



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

Case Reference : **MAN/00EQ/OLR/2022/0043**

Property : **14, Kingswood Court, Grove Avenue,
Wilmslow SK9 5EE**

Applicant : **Gerald John Maher**

Representative : **Orme Associates**

Freeholder : **Freehold Managers (Nominees)
Limited**

Representative : **Bolt Burdon, Solicitors**

Landlord : **Kingswood (Wilmslow) Management
Company Limited**

Representative : **Bhive Property Solicitors**

Type of Application : **Section 48(1) Leasehold Reform,
Housing and Urban Development Act
1993**

Tribunal Members : **Tribunal Judge C Wood
Tribunal Member J Gallagher MRICS**

Date of Decision : **5 December 2023**

DECISION

ORDER

1. The Tribunal determines as follows:
 - (1) in accordance with section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993, (“the Act”) that the price payable in respect of the freehold interest in the Property is £1275; and,
 - (2) as agreement has been reached between the Applicant and the freeholder regarding the terms of the new lease, and between the applicant and the Intermediate landlord in respect of the price payable in respect of its interest in the property, the tribunal has no jurisdiction to make any further determinations.

BACKGROUND

2. By an application dated 28 November 2022, (“the Application”), the Applicant sought determinations as to:
 - (1) the premium to be paid for the lease; and
 - (2) the other terms of the acquisition which remain in dispute.
3. By directions dated 5 January 2023, the matter was to be determined by way of paper determination, subject to the right of the parties to request an oral hearing.
4. No request was received and the matter was scheduled for determination on Tuesday 19 September 2023.
5. The Tribunal concluded that, having regard to the issues for determination, no inspection was necessary.
6. Both parties had made written representations to the tribunal in accordance with the Directions.

LAW

7. The relevant provisions of Section 48 of the Act provide as follows-
 - (1) Where the landlord has given the tenant-

(a) a counter-notice under section 45 which complies with the requirement set out in subsection (2)(a) of that section, or

(b)

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date when the counter-notice...was so given, the Tribunal may, on the application of either the tenant or the landlord, determine the matters in dispute.

- (2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice...was given to the tenant.

EVIDENCE

8. The Applicant's position, as set out in its Statement of Case and replies to the Respondent's Statement of Case, is summarised as follows:

- (1) the chronology of events including, without limitation, the service of the notice of claim to a lease extension dated 5 April 2022, ("the Claim Notice"), the receipt of a counter-notice dated 8 June 2022 from the Freeholder, ("the Counter-notice") and the receipt of a Notice to Act Independently dated 28 June 2022 from the Intermediate Landlord's solicitors are recorded, together with the details of the Applicant's proposals as set out in the Claim Notice and the Freeholder's counter-proposals as set out in the Counter-notice;
- (2) the Applicant's representative also recites his acknowledgement following receipt of a letter dated 12 October 2022 from the Intermediate Landlord's valuer of his mistaken assumption regarding the value of the Intermediate Leaseholder's interest and the subsequent agreement of the price payable for that interest of £4350;
- (3) in response to the Respondent's Statement of Case, in which reference is made to correspondence from the Applicant's representative dated 26 August and 3 October 2022 in which he confirms agreement of a price payable of £2820 for the freeholder's interest (accepting the Freeholder's counter-proposal as set out in the Counter-notice), the Applicant's

representative refers to an email dated 4 October 2022 from the Freeholder's solicitors rejecting the assertion that an agreement has been reached because of the absence at that time of any agreement regarding the price payable for the interest of the Intermediate Landlord;

- (4) reference is made to correspondence between the parties in January/February 2023 in which the Applicant's representative confirms to the Freeholder's solicitors that agreement has been reached regarding the price payable for the Intermediate landlord's interest and proposing a price payable of £1275 for the Freeholder's interest;
- (5) no agreement has been reached with the Freeholder as to the price payable;
- (6) the Applicant's representative confirms receipt of a draft lease from the Freeholder's solicitors and his recommendation of its acceptance as drafted to the Applicant.

9. The Freeholder's position, as set out in its Statement of Case and Statement in Reply, is summarised as follows:

- (1) reference is made to the correspondence from the Applicant dated 26 August and 3 October 2022 as evidence of agreement having been reached as to the price payable of £2820 for the Freeholder's interest;
- (7) the Freeholder states that, with regard to the "terms of acquisition", the parties' positions as set out in paragraph 8.3 of the Notice and paragraph 10.3 of the Counter-notice are "not dissimilar", leaving no outstanding terms for determination by the Tribunal;
- (8) the Freeholder asserts that the subsequent proposal received from the Applicant's representative of £1725 for the Freeholder's interest is of no relevance as a prior binding agreement had been made, as set out in (1) above.

REASONS

10. The parties and, in particular, their representatives are reminded of their duties to the Tribunal under Rule 3(4) of the Tribunal Procedure (First-

tier Tribunal) (Property Chamber) Rules 2013, namely, to help the Tribunal to further the overriding objective and to co-operate with the Tribunal generally. In this respect, the Tribunal notes with regret the omission by both parties from their written evidence of correspondence between themselves, presumably because it was not considered to be helpful to their case.

11. Having considered the parties' evidence of the sequence of events between the service of the Notice up to and including the issue of a draft lease by the Freeholder's solicitors and the recommendation of its acceptance by the Applicant's representative, the Tribunal notes as follows:
 - (1) it would have been possible for the parties to agree the various elements of the transaction, namely, the price payable for the freeholder's interest, the price payable for the Intermediate Landlord's interests and the other terms of acquisition which, in this case, are the terms of the new lease, independently: that is, there is no presumption of interdependence;
 - (2) it appears that, at the time of issue of the Counter-notice, the Freeholder regarded itself as the Competent Landlord to negotiate all of the terms of the transaction but that this position was altered on the issue by the Intermediate Landlord of the Notice to Act Independently which made it clear that agreement of the price payable for its interest should be made directly between the Applicant and the Intermediate Landlord;
 - (3) the Tribunal therefore considers that, as a matter of law and fact, from 28 June 2022, the Freeholder's rights were limited to negotiating the price payable for its interest and the terms of the new lease;
 - (4) the Tribunal accepts that, in agreeing to the terms as set out in the Counter-notice, the Applicant's representative was acting under a mistaken assumption which he did not acknowledge until some time later. It is arguable, but in the event irrelevant to this determination, that the Applicant's representative was put on notice of his mistake, or at least should have made further enquiry of the position at that time, on

receipt of the Counter-notice by reason of the significantly greater value attributed by the Freeholder to the Intermediate Landlord's interest;

- (5) the Tribunal accepts nonetheless that, by their email dated 4 October 2022, the Freeholder's solicitors were clear in their rejection of the Applicant's position that the terms of the transaction had been agreed and it considers it would be inequitable to allow them to resile from that position subsequently to secure a higher price for its interest;
- (6) having regard to the correspondence between the Applicant's and the Freeholder's representatives in January/February 2023, the Tribunal is satisfied that agreement has been reached on the terms of the acquisition, in the form of the draft lease issued by the Freeholder and accepted as drafted by the Applicant, and the Tribunal therefore has no jurisdiction under section 48 of the Act to make any determination in this respect;
- (7) the Tribunal is further satisfied that no agreement has been reached between the Freeholder and the Applicant regarding the price payable in respect of the Freeholder's interest;
- (8) the only evidence available to the Tribunal regarding the valuation of this interest is the statement by the Freeholder in the Counter-notice and the limited evidence of valuation in the Applicant's representative's letter dated 1 February 2023;
- (9) in the absence of any further evidence, the Tribunal having regard to the Applicant's representative's valuation and also relying on its own knowledge and experience accepts the valuation of £1275 and determines that this is the purchase price payable for the Freeholder's interest.
- (10) The Tribunal notes that the only evidence before it that agreement has been reached with the Intermediate Landlord for a purchase price of £4350 in respect of its interest are the statements from the Applicant's representative to this effect. There is no reason for the Tribunal to question that such agreement has been reached. The Tribunal therefore

has no jurisdiction under section 48 of the Act to make a determination in this respect.

Judge C Wood
5 December 2023