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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property : 16-22 Oakfern Grove
Sheffield
South Yorkshire
S35 4DT

Applicants : Oakfern Grove Limited
14 Farlow Croft
High Green
SHEFFIELD
South Yorkshire
S35 4PY

Respondent : Freehold Portfolios GR Limited
c/o Gorgate Chambers
Gorgate Drive
HOE
Dereham
NR20 4HB

Case Number : MAN/00CG/OCE/2008/0003

Date of Application : 29th October 2008

Type of Application : To determine the cost of acquisition
of the enfranchisement of the
property under Section 24 of the
Leasehold Reform Housing &
Urban Development Act 1993
(The Act).

Date of Direction : 4th November 2008

Date of Hearing : 20th January 2009

Date of Final Decision :

Tribunal : Mrs. J.E. Oliver – Chairman
Mr. R. Wormald – FRICS
Mrs. M. Oates

DECISION

1. The price to be paid upon completion of the enfranchisement of the property is £10,650 in accordance with the Valuation Schedule (attached).
2. The Respondent is not entitled to a payment of compensation pursuant to Section 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

REASONS

Introduction

1. The Application is made by three of the four Lessees of the property namely Mr. and Mrs. Rich of 16 Oakfern Grove and Mr. and Mrs. Wilson both of 18 and 22 Oakfern Grove. They have formed Oakfern Grove Limited, the nominee purchaser. The Lessee of 20 Oakfern Grove, Mr. Mitchell is not participating in the application.
2. The Application is for the price to be paid for the collective enfranchisement of the property. In the original application there were no other issues to be determined by the Tribunal but, prior to the hearing, two ancillary applications were made by the Respondent, represented by Mr. Geraint Evans which were:-
 - (i) Mr. John M. Francis, appearing on behalf of the Applicant, had a conflict of interest and;
 - (ii) Mr. Francis had conducted the application, such to justify a payment of compensation under paragraph 10 of Schedule 12 of the Commonhold & Leasehold Reform Act 2002.
3. In determining the price to be paid, there was no agreement as to the following:-
 - (i) The current value of the properties.
 - (ii) The value of the properties to reflect "No Act World".
 - (iii) The capitalization of ground rent.
 - (iv) Whether any hope value should be attributed to the non participating property, Oakfern Grove.

The parties agreed the deferment rate at 5%.

The Inspection

4. The Tribunal inspected numbers 16 and 18 Oakfern Grove, High Green, Sheffield. These two properties form part of a block of four maisonnettes numbering 18 – 22 Oakfern Grove, High Green, Sheffield. The ground floor flats have the benefit of a small garden. In respect of those properties which were inspected, there had been tenants improvements by way of the installation of a new kitchen, bathroom and double glazing. The properties do not have the benefit of central heating.

The Leases

5. The properties are each held under leases granted for a term of 99 years as follows:-

<u>Property</u>	<u>Date of Commencement of Lease</u>	<u>Annual Ground Rent</u>
16 Oakfern Grove	13 th December 1982	£10.00
80 Oakfern Grove	26 th November 1982	£10.00
22 Oakfern Grove	18 th November 1982	£10.00

The Law

6. The price to be paid on collective enfranchisement is calculated in accordance with Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"). This is the aggregate of:-
- (a) the value of the freeholders interest in the premises as determined in accordance with paragraph 3,
 - (b) the freeholders share of the marriage value as determined with paragraph 4 and;
 - (c) any amount of compensation payable to the freeholder under paragraph 5.

Neither party propose that any compensation is payable under paragraph 5.

7. The relevant date for the purpose of a valuation is the date of initial Notice, 27th May 2008.

The Hearing

8. The first application to be considered by the Tribunal was that made by Mr. Evans, initially by a letter dated 19th January 2008 and also at the hearing that the evidence of Mr. Francis should not be accepted as that of an Expert upon the basis that Mr. Francis has a conflict of interest. The Tribunal was made aware that whilst Mr. Francis was attending the application for 18-22 Oakfern Grove, High Green, Sheffield as an Expert witness, he was the Applicant in respect of an application for 2 Beechfern Close, High Green, Sheffield, a matter to be determined by a subsequent Tribunal. Mr. Evans submitted in his letter dated 19th January 2009

“It is not suggested that Mr. Francis is a “participating tenant” with regard to the properties on Oakfern Close, however, both Reports are so similar that it is almost as if one matter only is being decided. Any decision on Oakfern Close along the lines suggested in Mr. Francis’ Report can only taint any subsequent decision in Beechfern Close in his financial favour – in his Report on Oakfern Close, Mr. Francis states “correctly” that Oakfern Close and Beechfern Close are adjoining cul-de-sacs. He makes identical argument for his property as he does for Oakfern Close. I believe this clearly demonstrates that he lacks the independence required as an Expert on either matter”.

In his oral submissions to the Court, Mr. Evans relied upon *McHale –v- Cadogan* (LRA/44/2007).

In his submissions to the Tribunal, Mr. Francis confirmed that whilst he was appearing as an Expert for the application in respect of Oakfern Grove, he was not attending the hearing in respect of Beechfern Grove in the same capacity. Mr. Francis conceded that his submissions to the Tribunal were not endorsed with the Statement of Truth required by the RICS when acting as an Expert.

The Tribunal found that there was a potential conflict of interest by Mr. Francis and, as such, determined that it would proceed with the application upon the basis that Mr. Francis appeared as an advocate for the Applicant and not as an expert witness. The Applicants were given the opportunity to apply for an adjournment to seek other Expert evidence but declined to do so and the hearing proceeded.

Valuation

9. Submissions were made upon the various components required to determine the price to be paid upon the collective enfranchisement as follows:-

10. Capitalisation of Ground Rent

Mr. Evans submitted that this should be 8.5% whilst Mr. Francis proposed 6%. In his evidence to the Tribunal, Mr. Francis indicated that this figure had been considered appropriate from previous LVT decisions.

Mr. Evans submitted that the appropriate rate of capitalization was 8.5%. This was taking into account the fact that the Bank of England base rate was, at the date of the Notice, at 5%.

11. The Tribunal determined that the rate to be applied would be 8.5%.

12. In respect of the valuations of the property, Mr. Francis provided evidence of sales of comparable properties on Beechfern Close for the period 2007 to 2008 and, after indexation, proposed that the values of the property (unimproved) would be as follows:-

16 and 20 Oakfern Grove - £50,000.00

18 and 22 Oakfern Grove - £52,500.00

It was submitted that the first floor flats had a greater value than the ground floor flats. It was submitted that it was disadvantageous to have the responsibility of the maintenance of a garden, hence the difference in the values proposed.

13. Mr. Evans provided comparable evidence in respect of 16 Oakfern Grove, 18 and 22 Oakfern Grove based on sales achieved between 2004 and 2005 and thereafter achieving a current valuation by indexation. Upon this basis, it was submitted that the average price based upon this evidence for each property was £51,914.00. Mr. Evans then further submitted that there should be a reduction of 5% in respect of these valuations to reflect a "No Act World". The adjustment resulted in a value of £50,000 re each subject property or £200,000 in total.

14. Mr. Francis submitted that in respect of the properties, (assuming the benefit of a 999 year lease) should be as follows:-

16 and 20 Oakfern Grove - £52,500.00

18 and 22 Oakfern Grove - £55,125.00

15. Mr. Evans submitted that the valuation of the properties upon the basis of a 999 year lease would total £216,200.

The Tribunal determined that there should be no difference in the valuation of the ground floor and first floor flats. Whilst the ground floor flat has the responsibility of the maintenance of a garden, under the terms of the Lease, the

first floor flat has the responsibility of the maintenance of the roof. The Tribunal considered that this would effectively equalize the valuations. The Tribunal therefore determined that the unimproved values of the properties were £50,000.

The Tribunal then considered what value of the respective properties would be, assuming the benefit of a virtual freehold, ie. 999 year Lease. In considering this, the Tribunal noted the evidence provided by Mr. Evans stating that he had sought the opinion of a local Chartered Surveyor who had indicated a valuation of £217,000. Mr. Evans had submitted that this should then be reduced to £216,200 taking into account the Beckett and Kaye leasehold relativity in mortgage-dependant markets with mid range non-mortgage-dependant relativity in the background (2008; first division). On behalf of the Applicants, Mr. Francis stated that he had made further enquiries with regard to this and had been advised the graph was not reliable in respect of properties outside the London area. The Tribunal preferred the evidence of the local Chartered Surveyor and therefore determined that the value of the property, on the basis of a virtual freehold, would be in the total sum of £217,000 (£54,250 per property).

Marriage Value

16. In his submissions, Mr. Francis apportioned the marriage value in respect of the three participating flats only but did not attribute any hope value in respect of the non participating flat.

Mr. Evans indicated that in his calculation, whilst it was not detailed, he had included a hope value in respect of the non participating flat, taking into account the decision in *Cadogan -v- Sportelli* [2008] UK HL 71.

Application for Compensation

17. Mr. Evans applied for a payment of compensation of £500.00 pursuant to paragraph 10, Schedule 12 of the Commonhold and Leasehold Reform Act 2002 upon the basis that, in the course of the application, Mr. Francis had behaved frivolously, vexatiously, abusively, disruptively or otherwise unreasonably. The Tribunal was provided with copies of correspondence passing between the Applicants and the Respondent, their respective Solicitors and Mr. Francis and Mr. Evans prior to the application to the Tribunal. Privilege was waived by both parties.

Mr. Evans objected to comments made by Mr. Francis in a letter to the Tribunal dated 21st November 2008 in which it was stated:-

“contrary to the information provided in the letter by Stevensons Solicitors


dated 14th November 2008, the Applicant and the Respondent are not the same in this case as for the case for 2 Beechfern Close and, in any event, if the client's valuer, Mr. Evans was willing to carry out any meaningful negotiations whatsoever which he is currently refusing to do, then in fact, he may not have to have a trip from Cardiff for either of these cases as the Applicants are quite willing to negotiate and settle and the applications have only been made to the LVT because of Mr. Evans' refusal to negotiate".

Mr. Evans submitted that he had been willing to negotiate and that it had been the failure of Mr. Francis to contact him to commence negotiations that was the issue.

The Tribunal noted from the exchange of correspondence that Mr. Evans had been asked to provide a Valuation Schedule upon which negotiations could be based by HLW Commercial Solicitors acting on behalf of the Applicant on 15th September 2008. In their letter they refer to having made a previous request for a Valuation Schedule but no evidence of that letter was provided. Mr. Evans did not provide a Valuation Schedule and the issue appears to be whether communication should be with the Solicitors for the Applicant or Mr. Francis direct.

18. The application for compensation by Mr. Evans is refused. It appears from the exchange of correspondence that requests for a Valuation Schedule were made by the Solicitors for the Applicant which Mr. Evans did not answer, choosing to take issue as to whether he should be dealing with Mr. Francis, direct. Despite this, there appears to have been no attempt by Mr. Evans to contact Mr. Francis personally and his failure to provide a Valuation Schedule, as requested by HLW Solicitors undoubtedly contributed to the decision of the Applicants to pursue their application. It is not considered that Mr. Francis has behaved in such a way to justify the payment of compensation as provided for by the Commonhold and Leasehold Reform Act 2002.

Dated this 26th day of February 2009


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Judith E. Oliver - Chairman

Hope Value on Non-Participating Flat

Value of extended Lease £ 54,250.00

LESS value of existing Lease £50,000.00

Value of Ground Rent £10.00
YP 73 years @ 8.5% x 11.7342 £ 117.34

Value of Reversion £54,250.00

Deferred 73 years @ 5% x 0.02839 £ 1,540.15 £ 51,657.49

£ 2,952.51

Hope value at 5% £ 129.63

Total:-

The Term £ 465.37
The Reversion £ 6,160.63
Marriage Value £ 3,888.75
Hope Value £ 129.63

SAY £10,644.38

Marriage Value

Value of Properties (999 year Lease)

$$3 \times \text{£}54,250.00 = \text{£}162,750.00$$

LESS

Value of existing Leases

$$3 \times \text{£}50,000.00 = \text{£}150,000.00$$

Value of ground rents

$$3 \times \text{£}10.00 = \text{£}30.00$$

$$\text{YP 73 years @ 8.5\%} \quad \times 11.7342 = \text{£} \quad 352.03$$

Value of Reversion

$$3 \times \text{£}54,250.00 = \text{£}162,750.00$$

$$73 \text{ years @ } 5\% \quad \times 0.02839 = \text{£} \quad 4,620.50 \quad \underline{\text{£}154,972.50}$$

£ 7,777.50

50% Share £ 3,888.75