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RESIDENTIAL PROPERTY TRIBUNAL SERVICE LEASEHOLD VALUATION TRIBUNAL

Property : 148/150 Downhall Road
Raleigh
Essex
SS6 9LP

Applicant : Alulie Limited

Case number : CAM/22UL/OCE/2007/0008

Date of Application: 20th March 2007

Type of Application: To determine the purchase price payable on enfranchisement and the terms of acquisition where the landlord cannot be found, pursuant to section 13 of the Leasehold, Reform, and Urban Development Act 1993 ("the Act").

Tribunal : Mrs Joanne Oxlade Lawyer Chairman
Mr David Brown FRICS MCI Arb Valuer Member
Mr Neil Martindale FRICS Valuer Member

DECISION

1. The Applicant do pay the sum of £250 to acquire the freehold of the premises.
2. The terms of the transfer require amendment before approval.

REASONS

Background

1. The current lessees of the premises, Julie Fiona Fraser and Alun Lewis Perkins, wished to collectively enfranchise the freehold of the

premises, and so formed a company called Alulie Limited for this purpose.

2. They made enquiries to discover the identity of the freeholder (who had not collected ground rent for at least 15 years) but without success. Accordingly, they made an application to the County Court for an order dispensing with the need to serve an initial notice - in view of the missing freeholder - and an order vesting in the nominee purchaser any interests in the freehold premises, subject to the Tribunal determining the terms and price of acquisition.

3. On 29th December 2006, an Order was made by Deputy District Judge Edgington, that the:

(a) requirement to serve an initial notice claiming the right to collective enfranchisement pursuant to section 13 of the Act, be dispensed with, and

(b) interests of the freeholder of the premises liable to acquisition by virtue of section 1(2)(a) of the Act, be vested in a nominee purchaser, upon such terms and such price as may be determined by the Leasehold Valuation Tribunal ("the Tribunal") pursuant to section 27 of the Act.

Proceedings

4. By letter dated 20th March 2007, the Claimant referred the matter to the Tribunal for determination as to the price payable and the terms of acquisition.

5. Directions were made on 16th April, 2nd May 2007, and 8th August 2007 to file evidence, clarify the extent of the premises and appurtenances to be transferred, and whether or not an inspection/hearing was required.

Jurisdiction

6. Section 91(1) of the Act, provides the Tribunal with jurisdiction to determine any question arising in relation to matter specified in subsection (2), which include the "terms of acquisition" relating to any interests to be acquired by a nominee purchaser. By section 24(8) "terms of acquisition" include the interests to be acquired, the extent of the property to which those interests relate, and the amounts payable as the purchase price for such interests.

The Law

7. The valuation provisions in respect of the acquisition of the freehold by a nominee purchaser are contained in Schedule 6 of the Act. Paragraph 2 (1) to Schedule 6 establishes that the price paid for the freehold is the aggregate of the:

- (a) 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.

8. Section 27(3) of the Act provides that where interests are to be vested in any person/persons then on his/their paying into court the appropriate sum, there shall be executed by any such person as the Court may designate, a conveyance which is in a form approved by the LVT.

Inspection and Hearing

9. The Applicant sought a paper determination, because the costs of attending a hearing were disproportionate to the price likely to be found to be payable. Although mindful of the absence of a Respondent to advance opposing arguments and test the Applicants evidence, upon the Applicant clarifying the extent of the premises and appurtenances to be transferred, and filing expert evidence explaining the basis on which the price should be calculated, the Tribunal acceded to the Applicants request for a paper determination of the application.
10. For the reasons set out in paragraph 13, the only matters relevant to the price are the fixed ground rent and the yield, and so we did not consider that an inspection of the premises was needed. We note from the report of Mr Gillespie, that the property comprises two 2 – bedroomed maisonettes, one with a garage and one with a parking space.

Expert Evidence

11. The application dated 20th March 2007, was accompanied by a report of David Gillespie MSc FRICS dated 24th June 2005 offering an opinion on the price payable. In due course, this initial report was supplemented by two addendum reports dated 25th April 2007 and 3rd July 2007, made pursuant to Directions of the Tribunal.
12. In short, the report calculates the purchase price at £250, which calculations are to be found at page 5 of the report dated 24th June 2005. The justification for the choice of yield of 8%, and comparable market evidence, is contained in the report dated 3rd July 2007.

Findings

Price

13. Having carefully considered the evidence filed, we are satisfied that the price proposed by the Applicant's valuer of £250 is the appropriate price to be paid for the freeholder's interest in the premises, pursuant paragraph 2 (1)(a) to Schedule 6 of the Act. We have carefully considered the yield of 8% for the capitalisation of the ground rents, which is appropriate given the small amounts involved, and in the light of the other market evidence available.
14. In view of the unexpired term of over 950 years there is no value to the reversion and no marriage value is payable. Further, we do not consider that any claim under paragraph 2(1)(c) could be advanced.

Claim under section 27(5)(b)

15. By virtue of section 27(5)(b) we are required in a missing landlord case, to determine what sums are due from any tenants of the transferor, and require that they be paid into Court by the Applicant.
16. However, as it appears that the freehold company was dissolved in October 1985, it is highly unlikely that the requirement to furnish tenants with the address for service of notices (under section 48 of the Landlord and Tenant Act 1987) has been complied with. The failure to comply means that the liability to pay rent is unenforceable. There are of course problems of enforcing rent outside the limitation period, which would provide a partial limitation on recovery of the rent. Accordingly, we do not consider on a balance of probabilities that any rent can be considered to be due, and so could that there is no liability arising on the Applicant by virtue of section 27(5)(b) of the Act.

Terms of the Transfer

Garage

17. The right to collective enfranchisement is a right to acquire the freehold of the premises, and any appurtenant property, defined in section 1(7) of the Act as "any garage, out house, garden, yard, or appurtenance belonging to or usually enjoyed with a flat".
18. In this case, it appears from the leases that each demise consists of the following:
 - the ground floor flat (number 148) consists of the flat, gardens to the front and rear, and a garage to the rear for one car
 - the first floor flat (number 150) consists of a flat, a garden to the rear, and parking space to the rear for one car.

19. Although there is located on the premises a second garage, which is let to a third party, it does not fall within either demise nor is it usually enjoyed with one of the flats, and so cannot be regarded as an "appurtenance" as defined by section 1(7) of the Act.
20. By correspondence dated 21st August 2007, the Applicant accepted that the garage could not form part of the transfer. By virtue of section 27(2) of the Act the Tribunal is empowered to determine that the premises are less extensive than specified in the application for and the vesting order. We so determine, that the garage shall be excluded from the transfer.
21. The original transfer submitted with the application did not exclude the garage, nor did the accompanying plan. However, under cover of letter dated 21st August 2007, the Applicant filed a new transfer and plan, which defined the property to be transferred as shown edged red on the plan but excluding the garage marked as blue. It would perhaps be helpful to point out that on the copies supplied the flats themselves also appear to be marked in a blue haze – which is clearly not intended – and the Applicant may wish to rectify this and re-submit a copy of the transfer.

Right of Way

22. The user of the garage clearly has a right of way at all times on foot and by vehicular access, and this needs to be reserved in the transfer document. The current copy does not do so, and so until this is done we are unable to approve the transfer. The amendments should be made and a copy re-submitted.
23. Finally, we observe that the Claimant has not sought a transfer which is subject to the ability to recover from the owner of the excluded garage, a contribution to the maintenance and upkeep of the right of way. In practical terms, if the owner cannot be found, this may be an unenforceable obligation, but the Applicant may wish to give this some thought.

Conclusion

24. In summary therefore, we find that the price payable to be £250. Further, that the transfer of the premises requires amendment, as suggested, and that this should be submitted for our consideration within 21 days of the date of receipt of this decision.

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Joanne Oxlade

Chairman

20th September 2007