



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

Case Reference : **BIR/00CN/OAF/2020/0018
BIR/00CN/OC6/2020/0010**

HMCTS : **P: PAPERREMOTE**

Property : **457A Alcester Road South, Birmingham,
B14 6ER**

Applicants : **Mr Michael James Hughes & Mrs Amy
Hughes**

Representative : **Nick Plotnek Associates**

Respondents : **Mr James Thomas Stokoe & Mrs Wendy
Stokoe**

Type of Application : **Application under Section 21(1)(a) and
Section 21(1)(ba) of the Leasehold Reform
Act 1967**

Tribunal Members : **Judge M K Gandham
Mr V Ward BSC Hons FRICS (Regional
Surveyor)
Mr R T Brown FRICS**

Date of Decision : **16 November 2020**

DECISION

Decision

1. The Tribunal determines that, taking account of the evidence adduced and the Tribunal's own general knowledge and experience, the price payable by the Applicants for the acquisition of the freehold interest in the property known as 457A Alcester Road South, Birmingham, B14 6ER ('the Property') in accordance with section 9 of the Leasehold Reform Act 1967 (as amended) is **£1,421**.
2. The Tribunal determines the Respondents' legal costs, under section 9(4) of the Leasehold Reform Act 1967, at **£1,250** (plus VAT if applicable) and disbursements (which should not exceed **£25**).

Reasons for Decision

Introduction

3. By Applications received by the Tribunal on 13th July 2020, Mr Michael James Hughes and Mrs Amy Hughes ('the Applicants') applied to the Tribunal for the determination under section 21(1)(a) of the Leasehold Reform Act 1967 (the 'Act') of the price payable for the freehold of the Property, under section 9 of the Act, and for a determination of costs, under subsection 21(1)(ba) of the Act.
4. The Property is held under a lease dated 17th November 2006 made between (1) JMF Renovations Limited and (2) Edward Patrick Smith for a term of 125 years (less three days) from 6th November 2003 ('the Lease'). The Lease was made subject to the payment by the tenant of a peppercorn rent and the tenant's proportion of the maintenance expenses as detailed in the fourth schedule to the Lease.
5. The Applications to the Tribunal included a copy of a notice to acquire the freehold, dated 28th February 2020, sent to Mr James Thomas Stokoe and Mrs Wendy Stokoe ('the Respondents'), who are the registered proprietors of the freehold reversion. The Respondents did not appear to have served any Landlord's Reply to the notice of claim.
6. Directions were issued by the Tribunal on 21st July 2020, which stayed the application to determine the landlord's recoverable costs. Due to the Covid-19 Public Health Emergency, the Tribunal advised the parties that it would be unable to carry out an inspection of the Property unless either party objected. Neither party did. The parties were invited to include photographs in their submissions by way of mitigation.
7. Following a request by the Respondents for the stay on the costs application to be lifted, a second Directions Order was issued on 14th August 2020. Although the second Directions Order referred to an application which was made under section 21(2)(a) of the Act (in relation

to the provisions to be included in the conveyance), on 26th August 2020 the Tribunal received confirmation that the terms of the transfer deed had been agreed.

8. A bundle of documents was received from each of the parties. The Respondents, in their statement of case, made reference to queries regarding the validity of this notice of claim and questions regarding its service. These are not matters which fall within the jurisdiction of the Tribunal. The Tribunal does note, however, that the Respondents had received the Notice, so any issue regarding the service would not be relevant, and had provided evidence of informal negotiations that took place between them and the Applicants' Representative after receipt of the same.
9. In addition, the Respondents, in their statement, made reference to purported historical breaches of the Lease by the Applicants and requested that the Tribunal either strike out the Applications or make the purchase of the freehold reversion conditional on certain repairs to the Property. Any breaches of covenant are not issues relevant to the Applications before the Tribunal and the Tribunal has no power to make the transfer of the freehold reversion conditional.
10. Neither Party requested an oral hearing, the Tribunal therefore makes its determination on the basis of the written submissions of the parties.

The Law

11. The relevant law in relation to the application is set out in section 9 of the Leasehold Reform Act 1967 as amended by the Commonhold and Leasehold Reform Act 2002.

The Property

12. The Property forms part of a redevelopment of the Malthouse Farm. The development comprises three separate properties – 'The Farmhouse' 457b Alcester Road, 'The Maltings' 457c Alcester Road and the Property (referred to as 'The Stables').
13. From the information provided by the parties, the Property is a detached three-bedroom dwelling in the style of a barn conversion, with a single garage located in a separate garage block. The development is accessed from Alcester Road South via a private drive which leads to the three properties, a parking area and the garage block. In addition to the private drive, the Property benefits from the right to use a private drain which services the development.

Submissions

The Applicants' submissions

Enfranchisement Price

14. Mr Plotnek, on behalf the Applicants, provided a statement together with a number of documents which included his valuation of the Property under the Act, photographs of the exterior of the Property and previous sales particulars, house prices in the local area and the UK House Price Index from December 2015 to February 2020.
15. He confirmed that, at the date of the Notice, the Lease had 108.71 years unexpired and submitted that the valuation of the Property should be carried out in accordance with section 9 (1A) of the Act as, he contended, that neither section 9 (1) nor section 9 (1C) applied.
16. He stated that the valuation should be based upon the value of the Property in its current condition and noted that the Applicants had purchased the Property in December 2015 for a sum of £269,000. He stated that, if the purchase price was increased by a multiplier of 1.245 (a figure he had calculated by utilising the increase in the UK House Price Index for the period between December 2015 and February 2020), the resulting figure would amount to £334,905.
17. Mr Plotnek noted that, although the Applicants had carried out a good deal of refurbishment (the installation of the kitchen and bathroom), a number of items remained to be carried out (window repairs, shower installation and some flooring). As such, he submitted that, in his professional opinion, the current value of the Property would be £370,000.
18. Mr Plotnek suggested that the deferment rate should be 5.25%, following the decisions in *Cadogan and Another v Sportelli and Another* [2007] EWCA Civ 1042, *Zuckerman & Others v Trustees of the Calthorpe Estate* [2009] UKUT 235, *JGS Properties Limited v King and others* [2017] UKUT 0233 (LC) and a recent decision of the First-tier Tribunal in the Midlands Region (BIR/00CN/OAF/2020/0016).
19. Taking into account the above figures, Mr Plotnek's valuation under section 9(1A) of the Act produced a premium for the freehold reversion of the Property of £1,421.

Reasonable costs

20. Mr Plotnek stated that no valuation fee should be payable as, as far as he was aware, no valuation had been carried out by or on behalf of the Respondents.

21. In relation to legal costs, Mr Plotnek contended that legal costs in the matter should not amount to more than £500 (plus VAT if applicable). He provided a copy of the freehold and leasehold titles, a copy of the draft transfer and a copy of the previous transfer of The Farmhouse in August 2009.
22. He stated that the Applicants' solicitor had prepared the draft transfer (which had been agreed by the Respondents), that both the freehold and leasehold titles were registered and that no ground rent was payable under the Lease. As such, he submitted that the work to be carried out by the Respondents' solicitors would be minimal and that a fee of £500 plus VAT was adequate for the work involved.

The Respondents' submissions

Enfranchisement Price

23. The Respondents failed to provide any detailed submissions or any valuation of the freehold interest based on the provisions of the Act. Instead, in their statement, they referred to informal, without prejudice, negotiations between the parties where they stated that they had been offered and accepted the sum of £2,200. The Respondents provided copies of email correspondence in relation to the same.
24. In addition, the Respondents provided a number of historical documents relating to their purchase of the freehold of Malthouse Farm and stated that, at that time, the valuation of the freehold for each of the three properties in the development was £3,000, not including administration and legal costs. They argued that the Applicants' claim should not be used to set aside a *'previous judgement in law'*.

Reasonable Costs

25. In relation to costs, the Respondents failed to provide a draft transfer, as required by the Tribunal's directions of 14th of August 2020. The Respondents did, however, provide a copy of an email quote from Mr Williams of DWF Law LLP.
26. In the email, Mr Williams stated that his fees would £1,250 plus VAT and disbursements, which would normally not exceed £25. The email confirmed that the work involved would include obtaining copies of the titles and checking the same, drafting the transfer, arranging for the execution of the transfer, preparing a completion statement and completing the sale. In addition, the email stated that, if there were to be a dispute over the wording of the draft transfer, additional costs would be payable. The Respondents stated that any additional costs would be charged at £350 an hour.
27. The Respondents submitted that it was reasonable for them to instruct DWF Law LLP based on the complexities of the development. The

Respondents stated that Mr Roger Williams, who is a partner at the firm, was the solicitor who had handled the original site purchase, the transfers of the two other properties on the development and that he had prepared the original transfer of part. As such, they submitted that his knowledge and experience of the site would mean that the transaction would be speedy, accurate and cost-effective.

The Tribunal's Deliberations

28. The Tribunal considered all of the evidence submitted by both parties, which is briefly summarised above.

Enfranchisement Price

29. The Tribunal notes that the Respondents failed to provide any valuation carried out in accordance with the provisions of the Act. The Respondents' contention that a previous valuation of £3,000 was a legal judgement binding on the Tribunal in this matter is incorrect and any 'without prejudice' negotiations which may have been carried out between the parties are also irrelevant.
30. Although the Tribunal does have some reservations regarding the basis of valuation under section 9(1A) and the methodology adopted by Mr Plotnek, the Tribunal is satisfied that adopting a vacant possession value of £370,000, a capitalisation rate of 7% and a deferment rate of 5.25% is correct. Further, the Tribunal is satisfied that the resulting valuation of £1,421 is appropriate and, accordingly, adopts that figure.

Reasonable Costs

31. The Tribunal was not forwarded a copy of any valuation carried out on behalf of the Respondents pursuant to the Applicants' notice of claim, nor have the Respondents made any submissions regarding costs for any such valuation. As such, the Tribunal determines that no valuation costs are payable.
32. The Tribunal notes Mr Plotnek's submissions regarding both titles being registered, the draft transfer having being drafted by the Applicants' solicitors and the transfer of the freehold being a relatively straightforward matter, however, the Tribunal agrees with the Respondents – that the purchase of the freehold reversion of the Property is more complex than a standard transaction.
33. Although both the freehold and leasehold titles are registered, the transfer of the freehold will be subject to an ongoing service charge in relation to the services which are shared by the three properties on the development. As such, the Respondents' solicitors will need to check titles to all of the properties on the development, in addition to the Lease, when considering the provisions of the draft transfer and completing the transaction.

34. As the Respondents requested the application for reasonable costs to be determined prior to the transaction having been completed, the only evidence regarding the amount of the reasonable costs for this transaction is a quote the Respondents received from Mr Williams at DWF Law LLP.
35. The Respondents have confirmed that Mr Williams has historical knowledge of the development and the Tribunal considers that it is reasonable for the Respondents to wish to use the solicitor who was previously involved in transactions relating to the site.
36. The Tribunal notes that the terms of the draft transfer have been approved by the Respondents and appear to be in a similar vein to those used for the transfer of the freehold reversion of The Farmhouse. As such, the Tribunal does not consider that there should be any additional costs payable regarding any potential dispute in the wording, as referenced to in Mr William's email.
37. In addition, although the Tribunal notes that the quote includes the costs of drafting the transfer, this would not obviate the need for the Respondents' solicitors to have to check through and explain the terms of the transfer deed to their clients, irrespective of whether they had drafted the deed and whether or not a similar form of transfer had been entered into some years previously.
38. Accordingly, based on the complexities in relation to this particular matter, the Tribunal considers that a sum of £1,250 (plus VAT if applicable) for legal costs, with disbursements not exceeding £25, to be reasonable.

Appeal

39. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
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Judge M. K. Gandham