



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

Case Reference : **MAN/00BQ/OAF/2015/0001 and 0002**

Properties : **10 and 12 Starfield Avenue, Littleborough,
Rochdale, Lancashire OL15 ONG**

Applicants : **Wilfred and Norren Lord (No 10)
Julian and Janet Gartside (No 12)**

Respondent : **Leafenvoy Ltd.**

Type of Application : **Application for determination of price payable
Leasehold Reform Act 1967, s.21**

Tribunal Members : **Judge Caroline Hunter
Mr John Faulkner FRICS**

Date of decision : **23 April 2015**

DECISION

Summary Decision

1. The Tribunal decides that the price to be paid for the enfranchisement of the two properties is: £357 per property.
2. That the cost of the respondent's valuer should be agreed and if not agreed an application may be made to the Tribunal to determine the matter. The legal costs of the enfranchisement should be agreed, and if not agreed an application may be made to the Tribunal to determine the matter.
3. The applicants may apply for an order for costs in writing within 14 days of this decision. The respondents should respond to any such application within 14 days.

Reasons

Background

4. 10 and 12 Starfield Avenue are both part of a small development of detached houses in Littleborough, Rochdale. They were built in the mid 1970s and let on 999 year leases. Mrs and Mrs Lord are the current leaseholders of number 10 and Mr and Mrs Gartside of number 12. We shall refer to them collectively as the applicants as the cases are essentially identical. Leafenvoy Ltd is the respondent freeholder.
5. On October 19 2014 the applicants served notices on the respondent freeholder claiming the right to enfranchise the properties in accordance with the Leasehold Reform Act 1967 ("the Act"). The respondents did not respond to this formal notice, so that they are deemed to have admitted the right to enfranchise. Further as the landlord failed to give notice of the price it was seeking for the properties within two months of the notice, the applicants were entitled (see s.21(1B) of the Act) and did seek a determination of the price from the Tribunal under s.21(1)(b) of the Act.
6. Directions were issued by the Tribunal on 7 January 2015. These included a direction that the matter should be determined on paper unless the parties sought an oral hearing. Neither party has. The directions also stated that the matter would be determined without an inspection of the properties. Both parties submitted written representations, the applicants through their solicitor, Mr Michael Loveridge, the respondents through their surveyor Emma Beesley.

The Law

7. Section 9(1) of the Act defines the price payable as the amount which the house and premises, if sold on 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. Section 9(1A) requires the assumption that the Act conferred no right to acquire the freehold but if the tenancy has not been extended under the Act it was to be so extended.
8. The extension referred to in s.9(1A) is that in s.14 of the Act and is for a term of 50 years after the existing term date.

9. Section 9(4) permits the freeholder to recover reasonable legal and valuation costs.

The Lease

10. The terms of the leases are not unusual. Both leases are for terms of 999 years from 1 November 1976 at fixed ground rents of £25 per annum. The valuation date under the Act is 19 October 2014 when there was 961 years remaining on the leases. The ground rent is payable in two yearly instalments.

Price

11. The applicants suggest that the price for each property should be £100. They do so on the basis of other decisions by the Tribunal in relation to similar properties in the region. These were all properties with ground rents of £25 or less. These decisions Mr Loveridge suggests indicate that, where there are low fixed ground rents and a very distant reversion, the prices fixed by tribunals for the reversions have been falling and have become essentially nominal. This is because the legal costs of acquiring the reversion, plus the administrative costs of collecting the rents have continued to rise such that the acquisition of such a reversion is increasingly unattractive and therefore increasingly less valuable. Mr Loveridge for the applicants suggests on the basis of these decisions that Tribunals are reducing the amounts given as a nominal sum.
12. For the respondent Ms Beesley suggested a sum of £357. This was calculated by a years purchase figure of 14.24 or 7% yield to the ground rent. Ms Beesley states that an investor would be of the opinion that the income is very secure as it is highly unlikely that the tenant would fail to pay the annual rent because of the prospect of forfeiture of the lease. On this basis she suggests a purchaser is more likely to accept a lower yield in return for an increased certainty of payment.
13. Mr Loveridge in his response points out the limitations on landlords in exercising their rights to forfeiture now contained in the Commonhold and Leasehold Reform Act 2002, s.167, which would effectively require a minimum of three years before the landlord could start any proceedings for forfeiture. This is of course correct.
14. Nonetheless, we do not consider that on the basis of a small number of decisions it can be said that there is a clear tendency for a declining "nominal sum" to be awarded by Tribunals. Each case had different evidence and arguments put to it, and often the respondents did not put in any submissions. In this case we have an alternative argument put by the respondents.
15. We are not of the view that there is no market in individual ground rents, although in practice all are sold in larger lots. Accordingly the sum cannot be purely nominal and should be based on some valuation principle. As suggested by Ms Beesley the appropriate approach in cases where there is no value in the reversion, because it is so far into the future, is to capitalise the ground rent. We agree on balance with her approach of a 7% yield (which is about 3% above the yield on 2½% undated government stock at the time the application was made) and conclude that the sum should be £357.

Costs

16. Mr Loveridge in his supplementary statement of case asked that the Tribunal disallow any valuer's costs incurred by the respondent. His reasons for doing so are:
 - a. The respondent failed to respond to the original purchase notice
 - b. The respondent has failed on two separate occasions and without any reasonable excuse to comply with the Tribunal's directions. This has caused the Applicants additional expense and delay.
 - c. The respondent's valuation evidence is out of date and irrelevant and has failed to offer any useful guidance to the Tribunal.

17. We have not had in writing any substantive response to this application, which we take to be an application under s.9(4), although it is not labelled as such. Nor do we have any evidence of what the actual sums which might be claimed for the reasonable valuation costs are. In the circumstances we therefore do not consider that we are in a position to make a determination of the valuation costs. Once these have been determined the parties should seek to agree them, if not agreed they can refer the matter to the Tribunal for a determination.

18. Alternatively the arguments made by Mr Loveridge could potentially go to an application for costs under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13. Again if that is intended we consider that we are not in a position to make a decision without written representations specifically addressing the issue and providing details of the applicants' costs. Should the applicants wish to make such an application they should do so in writing, within 14 days of this decision. The respondents should reply within 14 days and the Tribunal will decide the matter of the papers.

19. When the applicants are informed of the legal costs that the respondent requires to be paid they may if they cannot be agreed refer the matter to the Tribunal for a determination under ss.21((ba) and 9(4) of the Act.