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**LEASEHOLD VALUATION TRIBUNAL FOR
EASTERN RENT ASSESSMENT PANEL**

File Ref No: CAM/11UF/OCE/2007/0012

Leasehold Valuation Tribunal: Decision

Leasehold Reform, Housing and Urban Development Act 1993 ("the Act")

The Tribunal Members were:

Mrs H Bowers BSc (Econ) MSc MRICS

Miss M Krisko Bsc(Est Man) FRICS

Mr J J Sims LLM

The Premises:

84, Crown Rod, Marlow, Buckinghamshire, SL7 2QG.

The Applicants:

Julie Guy and Robert Alford Burgess Guy

Respondent:

Resman Nominees Limited

Date of Inspection and Hearing: Tuesday 4th September 2007

Attendance

Applicants:

Mr D T Stone (ExtendLease) (Expert Witness - Valuer)

Respondents:

Mr C L Beamish (DMA Chartered Surveyors) (Expert Witness – Valuer)

1. Introduction

1.1 This matter relates to 84, Crown Road, Marlow (the subject property) and an application pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

1.2 On 7th October 2006, Julie Guy and Rupert Alford Burgess Guy served a notice on the landlords, Resman Nominees Limited under section 13 of the Act. The total premium proposed in the initial notice was £9,942, including a sum of £100 for an appurtenant property. A counter-notice was served on 22nd November 2006 by Resman Nominees Limited that recognised the Applicants' right to collectively enfranchise and proposing a premium of £16,500 and stating that they did not agree to the acquisition of property shown red on the plan attached to the counter notice. An application was made on the 19th May 2007 to the Tribunal to determine the terms of acquisition that were in dispute between the parties.

2. The Law

2.1 Chapter 1 of the Act sets out the provisions for the collective enfranchisement of a property. Schedule 6 of the Act sets out the provisions for the calculation of the premium that is payable in respect of the freehold interest of the property.

3. Inspection

3.1 Shortly prior to the hearing the Tribunal had the opportunity to carry out a brief external inspection of the property. We were accompanied by Mr Stone. It was understood from the papers that most issues in relation to the value of the flats had been agreed and therefore an internal inspection was not necessary. However, the Tribunal noted that the subject property was an end terrace house of brick and tiled construction, with UPVc double-glazed windows on the ground floor and timber casements on the first floor. There was a small front garden to the house and gardens to the rear with two garages. At the rear of the garages was a small strip of land,

which was approximately five and half feet wide. This land was identified as the appurtenant land and was still an issue between the parties.

4. The Leases

- 4.1 In the papers submitted to the Tribunal, there were copies of the original leases. The lease for the ground floor flat is dated 23rd January 1987 and is for a period of 99 years from 29th September 1986. The initial rent is £75 per annum, rising to £125 per annum in 2011, for a period of 25 years, then £175 for the next twenty five years and £225 for the remainder of the term. The lease for the upper maisonette is dated 1st April 1987 and is for a period of 99 years from 29th September 1986 and has the same rent and rent review provisions as the ground floor flat. Each lease contains a right in the First Schedule that permits the Lessee the right to use the "parking space" solely for the benefit of visitors. This parking space is the land identified as the appurtenant land in the initial notice.

5. Matters in Dispute

- 5.1 The following issues are still unresolved and were brought to the Tribunal for our consideration:
- i) The terms of the transfer, the TR1 and in particular the extent of the premises to be included in the enfranchisement.
 - ii) The capitalisation and deferment rates to be adopted and accordingly the premium to be paid on the enfranchisement.
 - iii) The valuation fees under Section 33 of the Act.

6 Hearing

- 6.1 A hearing was held on Tuesday 4th September 2007 at the Danesfield House Hotel in Marlow. The hearing was attended by Mr Stone, acting for the Applicants in this matter and Mr Beamish acting for the Respondents.

Applicant's Case

6.2 Transfer

The main issue in respect of the transfer was the "appurtenant land" that was used as the visitor's car parking space. Mr Stone had measured the strip and found it to be 1.57m. There was concern that the wording in the transfer did not protect the Applicants' current rights. It was the opinion of Mr Stone that the whole of the appurtenant land should pass to the Applicants

6.3 Capitalisation and Deferment Rates

Mr Stone is suggesting a capitalisation rate of 7.5% and a deferment rate of 6.5%. These figures inserted into the valuation produces a premium of £10,300. Mr Stone's earlier valuation had been done under the influence of "Sportelli". Subsequently Mr Stone has found a number of cases at 6% for the deferment on the basis of obsolescence. It is suggested that obsolescence would be applicable in this case where the property is 125 years old and with 79 years unexpired on the leases. Additionally, there had been five quarter point bank base rate rises since the decision in "Sportelli". It is Mr Stone's view that a deferment rate of 6.5% should be applied to the present property. Mr Stone was not rejecting Sportelli per se, but felt that the case was more relevant to properties in prime central London. For clarification purposes Mr Stone stated that if the appurtenant property was not included in the transfer, this would have no impact upon the premium to be paid.

6.4 Valuation Fees

We were referred to an invoice for a sum of £1,615.90 plus VAT of £282.78, (Total £1,898.68) in respect of the valuation fees under Section 33 of the Act. Mr Stone felt that these costs were horrendous. Whilst not going to examine every single aspect of the invoice, Mr Stone stated that he had dealt with a number of cases before the LVT and that the valuation

fees for one particular example in Edgeware were £720 plus VAT for the enfranchisement of three flats in a four storey building. In his written representations Mr Stone had commented that some of the work undertaken by Mr Beamish could have been done by an assistant; that the travel time should be charged at 50% of the hourly rate; the time taken to carry out the research and valuations was excessive and that the work involved in the preparation of an invoice for presentation to the other party/tribunal was beyond the scope of Section 33. It is Mr Stone's opinion that the fees should be £700 to £800.

Respondent's Case

6.5 Transfer

Mr Beamish accepted that if there was an error on the TR1, then that would need to be amended. It was the intention of the Respondents to comply with the requirements of the Act. However he stated that he had been willing to accept the premium of £14,277 on the basis of the TR1 that had accompanied the counter notice. It was the wording in this TR1 that had excluded the appurtenant land, but had proposed to grant rights to the Applicants, but subject to some retained rights which included the right to erect any new buildings on the subject parking space.

6.6 Capitalisation and Deferment Rates

Mr Beamish is proposing a capitalisation rate of 7.25% and a deferment rate of 5%, which would produce a premium of £14,277. Mr Beamish was willing to accept a valuation that was submitted by Mr Stone earlier in the negotiations that was subsequently withdrawn. A capitalisation rate of 7.25% was adopted as the ground rent has a stepped increase and this would be more attractive to purchasers; the landlord insures the property and there is some hope value, with the potential to go into the roof space. The deferment rate of 5% is taken from the "Sportelli" decision. Mr Beamish summarised Mr Stone's arguments and then considered that

none of the grounds were sufficient to permit a move from the Lands Tribunal decision in "Sportelli". Finally, Mr Beamish confirmed that if the appurtenant property was to be included in the transfer, this would have an impact on the premium. It was suggested that the premium would be increased by a further £2,000 to £16,277.

6.7 Valuation Fees

Mr Beamish stated that he had had a number of dealings with Mr Stone and from his past experiences he knew that the question of valuation fees would become an issue. Accordingly he had kept a very careful record of his time expended on this matter. It was suggested that there were four elements to examine. First was the Respondent obliged to use a local valuer, or did they have some choice in their appointment of a valuer? Secondly was the hourly rate of £150 per hour reasonable? Were the tasks undertaken within the remit of Section 33 and finally, was the amount spent on each task a reasonable length of time? Mr Beamish considered that the Respondent was able to choose which valuer undertook the work. There had been a long term relationship between the parties and this was a strong argument for the use of Mr Beamish as their valuer. It was stated that there did not appear to be a dispute between the parties in respect of the hourly rate. With respect to some of the specific issues raised by Mr Stone, it was stated that Mr Beamish always prepared his own spreadsheets and had no support staff working on the valuations; a failure to double check would be seen as negligent and that whilst normally Mr Beamish does not incur such a length of time on the preparation of the invoice, he felt it was necessary in this case to support his case. As to the length of time to carry out the various activities, he felt that his analysis fully reflected the time he had spent. Finally he considered that he should charge his full rate for travel time as this could be seen as an opportunity cost.

7. Determination

7.1 Transfer

The issue whether appurtenant land is to be included in a collective enfranchisement is dealt with in Section 1 of the Leasehold Reform, Housing and Urban Development Act 1993. Section 1(4) states

“The right of acquisition in respect of the freehold of any such property as is mentioned in subsection (3) (b) shall, however, be taken to be satisfied with respect to that property if, on the acquisition of the relevant remises in pursuance of this Chapter, either –

(a) there are granted by the (person who owns the freehold of that property) –

(i) over that property, or

(ii) over any other property,

such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly as may be the same rights as those enjoyed in relation to that property on the relevant date by the qualifying tenant under the terms of his lease....”

In the opinion of the Tribunal, the rights granted in the TR1 are limited as they include rights that are to be retained for the benefit of the land in question. In essence the freeholder of the parking space has retained the right to erect any new buildings on that land. Even if this is not very practical, this limitation to the rights granted to the Applicants means that the permanent rights are not “as nearly as may be the rights as those enjoyed” at the present time. Accordingly, the land should be included in the transfer under Section 1(3) (b). As the land is to be included, then the wording in the TR1 in relation to the parking space should be removed.

7.2 Capitalisation and Deferment Rates

With respect to the Capitalisation Rate, there was very little difference between the parties. We were not provided any information upon how the valuers arrived at their chosen rate, only their opinion as to the relative

merits of the income flow as an investment. We have decided that a capitalisation rate of 7.25% would be appropriate for this investment. We have decided on this rate following the reasoning of Mr Beamish, that the income flow whilst not a major sum is fairly attractive and has the benefit of stepped rent increases. Turning to the question of the Deferment Rate, whilst we are aware of the guidance given in "Sportelli", we have some reservations as to the appropriateness of those guidelines for a small Victorian property in Marlow, in comparison with the nature of the properties in the Prime Central London area. Some of those differences are reflected in the capital values for those respective properties, but that is only part of the equation. We do not agree with Mr Stone that there is an element of obsolescence that is greater for this particular property and any element that is there would be included in the capital value. However, we have a greater sympathy for Mr Stone's arguments in respect of the bank base rate increases. We are conscious that rate rises have put government bonds and gilts at the same level as that suggested in "Sportelli", but without the problems and costs of purchasing, holding and disposing of property. We therefore conclude that a Deferment Rate of 6% should be adopted in this case. Accordingly the premium to be paid is determined at £11,007. The Tribunal's valuation is attached to the end of this decision.

7.3 Valuation Fees

As to the principles behind the valuation fees, we agree with the approach taken by Mr Beamish. As to the first stage, we agree with Mr Beamish that the Respondent has some discretion as to whom should be employed as their valuer in this matter. We acknowledge that Mr Beamish has built up relationship with the Respondent. It would seem to be unreasonable for the Respondent to appoint a new agent and incur time in investing in a professional relationship. We note there is no dispute from Mr Stone in respect of the hourly rate. Turning to the nature of the work undertaken,

we noted that we were not provided with a copy of Mr Beamish's valuation prior to the hearing and that in the papers in front of us, it would appear that Mr Beamish had relied upon Mr Stone's earlier valuation. It is the opinion of the Tribunal that the preparation of the invoice is beyond the scope of Section 33 and as such the costs associated with that work would not be recoverable from the Applicants. As to the amount of time spent on the various tasks, we agree with Mr Stone that some of this time was excessive. This was a fairly straightforward calculation and Mr Beamish was relying upon the deferment rate fixed by Sportelli. In addition, given the experience of Mr Beamish and the necessary tools that he would have had available to him, such as spreadsheets, this should have resulted in a significantly shorter allocation of time on the various tasks. We are of the opinion that the assessment set out by Mr Stone of £874.94 (including VAT) is reasonable and certainly when considered by the rates one would normally expect to pay for work of this nature, this figure is reasonable.



Helen C Bowers
Chairman

Date 16/10/07

LVT VALUATION – 84 CROWN ROAD, MARLOW, BUCKS.

Valuation date: Agreed

Existing leasehold value: £170,000 each. Agreed.

Virtual freehold value: £176,000 each. Agreed

Remaining term: 79 years. Agreed.

Ground rent reviews: Agreed

Capitalisation rate: 7.25%

Reversionary rate: 6%

Term

| | |
|--|------|
| Flat 1 (Term values as per Respondents' valuation @ 7.25%) | |
| Total | 1607 |
| Flat 2 (Term values as per Respondents' valuation @ 7.25%) | |
| Total | 4880 |

Reversion

| | | | |
|---------------------|-----------|--|-------------|
| Flats 1 and 2 | £352,000 | | |
| PV £1 79 years @ 6% | 0.0100193 | | <u>3527</u> |

Landlord's interest
10,014

Marriage value

| | | |
|---------------------------|-----------------|---------------|
| Virtual freehold value | £352,000 | |
| Less existing lease value | £340,000 | |
| Less Landlord's interest | <u>£ 10,014</u> | |
| | £ 1,986 | |
| | 50% | <u>993</u> |
| Premium | | <u>11,007</u> |