



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

Case Reference	:	LON/00AY/OCE/2015/0273
Property	:	69 Elms Crescent
Applicants	:	Trevor Russell Pryer & Juliette Patricia McDonald, Leo Joseph Martin & Oonagh Marie Martin
Representative	:	Rigley Legal
Respondent	:	Christopher Rice
Representative	:	None
Type of Application	:	Acquisition of freehold (Section 13 Leasehold Reform, Housing and Urban Development Act 1993) – Missing Landlord
Tribunal Members	:	Mr M Martynski (Tribunal Judge) Mr I Holdsworth BSc MSc FRICS
Date of Decision	:	1 December 2015

DECISION

Decision summary

1. The premium to be paid for the freehold of the freehold interest in the subject house at 69 Elms Crescent is £82,580.00.

Background

2. The subject property at 69 Elms Road ('the Building') is a semi-detached house converted into two flats.
3. The Applicants' leases of the flats in the Building are for terms of 99 years from 25 March 1983 (69) and 24 June 1983 (69A).
4. The Applicants' Claim Notice claiming the right to the freehold interest in the Building is dated 8 September 2014.
5. In proceedings in the Wandsworth County Court issued on 13 May 2015, the Applicants applied for an order dispensing with service of the Claim Notice and for an order that the freehold interest in the Building vest in the Applicants.
6. On 18 September 2015, Deputy District Judge Wooton made an order in the following terms:-
 1. Upon no acknowledgement of service being received from the Defendant of the Claimant's [sic] notice to the purchase of the freehold title of 69 Elms Crescent, London SW4 8QF under section 13 the Leasehold Reform and Urban Development Act 1993 that the proceeding [sic] be transferred under section 26 of said Act to the First Tier Tribunal Property Chamber for the purposes of determination of price of the freehold.
 2. The county Court's jurisdiction in the proceedings be placed on stay until such time that the Claimant delivers to the County Court the determination of First Tier Tribunal Property Chamber's determination together with the draft order as to the execution of the Deed, payment into Court and associated costs.
 3. Costs reserved.
7. The matter was set down for a determination of the application by this tribunal on the papers alone. The Applicants did not request an oral hearing.

The Applicants' valuation - disrepair

8. The Applicants rely upon the valuation of Mr David Field FRICS.
9. The fundamental basis of Mr Field's valuation is that the Building in question is in significant disrepair. We consider that basis to be flawed.
10. In his report, Mr Field refers to cracks in the main flank wall of the Building, one of which is described as 'severe'. Mr Field recommended that the Building be inspected by a building engineer.
11. In the papers before us was the report of Mr Andrew Dust, a Chartered Structural Engineer. Mr Dust refers to evidence of structural / foundation movement in various parts of the Building. Mr Dust concluded that further detailed investigation was required to fully

ascertain the defects, causes, and the extent of any building or structural remedial work necessary and concludes;

At this stage we consider it is likely that unacceptable structural and foundation movement and associated damage (affecting in particular the main front-flank wall part) will continue, which may be unacceptable and not tolerable, unless appropriate structural and foundation stabilisation works are undertaken, which could be expensive.

12. Also in the papers before us was a photographic report from GHG Chartered Loss Adjusters and Subsidence Engineers (presumably instructed by the Building's insurers). The commentary on the photographs in that report give a more relaxed view as to the seriousness of the cracks in the Building. For example, photograph 35 in that report is a photograph of the crack on the external flank wall referred to by Mr Field in his report. The commentary to that crack is as follows;

A further close up of cracking in the left hand flank wall showing that this appears to be aged. The magnitude of the crack is not reflected internally, other than in the cupboard in the first floor flat which has not been decorated for many years. There is little more than hairline cracking visible through more recent decorations above the cupboard, which would be expected if a pre-existing crack had not been adequately repaired in the past.

13. In Mr Field's valuation report, he gives the opinion of his clients (who we assume are not qualified to give such an opinion) that "*expenditure of between £250,000 and £300,00 on underpinning may not be unreasonable*". Mr Field goes on to rely on these figures and to add to them extra costs for, contingencies, fees, party wall matters and loss of rent and suggests that the final costs may be in the region of £350-400,000. He goes on to deduct the sum of £200,000 from the value of each flat to cover the costs referred to.
14. As Mr Field notes, the Applicants' leases place the obligation of maintaining and insuring the building on the leaseholders (the costs to be met jointly). The landlord is under no obligation to maintain or repair the structure of the Building.
15. It must be the case therefore, in our view, that the landlord's interest in the Building, for the purposes of valuation on an enfranchisement claim, is an interest in a Building that has been kept in proper repair by the leaseholders under the terms of their leases. Accordingly, the costs of repair are irrelevant to the valuation of the building and the flats within the Building.
16. We additionally comment on two further matters. First, in his report, Mr Field refers to Clause 7 of the Applicants' leases. We take this to be a reference to Clause 3(7); that clause reads as follows:-

That the Lessee will not at any time make alterations or additions to the demised premises or cut main or remove the main walls timbers or external fabric thereof (otherwise than for the purpose of making good any defect

therein which shall be made good accordingly) nor carry out any development thereto or change the user thereof (within the meaning of any legislation for the time being relating to Town and Country Planning) without the previous consent in writing of the Lessor such consent not to be unreasonably withheld.

17. Mr Field says that his understanding of this clause is that the tenants may not carry out the remedial works unless there is prior approval, which of course cannot be obtained as the freeholder cannot be found.
18. We reject this reasoning. The clause clearly exempts from the need for consent any structural work that is for the purpose of making good defects. Second, there is in any event, no evidence as to what, if any, works will be required.
19. The second comment we have relates to the figure (£400,000) put on the works by Mr Field. The figure is derived largely on the opinion of his clients. There is no indication that his clients are qualified to give such an opinion or there is any evidence as to how the clients arrived at their figures. Further, there is no other evidence as to; (a) whether any works are required; (b) what those works may be; (c) the costs of those works.
20. Further, based on this tribunal's own knowledge and expertise, the figure of £400,000, in the absence of any more detailed engineering evidence, is excessive. Subject to the obtaining of further expert evidence, we consider that the likely costs, if any works are required, would be less than £50,000. As however stated above, the costs of any works needed for the leaseholders to comply with their obligations under the terms of their leases are irrelevant to the statutory valuation exercise to be conducted.

The Applicants' valuation – other matters

Market valuation of the long leasehold interests

21. We note Mr Field's evidence as to comparable values. Whilst we have reservations that his, unadjusted, long lease values are on the low side, we nevertheless accept his base rate of £800 p.s.f. for the flats at the valuation date.
22. However, we do not accept Mr Field's deduction for condition. There is little detail in Mr Field's report as to the internal condition of the flats and we conclude that a purchaser would only wish to modernise to an average extent. We do not accept, in the absence of any detail as to the make-up of the deduction, that, as proposed by Mr Field, the value of the flats would be reduced by over £60,000 per flat as suggested at page 11 of the report.
23. We have therefore taken Mr Field's valuation of £800 p.s.f. and reduced this to £780 to take account of the issue of modernisation giving long lease values of £581,880 (69) and £565,500 (69A).

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Property: 69 Elms Crescent Clapham London SW4 8QF

Lease and Valuation Data

Lease Term: 25/03/1983
 Lease Expiry date: 24/03/2082
 Unexpired term as at valuation date: 66.52 years
 Date of Valuation: 02/06/2015

Rent receivable by landlord:

Payable from valuation date for 0.52 years £ 50
 Payable from review date for 33 years £ 150
 Payable from review date for 33 years £ 200

Values

Reversionary lease value on statutory terms £ 581,880
 Notional Freehold £ 587,699
 LHVP £ 523,052 Relativity 88.00%

Capitalisation rate (%) 7.00
 Deferment rate (%) 5.00

Value of Freeholders present interest

Term 1
 Ground rent payable £ 50
 YP @ 0.52 years @ 7% 0.49387 £ 25
 Term 2
 Ground rent payable £ 150
 YP @ 33 years @ 7% 12.75379
 Deferred for 0.52 years @ 7% 0.9654 £ 1,847
 Term 3
 Ground rent payable £ 200
 YP @ 33 years @ 7% 12.75379
 Deferred for 33 years @ 7% 0.1035 £ 264
 Reversion
 Freehold value of flat £ 587,699
 PV of £1 in 66.52 years at 5% 0.03895 £ 22,890

Freeholders interest value £ 25,026

Calculation of Marriage Value

Value of flat with long lease on statutory terms £ 581,880
 Landlords proposed interest Nil £ 581,880
 Less
 Value of Leaseholders existing interest £ 523,052
 Value of Freeholders current interest £ 25,026 £ 548,077

Marriage value **Total** £ 33,803

Division of Marriage Value equally between

Freeholder £ 16,901
 Leaseholder £ 16,901

Price payable to Freeholder

Value of freeholders current interest £ 25,026
 Plus share of marriage value £ 16,901

Total £ 41,927
 Say £ 41,930

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Property: 69A Elms Crescent Clapham London SW4 8GF

Lease and Valuation Data

Lease Term: 24/06/1983
Lease Expiry date: 23/06/2082
Unexpired term as at valuation date: 66.76 years
Date of Valuation 02/06/2015

Rent receivable by landlord:

Payable from valuation date for 0.52 years £ 50
Payable from review date for 33 years £ 150
Payable from review date for 33 years £ 200

Values

Reversionary lease value on statutory terms £ 565,500
Notional Freehold £ 571,155
LHVP £ 508,328 Relativity 89.00%

Capitalisation rate (%) 7.00
Deferment rate (%) 5.00

Value of Freeholders present interest

Term 1
Ground rent payable £ 50
YP @ 0.52 years @ 7% 0.49387 £ 25
Term 2
Ground rent payable £ 150
YP @ 33 years @ 7% 12.75379
Deferred for 0.52 years @ 7% 0.9654 £ 1,847
Term 3
Ground rent payable £ 200
YP @ 33 years @ 7% 12.75379
Deferred for 33 years @ 7% 0.1035 £ 264
Reversion
Freehold value of flat £ 571,155
PV of £1 in 66.76 years at 5% 0.03849 £ 21,987

Freeholders interest value £ 24,122

Calculation of Marriage Value

Value of flat with long lease on statutory terms £ 565,500
Landlords proposed interest Nil £ 565,500
Less
Value of Leaseholders existing interest £ 508,328
Value of Freeholders current interest £ 24,122 £ 532,450

Marriage value **Total** £ 33,050

Division of Marriage Value equally between

Freeholder £ 16,525
Leaseholder £ 16,525

Price payable to Freeholder

Value of freeholders current interest £ 24,122
Plus share of marriage value £ 16,525

Total £ 40,647
Say £ 40,650