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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UE/OCE/2016/0022**
Property	:	**Victoria Lodge, 11 Wellington Road, Deal, Kent, CT14 7AL**
Applicant	:	**Victoria Lodge (Deal) Ltd**
Representative	:	**Pococks Solicitors**
Respondent	:	**Resham Singh**
Representative	:	**None (missing landlord)**
Type of Application	:	**S26 Leasehold Reform, Housing and Urban Development Act 1993 (the Act)**
Tribunal Members	:	**Mrs H C Bowers MSc MRICS BSc(Econ)**
Date of Determination	:	**6 January 2017**
Date of Decision	:	**10 January 2017**

DECISION

- **The Tribunal determines that the price payable for the collective enfranchisement of Victoria Lodge, 11 Wellington Road, Deal, Kent, CT14 7AL (the subject property) shall be £28,931.00**

- **No other sums are payable under section 27(5) of the Leasehold Reform, Housing and Urban Development Act 1993**

- **The TR1 form is approved subject to the amendments stated**

in paragraph 22.

REASONS

BACKGROUND

1. By an order made by Deputy District Judge Cagney dated 24 February 2016 in the County Court at Canterbury in claim number B00CT265 ("the Order") between Paula Russell and Resham Singh, the matter was remitted to this Tribunal.

2. The Tribunal is to determine the terms and provisions (if any) in respect of the vesting of Victoria Lodge, 11 Wellington Road, Deal, Kent, CT14 7AL (the subject property) in Victoria Lodge (Deal) Limited Company and the appropriate sums to be paid into court pursuant to section 27(5) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act").

3. The Tribunal had before it a bundle prepared by the Applicant's solicitors. These papers included the Claim Form, witness statement of the Applicant with exhibits, the Court Orders of 5 June 2015 and 24 February 2016, an initial valuation report from Stephen Hogben dated 31 October 2013, copies of the freehold and leasehold registers of title, the leases of the six flats comprising the subject property and the draft TR1 form. The freehold interest is under title number K475349. Each lease is for a term of 99 years from 29 September 1988. The solicitor acting for the Applicant subsequently informed the Tribunal that the claim form was issued on 27 March 2015.

4. In a further bundle of papers was a valuation report from Mr R Wilkie FRICS, dated 12 October 2016. There were a number of queries in respect of the valuation report, particularly in respect of the valuation date. Responding the to initial queries of the Tribunal, but not the point regarding the valuation date, a further report, dated 15 November 2016, was produced. The valuation date under the current case would be the date of the issue of the Claim Form, which as noted above was 27 March 2015. Accordingly a final revised valuation report, dated 29 December 2016, was prepared. At the time of the valuation date each lease had an unexpired term of 72.5 years.

5. The valuation report provides a photograph and description of the subject property. The property is two storeys with a basement area and a rear extension. It is constructed of brick and part rendered elevations and described as having a pitched, slate roof. In the main part of the property on the ground floor are Flats 1 and 2. Flat 1 is a one bedroom flat with a GIA of 31 sq. m. Flat 2 is a one bedroom flat with a GIA of 38 sq. m. On the first floor of the main building are Flats 5 and 6. Flat 5 is a stated to be a two bedroom flat with a GIA of 38 Sq. m. Flat 6 is a two bedroom flat with a GIA of 50 sq. m. The rear extension comprises

Flats 3 and 4 and both are one-bedroom flats. Flat 3 has a GIA of 60 sq. m. and Flat 4 has a GIA of 45 sq. m. Although there is a cellar it is noted that this was not inspected and the valuer assumes that it is used as rough storage. The external areas to the property are described as a forecourt and drive with access to rear parking. It is noted that Flats 1, 2, 3 and 6 have gas fired central heating, that Flat 4 has night storage heating and Flat 5 has no central heating. There is no mention of any improvements that should be disregarded for the purposes of this valuation.

6. The valuation report mentions that there are unexpired terms of 72 years with ground rents of £100. The report adopts a capitalisation rate of 7%. Mr Wilkie values the capitalised ground rent for the subject property at £8,102. However, as mentioned above, at the valuation date there were unexpired terms of 72.5 years. The annual ground rent arrangement for each flat is an initial ground rent of £100 per annum for the first 33 years, rising to £150 for the next 33 years and finally £200 for the last 33 years.

7. A total of five comparables were provided in respect of the long lease interest. It should be noted that there was no direct Land Registry evidence as to these transactions. However, sales particulars and Rightmove data sourced from the Land Registry were provided. Mr Wilkie made no adjustment in respect of the timing of the relevant transaction and the valuation date.

8. The details of the comparables are summarised below:

    - 41 Leivers Road, Deal, sold in May 2015 for £83,000. At the time of the sale there was an unexpired term of 90 years and a fixed ground rent of £90 per annum. It is described as a one-bedroom ex-local authority flat and the sales particulars show that it has a GIA of 39 sq m.
    - 42 Walcheren Close, Deal, sold in October 2014 for £83,000. At the time of the sale there was an unexpired term of 100 years and a fixed ground rent of £100 per annum. It is described as a one bedroom flat and the sales particulars show that it has a GIA of 36.9 sq m.
    - Flat 4, Somerset Court, Walmer, Deal, sold in January 2015 for £80,000. At the time of the sale there was an unexpired term of 78 years and a fixed ground rent of £100 per annum. It is described as a two bedroom flat and the sales particulars show that it has a GIA of 43.6 sq m.
    - Flat 5, The Portery, 38 Queen Street, Deal, sold in December 2014 for £105,000. At the time of the sale there was an unexpired term of 90 years and a fixed ground rent of £100 per annum. It is described as a two bedroom flat but no sales particulars were provided and there is no indication of the GIA.

- 32, Maxwell Place, Deal, sold in February 2015 for £115,000. At the time of the sale there was an unexpired term of 100 years and a fixed ground rent of £150 per annum. It is described as a two bedroom flat and the sales particulars show that it has a GIA of 55.6 sq m.

9. Although there is no analysis of these comparables, Mr Wilkie suggested that the long lease value of the six flats in the subject property are as follows:
   - Flat 1 - £80,000
   - Flat 2 - £80,000
   - Flat 3 - £85,000
   - Flat 4 - £60,000
   - Flat 5 - £60,000
   - Flat 6 - £105,000

10. Mr Wilkie adopted a total capital value for the long lease interests of £470,000. He makes no adjustment to obtain the freehold value. He then applies a deferment rate of 5%.

11. In respect of relativity, Mr Wilkie had no short lease open market evidence and relied on a deduction of £5,000 per flat to derive the short lease value. By means of correspondence the Tribunal questioned Mr Wilkie on his approach and asked for his comment as to the adoption of the RICS research paper on relativities. However, no specific response was received.

12. By inputting all of these elements into a valuation, Mr Wilkie calculated the premium to be £37,113.

13. The Tribunal comments on these submissions in the findings section below.

FINDINGS.

14. In essence the Tribunal is prepared to adopt the capitalisation and deferment rates proposed. These seem appropriate given the reserved ground rent and the provisions of Sportelli as to deferment rates. However, Mr Wilkie's calculations for the capitalisation of the ground rents do not reflect the lease structures. The Tribunal has set out the full calculations reflecting the fixed ground rent increase. These are detailed in the Appendix to this decision.

15. Although Mr Wilkie provided evidence of long lease values. He presented no analysis of the data or any explanation as to how he derived the long lease value of each flat. The figures that he produced are set out in the table below. However, the conclusions he reached in respect of the size of each flat and the number of bedrooms does not make sense. For example Flat 4 has a larger GIA (by nearly 50%) than Flats 1 and 2 is valued at £20,000 less with no explanation. It may be

that this is due to the fact that it has night storage heaters rather than a full central heating system, but the relationship between the figures is not logical.

16. The Tribunal has looked at the information provided and tried to provide a more logical spread of values to reflect the size and amenity of the flats. The evidence of the one-bedroom flats gives a value range of between £80,000 - £83,000. There is no evidence as to the standard of accommodation and the provision of amenities such as heating for these comparables. The three comparables have GIAs ranging from 36.9 sq m to 43.6 sq m. The adoption of £80,000 for Flats 1 and 2 as one-bedroom flats seems reasonable and the Tribunal accepts these figures. However, Flat 3 is described as a 1 bedroom flat but with a GIA of 60 sq m, it is nearly double the size of the comparables. In the circumstances it would be wrong to adopt a value of £80,000 for the long lease interest of this flat. However it is noted that as a one-bedroom flat and there must be a limit as to how much can be achieved. Accordingly, the Tribunal adopts a value of £90,000 for Flat 3. Flat 4 has night storage heaters but is a larger one bedroom flat with these factors would balance each other out and the Tribunal adopts the basic value of the one bedroom flats of £80,000. Although Flat 5 is described as a two-bedroom flat it is a small flat and similar in size to the Flats 1 and 2. It has no central heating and a deduction should be made to reflect this factor. Accordingly a value of £75,000 is adopted for this flat

17. The evidence of Flat 4, Somerset Court, Walmer, Deal, is of limited assistance given the short lease nature of the interest. The evidence of. Flat 5, The Portery, 38 Queen Street, Deal, at £105,000 and 32, Maxwell Place, Deal, at £115,000 gives some useful guidance in respect of two bedroom flats. The adoption of £105,000 for the value of long lease interest in Flat 6 is at the lower end of the scale but is not unreasonable.

- Flat 1 - £80,000
- Flat 2 - £80,000
- Flat 3 - £90,000
- Flat 4 - £80,000
- Flat 5 - £75,000
- Flat 6 - £105,000

18. The total capital value of all the long lease interests in the subject property is £510,000.

19. In respect of relativities, Mr Wilkie has just taken a deduction of £5,000 per flat to reflect the existing lease value. This is not a conventional approach and no evidence was provided in support of this approach. The Tribunal put to Mr Wilkie that the use of the RICS research report would

be more appropriate and invited Mr Wilkie to comment. He made no comment and in the absence of any comment and any evidence in support of his approach, the Tribunal adopts the relativity percentage from the RICS research report for the unexpired term of 72.5 years. It has taken the average of the five out of London data sets, namely Beckett & Kay – 93.8%; South East Leasehold – 94%; Nesbitt & Co – 92.25%; Austin Gray – 95.04% and Andrew Priddell – 94%, giving an average of 93.82%.

20. The Tribunal's calculation adopting all these elements is shown in the Appendix to this decision. The total premium payable on the enfranchisement for the subject property is £28,931.00.

21. The Tribunal is also required to determine any other sums payable under section 27(5) of the Act. There is no evidence as to whether there have been any demands for ground rent. If the Respondent landlord has not served any rent demands in the statutory form, no arrears of rent are due and therefore no sum is therefore payable into court under section 27(5) of the Act.

22. Included in the papers is a copy of the TR1 form. The following amendments should be made to the TR1 form. Given the nature of this transaction and that this is a missing landlord case, in respect of box 9, the transferor transfers with limited title guarantee. In order to comply with s. 34(10) of the Act and the Land Registration Rules 2003, the following wording should be included in box 11 "*This conveyance [or transfer] is executed for the purposes of Chapter I of Part I of the Leasehold Reform, Housing and Urban Development Act 1993*". Finally as the property is conveyed with limited title guarantee then the following wording needs to be deleted from the additional provisions in box 11 "*and for the purposes of the covenant implied into this transfer by s3(1) of the Act the Transferors are not to be considered to be aware of an action of another person merely because it is or was known or notice of it was given to a predecessor in title. This Transfer is made with full title guarantee but the covenants set out in s3(1) of the Act do not extend to any charge encumbrance or other right which the Transferors do not know about*". The other wording, namely "For the purposes of s6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 (the Act) all matters now recorded in registers open to public inspection are to be considered within the actual knowledge of the Transferees" may remain. Otherwise the Tribunal confirms the terms of the draft TR1 form.

Helen Bowers
Valuer Chair

10 January 2017

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.

Appendix

Victoria Lodge
Deal, CT14 7AL

Valuation Date	27/03/2015		
Unexpired Term	72.5 years		
Capitalisation Rate	7.00%		
Deferment Rate	5.00%		
Freehold Value	£510,000		
Relativity	93.82%		
Freeholder's Present Interest			
Term			
Term 1			
Rent Reserved	£600.00		
YP for 6.5 years @ 7%	5.0832		
		£3,050	
Term 1			
Rent Reserved	£900.00		
YP for 33 years @ 7%	12.7538		
PV of £1 in 6.5 years @ 7%	0.6442		
		£7,394	
Term 1			
Rent Reserved	£1,200.00		
YP for 33 years @ 7%	12.7538		
PV of £1 in 39.5 years @ 7%	0.0691		
		£1,058	
Reversion			
FH reversion	£510,000		
PV of £1 in 72.5 years @ 5%	0.0291		
		£14,841	
			£26,343
Marriage value			
Proposed			
FH Reversion	£510,000		
less			
Existing			
Freeholder's Interest	£26,343		
Short lease value	£474,482		
Marriage Value		£5,175	

50:50 division	£2,588	
Price for Enfranchisement		**£28,931**