



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

Case Reference : **MAN/00ET/OAF/2019/0048**

Property : **22, Chadwick Lane, Widnes, Cheshire
WA8 9NN**

Applicants : **Paul Howard and Emma Howard**

Represented by : **Orme Associates**

Respondent : **Adriatic Land 3 (GR1) Limited**

Represented by : **Knights plc**

Type of Application : **Applications under section 21(1)(a), (2) and
(1)(ba) Leasehold Reform Act 1967 (“the 1967
Act”)**

Tribunal Members : **Judge C. Wood
Tribunal Member S. Latham**

Date of Decision : **3 July 2020**

Date of Determination : **10 July 2020**

DECISION

ORDER

1. The Tribunal orders as follows:
 - 1.1 that the Tribunal has no jurisdiction to make a determination on the application under section 21(1)(a) of the 1967 Act as an agreement was reached between the parties on or about 13 September 2018 regarding the price payable for the freehold reversion of the Property;
 - 1.2 that the reasonable costs to be paid by the Applicant under section 9(4) of the 1967 Act are £1100 plus VAT, comprising solicitors' fees of £600 plus VAT and a valuation fee of £500 plus VAT; and,
 - 1.2 that, pursuant to section 21(2)(a) of the 1967 Act, the transfer of the Property should include the provisions as set out on in the annex to this Decision.

BACKGROUND

2. Pursuant to applications each dated 10 December 2019, ("the Applications"), the Applicants sought a determination of the price payable under section 9(1) of the Act, a determination of the reasonable costs payable under section 9(4) of the Act and a determination under section 21(2) of the Act of the provisions which ought to be contained in the conveyance.
3. Directions dated 31 January 2020 referred only to the applications under sections 21(1)(a) and (2). This issue is dealt with at paragraph 11 of this Decision.
4. The Tribunal has determined the Applications following a consideration of the written representations and supporting documentary evidence provided by the parties, but without holding a hearing. Rule 31 of the Tribunal's procedural rules permits a case to be dealt with in this manner provided that the parties give their consent (or do not object when a paper determination is proposed).
5. The Directions provided that these Applications be dealt with as paper determinations, in the absence of a request for an oral hearing from either of the parties. No request has been received from either of the parties.
6. Further, having reviewed the parties' submissions, the Tribunal is satisfied that this matter is suitable to be determined without a hearing: both parties are represented by professional advisers, the issues to be decided have been identified in their respective statements of case, which also set out their

competing arguments sufficiently to enable conclusions to be reached properly in respect of the issues to be determined, including any incidental issues of fact.

7. The Applications were listed for determination on Thursday 28 May 2020.

LAW

8. The relevant sections from the 1967 Act are set out below:

8.1 Sections 9(4) and 9(4A) of the 1967 Act provides as follows:

Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:—

- (a) any investigation by the landlord of that person's right to acquire the freehold;
- (b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;
- (c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;
- (d) making out and furnishing such abstracts and copies as the person giving the notice may require;
- (e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to an appropriate tribunal.

8.2 Section 21(2)(a) of the 1967 Act provides as follows:

“...a Residential Property Tribunal shall have jurisdiction, either by agreement or in a case where an application is made to a tribunal under subsection (1) above with reference to the same transaction,—

- (a) to determine what provisions ought to be contained in a conveyance in accordance with section 10 or 29(1) of this Act, or in a lease granting a new tenancy under section 14; or

(b)

(c)

EVIDENCE

9. The Applicants' submissions were made by their representative, Andrew Orme of Orme Associates, in the Statement of Case dated 7 February 2020. The relevant submissions are summarised as follows:
 - 9.1 paragraph 10 contains Mr. Orme's valuation of the freehold reversion of the Property at £2935, together with a detailed explanation of the methodology used;
 - 9.2 paragraph 11 entitled "Terms of Transfer" refers to "the Applicants proposed draft transfer" (said to be attached as Appendix 6 to the Statement of Case, ("the Applicants' Transfer")), to the service of a notice, (attached as Appendix 7), under Condition 3 of Part 1 of the Schedule to the Leasehold Reform (Enfranchisement and Extension) Regulations 1967, ("the 1967 Regulations"), and a statement as to the effect of the Respondent's failure to respond to that notice;
10. The Respondent's submissions were made by its representative, Knights plc, in the Statement of Case dated 9 April 2020. The relevant submissions are summarised as follows:
 - 10.1 the apparent confusion regarding the applications for determination by the Tribunal;
 - 10.2 with regard to the price payable for the freehold reversion, reference is made to the valuation report of Mr. G.Evans dated 17 September 2018, to an agreement between the parties on 13 September 2018 for a purchase price of £3535 as referenced in the letter dated 17 September 2018 from Mr.Evans to the Respondent's solicitors, to an exchange of emails on 16 April 2020 between the parties' representatives regarding the agreement as to price, costs and the terms to be included in the transfer, and an email dated 17 April 2020 from Mr. Evans to the Respondent's solicitors;

- 10.3 with regard to the provisions to be included within the transfer, it is denied that any notice under Condition 3 of the 1967 Regulations was served by the Applicants. Reference is made to a draft transfer containing restrictive covenants and rights of way which it is said was drafted by Mr. Orme and sent to the Respondent's solicitors as an attachment to a letter dated 19 December 2019 (which cannot be produced as it is titled "Without Prejudice"), ("the 2019 Transfer");
- 10.4 with regard to reasonable costs, reference is made to previous agreements claimed to have been reached for legal fees of £600 plus VAT and a valuation fee of £500 plus VAT; and
- 10.5 the Respondent's intention to seek a "wasted costs" order.

TRIBUNAL'S REASONS

11. It is not clear to the Tribunal why both Applications were not referenced in the Directions, nor why the Applicants' representative did not raise this omission with the Tribunal. It is clear, however, that the parties discussed the issue of costs in their email exchanges in April 2020 and that the Respondent has directly addressed it in its submissions. On that basis, the Tribunal considers that it is consistent with the overriding objective to consider the application for a determination in respect of reasonable costs.
12. The Tribunal is satisfied that an agreement was reached between the Applicants' representative, Mr. Orme, and the Respondent's valuer, Mr. Evans, on the price payable of £3535 for the freehold reversion to the Property, and that both Mr. Orme and Mr. Evans had authority to make such an agreement on behalf of their clients. The Tribunal reached its determination regarding the existence of an agreement having regard to the following:
- 13.1 the letter of 17 September 2018 from Mr. Evans to the Respondent's solicitors which the Tribunal considers to be the nearest contemporaneous evidence of an agreement reached on 13 September 2018. In this letter, Mr. Evans writes: "This was one of the ones where I have already negotiated a settlement with Andrew Orme at £3535";

- 13.2 the Applicants' Transfer in which the consideration is stated to be £3535. (The Tribunal notes that the 2019 Transfer also includes a consideration of £3535.) Mr. Orme has provided no evidence to explain why he included £3535 as the price payable in the 2020 Transfer, even where that differs both from the amount included in his valuation report, (£2935), and the amount he suggests as a compromise price in an email of 16 April, (£3200).
14. In view of the Tribunal's determination that an agreement had been reached between the parties regarding the price payable, it has no jurisdiction to determine the application under section 21(1)(a) of the 1967 Act.
15. The Tribunal accepts that the Applicants' representative did prepare a notice under Condition 3 of Part 1 of the Schedule to the 1967 Regulations but notes that there is no evidence of service of the notice on the Respondent/its solicitors. The Tribunal notes that the Respondent's solicitors deny receipt of this notice. The Tribunal considers that it is unnecessary to make a determination on this point, however, for the reasons set out in paragraph 17 below.
16. The Tribunal's deliberations have been made more difficult in this matter by the failure of both parties to adequately and accurately tabulate and index the supporting documents to their written submissions. In particular, the parties' written submissions included the following draft transfers: a draft transfer annexed to the Applicants' Statement of Case (incorrectly tabulated but referred to as Appendix 6 and referred to in this Decision as the Applicants' Transfer); three draft transfers apparently annexed to the Respondent's Statement of Case: one is expressly referenced in the Statement as a draft transfer attached to a letter from the Applicants' agent's letter dated 19 December 2019 but not marked as such. In this Decision, it is referred to as the 2019 Transfer. It appears that the other two, one of which refers to 22 Chadwick Lane and the other to 52, Shackleton Avenue were attachments to an email dated 16 April 2020 from Mr. Orme to the Respondent's solicitors.
17. The Tribunal considered that the email exchanges in April 2020 between the parties confirmed Mr. Orme's willingness to consider the inclusion in the transfer of restrictive covenants and rights of way as included in the lease. The Tribunal has made a determination regarding these provisions, however, as

there is no express confirmation from either of the parties to the effect that such terms were agreed.

18. The Tribunal considers that the provisions of clause 12 of the 2019 Transfer includes rights granted, rights reserved, restrictive and other covenants, agreements and declarations of the sort appropriate in this matter and therefore considers it appropriate in the circumstances to adopt the drafting of clause 12 of the 2019 Transfer in its determination of the terms to be included in the transfer.
19. The Tribunal is not satisfied that there is an agreement between the parties regarding reasonable costs payable, although it again notes Mr. Orme's statement in his email of 16 April 2020 to the Respondent's solicitors that, "I will recommend acceptable [sic] of your legal fees of £600 + VAT".
20. The Tribunal is satisfied that legal fees of £600 plus VAT are reasonable.
21. With regard to the valuation fee, the Tribunal notes that whilst Mr. Orme has made no submissions in his Statement of Case regarding valuation costs, in one of the emails of 16 April 2020 between Mr. Orme and the Respondent's solicitors (which are disclosed as part of the Respondent's Statement of Case), he states that his approach regarding valuer's fees is "...to adopt the policy of the Tribunal for valuer fees for desktop capitalizations", and sets out what is said to be a submission made to the Tribunal regarding valuation fees on a different matter. The Tribunal notes that Mr. Orme provides no explanation of what is meant by "the policy of the Tribunal for valuer fees for desktop capitalizations", nor of the relevance to this matter of the submissions made in the other Tribunal matter e.g. to what extent common features existed in both matters. Accordingly, the Tribunal places no reliance on this information.
22. In paragraph 8 of the Respondent's Statement of Case, reference is made to an email of 16 April 2020 from Mr. Evans to the Respondent's solicitors. Having regard to the time which has elapsed since the agreement regarding valuation fees and this email, and, in the absence of any substantially contemporaneous evidence of such an agreement, the Tribunal is not persuaded that an agreement was made on or about 13 September 2018 in respect of valuation fees. Specifically, the Tribunal considers that, if such an agreement had been

reached, it is reasonable to expect that Mr. Evans would have referred to it in his letter of 17 September 2018, at the same time as he confirmed agreement of the price payable.

23. The Tribunal must therefore make its own determination as to what it considers to be a reasonable valuation fee. The Tribunal rejects Mr. Orme's proposition that, as a general rule, the absence of a physical inspection should result in a minimal or no valuation fee. A review of the lease and preparation of the valuation by application of the appropriate methodology are still required whether or not a physical inspection is undertaken. In the circumstances, the Tribunal considers that a fee of £500 plus VAT is reasonable.
24. As at the date of this Decision, no application for a "wasted costs" order has been made by the Respondent's solicitors despite a statement that this would be sought in paragraph 9 of its submissions. The Tribunal notes that, whilst it has determined that it has no jurisdiction to determine the application regarding the price payable because of the existence of an agreement between the parties in this respect, determinations have been required in respect of the provisions to be included in the transfer and reasonable costs. In such circumstances, if an application for a "wasted costs" order had been before it, the Tribunal considers that it is unlikely that such an application would have been granted.

Tribunal Judge C Wood

3 July 2020