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

Case Reference : **DD/LON/OOBJ/OAO/2014/0001**

Property : **629 Garratt Lane, London, SW18 4SX**

Applicant : **629 Garratt Lane Limited (Nominee purchaser)**

Representative : **Ms Holmes of counsel instructed by TWM Solicitors with expert valuation evidence from Mr M. White BSc, MRICS chartered surveyor.**

Respondent : **Mr G. Hall (landlord)**

Representatives : **None**

Type of Application : **An application under section 31 of the Landlord and Tenant Act 1987 to determine the consideration payable for the acquisition of the landlord's interest in the subject premises.**

Tribunal Members : **Professor James Driscoll, solicitor (Tribunal Judge) and Mr Duncan Jagger MRICS (Tribunal Member)**

Date and venue of Hearing : **17 July 2014**

Date of Decision : **8 September 2014**

DECISION

Summary of the decision

1. The consideration payable for the acquisition of the freehold of the subject property is the sum £21,302.74. This represents a valuation of the freehold in the sum of £23,864 from which the sum of £2561.27 has been deducted in respect of certain costs in repairing and insuring the premises.

Background

2. This application concerns the acquisition of the freehold to the subject premises under the provisions in Part III of the Landlord and Tenant Act 1987. The applicant is a company formed by the three residential leaseholders of flats in the building and it is the appointed nominee purchaser. The respondent is the current owner of the freehold and the landlord under the leases. Those advising the applicants have been unable to trace the landlord recently though they believe that at one stage he was living in Saudia Arabia. They were told that the landlord has communicated with the Court that he does not oppose the application for an acquisition order.
3. On the 5 December 2013 an order was made by the Wandsworth County Court dispensing with the requirement for serving the landlord with a copy of the claim, ordering that the nominee purchaser acquires the freehold, and making certain orders in relation to costs (under claim number 3WT00379).
4. Following this an application was made to this tribunal on 10 April 2014 for a determination of the terms of the acquisition. Directions were given by the tribunal on 15 April 2014.

The hearing

5. At the hearing, which took place on 17 July 2014, the applicant was represented by Ms Holmes of counsel who was instructed by TWM Solicitors LLP. After addressing us on the background to the application she called Mr Stewart White to give evidence. He spoke to his valuation report which is dated 11 July 2014.
6. He told us that the premises consists of a building containing the three flats held on long residential leases and a basement/ground floor retail unit and a garage to the rear of the building. He carried out an inspection of the premises on 18 June 2014. Mr White summarises the structure of the building in the following way: there is a retail commercial unit which occupies part of the ground floor and extending into the basement of the building. Flat A occupies part of the ground and first floors of the building; Flat B is on the first floor whilst Flat C occupies the second floor. At the rear of the property there is a garage. Both the retail unit and the garage are held on long leases. At the valuation date the residential leases had unexpired terms of 72.94 years. The garage is held on a long lease also has an unexpired term of 72.94 years and it yields a ground rent. The retail or commercial unit is held on a very long lease at a nominal ground rent.
7. He told us that the 1987 Act does not appear to define the date on which the freehold should be valued. However, following a decision of this tribunal (00/LON/OCE/2008/0334) he has taken the valuation date as the date on which the applicant applied to the Court for an order under the 1987 Act.

8. Mr White told us that to arrive at the valuation he has considered sales of eight properties in the area local to the subject premises. Six of these are sales of flats in Garratt Road, one in Trinity Road and the other in Wandle Road.
9. As to his valuation methodology he has considered the position of a prospective purchaser of the freehold in the open market who would acquire the ground rent income from the flats and the garage, and the reversionary interests in the flats and the garage and the remainder of the property.
10. On the basis of his professional knowledge and experience he has adopted a capitalisation rate of 7% for the ground rent and a deferment rate of 5% for the reversionary interests. This produces a valuation in the sum of £23,864.
11. Ms Holmes then addressed us the question of what sums are to be deducted from this price. In her submission, under section 31 of the Act this tribunal has a broad discretion in determining the terms of acquisition. She added that this allows the tribunal to deduct from the price to be paid certain expenses they incurred because of the landlord's failure to discharge his duties under the residential leases. These consist of the costs of having to carry out certain structural works to the building, to reinstatement works and the costs of the insurance for the years 2010 to 2013. In total the residential leaseholders paid the sum of £3,611.26. However, Ms Holmes accepted that all of the receipts were not available so in these circumstances she submits that the sum of £2561.27 should be deducted from the sums to be paid for the freehold of the building. This is based on 25% of the actual costs. In Ms Holme's submission the landlord should bear 25% of the expenditure with each leaseholder also bearing that proportion.

Our decision and the reasons for it

12. Our task (as set out in section 31 of the 1987 Act) is to determine the terms on which the landlord's interest specified in the Court Order should be acquired. We are to determine the price based on the amount the freehold would fetch if sold on the open market by a willing seller 'on the appropriate terms' on the assumption that none of the leaseholders is buying or seeking to buy the interest (section 31(2)).
13. In order to determine this price we have the expert evidence of Mr White and our own professional knowledge and experience. As the landlord has not co-operated in the application we have just the one valuation report.
14. We agree with Mr White's approach. He has correctly in our opinion gathered market evidence of sales evidence for flats in the same street as the subject property as well as two sales in adjoining streets.
15. He is also correct, in our view, to propose a deferment rate of 5% applying the rate propounded by the Upper Tribunal in the *Sportelli v Cadogan* litigation, an approach endorsed by the Court of Appeal. We also accept the capitalisation rate he proposes.
16. In light of this we determine that the price to be paid is the sum of £23,864.
17. We accept also the submission made by Ms Holmes that the applicant is entitled to make a deduction of a sum representing what should have been the landlord's contribution to matters such as the cost of insuring the building. Ms Holmes referred us to a schedule showing the costs incurred by the leaseholders during the years 2010, 2011, 2012 and 2013.

18. Of course the leaseholder's would have been responsible for contributing to these costs if the expenditure had been incurred by the landlord in discharge of his responsibilities under the residential leases. However, the landlord would have to pay a proportion of such charges as part of the premises were let commercially. On balance we accept the proposition that based on the floor areas (as described in Mr White's report) that the landlord should bear 25% of these costs.
19. Ms Holmes very fairly accepted that some of these costs cannot be allowed as no receipts are available. We accept the calculation that 25% of the net costs is the appropriate figure for the deduction. This is the sum of £2,561.27 (as opposed to the sum of £3,611.26 which was originally claimed). Deducting this from the valuation figure of £23,864 produces a net price of £21,302.74.
20. We are unclear as to whether the applicant has obtained an order for costs which have been assessed by the Court.
21. Subject to this, we assume that with this determination having been made that the applicant will now apply for an order from the Wandsworth County Court that on payment into court of the sum we have determined, less the assessed court costs, an officer of the Court will execute a transfer to the nominee purchaser.