



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CAM/00KF/OCE/2016/0011

Property : 237 North Road, Westcliff on Sea, Essex
SS0 7AB

Applicants (Tenants) : Modean Ltd and Helen Nancy Finch
Representative : Mike Stapleton & Company

Respondent (Landlord) : Forcelux Ltd
Representative : Mr James Christopher Gibb BSc(Econ) MRICS

Date of Application : 14th March 2016

Type of Application : An application to the Tribunal under Section
24 of the Leasehold Reform Housing and
Urban Development Act 1993 (the 1993 Act) in
respect of the exercising of the right to a
collective enfranchisement.

Tribunal : Judge JR Morris
Mr Derek Barnden MRICS
Mr Gerard Smith MRICS FAAV

Date of Hearing : 9th May 2016

Date of Decision : 6th June 2016

DECISION

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UPON the Tribunal being told that the form of Transfer had been agreed between the parties

AND UPON there being no objection by the Applicant to paying the legal costs and valuation fee pursuant to section 33 of the Leasehold reform, Housing and Urban Development Act 1993

IT IS DETERMINED as follows:

1. The price payable in respect of the Freehold interest in the Specified Premises is £13,099.00 and for the Additional Freehold is £100.00. Therefore the total price payable for the Freehold of the Property is determined at £13,199.00 calculated in accordance with Annex 1 to this Decision.

Application

2. The Applicants acquired Absolute Leasehold Title of their respective flats, Ms Helen Nancy Finch on 8th October 2009 of the Ground Floor Flat (Title Number EX341554) and Modean Limited on 23rd June 2006 of the First Floor Flat (Title Number EX366366). The Respondent holds the Absolute Freehold Title since 29th July 1996 (Title Number EX133331).
3. The Applicants issued an Initial Notice under section 13 of the 1993 Act to acquire the freehold of the Property under the 1993 Act dated the 6th August 2015.
4. The Specified Premises of which the Applicants propose to acquire the freehold are those parts of Title Number EX133331 which comprise the building and common parts within it. The Applicants also proposed to acquire the Additional Freehold of those parts of Title Number EX361244 representing the front courtyard and any rear or side gardens and pathways (A marked plan was provided).
5. The proposed purchase price is £11,000 for the Specified Premises and £100 for the Additional Freehold.
6. The Respondent Reversioner served a Counter Notice under section 21 of the 1993 Act accepting the proposals contained in the Initial Notice with regard to the extent of the proposed acquisition but not accepting the proposed purchase price.
7. The Respondent proposed a purchase price of £30,450.00 for the Specified Premises and £2,000.00 for the Additional Freehold.

The Leases

8. Copies of the Leases were provided. The Lease for the Ground Floor Flat is dated 5th December 1986 between (1) Robert William Millard and Dorothy Louise Millard and (2) William Morris, Marjorie Ellen Joan Morris and Michael Robert John Jackson for a term of 99 years from the 29th September 1986. The Lease for the First Floor Flat is dated 3rd April 1987 between (1) Robert William Millard and Dorothy Louise Millard and (2) David John Millard and Tracy Ann Millard

for a term of 99 years from the 25th March 1987. The rent is the same for both flats and is:

£50.00 for the first 30 years

£100 for the next 30 years

£150 for the remainder of the term.

9. The Reversion was assigned to the Respondent on 29th July 1996. The remainder of the term was assigned to the present tenant of the Ground Floor Flat on 8th October 2009 and to the present tenant of the First Floor Flat on 23rd June 2006.

The Subject Property and Inspection

10. The Tribunal Inspected the Property in the presence of Mr Stapleton the surveyor and representative for the Applicant and Mr Gibb the surveyor and representative for the Respondent.
11. The Property is a two storey mid terrace house of brick, rendered to the first floor, under a pitched tile roof, probably constructed circa 1900 and converted into two self contained flats in the 1980s. Originally the ground floor was a shop and the premises to one side are still commercial (a butchers) whereas to the other side the property has been converted similarly to the Property into residential accommodation.
12. There is a small common entrance hall with a door to the Ground Floor Flat and a door to the stairs leading to the First Floor Flat. The Ground floor Flat comprises a lounge, bedroom kitchen/diner off which is the bathroom. The First Floor Flat comprises a living room, two bedrooms, bathroom and kitchenette. Space and water heating is by gas central heating system.
13. The Ground Floor Flat has direct access to the garden which is within its demise. The area in the front of the Property referred to in the Initial Notice as the courtyard is now incorporated into the pavement and appears to have been adopted by the local authority for the purposes of maintenance. This has been retained by the Landlord and is the Additional Freehold.
14. The Property is in fair condition. The windows are upvc double glazed as are the rainwater goods. The front door to the common entrance hall has suffered some damage and the hallway is in need of redecoration. There is a crack in the wall at the rear and some external re-decoration is due.

The Law

15. The method of calculation of the premium is by reference to Schedule 6 of the Leasehold Reform Housing and Urban Development Act 1993.
16. The price includes:

27. Mr Stapleton submitted that the Prime Central London graphs were not applicable to the Property. In summary the point she made in respect of each of the graphs were:
- ♦ The WA Ellis graph is concerned with leasehold houses in prestigious areas of central London such as Mayfair and Belgravia;
 - ♦ The Knight & Frank graph is compiled from properties 75% of which were in Prime Central London and Mr Stapleton said that from his investigations 25% were located on the fringe of Prime Central London;
 - ♦ All the other graphs (Cluttons, John D Wood, Charles Boston and Gerald Eve) were a combination of flats and houses all within Prime Central London or on its periphery.
28. He referred to a map of Prime Central London provided by Myleasehold.com to indicate the area. He also referred to the First-tier Tribunal Decision in relation to 16 Barons Court Road where it was stated that if Property fell within Prime Central London the graphs applicable would be different from if it fell outside.
29. The Tribunal points out that what might be considered Prime Central London altered over time. What was fashionable in one year will be less so four or five years later. Therefore geographical boundaries cannot be applied to property values too rigidly.
30. Mr Stapleton then referred to the Greater London & England graphs stating in summary:
- ♦ The Beckett & Kay graphs are based on “opinion” and probably the least reliable
 - ♦ The South East Leasehold graph is based largely on flats in the London Borough of Bromley
 - ♦ The Nesbitt & Company graph is based on flats in Greater London and includes evidence of settled cases and tribunal determinations as Mr Nesbitt mainly represents landlords;
 - ♦ The Austin Gray graph comprises flats and represents settled cases and tribunal determinations in the Brighton & Hove area. Austin Gray representing an equal number of tenant and landlords;
 - ♦ The Andrew Priddle Associates Ltd graph is largely based on flats and includes settled cases, opinion, transactional and tribunal decisions in the South East and suburban London area. The company represents most tenants with a small proportion of landlord clients.
31. Mr Stapleton submitted that the Greater London & England graphs had been a mainstay for determining appropriate relativity in Greater London and the south East of England. He added that where an agreement cannot be reached the “averaging method” cannot be said to be wrong. He said that the unexpired term for the ground floor flat was 70.15 and for the first floor flat 70.63. He had provided relativities for 70 years and 70.5 years which he said averaged at 92.5%

for 70 years and 92.77% for 70.5 years. He submitted that these relativities should be adopted.

32. Mr Gibb also provided a graph by graph commentary which so far as coming from the same RICS Research Document was similar to that of Mr Stapleton except that Mr Gibb's conclusion was that the Prime Central London Graphs should be followed as a matter of course for the following reasons:
33. Firstly the graphs for Prime Central London included a greater number of properties than the graphs outside central London. In addition they were compiled by surveyors who had by far the greatest experience of transactions particularly in relation to settlements and so the graphs were a truer reflection of values in the "no-Act World". Therefore the graphs were the best guide to relativity within the geographical area.
34. Secondly relativity is a percentage difference and so would be unaffected by the value of properties in other areas of the country. Given this the relativity of Prime Central London would be applicable throughout the country. He submitted that a Leasehold flat with the same unexpired term may sell for less in Southend than in Central London but the relative difference between the Leasehold value and the virtual freehold would be the same.
35. Mr Gibb submitted that the Beckett & Kay graph of graphs 2007 which coincided with the Knight Frank graph provided the best guide. It included properties outside Prime Central London and included settlements where the parties had the resources to employ experts to argue their respective cases and hence reflect the "no-Act World".
36. Mr Gibb also submitted that the value of a property will be severely diminished if a mortgage cannot be obtained. In the no-Act World he said that an assumption must be made that a lease extension will only be granted at a price acceptable to the freeholder and as minimum terms increase for mortgages then the relativity gap must also increase. He provided a breakdown of minimum terms accepted by lenders taken from the Council for Mortgage lender website on 26th October 2015. He said that it was clear that mortgages are not available for term below 70 years unexpired from much of the market and that account should be taken of the popularity of re-mortgaging. He referred to a marked difference between the Mortgage Dependent and Non-Mortgage dependent settlements in the Beckett and Kay Graph but accepted that the graph of graphs of 2007 was probably the best guide as it compared like with like.
37. Mr Gibb submitted a relativity of 88.00% should be adopted.

Virtual Freehold Value

38. Mr Stapleton provided a number of comparables which he had adjusted where appropriate to reflect the changes in value between the date of sale and the date of valuation. The following are all with double glazing and central heating:
- ♦ 225 North Road, 1 bedroom first floor flat, 169 year Lease guide price £150,000 to £120,000 (indexed value to valuation date £99,000 – £113,604)
 - ♦ 245 North Road, 1 bedroom first floor flat, 199 year Lease from August 1984 sold for £120,000 on 5th January 2016 (indexed value to valuation date £114,996)
 - ♦ 267 North Road, 1 bedroom first floor flat, 168 year unexpired Lease sold for £117,500 on 20th November 2015 (indexed value to valuation date £114,443)
 - ♦ 27 Shakespeare Drive, 2 bedroom ground floor flat 101 Leighton Avenue 199 year Lease from 14th February 1975 sold for £122,000 on 27th November 2015 (indexed value to valuation date £118,815)
 - ♦ 27A Shakespeare Drive, 2 bedroom first floor flat, 99 year Lease from 1st January 2005 sold for £115,000 on 16th July 2015 (indexed value to valuation date £117,829)
39. Mr Stapleton said that taking into account the less attractive features so of the Property being adjacent to commercial premises he submitted that the virtual freehold values of the Flats were:
Ground Floor Flat: £105,000
First Floor Flat: £110,000
40. Mr Gibb also provided a number of comparables with details from the Righthmove internet site as follows:
- ♦ 245 North Road 1 bedroom flat sold 5th January 2016 for £120,000
 - ♦ 36 Harcourt Avenue 1 bedroom flat sold 12th November 2015 for £115,000
 - ♦ 75b Baxter Avenue 1 bedroom flat sold 30th October 2015 for £135,000
 - ♦ 167 North Road 1 bedroom flat sold 1st September 2015 for £105,000
 - ♦ 50a Harcourt Avenue 2 bedroom flat sold 24th August 2015 for £122,000
 - ♦ 10a Harcourt Avenue 2 bedroom flat sold 22nd January 2015 for £137,000
 - ♦ 50b Harcourt Avenue 2 bedroom flat sold 5th January 2015 for £134,995
 - ♦ 31a Harcourt Avenue 2 bedroom flat sold 12th December 2014 for £125,000
41. Mr Gibb submitted that since the terms of the leases could not known there should be an upwards adjustment to equate to virtual freehold values. He submitted that virtual freehold values of the Flats were:
Ground Floor Flat: £140,000
First Floor Flat: £140,000

Development Value

42. Mr Stapleton submitted that there was no development value. Notwithstanding that the roof void was retained by the Landlord and that the garden was immediately adjacent to the ground floor Flat the Landlord would not be able to

develop these areas without the Leaseholder's agreement. He submitted that any development of first floor flat would detract from the existing accommodation.

43. Mr Gibb submitted that there was potential to extend into the garden of the Ground Floor Flat and into the roof void for the First Floor Flat. He was not able to provide any costings for either but had been told by a builder who specialised in loft extensions that the cost would be in the region of £25,000 and Mr Gibb considered that a profit in excess of £10,000 could be achieved, hence the sum he attributed to Development Value.
44. Firstly the Tribunal said that they would require a detailed cost of the works and an illustration of a similar property or properties being sold with and without such development to be assured that such profit could be achieved. The Tribunal was not convinced that there would in fact be a profit or indeed a loss. Those who had extended might well have done so to improve their own lifestyle and not with a view to making a profit on sale. The works, particularly the loft extension were likely to be relatively expensive. Taking account of the size of the flats the works would be disruptive and the Leaseholders may well have to move to alternative accommodation, the charge for which would need to be factored into the overall cost.
45. Secondly, the suggested extension relied upon the desire of the tenant to instigate the development as access to the roof void is through the demised property.
46. The Surveyors cross examined one another on their evidence but each held their position apart from the compromise on capitalisation.

Additional Freehold

47. Mr Stapleton had valued the Additional freehold of the front courtyard of the Property at a nominal £100 whereas Mr Gibb had valued this at a much more substantial sum of £2,000. Mr Gibb's valuation was on the basis that the front courtyard might be used for parking. Mr Gibb referred to the vehicle parked in front of the Property on the day of inspection.

Tribunal's Determination

Valuation Date, Capitalisation & Deferment Rates & Unexpired Term

48. The Valuation Date was agreed as being the 8th August 2015, the capitalisation Rate was agreed at 6% and the Deferment rate was agreed at 5%. From the Valuations attached to their respective reports the Surveyors agreed the unexpired term at 70.15 years.

Relativity

49. Both Mr Gibb and Mr Stapleton adduced the RICS Research Graphs of Relativity as evidence of relativity. The Tribunal noted the three sets of graphs and found that the Property is on the outskirts of Greater London and the South East and not Prime Central London. Therefore it considered the appropriate graphs to determine relativity to be those for Greater London & England. Both Mr Stapleton and Mr Gibb referred to the general criticism of following one particular graph and therefore the Tribunal applied an average of the graphs referred to by the surveyors as approved in *Trustees of the Sloane Stanley Estate v Mundy & Legasse* [2016] UKUT 0223 (LC) Case Nos: LRA 20, 21 & 35/2015 and determined relativity of 92.8% for the Property.

Virtual Freehold Value

50. The Tribunal took as its guide the index adjusted market values for 225, 245 and 267 which were all in the region of £115,000. The Tribunal found that these were all in the same road of similar size and converted in a similar manner. However, the Property was less attractive and being adjacent to commercial premises and on a busy corner with the front door, in effect, opening on to the street and in what appeared to be less good condition. Therefore, the Tribunal determined an average virtual freehold value of £110,000 for each flat.
51. In allocating a specific value to each flat the Tribunal found there was a differential between them. The First Floor Flat, although nominally had two bedrooms the second bedroom was very much at the cost of the kitchen. The Ground Floor Flat had a better layout and the added attraction of the garden. The Tribunal determined a virtual freehold value of £107,500 for the First Floor Flat and £112,500 for the Ground Floor Flat.

Development Value

52. As stated at the hearing the Tribunal considered there to be insufficient evidence of a loss of development value for which the Respondent Landlord should be compensated under Paragraph 5 of the 1993 Act.

Additional Freehold

53. What was referred to as “the front courtyard” is now a part of the pavement and appears to have been adopted, for the purposes of maintenance, by the local authority. In determining the value of the Additional Freehold the Tribunal questioned whether there was an indefeasible right to park a vehicle on the land.
54. It is not clear how far the area extends and whether a vehicle could fit within the space. Also, the parking of a vehicle was unlikely to be envisaged in 1898 when the Property was constructed. It was most likely intended to be a pedestrian forecourt for the commercial premises. In addition it is possible that the local

authority could prohibit parking on the land. There is no drop curb and merely because a vehicle is occasionally parked there does not mean that it is lawful to do so.

55. The Tribunal therefore found that it was uncertain as to what rights a freeholder could exercise over “the front courtyard” with specific reference to parking a vehicle there. The Tribunal therefore determined that it only had a nominal value of £100.00

Tribunal’s Valuation

56. The Tribunal followed the case of *Clarise Properties Ltd re 167 Lindhurst Road, Northfield Birmingham* [2012] UKHT 4 (LC) and adopted the three stage approach.
57. The price payable in respect of the Freehold interest in the Specified Premises for the Ground Floor Flat is £6,681.00 and for the First Floor Flat is £6,418.00, the calculations for which are set out in Annex 1 to this Decision. The price payable for the Additional Freehold is £100.00. Therefore the total price payable for the Freehold of the Property is determined at **£13,199.00.**

Judge JR Morris

Appendix 1a
Tribunal's Claculations
237 North Road, Wescliff on Sea Ground Floor Flat

Valuation assumptions

Lease expiry date	25/03/2086
Valuation date	08/08/2015
Unexpired term	70.15
Capitalisation rate	6.0%
Deferment rate	5.0%
Freehold value	
Extended lease value	£ 112,500
Existing lease value	£ 104,366
Relativity	92.8%

A Value of Landlord's existing interest

Ground Rent 1						
Years Purchase	1.15 years @	6.0%	50		£	54
Ground Rent 2			100			
Years Purchase	30 years @	6.0%	13.7648	£	1,376	
Deferred	1.15 years @	6.0%	0.93519		£	1,287
Ground Rent 3			150			
Years Purchase	39 years @	6.0%	14.9491	£	2,242	
Deferred	40.15 years @	6.0%	0.09638		£	216
Reversion to	Freehold / Long lease Value		£ 112,500			
Present Value of £1	70.15 years	5.0%	0.03263		£	3,670

Sub-total		£	5,228
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C **Marriage value calculation**

Value of Landlord's proposed interest	£	-	
Value of Tenant's proposed interest	£	112,500	
Sub-total		£	112,500

Value of landlords existing interest	£	5,228	
Value of tenants existing lease	£	104,366	
		£	109,594

Marriage gain		£	2,906
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Landlords 50% share		£	1,453
Plus Loss to landlord in granting new lease		£	5,228

Premium payable		£	6,681
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Appendix 1b

Tribunal's Calculations

237 North Road, Wescliff on Sea First Floor Flat

Valuation assumptions

Lease expiry date	25/03/2086
Valuation date	08/08/2015
Unexpired term	70.15
Capitalisation rate	6.0%
Deferment rate	5.0%
Freehold value	
Extended lease value	£ 107,500
Existing lease value	£ 99,728
Relativity	92.8%

A

Value of Landlord's existing interest

Ground Rent 1				50		
Years Purchase	1.15 years @	6.0%	1.0802		£	54
Ground Rent 2				100		
Years Purchase	30 years @	6.0%	13.7648	£	1,376	
Deferred	1.15 years @	6.0%	0.93519		£	1,287
Ground Rent 3				150		
Years Purchase	39 years @	6.0%	14.9491	£	2,242	
Deferred	40.15 years @	6.0%	0.09638		£	216
Reversion to	Freehold / Long lease Value			£ 107,500		
Present Value of £1	70.15 years	5.0%	0.03263		£	3,507

Sub-total		£	5,065
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C **Marriage value calculation**

Value of Landlord's proposed interest	£	-	
Value of Tenant's proposed interest	£	107,500	
Sub-total		£	107,500

Value of landlords existing interest	£	5,065	
Value of tenants existing lease	£	99,728	
		£	104,792

Marriage gain		£	2,708
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Landlords 50% share		£	1,354
Plus Loss to landlord in granting new lease		£	5,065

Premium payable		£	6,418
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Annex 2 – Right of Appeal

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.