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

Case Reference : **BIR/41UK/OAF/2015/0020**

County Court Reference : **A00NU400**

Applicant : **Mr. R V and Mrs. C D Melen**

Represented by : **Mr. A W Brunt FRICS of Anthony Brunt and Co**

Respondent : **Unknown**

Property : **10 Morpeth, Dosthill, Tamworth B77 1JF**

Type of Application : **Sections 21(1)(a) of the Leasehold Reform Act 1967 ('The Act') to determine the price payable under section 9(1), in respect of the tenant's acquisition of the freehold, under section 21(1)(ba) of the Act**

Tribunal : **R T Brown FRICS (Chairman)
P J Hawksworth (Lawyer member)**

Dated : **1st July 2015**

DECISION

Determination

1. The Tribunal determines that, taking account of the evidence adduced, our evaluation of it, using our general knowledge and experience, but not any special knowledge, the price payable by the lessee for the acquisition of the freehold interest in the property in accordance with section 9(1) of the Leasehold Reform Act 1967 as amended is **£3,563.95**.
2. This decision is referred back to the County Court.

Reasons for Decision

Introduction

3. By an order of Deputy District Judge Severn sitting in the County Court, Nuneaton, dated 17th April 2015 the Claimant is given permission to proceed to obtain a valuation of the Freehold Interest from the First tier Tribunal (Property Chamber).

Inspection

4. The members of the Tribunal inspected the subject property on 2nd June 2015 in the presence of Mr Brunt and Mr and Mrs Melen.
5. The property which is located some 16 miles North East of Birmingham City Centre is a 1980s detached bungalow situated in the corner of a cul-de-sac. It has a front garden, driveway to double detached garage and a back garden. The centrally- heated double- glazed accommodation comprises: on the Ground Floor: Porch, hall, cloakroom (with w/c), living room, dining room, kitchen/ breakfast room, utility, one single bedrooms and bathroom (shower, w/c and w/b) and two double (one en-suite).

Lease

6. The Lease is for a period of 99 years from 25th march 1982 at an initial ground rent of £50.00 per annum, with a review to £75.00 per annum from 25th march 2015 and from 25th March 2048 £100.00 per annum.

Hearing

7. The hearing was held in Birmingham attended by Mr Brunt.

Applicant's Case

Capitalisation Rate

8. Mr Brunt, in support of his conclusion that the appropriate rate is 6.50%, referred the Tribunal to three decisions, which he admitted were not binding on the current Tribunal, namely: *108 Edmond Road Alum Rock* - BIR/00CN/OAFD/2014/0005, *9 Church Road* - BIR/47UK/2012/0011 and *21 Longacres, Hednesford, Cannock WS12 1HT* - BIR/41UB/OAF/2011/0010. In the first case the ground rent was a modern rent of £1,155.00 per annum (subject to review) , in the second and third cases subject to fixed review £60.00, £90.00 and £120.00 and £35.00, £52.00 and £78.00 per annum respectively.

Deferment Rate

9. Mr Brunt contends for a deferment rate of 5.50%.

10. He referred the Tribunal to the history of the *Sportelli* decisions (*Earl Cadogan and Another v Sportelli and Another* [2006] LRA/50/2005), The *Kelton Court* decision (*Zuckerman and Others v Trustees of the Calthorpe Estate* LRA/97/2008) and more recently the decision in *7 Grange Crescent (Sinclair Gardens Investments (Kensington) Ltd* [2014] UKUT 78 (LC). In the last case the subject property was a 2 bedroom maisonette and the rate determined was 5.50%. Mr Brunt said he was not confident in following this decision because of the residual liability for estate management.
11. Following *Zuckerman* Mr Brunt said, he had negotiated many house freeholds at 5.50% and that this was the rate most commonly adopted by the Midlands Panel.
12. The Tribunal questioned Mr Brunt pointing out the cases he referred to were all 'missing landlord' cases where, as a consequence, no argument was heard, nor evidence put forward by the Landlord. Mr Brunt's response was that the Tribunal appointed was an expert tribunal and capable of making its own judgement on the evidence.

Entirety Value

13. Mr Brunt adopted an entirety value of £304,000.00 on the basis that the property has been sold, subject to contract (that is to say a purchaser for it has been found) on a Freehold basis at that amount. He said that the purchaser is most anxious to proceed.

Site apportionment

14. Mr Brunt adopted 33.33% on the basis that this is the sum set aside by developers on a 'rule of thumb' basis for land acquisition.
15. Mr Brunt contended that in more expensive districts developers might pay a higher figure because there will be little difference in construction costs. Mr Brunt submitted that in Tamworth values are fairly modest so in this case 33.33% is reasonable.
16. In support of this contention Mr Brunt referred to a number of Tribunal decisions where the figure ranged between 30.00 and 33.00%. In particular, *22 Oakslade Drive, Solihull, B92* BIR/00CT/OAF/2009/0068 a detached house where a site apportionment of 33.00% was adopted.

Clarise Adjustment - Clarise Properties Limited [2012] UKUT

17. Tribunal's Note: The reference to *Clarise* refers to the case of *Clarise Properties Limited* (2012)UKUT 4(LC) which introduced a third stage in the valuation process. This third and last stage is to value the ultimate reversion. This is sometimes called the "*Haresign*" addition following the case of *Haresign v St John's College Oxford* (1980)255 EG 711. It is the value of the property after the expiry of the notional 50 year lease. The valuer in formulating a *Haresign* addition asks himself what value should be placed at the time of the notice on the right to have the property back after the expiry of the existing lease plus 50 years. For some years the *Haresign* addition was out of favour but in *Clarise* the Upper Tribunal in very firm terms indicated that a *Haresign* addition was appropriate and Tribunals have applied the same. This is dealt with in more detail below at paragraph 36 of this decision.

18. Mr Brunt agrees that in certain cases the *Clarise* adjustment should be used but he contends that is not appropriate in this case.
19. Mr Brunt submitted that valuing a reversion some 50 years after the term date looks precarious and further, he states that some valuers suggest that, if the adjustment is less than 5.00%, it should be ignored.
20. Mr Brunt says that in the subject case the Lease will expire in 2081 and thus, a fifty year extension will bring this to 2131.
21. Mr Brunt further says he does not feel confident in separately adding a further 'stand alone' element to the valuation. He said that a lot of things could change over the next 118 years.
22. Mr Brunt says he prefers to value the section 15 rent in perpetuity thereby not ignoring the final reversion but simply taking a more cautious approach.
23. Questioned by the Tribunal, Mr Brunt concurred that if *Clarise* is adopted, then the final deduction to the entirety value to reflect Schedule 10 of the Housing and Local Government Act 1989 should be 2.50% in this instance.

The Tribunal's Deliberations

24. The Tribunal considered all the oral and written evidence submitted by Mr Brunt as summarised above.

Capitalisation rate

25. The Tribunal noted the cases referred to and reminds the Applicant that it is not bound by its own previous decisions. The decision reached in *108 Alum Rock Road* was made without the benefit of expert evidence and the decisions in *Church Road* and *21 Longacres* were similarly reached on a 'missing landlord' basis and therefore without representations by the Freeholders.
26. In the circumstances, the Tribunal is not persuaded on the evidence before it that the rate should be increased and accordingly determines the Capitalisation Rate at 6.00%.

Deferment rate

27. In *Earl Cadogan and Another v Sportelli and Another (2006) LRA/50/2005* and related cases valuers have defined the deferment rate as the "annual discount applied, on a compound basis, to an anticipated future receipt (assessed at current prices) to arrive at its market value at an earlier date" (Sportelli paragraph 2).
28. For many years the Midlands LVT used, by convention, 7% for houses being valued under section 9(1) and 9(1A) of the Act. However, in *Arbib v Earl Cadogan (2005) LRA/62/2004* the Lands Tribunal, in making its decision reminded LVTs that those rates should not be established by convention.
29. In *Sportelli* the Lands Tribunal determined a generic deferment rate of 4.75%. This was endorsed by the Court of Appeal in *Cadogan and Another v Sportelli and Another (2007) EWCA Civ 1042*.

30. The Lands Tribunal in, *Re Mansal Securities Ltd and others application* [2009] 2E.G.L.R. 87, concluded that the correct deferment rate for section 9(1) was 5.00%. In considering the elements of that rate, the risk free element and the growth rate are the same under section 9(1) as 9(1A) of the Act but the risk premium is increased by 0.25% to 4.75% (and so the deferment rate rises to 5.00%) because the reversion under Section 9(1) is to a ground rent only which increases volatility and illiquidity.
31. In *Zuckerman* (above) the Lands Tribunal adopted 6%. Additions for the management of flats and obsolescence are not appropriate in this case but in view of the perceived increase in the risk of not reaching the growth assumed in *Sportelli* (above) the Midlands Region has adopted, on a number of subsequent occasions, a rate of 5.50%. In *Zuckerman* the Lands Tribunal concluded that the growth rate in the West Midlands region was slower than in London and that as a result 2% real growth was less likely to be achieved.
32. In *7 Grange Crescent* (above) the Upper Tribunal concluded that the correct rate for maisonettes was 5.50%. Whilst Mr Brunt does not feel confident in following this decision at present (because of the differing input with regard to estate management on this type of estate) he concludes that there is no justification for changing the current rate of 5.50% for houses.
33. On the basis of the evidence before it the Tribunal therefore determines the Deferment Rate at 5.50%.

Entirety value

34. On the evidence before it the Tribunal adopts the figure of £304,000.00 proposed by Mr Brunt.

Site apportionment

35. On the evidence before it the Tribunal adopts the figure of 33.33% proposed by Mr Brunt.

Clarise Adjustment - Clarise Properties Limited [2012] UKUT

36. The Tribunal is guided by the decision of the Upper Tribunal in *Clarise* (above) particularly paragraph 36:

'We consider the time has now come to move away from the two-stage approach as the standard practice in section 9(1) valuations and to apply instead the three stage approach. As a matter of good valuation practice, where a price has to be determined, every element of value should in general be separately assessed unless there is some reason not to do so. There is now a much greater likelihood that the ultimate reversion will have a significant value than there was when the two stage approach became standard practice 40 years or more ago. There are two reasons for this. The first is that house prices, including the prices of houses that would fall to be valued under section 9(1), have increased substantially in real terms; and the second is the lower deferment rates that are now applied in the light of Sportelli. There is, we think, a real danger that applying the two stage approach as standard will in some cases lead to the exclusion of an element of value that ought to be included in the price. This is particularly so if valuers and LVT's test as the criterion for the application of a Haresign addition whether the house is 'substantial' and thus

exclude any element of value in the ultimate reversion (other than that included in the capitalisation of the section 15 rent in perpetuity) where the house does not meet this ill-defined criterion. The only relevant question is whether the ultimate reversion does have a significant value. In future, therefore, we consider that the appropriate approach will be to capitalise the section 15 rent to the end of the 50-year extension and to assess the value (if any) of the ultimate reversion'.

37. The Tribunal is not persuaded by Mr Brunt's evidence that it should move away from this position. Whilst acknowledging that *'the more remote an element of value the less it can be relied upon as a contributory factor to the end result'* does not in the Tribunal's view lead to the inevitable conclusion that it should be ignored altogether. Mr Brunt's suggestions that there should be a "cut off" point where the third stage should be ignored or that if the third stage adds less than 5.00% to the end value it could be ignored, are unsupported.
38. The Tribunal is not persuaded that there is any reason to differentiate this case from *Clarise* and accordingly, determines that the three stage valuation approach should be applied but with a 2.5% adjustment to the entirety value to reflect the possible effect of Schedule 10 to the Local Government and Housing Act 1989.

Conclusion

39. Applying those findings to the determination, the Tribunal calculates the price payable for the Freehold as follows:

Stage 1	Term			
	Current Ground Rent		£50.00	
	YP 0.35 years @ 6.0%		<u>0.3400</u>	17.00
	Ground Rent from 25/03/2015		£75.00	
	YP 33 years @ 6.0%	14.2302	1,067.27	
	PV £1 in .35 years @ 6.0%		<u>0.9791</u>	1,044.96
	Ground Rent from 25/03/2048		£100.00	
	YP 33 years @ 6.0%	14.2302	1,423.02	
	PV £1 in 33.35 years @ 6.0%		<u>0.1433</u>	203.92
Stage 2	1st Reversion			
	Entirety Value	£304,000		
	Site apportionment 33.33%	£101,323		
	Section 15 Modern Ground Rent 5.5%	£5,572.78		
	YP 50 years @ 5.5%	<u>16.9315</u>		
		£94,355.46		
	PV £1 in 66.35 years @ 5.5%	<u>0.0209</u>		1,972.03
Stage 3	2nd Reversion			
	Standing House Value	304,000		
	Schedule 10 @2.5%	296,400		
	PV £1 in 116.35 years at 5.5%	<u>0.0011</u>		326.04
				£3,563.95

Appeal Provisions

40. 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).

Robert T Brown FRICS
Chairman