FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BY/OAF/2014/0015**
Property	:	**20-22 Larkhill Place, Liverpool L13 9BS**
Applicants	:	**Sabah Elgadhy and Zara Elgadhy**
Representative	:	**Orme Associates**
Respondent	:	**Liverpool City Council**
Representative	:	**Hill Dickinson**
Type of Application	:	**Determination of price payable - section 21(1)(a) Leasehold Reform Act 1967**
Tribunal Members	:	**Mr PA Barber LLM** **Mrs J Brown MRICS**
Date of Paper Determination	:	**16 March 2015**
Date of Decision	:	**24 April 2015**

DECISION

DECISION

The price payable is £29,852.

REASONS

The Application

1. The Application is made under section 21(1)(a) of the Leasehold Reform Act 1967 ('the Act') to determine the price payable by the Applicants upon enfranchisement. The Property is held by the Applicants under the terms of a lease ('the Lease') dated 15 October 1923 and made between Liverpool Corporation (1) The Right Honourable John Herbert Baronclwyd (2) and Ivy Louise Morrison (3) for a term of 99 years calculated from 31 August 1922 at an annual ground rent of one peppercorn.

2. The parties agree the valuation date of the 12 March 2014.

Inspection

3. On 15 March 2015 the Tribunal inspected the Property. It was noted to comprise effectively two parts: a shop which extended to the back of the property with accommodation at the rear (not living accommodation) and a flat above the shop with a separate entrance. The flat was originally 2 bedrooms with a bathroom, kitchen and living room but the tenants have extended into the loft space by means of an additional staircase from the kitchen area and created a large upstairs living and sleeping area with its own shower facilities.

4. No oral hearing was requested by either party.

Submissions

5. The Tribunal had the benefit of submissions from the parties. We had a submission to the Tribunal dated the 08 December 2014 setting out the Applicant's statement of case and method of calculation; a statement of case by the Respondent dated the 03 December 2014 setting out their method of calculation; a reply by the Applicants to the Respondent's statement of case (our copy was undated) and a statement in reply dated the 14 January 2015 by the Respondent. We took all of those submissions into account in arriving at our decision.

6. The Tribunal accepted both calculations as expert evidence but as will become apparent below prefers the submissions and method of calculation presented by the Respondent in accordance with the investment approach at valuation (A) on page 73 of their statement of case.

7. The legal position in relation to the approach to calculation is set out in section 9 of the 1967 Act:

(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family not buying or seeking to buy) might be expected to realise on the following assumptions:—

(a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;

(b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

Method of Valuation

8. The valuation evidence submitted by the Applicants supports a price of £12,168 and the valuation evidence submitted by the Respondent supports a price of between £29,860 and £31,140. There was clearly some distance between the parties but there is a lot of common ground in relation to the method of calculation.

9. Both parties agree that the proper basis of valuation can be found at section 9(1) of the Act.

10. The Tribunal considers that the appropriate method of calculation of the price to be paid for the freehold is therefore as follows: the value of the present rental income for the unexpired term **plus** the current value of a modern ground rent for a 50 year lease extension **plus** a Haresign addition (i.e. the value of the reversion at the end of the 50 year extension). This accords with the Respondent's valuation report at paragraph (A). In this respect the Tribunal accepts the Respondent's contention that in the light of the case of *Clarise Properties Limited [2012] UKUT 4 (LC)* this three stage valuation is appropriate.

11. The Tribunal decided that the investment approach to calculation was the correct approach and set out its reasons and findings of fact below.

12. In order to determine the price payable the Tribunal considers that the following variables and values need to be determined:

- yield to calculate the value of the existing rental entitlement;
- entirety value;
- site apportionment;
- deferment rate to calculate the current value of the capitalised modern ground rent on the lease extension;
- yield to capitalise the modern ground rent; and
- value of reversionary interest for the Haresign addition.

These are considered in turn.

Yield - existing rental entitlement

Submissions

13. Both parties agree that the ground rent is one peppercorn which is effectively nil.

Entirety Value

Submissions

14. The Applicants have valued the freehold interest modernised and renovated at £75,000 in accordance with their submissions using a freehold unencumbered value by reference to a number of comparables they have identified. The Respondent has presented three methods to calculate the value: an investment approach and two sales approaches. These are set at £122,706, £125,000 and £128,000 respectively.

Determination

15. This is the area where the parties are in the biggest disagreement. We decided that the best approach would be the investment approach as suggested by the Respondent in its submission. The Tribunal decided this because it was not satisfied that the comparables evidence as submitted by either the Appellants or the Respondent was sufficiently comparable to be comparable. As well as this the comparables submitted as being comparable were so diverse and gave rise to such differing sales values that the Tribunal was satisfied that it was not appropriate to approach the method of calculation in this manner.

16. The Applicants in paragraph 12 of their submission and the Respondent in the witness statement of Mr Kasambara have set out their evidence of the comparables none of which we found particularly persuasive. The comparables identified were all generally either too remote or too different to the subject property. It is also possible that the addition of the large living area at the top of the property would make a difference to the figures used.

17. Finally, the parties were much closer in their evidence in relation to the rental levels likely to be achieved for this type of property and accordingly the Tribunal thought that the investment approach to value the interest was the best approach to take.

18. The Tribunal therefore found that a net market rent for the property would be £9,203 per annum with a capitalisation yield of 7.5% in accordance with the submissions of the Respondent which the Tribunal agreed could be assumed to be a reasonable net market rent. Considering the neighbourhood the Tribunal did not think this amount to be unreasonable. Accordingly this would produce an entirety value of £122,706.

Site apportionment

Submissions

19. The Respondent apportions the site value as being 33% of total value and the Applicants propose an apportionment of 20%.

Determination

20. The Tribunal determines that the appropriate apportionment of total value for a low value house in the region would be 33%, and accordingly prefer the submissions of the Respondent on this point thinking that the percentage suggested by the Applicants is too low.

Deferment rate - current value of capitalised modern ground rent

Submissions

21. Both parties agree that a rate of 5.5% is appropriate.

Yield - modern ground rent

Submissions

22. Both parties agree that the yield assumed in capitalising the modern ground rent for the 50 year lease extension should be at the deferment rate of 5.5% on the unexpired term of the lease of 7.44 (the Respondent is correct).

Value of reversionary interest - Haresign addition

Submissions

23. Both parties agreed that the Haresign addition would reduce the unencumbered freehold value by 20% the only difference in this calculation being in relation to the unexpired term of the lease.

Overall Determination of Price Payable

24. Applying the Tribunal's preceding determinations the price payable by the Applicants comes to £29,852. The Tribunal's detailed calculation arriving at this figure is annexed.

ANNEX

Valuation Date	:	12 March 2014
Term Commencement Date	:	31 August 1922
Term (years)	:	99
Term expiry Date	:	30 August 2021
Unexpired Term (years)	:	7.44 years
Ground Rent	:	£0
Capitalisation Rate		
Unencumbered freehold	:	7.5%
Freehold Value	:	£122,706
Apportionment of Value to site	:	33%
Modern Ground at 5.5%	:	£2,227 p.a.
Capitalisation Rate on reversion	:	5.5%
Reversion (years)	:	57.44
"Haresign" reduction	:	20%
Reversionary Yield	:	5.5%

Unencumbered freehold value – vacant possession

Net Market Rent		£9,203 p.a.
X YP perp @ 7.5%	13.3333	£122,706

Reversion	
Term capital value	£0
Capital Value of property	£122,706
Site value at 33% of capital value	£40,493
Section 15 rent @ 5.5%	£2,227
X yp for 50 years @5.5% deferred 7.44 years 11.3684	£25,317
Total value of reversion	£25,317

Add		
Haresign Addition	Unencumbered freehold	£122,706
Less 20%		£24,541
X pv of £1 in 57.44 years @ 5.5% 0.0462		£4,535
Add to value of reversion £25,317		£29,852
Premium payable to freeholder		£29,852