



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

Case Reference : **MAN/00BY/OAF/2015/0034**

Property : **33 Lucan Road, Liverpool L17 0BR**

Applicant : **Anne Elizabeth Barr**

Represented by : **Orme Associates**

Respondent : **Fee Simple Investments Ltd**

Represented by : **Adcocks Solicitors Ltd**

Type of Application : **Applications under sections 21(1)(a),
21(1)(ba) & 21(2) Leasehold Reform Act 1967
("the 1967 Act")**

Tribunal Members : **Judge C Wood
Mr M Bennett**

Date of Decision : **17 May 2016**

DECISION

ORDER

1. The Tribunal orders that the price payable for the freehold reversion of the Property is £333.00.

BACKGROUND

2. The Applicant is the registered proprietor of the leasehold interest in the Property, (Title No. MS304589).
3. The Respondent is the registered proprietor of the freehold title to the land registered under Title No. MS114812 which includes the freehold title to the Property.
4. By a notice dated 10 August 2015, the Applicant's Representative gave notice to the Respondent of her claim to acquire the freehold of the Property, ("the Tenant's Notice").
5. By a notice in reply dated 9 October 2015, the Respondent acknowledged the right of the Applicant to purchase the freehold and that the house should be valued in accordance with section 9(1) of the 1967 Act, ("the Landlord's Reply").
6. By an application dated 25 November 2015, the Applicant sought a determination from the Tribunal under s21(a), (the price payable for a house and premises under section 9 above), ("the Application").
7. Directions dated 5 February 2016 provided for the Application to be determined by way of a paper determination unless either party requested a hearing. Neither party requested a hearing.
8. The following written submissions were received from the parties:
 - 8.1 Applicant's statement of case including the statement of Mr A Hamlett-Orme dated 3 March 2016 and his valuation dated July 2015, ("the Applicant's valuation"), and the Applicant's replies to the Respondent's statement of case dated 22 March 2016, ("together the Applicant's Bundle");
 - 8.2 Respondent's Statement of Case including the statement of Mr G R Bates dated 27 February 2015 and his valuation dated 7 September 2015, ("the Respondent's valuation"), ("the Respondent's Bundle").

LAW

9. The following provisions of sections 9 of the 1967 Act are relevant to the Application:

Section 9 Purchase price and costs of enfranchisement...

(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, 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 on the following assumptions:—

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

(b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's encumbrances; and

(c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below...

EVIDENCE

10. The Applicant's submissions are summarised as follows:

10.1 the Applicant's valuation determines that the price payable for the freehold of the Property should be £333;

10.2 the Applicant challenges the inclusion in the Respondent's valuation of the sum of £239 in respect of the loss of profit/extra income yield arising from clause 5(g) of the lease of the Property dated 27 April 1999 and made between Suburban Homes Limited (1) and Hoylake Estates Limited (2);

10.3 in particular, the Applicant's Representative states in the replies dated 22 March 2016 that (i) it is not aware of any instance where "...a common restriction on alienation found in leases has an ameliorating effect on the value of the freehold interest"; (ii) the effect of clause 5(g) as read in conjunction with the implied provision in section 19 Landlord and Tenant Act 1927, "...any investor could recover no more than its loss incurred in giving consent..."; (iii) there is no evidence to support the Respondent's statement that a sale or assignment would occur, on average, once every 7 years; and (iv) that, in all other respects, the parties are agreed on the valuation of the freehold of the Property.

11. The Respondent's submissions are summarised as follows:
 - 11.1 the method of valuation of the freehold title is agreed between the parties save for the inclusion of the value relating to "extraneous income" payable to the freeholder, in this case, as a result of the operation of clause 5(g) of the Lease;
 - 11.2 the fee currently charged by Alton Property Management, ("APM"), for dealing with consent to an assignment on the Respondent's behalf is £360, and the excess of this amount over the actual costs incurred, are properly to be regarded as profit/extra income;
 - 11.3 in paragraph 7.1 of Mr Bates' statement, referring to clause 5(g), he states that " I have assumed that one of the [events listed in the clause] would realistically occur every 7 years..."

TRIBUNAL'S REASONS

12. In making its determination, the Tribunal had regard to the following matters:
 - 12.1 the parties' agreement on the method of valuation of the freehold interest, (excluding any amount relating to the effect (if any) of clause 5(g) on its' value), and therefore on the amount of £333 as being the amount payable, with which the Tribunal were also in agreement;
 - 12.2 the Tribunal did not agree with the Respondent that, when valuing the freehold of the Property, it was proper to take into account any income/profit received by it as a result of the operation of clause 5(g). The Tribunal was satisfied that the clause, as read in conjunction with section 19 of the Landlord and Tenant Act 1927, entitled the Lessor to recover from the Lessee its' reasonable legal and other expenses actually incurred, but no additional profit element;
 - 12.3 there was no evidence before the Tribunal to support Mr Bates' assumption of the frequency of the occurrence of the events encompassed by clause 5(g) which would give rise to a cost being incurred.