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

Case Reference : CHI/23UF/OAF/2016/0010.

Property : The Old Chapel, Berkeley Heath,
Berkeley, Stroud, Gloucestershire,
GL13 9EW.

Applicants : 1. Simon Firth-Bernard
2. Joanna Margaret Firth-Bernard.

Representative : Mogers Drewett, Solicitors

Respondent : The successors in title to the late
Joseph Wheatley deceased.

Representative : None

Type of Application : Price payable on enfranchisement
(missing landlord) – S27(5)
Leasehold Reform Act 1967.

Tribunal Members : Judge J G Orme
Mrs. J E Coupe FRICS

**Date and Venue of
Hearing** : 16 September 2016.
Determination on papers.

Date of Decision : 30 September 2016.

DECISION

For the reasons set out below, the Tribunal determines that the appropriate sum payable by the Applicants, Simon Firth-Bernard and Joanna Margaret Firth-Bernard, pursuant to section 27(5) of the Leasehold Reform Act 1967 for the freehold reversion of the leasehold property at The Old Chapel, Berkeley Heath, Berkeley, Stroud, Gloucestershire, GL13 9EW is the sum of £5,205.00.

REASONS

Background

1. Mr. Simon Firth-Bernard and Mrs. Joanna Margaret Firth-Bernard (“the Applicants”) are the owners of the Property known as The Old Chapel, Berkeley Heath, Berkeley, Stroud, Gloucestershire, GL13 9EW (“the Property”). When they originally purchased the Property, part was leasehold and part was freehold. The leasehold part is registered at HM Land Registry with Good Leasehold title under number GR116867. The freehold part is registered at HM Land Registry under title number GR116868. They have subsequently extended the Property by purchasing additional parcels of freehold land which are registered at HM Land Registry under titles number GR255341 and GR382848.
2. On 11 May 2016, an application was made to the County Court sitting at Gloucester and Cheltenham pursuant to section 27(1) of the Leasehold Reform Act 1967 (as amended) (“the Act”). On 16 June 2016, District Judge Singleton made an order in claim number COOGL343 providing for the freehold estate in the leasehold part of the Property to be vested in the Applicants and including the following provision:
The claim shall be transferred to the First-tier Tribunal (Property Chamber), Southern Region (Ground Floor, Magistrates’ Court and Tribunals Centre, 6 Market Avenue, Chichester, West Sussex PO19 1YE) for the purposes of determining “the appropriate sum” to be paid into Court for the purchase of the freehold of the property, pursuant to sections 9 and 27 of the said 1967 Act.
3. The Applicants have filed with the Tribunal a report and valuation prepared by Mr. Keith Chapman-Burnett MRICS of Chroma Surveyors dated 25 August 2016.
4. The Tribunal inspected the Property on 16 September 2016 in the presence of Mr. Firth-Bernard. The Property now consists of a large detached five bedroom dwelling house with quadruple garage and a further double garage set in substantial gardens with views over open countryside. The Tribunal was able to identify that part of the Property which is included in the leasehold title and on which the remains of the Old Chapel are still visible. The Tribunal was also able to identify the parcel of freehold land which was originally purchased with the leasehold title and the parcels of freehold land which have been subsequently purchased. The history of the development of the Property to its present condition is set out in the report of Mr. Chapman-Burnett.

5. The Applicants did not seek a hearing before the Tribunal and the Tribunal made its determination on the papers presented to it.

The Lease

6. The Tribunal had before it a copy of the lease referred to in the register of title. The lease is dated 14 August 1886 and was made between Mr. Joseph Wheatley as lessor and Thomas Alpass and others as lessees. The lease demised to the lessees a parcel of land with a chapel and other buildings for a term of 200 years from 25 December 1875 at an annual rent of one shilling. The premium payable for the lease was £50. The Applicants say that they are unable to ascertain or find the successors in title of either the original landlord or the original tenants.
7. In his witness statement, Mr. Firth-Bernard states that the Chapel was used as a place of worship and a religious school until about 1969. It then fell into disuse and became derelict. The area of the leasehold land is about 0.076 acres. The chapel was then sold together with approximately 0.1 acres of freehold land which was required to provide road access by public auction in 1989. The Applicants purchased the two parcels of land in May 1990 for £55,000 when it was completely derelict and with no main services. Mr. Firth-Bernard states that the Applicants have paid no rent for the leasehold part of Property since they purchased it and that they have been unable to find any information to suggest that the trustees ever paid any rent to Mr. Wheatley or his successors.

The Law

8. Section 27(5) of the Act provides:
The appropriate sum which, in accordance with subsection (3) above, is to be paid into court is the aggregate of –
 - a. *Such amount as may be determined by (or on appeal from) the appropriate 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 remains unpaid.*
9. Section 9(1) of the Act provides:
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. *On the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; 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.*

The reference in this subsection to members of the tenant's family shall be construed in accordance with section 7(7) of this Act.

10. The Tribunal has taken into account the following decisions in which these provisions have been considered in recent years: *Cadogan v Sportelli [2007] EWCA Civ 1042* and *[2008] UKHL 71* and *Clarise Properties Limited [2012] UKUT 4*.

Conclusions.

11. The Tribunal has to value the freehold reversion of only that part of the Property which is leasehold.
12. The Tribunal has considered the valuation exercise carried out by Mr. Chapman-Burnett in his report and has reached the following conclusions.
13. The Tribunal accepts the submission by Mr. Chapman-Burnett that the appropriate method of valuation is that set out in section 9(1) rather than that set out in section 9(1A) of the Act. There is no evidence to suggest that the Old Chapel had a rateable value as at 1 April 1990 and it is unlikely that it did as it was derelict and had not previously been used as a dwelling. Using the formula set out at section 1(1)(a)(ii) of the Act, the resulting sum for R is well below £16,333 and therefore section 9(1A) does not apply.
14. Mr. Chapman-Burnett has adopted the "standing house" method of valuation. The Tribunal accepts that this is the correct method to be adopted as there is no evidence of sales of vacant sites within the locality.
15. Mr. Chapman-Burnett assumes that the first dwelling on the original site combining the leasehold part and the freehold part which was purchased in 1990 would have been a two to three bedroom house within the slightly extended chapel area. He adopts an entirety value of £350,000 for such a property. The valuation date is the date of the application to the Court, namely 11 May 2016. The Tribunal accepts that valuation.
16. Mr. Chapman-Burnett has submitted that the site value is fairly estimated at 35% of the entirety value. The Tribunal accepts that submission.

17. Mr. Chapman-Burnett has submitted that the proportion of that site value which should be attributed to the leasehold part is 67%. Given the relevant sizes of the plots (0.076 acres and 0.1 acres) the Tribunal accepts that submission.
18. The Tribunal does not accept Mr. Chapman-Burnett's submission that a capitalisation rate of 5% should be used when calculating the modern ground rent for the 50 year lease extension from 26 December 2075. The Tribunal considers that 6% represents a reasonable rental yield from the site.
19. Mr. Chapman-Burnett seeks to apply a deferment rate of 5%. The case of *Cadogan v Sportelli* is authority for a generic deferment rate for houses of 4.75%. The Tribunal accepts the rate of 5% suggested by Mr. Chapman-Burnett.
20. At paragraph 72 of his report, Mr. Chapman-Burnett seeks to justify a 2 stage valuation process rather than a 3 stage process. At paragraph 36 of the decision in *Clarise Properties*, the Upper Tribunal said "*We consider that 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.*" The Tribunal does not accept Mr. Chapman-Burnett's submissions in favour of adopting a two-stage approach. The factors which he sets out are not sufficient to persuade the Tribunal to depart from the standard practice. The Tribunal will adopt a three-stage approach.
21. In calculating the value of the second reversion at the end of the extended term, the Tribunal has reduced the entirety value of the Property by 3.85% to reflect the assumption that Schedule 10 of the Local Government and Housing Act 1989 applies to the tenancy. This means that the tenancy automatically continues until a notice is served under Schedule 10, paragraph 4, when the tenant is entitled to an assured tenancy under the Housing Act 1988 at a market rent. This means that there is no certainty of obtaining vacant possession after the 50 year lease extension. This would depress the value of the freehold reversion further.

22. Accordingly, the Tribunal's valuation is:-

1. Value of current term, 1 shilling payable, therefore £0.00
2. Value of first reversion:
 - Entirety value £350,000
 - Site value at 35% £122,500
 - Leasehold part 67% £82,075
 - Section 15 modern ground rent at 6%
£4,924
 - Years purchase 50 years at 6% = 15.762
 - = £77,612

Present value of £1 in 60 years deferred
@5% = 0.0535 = £4,152.00

3. Value of second reversion:
Entirety value £350,000
Leasehold part 67% £234,500
Deduct 3.85%, £225,472
Present value of £1 in 110 years deferred
@ 5% = 0.00467 = £1,053.00

Total sum payable £5,205.00

23. The Tribunal accepts Mr. Chapman-Burnett's submission that the unpaid ground rent can be regarded as "infinitesimal".
24. The Tribunal concludes that the appropriate sum payable is £5,205.00.

Right of Appeal

25. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
26. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.
27. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

J G Orme
Judge of the First-tier Tribunal
Dated 30 September 2016.