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

Case Reference : **BIR/OOCN/OAF/2014/0005**

Claim No. : **3BM 02001**

Property : **108 Edmund Road, Alum Rock,
Birmingham, B8 1HE**

Applicant : **Mr Haroon Younis**

Representative : **Chadwick Lawrence, Solicitors**

Respondent : **Shafquat Hussain Chaudhry
(Missing Landlord)**

Representative : **Not represented**

Type of Application : **Under section 27(5) of the
Leasehold Reform Act 1967 as
amended by sections 148 & 149 of
the Commonhold & Leasehold
Reform Act 2002**

Tribunal Members : **N R Thompson – Deputy Regional
Valuer (Chairman)
Judge S J Duffy – Regional Judge**

**Date and venue of
Hearing** : **12 March 2014, Tribunal Hearing
Room, Priory Courts, Birmingham**

Date of Decision : **8th May 2014**

DECISION

Background

1 This is a determination under section 27(5) the Leasehold Reform Act 1967 ("the 1967 Act"), as amended by section 148 and 149 of the Commonhold & Leasehold Reform Act 2002 ("the 2002 Act") as to the appropriate sum, which, because the landlord, Mr Shafquat Hussain Chaudhry cannot be found, is to be paid into Court for the freehold interest in respect of 108 Edmund Road, Alum Rock, Birmingham B8 1HE. The lessee, Mr Haroon Younis, holds the property by way of a lease dated 31st December 1998 which he acquired on 22nd October 2010. The lease is for a term of 50 years from 29th September 1998 at an annual ground rent of £1,155, subject to review at the end of the 25th year of the term. The deemed date of the tenants' notice to acquire the freehold is 14th August 2013, being the date of the application to the Court, when approximately 35 years of the term remained unexpired.

2 Section 27(5) of the 1967 Act states:

"(5) 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) a leasehold valuation 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."

Property

3 The Tribunal carried out an inspection of the premises on 12th March 2014, in the presence of Mrs Younis, the wife of the Applicant.

The property comprises a two storey semi detached house of brick and slate construction, built around the late 1890s/early 1900s, in a well established residential area some 3 miles east of Birmingham City Centre with good local shopping and transport facilities.

The accommodation is centrally heated (except for the breakfast room and kitchen) and is double glazed. It comprises a hall; two reception rooms; a breakfast room and kitchen on the ground floor, with two double and one single bedrooms plus a fully fitted bathroom/WC on the first floor. Externally the property has modest front and rear gardens. There is no off street parking or garage with the property.

Submissions

4 At the hearing, the Applicant was represented by Ms J Phillipson, a solicitor appointed by Messrs Chadwick Lawrence of Huddersfield.

5. In advance of the hearing, Chadwick Lawrence had lodged with the Tribunal a bundle containing a copy of the lease of the property; a valuation of the

property obtained by the Applicant from Hugh James Surveyors, Chartered Building Surveyors and Valuers of Peterborough and a Witness Statement prepared originally for the Court by the Applicant.

- 5 At the hearing Ms Phillipson confirmed both that the Applicant had taken all reasonable steps to locate the freeholder of the property, as set out in his Witness Statement and that a Vesting Order had been granted by Deputy District Judge Parkinson sitting at Birmingham County Court on 2nd December 2013.
- 6 The lease of the property had been granted pursuant to the Leasehold Reform Act 1967 (as stated in Clause 1), and the Applicant had been provided with advice as to the price payable for the freehold interest of the property on both 30th March 2013 and 7th March 2014 by Hugh James Surveyors (“the Surveyors”).
- 7 In terms of the initial advice dated 30th March 2013, the Surveyors set out the principles to be adopted in determining the price to be paid into Court for the benefit of the freehold interest and recommended that the Applicant take appropriate legal advice concerning the possibility of seeking a Vesting Order from the Court. The Surveyors then set out the procedure they had adopted for calculating the price payable for the freehold interest based on:
 - the (incorrect) assumption that the ground rent was a peppercorn and therefore there was “no reversionary capital value to the freeholder”,
 - the calculation of the Marriage Value, which in this case they assessed as nil due to “negative equity” in this particular case, and
 - the calculation of the final premium in accordance with an illustration supposedly attached to their report. Unfortunately, no such illustration was attached to the papers before the Tribunal.

In conclusion, the Surveyors recommended offering a nominal payment of £500 as a “gesture of goodwill” due to the fact that “the freeholder is absent as advised by the client, consequently there is no reversionary capital value to the freeholder”.

- 8 In terms of the later advice dated 7th March 2014, the Surveyors initially set out their advice concerning the differences between a valuation under Section 9(1) and Section 9(1A) of the 1967 Act and considered in some detail the question of the Rateable Value of the property at various dates in identifying the correct method of valuation to be used. They concluded that the correct basis was that prescribed by Section 9(1) of the 1967 Act and from the “sale of comparable properties and condition of the property” they produced a valuation of £92,000 of which 25% was attributable to the value of the site “based on previous Lands Tribunal decisions”. They then went on to advise however, that as “this is a virtual freehold, the reversionary capital value of the freehold is nil (and) the price for the freehold is **£0 (Zero)**”.
- 9 The Tribunal expressed regret that the Surveyors were not present to be questioned on their valuation, but in their absence, Ms Phillipson indicated

that, as a solicitor, she was not in a position to assist the Tribunal with valuation issues.

Decision

A – Freehold price in accordance with Section 27(5) (a) of the 1967 Act:

- 10 The Tribunal found the report and valuation prepared by the Surveyors of little assistance as it had been undertaken on the wrong basis and was predicated on the erroneous assumption that because the freeholder could not be found, there was “no reversionary capital value to the freeholder”. It is not a condition precedent to the freehold reversion having any value that the freeholder should be identifiable; such value is inherent in the freehold interest regardless of whether the freeholder can be identified at any particular point in time.

- 11 As the lease is expressed to have been granted pursuant to the 1967 Act the first issue for the Tribunal to determine was the correct basis of valuation. As such, there are a number of characteristics specific to that type of lease which affect the basis of valuation:
 - The ground rent has to be fixed both initially and upon review by reference to the letting value of the site. As it is expressed in section 15 of the 1967 Act:

“the rent shall be a ground rent in the sense that it shall represent the letting value of the site (without including anything for the value of the buildings on the site) for the uses to which the house and premises have been put since the commencement of the tenancy, other than uses which by the terms of the new tenancy are not permitted or are permitted only with the landlord’s consent”;
 - The lease incorporates a review (on the same basis of valuation) at the end of the 25th year of the term;
 - At the end of the current term, there is no further right to extend the lease;
 - During the term, the landlord has the right to determine the lease at any time for redevelopment purposes upon paying compensation to the tenant; and
 - Such a lease, once granted, could not be enfranchised under the original 1967 Act, but can now be the subject of a claim to enfranchise by virtue of the provisions of sections 148 and 149 of the 2002 Act. **However, in the event of such a claim, - as in this case - the correct basis of valuation is that prescribed by section 9(1A) of the 1967 Act.**

- 12 Consequently, the correct basis of valuation in this case is considered to be section 9 (1A).

- 13 Based on its own experience and knowledge (but not any special knowledge), together with the evidence of sales of comparable properties in the immediate vicinity of the subject property in Edmund Road, namely:

No: 60 a freehold terraced house sold on 10th December 2013 for £110,000;

No: 101 a freehold terraced house sold on 6th December 2011 for £100,000;
and

No: 98 a freehold semi detached house sold on 5th March 2008 for £100,000;
the Tribunal considered the freehold vacant possession value of the property in the condition observed at the time of the inspection, net of any tenant's improvements and as at the appropriate valuation date of 14th August 2013 to be £100,000 and that is the basis used by the Tribunal in its valuation.

- 14 **The Tribunal therefore determines that the amount to be paid into Court in accordance with Section 27 (5)(a) of the 1967 Act to be £33,920 (thirty three thousand nine hundred and twenty pounds) as set out in the valuation attached as an Annex to this decision.**

B - The amount of any unpaid pecuniary rent in accordance with Section 27 (5) (b) of the 1967 Act:

- 15 As indicated in the Applicant's Witness Statement, he has not paid any ground rent since purchasing the property on 22nd October 2010. Consequently, there are arrears due from that date to the date of this decision of £4,094.71. The ground rent continues to be payable at the rate of £3.16 per day from the date of this decision to the date of the conveyance of the property in accordance with Section 27(5) of the 1967 Act.

Summary:

- 16 **In accordance therefore with section 27 (5) of the 1967 Act, the total amount to be paid into Court in respect of the subject property is the aggregate of £33,920 and £4,094.71, i.e. £38,014.71**
- 17 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date specified below stating (i) the decision of the Tribunal to which the appeal application relates; (ii) the grounds on which they intend to rely in the appeal; and (iii) the result the party making the application is seeking.

N R Thompson
Chairman

Date: 8th May 2014

108 Edmund Road, Alum Rock, Birmingham, B8 1HE

Valuation of freehold interest as at 14th August 2013

	£	
Term:		
Current Ground Rent :	1,155	
YP 10 years at 6.5%	<u>7.1888</u>	£ 8,303
Ground Rent upon review:	1,650	
YP 25 years @ 6.5%:	12.1979	
PV £1 in 10 years @6.5%:	0.5327	
	<u>6.4978</u>	£10,721
Reversion:		
Freehold VP value:	£100,000	
Less:		
10% for risk of tenant claiming rights under Sch. 10 to 1989		
Local Govrmt. & Housing Act: £90,000		
PV £1 in 35 years @5.5%	<u>0.1535</u>	<u>£13,815</u>
		£32,839
Marriage Value:		
Freehold VP value:	£100,000	
Less:		
Freeholder's present interest: £32,839		
Leaseholder's present interest: <u>£65,000</u>		
	<u>£ 97,839</u>	
Marriage Value:	£ 2,161	
50%:		<u>£ 1,081</u>
Total price for freehold interest:		£33,920