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

Case Reference: CHI/18UE/OAF/2014/0006

Property: Craigmere, Woodlands, Combe Martin,
Ilfracombe, Devon EX34 0AS

Applicant: Michael John Shakespeare and Lynda Ann
Shakespeare

Representative: Lawrence and Wightman, Chartered
Surveyors

Respondent: Not Known

Type of Application: Section 21 Leasehold Reform Act 1967
(Valuation: Missing Landlord)

Tribunal Members: Judge A Cresswell (Chairman)
Mr W H Gater FRICS ACIArb

Date and venue of Hearing: 14 May 2014 by Paper Determination

Date of Decision: 26 May 2014

DECISION

DETERMINATION

The price payable under Section 9 of the Leasehold Reform Act 1967 (“the 1967 Act”) for the freehold interest in the property is £1.

The Application

1. The Applicants are tenants of the property. The Respondent is the landlord and freeholder.
2. At Barnstaple County Court, Deputy District Judge Stockdale ordered on 6 March 2014 that the property was to be vested in the claimants pursuant to Section 27(1) Leasehold Reform Act 1967 (“The 1967 Act”). “Pursuant to Section 27(5) Leasehold Reform Act 1967, the appropriate sum to be paid into Court shall be determined in accordance with that subsection upon the basis that if any rent was reserved by the Lease it was of a peppercorn or other nominal amount.”
3. Subsequently the applicants made an application to this Tribunal on 2 April 2014 via their representative, Mr K Chew FRICS, under Section 21(1) (cza) of the 1967 Act for the determination of the amount of the appropriate sum to be paid into Court under Section 27(5) of the 1967 Act.

Description of Property

4. The Tribunal was unable to inspect the inside of the property as it was impractical to do so; the Tribunal, accordingly, adopts the description of the interior given by Keith Chew RICS in his valuation statement. The property is a traditional style early Edwardian semi-detached house comprising a 3-storey main building together with a 2-storey wing building at the rear. The property is of traditional construction with rendered elevations and pitched slate roofs. The property comprises a hallway, lounge, kitchen/diner, cloakroom/WC on the ground floor; a landing, 2 double bedrooms, bathroom, separate WC on the first floor; a landing, double bedroom, 2 single bedrooms and shower room on the second floor. Outside there are gardens to the front and rear.

Directions and Hearing

5. Directions were issued on 9 April 2014. These directions provided for the application to be determined on the papers without an oral hearing.
6. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration including a Valuer’s report.
7. This determination is made in the light of the documentation submitted in response to those directions, which included the valuation statement made by Mr Chew and dated 23 April 2014.

The Law

Leasehold Reform Act 1967

21 Jurisdiction of [. . . tribunals]

- (1) The following matters shall, in default of agreement, be determined by [the appropriate tribunal] namely,—

- (a) the price payable for a house and premises under section 9 above;
- (cza) the amount of the appropriate sum to be paid into court under section 27(5);

9 Purchase price and costs of enfranchisement, and tenant's right to withdraw

(1) 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.

27 Enfranchisement where landlord cannot be found

(b) [the court] may give such directions as [the court] thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Act or of regulations made under this Act.

(3) Where a house and premises are to be vested in a person in pursuance of an application under this section, then on his paying into [court] the appropriate sum there shall be executed by such person as the [court] may designate a conveyance in a form approved by the [court] and containing such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 10 above; and that conveyance shall be effective to vest in the person to whom the conveyance is made the property expressed to be conveyed, subject as and in the manner in which it is expressed to be conveyed.

(5) 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.

The Lease

8. The property is held under a long lease dated 17 July 1795 for a term of 1190 years at a ground rent of 1 peppercorn throughout the term. The leasehold interest was acquired by the applicants by transfer on 27 January 2012. An indenture of 10 March 1910 contains the earliest evidence of the terms of the original lease; DDJ Stockdale determined that the appropriate sum to be paid into Court shall be determined in accordance with that subsection upon the basis that if any rent was reserved by the Lease it was of a peppercorn or other nominal amount.

The Valuation

9. The Tribunal reached its valuation by applying the requirements of the 1967 Act to the property and the findings of Deputy District Judge Stockdale.
10. The applicant's expert Mr Chew provided a valuation report dated 23rd April 2014 which the Tribunal noted.
11. The County Court decision appears to accept the applicant's assertion that the property falls to be valued under Section 9(1) of the 1967 Act by virtue of the recorded Rateable Value. There is a discrepancy between the statement on rateable value in the particulars of claim and the expert's report as the actual rateable values are not stated. The Tribunal is guided by the County Court in this.

A valuation of the freehold interest under Section 9(1) now involves three stages

- i. The term: The capitalisation of the Ground rent for the term
- ii. The first reversion: The value of the right to receive a modern ground rent (S.15) for 50 years after the term has expired.
- iii. The second reversion: The value of the house with vacant possession at the end of the term and first reversion.

The property is held under a lease with just over 971 years to run at a peppercorn rent.

The valuation of the term involves capitalising the right to receive a token amount for 971 years.

The valuation of the reversions is influenced by the length of the term which must expire before they take effect. The first is after 971 years and the second after 1021 years. This deferral of the interest in the property is represented in the valuation by discounting the current value at a certain percentage- the deferral rate. Discounting the current value over such a long period results in very small or nominal values for the reversions as will be seen below.

Discount Rate

The Tribunal adopts Mr Chew's figure of 4.75% but notes that such figure has been adopted for convenience rather than on an evidential basis.

Entirety Value

Entirety Value assumes *'the value of the property in good condition and fully developing the potential of its site provided always that the potential identified is realistic and not fanciful'* (*Marlodge Monnow Ltd v Midland RAP [2002] LRA 15 2002 (LT)* and *Cadogan Estates Ltd v Hows Hock LRA 1 and 3/1988, [1989] 48EG 167, 2EGLR 216 (LT)*).

The only evidence of capital value before the Tribunal is provided by Mr Chew at a valuation of £285,000. In the circumstances, given such a long reversion period, the Tribunal adopts this figure.

Modern Ground Rent under s.15.

Mr Chew has not provided a calculation of the first reversion to a modern ground rent. For convenience and again not as a matter of evidence, the Tribunal adopts the rate of 4.75% to decapitalise the entirety value to a ground rent. From the Tribunal's knowledge and experience it adopts 30% as the proportionate value of the site for illustrative purposes.

Special note on Valuation.

The extremely long reversions create very small discount factors – with 18 zeroes after the decimal point- and therefore negligible reversionary values. With an absent freeholder it has not been possible to test evidence at a hearing. With this in mind the Tribunal has considered a range of calculations to test the outcome. Given the length of the reversions it is satisfied that, had the case been contested, even the widest variation in the valuation evidence would have resulted in the same result.

The valuation schedule below is illustrative and should not be taken as a guide to other cases.

Conclusion

12. Using the above methodology, and noting that the transfer of the freehold will require at least nominal consideration, the Tribunal considers the correct premium to be £1.
13. The Tribunal's illustrative valuation schedule is annexed below this Determination.

A Cresswell (Judge)

APPEAL

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.

Valuation Schedule

Stage 1	Term		
	Current Ground Rent		£0
Stage 2	1st Reversion		
	Entirety Value	£285,000.00	
	Site apportionment 30.00%	£85,500.00	
	Section 15 Modern Ground Rent @ 4.75%	£4,061	
	YP 50 years @ 4.75%.	<u>18,984</u>	
		£77,094	
	PV £1 in 971 years @ 4.75%	<u>0.00</u>	0
Stage 3	2nd Reversion		
	Standing House Value	285,000	
	PV of £1 in 1071 years at 4.75%	<u>0.0</u>	0.00
		say	£1

