



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case Reference : CAM/00KG/OCE/2015/0002

Property : Hassenbrook Court,
Hassenbrook Road,
Stanford-le-Hope,
Essex SS17 0NT

Applicants : Joanne Hart, Raymond Polaine, June
Polaine, Clive Bellingham, Lee Bradford
and Emma Bradford

Respondent : Frank P. Smith (Thurrock) Ltd.
(dissolved)

**Date of transfer from
the county court at
Basildon** : 8th January 2015

Type of Application : To determine the terms on
enfranchisement where landlord cannot
be found (section 27 of the Leasehold
Reform Housing and Urban
Development Act 1993)

Tribunal : Bruce Edgington (lawyer chair)
Marina Krisko BSc (Est Man) FRICS
Stephen Moll FRICS

**Date and place
of hearing** : 9th April 2015 at The Court House,
Great Oaks, Basildon, Essex SS14 1EH

DECISION

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1. The total price to be paid for the freehold of the property is £101,730.00 split as to £20,530.00 for the ground floor flat 1 and then £20,300.00 each for the remaining 4 flats, calculated in accordance with the Schedule attached to this decision.
2. The remaining terms of the transfer as set out in the document annexed to this decision are approved by the Tribunal subject to (a) the insertion of the correct price, (b) the annexing of the 'continuation sheet' referred to in clause 2 which has not been produced to the Tribunal and (c) to the Vesting Order being varied so as to vest the property in the name of the

nominee purchaser named therein. The said continuation sheet must contain details of any restrictive and positive covenants or easements known to the Applicants which affect the freehold title. It must annex and refer to the plan at page 201 in the Tribunal's bundle with the freehold land edged in red.

3. The matter is transferred back to the county court sitting at Basildon under claim number A00BQ593

Reasons

Introduction

4. By order of District Judge Molineaux sitting in the county court at Basildon on the 8th January 2015, this Tribunal is asked to determine the terms (including the price) of the collective enfranchisement of the freehold title of the property consisting of the 5 flats described in the Schedule annexed to this decision plus the common parts. The existing freehold owner is a limited company which has been dissolved.
5. The said order does not actually dispense with the service of an Initial Notice but as a vesting order was clearly made, this is of no concern to the Tribunal. A combination of the effects of sections 1(8) and 27(1)(b) of the **Leasehold Reform, Housing & Urban Development Act 1993** ("the Act") and the terms of the said order mean that the valuation date is a date of the application for the vesting order i.e. 13th October 2014.
6. The county court order appears to be defective in that it purports to make a vesting order in favour of the 6 Applicants as nominee purchasers. Whilst the 6 Applicants may be intended to be the owners of the beneficial interest in the property, it is not possible to have more than 4 people as trustees holding the legal title. However, the Tribunal has now been told that the nominee purchaser appointed by the Applicants is Hassenbrook Court (2015) Ltd.
7. Clearly the matter will have to be referred back to a District Judge and if he or she is satisfied that Hassenbrook Court (2015) Ltd. is the adopted nominee purchaser for all the Applicants, the vesting order will be varied accordingly. Otherwise, the Land Registry will not accept the transfer as drawn.
8. The freehold title is subject to 5 leases namely:-
 - (a) ground floor flat known as Flat 1 which is let for a term of 99 years from the 28th July 1966 with an annual ground rent of £10,
 - (b) Flats 2, 3, 4 and 5 are all let for terms of 99 years from the 29th September 1965 with annual ground rents of £10.

The Inspection

9. The members of the Tribunal inspected the property in the presence of the Applicants June Polaine and Joanne Hart plus the expert witness of the Applicants, namely Peter Foster FRICS IRRV (Hons). His report dated 10th February 2015 was before the Tribunal. The property is fairly close to Stanford-le-Hope town centre and is in reasonably close proximity to

shops and a railway station with commuter trains into central London. It was built about 50 years ago of brick and tile construction.

10. There are integral garages for Flats 3, 4 and 5 within the building and separate pre-cast concrete adjoining garages with an asbestos roof for Flats 1 and 2. Flat 1 has the benefit of quite a large garden area around the front and to the side of the building which has been partially fenced in. Flats 2 – 5 have balconies which appear to be in reasonable condition save for one of the second floor balconies which appears to have water staining under it indicating a possible fault or failing to the asphalt finish. Some isolated repairs were noted to be required to the main roof covering.
11. The members of the Tribunal were able to inspect the interiors of Flats 1, 2 and 3. They were told that there was no heating installed at all when the flats were built whereas all the flats now have gas central heating (of varying ages) by radiators installed by lessees. Flats 1 and 3 showed signs of considerable condensation damage on walls and ceilings. Flat 2 is evidently occupied by someone who was a professional decorator and there were no such signs in that flat. It was also noted that, unlike Flats 1 and 3, this flat had background heating on which tends to avoid condensation problems.
12. The Tribunal was also told that there had been little, if any, maintenance of the structure by the landlord since the leases commenced. Lessees have undertaken *ad hoc* maintenance over the years and the lessees had replaced their kitchens and windows with double glazed units. There may have been some replacement bathroom fixtures and fittings and small amounts of re-wiring. The communal stairwell had been carpeted and painted by the lessees.
13. However, as the landlord had evidently not paid the electricity supplier for the lighting etc. to the stairwell, the supply had been cut off.
14. Despite this lack of maintenance by the landlord for upwards of 50 years, the building appeared to be in reasonable condition for its age due in part, no doubt, to the efforts of the lessees. At the rear of the building are individual grass areas for lessees to hang washing and, presumably, sit out, weather permitting. There are also small lockable storage rooms for each flat.

The Law

15. The price to be paid on collective enfranchisement is calculated in accordance with the provisions of Schedule 6 of the Act. The price includes (a) the value of the freeholder's interest if sold on the open market calculated in accordance with the assumptions in Paragraph 3 of the Schedule (b) the freeholder's share of the marriage value and (c) any compensation payable to the freeholder under Paragraph 5 of the Schedule. In this case, there is no suggestion that any such compensation is payable.

The Hearing

16. Only the Applicant Ms. Hart attended the hearing together with Mr. Foster to present his report and answer questions from the Tribunal.

Unfortunately, his valuation contained 3 basic flaws. Firstly he had not taken into account the fact that the term for Flat 1 was different to the other flats. He had also not understood that the garden area to the front and side of the building was demised to Flat 1 only. Finally, he had put the unexpired terms as 49.5 years for all the flats which was presumable based on an incorrect valuation date. The unexpired terms are 50.75 years for Flat 1 and 50 years for the other flats.

17. As to relativity and capitalisation of ground rent, he proposed 75% and 7% respectively with which the Tribunal agreed. However, he proposed a deferment rate of 7%. He provided no 'compelling evidence' in his report as to why the deferment rate of 5% in the well known Upper Tribunal case known as *Sportelli* should be changed. He was therefore asked to explain his reasoning for this.
18. He said that the building had not been maintained by the landlord for years and was showing signs of neglect. Substantial works were needed to include removing asbestos and renewing the soffits. The concrete slab in front of the garages to Flats 1 and 2 needed repair. Mr. Foster then mentioned differences in the market but it became clear that the example he was using i.e. in an area closer to central London, did not in fact produce any significant change in investment returns on rental values.
19. As to the values of the flats in what is described as a 'no Act' world, he was asked to explain his position because it appeared to the Tribunal members that the comparables in his report did not tend to support his figure of £80,000 for each flat as its unimproved extended leasehold value - sometimes referred to as the virtual freehold value.
20. There had been 2 sales of Flats in this building. Flat 4 was bought by Ms. Hart in 2011 for £72,000 but this was a repossession where the condition of the flat was more likely than not to have been bad. Flat 3 had been sold in December 2007 for £88,000. In order to justify his position, he said that this sale was at the peak in property values before the subsequent collapse in the property market in 2008. His view appeared to be that prices had not, even now, come up to the 'pre-slump' levels.
21. The problem with this view is that there is a relatively new block of flats known as Hassenbrook House which is next door to this block. The building is a lot newer and will no doubt have benefitted from modern building regulations including improved standards of insulation etc. However, those flats do not appear to have balconies - at the front at least - and they are only 1 bed roomed flats. All the subject flats have 2 double bedrooms. Flats 4 and 5 Hassenbrook House sold in May 2014 and September 2014 for £152,000 and £134,000 respectively.
22. Furthermore, 2 other examples of comparables he gave were a 2 bed roomed flat at 138F Southend Road, Stanford le Hope and a 2 bed roomed maisonette at 6 Southend House, Southend Road, Stanford-le-Hope. Both properties are within walking distance of the subject flats. 138F sold in November 2014 for £135,000. The Tribunal accepted that it appeared to be a nicer property to look at but it only had a 57 lease which is almost bound to have had a downward pressure on the price.

23.6 Southend Road was marketed between September 2014 and January 2015 with a 'guide price' of £95,000. In fact the internet reference to this property said that it was sold subject to contract for £110,000 which would suggest that it was sold at auction. This, in turn, would suggest another mortgage repossession property or at least it was in such condition that it could not be sold privately.

24. As tenants' improvements must be taken out of the 'no Act' world valuation and Mr. Foster had not said how much he had deducted for improvements, he was asked to explain what he had deducted for the improvements he had identified in his report i.e. double glazed windows, gas central heating, modern kitchens, replacement bathrooms and rewiring. The only evidence he was able to give was to say how much he thought each of these would have cost, per flat. His figures were:-

<i>Windows</i>	<i>£3-4,000</i>
<i>Central heating</i>	<i>£5-6,000</i>
<i>Kitchens</i>	<i>£4-5,000</i>
<i>Bathrooms</i>	<i>£2-3,000</i>
<i>Rewiring</i>	<i><u>£2,500-3,500</u></i>
<i>totals</i>	<i><u>£16,500-21,500</u></i>

25. As far as the garden to Flat 1 was concerned, Mr. Foster accepted that this would make it slightly more valuable and suggested a figure of £1,500-2,000 as the differential.

Conclusions

26. As far as the 'no Act' values of the flats were concerned, the Tribunal remained concerned with Mr. Foster's arguments which appeared to be based on sales of the subject Flats 3 and 4 only in 2007 and 2011 i.e. well before the valuation date and on the assumption, which the Tribunal did not accept, that there had been no rise in the market since the 2007 sale. Values of £80,000 for flats, albeit unimproved, which each have 2 double bedrooms, a garage and a balcony or garden are unrealistic.
27. This is particularly so when there is clear evidence of sales of other flats in the same locality at much higher prices which would indicate that the sales potential for flats in Stanford-le-Hope is quite good.
28. As far as improvements are concerned, even Mr. Foster was not suggesting that he had deducted £16,500-21,500 from the values to reach his figure of £80,000. In fact there is little co-relation between the one off capital cost of improvements and their effect on the sale price. The evidence of the need to rewire was not strong. The bathrooms did not appear to have had wholesale improvement to the cost suggested, as they appeared to be the same basic layouts as built. The kitchens were fairly basic and the heating systems were also fairly basic.
29. The Tribunal came to the view that the difference in price for a flat with these improvements as opposed to one without would be no more than about £5,000.

30. Taking all these factors into account and taking particular note of 138F Southend Road and 6 Southend House, as the closest 2 bed roomed properties whose last sales were reasonably close to the valuation date, the Tribunal concludes that the 'no Act' value of Flat 1 is £127,500 and for the other 4 flats is £125,000 which makes the unimproved values at £122,500 and £120,000 respectively. It will be seen that this reflects a value of £2,500 for the benefit of the garden at Flat 1. This is slightly higher than Mr. Foster's figure but reflects the market place where increments of about £2,500 for particular benefits are usually applied.
31. Turning now to the deferment rate, the Tribunal was not convinced by Mr. Foster's arguments. As he will know, the Upper Tribunal case of *Sportelli* which was supported in the Court of Appeal, proposed deferment rates which were intended to cover the whole country. There was an express reservation to say that only compelling evidence could be relied upon to deviate from the rates set down.
32. The almost equally well known case of *Zuckerman* was just such a case where there was extensive evidence of a fragile market in the Midlands where properties were falling into disrepair and evidence of the money market over many years to show that the area in question was in general decline because of the loss of large sections of manufacturing industry. There was no such evidence in this case.
33. Following a recent Supreme Court case involving a particular problem for landlords who fail to consult properly when proceeding with major works, that problem was alleviated because the test which landlords now have to 'pass' is 'merely' to show that there has been no prejudice to the tenants. This has removed a particular obstacle to the perceived difficulties of property management and the Upper Tribunal has subsequently said, in effect, that this is even more reason why the *Sportelli* rates should be followed.
34. Mr. Foster's evidence came no-where near to providing the sort of compelling evidence needed to vary the rates. Thus, the Tribunal adopts the *Sportelli* rate of 5% for flats.

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Bruce Edgington
Regional Judge
13th April 2015

The Schedule

Valuation date 13/10/2014

Relativity 75%

Capitalisation rate 7%

Deferment rate 5%

Flat 1.

Term remaining 50.75 yrs.

Freeholder's interest.

Ground Rent	£10	
YP @ 7% for 50.75 yrs	13.82455	£138
Reversion to unimproved Virtual Freehold	£122,500	
PV of £1 @ 5% deferred 50.75 yrs	0.0840894	<u>£10,301</u>
Value of Freeholders interest		£10,439

Marriage Value

Virtual Freehold	£122,500	
Less	£10,439	
	£91,875	<u>£102,314</u>
	£20,186	

50% of Marriage Value £10,093

Premium Payable £20,532

Say £20,530

Flats 2,3,4&5

Term remaining 50 yrs.

Freeholder's interest.

Ground Rent	£40	
YP @ 7% for 50 yrs	13.8007	£552
Reversion to unimproved Virtual Freehold	£480,000	

PV of £1 @ 5% deferred 50 yrs	.0872037	<u>£41,858</u>
Value of Freeholders interest		£42,410
Marriage Value		
Virtual Freehold	£480,000	
Less	£42,410	
	£360,000	<u>£402,410</u>
	£77590	
50% of Marriage Value		<u>£38,795</u>
Premium Payable		£81,205
		Say £81,200 or £20,300 per flat

Land Registry Transfer of whole of registered title(s)

TR1

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Give full name(s).

Complete as appropriate where the transferor is a company.

Give full name(s).

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal

address, a UK DX box number or an electronic address.

	<p>1 Title number(s) of the property:</p>
	<p>2 Property: All that freehold property known as Hassenbrook Court, Hassenbrook Road, Stanford-le-Hope, Essex SS17 0NT as is further described in the continuation sheet hereto.</p>
	<p>3 Date:</p>
	<p>4 Transferor: Frank P Thurrock Smith Ltd</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
	<p>5 Transferee for entry in the register: Hassenbrook Court (2015) Ltd</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 9433669</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
	<p>6 Transferee's intended address(es) for service for entry in the register: No. 4 Hassenbrook Court, Hassenbrook Road, Stanford-le-Hope, Essex SS17 0NT</p>
	<p>7 The transferor transfers the property to the transferee</p>

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

8 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):

£45,000 Forty Five Thousand Pounds

- The transfer is not for money or anything that has a monetary value
- Insert other receipt as appropriate:

Place 'X' in any box that applies.
Add any modifications.

9 The transferor transfers with

- full title guarantee
- limited title guarantee

Where the transferee is more than one person, place 'X' in the appropriate box.

10 Declaration of trust. The transferee is more than one person and

- they are to hold the property on trust for themselves as joint tenants
- they are to hold the property on trust for themselves as tenants in common in equal shares
- they are to hold the property on trust:

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to Joint property ownership and practice guide 24: private trusts of land for further guidance. These are both available on the GOV.UK website.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

11 Additional provisions

This transfer is executed for the purposes of Chapter 1 Part 1 of the Leasehold Reform Housing and Urban Development Act 1993.

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 10 has been completed, each transferee may also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to Joint property ownership and practice guide 24: private trusts of land for further guidance.

12 Execution

Signed and delivered as a Deed)
by a District Judge of the)
County Court on behalf of)
Frank P. Smith (Thurrock) Ltd)
pursuant to an Order dated)
13 January 2015)

In the presence of :

.....
.....
.....

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

Approved subject to
Comments in decision
CAM/0009/OCE/2015/0002

Chair 13/4/15

