



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

Case Reference : **MAN/00CZ/OCE/2022/0010**

Property : **STONELEIGH, BRYAN ROAD, HUDDERSFIELD,
HD2 2AH**

Applicants : **STONELEIGH PAVILLIONS PROPERTY COMPAY
LIMITED**

Respondent : **MD CONSTRUCTION (BRADFORD) LIMITED**

Type of Application : **Determination of disputed acquisition terms
section 24(1), Leasehold Reform, Housing and
Urban Development Act 1993**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member A Hossain, BSc (Est Man)
MRICS**

Date of Decision : **22 November 2023**

DECISION

1. The amount payable for purchase of the freehold of Stoneleigh Pavillions (the Specified Premises shown coloured red on the plan attached to the Applicant's section 13 Notice) is £32,474.
2. The amount payable for purchase of the additional land (shown coloured blue on the plan) is £100.
3. The indemnity clause to be inserted in the transfer to the Applicant is to read:
"The Transferee covenants by way of indemnity on the Transferee's behalf and on behalf of the Transferee's successors in title to observe and perform the charges, incumbrances, covenants and restrictions contained or referred to in the property and charges register of title number WYK630762 insofar as they are subsisting and capable of taking effect."

REASONS

Background

1. On 9 March 2022 an Initial Notice was served on the Respondent under section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ("the Act") by Mr R E Hall and Mrs P E Cato-Hall (flat 1), Mr S J J Evans (flat 2), Mr R Greaves (flat 3), and Mr A P Coulson (flat 4), leaseholders of Stoneleigh Pavillions, Huddersfield. Flats 1, 2, 3, and 4 are therefore participating flats. Each has an unexpired term of some 984 years. A director of the Respondent, Mr M Dunbar, is the leaseholder of flat 5, and the leaseholder of flat 6 is SSH Property Investment Limited. Flats 5 and 6 are non-participating flats.
2. The Initial Notice sought enfranchisement of the building known as Stoneleigh Pavillions ("the building") and the surrounding former garden grounds ("the blue land"). The Notice contained an offer of £31,200 for the building and £100 for the blue land.

3. By its counter-notice dated 24 May 2022 the Respondent proposed a price of £81,030 for the building and £1,200,000 for the blue land. The suggested price for the blue land was later reduced to £150,000. The Respondent also proposed the following form of indemnity for inclusion in the transfer: *“The Transferee covenants by way of indemnity on the Transferee’s behalf and on behalf of the Transferee’s successors in title to observe and perform the charges, incumbrances, covenants and restrictions contained or referred to in the property and charges register of title number WYK630762 insofar as they are subsisting and capable of taking effect.”*

The Application

4. No agreement having been reached as to either the price of the property or the wording of the indemnity clause, on 11 November 2022 the Applicant filed an application under section 24 of the Act. Pursuant to Directions, the Tribunal was supplied with representations in writing as follows:

For the Applicant:

a Statement of Case signed by its solicitor dated 31 May 2023

an expert witness report prepared by Mr Robert Stewart Kaye, MSc MRICS and dated 5 May 2023

a Reply to the Respondent’s Statement of Case dated 4 July 2023

For the Respondent:

a Statement of Case signed by Mrs Keeley Dunbar, a director of the Respondent, dated 13 June 2023

For both parties: an expert witness Joint Statement prepared by Mr Kaye.

5. Mr Greaves, Mr Coulson and Mrs Dunbar showed the Tribunal around the common parts and grounds of the property on the morning of the hearing. The hearing took place by video link, Mr Greaves attending by telephone. Mr Hall spoke for the Applicant and the Respondent was represented by Mr Dymond of counsel. Evidence was given by Mr Kaye in the terms of his written report.

The Property

6. On inspection the Tribunal was not concerned with the value of the freehold reversion in view of the length of the unexpired terms. Apart from the immediate surrounds of the building, the blue land was almost completely inaccessible, being covered by brambles and other undergrowth. The blue land was clearly sloping, hilly and populated with mature and other trees. It includes an access drive and a parking/turning area in front of the building. Outdoor parking spaces are not allocated to specific flats.

7. Beyond the front boundary of the property to the west is Stoneleigh, a grade II listed building clearly visible from the building. A further grade II listed building is adjacent to the property, and a grade I listed building lies beyond the eastern boundary. These are largely screened by the trees. Generally despite some recent development the area consists of large individual properties built any time up to 150 years ago in mature and extensive grounds.

Preliminary issue

8. Some two working days prior the hearing the Respondent filed and served a letter from a solicitor, Mr Scanlon, trading as Noel Scanlon Consultancy Ltd, dated 17 November 2023. Counsel sought to have this document included in the evidence for the Respondent. The Applicant objected. After hearing the representations for both parties, the Tribunal decided to exclude the document from consideration at the hearing for the following reasons: Mr Scanlon did not present himself as an expert witness with appropriate qualifications to comment on the valuation issues; the letter contained opinion but was not presented as an expert report; the Respondent had not complied with the directions order; the letter was supplied too late for the Applicant and Mr Kaye to consider it properly and respond to it; Mr Scanlon was not present at the hearing (although the Tribunal was told that he might have been able to make himself available between 1.30 and 2 pm); and finally the Respondent did not provide any explanation for its failure to comply with directions, or for the late production of this document.

The Applicant's case

9. The Applicant's case was presented by Mr Kaye, who said that the blue land was worthless because at most one or two houses could be built on it, and no developer considering such a small development would be willing to undertake the considerable cost of applying for planning consent in a conservation area adjacent to three listed buildings, probable appeal (a recent planning application having failed on appeal), applying to remove TPOs, applying to free the land from the obligations contained in a s.106 agreement, reporting on the presence and management of protected species; and relocation of the carparking area. Mr Kaye said that these considerable obstacles were no doubt the reason the Respondent, a property developer, had not built on the property during its 10 years of ownership.
10. Further, the blue land represented a substantial financial burden for any owner who attempted to maintain it and preserve its features as required by the s.106 agreement. To date the provisions of the agreement have not been enforced.
11. In cross examination Mr Dymond put it to Mr Kaye that the shortage of housing in England was likely to lead to a general political will to relax planning laws, and might persuade the local authority to change its mind regarding TPOs, the management of conservation areas, and the application of owner's covenants in the s.106 agreement. He said that these possibilities might be expected to encourage a developer to make an offer for the blue land. Mr Kaye replied that any such changes would only occur, if at all, some years ahead. He was required to value the land as at 9 March 2022, and he did not think that any developer who carried out due diligence on the property at that time would have any interest in buying it.
12. Mr Kaye's valuation of the rental income using a capitalisation figure of 7.5% was supported by reference to comparable ground rents, and was not challenged by the Respondent.

The Respondent's case

13. The Respondent's valuation of the blue land was £150,000 and relied entirely on a letter dated 13 July 2023 sent by Khela (UK) Limited ("Khela") to the Respondent. Khela offered £150,000 for the property together with an overage should planning permission be obtained for more than one property. A representative of Khela was not present at the hearing and no witness statement was supplied.

14. Both Mr Hall and Mr Kaye queried the validity of this offer. Mr Hall pointed out that the Tribunal had not been given any indication of the relationship, if any, between the Respondent and Khela and did not know the circumstances in which the offer had been made fortuitously during the current proceedings. Mr Kaye said that if the offer was genuine it may well have been made prior to any due diligence having been carried out. It was not clear whether Khela were even aware of the enfranchisement application.

Valuation findings

15. The Tribunal finds that Khela's offer is insufficiently supported by evidence of the circumstances in which it was made, and is not acceptable as evidence of the value of the blue land.
16. Mr Kaye was able to justify the arguments and conclusions in his report despite the best efforts of Mr Dymond in cross examination. Those arguments and conclusions are accepted.
17. Following inspection of the property and in the light of the documents provided to them, the Tribunal has no difficulty in valuing the blue land at £100.
18. The comparables provided by Mr Kaye are accepted by the Tribunal, which finds the capitalisation rate of 7.5% and resulting valuation of £32,475 for the building to be correct.

The indemnity clause

19. The wording of the indemnity to be provided by the purchaser was not agreed between the parties. The Respondent's wording cited at paragraph 3 above was amended by the Applicant to read: "*The Transferee covenants by way of indemnity only to observe and perform the charges, incumbrances, covenants and restrictions contained or referred to in the property and charges register of title number WYK630762 insofar as they are subsisting and capable of taking effect with the exception of financial charges.*"

20. Counsel referred the Tribunal to section 35 and Schedule 8 of the Act, which deals with the discharge of financial charges against the title on completion of the transfer, and the requirement that any such financial obligations which are not satisfied by payment out of the agreed sale price shall remain charged against the property. He argued that in view of this provision at paragraph 2(2) of Schedule 8, it was inappropriate to exclude financial charges from the indemnity clause. (In this case, the only such charge against the freehold title is represented by a unilateral notice in favour of the Respondent in respect of a lien arising from a lease of Flat 1.)
21. Counsel further argued that the indemnity covenant must be worded so as to bind future purchasers of the property, to prevent the indemnity being avoided by the Applicant selling the property on to another company in their control. He pointed out that if the Applicant were to buy the freehold, it would protect itself from liability following a future sale by requiring its purchaser to enter into a further indemnity covenant, thus creating an “indemnity chain” in the usual way.
22. The Tribunal sought to explain these points to the Applicant’s representatives in layman’s terms. No further objection was raised. The Tribunal accepts the points made by Mr Dymond and the indemnity covenant to be inserted in the transfer has been drafted accordingly.

Tribunal Judge A Davies

22 November 2023