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**FIRST – TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIALPROPERTY)**

Case Reference : **BIR/41UK/OAF/2014/026**

Property : **4 Kestrel Wilnecote Tamworth B77
5NY**

Applicants : **Mr Jason Brookes and Mrs Paula
Brookes**

Representative : **Mr Anthony Brunt FRICS**

Respondent : **Mr Aubrey Fisher**

Representative : **In person**

Type of Application : **An application pursuant to section
21(1)(a) of the Leasehold Reform Act
1967 to determine the price payable
for the purchase of the freehold
estate and to determine the
landlord's costs pursuant to section
21(1)(ba) of the Act**

Tribunal Members : **Judge Roger Healey, Mr David
Satchwell FRICS & Mr Nicholas Wint
FRICS**

**Date and venue of
hearing** : **Priory Court 35 Bull Street Birmingham
on 16 July 2014**

Date of Decision : **10 SEP 2014**

DECISION

Summary of the decision

The Tribunal determines the price payable by the Applicants under section 9(1) of the Leasehold Reform Act 1967 is £3,098.00 (Three thousand and ninety eight pounds). In addition the legal fees payable under section 9(4) of the Act are £450.00 plus VAT (if applicable) and proper disbursements. No valuers fees are payable.

Reasons for the decision

Introduction

1. This is a decision on an application under section 21(1)(a) of the Leasehold Reform Act 1967 ("the Act") relating to the house and premises known as 4 Kestrel Wilnecote Tamworth ("the subject property") for determination of the price payable under section 9(1) of the Act for the freehold estate in the subject property and a further application under section 21(ba) of the Act to determine the amount of the reasonable costs payable to the freeholder under section 9(4).

Background

2. The leasehold estate in the subject property is held by Jason Brookes and Paula Brookes ("the Applicants") and the freehold estate is held by Aubrey Fisher ("the Respondent"). The subject property is more particularly described in a lease dated 12 June 1979 made between Focus Homes Limited of the one part and Gary Davis and Margaret Lesley Davis of the other part ("the Lease") whereby the subject property is demised for a term of 99 years from 29 September 1976 subject to a ground rent payable from the date of completion of the construction of the dwelling until 29 September 2009 of £40.00 per annum and from 29 September 2009 until 29 September 2042 of £60.00 per annum and for the remainder of the term of £80.00 per annum.

3. The Applicants' Notice of Claim under Part 1 of the Act to acquire the freehold in the subject property is dated 10 March 2014 and the Respondent's Notice in reply admitting the claim is dated 2 May 2014.

4. The Applicants subsequently applied to the Tribunal under section 21 of the Act for a determination of the price payable under section 9(1) and for determination of the Respondent's costs under section 9(4).

5. Directions were issued by the Tribunal on 13 May 2014.

6. The parties do not dispute and the Tribunal accepts that the qualifying conditions for enfranchisement under the Act are satisfied.

Inspection

7. The Tribunal, in the presence of Mr Brunt, inspected the subject property on the morning prior to the hearing on 16 July 2014.

8. It comprises a traditional style two storey semi detached house constructed in approximately the mid 1970's of brick and tile construction. The accommodation provides, on the ground floor, a lounge, kitchen and conservatory with an adjoining car port. The upstairs comprises two double bedrooms, one single bedroom and

bathroom. It has the benefit of double glazing and central heating and externally there are gardens to the front and rear.

9. Mrs Brookes (one of the Applicants) explained that it was intended that the car port be demolished and the accommodation be extended. The proposed extension is to comprise an extended kitchen, small utility room and small additional room on the ground floor and on the first floor to comprise a bedroom and a bathroom. The existing small bedroom is proposed to be incorporated into the master bedroom.

10. The Tribunal also conducted an external inspection of the seven comparables submitted by Mr Brunt which are situated on Kestrel, Goldcrest and Nightingale.

11. The Tribunal noted the majority of the comparable properties had been extended and that a number of other houses on the estate appear to be extended.

Hearing

12. Negotiations between the parties for enfranchisement have failed to reach an agreement. The hearing is therefore to determine the price to be paid by the Applicants for the freehold of the subject property and also to determine the Respondent's legal and valuation costs. Both matters are before the Tribunal for determination.

13. Mr Anthony Brunt FRICS appeared for the Applicants and submitted a written statement of case. He assisted the Tribunal by elaborating on his written submissions.

14. In summary the Applicants' case is that the price payable for the freehold is £3,086.

15. The Tribunal notes from the evidence before it that the Respondent is in receipt of a request from the Applicants for a licence to extend the subject property.

16. The Respondent did not appear. In summary the Respondent in his written statement states that 28 Kestrel, a similar property, was enfranchised pursuant to the Act on 3 April 2011 for £2,750. and quotes the BBC as reporting in June 2014 that overall nationally the price of housing has increased by 9.1% in the previous twelve months and by implication considers that the price for the subject property should reflect this overall increase in property values.

The valuation approach

17. Mr Brunt submits the subject property falls to be valued in accordance with section 9(1) of the Act which requires a three stage valuation in accordance with the principles set out in *Clarise Properties Limited (LRA/1/170/210) (Clarise Properties Limited)*. This requires firstly a capitalisation of the ground rent, secondly a capitalisation of the modern ground rent to be deferred to the end of the 50 years extension and thirdly a valuation of the landlord's reversion after the expiry of the 50 years extension on the basis that Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy.

18. The Respondent has not challenged the methodology of the valuation proposed by Mr Brunt. The Tribunal accepts the three stage valuation methodology is the correct approach to adopt.

Valuation issues for determination by the Tribunal

First stage - Capitalisation of the Ground Rent

19. Mr Brunt submits that at the valuation date the lease had 61.56 years outstanding. There is some provision for escalation of the ground rent in the lease but this is reasonably modest rising to a maximum of £80.00 per annum. He submits for a capitalisation rate of 6.5% which produces a figure of £948.51. The Respondent does not comment.

Second stage – Present Value of Modern Ground Rent

(a) Entirety Value

20. Mr Brunt relies on the comparables set out below and submits for an Entirety Value of £160,000 –

<u>Property</u>	<u>Property Type</u>	<u>Tenure</u>	<u>Sale Price</u>	<u>Date of Sale</u>
20 Kestrel	semi-detached	freehold	£125,000	2 August 2011
28 Goldcrest	semi-detached	leasehold	£157,000	13 Sept. 2013
42 Goldcrest	detached	freehold	£194,000	3 May 2013
16 Goldcrest	detached	freehold	£170,000	28 March 2013
34 Nightingale	semi-detached	leasehold	£125,000	15 October 2013
10 Nightingale	semi-detached	freehold	£122,000	11 October 2013
3 Nightingale	semi-detached	leasehold	£125,000	25 March 2013

21. It is unfortunate that Mr Fisher did not submit any comparables for the Tribunal's consideration; neither did he challenge those submitted by Mr Brunt. The Respondent indicates that previously he was prepared to accept an offer of £4,500. plus costs and subsequently £3,250 plus costs in settlement of the claim. However, no methodology is produced in support of these figures which the Tribunal finds unhelpful and limited.

22. In response to a question from the Tribunal Mr Brunt submitted that the Standing House Value and the Entirety Value of the subject property are the same and did not attribute any value to the proposed extension to the subject property. He submitted that the cost of undertaking the works would be in excess of the additional value that would accrue to the subject property. Mr Brunt advised the Tribunal that he did not consider it realistic to expect the site to be developed at a cost which would not be realised on an immediate sale. He therefore submitted that for the purposes of the Act the subject property is "fully developed".

(b) Site apportionment

23. Mr Brunt submitted for a site apportionment of 33%. No challenge is made by the Respondent.

(c) Deferment Rate.

24. Mr Brunt submits for a deferment rate of 5.5% for capitalising the modern ground rent. He submits that the starting point for determining the deferment rate is the generic rate of 4.75% for houses in Prime Central London determined in *Cadogan v Sportelli* (2007 EWCA Civ 1042) (*Sportelli*). He then adds 0.75% as provided for in *Zuckerman v Calthorpe Estates LRA/97/2008*. (*Zuckerman*) to reflect the increased risk of deterioration and reduced growth rate in the West Midlands to give a deferment rate of 5.5%. He submits for a deferment rate of 5.5% being the established practice of the Tribunal. As referred to above the Respondent made no comment on the deferment rate and no reference to the valuation principles involved.

25. In challenging the approach the Tribunal referred Mr Brunt to the recent Upper Tribunal Decision – *Sinclair Gardens Investments (Kensington) Limited* (2014) UKUT79(LC). The Tribunal put it to Mr Brunt that it interprets the decision as saying that in *Zuckerman* the Lands Tribunal was satisfied there is a considerable difference in past growth rates between Prime Central London and the West Midlands which would cause an investor to reduce his bid for a property in the West Midlands. The evidence and submissions from both sides in *Zuckerman* were of a much higher calibre than might be expected in relatively modest cases. The Tribunal was entitled to take into account this difference in growth rates as part of the evidence even though the relative indices were not put in evidence. However the Upper Tribunal was not satisfied that so far as deterioration and obsolescence are concerned this could be accepted simply by reference to *Zuckerman*. Any variation of the deferment rate for deterioration and obsolescence must be based on the particular characteristics of the property under consideration. In this instance, with the benefit of the inspection of the subject property and the Tribunal's knowledge of the property at Kelton Court, Edgbaston, Birmingham which formed the subject of *Zuckerman*, the Tribunal is satisfied that a similar deduction for deterioration and obsolescence is warranted in this case.

26. Mr Brunt submitted that the case is subject to further appeal and that he continues to rely on the *Zuckerman* decision.

Third stage – Valuation of reversion after 50 years

27. Mr Brunt in his initial submissions submitted for a deduction of 10% from the Standing House Value when calculating the value of the ultimate reversion to reflect the risk of an assured tenancy arising under Schedule 10 to the Local Government Act 1989 at the end of the 50 year notional lease extension contemplated by the 1967 Act which would deprive the freeholder of vacant possession. Mr Brunt further submitted that the resultant figure be deferred at 5.5% (as with the second stage deferment) to the end of the 50 year notional lease extension. Again the Respondent did not challenge the methodology.

28. However, the Tribunal referred Mr Brunt to an earlier determination dated 7 July 2014 in the Upper Tribunal relating to an appeal by *Midland Freeholds Limited* regarding 68 Mallaby Close Shirley Solihull West Midlands. The determination

relates to a lease extension under the provisions of the Leasehold Reform and Urban Development Act 1993. The unexpired lease at the valuation date was 60 years. The Upper Tribunal confirmed a deduction of 4% to reflect the risk associated with the landlord not recovering possession at the end of the term.

29. Mr Brunt considered the Upper Tribunal's determination and on reflection accepted a deduction of 5% would be more appropriate which takes account of the current unexpired lease of 61.56 years.

Costs

30. Mr Brunt submits for the Respondent's legal fees to be determined at £450 plus VAT (if applicable) and for the usual conveyancing disbursements. He submits that valuation fees are not payable as any valuation was conducted after the date of the application to the Tribunal. The Respondent submits for "our legal costs which incorporate the valuation costs of £540".

Findings of the Tribunal

Capitalisation of the ground rent

31. The Tribunal accepts the Mr Brunt's valuation of £948.51 and so determines.

Entirety value

32. The Tribunal accepts that the costs incurred by the Applicants in executing the proposed extension may not be recovered on an immediate sale. The Tribunal finds that it is common practice for other properties within the immediate area of Kestrel, Goldfinch and Nightingale to be extended. The Tribunal finds that the development in the area was constructed in approximately the mid 1970s to a low density. In circumstances prevailing today the development in the area easily lends itself to extensions to the original dwellings. The Tribunal finds it likely that any modern development on the site forming the subject property would be at least to the footprint which would result after completion of the Applicants' proposed extension. The Tribunal therefore finds that the proposed extension to the subject property is realistic and not fanciful and on completion will render the site fully developed. The Tribunal determines the notional Entirety Value at **£160,000**.

Site apportionment

33. The Tribunal accepts Mr. Brunt's submission for **33%** and so determines.

Deferment Rate

34. The Tribunal determines the deferment rate at **5.5%** for the reasons given at paragraphs 25 ad 26 above.

Third stage valuation

35. The Tribunal determines the starting point to be the Entirety Value of **£160,000**. The Tribunal accepts Mr. Brunt's submission for a **5%** deduction and so determines. The Tribunal determines the deferment rate at **5.5%** as with the second stage deferment.

Costs

36. The Tribunal finds Mr Brunt's proposals for legal fees reasonable and determines landlord's legal fees at **£450 plus VAT** if applicable plus the usual conveyancing disbursements.

37. The Tribunal **does not award any valuation fees** as it is not satisfied on a balance of probabilities that any work as defined by section 9(4) of the Act was conducted before the application as made to the Tribunal.

DECISION

The Tribunal's Valuation

38. Applying its determinations as above the Tribunal's calculation of the amount payable to the Respondent is as follows:

Term

Ground rent	60	
YP28.5 years @ 6.5%	<u>12.827</u>	770
Ground rent	80	
YP 61.5 years def 28.5 @ 6.5%	<u>2.2375</u>	179
Reversion to new 50 year lease		
Entirety vaule	160,000	
Site apportionment @ 33%	52,800	
S15 Rent @ 5.5%	2,904	
YP 50 years def 61.5 @ 5.5%	<u>0.6293</u>	1,827
Third stage end reversion		
Entirety value less 5%	152,000	
PV £1 111.5 years @ 5.5%	<u>0.00212</u>	322
Price		<u><u>3,098</u></u>

39. In reaching their determination the Tribunal had regard to the evidence and submissions of the parties, the relevant law and their own knowledge and experience as an expert Tribunal but not any special or secret knowledge.

Appeal

41. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. The application must be received by the Tribunal no later than 28 days after the date the Tribunal sends this decision to the party making the application. Further information is contained within

Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules
2013 (S.I. 2013 No. 1169).

Roger Healey
Tribunal Judge