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**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/OOAE/OCE/2017/0008**

**Property** : **1-10 Midwinter Court, 76 - 78 Draycott Avenue, Kenton, Middlesex HA3 0BY**

**Applicants** : **Midwinter Court (Kenton) Freehold Limited (nominee purchaser)**

**Representatives** : **Mr Alan Cohen of Talbots Surveying Services Limited instructed by Bishop & Sewell LLP, solicitors.**

**Respondent** : **W.E. Black Limited (landlord)**

**Representative** : **Ms Katie Meltzer of Meltzer Associates instructed by Lynch Hall & Hornby LLP, solicitors**

**Type of Application** : **For a determination of the premium payable for the acquisition of the freehold made under sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the Act')**

**Tribunal Members** : **Judge James Driscoll, Mr Neil Martindale FRICS and Judge Tim Cowen**

**Date of Hearing** : **16 May, 2017**

**Date of Decision** : **23 May, 2017**

**DECISION**

## **Summary of the decision**

1. The premium to be paid for the grant for the acquisition of the freehold is the sum of £97,225 (ninety-seven thousand, two hundred and twenty-five pounds).

### **The claim**

2. The applicant is a company which was incorporated on behalf of the leaseholders of flats at the subject premises. It was incorporated to pursue a claim collectively to enfranchise under the provisions in the Act acting as the participating leaseholders' nominee purchaser. The respondent is the owner of the freehold and the landlord under the leases to which there is a third party management company.
3. A claim notice was given to the landlord on 2 September, 2017. It proposed to acquire the freehold to the subject premises which is a block of 10 flats all held on qualifying long leases. (Six of the leaseholders are participating in the claim). It will also acquire the freehold of gardens and car parking spaces and areas for the storage of bicycles and waste bins. An intermediate lease will also be acquired. That is a lease of the common parts known as the 'amenity lease'.
4. A counter-notice was given to the nominee purchaser on 9 November, 2017 admitting the right to claim the freehold and leasehold interests but proposing a different premium and claiming also a sum for the additional land that will be acquired.
5. As the parties did not agree on the price to be paid application was made to the Tribunal on behalf of the nominee purchaser for this to be determined. The application was made on 10 January, 2017. Directions were given on 26 January 2017. Solicitors acting for the nominee purchaser produced a bundle of documents as directed. It contained a copy of the application and the directions, copies of the notices, official copies of the freehold, the intermediate lease and the flat leases, copy specimen leases, draft agreed transfer of the freehold title, a statement of agreed and disputed facts and opinions. It also contained the valuation reports prepared on behalf of the parties.

### **The hearing**

6. The hearing took place on 16 May, 2017. The nominee purchaser was represented by Mr Cohen (BSc, FRICS, IRRV) who acted as both an expert witness and an advocate. Also present was Mr Laurent Vaughan a solicitor with

Bishop and Sewell and Mr Daniel Cohen an associate of Talbots Surveying Services Limited. One of the leaseholders also attended the hearing.

7. The landlord was represented by Ms Meltzer (BSc MRICS) who also appeared as both an expert witness and an advocate.
8. We were told by the representatives that most of the elements of the valuation were agreed. What remained in dispute was first, the capitalisation rate to be used to calculate the value of the ground rent that will be lost by the freeholder once the freehold is acquired by the nominee purchaser and second, the value of the common areas the freehold to which will also be acquired once the enfranchisement is completed.
9. In a statement of agreed and disputed facts and opinions signed by Mr Cohen and Ms Meltzer on 9 March, 2017 it was agreed that the valuation date is 2 September, 2016, that the ground rent payable for the first 25 years of the leases is the sum of £350 per annum, rising to £700 for the next 25 years rising to £1,050 for the next 25 years and rising to £1,400 for the remainder of the term.
10. The unexpired terms of the leases of the participating leaseholders at the valuation date were 114.80 years for three of the flats and 113.80 years for the other flats. It was common ground that no marriage value is payable (and as the Tribunal pointed out, with the agreement of both parties, no 'hope value' for the non-participating leaseholders either).
11. Mr Cohen gave evidence on the two disputed elements of the disputed valuation. He spoke to his report and he answered questions posed by Ms Meltzer and the Tribunal. He told us that he has practiced in the general area of leasehold enfranchisement and new leases since the Act came into force in 1993. He has experience of advising on such transactions all over Greater London. He told us that the starting point is that a rate of 7% should be used. This he bases on his professional experience of negotiating claims. However, as he was prepared to accept a lower rate of 6.5% in this claim, this is the rate he proposes (even though he considers that a higher rate of 7% would otherwise be justified.) In support of this conclusion he also presented data gained from auction sales figures of residential freehold interests though he told us as one knows so little about the details of such sales that very little credence should be given to it. (Mr Cohen used the capitalisation rate of 7% in his written valuation report).
12. In addition Mr Cohen drew to our attention the decision of the Upper Tribunal (Lands Chamber) in *Roberts and Thain v Fernandez* [2015] UKUT 0106 which he submits supports his position on the appropriate capitalisation rate.
13. Turning to the appurtenant land, Mr Cohen is of the opinion that because of the sheer length of the unexpired leases it has no value. A prospective purchaser would not be able to use or develop this land until after the expiration of the flat leases.

14. Then Ms Meltzer gave her evidence and she spoke to her report dated 27 April, 2017. She answered questions posed by Mr Cohen and the Tribunal. On the capitalisation rate, she is of the opinion that a rate of 5.5% should be adopted. In general terms she considers that recently changing economic conditions with its effects on interest rates points to a different rate to the 7% proposed by Mr Cohen. She also referred us to various transactions she was involved with which suggest that a lower rate of 5.5% should be used. She also draws support from auction sales and placed greater reliance upon them than Mr Cohen did.
15. Turning to the appurtenant land she relies on an enfranchisement of a property in Harrow where a value of £2,000 was agreed for what she said was similar amenity land.

### **Reasons for our decision**

16. We will deal first with the capitalisation rate. On balance we prefer Mr Cohen's evidence that the 6.5% rate should be used. In our experience this is the rate that is commonly used by valuers in the greater London area and that it is an element of a valuation that is commonly agreed between valuers.
17. However, we consider that drawing conclusions from settlements is difficult (as Mr Cohen did) as it is usually impossible to work out why the parties negotiated and agreed the different elements of the valuation. After all, the ground rent valuation is usually a very small part of the figures agreed on when parties reach agreement (as it is for the valuation in this particular case). Similarly, we are far from confident that sales evidence from auctions is a reliable guide to capitalisation rates: little is usually known of the properties sold at auction. We were also not convinced by Ms Meltzer's argument that current economic conditions should affect the capitalisation rate, because we regard this as a long-term investment which is unlikely to be affected substantially by short-term economic factors.
18. Some support for the 7% rate may be found in the *Roberts* decision referred to above. This was a new lease claim where the appeal had to deal with several valuation issues including the capitalisation rate. In that case the tribunal accepted expert evidence that 7% if the rate commonly used in cases where are rent reviews every twenty years (twenty five years in this case).
19. For these reasons, we determine that the capitalisation rate to be used in this case is 6.5%. This is the rate proposed by Mr Cohen in his oral evidence.
20. We found the other valuation issue easier to determine. Ms Meltzer had little more than one transaction to found her valuation of this element. On this we also prefer the approach of Mr Cohen and we determine that the appurtenant land has a nil value. The freeholder of the appurtenant land has no present rights to use or derive any benefit from that land until the expiry of the leases in 114-115 years' time. It is true that land available for parking can be at a premium in the current market, we do not think that any hypothetical third party would pay anything for the right to possession of such land in 114/115 years' time. We were particularly persuaded by Mr Cohen's argument that

applying 114/115 years' deferment to any reasonable value of that land would result in only a nominal sum.

21. To summarise having decided the two disputed elements of the valuation, where all the other elements were agreed by the parties, we determine that the premium payable is the sum of £97,225.
22. As this incorporates the 6.5% capitalisation rate proposed by Mr Cohen in his oral evidence and the general tenor of his written report, there is no need for us to add a valuation to this decision.
23. We were told that the terms of the transfer have been agreed but that the landlord's entitlement to costs under section 33 of the Act are yet to be agreed.

### **Rights of appeal**

24. Under rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.
25. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.
26. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite it not being within the time limit.
27. The application for permission to appeal must identify the decision of the tribunal to which it relates (that is to give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.
28. If this tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

**James Driscoll, Neil Martindale and Tim Cowen**

**23 May, 2017**