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

Case Reference : **CHI/00HC/OAF/2014/0010.**

Property : **45 Lansdown Gardens, Worle,
Weston-super-Mare, Somerset, BS22
7FE.**

Applicant : **Mrs. Maureen Brown**

Representative : **Berry Redmond Gordon and Penney
LLP**

Respondent : **The successors in title of Catherine
Wallop.**

Representative : **None**

Type of Application : **Price payable on enfranchisement
(missing landlord) – S27(5)
Leasehold Reform Act 1967.**

Tribunal Members : **Judge J G Orme (Chairman)
Mr. M J Ayres FRICS (Member)**

**Date and Venue of
Hearing** : **8 October 2014.
Determination on papers.**

Date of Decision : **14 October 2014.**

DECISION

For the reasons set out below, the Tribunal determines that the appropriate sum payable by the Applicant, Mrs Maureen Brown, pursuant to section 27(5) of the Leasehold Reform Act 1967 for the freehold reversion of the property at 45 Lansdown Gardens, Worle, Weston-super-Mare, Somerset, BS22 7FE is the sum of £3,379.00.

REASONS

Background

1. Mrs. Maureen Brown ("the Applicant") is the leasehold owner of the Property known as 45 Lansdown Gardens, Worle, Weston-super-Mare, BS22 7FE ("the Property"). Her title is registered at HM Land Registry with Good Leasehold title under number AV154674.
2. On 2 July 2014, an application was made to the County Court sitting at Weston-super-Mare pursuant to section 27(1) of the Leasehold Reform Act 1967 (as amended) ("the Act"). On 22 July 2014, District Judge Cope made an order in claim number A00WM136 providing for the Property to be vested in the Applicant and including the following provision:
AND THIS COURT determines and declares pursuant to the provisions of Section 27(5) of the Leasehold Reform Act 1967 that the estimated amount of pecuniary rent payable for the said property by the Applicant as Tenant thereof under the Lease out of which the Applicants current interest arises as provided by Section 3 of the Landlord and Tenant Act 1954 (as amended) and which remains unpaid and will remain unpaid up to the date of this Order is the sum to be determined by the Leasehold Valuation Tribunal under Section 9(i) of the Leasehold Reform Act 1967 under the "original valuation" basis.
3. Since 1 July 2013 the functions of the Leasehold Valuation Tribunal have been transferred to the First-tier Tribunal (Property Chamber).
4. The Applicant has filed with the Tribunal a report and valuation prepared by Mr. M T Ripley FRICS of Stephens & Co Chartered Surveyors dated 26 August 2014.
5. The Tribunal inspected the property on 8 October 2014 in the presence of the Applicant. It is an end of terrace bungalow built in about 1988 for occupation by people aged 60 years and over. It is more particularly described on page 1 of Mr. Ripley's report under the heading "Description".
6. The Applicant did not seek a hearing before the Tribunal and the Tribunal made its determination on the papers presented to it.

The Lease

7. The register of title records that the Applicant holds the Property by virtue of a lease dated 23 February 1988. The term is 70 years from 1 January 1987. The rent payable is a peppercorn.
8. The Landlord is Lansdown Gardens (Worle) Residents Company Limited whose title is registered with Good Leasehold title under title number AV246425. The register of that title records that the land is held for the residue of a term of 500 years created by a lease dated 1 September 1557 made between (1) Catherine Wallop and (2) John and Isobel Thomas subject to a yearly payment of a sum of £1 6s 9d. In a witness statement dated 23 June 2014, the Applicant says that she is unable to ascertain or find the successors in title of either the original landlord or the original tenants.
9. In her witness statement, the Applicant states that she purchased the Property on 6 June 2013 and that she has paid no rent for the Property since that time.

The Law

10. Section 27(5) of the Act provides:

The appropriate sum which, in accordance with subsection (3) above, is to be paid into court is the aggregate of –

 - a. *Such amount as may be determined by (or on appeal from) the appropriate tribunal to be the price payable in accordance with section 9 above; and*
 - b. *The amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.*
11. Section 9(1) of the Act provides:

Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller (with the tenant and members of his family not buying or seeking to buy), might be expected to realise on the following assumptions:-

 - a. *On the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold; and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;*
 - b. *On the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and*

- c. *On the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.*

The reference in this subsection to members of the tenant's family shall be construed in accordance with section 7(7) of this Act.

12. The Tribunal has been directed to and has taken into account the following decisions in which these provisions have been considered in recent years: *Cadogan v Sportelli* [2007] EWCA Civ 1042 and [2008] UKHL 71 and *Clarise Properties Limited* [2012] UKUT 4.

Conclusions.

13. The Tribunal has considered the valuation exercise carried out by Mr. Ripley in his report and has reached the following conclusions.
14. The Tribunal accepts Mr. Ripley's submission that as no rent has been paid by the Applicants, there is no value to be attached to the residue of the current term.
15. Mr. Ripley has adopted the "standing house" method of valuation. The Tribunal accepts that this is the correct method to be adopted as there is unlikely to be evidence of sales of vacant sites as this locality has been developed for some years.
16. Mr. Ripley starts by valuing the Property on an open market basis by reference to comparable properties which have been sold recently. By virtue of section 27(2)(a) of the Act, the valuation date is the date of the application to the court, namely 2 July 2014. Mr. Ripley's valuation was dated 26 August 2014. The Tribunal accepts the evidence of Mr. Ripley with regard to the value of the Property and finds that the value of the Property as at the valuation date was £122,500. The Tribunal does not consider that there has been a material change in the value of the Property between the date of the application and the date of Mr. Ripley's report.
17. The Tribunal accepts Mr. Ripley's submission that a rate of 7% of the site value should be used when calculating the modern ground rent for the 50 year lease extension from 1 January 2057.
18. Mr. Ripley seeks to apply a deferment rate of 7%. The case of *Cadogan v Sportelli* is authority for a generic deferment rate for houses of 4.75%. However, it was made clear that particular features of a property may justify a departure from that rate. Mr. Ripley sets out such features on page 3 of his report at paragraphs numbered 1 to 5. Whilst the Tribunal accepts that those features do justify a departure from the rate of 4.75%, it does not accept the figure of 7%. It considers that a figure of 6% is appropriate and will apply that figure.

19. At paragraph 6 on page 3 of his report, Mr. Ripley seeks to justify a 2 stage valuation process rather than a 3 stage process. At paragraph 36 of the decision in Clarise Properties, the Upper Tribunal said "*We consider that the time has now come to move away from the two-stage approach as the standard practice in section 9(1) valuations and to apply instead the three-stage approach.*" The Tribunal does not accept Mr. Ripley's submissions in favour of adopting a two-stage approach. The factors which he sets out are not sufficient to persuade the Tribunal to depart from the standard practice. The Tribunal will adopt a three-stage approach. Given the valuation date and the date of expiry of the current term, the valuation of the 1st reversion will be deferred for 42.5 years and the valuation of the 2nd reversion will be deferred for 92.5 years.

20. Mr. Ripley has submitted that the site value is fairly estimated as 25% of the entirety value. In his report, Mr. Ripley draws attention to the fact that the Land Registry plan showing the extent of the Property does not include the front garden within the title. That could affect the value of the site both from the point of limiting the extent of the site and affecting access to the site. The Tribunal accepts that submission and agrees the figure of 25%.

21. In calculating the value of the second reversion at the end of the extended term, the Tribunal has reduced the entirety value of the Property by 3.85% to reflect the assumption that Schedule 10 of the Local Government and Housing Act 1989 applies to the tenancy. This means that the tenancy automatically continues until a notice is served under Schedule 10, paragraph 4, when the tenant is entitled to an assured tenancy under the Housing Act 1988 at a market rent. This means that there is no certainty of obtaining vacant possession after the 50 year lease extension. This would depress the value of the freehold reversion further.

22. Accordingly, the Tribunal's valuation is:-

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|---|-----------|
| 1. Value of current term, no rent payable, therefore | £0.00 |
| 2. Value of first reversion: | |
| Entirety value £122,500 | |
| Site value at 25% £30,625 | |
| Section 15 modern ground rent at 7% | |
| £2,143.75 | |
| Years purchase 50 years at 6% = 15.762 | |
| = £33,790 | |
| Present value of £1 in 42.5 years deferred @6% = 0.0841 = | £2,842.00 |
| 3. Value of second reversion: | |
| Entirety value £122,500 | |
| Deduct 3.85%, £117,784 | |
| Present value of £1 in 92.5 years | |

deferred @ 6% = 0.00456 = £537.00

Total sum payable £3,379.00

23. The Tribunal accepts Mr. Ripley's submission that the unpaid ground rent can be regarded as "infinitesimal".
24. Mr. Ripley has apportioned the total sum payable between the under-lease and the head-lease. The Tribunal is not required to carry out such an apportionment by section 27(5).

Right of Appeal

25. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
26. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.
27. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.



J G Orme
Judge of the First-tier Tribunal
Dated 14 October 2014.