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H M COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an application under section 27(3) and (5) of the Leasehold Reform Housing and Urban Development Act 1993 (missing landlord)

Case No. CHI/29UL/OCE/2011/0034

Property: **50 BROADMEAD ROAD, FOLKESTONE, KENT CT19 5AP**

Between:

Phoenix Regeneration Partnership LLP
(the Applicant/Nominee Purchaser)

- and -

Peter Kevin Murtagh
(the Respondent/Missing Landlord)

Members of the Tribunal: MA Loveday BA Hons MCI Arb
Mr R Athow FRICS MIRPM

Date of the Decision: 20 January 2012

Introduction

1. This application is made under the "missing landlord" provisions of Sub-sections 27(3) and (5) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act"). The Applicant sought the Tribunal's approval of the proposed form of transfer and a determination of the price to be paid into Court for the collective enfranchisement of the Property. The application was made pursuant to a vesting order of DJ Liston dated 16 September 2011 in Brighton County Court. Provisional directions were given on 9 November 2011 when the Tribunal directed that the matter should be determined on the paper track without a hearing. In accordance with those directions, the Applicants submitted a written valuation report of Mr Andrew Pridell FRICS dated 10 March 2010 and a draft form of transfer. The present Tribunal considered the papers and drew the attention of the Applicants to a potential issue in relation to the construction of the rent review provisions of one of the leases, which might affect the valuation of the premium to be paid for the freehold. As a result, Mr Pridell submitted a further report dated 30 December 2011. The Tribunal inspected the property on 20 January 2012 and it has considered both the valuation reports and the draft transfer.

Inspection

2. The property is an end of terrace house situated in Folkestone town centre, within 400 yards of Folkestone Central Station with its main line railway connections to London. Dover port is about 7 miles distant and Canterbury 17 miles away. The railway line runs along an embankment on the opposite side of the road to the property.
3. The property is of traditional construction with brick elevations and has a modern concrete tiled roof to the main part, and the single storey rear addition is flat with a felted roof. The accommodation is set over three floors and each floor has a mezzanine level. There is a communal entrance hall with doors to both flats. The windows throughout are mainly the original style of sliding sash without any double glazing. The ground floor flat (50a) has an entrance hall, living room, double bedroom, kitchen, rear lobby and bathroom/WC. It does not have central heating, but the living

room and bedroom have electric storage heaters. There is a small garden to the rear which has access to a pedestrian right of way on the rear boundary. The first and second floor maisonette (50b) has a hall and stairs to all levels, living room, 3 bedrooms (one could be used as a dining room), kitchen, bathroom and a separate WC. It has gas fired central heating.

THE GROUND RENT

4. Only one point of law appeared to arise from the papers. The lease of the upper maisonette at 50b is dated 28 May 1982 for a term of 99 years from 25 March 1982.

The lease provided for a ground rent at clause 1 as follows:

"Yielding and Paying unto the landlord yearly in advance and proportionately for any fraction of a year the following rents without any deduction during the first twenty-five years of the term the yearly rent of Thirty Pounds (£30.00) and in respect of each successive period of twenty-five years the yearly rent of Sixty Pounds (£60.00) Ninety Pounds (£90.00) and one Hundred and Twenty Pounds (£120) respectively be equal half yearly payments on the 25th March and on the 29th September in each year..."

5. The ground floor flat at 50a was also originally let on a lease dated 28 May 1982 for a term of 99 years from 25 March 1982. That lease provided at clause 1 for a ground rent in the same terms as the lease of the upper flat. However, that lease was later extended by agreement. By a deed of surrender and re-grant dated 7 March 2006, the landlord granted a new term of 99 years from 24 June 2005. The deed did not expressly modify the ground rent provisions of the earlier lease, and instead simply provided at clause 4 that:

"This lease is made upon the same terms and subject to the same covenants, provisos and conditions as are contained in the Other Lease below so that this Lease is to be construed to take effect as if those terms, covenants, provisos and conditions were except as above repeated in this Lease in full with such modifications only as are necessary to make them applicable to this demise and the parties to this Lease except that the covenants given by the Landlord and the Tenant are to be construed as if they had been given at the date of the Other Lease."

6. Mr Pridell's original report stated at para 4.4 that the ground rents payable for the flats were:

"50a

2005-2007	£30
2007-2032	£60
2032-2057	£90
2057-2104	£120

50b

1982-2007	£30
2007-2032	£60
2032-2057	£90
2057-2081	£120"

7. The Tribunal invited the Applicants to comment on the construction of the rent review provisions of the Deed or Surrender. In his later report Mr Pridell stated at para 4.5 that "our interpretation of the ground rent provisions in respect of 50A is that the final escalated rent runs through to the end of the extended term created by the Deed of Variation". Mr Pridell then provided an alternative valuation on the basis that he was wrong.

8. The Tribunal does not consider that the rent review provisions of the current lease of 50a should be construed in this way. The originally worded lease of 50a did not set the ground rent by reference to specific dates. It set the ground rents by reference to periods of the lease. These periods were respectively "*the first twenty-five years of the term*", and the "*successive period[s] of twenty-five years*": see clause Under the Deed of Surrender, the parties agreed a new "*term of 99 years commencing and including 24th June 2005*": see clause 3. The ground rent provision at clause 1 of the 1982 lease was plainly one of the "*terms, covenants, provisos and conditions*" of the earlier lease within the meaning of clause 4 of the 2006 Deed. It follows that one simply imports the words of clause 1 of the earlier lease into the new lease. The plain meaning of these provisions results in a ground rent of £30 pa being payable during the first twenty five years of the new term, namely from 2005 to 2030. The ground rent then rises by £30 pa every twenty five years. Support for this is also given by the fact that the applicant's alternative construction results in a final period of 57 years during which a ground rent of £120 pa is payable. That is wholly inconsistent with the

statement in clause 1 of the original lease that expressly provides for period of 25 years. The Tribunal therefore finds that the present lease of flat 50a provides for ground rents as follows:

50a	
2005-2030	£30
2030-2055	£60
2055-2080	£90
2080-2104	£120

The Tribunal therefore bases its determination on the figures given by Mr Pridell in his second report.

VALUATION

9. The valuation date is the date of the Initial Notice, namely 10 February 2011.

10. Mr Pridell valued the long improved leasehold interests in the lower and upper flats as £94,000 and £117,000 respectively. This was not based on any comparable sales of other flats in the area in or around the valuation date. Instead, Mr Pridell considered a sale of 50a in March 2006 for £90,000 and a sale of 50b in September 2007 for £127,000. He then updated these values using the Nationwide House Price Index and his experience of valuing properties over the years. The Tribunal has some reservations about taking such historic transactions and updating using market indices without any cross-check against more recent comparable sale values achieved in the locality. However, using its own experience of the local market, the Tribunal is satisfied that the values given by Mr Pridell do not understate the open market value of the existing leaseholds of the flats on the valuation date. The Tribunal therefore adopts the figures of £94,000 for flat 50a and £117,000 for flat 50b.

11. The Tribunal agrees with and adopts the capitalisation rate of 7% and the generic 5% deferment rate applied by Mr Pridell. The Tribunal also takes into account marriage value in relation to the lease of 50b, which had an unexpired term of less than 80 years on the valuation date. The Tribunal also adopts a relativity of 91.5% for a term with 70 years remaining unexpired. This is broadly in line with the graph produced by

Mr Pridell in section 2 of the Research Report *Leasehold Reform: Graphs of Relativity* (RICS, 2009).

12. In his second report, Mr Pridell values the unimproved leasehold interests in flats 50a and 50b as £94,000 and £107,055 respectively. Mr Pridell calculates that this produces a premium of £1,975 for 50a and £7,375 for flat 50b, representing a total premium for the freehold of £9,350. We agree with these figures. A copy of the Tribunal's valuation, which is derived from Appendix IV to the report of Mr Pridell dated 30 December 2011, is attached.

The Transfer

13. The Tribunal has considered the draft transfer in accordance with s.27(3) of the Act. The draft transfer is approved subject to three matters:
 - (a) Firstly, in the case of a missing landlord, it is not possible to give a receipt in the form of the draft receipt in paragraph 8 of the transfer. The receipt should be amended to read: "The transferee has paid the sum of £9,350 into court."
 - (b) Secondly, the Transferor should transfer with limited title guarantee in accordance with paragraph 2 of Schedule 7 of the Act. Paragraph 9 of the draft transfer should be amended accordingly.
 - (b) Thirdly, s.34(10) of the Act requires the transfer to include a statement that it is a conveyance executed for the purposes of Chapter I of Part 1 of the Act. The following additional words should therefore be added to the transfer: "This Transfer is executed for the purposes of Chapter I of Part 1 of the leasehold Reform Housing and Urban Development Act 1993".

Mark Loveday

Chairman
20 January 2012

50A - GROUND FLOOR FLAT**FACTS**

Lease valuation date	10/02/2011
Lease terms	99 years
Income from 24/06/2005	£ 30.00
Income from 24/06/2030	£ 60.00
Income from 24/06/2055	£ 90.00
Income from 24/06/2080	£ 120.00
Lease ends	23/06/2104

SUMPTIONS

Yield-Term	7.0%
Yield-Reversion	5.0%
Percentage uplift	92.0%

VALUATION

OMV current lease	£ 94,000
OMV 999 year lease	£ 94,000

LANDLORDS PRESENT INTEREST

<u>Freehold interest</u>		
Ground Rent	£ 30.00	
YP 19 years @ 7.0%	10.3356	£ 310.07

Ground Rent	£ 60	
YP 25 Years @ 7%	11.6536	
1 @ 7% in 19 years	0.2765	£ 193.33

Ground Rent	£ 90	
YP 25 Years @ 7%	11.6536	
1 @ 7% in 44 years	0.0509	£ 53.39

Ground Rent	£ 120	
YP 24 Years @ 7%	11.4693	
1 @ 7% in 69 years	0.0094	£ 12.94 £ 569.72

Reversion to Capital Value	£ 94,000		
in 93 years @ 5%	0.0107003	£ 1,005.83	£ 1,575.55

Marriage Value

Tenant's proposed interest

Landlord's present interest

Tenant's present interest

Marriage Value Unexpired term in excess of 80 years £ -

PREMIUM PAYABLE £ 1,575.55

TOTAL PREMIUM SAY £ 1,575**50B - UPPER MAISONETTE****FACTS**

Lease valuation date	10/02/2011
Lease terms	99 years
Income from 25/03/1982	£ 30.00
Income from 25/03/2007	£ 60.00
Income from 25/03/2032	£ 90.00
Income from 25/03/2057	£ 120.00
Lease ends	24/03/2081

SUMPTIONS

Yield-Term	7.00%
Yield-Reversion	5.0%
Percentage uplift	92.0%

VALUATION

OMV current lease	£ 107,055
OMV 999 year lease	£ 117,000

LANDLORDS PRESENT INTEREST

<u>Freehold interest</u>		
Ground Rent	£ 30.00	
YP 0 years @ 7.0%	0	£ -

Ground Rent	£ 60	
YP 21 Years @ 7%	10.8355	
1 @ 7% in 19 years		£ 650.13

Ground Rent	£ 90	
YP 25 Years @ 7%	11.6536	
pv £1 @ 7% in 21 years	0.2415	£ 253.29

Ground Rent	£ 120	
YP 24 Years @ 7%	11.4693	
pv £1 @ 7% in 46 years	0.0445	£ 61.25 £ 964.67

Reversion to Capital Value	£ 117,000		
pv £ in 70 years @ 5%	0.0328662	£ 3,845.35	£ 4,810.01

Marriage Value

Tenant's proposed interest £ 117,000

less

Landlord's present interest £ 4,810.01

Tenant's present interest £ 107,055 £ 111,865.01

Marriage Value £5,134.99 50% £2,567.49

PREMIUM PAYABLE £ 7,377.51

TOTAL PREMIUM SAY £ 7,375**TOTAL ENFRANCHISEMENT PRICE****£ 8,950**