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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CAM/OOMC/OAF/2015/0003**
Property	:	**26 Hillbrow, Whitley Wood Road, Reading, Berkshire RG2 8JD**
Applicant	:	**Mr John Robert Brown and Mrs Margaret Brown**
Representative	:	**Mr Pierre Ali-Noor**
Respondent	:	**Terrace Investments Limited**
Representative	:	**Mr D Stanton of Kiteleys Solicitors Ltd**
Type of Application	:	**To determine the terms of acquisition and the costs of enfranchisement (Leasehold Reform Act 1967)**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs S Redmond BSc (Econ) MRICS** **Mr D Barnden MRICS**
Date and venue of Hearing	:	**27th November 2015, at the Magistrates Court at Reading**
Date of Decision	:	**11th December 2015**

DECISION

DECISION

The tribunal determines that the terms of the Transfer are as set out in the findings section below.
The Tribunal records the agreement as to the costs to be paid by the Applicants to the Respondent under the provisions of s9(4) of the Act at £1,010.88, together with valuer's fees £375 plus VAT making a total amount payable in respect of costs of £1,460.88.
The Tribunal declines to make an order under rule 13 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (the Rules) in favour of the Applicants for the reasons set out below.

REASONS

BACKGROUND

1. By an application dated 7th September 2015 the Applicants, Mr and Mrs Brown, the lessees of 26 Hillbrow, Whitley Wood Road, Reading, Berkshire RG2 8JD (the Property) sought a determination as to the terms of acquisition of the Property, including the price payable for the freehold, under the provisions of section 9(1) of the Leasehold Reform Act 1967("the Act").

2. The hearing took place on 27th November 2015 at the Reading Magistrates Court, when Mr and Mrs Brown were represented by their son-in-law Mr Pierre Ali-Noor, who was accompanied by his wife. The Respondent, Terrace investments Limited, was represented by Mr Stanton of Kiteleys Solicitors Limited.

3. We had before us a bundle of papers which included the application, tribunal directions, correspondence between the parties, a copy of the lease and the register of title. In addition we had papers relating to the dispute over the costs payable under the provisions of s9(4) of the Act. Also included in the bundle was the proposed draft transfer, the terms of which remained in dispute and valuations prepared by Mr Peter May for the Respondent and Langtons for the Applicants. We are pleased to record that the price to paid for the freehold had been agreed at £9,720, the amount argued for by Mr May in his report.

4. The matters we had to determine were
   - The terms of the transfer
   - The costs payable by the Applicants to the Respondent under s9(4) of the Act
   - A claim for costs made by the Applicants against the Respondent under the Rules.

5. Just prior to the hearing we were supplied with skeleton arguments for both parties, although whether that is something of a misnomer given that they ran to 9 and 12 pages respectively, is debatable. We noted all that was said. These documents are common to both parties and we do

not consider it necessary to recount in any detail the matters raised therein.

6. For the Applicants Mr Ali-Noor confirmed the agreement on price and addressed three outstanding issues. It seems that terms of a draft transfer had been submitted to the Respondent with a view to reaching an agreement without recourse to the Tribunal. However, as such an agreement had not been forthcoming we were invited to review the terms in the light of the detailed legal submissions he then put to us, which we noted.

7. Turning to the appropriate level of costs to be paid by the Applicants under s9(4) having taken us through the sub-section and the basis upon which costs should be awarded he asked the Tribunal to determine what the costs should be. A detailed schedule of costs with points in dispute was included in the bundle and up-dated in the skeleton produced by Mr Stanton. No information on any offers of costs was included in the skeleton.

8. We were told that the Applicants had attempted to reach agreement on the price and in so doing had agreed and had paid £550 plus VAT to Mr May to enable a valuation report to be prepared. It was therefore submitted that Mr May should not be entitled to any further fee, the sum of £375 plus VAT being claimed by the Respondent.

9. Finally Mr Ali-Noor turned to a claim for costs under the provisions of rule 13 of the Rules. It is suggested that the Applicants had been forced to commence proceedings and that there had been delays which had "*only served to frustrate what should otherwise be a relatively simple exercise under the Act*". It was put to us that the Applicants had incurred valuation costs, legal costs and the costs of preparing for the hearing. The time spent by Mr Ali-Noor was on a pro bono basis. No details of any costs so claimed were included in the papers before us.

10. The skeleton argument on behalf of the Respondent set out a chronology showing that from an original valuation by Mr May in September 2014 the matter had "meandered" its way to a hearing in November 2015. A detailed background was provided with comments on the terms of the transfer, the Respondent's costs, the costs of Mr May and a response to the claim under rule 13.

Hearing

11. The first matter addressed at the hearing was the terms of the transfer. This document was appended to the Respondent's skeleton argument at pages 13 onwards. We will utilise the numbering from that document for ease of understanding. Although Mr Ali-Noor had adopted a highly legalistic approach in his skeleton he adopted a more pragmatic position before us. It seems that the Respondent had prepared a draft transfer in the early part of 2015. This had been responded to by

solicitors acting for the Applicants, although according to the chronology supplied by the Respondent not until October 2015. Accordingly, rather than taking "nice" legal points on the terms Mr Ali-Noor confirmed he was prepared to work from the draft before us to achieve a settlement on this point. We heard all that was said but in truth there was very little between the parties. Mr Stanton confirmed that the Respondent would be prepared to transfer with "full title guarantee" (box 10) and we can record that the wording to paragraphs 2, 3, 6 and 11 of the "Restrictive Covenants by the Transferee" (box 12) was agreed. The issue in respect of paragraph 1 was the inclusion of the word 'single'. The Applicants argued that this was otiose, and that the inclusion of such a restriction must be of value to other property. The Respondent said that it should remain to safeguard other property owned by the Respondent. There was a concern that other houses on the estate had been converted to flats and it was suggested that the inclusion of the word 'single' would prevent this. Apparently a transfer of 20 Hillbrow had included this word. As a parting shot at the conclusion of the hearing Mr Stanton suggested that the removal of the word would affect the price being paid for the freehold by the Applicants, which should be greater.

12. It was also suggested that the addition of the word "annoyance" in paragraphs 2 and 11 was unnecessary

13. Under this Restrictive Covenant heading it was agreed that the wording of paragraph 12 should be limited as follows *"Not to allow the gardens belonging to the Property to fall into an untidy state"*

14. Under the Transferors restrictive covenants the wording for paragraph 5 is agreed subject only to the insertion of the date of the transfer and in paragraph 6 the word 'it' should be inserted between "above" and "shall" in the third line. Finally under the Schedule heading "Service Charge" it was agreed that paragraph 3A should be omitted. Save for these matters the transfer is agreed and approved.

15. As we have indicated above agreement was reached on the question of the solicitors' costs under s9(4) following an offer being made by Mr Ali-Noor at the hearing, which was accepted by Mr Stanton. The only outstanding issue was the valuer's fee of £375 plus VAT. The sum of £550 plus VAT had already been paid by the Applicants in respect of pre applications negotiations, which did not achieve a settlement. The additional sum claimed by the Respondent related to the work undertaken by Mr May to update his valuation following the service of the Notice by the Applicants in November 2014. This gave a total valuer's fee of £1110, inclusive of VAT but in these proceedings the Respondent only sought to argue that the £375 was payable under the Act, the earlier sum being payable as a result of pre application negotiations. The Applicants' position was that it was not reasonable to charge the two fees as it was a requirement of the Respondent to pursue a voluntary negotiation.

16. As to the costs under rule 13 Mr Ali-Noor sought to lay the blame in the failure of the negotiations at the door of the Respondent. There had been conflicting offers. The Applicants had opened with an offer of £5,780 included in the Notice dated 21st October 2014 but it seems that Mr May's initial thoughts on the price were somewhere between £13,000 and £14,000. The Applicant had obtained a valuation from Langtons in September 2014 of £7,250 from but had not used this in the Notice and eventually agreed the price payable at £9,720 the amount set out in the report of Mr May dated 30th September 2015. It was suggested that during the course of the negotiations, on a without prejudice basis an offer had been made to the Applicants by Mr May, it is not clear by what authority, which was accepted by the Applicants but subsequently rejected by the Respondent. Mr Stanton had nothing more to add than that contained in his skeleton argument on this point.

FINDINGS.

17. We are grateful to the parties for reaching agreement on a number of matters. In so far as the transfer is concerned the main issue is whether to include the word 'single' in paragraph 1 of the Transferees' Restrictive Covenants. The lease does not use this wording referring instead to the use of the property as a private residence in the occupation of one family only. The lease is dated 25th July 1966 and time has moved on. No evidence was produced to us that the inclusion of the word would somehow benefit the Respondent's other properties, or indeed any other property on the estate. Indeed such evidence as there was indicated that some houses were arranged as, or had been converted into, flats. The suggestion made at the closing of the hearing that the exclusion of the word would somehow add to the value of the property and therefore the sum that should have been paid is fallacious. If the Respondent considered that the Property had additional value as flats that should have been included in the value it attributed to the freehold, which was of course accepted by the Applicants. We conclude that there is no reason to include the word 'single'.

18. As to the inclusion of the word "annoyance" in paragraphs 2 and 11 we find that in so far as an action could be taken it is covered by the word "nuisance" with accompanies the "annoyance". We are disappointed that the parties could not have accommodated this wording but taking a view we find that the addition of the word annoyance achieves nothing and therefore that it does not require inclusion in these two paragraphs.

19. We turn then to the question of costs payable by the Applicants under the provisions of s9(4) of the Act. It is unfortunate that the Applicants did not make an offer to settle the costs, which they should have done. However, at the hearing Mr Ali-Noor put forward a figure for solicitors' costs of £842.40 plus VAT making a total of £1,010.88 which was accepted by Mr Stanton. The only issue therefore was the additional valuer's fee of £375 plus VAT. The Act says that the Respondent is entitled to recover any valuation of the house and premises so far as

they were incurred in pursuance of the notice. The first valuation fee of £550 plus VAT was wrung from the Applicants as part of the pre-notice negotiations. There was the usual market trading and it must be noted that the Applicants' own expert put the price at £7,250 although the offer made in the Notice was only £5,780. The eventual price was agreed at £9,720. The report relied upon by the Respondent was, we were told updated by Mr May, his first report having been issued in December 2014. It was necessary to review the position given the passage of time and a further fee of £375 plus VAT does not seem unreasonable for this purpose. The Applicants were not obliged to pay the first sum of £550 plus VAT but chose to do so in the hope that settlement could be achieved. It could not be, not helped we suspect by the low offer made in the Notice. However, we find that the only valuation fee incurred as a result of the Notice is £375 plus VAT which is reasonable and payable.

20. Finally the question of costs under rule 13 of the Rules. This requires the Respondent in this case to have acted unreasonably in the defending or the conduct of proceedings. It cannot be unreasonable for the Respondent to 'defend' the action. This is a form of compulsory purchase and it is natural for the freeholder to wish to maximise its return. The valuation given to the Applicants in September 2014 was £7,250, which they chose not to use. The valuation was agreed in advance of the hearing and in truth there was little between the parties on the terms of the transfer. Had the Applicants made an offer on the costs front it may well be that a hearing could have been avoided. The application was issued in September 2015 and came for hearing in November so it cannot be said that the Respondent had delayed the procedure. The costs incurred by the Applicants in respect of a valuation fee and legal costs were a necessary consequence of the procedure. We do not consider that the Respondent has acted in such a way that it should be required to pay any costs to the Applicants under the provisions of rule 13

Andrew Dutton

Andrew Dutton
Tribunal Judge

11th December 2015

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.