



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

Case Reference : **CAM/00KF/OCE/2018/0005**

Property : **16 Meteor Road,
Westcliff-on-Sea,
SS0 8DG**

**Applicant
Represented by** : **Vanissa Amliwala
Sam Phillips of counsel (Coole Bevis
LLP)**

Respondents : **(1) Karam Noor Aslam
(2) Bhawal Bukhsh
(3) Rashid Bukhsh
(not present or represented)**

**Date of Transfer from
the county court sitting
at Southend** : **19th January 2018**

Type of Application : **To determine the terms including the
appropriate sum on enfranchisement
where the landlord cannot be found
(section 26 of the Leasehold Reform
Housing and Urban Development Act
1993 (“the 1993 Act”))**

Tribunal : **Bruce Edgington (lawyer chair)
Evelyn Flint DMS FRICS IRRV
Gerard Smith MRICS FAAV**

**Date and place
of hearing** : **10th January 2019 at the Court House,
80 Victoria Avenue, Southend- on-Sea,
Essex SS1 2AW**

DECISION

Crown Copyright ©

1. The ‘appropriate sum’ to be paid into court for the new lease of the property pursuant to the court’s directions of the 5th July 2018 made pursuant to section 26(5)(b) of the 1993 Act is £26,400.00. This total sum represents the interests of the 2 missing landlords namely Bhawal Bukhsh and Rashid Bukhsh.

2. The remaining terms of the deed of conveyance cannot be approved as no draft was presented to the Tribunal. However, it will be in standard terms but reciting the relevant provisions of the 1993 Act. The total price will be £37,066.67 i.e. £10,666.67 to be paid by the Applicant direct to the First Respondent in respect of that person's share and £26,400.00 to be paid into court for the Second and Third Respondents' shares.
3. The applications for costs are refused either in terms of any deduction from the appropriate sum or generally.

Reasons

Introduction

4. This hearing was for the Tribunal to determine the terms of a conveyance – or a 'transfer' in modern language – of the property to the Applicant. Two of the existing freehold owners cannot be found. An Initial Notice was served on the 3rd freehold owner but no counter notice was served. Accordingly, section 25(1) of the 1993 Act applies and that freeholder's interest is to be valued in accordance with the amount contained in the Initial Notice i.e. one third of £32,000.00 being £10,666.67.
5. Unusually, no Vesting Order was sought in respect of the shares of the missing landlords in the freehold interest. Accordingly, on the 5th July 2018, the county court directed that an 'appropriate sum' should be paid into court in respect of the missing landlords' shares in the freehold interest before any transfer was executed and registered.

The Inspection

6. The members of the Tribunal inspected the property on the morning of the hearing, having previously received and read the report of the Applicants' expert valuer, Mr. Rupert Greenlees MRICS. The property is as described by Mr. Greenlees.

The Law

7. The price to be paid on collective enfranchisement is calculated in accordance with the provisions of Schedule 6 of the 1993 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. No compensation is payable in this case.

The Hearing

8. The hearing was attended by the Applicant, her counsel, Mr. Phillips, and Mr. Greenlees. The members of the Tribunal had discussed the evidence after the inspection but before the hearing and had determined that subject to his clarifying one or two minor matters, Mr. Greenlees's figures would be accepted. He did clarify those matters for the Tribunal.

Conclusions

9. As has been said, the figures supplied by Mr. Greenlees were agreed by the Tribunal.

10. An application for costs was made in the sum of £12,509.60 which seemed to be pursued on the basis that either it should be deducted from money to be paid to the First Respondent or from the appropriate sum to be paid into court. Alternatively, it should be a stand alone costs order for recovery as and when possible.
11. As has been pointed out to the Applicant in the county court Judgment, there is simply no power in the 1993 Act for legal costs to be deducted from the appropriate sum. There is also no such power in respect of the price to be paid pursuant to section 25(1) of the 1993 Act where no counter notice has been served. Primary legislation in the form of a Statute must prevail.
12. As to any inherent jurisdiction to award costs, it is considered to be unjust and unreasonable to make any order for costs where (a) none of the Respondents has been obstructive and (b) the Applicant has not had to pay the Respondent's costs in accordance with section 33 of the 1993 Act. Furthermore, if the freeholders had been around and had served counter notices, the Applicant would have had to pay all of her own costs in any event as well as the Respondents'.

.....
Bruce Edgington
Regional Judge
11th January 2019

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.