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

Case Reference : **CHI/24UD/OAF/2013/0006**

Property : **1 Elmslie Gardens, Bursledon, Southampton,
SO31 8FH**

Applicant : **Rodney Albert Horne & Carol Eileen
Horne**

Representative : **Eric Robinson, Solicitors**

Respondent : **Persons unknown**

Representative : **None**

Type of Application : **Section 27 of the Leasehold Reform Act 1967**

Tribunal Members : **A J Mellery-Pratt FRICS
P D Turner-Powell FRICS**

Date of Inspection : **24th July 2013**

Date of Decision : **30th July 2013**

DECISION

Preliminary

1. By an order dated 20th of March 2013, the Southampton County Court transferred the matter to the Leasehold Valuation Tribunal, now a First Tier Tribunal (Property Chamber), for the determination of the price to be paid for the freehold interest in the subject property, subject to the existing lease.
2. On 15 April, 2013, the tribunal issued directions. Subsequently, representations were received from the applicant/tenant and the date of 24th July, 2013 was set for the inspection and determination.
3. As the name and whereabouts of the respondent/freeholder are unknown, no representations were received from the respondent/freeholder, nor was it possible to provide that person with copies of the representations made by the applicant/tenant.
4. The applicant/tenant had not requested a hearing and following the inspection the tribunal met to consider the application.

Documents

5. The documents before the tribunal consisted of the original application to the County Court dated 13th November 2012, together with the Court Order transferring the matter to the tribunal. Additionally, there were statements confirming the actions that had been taken by the applicant to trace the respondent/freeholder, together with a copy of the original lease, defective title indemnity policy and a valuation report prepared by Mr Gordon Birch FRICS for the applicant/tenant.

Inspection

6. The tribunal inspected the property at 10.00 am on 24th July, 2013 and found the property to be as described by Mr Birch in his valuation report dated 8th September 2012.

The Law

7. The relevant legislation is the Leasehold Reform Act 1967:-
9Purchase price and costs of enfranchisement, and tenant's right to withdraw.
(1)Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family . . . not buying or seeking to buy) might be expected to realise on the following assumptions:—
(a)on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;
(b)..... and
(c)on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and

subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

(1A) Notwithstanding the foregoing subsection, the price payable for a house and premises,—

(i) the rateable value of which was above £1,000 in Greater London and £500 elsewhere on 31st March 1990, or,

(ii).....

shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:—

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy, but on the assumption that this Part of this Act conferred no right to acquire the freehold; or an extended lease

(b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises

(i)..... and

(ii) in any other case under the provisions of Part I of the Landlord and Tenant Act 1954;

(c).....

(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;

(e)..... and

(f) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

and in a case where the provision (or one of the provisions) by virtue of which the right to acquire the freehold arises is section 1A(1) above, subsection (1A) above shall apply with the omission of the assumption set out in paragraph (b) of that subsection.

8. 27Enfranchisement where landlord cannot be found.

(1) Where a tenant of a house having a right under this Part of this Act to acquire the freehold is prevented from giving notice of his desire to have the freehold because the person to be served with the notice cannot be found, or his identity cannot be ascertained, then on an application made by the tenant the court may, subject to and in accordance with the provisions of this section, make such order as the Court thinks fit with a view to the house and premises being vested in him, his executors, administrators or assigns for the like estate and on the like terms (so far as the circumstances permit) as if he had at the date of his application to the High Court given notice of his desire to have the freehold.

(2) Before making any such order the court may require the applicant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the landlord; and if after an application is made to the court and before the house and premises are vested in pursuance of the application the landlord is traced, then no further proceedings shall be

taken with a view to the house and premises being so vested, but subject to subsection (7) below—

(a) the rights and obligations of all parties shall be determined as if the applicant had, at the date of the application, duly given notice of his desire to have the freehold; and

(b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Act or of regulations made under this Act.

(3) Where a house and premises are to be vested in a person in pursuance of an application under this section, then on his paying into the court the appropriate sum there shall be executed by such person as the court may designate a conveyance in a form approved by the court and containing such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 10 above; and that conveyance shall be effective to vest in the person to whom the conveyance is made the property expressed to be conveyed, subject as and in the manner in which it is expressed to be conveyed.

(4) For the purpose of any conveyance to be executed in accordance with subsection (3) above, any question as to the property to be conveyed and the rights with or subject to which it is to be conveyed shall be determined by the court, but it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be conveyed and, for the purpose of excepting them from the conveyance, any underlying minerals.

(5) The appropriate sum which in accordance with subsection (3) above, is to be paid into the court is the aggregate of—

(a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal to be the price payable in accordance with section 9 above; and

(b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remain unpaid.

(6) Where a house and premises are vested in a person in accordance with this section, the payment into the court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his executors, administrators or assigns in respect of the price payable under this Part of this Act for the acquisition of the freehold in the house and premises.

(7).....

(8).....

The Lease

9. The lease of the property is for a term of 1000 years from 29 September, 1870, at a rent of one shilling (5 p) per annum without provision for review.

The applicant/tenant's case.

10. Mr Birch in his valuation was of the opinion that such a small ground rent, without review for such a lengthy period, would raise little interest and may not even find a buyer when considering that the cost of collecting the ground rent exceeds the ground rent itself.
11. Whilst he was of the view that a freeholder might ask a figure in the order of £250-£300, he was of the opinion that the market value was fairly represented by £100.

Consideration

12. The tribunal considered all the points raised by Mr Birch in his valuation, and considered that in his approach to the valuation, both in terms of the requirements of the Act and the interest likely to be shown in the open market, he was correct.
13. The tribunal therefore agreed with Mr Birch's valuation.

The determination

14. The tribunal determines that the value of the freehold interest as at 13 November 2012 is £100.00.

Appeal

15. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
16. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
17. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
18. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Signed

AJ Mellery-Pratt. FRICS. Chairman
A member of the Tribunal
appointed by the Lord Chancellor