the Property or the Lease) which would detract from the market value of the freehold which would necessarily reflect the costs inherent in collecting the rent and implementing the rent review machinery. On the other hand, the potential for the rent to increase every ten years would make the investment more attractive.

20. Taking these factors into account, and applying the Tribunal's own knowledge and experience, we determine that the appropriate yield to be adopted in this case is 5.0%.
21. The interval between the valuation date and the first rent review date is 2.35 years. Mr Prichard argued that, by reference to the RPI as at the valuation date, one can anticipate that the rent will be increased to £246.58 as from 1 January 2016, and that the capitalised value of the rent should be determined accordingly. We agree that this is the appropriate approach, and we therefore reject Mr Orme's contention that no attempt should be made to anticipate the level of rent on review.
22. The Tribunal has carried out its own valuation in the light of the above findings and conclusions (as shown in the Annex hereto). We have rounded down the valuation figure of £4,809.34 and therefore determine that the price payable under section 9(1) of the Act is £4,800.00.

#### **Costs payable under section 9(4) of the Act**

23. In addition to the price for the freehold interest, the Applicants are liable to bear the Respondent's reasonable costs. In his original submission, Mr Prichard identified the Respondent's costs as comprising surveyor's fees of £525 plus VAT together with legal fees of £950 plus VAT and disbursements. However, in his supplementary submission, Mr Prichard said that his clients were prepared to accept reduced legal fees of £525 plus VAT and a Land Registry fee of £3.00.
24. Mr Orme argued that the amount of these costs is unreasonably high. He again referred to previous tribunal decisions in support of his contention that reasonable valuation costs would be in the region of £350-£400 plus VAT with reasonable legal costs around £400 plus VAT.
25. We noted Mr Prichard's description of the work he had undertaken to prepare a valuation and we accept that the proposed charge for that work of £525 plus VAT is not an unreasonable one in the circumstances. In relation to legal costs, however, no explanation was provided of the basis upon which either the original, or revised, proposed costs have been calculated. Based on the Tribunal's knowledge and experience, we find that even the revised figure is unreasonably high. This matter concerns a relatively straightforward transfer of an interest in registered land for which, in our judgment, legal costs (inclusive of disbursements) of £400 plus VAT are reasonable.

## ANNEX

### Valuation of freehold interest in the Property

|                            |   |                  |
|----------------------------|---|------------------|
| Valuation Date             | : | 19 August 2013   |
| Term Commencement Date     | : | 1 January 2006   |
| Term (years)               | : | 999              |
| Term expiry Date           | : | 31 December 3004 |
| Unexpired Term (years)     | : | 991.35           |
| Rent Review Period (years) | : | 10               |
| Years to First Review      | : | 2.35             |
| Current Annual Rent        | : | £190.00          |
| RPI on Term Commencement   | : | 193.4            |
| RPI on Valuation Date      | : | 251.0            |
| Current RPI Rent           | : | £246.59          |
| Capitalisation Rate        | : | 5.0%             |

#### Term 1

|                        |               |         |
|------------------------|---------------|---------|
| Rent Passing           | £190.00 pa    |         |
| YP for 2.35 yrs @ 5.0% | <u>2.1666</u> | £411.65 |

#### Reversion

|                             |                |                  |
|-----------------------------|----------------|------------------|
| Current Rent                | £246.59 pa     |                  |
| YP for 989 yrs @ 5.0%       | <u>20.0000</u> |                  |
|                             | £4,931.80      |                  |
| PV of £1 in 2.35 yrs @ 5.0% | <u>0.8917</u>  | £4,397.69        |
|                             |                | <u>£4,809.34</u> |