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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

MAN/00CG/OAF/2012/0012

On an application under section 21(1)(a) to determine the price payable under section 9(1) of the Leasehold Reform Act 1967 for the freehold interest

Property:	**223 Crookes Sheffield S10 1TE**
Applicant:	**Richard Knowles and Catherine Marie Knowles**
Respondent:	**Daniel James Baxter Mandy Guest and Pamela Gillian Voice**
Date of Application:	**17th July 2012**
Date of Directions:	**23rd January 2013**
Date of Determination:	**13th February 2013**
Tribunal:	**Mrs J. E. Oliver**
	Mr P. Swift

Decision

1. The price to be paid for the enfranchisement of the property is £540 as shown in the Appendix.

Reasons

Introduction

2. This is an application made by Richard Knowles and Catherine Marie Knowles ("the Applicants") who are the Lessees of the property known as 223 Crookes Sheffield ("the Property"). The Property is held under a Lease dated 28th July 1905 and made between The Lord Mayor Aldermen and Citizens of the City of Sheffield (1) and Edward Holmes(2). The Lease is for a term of 200 years from the 25th March 1905 subject to the payment of an annual ground rent of £4 2 shillings and six pence (£4 12.5 pence). The Applicants acquired the leasehold interest in the Property on 31st August 2007.

   The freehold interest in the Property is vested in Daniel James Baxter Mandy Guest and Pamela Gillian Voice ("the Respondents") .

3. On the 14th December 2011 the Applicants served a Notice upon the Respondents pursuant to section 9(1) of the Leasehold Reform Act 1967 ("the Act") to acquire the freehold interest in the Property .

4. The price payable for the freehold reversion was not agreed and the Applicants thereafter applied to the Leasehold Valuation Tribunal, on 7th September 2012, for it to determine the price payable.

5. On the 1st November 2012 directions were given by the Tribunal providing for the filing of any evidence upon which the Applicant intended to rely no less than 21 days prior to the hearing and for the Respondent to file any reply 14 days thereafter. An extension of time for the filing of evidence was subsequently ordered.

The Applicants filed their evidence on 9th January 2013, the Respondents filing no further evidence prior to the date fixed for determination.

6. The Tribunal subsequently invited further submission from the parties, following the inspection of the Property, the Applicants filing such further evidence on 6th February 2013 and the Respondents on 5th February 2013.

The Inspection

7. The Tribunal inspected the Property on 23rd January 2013. The Property is situate on the corner of Crookes and Duncan Road Sheffield and comprises a florist shop which occupies the ground floor and cellar and residential accommodation which is on the first and second floors. The residential accommodation is let to students on an assured shorthold tenancy for a period of 11 months and 17 days from 14th July 2012. Outside the Property are outbuildings which are derelict and are therefore not in use.
8. There was no hearing, neither party having requested the same.

Submissions

9. The Applicants are represented by Mr Simon Shires of Lewis Francis Blackburn Gray Solicitors who instructed Mr Martin Holmes of Fowler Sandford Chartered Surveyors to prepare a report in support of their application.
10. Mr Holmes contended that, having inspected the Property and having taken areas from the Valuation Office Agency's rating records, the Property is divided into commercial and residential use on a ratio of 35%/65%. Therefore, although the Property was of mixed use it was a house " reasonably so called" per **Tandon v Trustees of Spurgeons Homes [1982] AC 775.**
11. Mr Holmes submitted that the valuation under section 9(1) of the 1967 Act should be a three stage process following the decision in **Re Clarise Properties [2012] UKUT 4 (LC).** Mr Holmes further stated that the appropriate rates for capitalisation and deferment should be

6.5% and 5.5% respectively, these being the rates used in three decisions of the Leasehold Valuation Tribunal, **259 Birley Spa Lane Hackenthorpe Sheffield (MAN/00CG/OAF/2009/0021) Whirlowdale Rise Whirlow Sheffield (MAN.00CG/OAF/2011/0014) and 3 Causeway Gardens Dore Sheffield (MAN/00CG/OAF/2012/0003).**

12. Mr Holmes placed a value on the Property at £175000, to include "hope value" in respect of the derelict outbuildings. A Site Value at 35% was used following the decision in **259 Birley Spa Lane.** Whilst Mr Holmes referred to a site value of 40% in the decisions in **Whirlowdale and 3 Causeway Gardens** it was said those properties were of a higher value and in sought after areas.
13. Upon the basis of his calculation Mr Holmes suggested a value for the freehold reversion in the sum of £540.
14. The Respondents made no representations prior to the determination scheduled for 23rd January 2013.
15. The Tribunal, having inspected the Property, invited both parties to make further written submissions in the light of the decisions of theSupreme Court in **Day v Hosebay Ltd** and **Howard de Walden Estates Ltd v Lexgorge Ltd [2102] UKSC 41,** on the definition of a "house" for the purposes of the Leasehold Reform Act 1967.
16. The Applicants, in their further written submissions, made the following points:
    1. Section 2(1) of the Leasehold Reform Act 1967 defines a house as "any building designed or adapted for living in and reasonably so called", notwithstanding that the building is not structurally detached or was not or is not solely designed or adapted for living in, or is divided horizontally into flats or maisonettes; and
        (a) Where a building is divided horizontally the flats or other units into which it is divided are not separate "houses" thought the building as a whole may be; and

(b) Where a building is divided vertically the building as a whole is not a "house" though any of the units into which it is divided may be.

2. The Lease under which the Property is held refers to "the dwellinghouse and saleshop...[being] in the course of erection".

3. In **Ashbridge Investments Ltd v Minister of Housing and Local Government [1965] 1 WLR 1320** (a case on the meaning of a "house" in the Housing Act 1957) Lord Denning stated that a "house" is a " building which is constructed or adapted for use as, or for the purpose of a dwelling". Further the decision in **Boss Holdings Ltd v Grosvenor West End Properties Ltd [2008] 1 WLR 289** held that a building previously designed or adapted for living in remained a house even though , at the material time, it was disused.

4. In the light of these decisions it was said the Property was a house

5. With regard to the requirement of section2(1) of the Act that a house must be "reasonably so called" reference was made to the House of Lords decision in **Lake v Bennett [1970] 1 QB 663** which held that although the ground floor of a three storey property had been converted to a shop the property was still a house "reasonably so called", **Tandon v Trustees of Spurgeon Homes [1982] AC 755** which held that the Act still applied to properties not exclusively designed or adapted for residential purposes. In that particular case the percentage of the property used for residential purposes was 25%. The Applicants also referred to **Grosvenor Estates Ltd v Prospect Estates Ltd [2008] EWCA Civ 1281** where it was held that a property could not reasonably be called a house when 90% of it was not used for residential purposes, the Court of Appeal stating that sufficient weight must be given to the terms of the lease, the actual use of the building and the proportions of the mixed use.

6. In considering the decisions in **Day v Hosebay** and **Howard de Walden Estates Ltd v Lexgorge Ltd** it was said that both cases dealt with properties which were used

"wholly" for either a self-catering hotel (**Hosebay)** or offices (**Lexgorge).** In both cases it was determined by the Court that whatever the original design or current appearance, the building was not a house "reasonably so called".

7. A copy of the Assured Shorthold Tenancy agreement was produced which showed the residential part of the Property was let under one tenancy to three persons. Clause 4.2 of the Tenancy restricts the use to that of a single private dwelling. This case is therefore distinguishable from **Hosebay** in that "the Tenancy creates an estate in real property (being a term of years – even though the actual term is less than 12 months, this is treated by virtue of section 205 (1) (XXVII) of the Law of Property Act 1925 as being a term of years and therefore an estate of land) and it further confers a right of exclusivity of occupation on the tenants of the Property, unlike the transitory nature of the occupation of the property in the **Hosebay** case".

17. The Respondents, in their written submissions, made the following points:

    1. The decision In **Tandon v Trustees of Spurgeon Homes Ltd** could be distinguished from the present case in that although the property was of mixed use it was in fact only one unit because it had only one w.c on the ground floor and therefore could only be conveniently occupied by one family (per the dissenting judgment of Lord Fraser)
    2. Whilst it was accepted that the Property was of mixed use the percentages between residential and commercial use were disputed. No account had been taken of the cellar used by the florist nor the substantial outbuildings, which although not currently used, had always formed part of the commercial premises. They contain the freezers previously used by the butcher who had occupied the ground floor shop.
    3. It was stated that when the Property was occupied as one unit "there is likely to have been some cross over between the areas of the property being used for

residential and those for commercial. The situation ... is now that the entire ground floor and cellar are used for commercial purposes and there is a wholly separate flat above with its own entrance. We would therefore dispute that there is a sufficient amount of the Premises given over to residential for it to be "designed or adapted for living in."

4. In respect of the decision in **Day v Hosebay** reference was made to the comments of Lord Carnwath who "highlighted that a difficulty with mixed use premises "was to reconcile the statutory recognition (under the proviso) that the building need not be solely designed or adapted for living in, with the need for the building **as a whole** to be a house "reasonably so called". In our submission Lord Carnwath meant because the buildings in each appeal were held as one unit and therefore what applied to one part of the building applied to the building in its entirety."
5. In **Howard de Walden v Lexgorge Ltd** appearances and historic use were not determining factors and given the property was used as offices and had been for many years, this meant it could not reasonably be called a house.
6. The upper floors of the Property are let for commercial gain (a buy to let property)and are entirely separate from the ground floor commercial premises. This distinguishes the Property from that in **Tandon** where the building was one unit and could only "feasibly be occupied by one family". The Property is let as two separate units.
7. Alternatively, due to the weighting in favour of commercial premises the Property is not a house "reasonably so called".

Decision

18. The Tribunal considered the representations made by the parties as to whether the Property fell within the definition of a house in section 2(1) of the Act and consequently whether the Applicants have the right to acquire the freehold reversion.

    It considered the decisions made by the Supreme Court in both **Day v Hosebay and Howard de Walden Estates v Lexgorge Ltd.** In both these cases the buildings were used exclusively as commercial premises. The buildings in **Hosebay** had originally been built as houses but, at the time of the application, had been converted for use by tourists and other visitors to London as short term accommodation with self-catering facilities. The building in **Lexgorge** had, save for the basement, been used as offices. The cases established that the test under section 2 of the Act is threefold. Firstly, if the building is not a house "reasonably so called" then its original purpose does not have to be considered. Secondly any building used wholly as offices or for other commercial purposes are not houses "reasonably so called". Thirdly when deciding whether a building was or is designed or adapted for "living in" something more settled than "staying in" is required.

19. The Tribunal determined that the Property was not used exclusively for commercial purposes. The Tribunal did not consider that the occupation of the upper floors on an assured shorthold tenancy amounted to a commercial use as was the case in **Hosebay**. It was clearly residential Therefore, having determined this, the Tribunal had then to consider the previous decision in **Tandon,** as to whether the Property could be said to be a house reasonably so called, despite the mixed residential and commercial use of the building.

20. In **Tandon,** Lord Roskill, who was in the majority, stated that "as long as a building of mixed use can reasonably be called a house, it is within the statutory definition of a "house" even though it may reasonably be called something else." As Lord Carnwath observed in **Hosebay,** when analysing this passage in **Tandon** "such a building could plausibly be described as a

house with a shop below, or as a shop with a dwelling above. That was enough to show that it could "reasonably" be called a house. As to whether it was the House of Lords in **Tandon** relied on the fact that the proportion of residential use was substantial. Applying **Tandon** to the present case, the Tribunal took account of the proportions given by Mr Holmes within his report, namely a split of 65%/35% based on the whole site of 198 sq.m. The measurements given for the ground floor retail unit was 57.2 sq.m. The Respondents submitted that the commercial area should also include the outside buildings although no alternative split for the use of the Property was put in percentage terms.

21. The Tribunal considered that although the outside buildings had previously been used by the butcher's shop which occupied the ground floor, those buildings were no longer in use. It could not be determined what their future use may be; they were derelict and could be converted for use either as commercial or residential property. They did not form part of the current commercial letting. It was therefore considered that the outbuildings could not from part of the calculation when considering the split between the current commercial and residential use.

22. The Tribunal therefore determines that the residential use of the building was sufficiently substantial to permit the building to qualify as a house reasonably so called. The fact that the Property was not **solely** designed or adapted for living in does not prevent it from being a house, because this is expressly provided for by section 2(1). It is sufficient that part of the building is so designed or adapted. That requirement is satisfied by the residential accommodation on the first and second floors, which are clearly designed for "living in". The Tribunal therefore finds that the Property is a house within the definition of section 2 of the Act and the Applicants are entitled to acquire the freehold reversion.

23. In considering the price to be paid for the freehold reversion the Tribunal took into account the representations made on behalf of the Applicant, none of which had been challenged by the Respondent. The Tribunal looked at the following factors:

Entirety Value

24. Mr Holmes suggested the open market value to be £175000.Upon the basis this included some hope value for the outside buildings the Tribunal saw no reason to depart from this figure

Site Value

25. Mr Holmes relied upon the site value at 35% as set out in the decision of **259 Birley Spa Lane Hackenthorpe** and **3 Causeway Gardens**. The Tribunal considered this to be reasonable.

Capitalisation

26. Mr Holmes, in his calculation, used a rate of 6.5%. The Tribunal saw no reason to change this, in the light of the previous decisions at **Whirlowdale** and **259 Birley Spa Lane Sheffield**.

Deferment Rate

27. Mr Holmes used a rate of 5.5%. The Tribunal again agreed with this rate, reflecting the decision in **Cadogan v Sportelli [2007] EWCA Civ 1042** as adjusted by the decision of the Lands Tribunal in **Kelton Court [2009)] UKUT 235 (LC** for properties outside Central London.
28. In determining the above rates the Tribunal agreed the amount to be paid for the freehold reversion should be in the sum of £540 as calculated by Mr Holmes, a copy of which is attached to this decision.

Dated this 11th day of March 2013

Judith Oliver

Mrs Judith Oliver

Chairman

VALUATION SCHEDULE

223 Crookes, Sheffield S10 1TE

Entirety value	£175,000	
Site value at 35%	£61,250	
Section 15 rent @ 5.5%	£3,370	
<u>Present Term</u>		
Ground rent	£4.13	
YP say 93 years @ 6.5%	15.34	
		£63.35
<u>First Reversion</u>		
Section 15 rent	£3,370	
YP for 50 years @ 5.5%	16.93	
PV of £1 in 93 years @ 5.5%	.0069	
		£393.67
<u>Second Reversion</u>		
Entirety value	£175,000	
PV of £1 in 143 years @ 5.5%	.00047	
		£82.25
	Total	£539.27
	Say	£540