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**Residential
Property**
TRIBUNAL SERVICE

**EASTERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: CAM/00KF/OCE/2010/0005

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 24 OF THE LEASEHOLD REFORM,
HOUSING AND URBAN DEVELOPMENT ACT 1993**

Address: 124-134 St George's Park Avenue, Westcliff on Sea, Essex,
SS0 9UA

Applicant: 124-134 St George's Park Avenue Ltd

Respondent: Tenway Ventures Ltd

Application: 17 February 2010

Inspection: 21 May 2010

Hearing: 21 May 2010

Reconvene: 25 June 2010

Appearances

Applicant

Mr A Dann Solicitor, Adrian Dann & Company
Mr M. Stapleton FRICS Chartered Surveyor, Mike Stapleton & Company

Respondent

Mr J Gibb BSc (Econ) Chartered Surveyor, J. C. Gibb Chartered Surveyors
MRICS

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mrs E. Flint DMS FRICS IRRV
Mr J. Humphrys FRICS

DECISION

The premium payable by the Applicant to acquire the freehold interest in the subject property is £28,816.

Introduction

1. This is an application made by the Applicant, as the nominee purchaser, under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("the Act") to determine the terms of acquisition of the freehold interest in dispute of the property known as 124-134 St George's Park Avenue, Westcliff on Sea, Essex, SS0 9UA ("the subject property").
2. The subject property is a detached three-storey building comprised of six purpose built flats, numbered 124, 126, 128, 130, 132 and 134. Broadly, the accommodation provided on the left-hand side of the building is mirrored by the right-hand side thereby providing a flat on the ground, first and second floors. There is a communal garden to the rear of the property and parts of the front garden demised to the flats.
3. By an initial notice served pursuant to section 13 of the Act, the lessees of Flats 124, 128 and 134 ("the participating tenants") exercised their right, as qualifying tenants, to acquire the freehold interest in the subject property together with the front and rear gardens. The proposed purchase price was £19,955 for the freehold interest and £5 for the gardens as appurtenant land claimed under section 1(2)(a) of the Act.
4. By a counter notice dated 15 December 2009, the Respondent admitted the applicants' right to acquire the freehold interest and appurtenant land and counter proposed a purchase price of £54,000 and £300 respectively.
5. It seems that the parties were unable to agree, in the main, the purchase price for the freehold interest and appurtenant land and on 17 February 2010, the Applicant issued this application.

The Issues

6. Save for agreeing a valuation date of 25 September 2009, the respective valuers instructed by the parties, somewhat unusually, were unable to agree any of the elements that comprise the valuation of the purchase price under Schedule 6 of the Act. Given that both parties were professionally represented in this matter, the Tribunal does not propose to recite the relevant statutory valuation principles to be applied, as it would be trite to do so. The valuation issues that, therefore, fell to be determined by the Tribunal were:

- (a) The term yield rate ("the capitalisation rate").
- (b) The deferment rate.
- (c) The virtual freehold value of the flats ignoring tenants improvements.
- (d) Relativity.
- (e) Hope value.

Each of these issues is considered in turn below.

Inspection

7. The Tribunal inspected the subject property on 21 May 2010 and found it to be a detached brick built property with a tiled roof with zinc clad cheeks c1920 comprising 5x three roomed flats and one two roomed flat each with kitchen and bath/wc, with communal gardens to the front and rear. The front elevation was painted; the windows had either wooden sashes in poor condition or pvc-u double glazed frames. The general condition, including the tiled garden path and step to the front door, was poor. The property had an air of neglect. The spiral fire escape staircase at the rear leading from the 2nd floor was blocked where it joined the first floor landing.

Internally there was a very steep staircase leading from a small lobby to the upper floors with 2 flats located off each landing. The kitchen facilities in each flat were very limited and galley in style, except for No.128 where the kitchen had been combined with the adjacent room to provide a kitchen/diner. The bathrooms were also very small and generally unmodernised.

Decision

8. The hearing in this matter also took place on 21 May 2010. The Applicant was represented by Mr Dann of Adrian Dann & Company, Solicitors and Mr Stapleton FRICS of Mike Stapleton & Company, Chartered Surveyors. The Respondent was represented by Mr Gibb MRICS of J. C. Gibb Chartered Surveyors.

9. Mr Stapleton's valuation evidence is set out in his report dated 7 April 2010. Mr Gibb's valuation evidence is set out in his report dated 10 March 2010. The reports stood as the evidence in chief of both surveyors. They, respectively, contended for a purchase price of £21,300 (subsequently amended) and £54,000 plus £300 for the appurtenant land.

Capitalisation Rate

10. Mr Stapleton contended for a rate of 7.5% based exclusively on settlements he had agreed with other surveyors and was consistent with other Tribunal decisions in the Greater London area and the provinces, including local decisions.

11. Mr Gibb contended for a rate of 5% on the basis that this rate related to income and is closely allied to government long-term stock. Given the reduction in yield rates on government stocks, clearly the yield applied to these valuations requires adjustment and should reduce in the current climate.

12. The Tribunal determined that a capitalisation rate of 6.5% should be applied in this instance because it was clear that Mr Gibb's rate of 5% was not supported by any evidence. Indeed, in cross-examination he admitted that he had never agreed any settlements at 5%. In contrast, Mr Stapleton relied on earlier LVT decisions and settlements achieved. However, other LVT decisions do not bind this Tribunal and those decisions may have been based on different facts and evidence to the present case. Similarly, other factors may have an influence on negotiated settlements reached in other transactions.

13. In the Tribunal's judgement, the correct rate to be applied in the Southend area is between 6-7%. On the limited evidence before the Tribunal, it found that a rate of 6.5% was appropriate especially having regard to the small ground rent for the leases which started at £60 per annum, rising to £120 and then £180 on review. This relatively unattractive ground rent was appropriately reflected in a rate of 6.5%.

Deferment Rate

14. Mr Gibb simply adopted a yield rate of 5% in accordance with the case of *Cadogan v Sportelli* [2007] EWCA Civ 1042 on the basis that he did not believe there were any local conditions that allowed a departure from this rate. Moreover, he did not consider that the subject property would become obsolescent because the lack of land for building in the borough meant that the long-term redevelopment values would preserve the value of the investment.
15. Mr Stapleton argued that the Court of Appeal in *Sportelli* made it clear that a yield rate of 5% may not be appropriate where there are compelling reasons to depart from it. He placed particular reliance on the case of *Zuckerman & Ors v The Trustees of Calthorpe Estates* (LRA/97/2008) where the Lands Tribunal did in fact depart from *Sportelli* to reflect different growth rates and different rates of deterioration/obsolescence in the West Midlands when compared with Prime Central London properties.
16. Mr Stapleton submitted that the risk premium in the present case should be increased to reflect the greater risk that the subject property will become obsolete over the term of the lease. In other words, that the extent of deterioration would be so great that the flats would no longer be worth repairing. He concluded that an increase of 0.25% in the risk premium should be applied here, as was the case in *Zuckerman*.
17. Mr Stapleton also submitted that a further 0.25% should be added to the risk premium, as was done in *Zuckerman*, to reflect the greater management problems associated with flats. He argued that any potential purchaser of the freehold interest in the subject property would need to be mindful of The Service Charges (Consultation Requirements) (England) Regulations 2003

especially having regard to the existing disrepair of the building. The potential risk to a new purchaser of the freehold in failing to deal with the statutory consultation requirements could easily result in a financial burden on the landlord. This could only be addressed properly by adjusting his bid to seek a higher risk premium.

18. On this issue, the Tribunal adopted, as its starting position, a yield rate of 5% in accordance with *Sportelli*. However, the Tribunal, as in the case of *Zuckerman*, concluded that the subject property was subject to obsolescence for the reasons given by Mr Stapleton. Having inspected the property, the Tribunal found there to be a degree of disrepair which appeared to be long standing. Given that most of the flats were not owner occupied but subject to subletting, it was likely that the building would continue to deteriorate in the future and would become obsolescent. The likelihood of this occurring increased having regard to the potential problems with very steep communal stair access, the layout of the accommodation, the location and size of windows, the size of the rooms and the inadequate kitchen and bathrooms. The Tribunal also accepted Mr Stapleton's submission that a further 0.25% should be added to the risk premium for the reasons he gave to reflect the greater management problems any potential purchaser would face having purchased the property.
19. Accordingly, the Tribunal found that a deferment rate of 5.5% should be adopted in the present case.

Virtual Freehold Value of Flats

20. The Tribunal heard much argument from both parties on this issue and the comparable market evidence upon which they relied in support of those arguments. In the main, the Tribunal found that the majority of those arguments and the comparable evidence did not provide any assistance on this issue. For this reason, the Tribunal does not propose to recite any of those matters and its conclusions can be summarised in the following way.

21. The Tribunal disagreed with the assertion made by Mr Stapleton that the flats were one bedroom flats. They were, potentially, flats that could be let as two-bedroom accommodation.
22. The comparable evidence provided by both valuers was unhelpful. Neither had inspected the properties concerned nor had they provided any plans of those properties. A schedule would have assisted the Tribunal and should have been provided by both experts who are experienced valuers. Moreover, the comparable properties relied upon appeared to be significantly better properties than the subject property when the Tribunal externally inspected them.
23. The evidence before the Tribunal was limited to three flats in the subject property. These were:

Flat 128

This flat was sold improved in 2007 for £92,000 with an unexpired lease term of 121 years (extended). It had previously been sold in July 2005 for £72,000.

Flat 134 (3 rooms)

This flat was sold in 2004 for £85,000 with a short lease. It was sold again in May 2009 for £61,325 in a dated condition with old double glazing and dated kitchen with exposed pipework. The Tribunal concluded that this was sufficient evidence of falling market values over this period.

Flat 126 (3 rooms)

This evidence was introduced by Mr Stapleton at a relatively late stage in the proceedings and concerned the recent sale of this flat for £76,500. The contract of sale was provided to the Tribunal together with a letter from the vendors solicitors dated 26 May 2010 confirming that they believed the transaction had taken place at arm's length. The Tribunal treated this evidence with a degree of caution because it had some doubt that the purchase price accurately reflected the value of the flat. On inspection, the Tribunal found that flat was in very poor condition and in the context of falling market values,

the purchase price did not sit well. Moreover, the letter from the vendor's solicitors could not confirm what price was paid for the flat on completion and the Tribunal found the language of the letter to be equivocal.

24. Accordingly, the Tribunal found that the virtual freehold value, save for Flat 128, was £72,500. In relation to Flat 128, the Tribunal found for a value of £72,000 because this flat had fewer rooms and offered less accommodation.

Relativity

25. In his report, Mr Stapleton, gave an explanation as to why open market sales, graphs, settled evidence and other Tribunal decisions were unreliable evidence on the issue of relativity. Instead, he relied on the research paper published by the RICS in October 2009 in which a rather unsuccessful attempt had been made to bring a degree of certainty to the matter of relativity. As part of the research paper, a number of contributors had provided their own graphs on relativity. Mr Stapleton averaged these graphs to arrive at a figure of 89.91%.
26. Mr Gibb contended for a relativity figure of 86% based on an averaging of the various graphs contained in the Beckett and Kay Graph of Graphs 2007.
27. The Tribunal found that a relativity figure of 86%, as contended for by Mr Gibb, should be adopted in this instance. This produced a short lease value of £62,350 for Flats 124, 126, 130, 132 and 134, which was directly comparable to the purchase price of Flat 134 in 2009. In relation to Flat 128, a short lease value of £60,000 was produced when this relativity figure is applied.

Hope Value

28. Mr Gibb submitted that the Respondent should be entitled to a 50% share, for the non-participating tenants, save for Flat 128, seeking a lease extension in the future. This was in effect the share of the marriage value the Respondent would have realised had it retained the freehold interest. Flat 126 is connected with the Respondent and Mr Gibb maintained that his client sought a lease extension either before or immediately after parting with the freehold. Similarly, it was his belief that Flats 130 and 134 would seek a lease extension

in the reasonably near future. Therefore, the Respondent should be entitled to 50% of the marriage value.

29. The Tribunal did not agree with Mr Gibbs submissions on hope value. His figure of 50% was completely without foundation and, in the Tribunal's judgement, no investor would pay this figure. Instead, the Tribunal preferred the figure of 10% contended for by Mr Stapleton as it was correctly based on the Lands Tribunal decision in *Amanda Jane Culley v Daejan Properties Ltd* (LRA/163/2007) when it was held that where 50% of the lessees did not participate and the unexpired lease terms were 65.37 years, the hope value should be 10%. The position is directly analogous to the present case and of the Tribunal determined that a figure of 10% was not only appropriate but also perhaps generous in the particular circumstances of this case.

Appurtenant Land

30. Mr Gibb contended for a figure of £300 on the basis that the front garden is demised and the value might be released by altering the arrangement. Furthermore, there may be value if permission was granted to alter the layout of the building. Mr Stapleton placed a nil value on this matter.
31. The Tribunal considered that Mr Gibb's approach was unrealistic and rejected his arguments with little difficulty. Indeed, none of the sale prices of the comparable properties relied on as part of his case apportioned the value in this way. Accordingly, the Tribunal determined that only a nominal value of £50 should be placed on the appurtenant land.
32. Accordingly, having regard to the findings made above, the Tribunal concluded that the purchase price to be paid by the Applicant to acquire the freehold interest in the subject property is **£28,816**. The Tribunal's valuation is annexed to this Decision.

Costs

33. The Respondent's costs were agreed by Mr Gibb at the commencement of the hearing in the sum of £1,098 plus VAT and disbursements totalling £1,299.15.

Schedule 12, Paragraph 10 Costs

34. At the hearing, Mr Gibb made an application under Schedule 12, Paragraph 10 of the Commonhold and Leasehold Reform Act 2002, that the Applicant pay a contribution towards the Respondent's costs. The basis of the application was that the Applicant had not served the hearing bundle on him until shortly before the hearing thereby prejudicing the Respondent's position. In so doing, he submitted, the Applicant had acted unreasonably and should pay a contribution towards the Respondent's costs.
35. The Tribunal found the Applicant's explanation on this matter disingenuous. Apparently, Mr Stapleton had sent his report to his instructing solicitors on 6 April 2010 but this report had not been served on Mr Gibb until the day before the hearing when it had been incorporated into the hearing bundle. This was clearly in breach of Direction 8 of the Tribunal's Directions dated 20 February 2010 and the argument advanced by Mr Dann that there was no specific direction for earlier service of the report was clearly wrong. Furthermore, Mr Stapleton admitted that he had failed to attempt to meet Mr Gibb with a view to narrowing the issues, as required by Direction 9. The Stapleton's personal reservations about the constructive nature of any such meeting are irrelevant and the Tribunal considers that, as professionals, both valuers should conduct themselves accordingly regardless of the circumstances. It was beyond doubt that the failure on the part of Mr Stapleton to attempt to agree some of the issues and also dealing with this matter had resulted in the hearing being longer than it should have been.
36. The Tribunal found that the conduct of the Applicant's solicitors and/or Mr Stapleton was unreasonable and possibly amounted to an abuse of process also. Therefore, the Tribunal orders that the Applicant pay a contribution of £250 to the Respondent's costs.

Dated the 28 day of July 2010

CHAIRMAN..... *I. Mohabir*

Mr I Mohabir LLB (Hons)

Leasehold Valuation Tribunal's Valuation in accordance with the Leasehold Reform and Urban Development Act 1993 as amended.

Property	124, 126, 128, 130, 132 and 134 St Georges Park Avenue, Westcliff-on-Sea, SS0 9UA
Valuation Date	25 September 2009
Capitalisation Rate	6.5%
Deferment Rate	5.5%
Long Lease/Share of Freeholder Value	£72,500 (124, 126, 130, 132 and 134) £70,000 (128)
Relativity	86% (£62,350 and £60,200)
Hope Value	10% of total Marriage Value (20% of a half share)
Garden	£50

Valuation 124, 126, 130, 132 and 134

Term 1 Ground Rent	310		
YP 5.52 years @ 6.5%	4.5174	1,400	
Term 2 Ground Rent	550		
YP 30 years @ 6.5%	13.0586		
PV for 5.52 years @ 6.5%	0.7064	5,073	
Term 3 Ground Rent	930		
YP 39 years @ 6.5%	13.0586		
PV 35.52 years @ 6.5%	0.1068	1,297	
Reversion	362,500		
Defer 65.52 years @ 5.5%	0.02995	10,856	18,626

Valuation 128

Term 1 Ground Rent	100		
YP 5.52 years @ 6.5%	4.5174	451	
Term 2 Ground Rent	170		
YP 30 years @ 6.5%	13.0586		
PV 5.52 years @ 6.5%	0.7064	1,568	
Term 3 Ground Rent	250		
YP 59 years @ 6.5%	15.0101		
PV 35.52 years @ 6.5%	0.1068	400	
Reversion	70,000		
Defer 94.52 years @ 5.5%	.006	420	2,839

Marriage Value 124 and 132

Capital Values of both flats		145,000	
Less			
Existing Freehold	7,600		
Existing Leaseholds	124,700	132,300	
		12,700	
Landlord's Share 50%			6,350
Hope Value @ 10% = £317 x 3			951
Value of Garden, say			50
Total Premium Payable			<u>£28,816</u>