



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

Case Reference : **LON/00AB/OAF/2015/0016**

Property : **118 Fanshawe Avenue Barking
Essex IG11 8RQ**

Applicant : **Shadab Aslam**

Representative : **Ibrahim & Co**

Respondent : **Tabusan Kayani**

Representative : **n/a**

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

Tribunal Members : **Mrs F J Silverman Dip Fr LLM
Mrs E Flint FRICS**

**Date and venue of
Hearing** : **9 June 2015 (paper consideration)
10 Alfred Place, London WC1E 7LR**

Date of Decision : **9 June 2015**

DECISION

**The price payable for the acquisition of freehold reversionary
interest shall be £ 5,304.**

Background

1 The Applicant tenant is the owner of the leasehold interests in the property known as **118 Fanshawe Avenue Barking Essex IG11 8RQ** which are held under a two leases both dated 13 August 2007 for 125 years and commencing on 13 August 2007 .

2 By order of the County Court dated 30 December 2014 the Applicant is held to be entitled to make a claim for enfranchisement under the Leasehold Reform Act 1967 , the landlord being unreachable. The Court further ordered on 28 March 2015 that the matter be transferred to the the First Tier Property Chamber to determine the price to be paid by the Applicant for the freehold and to approve the terms of the Transfer.

3 The matter was considered by a Tribunal on 9 June 2015 as a paper determination. The Applicant did not attend the hearing and the landlord is missing .

4 The Tribunal did not consider it necessary to inspect the property.

5 The Tribunal considered the bundle of papers put before it by the Applicant, including the valuation prepared by Mr Shahlab Baig MRICS MCIOB and, having done so, determines that the price payable for the freehold reversionary interest shall be £ 5,304 .

6 The following factors were taken into consideration by the Tribunal in reaching their decision on the price to be paid.

7.1 The Applicant's valuer presented two comparables, both of which are in the same street as the subject property and are described by the valuer as being similar in type and size to the subject property. They were both within a close proximity to the subject property with appropriate sale prices offered by the valuer. The Tribunal is prepared to accept these properties as reasonable comparators although the valuer provided no substantive reasoning to justify his choice of comparables or the decisions made in reliance on them.

7.2 The valuer concluded that the unimproved leasehold value of the house should be £241,325 .

7.3 **Capitalisation:** The valuer inserted a figure of 7% for capitalisation but failed to justify his decision to use this figure. The Tribunal does not

accept this as being reasonable. The ground rent for each lease increases by £100 p a at each review (33 yr intervals and then the remainder of the term). The Tribunal determines the capitalisation rate at 6% based on its knowledge and experience in these matters.

7.4 **Deferment rates** : In relation to the deferment rate the Applicant used 4.75% in line with the Sportelli decision. The Tribunal accepts and adopts this figure.

8 The Tribunal notes that the valuer's original valuation had been returned to him for correction and elaboration and considers that the revised version was still lacking in detail but was able to deduce his intent from the material supplied. The Tribunal would normally expect to be offered more detail about the relevant comparables including source material to justify the valuer's conclusions and a floor plan to show the improvements to the property.

9 The Law

27 Enfranchisement 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 High 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 High 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 High 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 High 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 Supreme Court the appropriate sum there shall be executed by such person as the High Court may designate a conveyance in a form approved by the High 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 High 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 to be paid into the Supreme Court in accordance with subsection (3) above shall be such amount as a surveyor selected by the President of the Lands Tribunal may certify to be at a fair valuation the price payable in accordance with section 9 above, together with the amount or estimated amount remaining unpaid (as determined by the High Court) of any pecuniary rent payable for the house and premises up to the date of the conveyance.

(6) Where a house and premises are vested in a person in accordance with this section, the payment into the Supreme 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) An application under this section may be withdrawn at any time before execution of a conveyance under subsection (3) above and, after it is withdrawn, subsection (2)(a) shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (2)(a) in the case of any application, the application shall not afterwards be withdrawn except with the landlord's consent or by leave of the High Court, and the High Court shall not give leave unless it appears to the Court just to do so by reason of matters coming to the knowledge of the applicant in consequence of the landlord being traced.

(8) A conveyance executed under subsection (3) above shall have effect as provided by that subsection notwithstanding any interest of the Crown in the property expressed to be conveyed.

10 The Tribunal also had regard to the decision in *Earl Cadogan & Cadogan Estates Ltd v Sportelli & Sportelli (2006)* LRA /50/2005

11 A copy of the Tribunal's valuation is attached as Appendix 1.

12 The Transfer is approved as drawn.

Judge F J Silverman as Chairman

Date 9 June 2015

Note:

Appeals

1. 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.

118 Fanshawe Avenue Barking IG11 8RQ

Valuation Date 30 December 2014

Capitalisation rate 6%

Deferment rate 4.75%

Two leases each for 125 years from 13 August 2007 at £100 pa for the first 33 years, £200 pa for the next 33 years and £300pa for the remainder of the term.

| | | | |
|---------------------|--------|------|-----------|
| Ground rent | | £200 | |
| YP 25.7 years at 6% | 12.937 | | £2,587.40 |

| | | | |
|-------------------|-------|---------|-----------|
| Ground rent | | £400 | |
| YP 33 years at 6% | 14.23 | | |
| PV 25.7 years | 0.229 | 3.25867 | £1,303.47 |

| | | | |
|-------------------|----------|----------|---------|
| Ground rent | | £600 | |
| YP 59 years at 6% | 16.1311 | | |
| PV 58.7 years | 0.038423 | 0.619805 | £371.88 |

Reversion

| | | | |
|---------------------------|---------|----------|------------------|
| Unimproved freehold value | | £245,000 | |
| PV 117.7 years at 4.75% | 0.00425 | | <u>£1,041.25</u> |

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|---------|--|--|------------------|
| Premium | | | <u>£5,304.00</u> |
|---------|--|--|------------------|