

4203



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : CAM/00KF/OCE/2016/0012

Property : 36 Tunbridge Road,
Southend-on-Sea,
Essex SS2 6LT

Applicants : Mark Gareth Cantor, Wayne Cantor
and Amanda Cantor

Represented by : Danny Turpin, solicitor advocate
(Tolhurst Fisher LLP)

Respondent : Ernest Patrick Cleminson (dec'd)
(not represented)

Date of Application : 29th March 2016

Type of Application : To determine the terms of acquisition
of the enfranchisement of the property
where the landlord cannot be found
(sections 26 & 27 of the Leasehold
Reform Housing and Urban
Development Act 1993 (“the 1993 Act”))

Tribunal : Bruce Edgington (lawyer chair)
Evelyn Flint DMS FRICS IRRV
Stephen Moll FRICS

**Date and place
of hearing** : 27th June 2016 at the Park Inn Radisson
Palace Hotel, Church Road,
Southend-on-Sea SS1 2AL

DECISION

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1. The total price to be paid for the freehold of the property is £22,750.00 calculated in accordance with the Schedule attached to the report of Mike Stapleton FRICS dated 14th June 2016.
2. The remaining terms of the transfer are as set out in the document in the bundle provided to the Tribunal by the Applicant’s solicitors as approved by the Tribunal subject, of course, to (a) any reasonable requisitions which may be raised by the Land Registry, (b) the correct recital for the amount to be paid into court rather than being paid to the Respondent and (c) the insertion of that amount. The Tribunal notes that the vesting order allows

a deduction to be made in respect of costs. However this does not form part of the valuation exercise by the Tribunal to ascertain the appropriate amount to be paid into court in accordance with subsection 27(5) of the 1993 Act. There is no power under the 1993 Act to make any such deduction.

Reasons

Introduction

3. This application is for the Tribunal to determine the terms (including the price) of the collective enfranchisement of the freehold of the property consisting of two flats following a vesting order made by District Judge Ashworth on the 1st March 2016. The existing freehold owner died in 1987 and his executor died in 1997 leaving an Administratrix who has not co-operated in this process.
4. The said order does not actually dispense with the service of an Initial Notice but as a vesting order was clearly made, this is of no concern to the Tribunal. A combination of the effects of sections 1(8) and 27(1)(b) of the **Leasehold Reform, Housing & Urban Development Act 1993** ("the Act") and the terms of the said order mean that the valuation date is 29th January 2016.
5. The freehold title is subject to 2 leases namely:-
 - (a) ground floor flat, 36 Tunbridge Road, let on a lease for 99 years from the 1st July 1978 with a ground rent of £20 per annum for the term,
 - (b) first floor flat, 36A Tunbridge Road, let on a lease for 99 years from 1st July 1978 with a ground rent of £20 for the term.

The Inspection

6. The members of the Tribunal inspected the property in the presence of the expert witness of the Applicants namely Mike Stapleton FRICS. His report as referred to above had been sent to the Tribunal before the inspection. The location is in a central position close to Southend town centre and is in reasonably close proximity to 2 railway stations with commuter trains into 2 central London stations. It is a converted semi-detached house of brick construction under an interlocking concrete tiled pitched roof built in the late 19th or early 20th century and now with uPVC windows.
7. Through the front door is a hallway off which are doors to each flat. The ground floor consists of a kitchen off which is a shower room. There is a door to a small section of garden which consists of a seating area. There is a side entrance but it is in a poor state of repair. At the front is a double bedroom and a lounge with a bay window.
8. The first floor flat is reached by a staircase off the hall which goes up to a landing off which is a kitchen diner at the rear, a staircase down to a medium sized garden at the rear, and then a double bedroom, a single bedroom and a lounge. There is gas fired central heating with radiators to both flats.
9. The outside was in reasonable decorative order. Neither flat appeared to have been improved enough to require specific allowances in the price.

The Law

- 10. The price to be paid on collective enfranchisement is calculated in accordance with the provisions of Schedule 6 of the 1993 Act. The price includes (a) the value of the freeholder’s interest if sold on the open market calculated in accordance with the assumptions in Paragraph 3 of the Schedule (b) the freeholder’s share of the marriage value and (c) any compensation payable to the freeholder under Paragraph 5 of the Schedule.

The Hearing

- 11. The hearing was attended by Mr. Turpin and Mr. Stapleton. The members of the Tribunal had been able to discuss the evidence after the inspection but before the hearing and had determined that Mr. Stapleton’s figures would be accepted. They told him this at the hearing and also told Mr. Turpin that the Tribunal would look at the draft transfer.
- 12. There was a brief discussion about whether there was any development potential for the roof void. Both Mr. Stapleton and the Tribunal members agreed that it probably had no real value.

Conclusions

- 13. As far as the ‘no Act’ values of the 2 flats were concerned, the Tribunal noted the extensive evidence provided by Mr. Stapleton which was accepted. The only problem was the valuation date which was 2 months after the correct date. Some of the calculations made by Mr. Stapleton could have been adjusted but the resulting difference in his figures as opposed to figures based on the correct date was so small as to be *de minimis*.
- 14. The rates for capitalisation of ground rent, deferment and relativity were accepted by the Tribunal as was the total.
- 15. As far as the draft transfer is concerned, the Tribunal, as has been said, did decide to look at this. However, the Applicants’ solicitors will no doubt note for future reference that section 27(1)(b) of the 1993 Act gives the Tribunal the power to determine the terms of the transaction which is what the order of District Judge Ashworth says. However, it is section 27(3)(a) which gives the power to order the Tribunal to approve the form of the transfer. In other words they are 2 separate things and the order should have provided for both.

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Bruce Edgington
Regional Judge
30th June 2016

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.