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

Case Reference : LON/00BG/0CE/2017/0168

Property : 36A Wilmot Street, London E2 0BP

Applicants :
1. Joseph Edward Yaw Traynor
2. Mark Francis Whitfield

Representative : Child & Child Limited

Respondent : Michael Dennis Evans

Representative : None

Type of application : To determine the terms on which
the freehold is to be acquired
where the landlord is missing

Tribunal members : Angus Andrew
Marina Krisko BSc (EstMan) FRICS

Date of determination : 5 September 2017

DECISION

1. This is an application under section 26 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") to determine the price to be paid for and other terms of acquisition of the freehold of 36A Wilmot Street, London E2 0BP. The property comprises two flats: one on the ground floor and the other on the first and second floors. There is no garden ground and the leases are somewhat unusual in that they are both full repairing and insuring leases with minimal obligations being undertaken by the lessor.

2. Both flats are held on leases for terms of 99 years from 24 June 1988 and both leases reserve ground rents of £100 per year rising to £200 per year.
3. The landlord could not be found and on 16 February 2017 the applicants issued proceedings in the County Court under section 26 of the Act for an order dispensing with service of the claim notice. By an order made on 27 June 2017 District Judge Lightman transferred the claim to this tribunal for a determination of the premium to be paid. District judge Lightman did not transfer the terms of the transfer for determination. We have however taken the liberty of considering the draft transfer included in the document bundle because it is an issue that falls within the jurisdiction of this tribunal being a term of acquisition.
4. The applicant leaseholders rely on a valuation report prepared by Richard Galbraith MBA MRICS. Mr Galbraith describes the property as being a three storey semi-detached house that was constructed in about 1860, which has been subdivided to create two self contained one-bedroom flats: the lower flat occupying the ground floor only and the upper flat occupying the first and second floors.
5. The ground floor flat has a gross internal area of 373 square feet and the upper flat a gross internal area of 592.5 square feet. Mr Galbraith does not suggest that any relevant improvements have been completed by the applicants or their predecessors in title.
6. In his report Mr Galbraith correctly identifies the valuation date as 16 February 2017 being the date of the issue of issue in the County Court. However in his valuation he mistakenly uses a valuation date of 15 February 2017. The mistake is however immaterial and we accept his assumption that at the valuation date the leases had unexpired terms of 70.35 years.
7. Mr Galbraith valued a long leasehold interest in the ground floor flat at £365,000 (£980 per square foot) and in the upper flat at £435,000 (£735 per square foot). He then increased those values by 1% to give freehold values of £368,650 and £439,350. He bases those values on the sale of five local long leasehold flats that sold for between £376,000 and £750,000. He also has regard to the prospective sale of the upper flat that is apparently on offer for £435,000 with the benefit of the claim notice.
8. Three of the comparables sales are unhelpful because they are sales of two bedroom flats and there are different markets for one and two bedroom flats. The other two comparable sales were at £376,000 (£974 per square foot) and £404,000 (£1,000 per square foot) and they sit comfortably with Mr Galbraith's valuation of the ground floor flat.

9. Having regard to the plan of the upper flat we agree with Mr Galbraith that the layout is inconvenient with a large amount of unusable circulation space. The asking price of £435,000 with the benefit of the claim notice is a better indicator of the flat's long leasehold value. Consequently we agree with Mr Galbraith's long leasehold valuations that we adopt. Equally we agree his uplift of 1% to freehold value that is consistent with common practice and indeed Upper Tribunal decisions.
10. Mr Galbraith adopts relativity of 92.73% to value the existing leasehold interest. That relativity is based on an average of five relativity graphs in the Greater London and England section of the October 2009 RICS Research Report. Although market evidence with a deduction for act rights is to be preferred there appears to be no readily available market evidence in this case. In such circumstances we accept that the relativity graphs are a reasonable substitute and outside Prime Central London they remain in common use. Consequently we accept Mr Galbraith's relativity.
11. We agree with Mr Galbraith's deferment rate of 5% which is consistent with *Earl Cadogan v Sportelli* [20017]. Equally we accept his capitalisation rate of 5.5% that is within generally accepted parameters having regard to the reserved ground rents.
12. Consequently we approve and adopt Mr Galbraith's valuation and we determine the price to be paid for the freehold interest in the property at £41,100.
13. The form of transfer at pages 104 to 110 of the document bundle. It is with limited title guarantee as required by paragraph 2(2)(b) of Schedule 7 to the Act and it contains the statement required by section 34(10) of the Act.
14. The transfer seeks to grant express rights over adjoining property that, on the basis of the documents provided, does not appear to be in the missing landlord's ownership. The property may have the benefit of implied and prescriptive rights but the transferor cannot grant express rights over property that he does not own. The rights should be deleted. It would also seem sensible to delete the reciprocal reservations although we leave that to the applicants. In other respects we are content with the draft from.

Name: Angus Andrew

Date: 5 September 2017