



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

Case Reference : CAM/00KF/OAO/2019/0001

Property : 45 Old Southend Rd

Applicant : 45 Old Southend Rd Ltd (Nominee Purchaser)

Respondent : Phillip Eric Curtis and Susan Anne Curtis

Date of Application : 9 July 2019

Type of Application : An application under section 31 of the Landlord and Tenant Act 1988 to determine the consideration payable for the acquisition of the landlords' interest in the subject premises

Tribunal Members : Mary Hardman FRICS IRRV(Hons)

Date of Decision : 28 November 2019

DECISION

- 1. The consideration payable for the acquisition of the landlords' interest in the subject property is £16,673.68 This represents a valuation of the freehold in the sum of £18,500 from which the sum of £1826.32 has been deducted in respect of the costs incurred in respect of the application.**

STATEMENT OF REASONS

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 two of the four leaseholders of flats in the building and is the appointed nominee purchaser. The respondents are the current owners of the freehold and the landlords under the leases. Those advising the applicant have been unable to trace the landlords.**

3. On 9 July 2019 an acquisition order under claim number EOO CM726 was made by the Judge Earl in Chelmsford County Court ordering that the nominee purchaser acquire the freehold, that the order will come into effect upon the Court Office receiving the sum determined by the tribunal as the conditional (should read consideration) for the purchase of the freehold and that the case be transferred to the first-tier property tribunal for the valuation of the freehold.
4. He also ordered that the Defendants pay the Claimants' costs of the application to be deducted from such sum as the tribunal shall determine as being due for the purchase of the freehold.
5. Directions were issued by the Tribunal on 19 August 2019 indicating that the matter would be dealt with on the papers if a request for a hearing was not received by 2 September 2019. No such request was received.

The Leases

6. The property comprises three flats:

45a Old Southend Rd is held on a lease for 99 years from 30 June 1990 at an initial ground rent of £100pa for the first 30 years, £150 for the next 30 years and £300 for the final 30 years. The site is identified on the HM Registry under title number EX461780.

45b Old Southend Rd is held on a lease for 99 years from 27 September 1990 at an initial ground rent of £100pa for the first 30 years, £150 for the next 30 years and £300 for the final 30 years. The site is identified on the HM Registry under title number EX461847.

45c Old Southend Rd is held on a lease for 99 years from 30 June 1990 at an initial ground rent of £100pa for the first 30 years, £150 for the next 30 years and £300 for the final 30 years. The site is identified on the HM Registry under title number EX461780.

The Law

7. Section 31 of the Landlord and Tenant Act 1987 Act provides that the tribunal should determine the terms on which the landlord's interest as specified in the court order should be acquired.
8. The tribunal is to determine the price payable based on the amount the freehold interest would achieve 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)).

The Property

9. A valuation report provided by Roy Hilton MRICS, Registered Valuer of Sorrell Chartered Surveyors, Southend on Sea, describes the property as comprising a three-storey end terrace building originally built as a house but subsequently extended to the rear and converted into 3 self-contained flats.
10. The building is of traditional brick construction, rendered to the front elevation and main flank walls with pitched slate roof. There is a small garden to the rear which is said to be shared by the three flats. Only 45a and 45c have the right under their lease to use the garden area.
11. Flat 45a to the ground floor is a two-bedroom flat whilst flat 45b (first floor) and flat 45c (second floor) are one-bedroom flats.
12. Heating is by night storage heaters and the flats have double glazed windows, which Mr Hilton reports were installed by the lessees.

The Evidence

13. The Applicants rely on the report from Roy Hilton MRICS, Registered Valuer dated 11 September 2019.
14. The tribunal was very much assisted by Mr Hilton's comprehensive report which describes the property, outlines the tenure, provides site plans, comparables, photographs and a valuation.
15. To arrive at his valuation, he considered the sales of 4 comparable leasehold flats in the immediate area of the property and one flat under offer at the date of valuation. These comprise of both one and two bedroomed flats with longer leases than the subject flats – varying from 152 years unexpired to 993 years unexpired.
16. 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 reversionary interests in the flats and the remainder of the property.
17. He explains that he has adopted a capitalisation rate of 7% on the basis of the *Sportelli* decision and based on previous valuations he had agreed acting for both lessees and freeholders.
18. He adopts a deferment rate of 5% based also on the decision in *Sportelli*.
19. He values the flats at £130,000 (45a), £125,000 (45b) and £115,000 (45c).
20. He values the appurtenant land, consisting of the rear garden and the passageways from front to rear at the side of the plot over which the flats have rights at a nominal value of £184.

21. His opinion is that the value of the freehold interest on the above basis is £18,500.

Determination

22. The tribunal accepts the capitalisation rate of 7% adopted by Mr Hilton. We do not agree that the decision of the Lands Tribunal in *Sportelli* sets out the guideline for this, but accept that this is in line with market practice and decisions in similar cases.

23. The tribunal also accepts the proposed deferment rate of 5% and that this is a well-established precedent for flats following *Sportelli*.

24. The tribunal also accepts Mr Hilton's valuation methodology in arriving at the value the freehold interest would achieve if sold on the open market by a willing seller by capitalising the ground rent for the remainder of the term of the leases and then adding the deferred freehold value of each flat.

25. The tribunal accepts the freehold values adopted for each flat by Mr Hilton. Whilst possibly somewhat towards the lower end of the range any adjustment makes no significant impact on the valuation given the length of the deferment.

26. In the light of this we determine that the value of the freehold interest is £18,500. The order from Chelmsford County Court transferring the case to the First-tier Tribunal ordered that cost of £1826.32 be deducted from 'such sum as the tribunal shall determine as being due for the purchase of the freehold' and therefore the amount to be paid into the Court Office is £16,673.68.

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.