



26 AUG 2014

**First-tier Tribunal  
Property Chamber  
(Residential Property)**

**Case Reference** : CAM/00KF/OCE/2014/0007

**Property** : 117 St. Helen's Road,  
Westcliff-on-Sea,  
Essex SS0 7LF

**Applicant** : Sarah Louise Meadows and Emma  
Harriet Vernon

**Represented by** : Lorraine Lancaster, solicitor

**Respondent** : Wallwood Investments Ltd.

**Date of Application** : 2<sup>nd</sup> May 2014

**Type of Application** : To determine the terms of acquisition  
and costs of the enfranchisement of the  
property

**Tribunal** : Bruce Edgington (lawyer chair)  
Stephen Moll FRICS  
Roland Thomas MRICS

**Date and place  
of hearing** : 14<sup>th</sup> August 2014 at The Court House,  
80 Victoria Avenue, Southend-on-Sea,  
Essex SS2 6EU

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## DECISION

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1. The total price to be paid for the freehold is £9,157.00 split as to £4,688.00 for the first floor flat known as 117 St. Helen's Road and £4,469.00 for the ground floor flat known as 117A St. Helen's Road.
2. The contents of form TR1 at pages 44-46 in the hearing bundle are approved by the Tribunal subject only to the insertion of "full title guarantee" at clause 9 and the price as stated above.
3. The Respondent's legal and valuation costs are determined at 'nil' each.

## Reasons

### Introduction

4. This application is for the Tribunal to determine (a) the terms (including the price) of the collective enfranchisement of the freehold of the property known as 117 St. Helen's Road, Westcliff-on-Sea, Essex SSo 7LF, (b) the amount of legal costs payable by the Applicants to the Respondent pursuant to section 33 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act") and (c) the valuation fees payable pursuant to the same section of the 1993 Act.
5. This followed the service of an Initial Notice by the Applicants dated 17<sup>th</sup> September 2013 and a Counter-Notice by the Respondent dated 12<sup>th</sup> November 2013.
6. On the 12<sup>th</sup> May 2014, the Tribunal issued a directions order timetabling the case to a final hearing. This ordered the Respondent to file and serve a statement of any costs and valuation fee claimed, a valuer's report and any other document or statement relied upon. It also made the usual order for the expert witnesses to discuss any differences and prepare a joint statement for the Tribunal. Finally, it ordered that a bundle of documents for the hearing must be agreed by the Respondent to be filed for the Tribunal hearing.
7. The Respondent failed to comply with any of these directions. The Applicants complied so far as they were able to do so and filed a bundle with copies of all relevant documents including their valuation report from Mr. David Plaskow FRICS, a partner in a well known local firm of chartered surveyors.

### The Inspection

8. The members of the Tribunal inspected the property in the presence of Mr. Plaskow and two people introduced as the Applicants. The location is in a central position in Westcliff within walking distance of Westcliff and Southend town centres and a railway station with commuter trains into central London.
9. The property was brick built in the early part of the 20<sup>th</sup> century. It has a concrete interlocking tiled pitched roof. It appears to have been an end terraced house but there is a commercial property now semi-detached to it where the end of the terrace would have been. This commercial property is quite large and is a garage business called PR Wood Motor Bodies. There is also another garage business to the rear of the back garden.
10. There is no off street parking and on street parking appears to be at a premium. The ground floor flat consists of an entrance hall off which are 2 bedrooms, a WC, a lounge, a kitchen with a bathroom off. It has the benefit of a modest rear garden and a right of way from further up St. Helen's Road into the rear garden.

11. The first floor flat consists of 2 bedrooms, a kitchen, a bathroom/WC and a large kitchen/diner. Obviously the property is described in more detail in Mr. Plaskow's helpful report.

### **The Law**

12. The price to be paid on collective enfranchisement is calculated in accordance with the provisions of Schedule 6 of the 1993 Act. The price includes (a) the value of the freeholder's interest if sold on the open market calculated in accordance with the assumptions in Paragraph 3 of the Schedule (b) the freeholder's share of the marriage value and (c) any compensation payable to the freeholder under Paragraph 5 of the Schedule.
13. As has been said the costs and valuation fee are assessed in accordance with section 33 of the 1993 Act.

### **The Hearing**

14. Those attending the hearing were the same as those at the inspection plus the Applicant's solicitor advocate, Ms. Lorraine Lancaster. She had produced a useful skeleton argument which recorded that the Respondent's solicitor had, unbeknown to the Tribunal, written to Ms. Lancaster on the 6<sup>th</sup> January 2014 changing their requested figures for the enfranchisement from a total of £8,500.00 in the Counter-Notice to a total of £16,750.00. However, she also confirmed that no valuation evidence had ever been produced to support either figure.
15. Immediately before the hearing, the Tribunal's case worker received a telephone call from a colleague at the Cambridge regional office of the Tribunal to say that a barrister had arrived at Cambridge for the hearing. That barrister had now left and had not asked for the hearing to be adjourned.
16. The hearing proceeded and after it was over and the Tribunal had made its determination, a letter was received at 12.34 pm in the Tribunal office from the solicitors, Stanley de Leon, quoting the property details and saying:-

*"We write in relation to the above.*

*Our Counsel has attended the Cambridge Property Chamber, Eastern Residential Property, First Tier Tribunal. Whilst a notice of the Hearing was previously sent our counsel understood that the venue had changed given your letter to us yesterday.*

*Given the above and in the circumstances we would ask that this matter be adjourned and relisted for the first available open date. We regret any inconvenience caused but the latest correspondence appeared to indicate that the venue had in fact changed"*

17. The Tribunal chair carried out an investigation and found that the Tribunal had written to Stanley de Leon on the 2<sup>nd</sup> June 2014 informing them of the hearing date. That letter enclosed a 'reply form' which the solicitors were asked to complete setting out who would be attending the hearing. The venue for the hearing was not then known. On the 3<sup>rd</sup> July 2014 a further letter was written confirming the hearing date and informing them that the hearing was to be at the Court House in Southend-on-Sea after the Tribunal members had inspected the property. The letter said that if the Tribunal was satisfied that adequate notice of the hearing had been given to the parties, then the hearing may proceed.
18. As the Applicants had returned their reply form on the 3<sup>rd</sup> June 2014 informing the Tribunal that they and their solicitor would be attending the hearing, the case worker had taken the liberty of writing again to Stanley de Leon just before the hearing enclosing a further reply form asking them to complete it with the identity of who was attending the hearing. That was the letter referred to by the solicitors and it made no mention of the hearing venue having been changed. In the Tribunal chair's view, no reasonable person would have inferred that to be the case. Indeed, it would be illogical given that the Tribunal would have to inspect the subject property in Westcliff-on-Sea which is about 70 miles away from the Tribunal office.
19. These facts were reported to the other Tribunal members and it was agreed that the decision made would stand because (a) adequate notice of the hearing and the venue had been given and received by Stanley de Leon (b) there was no letter from which they could infer that the hearing venue had changed (c) there had been a complete failure to comply with any of the Tribunal's directions by the Respondent and its representatives, (d) there was no statement of costs or valuation evidence from the Respondent, (e) there was nothing in the letter from Stanley de Leon to say exactly what they or their client were hoping to achieve at the hearing and (f) given the amounts involved it would not be proportionate to adjourn the hearing.
20. Before the hearing, the Tribunal discussed the valuation provided by Mr. Plaskow. It was concluded that save for one matter, namely the deferment rate, the valuation in the report was within the range which the valuer members would have accepted. The problem with the deferment rate was that it was put at 5.25% i.e. .25% above the rate dictated in the **Sportelli** case. It had been determined in that case that a Tribunal should only determine another rate if it was persuaded by 'compelling evidence', of which there was none in the report.
21. The hearing therefore commenced and the Tribunal chair indicated to both Ms. Lancaster and Mr. Plaskow what the Tribunal had in mind. Mr. Plaskow helpfully said that in fact there was no such compelling evidence, that his valuation report had been prepared in August 2013 before the Supreme Court decision in **Daejan** and if the report had been prepared now, it would have given a deferment rate of 5% in accordance with **Sportelli**. He therefore accepted the Tribunal's view. He was happy for the Tribunal to amend the valuation accordingly.

**Conclusions**

22. As to the terms of the form TR1, Ms. Lancaster accepted that there should be a full title guarantee which just left the price to be inserted. As to that, the Tribunal's calculations are:-

		£
<u>117 St. Helens Road</u>	capitalisation of ground rent	1,064.00
	Deferment (0.0275)	2,612.00
	1/2 marriage value	<u>1,012.00</u>
		<u>4,688.00</u>
<u>117A St. Helen's Road</u>	capitalisation of ground rent	1,064.00
	Deferment (0.0275)	2,475.00
	1/2 marriage value	<u>930.00</u>
		<u>4,469.00</u>
<u>Total price</u>		£9,157.00

23. As the Tribunal had no evidence before it as to the level of the Respondent's costs and valuation fee; as they had no evidence that a professional valuation had even been undertaken by the Respondent and as the Tribunal's order for the Respondent to file and serve such information had been ignored, the Tribunal determined that such costs and fee should be assessed at 'nil'.

.....  
**Bruce Edgington**  
**Regional Judge**  
**18<sup>th</sup> August 2014**