

887



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

Case Reference : **MAN/00CG/OAF/2014/0007**

Property : **34 Elcroft Gardens, Beighton, Sheffield, S20 1GY**

Applicant : **Freda Pauline Kanaris-Sotiriou**

Respondent : **Coppen (Estates) Ltd**

Type of Application : **Sections 21(1)(a), S21(1)(b)(a) of the Leasehold Reform Act 1967**

Tribunal Members : **K M Southby (Lawyer Chair)
M Bennett (Valuer Member)**

Date of Decision : **14 May 2014**

DECISION

© CROWN COPYRIGHT 2014

DECISION

1. The price to be paid upon enfranchisement of the property is:
 - a. The sum of £1850 to the freeholder of the property, Coppen Estates Ltd
2. The costs payable by the Applicant pursuant to Section 9(4) of the Leasehold Reform Act 1967 are as follows:
 - a. The reasonable costs of the freeholder, Coppen Estates Ltd, such costs summarily assessed to be £450 +VAT

REASONS

Introduction

1. This is an application made by Raymond Kanaris-Sotiriou exercising Power of Attorney on behalf of the Applicant Freda Kanaris Sotiriou, who is the Lessee of the Property at 34 Elcroft Gardens, Beighton, Sheffield, S20 1GY. The Property is held under a Lease dated 31 August 1984 made between J.C. Homes Ltd and Mr B. H. Duke. The Lease is for a term of 99 years from 25 March 1983. J.C. Homes subsequently disposed of the Freehold interest in the property to Coppen Homes Ltd.
2. On 22 September 2013 the Applicant completed a Notice of Claim to acquire the freehold interest in the property under s9(1) of the Leasehold Reform Act, which was served on the Respondent on 1 October 2013.
3. The Respondent replied on 20 November 2013 with an all inclusive offer of £4250.
4. The Applicant countered on 4 December 2013 with an offer based upon the valuation figure of Peter H Swift, of £1700 plus reasonable expenses of upto £450+VAT.
5. No further response from the Respondent having been received, the Applicant filed an application with the Tribunal seeking a determination of the amount to be paid for the freehold reversion of the property.
6. The unexpired term of the Lease for valuation purposes is 68 years.

The Inspection

7. The Tribunal inspected the property at 34 Elcroft Gardens, Beighton, Sheffield on 14 May 2014. The property is a modern semi-detached house built around 1984 which has accommodation on two floors. It comprises a dining-kitchen, living room, 2 bedrooms and a wet room with shower. The property is situated in a cul-de-sac development with limited frontage, no garage or driveway and a small rectangular-shaped plot to the rear.
8. Upon inspection the Applicant confirmed that they had not undertaken any significant improvements to the property.

The Law

9. The price to pay upon enfranchisement is provided for in Section 9(1) of the Leasehold Reform Act 1967 which states:
 - Subject to sub-section (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, is sold on the open market by a willing seller with the tenant and family not seeking to buy.....might be expected to realise on the following assumption that:
 - 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 the Act conferred no right to acquire the freehold; and if the tenancy has not been extended under this part of the 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 the vendor was selling subject in respect of rent charges to which section 11 (2) below applies, to the same annual charge as the conveyancer the tenant is to be subject to but the purchaser would be otherwise effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenants incumbrances; 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 conveyancer 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

Submissions

10. Neither party requested an oral hearing at which further representations could be made.
11. The Applicant provided an expert report by Mr Peter H Swift of Swift and Co. Chartered Surveyors who submitted as follows:
 - The valuation should be assessed on the 3-stage procedure following the decision in Clarise Properties Ltd (2012) UKUT4(LC).
 - The yield rate should be 6.5%
 - The deferment rate should be 5.5%
 - The valuation of the property should be £110,000 of which the site value should be 33.3%, i.e. £36666.66
 - In taking these figures the amount payable for the freehold reversion should be the sum of £1850 plus reasonable legal and surveyors fees.
12. Submissions were received from the Respondent suggesting that the Applicant did not have standing to bring the claim and that the Tribunal did not have jurisdiction to consider the matter. These were addressed by the Applicant by clarification of the position regarding the Power of Attorney and the

Respondent withdraws this point which the Tribunal therefore has no need to address any further.

13. The Respondent's submissions accepts the valuation by the Applicant's expert in its entirety. The Respondent's only issue therefore is in respect of the assessment of reasonable costs under s9(4) of the 1967 Act, and also in addition the Respondent argues that the Tribunal should consider making an order for wasted costs under the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules).

Valuation

14. In view of the agreement between the parties on the valuation of the property, and having considered its own inspection and valuation of the property, the Tribunal finds no reason to depart from the valuation reached by the Applicant's expert, and therefore finds that the price to be paid upon the enfranchisement of the property is £1850.

Terms of the Transfer

15. The Respondent suggests that a restriction should be placed upon the transfer as follows:
"The property is transferred with the benefit of the rent reserved in the Lease but subject to the covenants on the part of the Lessor therein contained which the Transferee hereby covenants to indemnify the Transferor from any further breach of"
16. The starting point for the Tribunal under the 1967 Act is that subject to certain exceptions the Leaseholder acquires the freehold free from any incumbrances. No submissions or evidence were provided to the Tribunal as to how or why these covenants amounted to an exception from this starting point or how they materially enhance the value of other property belonging to the Respondent. Accordingly on the basis of the submissions before it the Tribunal concludes that no further condition or restriction be added to the Transfer as submitted at pages 41 to 44 of the Applicant's bundle.

Costs

17. Two costs provisions are relevant in the present matter – costs to which the landlord is entitled under s9(4) of the 1967 Act, and costs of the proceedings which are governed by the Rules.
18. S9(4) entitles the landlord to its reasonable costs of or incidental to any of the following matters:
 - a. Any investigation by the landlord of that person's right to acquire the freehold
 - b. Any conveyance or assurance of the house and premises or any part thereof or of an outstanding estate or interest therein
 - c. Deducing, evidencing and verifying the title to the house and premises or any estate or interest therein
 - d. Making out and furnishing such abstracts and copies as the person giving the notice may require

e. Any valuation of the house and premises

19. S9(4A) states that Subsection (4) does not require a person to bear the costs of another person in connection with an application to a Tribunal.
20. The Tribunal therefore considers the submissions before it in respect of costs, including the Statement of Costs from the Respondent and its references to costs in its correspondence. The Tribunal notes that the Respondent describes the work referred to in the Statement of Costs as being 'the costs incurred by the Respondent in dealing with the Applicant's applications' and therefore these would fall outside the scope of s9(4) of the 1967 Act. The Respondent has not provided any further detailed information on its costs, having instead responded to the Applicant by way of a global figure. The Tribunal has determined based on the information before it and its knowledge and expertise that a reasonable sum for the Respondent's costs in this case would be £450+VAT.
21. It is the Respondent's case that the Tribunal should make an order for wasted costs against the Applicant. This argument is founded on the premise that the Applicant had no standing in bringing the application in the first place. The standing of the Applicant as evidenced by the power of attorney has subsequently been accepted by the Respondent and therefore this argument falls away. A wasted costs order can only be made if the receiving party has incurred costs as a result of improper or negligent conduct by a representative, and there is no indication of such conduct here. Accordingly the Tribunal does not find that the Applicant has acted unreasonably in bringing or conducting proceedings, and therefore dismisses the suggestion that it should make an order for wasted costs on these grounds against the Applicant.
22. The Respondent also argues that in the alternative the Tribunal should make a costs order against the Applicant as a consequence of the Applicant's unreasonable conduct in continuing the proceedings. The Applicant has submitted a chronology, and the Respondent has provided the Tribunal with submissions regarding the conduct of the parties in this matter. Having considered all submissions the Tribunal concludes that the Applicant was entirely appropriate in bringing the matter before the Tribunal, having heard nothing from the Respondent between 4 December 2013, when its valuation figure and offer in respect of costs was sent, and 6 February 2014 when the matter was brought to the Tribunal. Indeed the Respondent did not reply to the Applicant's counter offer until 8 April 2014.
23. It is the Respondent's case that the continuance of these proceedings following the Respondent's counter offer on 8 April 2014 is unreasonable, given that at that stage the price payable was agreed, and the only remaining issue was that of costs. The Tribunal does not accept this submission and concludes that the Applicant was entitled to seek determination of the issue of costs by the Tribunal. In particular the Tribunal notes that although the Respondent's Statement of Costs for summary assessment dated 23 April 2014 sets out costs of £600 plus VAT, the Respondents nevertheless informed the Applicant by correspondence dated 17 April 2014 that their costs were £740 plus VAT.
24. The Tribunal therefore declines to make a costs order under the 2013 Rules.