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

Case Reference : **BIR/OOCT/OAF/2016/0008**

Property : **2a Featherstone Crescent, Shirley, Solihull, West Midlands, B90 3RJ.**

Applicant : **June Vera Birnie.**

Applicants Representative : **Anthony W. Brunt, Surveyor.**

Respondents : **Persons Unknown.**

Type of Application : **Application for determination of the price to be paid by the Applicant for the Freehold of the Property pursuant to s9(1) of the Leasehold Reform Act 1967.**

Tribunal Members : **Judge P.J.Ellis (Chair)
N. R. Thompson FRICS**

Date and venue of Hearing : **5 April 2016
City Centre Tower, 5-7 Hill Street Birmingham**

Date of Decision : **21 APR 2016**

DECISION

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BACKGROUND

1. This is an application by June Vera Birnie for a determination of the price to be paid by her to acquire the freehold of 2a Featherstone Crescent, Shirley, Solihull, West Midlands B90 3RJ (the Property).
2. The matter started in the Birmingham County Court when proceedings were issued by the Applicant on 22 October 2015 for an order vesting the Property in her pursuant to s27 of the Leasehold Reform Act 1967 (the Act) because the person to be served with notice of her desire to acquire the freehold could not be found.
3. The matter was referred to the First Tier Tribunal by Order made on 5 February 2016 by Mr District Judge Davies sitting at the Birmingham County Court. The Order stated that the court was
“satisfied that (the Applicant) being the tenant of (the Property) has a right under Part 1 of the Leasehold Reform Act 1967 to acquire the freehold thereof and is prevented from giving notice in accordance with the said Act of her desire to have the freehold because the identity of the person to be served with notice cannot be ascertained.”
The court then directed that an application be made to the this Tribunal for determination of a fair valuation to be paid by the Applicant pursuant to s9(1) of the Act to include a figure for arrears of ground rent.
4. The Applicant then made this Application and although represented by solicitors before the court the Tribunal was assisted in determining the valuation by Mr Anthony W Brunt (Mr Brunt) an experienced surveyor instructed by the Applicant as expert in accordance with the Royal Institution of Chartered Surveyors practice statement ‘Surveyors acting as expert witnesses’ 4th edition.
5. In accordance with the direction of the court this Tribunal was concerned only with determining a fair value for the freehold of the property under s21 of the Act and the amount of any arrears of ground rent.

INSPECTION

6. The Tribunal inspected the Property in the presence of the Applicant and Mr Brunt on 5 April 2016.
7. The Tribunal adopts the summary description of the Property given by Mr Brunt in his report. It is a traditionally designed and constructed brick and tile semi-detached house having a road frontage of 25 feet or thereabouts.
8. On the ground floor there is a hall, rear living/dining room and kitchen to the front. Upstairs there are three bedrooms plus a bathroom. Outside there is a front garden, driveway and garage with space to the side and rear garden with a dogleg boundary line.
9. In addition the Tribunal noted the windows are upvc double glazed units throughout. There is gas central heating with radiators throughout and a gas fire in the living/dining room. The irregularity of the rear boundary is not relevant to the valuation.

THE LEASE

10. The lease was made the 23 May 1966 between Biddle & Homer (Shirley) Limited and Mr William James Birnie (the Applicant's father in law) for a term of 99 years from 25 March 1966 yielding a yearly ground rent of £20. The cover sheet of the lease described the term as commencing on 29 September 1964 but as nothing significant turns on this inconsistency the Tribunal has adopted the 25 March 1966 as the commencement date in accordance with clause 1 of the lease.
11. The unexpired term of the lease at the commencement of proceedings in the Birmingham County Court was 49 years & 5months or 49.42 years. The date of commencement of proceedings is the notice date for the purpose of calculating the acquisition value.

SUBMISSIONS

12. Mr Brunt prepared his valuation in three stages as approved in *Clarise Properties Limited [2012] UKUT 4* applying *Haresign v St John the Baptist College Oxford (1980)* namely
 - a. capitalisation of the ground rent for the remainder of the term;
 - b. the s15 rent from the original term date until the expiry of the 50 year extension and
 - c. the value of the landlord's reversion to the house after the expiry of the 50 year extension on the basis that Schedule 10 to the local Government and Housing Act 1989 applies to the tenancy.
13. Capitalisation of the ground rent was proposed at 7% for 49.42 years purchase and 13.78146 from the relevant valuation table deduced a proposal of £275.63 for this stage.
14. In calculating stage b Mr Brunt submitted evidence of recent sales of nearby properties in order to determine the entirety value of the Property. He relied, in particular, upon the sale of 2b Featherstone Crescent in May 2015 for £276,000 and 1a Featherstone Crescent for £245,000 in July 2014 to support his submission that the entirety value of the Property is £280,000.
15. He then contended that the appropriate site value is one third of that sum namely £98,324. Although in his submissions Mr Brunt referred to several decisions of the Midland Tribunal to support his submissions as he had not brought any of the decisions with him the references were not considered of significant assistance to the Tribunal, given that they were not, in any event, binding in this case.
16. Mr Brunt submitted the deferment rate should be 5.5% and justified his claim to depart from the rate of 4.75% proposed by the Upper Tribunal in *Earl Cadogan v Sportelli [2007]EWCA Civ 1042* by reference to demand in the Midlands being very different from central London. In oral submissions he submitted this case involves the valuation of an income stream not a term date. Further he submitted the decision of Mr N.J. Rose FRICS in *Re Mansal Securities Ltd [2009]2EGLR 87* and the decision in *Zuckerman v Calthorpe Estates Trustees [2009] UKUT*

235 provided the grounds for departing from the 'Sportelli' rate of 4.75% and that he had negotiated many agreements with other surveyors based upon a deferment rate of 5.5% .

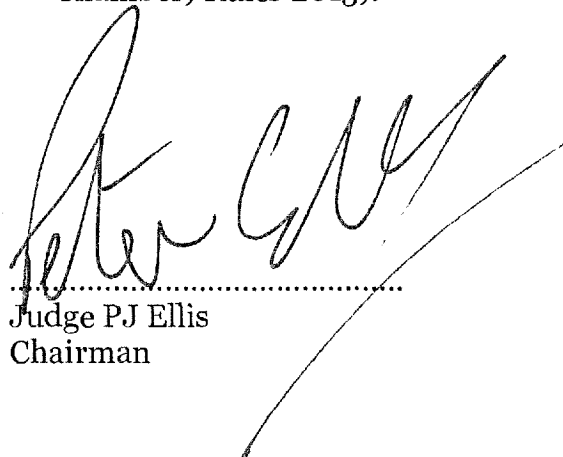
17. Applying his proposed deferment rate of 5.5% he deduced a value for the second stage of £6163.53.
18. The third stage of the valuation was calculated after applying a Schedule 10 deduction of 5% and applying the value of a pound to the resultant figure for 99.42 years at 5.5% of 0.00488 resulted in the sum of £1,297.29.
19. In conclusion Mr Brunt submitted a fair sum payable is £7,736. The calculation submitted by him to the Tribunal in support of his submission is annexed to this Decision.

DECISION

20. The Tribunal is satisfied the sum proposed is fair and reasonable and determines that the fair value of the sum required of the Applicant to acquire the freehold is £7,736 together with arrears of unpaid ground rent for six years in the sum of £120.
21. In coming to this decision the Tribunal accepts the rates for capitalisation and deferment put forward by Mr Brunt in this case. The Tribunal relied upon its own experience in finding the rates reasonable.
22. However, the Tribunal understood and accepted the method proposed by Mr Brunt for deducing the fair value and is able to make this decision on the basis of its inspection of the Property, the submissions made by Mr Brunt and upon its own experience.

APPEAL

23. If the Applicant is dissatisfied with this decision she may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to her (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).



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Judge PJ Ellis
Chairman



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**ANNEX
ENFRANCHISEMENT CALCULATION**

Section 9 (1) Valuation

Property 2a Featherstone Cr
Lease Expires 25/03/2065
Notice Date 22/10/2015

Term

Ground Rent (p.a.)		£20.00	
YP for (yrs)	49.42 @ 7.00%	13.78146	
			<u>£275.63</u>

Reversion to new 50 yr lease

Entirety Value		£280,000.00	
Site Apportionment	@ 33.33%	£93,324.00	
Section 15 Rent	@ 5.50%	£5,132.82	
YP for 50 yrs	50.00 @ 5.50%	16.93152	
PV of £1 in (yrs)	49.42 @ 5.50%	0.07092	
			<u>£5,163.53</u>

Third stage end reversion

Deduction for Sch 10		£266,000.00	
PV of £1 in (yrs)	99.42 @ 5.50%	0.00488	
			<u>£1,297.29</u>

Price			<u>£7,736-</u>
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Received
Residential Property
Midland Region

21 APR 2016