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

Case Reference : MAN/OOCY/OCE/2013 /0008

Property : Dodge Holme Court, Mixenden Road,
Mixenden, Halifax, HX2 8NU

Applicant : Dodge Holme Court Limited

Respondent : (1) Warnerlane Limited
(2) Bishops Heights Limited

Type of Application : Section 24(1) Leasehold Reform Housing and Urban
Development Act 1993

Tribunal Members : Habib A Khan (Tribunal Judge)
Ian Loncaster FRICS

Date of Decision : 18 October 2013

DECISION

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Introduction

1. This is an application under the Leasehold Reform, Housing and Urban Development Act 1993 ("The Act") to determine the value of Warnerlane Limited (First Respondents) head lease in respect of Dodge Holme Court, Mixenden, Halifax HX2 8TG ("The Property")
2. The Applicants are leasehold owners of flats within the property. The Applicant understands that at some point in the early 1980s, it transferred into private ownership.
3. The freeholder of the property is a company called Bishop Height limited (Second Respondent). The head lease was granted on 1 June 1983 to the First Respondent for a term of 999 years, from that date, at a rent which is now £950 p.a. The application states that the nominee purchaser wishes to enfranchise and acquire both the freehold interest and the leasehold interest of the property.

Description

4. The property is a 15 storey block of flats located in a low cost residential area of mainly social housing, approximately 2½ miles from the centre of Halifax.
5. The block was built in the 1960's and is of part brick and part rendered block construction under a flat roof with metal windows and concrete slab floors throughout. It comprises 101 units being a mix of 64 two-bedroom flats, 36 one-bedroom flats and one studio.
6. There is garage provision for fourteen cars and very limited additional parking space. It is situated in its own grounds of approximately one acre and in the near vicinity are four other similar blocks of multi storey flats all occupied and understood to be in local authority ownership. All mains services are available
7. The building has remained vacant since around July 2009 when all the residents were evacuated as a consequence of an emergency prohibition order served by Calderdale Council. It was served on the grounds that fire regulations were not complied with and a security cordon was placed around the building.

Background

8. By an initial notice served pursuant to section 13 of the act, the Applicant's triggered their application to acquire the freehold and leasehold of the property specified therein pursuant to the provisions of the act. The notice was dated 4th of February 2013.
9. The First Respondent served a counter notice and admitted that the applicants were entitled to exercise a right to collective enfranchisement. However, the notice made it clear that whilst they accepted the proposed purchase price for the freehold, they did not accept the extent of the specified premises as shown on the initial notice and disagreed with the proposed purchase price of £Nil for their intermediate leasehold interest.
10. The Applicants accepted the First Respondents comments in relation to the extent of the specified premises. This was due to a part of the property being disposed and as a consequence having its own title number.
11. By a counter notice served pursuant to section 21 of the act, the Second Respondent admitted that the applicants were entitled to exercise a right to collective enfranchisement in respect of the specified premises. The Second Respondent also accepted that the freehold interest in the premises could be acquired for the upto £9500.
12. The Tribunal was informed, at the hearing that the applicant nominee purchaser had agreed with the Second Respondent the enfranchisement price for its freehold interest in the sum of £9500.

The Issue

13. The main issue, as may be anticipated from the above summary, was that by the time the matter reached the hearing stage, the only issue which needed to be determined was the value of the First Respondents head lease.

Inspection

14. The Tribunal inspected the property of the morning of the hearing in the presence of Guy Avital, Jonathan Tawil and David Gould. Mr Avital and Mr Tawil informed the Tribunal that they owned a number of flats within the block. Mr Gould was a caretaker who looked after the block.
15. The Tribunal inspected the building including the common areas and a sample range of flats throughout the block, across a number of floors. This included inspecting a flat on the top floor. It was clear that the building

had not been occupied for some time. It's bottom floor windows were steel sheeted.

16. During the inspection it was noted the building has been neglected for several years and that there were a substantial number of defects both to the structure, common parts and the individual flats.

17. These included

- a) Faults and defects to the plumbing, electrical and gas systems.
- b) Faults and defects to the central heating and lift installations.
- c) General building works required to broken windows, defective rubbish chutes, missing and broken fixtures and fittings and a number of leaks through the roof.

18. There was also complete failure to adhere to fire regulations. The Tribunal did not undertake a building or structural survey and the above faults and defects should not in any way be considered a comprehensive list, of the all the outstanding repairs, required to put the building back into a habitable condition. It was a list of what the Tribunal noted during its inspection.

The Hearing

19. The hearing took place at the Imperial Crown Hotel in Halifax. The Applicant was represented by counsel, Mr Anthony Radvesky. Mr S.N. Molloy and Mr Tawil attended on behalf of the Applicants. Neither the First Respondent or the Second Respondent attended.

20. The Tribunal had a few days prior to the hearing received a request from Peter Brown and Co solicitors acting for the First Respondents for a further stay of proceedings so that ownership of the company's shares could be investigated. The Tribunal decided that it would deal with this as a preliminary hearing before the substantive matter on the day of the hearing.

21. Mr Radvesky informed the Tribunal on the morning of the hearing that he had received a letter from First Respondents solicitors informing him that they would not be attending the hearing, as they had no instructions regarding the matter. The Tribunal noted that the First Respondent had previously been granted a further period, within which to obtain any additional valuation evidence. However, the First Respondent had not submitted any valuation to the Tribunal.

22. The Tribunal therefore proceeded to deal with the main issue in dispute which was to determine the value of the First Respondents head lease.

Counsel for the Applicant had prepared an outline opening which was handed in to the Tribunal on the morning of the hearing.

The Applicants Submissions

23. At the hearing, the Applicant relied on the evidence of Mr S.N. Molloy FRICS. Mr Molloy gave oral evidence as well as providing a written valuation which had been served on all parties prior to the hearing. Mr Molloy referred to his report. His evidence referred to the condition of the building. His contention was that the building had been neglected for many years and required a comprehensive course of renovation both externally and throughout the common areas to bring the building back into habitable condition.
24. He referred to the fact that the individual flats he inspected were in poor repair and all required comprehensive refurbishment to include new kitchens, bathrooms, heating, decorations, maintenance works and floor finishes. He contended that the value of the long leasehold interest was NIL. This was due to the condition of the building which had a faulty heating system and only one lift was operational. Furthermore, he pointed to the fact that the existence of the prohibition order (which was assumed to be in force) had resulted in the flats being unable to be let.
25. He had been provided with a copy of the head lease which was for the term of 999 years from 1 June 1983, however, some of the pages were missing, in particular the rent and rent review provisions. In support of his contention, he pointed to the fact that the UK economy has seen unprecedented turmoil which has resulted in activity in both the commercial and residential property markets being reduced and with speculative development at a virtual standstill. Furthermore, he did not consider that any marriage value was applicable here due to the significant term (circa 1970 years) remaining in the sub leases.
26. In his view, the existence of the prohibition order as well as the factors referred to above, led him to conclude that any party, after undertaking due diligence, would not be willing to pay any form of premium and therefore he was unable to place any value on the long head leaseholders interest while the current circumstances prevailed.

The First Respondents Submission

27. The First Respondent had proposed a price of £101,000. However, it had failed to provide any evidence to substantiate that figure, despite informing the Tribunal and requesting a postponement and being granted it, in order to obtain one.

The Law

28. The Tribunals jurisdiction stems from Leasehold Reform, Housing and Urban Development Act 1999 and in particular Section 24 of the Act. It deals with what happens when the right is admitted but the terms are in dispute or there is a failure to enter a contract. If, after a further period of two months from the service of the counter-notice there is no complete agreement, either side can apply to the Tribunal to "determine the matters in dispute." Such an application must be made within six months of the counter-notice. Furthermore, Schedule 6 sets out the principles for determining the price payable for the freehold and intermediate leasehold interests

Tribunals Decision

29. Having considered the position put forward by the applicant, and having inspected the property, the Tribunal concluded that it accepted the analysis and interpretation and valuation advanced by the Applicants. It was clear that the cost of dealing with the matters of insurance, maintenance of gardens, dealing with common parts, repairs and other matters identified above would be considerable. The Tribunal did not necessarily disagree with the figure of around £500,000 put forward by Mr Molloy.
30. The Tribunal first considered the valuation of £500 put forward by Mr Molloy. They concluded that the methodology was correct and the yield of 10% used reflected the existing circumstances and condition of the building. They agreed with the sum of £500.
31. The Tribunal then considered the matter of marriage value and redevelopment potential. As all the sub leases had over 950 years remaining, they were well in excess of the 80 years below which marriage value is considered to exist and the Tribunal decided that no additional sum should be added.
32. The Tribunal also noted that Mr Molloy did not attach any value for the loss of development or any claim for injurious affection. He concluded that the existing circumstances with the prohibition notice and outstanding cost of bringing the building back into use would deter prospective purchasers in the open market from paying any further premium. This was accepted by the Tribunal and no addition was made.
33. The Tribunal then decided that the onerous breaches of covenant by the head leaseholder, with an estimated cost in excess of £500,000, were such as to put a negative value on the leaseholders interest and the value should be £NIL.

Valuation

34. The Tribunal was entirely satisfied that the cost of putting right the building works was well in excess of the value of the leaseholders interest. Accordingly, the Tribunal determined that the value of the First Respondent head lease in the property was £NIL