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RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

In the matter of 67 Penylan Road, Cardiff, CF23 5HZ

And in the matter of an Application under section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993

Reference: LVT/0044/12/20

Applicant: 67 Penylan Road (Freehold) Limited

Respondent: Residential Freeholds Limited

Tribunal: Mr. A Grant (Chairman)
Mr. R. Baynham (Surveyor)
Ms. A. Ash (Lay member)

Decision

The tribunal determine that there is no hope value to be included within the purchase price of the Property.

Reasons

1. This is an application made by 67 Penylan Road (Freehold) Limited (“the Applicant”) which is the nominee purchaser of the freehold interest in the property situated at 67 Penylan Road, Cardiff, CF23 5HZ (“the Property”). The freehold interest is currently vested in Residential Freeholds Limited (“the Respondent”) and is registered at HM Land Registry under title number WA25902.
2. By way of an application dated the 22nd December 2020, the Applicant sought a determination from this tribunal as to the extent of land to be included in the transfer and as to the price payable for the freehold interest in the Property.

Background

3. By way of a notice dated the 24th April 2020, The Applicant served upon the Respondent a notice pursuant to section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) notifying the Respondent of its desire to purchase the freehold of the Property and setting out the proposed terms of purchase.
4. The Respondent served a counter notice dated the 24th June 2020, in which it acknowledged the Applicant’s right to acquire the freehold and thereafter set out its own proposed terms.
5. At this stage there were two items in contention: (1) the extent of the property to be included in the transfer and (2) the proposed purchase price.
6. Being unable to reach agreement on these issues, the Applicant applied to this tribunal for a determination of those issues pursuant to section 24(1) of the Act.
7. Fortunately, the parties were able to agree those issues subsequently but by that stage a further issue had arisen, namely whether any hope value was to be attributed to the purchase price. The Applicant asserted that there was no hope value. The Respondent asserted that hope value should be included and valued that aspect at £76,891.00.
8. The question of hope value is the only matter to be determined by this tribunal.

Proceedings

9. The Application was received in the tribunal offices on the 23rd December 2020. Directions were issued on the 15th January 2021. The tribunal issued amended directions (specifically addressing the issue of hope value) on the 11th March 2021.
10. The Applicant seeks to rely upon the particulars which accompanied its application together with its written submissions dated the 25th March 2021. The Respondent relies upon its written submissions dated the 26th March 2021.
11. In addition, both parties seek to rely upon expert evidence. The Applicant relies upon the report of Mr. Geraint Evans which is dated the 8th February 2021. The Respondent relies upon the expert report of Mr. Colin Horton which is undated.
12. Both parties indicated that they were prepared for the matter to be determined on the papers. The tribunal considered the matter on the 18th June 2021.

Deliberations

13. The Respondent asserts that any valuation of the purchase price must take into account hope value arising from the fact that any prospective purchaser would attach a value to the fact that there has been a determination by the First Tier Tribunal that there has been a breach of the lease in relation to flat number 1 at the Property, the breach is irremediable, a section 146 LPA 1925 notice has been served and as such the lease is vulnerable to forfeiture by the Respondent.
14. The Applicant asserts that the breach is remediable and as such the section 146 notice is invalid. Further and alternatively, the Applicant also states that in the circumstances of the case, a court would grant relief from forfeiture in any event. Given those points, the Applicant asserts that there is no hope value to be included in the purchase price.
15. The tribunal has considered the written submissions of the parties and the expert reports.

The written submissions

16. The tribunal consider that the breach in question is remediable and, in that regard, it prefers the Applicant's written submissions on the point. The current case law as set out in the Applicant's submissions clearly point to the courts taking the view that breach of a covenant not to carry out unlawful alterations is a breach which is capable of remedy. Indeed, in this case the tenant of flat number 1 has offered to remedy the breach (which was carried out by a previous owner of the flat) but the Respondent has objected.
17. Having determined that the breach is remediable, the tribunal further determines that the section 146 notice served by the Respondent is defective in that it did not set out the steps required by the Respondent to enable the tenant to remedy the breach. Again, it prefers the Applicant's submissions on this point.
18. In respect of those matters, the tribunal concludes that the Respondent's submissions that the possibility of obtaining forfeiture add hope value in the present case are improbable.
19. However, if the tribunal were to be wrong in that regard, the tribunal take the view that given the facts of this particular case, namely that it considers the breach to be remediable and the tenant of flat 1 has offered to remedy the breach, the tribunal considers, on the balance of probability, that the court would be likely to grant the tenant of flat number 1 relief from forfeiture in any event and the Respondent or prospective purchaser would not obtain a windfall by having the possibility of forfeiting the lease of flat number 1.
20. In reaching that determination, the tribunal again prefer the Applicant's submissions.

The expert evidence.

21. Both parties have relied upon the evidence of a surveyor as outlined earlier in this decision.
22. The tribunal considers that the Applicant's expert report is balanced and objective in its approach and the conclusions are supported with appropriate evidence.
23. The Respondent's expert, in reaching his conclusions, relies heavily upon the issue of forfeiture as being a realistic possibility such as to add hope value in the present circumstances.
24. It is noted that whilst the Respondent's expert puts forward figures in support of his calculations, he does not provide any evidence to support the figures which he has advanced in reaching his conclusions.
25. The Tribunal prefer the evidence of the Applicant. The tribunal consider the Respondent's approach to be fanciful and it is not supported by any evidence.

Conclusion

26. Having considered the totality of the evidence, the Tribunal determine that there is no hope value to be attributable to the purchase price of the Property. In all other regards, the purchase price has been agreed between the parties as recorded in the statement of agreed facts appearing at page 99 of the hearing bundle.

Dated this 24th day of June 2021.

Andrew Grant
Chairman.