



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

Case Reference : **MAN/00CJ/OCE/2016/0001**

Property : **1 Eslington Terrace Jesmond Newcastle upon Tyne NE2 4RJ**

Applicants : **Patricia Violet Berry, Paul Hylton, and Julie Scorer**

Representative : **Mr J McHugh, Counsel**

Respondents : **Mr Liam Adrian O'Donnell
Mrs Nicola O'Donnell**

Type of Application : **Section 26 and Schedule 6 Section 32 Part II of the Leasehold Reform Housing and Urban Development Act 1993**

Tribunal Members : **Chairman: I D Jefferson TD BA BSc FRICS
Judge S Duffy
I R Harris BSc FRICS**

Date of Decision : **27 May 2016**

DECISION

Decision

The Tribunal determines that the appropriate price in respect of the transfer of the freehold to the Applicants shall be a payment into Court by the Applicants pursuant to Section 26 and Schedule 6 Section 32 Part II of the Act of a global sum of £4,080.00.

REASONS

Background

1. By way of a Part 8 claim (Claim No: B02NE358) the Applicants applied through their Solicitors BBH Legal Services Ltd ("BBH") to the Newcastle County Court in order to exercise their right to acquire the freehold of the premises known as 1 Eslington Terrace, Jesmond, Newcastle upon Tyne NE2 4RJ ("the Building").

Consequent to this Claim and by way of an Order dated 15 March 2016 District Judge Pescod ordered that upon payment into Court of such price as may be determined by a Leasehold Valuation Tribunal, the freehold interest in the Building be vested in No. 1 Jesmond Management Company Limited with this entity acting as the nominee purchaser on behalf of the Claimants (who are the Applicants before this Tribunal).

Accordingly, by way of an application dated 5 April 2016, the Tribunal is asked to determine the price, or premium, to be paid in to Court for the grant to the Applicant of the freehold in the absence of the Freeholder in accordance with Section 26 and Schedule 6 Part II of the Leasehold Reform and Urban Development Act 1993 ("the Act").

2. Directions dated 12 April 2016 were sent to the Parties requiring the Applicant to provide any evidence they wished the Tribunal to consider, including valuations, photographs, and plans, and indicating that an inspection was required. No response was received from the Respondents. The Applicants initially did not request a Hearing and therefore the matter was to be considered by written evidence alone. However, for the reasons set out in paragraph 9 below a Hearing was held. The Tribunal met on 19 May 2016, undertook an inspection of one flat, namely the first floor flat number 1B, the internal common areas, and inspected the whole property externally.

The Law

3. *Section 27(1) (b) of the Act provides that the vesting of the interest shall be "on such terms as may be determined by the appropriate tribunal..."*

4. *Schedule 6 relates to the purchase price payable by a nominee purchaser. Part II of that Schedule provides:*
- 2.-(1) *Subject to the provisions of this paragraph, [where the freehold of the whole of the specified premises is owned by the same person] the price payable by the nominee purchaser for the freehold of [those] premises shall be the aggregate of-*
- a) *the value of the freeholder's interest in the premises as determined in accordance with paragraph 3,*
 - b) *the freeholder's share of the marriage value as determined in accordance with paragraph 4, and*
 - c) *any amount of compensation payable to the freeholder under paragraph 5.*

The Property and the Leases

5. The Tribunal finds that the Building is an end terrace property, probably built around 1880 or thereabouts as a single house. At some stage it has been converted into three flats one on each of the ground floor, first floor, and second floor. This conversion, or perhaps refurbishment, was undertaken in or around 2002 and each of the three flats were subsequently sold by way of long leases. Each lease is broadly similar in its main aspects save for the commencement date.
6. The term of each lease is for 125 years in respect of: Flat A from 25 May 2006, Flat B from 24 June 2004, and Flat C from 1 November 2002, at an initial ground rent of £50.00 per annum rising by a further £25.00 every 25 years. In accordance with paragraph 2 of each lease headed Demise and Rents the ground rent is payable by the lessee to the lessor.

Submissions

7. The Tribunal has a copy of the Applicants' Application Form dated 20 March 2016 together with copies of witness statements dated 7 July 2015 and 28 April 2016 by the Applicants' Solicitor before Newcastle County Court and this Tribunal, a copy of the Court order and copy title documents and a copy lease for each of the three flats. The Applicants in their Application Form put forward a premium of £1.00 as the proposed purchase price of the freehold. No further written submissions have been made to the Tribunal either by the Applicants or the Respondents and no valuation has been produced by either.

The witness statement made by the Applicants' Solicitor, dated 28 April 2016, reiterated much of what was previously submitted. The statement relies upon the wording of the Eighth Schedule in each lease to support a price of £1.00 and states that, according to the third paragraph of that Schedule, a transfer at that amount was due to take place on the thirtieth day after the grant of the last lease in the Property. Following consideration of the second witness statement the Tribunal issued further Directions dated 10 May 2016 pointing out that whilst no decision has been made there was an alternative view to that propounded by BBH, namely that in statute the Tribunal must take account of the ground rent provisions subsisting in each lease and capitalise those amounts. The Tribunal invited the Parties to present any valuation evidence at a hearing on the appointed day if they so wished.

At the hearing held at SSCS Tribunal Centre Newcastle upon Tyne on 19 May 2016 the Applicants did not put forward any expert valuation evidence. However, Mr J McHugh of Counsel appeared on their behalf. The essence of the submissions put forward by Counsel were essentially twofold. Either the Eighth Schedule of each Lease envisaged the freehold being transferred for the sum of £1.00 and that this contractual arrangement displaced the role of the Tribunal.

Alternatively, the contractual requirement to transfer set out in each lease was not overridden by statute as paragraph 3(2) of Schedule 6 of the Act permitted the Tribunal to ignore the statutory basis of valuation.

Tribunal Decision

8. This matter has been referred to the Tribunal by the County Court for determination of the price payable. It is necessary to determine the date of valuation which the Tribunal finds as the date of application to the Court S27(1)(2)(a) namely 10 December 2015.
9. The Tribunal considered whether or not the Application was valid. Regard was had to *Cadogan Estate v Morris* (1999) 77 P&CR 336 CA and in particular a passage by Stuart Smith LJ. In the normal course of events it has been held in *Cadogan* that the Leaseholder is required to put forward a realistic figure and that if this is not done then the notice can be held to be invalid. This Tribunal however find that the Applicants did indeed only propose to pay £1.00. For this it is assumed they relied upon Paragraph 3 of the Eighth Schedule of the Leases which is a covenant on the part of the Lessor.
10. Paragraph 3 of the Leases states that within a reasonable period after the commencement date the Lessor shall execute a transfer of the freehold interest in the development at the price of £1.00 subject to the leases of the apartments. The requirement to execute a transfer within 30 days for the grant of the last lease within the Property, referred to by BBH in their second witness statement from the Eighth Schedule, was not found by the Tribunal in the Eighth Schedule of any of the three Leases provided. Counsel confirmed that BBH's interpretation on this point was flawed.

11. However, the price to be paid for the freehold under statute according to Section 27, directing to Schedule 6, Part II of the Act, shall include items a), b), and c) as set out in paragraph 6 earlier in this decision. The Tribunal considered carefully the arguments put by Counsel in particular in respect of Paragraph 3(2) of Schedule 6 but did not agree with that interpretation. The Tribunal interpretation of Schedule 6 Part II 3(1)(b) is that the Tribunal must value in a no scheme world, and ignore any contractual provisions in any of the leases.
12. This Tribunal must follow the guidance in the statutory schedule.
13. The Eighth Schedule price referred to in each lease is merely a contractual price limited in its application to that specific transaction between the Original Lessor and the Management Company. It can have no bearing on the task before this Tribunal under statute.
14. The Tribunal considered whether the Applicants were liable for arrears of ground rent payable to the Landlord, amounting to 6 years arrears of rents, since earlier arrears are likely to be statute barred. This Tribunal, however, find that the missing Landlord, has by definition, failed to furnish the Leaseholders by notice with an address for service of notices as required by S48(i) of the Landlord and Tenant Act 1987 for which the sanction is that “any rent or service charge otherwise due ... shall ... be treated for purposes as not being due” In addition the Freeholder, by definition, cannot have enclosed a copy of the mandatory guidance notes under the Administration Charges (Summary of Rights and Obligations). (England) Regulations 2007. The Tribunal therefore determine that no ground rent arrears are payable.
15. Turning to the matter of premium. The Tribunal notes that the unexpired term of years is in excess of 100 years in respect of each of the three flats and therefore a term and reversion valuation and calculation of marriage value which would be required were the unexpired term less than 80 years is not appropriate in this case see Schedule 6 Part II 4(2A).
16. The Tribunal noted the variation in commencement dates of each of the three leases. It was open to the Tribunal to undertake a separate valuation for each of the Leaseholders and notes that the Applicants are the individual Leaseholders however in reality, both in the Court Order, and under statute the Applicants are merely the individuals behind the nominee purchaser. The premium is a global sum payable by the nominee purchaser and therefore the Tribunal adopted an average term and commencement date of 2004.

The Tribunal notes that the passing ground rent is £50.00 per annum for each flat totalling £150.00 per annum. This is subject to future fixed uplifts every 25 years. The Tribunal, using their knowledge and experience, determine taking into account those fixed uplifts that the capitalised value of the ground rent for a single flat based on a yield of 5% is £1,360.00 for each flat. This must be multiplied by the number of flats giving a total premium in respect of all three flats of £4,080.00 in respect of the freehold.

17. The yield adopted reflects this reasonably secure investment and the fixed, phased uplifts of ground rent set out in each lease. The yield accords with many other previous Tribunal decisions.
18. The Tribunal attach a valuation sheet by way of a separate Appendix.
19. The price payable by statute shall also include any amount of compensation payable to the freeholders. Schedule 13 Paragraph 5 (2) outline the circumstances in which compensation may be payable but the Tribunal is unaware of any justification in the subject case.
20. The Tribunal therefore determine that the appropriate sum to be paid in to Court under the Act is £4,080.00.
21. The Applicants have not produced a draft transfer, nor has the County Court directed this Tribunal to consider the terms and conditions of any transfer and this matter is left for the County Court to direct as necessary.

APPENDIX

TRIBUNAL VALUATION

MAN/OOCJ/OCE/2016/0001

1 ESLINGTON TERRACE, JESMOND,
NEWCASTLE UPON TYNE NE2 4RJ

1 x Specimen Flat Lease
Adapting Average Commencement Date of April 2004

Current Ground Rent pa	£50.00	
YP for 13 years @ 5%	9.393	£469
Increase to	£75.00	
YP for 25 years @ 5% 14.094		
PV of £1 in 13 years @ 5.00% 0.530	7.470	£560
Increase to	£100.00	
YP for 25 years @ 5% 14.094		
PV of £1 in 38 years @ 5.00% 0.156	2.198	£220
Increase to	£125.00	
YP for 25 years @ 5% 14.094		
PV of £1 in 63 years @ 5.00% 0.046	0.648	£81
Increase to	£150.00	
YP for 25 years @ 5% 14.094		
PV of £1 in 88 years @ 5.00% 0.014	0.197	£29
Total		£1,359.00
Say		£1,360.00
x 3 Leases Sum Payable in respect of the Freehold		£4,080.00

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