

4237



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

Case Reference : **CAM/00KF/OCE/2016/0009**

Property : **99 Lymington Avenue, Leigh on Sea, Essex
SS9 2AL**

Applicants (Tenants) : **99 Lymington Avenue (Freehold) Ltd**
Representative : **Mike Stapleton & Company**

Respondent (Landlord): **Forcelux Ltd**
Representative : **Mr James Christopher Gibb BSc(Econ) MRICS**

Date of Application : **20th January 2016**

Type of Application : **An application to the Tribunal under Section
24 of the Leasehold Reform Housing and
Urban Development Act 1993 (the 1993 Act) in
respect of the exercising of the right to a
collective enfranchisement.**

Tribunal : **Judge JR Morris**
Mr Derek Barnden MRICS
Mr Gerard Smith MRICS FAAV

Date of Hearing : **9th May 2016**

Date of Decision : **6th June 2016**

Date of Review : **8th August 2016**

DECISION

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FOLLOWING REVIEW IT IS DETERMINED as follows:

1. The price payable in respect of the Freehold interest in the Specified Premises for each Flat is **£9,598.00** the calculations for which are set out in Annex 1 to this Decision. The total price paid for the Specified Premises is **£19,196.00**. The price payable for the Additional Freehold is **£100.00**. Therefore the total price payable for the Freehold of the Property is determined at **£19,296.00** calculated in accordance with Annex 1 to this Decision.

Original Application & Decision

1. The Applicants issued an Initial Notice under section 13 of the 1993 Act to acquire the freehold of the Property under the 1993 Act dated the 15th July 2015. The Specified Premises of which the Applicants propose to acquire the freehold are those parts of Title Number EX361244 which comprise the building and common parts within it. The Applicants also proposed to acquire the Additional Freehold of those parts of Title Number EX361244 representing the front and any rear or side gardens and pathways (A marked plan was provided). The proposed purchase price is £16,000 for the Specified Premises and £100 for the Additional Freehold.
2. The Respondent Reversioner served a Counter Notice under section 21 of the 1993 Act accepting the proposals contained in the Initial Notice with regard to the extent of the proposed acquisition but not accepting the proposed purchase price. The Respondent proposed a purchase price of £43,100.00 for the Specified Premises and £5,000.00 for the Additional Freehold.
3. In the absence of agreement following negotiations an Application was made to the Tribunal and a hearing was held on 9th May 2016. The hearing was attended by Mr Stapleton the surveyor and representative for the Applicant and Mr Gibb the surveyor and representative for the Respondent. Both representatives gave evidence.
4. The Valuation Date was agreed as being the 17th July 2015, the capitalisation Rate was agreed at 6% and the Deferment rate was agreed at 5%. From the Valuations attached to their respective reports the Surveyors agreed the unexpired term at 71.43 years.
5. The Tribunal determined relativity of 93.44%. The Tribunal considered there to be insufficient evidence of a loss of development value for which the Respondent Landlord should be compensated under Paragraph 5 of the 1993 Act. The Tribunal found that the front garden was too narrow to be used as a parking bay. The Tribunal therefore found that the front garden and the pathway were of nominal value and determined a price of £100.00. The Tribunal assessed a virtual freehold value of £171,000.

6. The Tribunal using the above figures calculated a price payable for the Freehold of the Property as £18,612.00.

Application

7. The Tribunal received an Application by letter dated 28th June 2016 from the Respondent to review its decision of the 6th June 2016 in respect of the exercising of the right to the collective enfranchisement of 99 Lymington Avenue, Leigh on Sea, Essex, SS9 2AL. It is understood a copy of the letter of Application was sent to the Applicants.

Ground for Review

8. The ground for the Review is that at paragraph 50 of the Decision the Tribunal deducted £7,000 from each flat due to disrepair. It is acknowledged in the Decision that this disrepair was to be remedied following the service of section 20 notices. It is submitted that the cost of remediation would have been paid by the Leaseholders under the service charge provisions in the Lease and therefore it should not affect the value of the reversion.
9. Although the Tribunal had in mind the general condition of the Property its assessment was based upon the specific disrepair which was to be the subject of the section 20 notices. As this work would have been paid for by the Leaseholders the Tribunal was minded to review its decision.
10. It gave notice of its intention to review its decision attaching a revised valuation. With the notice it gave a Direction stating that if the Applicant wished to make any representations with regard to the Application to Review or the Tribunal's proposed revision of its valuation these should be made to the Tribunal Office by 5.00 p.m. on 29th July 2016.
11. The Applicants made no Representations by that date.

Decision to Review

12. Therefore the Tribunal decided to review its Decision with regard to the total price payable for the Freehold of the Property.
13. The Tribunal accepts that the value of the repair works to be carried out, and for which section 20 Notices were to be served, of £7,000 should not be deducted and therefore the Tribunal calculates a virtual freehold value of £178,000 in place of its original calculation of £171,000.

Tribunal's Revised Valuation Following Review

14. Therefore the price payable in respect of the Freehold interest in the Specified Premises for each Flat is **£9,598.00** the calculations for which are set out in

Annex 1 to this Decision. The total price paid for the Specified Premises is **£19,196.00**. The price payable for the Additional Freehold is **£100.00**. Therefore the total price payable for the Freehold of the Property is determined at **£19,296.00**.

Judge JR Morris

Annex 1 – Tribunal’s Revised Calculations

Attached hereto.

Annex 2 – Right of Appeal

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Revised Appendix 1a
Tribunal's Revised Calculations
99 Lymington Avenue, Leigh on Sea, Ground Floor Flat

Valuation assumptions

Lease expiry date	25/12/2086
Valuation date	17/07/2015
Unexpired term	71.43
Capitalisation rate	5.0%
Deferment rate	6.0%
Freehold value	
Extended lease value	£ 178,000
Existing lease value	£ 166,074
Relativity	93.3%

Value of Landlord's existing interest

Ground Rent 1						
Years Purchase	4.93 years @	6.0%	4.1615	£	250	0.750312332
Ground Rent 2			120			
Years Purchase	33 years @	6.0%	14.2302	£	1,708	0.146186223
Deferred	4.93 years @	6.0%	0.75031	£	1,281	
Ground Rent 3			180			
Years Purchase	33.5 years @	6.0%	14.3002	£	2,574	0.141988612
Deferred	37.93 years @	6.0%	0.10969	£	282	
Reversion to	Freehold / long leasehold value		£ 178,000			
Present Value of £1	71.43 years	5.0%	0.03065	£	5,456	
Sub-total					£	7,269

Marriage value calculation

Value of Landlord's proposed interest	£	-	
Value of Tenant's proposed interest	£	178,000	
Sub-total			£ 178,000
value of landlords existing interest	£	7,269	
Value of tenants existing lease	£	166,074	
			£ 173,343
Marriage gain			£ 4,657
Landlords 50% share			£ 2,328
Plus Loss to landlord in granting new lease			£ 7,269
Premium payable			£ 9,598

**Revised Appendix 1b
Tribunal's Revised Calculations
99 Lymington Avenue, Leigh on Sea, First Floor Flat**

Valuation assumptions

Lease expiry date	25/12/2086
Valuation date	17/07/2015
Unexpired term	71.43
Capitalisation rate	5.0%
Deferment rate	6.0%
Freehold value	
Extended lease value	£ 178,000
Existing lease value	£ 166,074
Relativity	93.3%

Value of Landlord's existing interest

Ground Rent 1						
Years Purchase	4.93 years @	6.0%	4.1615	£	250	0.750312332
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Reversion to	Freehold / long leasehold value		£ 178,000			
Present Value of £1	71.43 years	5.0%	0.03065	£	5,456	
Sub-total					£	7,269

Marriage value calculation

	Value of Landlord's proposed interest	£	-	
	Value of Tenant's proposed interest	£	178,000	
	Sub-total			£ 178,000
	value of landlords existing interest	£	7,269	
	Value of tenants existing lease	£	166,074	
				£ 173,343
	Marriage gain			£ 4,657
	Landlords 50% share			£ 2,328
Plus	Loss to landlord in granting new lease			£ 7,269
	Premium payable			£ 9,598