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

Case Reference : CHI/19UD/OCE/2012/0007

Property : Avon Castle, 47 Avon Castle Drive, Ringwood,  
Hampshire BH24 2BD

Applicant : Avon Castle Limited

Representative : Ms Ellodie Gibbons of Counsel

Respondent : C R Vending & Electronics Limited

Representative : Mr Collins

Type of Application: Application for Enfranchisement under Section 24  
Leasehold Reform, Housing & Urban Development Act 1993

Tribunal Members : Judge P J Barber Chairman  
Mr D Lintott FRICS Valuer Member  
Mr K M Lyons FRICS Valuer Member

Date and venue of Hearing : 4<sup>th</sup> November 2013  
St Leonards Hotel, 185 Ringwood Road, St Leonards,  
Dorset BH24 2NP

Date of decision : 25<sup>th</sup> November 2013

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**DECISION**

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## Decision

1. The Tribunal determines in accordance with the provisions of Section 24 of the Leasehold Reform, Housing and Urban Development Act (the 1993 Act) that :
  - (a) the price payable by the Applicant to the Respondent in consideration of the transfer by the Respondent to the Applicant of the freehold interest in the Property is £10,000.00.
  - (b) and in default of compliance with requirements arising from Directions in this matter, the Respondent is deemed to have accepted the form of draft transfer and lease back submitted to it by the Applicant.

## Reasons

### BACKGROUND

2. The application in this matter for enfranchisement pursuant to Section 24 of the 1993 Act, is made in respect of Avon Castle, 47 Avon Castle Drive, Ringwood, Hampshire BH24 2BD (“the Property”); such application was originally made in February 2012. At a hearing in April 2012, the Tribunal determined that the Applicant was entitled to a transfer, not only of the main building at the Property, but also the surrounding gardens or amenity areas and outbuildings thereon, subject however to the requirement that the Applicant should simultaneous with such transfer, grant a lease back to the Respondent in respect of Flat 1A, occupied by Mr Collins but not currently subject to any lease, pursuant to the provisions of Section 36 and Schedule 9 of the 1993 Act. Further Directions were issued in November 2012 regarding the requirement for a joint report on such matters as the transfer and lease back.
3. On 11<sup>th</sup> March 2013, further directions were issued following a case management hearing, requiring the parties to exchange valuers reports and setting a required timescale for the parties to agree the form of the transfer and lease back. The March 2013 Directions specifically required that the Respondent should make any representations in writing on the proposed form of transfer and lease back, by no later than 26<sup>th</sup> April 2013.

### THE LAW

4. Paragraph 2(1) of Schedule 6 to the 1993 Act provides :-

*“2(1) Subject to the provisions of this paragraph, where the freehold of the whole of the specified premises is owned by the same person the price payable by the nominee purchaser for the freehold of those premises shall be the aggregate of :-*

  - (a) the value of the freeholder`s interest in the premises as determined in accordance with paragraph 3;*
  - (b) the freeholder`s share of the marriage value as determined in accordance with paragraph 4; and*

(c) any amount of compensation payable to the freeholder under paragraph 5.”

Paragraph 3 of Schedule 6 to the 1993 Act provides as follows :-

“(1) Subject to the provisions of this paragraph, the value of the freeholder’s interest in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions

(a) on the assumption that the vendor is selling for an estate in fee simple –

(i) subject to any leases subject to which the freeholder’s interest in the premises is to be acquired by the nominee purchaser, but

(ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser

(b)....”

(2) ...

(3) ...

(4) Where a lease of any flat or other unit contained in the specified premises is to be granted to the freeholder in accordance with section 36 and Schedule 9, the value of his interest in those premises at the relevant date so far as relating to that flat or other unit shall be taken to be the difference as at that date between :-

(a) the value of his freehold interest in it, and

(b) the value of his interest in it under that lease, assuming it to have been granted to him at that date;

and each of those values shall, so far as is appropriate, be determined in like manner as the value of the freeholder’s interest in the whole of the specified premises is determined for the purposes of paragraph 2(1)(a).”

Paragraph 4 to Schedule 6 of the 1993 Act provides :-

“4(1) The marriage value is the amount referred to in sub-paragraph (2), and the freeholder’s share of the marriage value is 50 per cent of that amount.

(2) Subject to sub-paragraph (2A), the marriage value is any increase in the aggregate value of the freehold and every intermediate leasehold interest in the specified premises, when regarded as being (in consequence of their being acquired by the nominee purchaser) interests under the control of the participating tenants, as compared with the aggregate value of those interests when held by the persons from whom they are to be acquired, being an increase in value -

(a) which is attributable to the potential ability of the participating tenants, once those interests have been so acquired, to have new leases granted to them without payment of any premium and without restriction as to length of term, and

(b) which, if those interests were being sold to the nominee purchaser on the open market by willing sellers, the nominee purchaser would have to agree to share with the sellers in order to reach agreement as to price.

*(2A) Where at the relevant date the unexpired term of the lease held by any of those participating members exceeds eighty years, any increase in the value of the freehold or any intermediate leasehold interest in the specified premises which is attributable to his potential ability to have a new lease granted to him as mentioned in sub-paragraph (2)(a) is to be ignored.”*

Paragraph 5 to Schedule 6 of the 1993 Act provides as follows :-

*“5(1) Where the freeholder will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.*

*(2) This paragraph applies to :-*

*(a) any diminution in value of any interest of the freeholder in other property resulting from the acquisition of his interest in the specified premises; and*

*(b) any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other property.”*

### **HEARING AND REPRESENTATIONS**

5. No inspection took place owing to the fact that the Tribunal members had inspected the Property prior to the hearing held in April 2012. Ms Gibbons of Counsel represented the Applicant; also present were Mr Howard and Mr Lewis of Coles Miller LLP solicitors, Mr Wetherall the Applicant`s valuer, and Ms Charlton, Mr Daniels and Mr Burke. Mr Collins represented the Respondent company, accompanied by his wife Mrs Collins.
6. Ms Gibbons submitted that the only issue for determination by the Tribunal, was the price payable for the Property by the Applicant to the Respondent. However, Mr Collins submitted that he had not ever agreed the form of draft transfer and lease back sent to him by the Applicant`s solicitors Coles Miller LLP in March 2013. The Tribunal reminded Mr Collins of the specific requirements in the further directions dated 11<sup>th</sup> March 2013 in which the Respondent had been required to make any representations to the Applicant in regard to the draft transfer, lease back and coloured document plans by 26<sup>th</sup> April 2013. The Respondent had failed to comply with such directions; when asked as to the reasons for such failure, Mr Collins said that he had been suffering with ill health. Ms Gibbons submitted that it would be disproportionate for the Applicant at this stage to be required to justify and make further submissions in regard to the draft transfer and lease back and that in any event such documents were based on standard precedents provided by the Practical Law Company. The Tribunal considered the position and, taking into account the requirements of the overriding objective in Paragraph 3 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 No. 1169 L.8, including the requirement to avoid delay, so far as compatible with proper consideration of the issues, concluded that the Respondent having failed to comply with the March 2013 Directions by making any written representations on the drafts, it would not be reasonable to allow any further time at this advanced stage. The Tribunal noted that it would have been open to the Respondent to appoint legal representatives to make any representations on the draft documents, but that it had simply failed to do so. In these circumstances the Tribunal deems the draft transfer and lease back to have been accepted by the Respondent in default of any objections or representations

having been made thereto by the Respondent in compliance with the requirement of the March 2013 Directions.

7. In regard to the remaining issue to be determined, namely the price payable for the Property, Ms Gibbons said that while the Applicant's bundle included both the Applicant's valuer's report dated 18<sup>th</sup> April 2013 prepared by Mr Wetherall, and the Respondent's valuer's report dated 2<sup>nd</sup> May 2013 prepared by Mr Higley, Mr Higley was not present and thus Ms Gibbons said that she was not in a position to cross examine him on any aspects of his report. Ms Gibbons called Mr Wetherall to give evidence. Mr Wetherall referred to his professional qualifications, background and experience; he gave evidence to justify the capitalisation rate of 9% used in his report. In regard to the amount claimed in Mr Higley's report in relation to potential development value for the grounds, Mr Wetherall said that the use of the grounds was entirely fettered by existing lessees' rights and therefore no such value should be taken into account, particularly as no details justifying any potential, such as planning permissions had been provided. In regard to development value of the outbuildings, Mr Wetherall thought that scope for residential use was unlikely, although accepted that a value of £5,000.00 should be attributed, not £7,500.00 as suggested by Mr Higley. In regard to fishing rights, Mr Wetherall said these were already included in the existing leases, so there was no loss. In relation to parking, Mr Wetherall accepted that the existing leases included no express rights; however he suggested that implied rights would be likely to have arisen as a result of the lessees having used the area in front of the building at the Property for regular parking, over so many years. In regard to Flat 1A, Ms Gibbons submitted that Paragraph 3(4) to Schedule 6 of the 1993 Act required an assessment of the difference in values as between the freehold interest in the Flat and the value thereof under the proposed new lease. Mr Wetherall said in evidence that in his view there was no such difference in value.
8. Ms Gibbons made reference to certain case law, including *Maryland Estates Ltd – v- Abbathure Flat Management Co Ltd [1999] 1 EGLR 100* and also *Sherwood Hall (East End Road) Management Company Limited –v- Magnolia Tree Limited [2009] UKUT 158 (LC)*; Ms Gibbons submitted that Mr Higley had provided no evidence in his report regarding the willingness of any person paying to acquire parking rights and that in any event it was arguable that rights had arisen through long use.
9. Mr Collins, submitted that Mr Wetherall had not actually made any internal inspection of the outbuildings in order properly to value them, whereas he said that Mr Higley had done so; Mr Wetherall responded that he had carried out a spot valuation only and accepted that there were few obvious comparables, adding that his valuation and that of Mr Higley were not that far apart in any event. Mr Collins further questioned why it was that such a large and imposing building was being valued by Mr Wetherall for such a seemingly small amount. Ms Gibbons submitted that the basis of valuation in these circumstances was strictly prescribed by statute. Ms Gibbons also referred to certain deficiencies in the current leases of flats in the Property, including in relation to insurance, limitation of landlord's management costs to 5% of total charges, and otherwise. Ms Gibbons indicated that it is the intention following completion of the transfer, for the existing leases to be surrendered and followed by new grants in a more satisfactory form, largely along the lines of the draft lease back of Flat 1A.

10. In closing Mr Collins submitted that a considerable amount of repair work was needed at the Property, including work to the roof; he described the exterior as being in dire need of repairs. Mr Collins further submitted that it would be unfair for him to have to bear a 5.9% share of all costs of repair arising, as lessee under the new lease back in respect of Flat 1A, in circumstances where there is currently no lease and no obligation to pay any service charges at all. In her closing, Ms Gibbons submitted that the 5.9% service charge proportion proposed for Flat 1A was not arbitrary and reflected measurement of floor area of such flat in relation to the remainder of the building. Ms Gibbons submitted that the Respondent and/or Mr Collins had had plenty of opportunity to make representations regarding both the draft documents generally and the service charge issue but had simply failed to do so. Ms Gibbons added that any existing disrepair at the building was due to the Respondent's own failures so to repair. Ms Gibbons submitted that the application had been made in the first place largely due to the Applicant's concerns about management issues affecting the building.

### **CONSIDERATION**

11. We, the Tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of both parties.
12. In regard to the valuation headings raised by the respective valuers the Tribunal concludes as follows :-

#### Capitalisation

The Tribunal considers that a capitalisation rate of 9% is not unreasonable and accordingly the sum of £1,000.00 suggested by Mr Wetherall is reasonable.

#### Difference in Value Freehold / Leasehold

Using its knowledge and experience the Tribunal is of the opinion that a reasonable valuation for Flat 1A, subject to the proposed new lease, would be £150,000.00 taking into account limited size and the fact that toilet facilities are separately located across the main hall. Mr Wetherall had expressed the opinion that in his view there was no difference between the value of Flat 1A as a freehold interest, and the value under the proposed new lease. The Tribunal did not have the benefit of any oral evidence from Mr Higley. However, the Tribunal notes that a service charge liability will arise under the new lease and, using its experience and knowledge, considers that it would be a reasonable approach to make some allowance for difference in value as between the freehold and leasehold tenure of Flat 1A, taking into account assumed service charges of say £2,500 per annum, capitalised at 10% in perpetuity, resulting in a £25,000 addition to the value of Flat 1A as a freehold. On this basis, assuming a freehold value of £175,000 and a leasehold value of £150,000, the difference to be taken into account for the purposes of Paragraph 3(4) to Schedule 6 of the 1993 Act is £25,000.

#### Development Value – Grounds

The Tribunal notes there was very limited access available to the grounds at the rear of the main building and that such grounds were subject in any event to the rights under the existing leases; consequently the Tribunal concludes that development value is zero.

### Development Value – Outbuildings

The respective valuations in respect of the potential development value of outbuildings at the Property, were £5,000 by Mr Wetherall and £7,500 by Mr Higley; on balance the Tribunal prefers Mr Higley's evidence, taking account of the fact that Mr Wetherall had accepted that he had not inspected internally whereas Mr Higley had done so.

### Fishing Rights

Neither valuer had provided any clear evidence. However the Tribunal considers in the light of its general experience that there is certainly some value in fishing rights and that Mr Higley's value of £2,000 would reflect annual payments of £200 on a capitalised basis at 10%. Accordingly the sum of £2,000 for fishing rights is considered to be reasonable.

### Parking

The Tribunal considers the assertion that implied rights to park currently subsist for the benefit of lessees in the building, to be at least partly speculative. In order to substantiate such claim, some form of litigation and/or incurring of professional costs is likely to be necessary. Whilst the position may not be entirely clear, the Tribunal is of the view that the value to occupiers in having clear rights to park in front of the building must be of some significance. Accordingly and using its knowledge and experience, the Tribunal accepts the evidence offered in this regard, assessing such value at £4,500.

Summary :	£
Capitalisation	1,000.00
Difference in value – freehold / leasehold	25,000.00
Development Value – Grounds	Nil
Development Value – Outbuildings	7,500.00
Fishing Rights	2,000.00
Parking	<u>4,500.00</u>
Total :	£ 40,000.00

The Tribunal further considers however that a proper approach in determining price payable, also requires consideration of general valuation issues in order properly to balance the valuation equation. For example the Tribunal notes that there are deficiencies in the form of the existing leases, in regard to the freeholder's inability currently to levy demands for advance service charges to cover the cost of intended works, to allow full recovery of legal, accountancy and surveyor's costs, charges for interest, and similarly the limitation of management fees to 5% only, of costs expenses and outgoings which make up or form the service charge. The Tribunal considers it likely, using its knowledge and experience, that such issues would be a significant deterrent to any purchaser of the freehold. Such issues in regard to borrowing and limitations on recovery, ought in the view of the Tribunal to be equated to a figure of at least £3,000.00 per annum and, if

capitalised at 10%, would require a reduction of £30,000.00 from the above total, resulting in a price payable for the Property of £10,000.00.

13. We made our decisions accordingly.

Judge P J Barber

A member of the Tribunal appointed by the Lord Chancellor

#### Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.