



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

Case Reference : **BIR/00CT/OAF/2018/0024**

Property : **334 Chester Road, Castle Bromwich,
Birmingham, B36 0LD**

Applicants : **Mrs Lisa Georgette Stack**

Representatives : **Darwin Gray Solicitors**

Respondent : **Unknown**

Representative : **N/A**

Type of Application : **Applications under Section 21(1)(cza)
and Section 21(2) Leasehold Reform Act
1967 to determine the amount to be paid
in to Court for the transfer of the
freehold interest and for a determination
for the provisions which ought to be
contained in the conveyance**

Tribunal Members : **Judge M K Gandham
Deputy Regional Valuer Mr V Ward
Mr V Chadha MRICS MCI Arb FCIH MBA**

**Date and venue of
Hearing** : **10th December 2018
Centre City Tower, 5 – 7 Hill Street,
Birmingham B5 4UU**

Date of Decision : **5 February 2019**

DECISION

Decision

1. For the purposes of section 27(5) of the Leasehold Reform Act 1967 ('the Act'), the Tribunal determines that, taking account of the evidence adduced and the Tribunal's own general knowledge and experience, the appropriate sum to be paid into Court for the acquisition of the freehold interest in the property known as 334 Chester Road, Castle Bromwich, Birmingham, B36 0LD ('the Property') under section 27(3) is:
 - a) £36,707, being the price payable in accordance with section 9 of the Act; and
 - b) the amount of any pecuniary rent payable for the Property which remains unpaid is nil.
2. The Tribunal determines that the terms of the conveyance, in accordance with section 10 of the Act, shall include the provisions detailed in Appendix 1.

Reasons for Decision

Introduction

3. On 26th September 2018, by Order of District Judge Vernon sitting in the County Court at Cardiff, the Court ordered the Applicant to apply to the Tribunal to determine the price payable for the Property under section 9 of the Leasehold Reform Act 1967. The Tribunal received an Application, under sections 21(1)(cza) and 21(2)(a) of the Act, on 3rd October 2018.
4. The Tribunal issued Directions on 4th October 2018. The Tribunal received a statement of case (in relation to the valuation) from Midlands Valuations on 18th October 2018. The Tribunal requested the Applicant's Representative to provide a draft Transfer and plan for approval and the Tribunal received this on 17th December 2018.
5. The Property is held under a lease, ('the Lease'), dated 5th September 1933, for a period of 99 years from 25th March 1933, at an annual rent of five pounds and ten shillings. At the valuation date, 17th April 2018, there were approximately 13.95 years unexpired.

The Law

6. Section 27 of the Act contains detailed provisions for the application to the County Court. Subsection (3) provides that, upon the payment in to Court of the 'appropriate sum,' a conveyance shall be executed as provided in that subsection. Subsection (5) of the Act provides as follows in relation to the determination of the 'appropriate sum':

(a) such amount as may be determined by (or appeal from) a leasehold valuation tribunal as to the price payable in accordance with section 9 above; and

(b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.

7. It is, therefore, the duty of the Tribunal to determine the value of the Property under section 9 of the Act (as amended by the Commonhold and Leasehold Reform Act 2002) and also the amount of any pecuniary rent outstanding up to the date of the conveyance.
8. The relevant law in relation to the rights to be conveyed to a tenant on enfranchisement are set out in section 10 of the Act.

Inspection

9. The Tribunal inspected the Property on 10th December 2018, in the presence of the Applicant and her father, who resided at the Property.
10. The Property is a two storey, semi-detached house, built circa. 1930, in brick and tile. It has a small lawned area to the front, with off road parking and a garage to the side. To the rear of the house was a fair sized garden and patio, in which a further garage had been erected.
11. The internal accommodation comprised a front lounge and rear extended kitchen/living area. A very steep staircase led to the first floor, which comprised a hallway leading to two double bedrooms and a family bathroom.
12. The kitchen had very limited storage and the bathroom was dated. The majority of the windows were not double-glazed and the flooring was in need of replacement. The entire Property was in need of modernisation and complete redecoration for the current market. In addition, the Property would have benefitted from reconfiguration of the first floor to create a third bedroom. The roof of the garage was also clearly bowed at the time of the inspection.

Hearing

13. Following the inspection, a public hearing was held at the Tribunal's hearing rooms in Centre City Tower in Birmingham. Mr Moore, from Midland Valuations Limited, attended the Hearing on behalf of the Applicant.

The Applicant's submissions on the Valuation

Basis of Valuation

14. Mr Moore submitted that the Property should be valued in accordance with section 9(1) of the Act.

Entirety Value

15. Mr Moore produced extensive comparables in his written submission, of which the most appropriate were the sales of 330 and 344 Chester Road, both of which were in very close proximity to the subject Property. 330 Chester Road was sold in August 2016 at £179,950 which, when adjusted to the date of valuation by the Nationwide House Price Index, gave a revised value of £193,976. 344 Chester Road was sold in September 2017 for £185,000 which, when revised to the valuation date, equated to £190,557. Mr Moore stated that both properties were of an identical style to the Property but had been modernised and had three bedrooms. This led Mr Moore to an Entirety Value of £195,000.
16. In the interests of complete disclosure, Mr Moore also referred to the sale of 314 Chester Road in May 2018, for £300,000. He stated that this was a different style of property, which had four bedrooms and a very large rear garden. He understood that there were ongoing discussions regarding development of the garden, which, he surmised, could be the reason for the inflated price.

Standing House Value

17. In respect of the Standing House Value, Mr Moore allowed for the fact that the Property only offered two bedrooms and required extensive works. He believed that the current open market value was approximately £150,000.

Site Value Apportionment

18. Mr Moore submitted that, as the Property was a semi-detached house with a long, but unremarkable, rear garden, a site value of 33% was appropriate. He stated that this was in line with recent decisions of the Tribunal and many settlements that the Applicant's Representative had dealt with.

Capitalisation Rate

19. Due to the very low ground rent - which was fixed for the entire term of the Lease - Mr Moore submitted a capitalisation rate of 7%. He stated that this was consistent with the rate agreed in all negotiations the Applicant's Representatives had dealt with when the rent was fixed and less than £10 per annum. He also believed it correctly interpreted the guidance on capitalisation rates in *Nicholson v Goff* [LRA/29/2006 (2007)], paragraph 9:

“The factors relevant to capitalisation rate: the length of the lease term, the security of recovery, the size of the ground rent (a larger ground rent being more attractive), whether there were provisions for review of the ground rent and, if there was such provision, the nature of it”

Deferment Rate

20. Mr Moore confirmed that the starting point for his consideration of the deferment rate was 4.75%, as per the decision in *Cadogan and Another v Sportelli and Another* [2007] EWCA Civ 1042. To this, he deducted 0.25% to reflect the short term. To this, he submitted, a further addition of 0.5% should be made in respect of the lack of growth between Prime Central London (PCL) and the West Midlands.
21. In support of this, he referred the Tribunal to the graph included within his written submission, which compared the rate of growth for properties in the West Midlands to that in Greater London (utilising the Nationwide House Price Index) for the period from 1974 to the first quarter of 2018. In addition, he supplied a table detailing Land Registry Price Index figures for both the West Midlands and Kensington & Chelsea which, he stated, indicated a clear difference in the increase in property prices between the two areas.
22. As such, Mr Moore contended it was appropriate to adopt a deferment rate of 5.00% calculated as follows:

Risk Free Rate	2.25%	minus
Real Growth Rate	2.00%	minus
Shortness of Unexpired Term	0.25%	plus
Risk Premium	4.50%	plus
Lower Growth Rate Outside PCL	<u>0.50%</u>	
Deferment Rate	<u>5.00%</u>	

Schedule 10 Allowance

23. Following the decision of the Upper Tribunal in *Lomas Drive* [2017] UKUT 0463 (LC) (*Lomas Drive*), Mr Moore submitted that a Schedule 10 deduction to the Standing House value at the second reversion was only appropriate in matters in which there were very short leases. Despite the unexpired term being 13.95 years, he submitted that this still did not warrant a deduction.

Valuation

24. Applying those figures to the valuation formula Mr Moore arrived at a value of £36,707.

The Tribunal's Deliberations

25. The Tribunal considered all of the written and oral evidence submitted and summarised above.

Enfranchisement Price

26. The Tribunal is satisfied that the approach taken by Mr Moore was the proper approach and that the valuation of the Property should be under section 9(1) of the Act, based on the rateable value and low rent.

The valuation exercise under section 9(1) is in three stages:

Stage (1) the valuation of the remainder of the existing term (50.61 years) by capitalising the Ground Rent,

Stage (2) Valuing an assumed extension to the lease of 50 years, and

Stage (3) Valuing the Property with assumed vacant possession after the end of the existing term plus 50 years (63.95 years)(subject to tenant's rights under Schedule 10 of the Local Government and Housing Act 1989 Act).

27. It was clear from the Tribunal's inspection that the Property would benefit from extensive works, including complete modernisation and redecoration. The Tribunal also externally viewed both 330 and 344 Chester Road, which were in very close proximity to the subject Property. The Tribunal is satisfied that both the Entirety Value figure and the Standing House Value figure submitted by Mr Moore fall within a band of reasonableness.
28. Due to the relatively nominal rent of £5.50 pa and the lack of reviews, the Tribunal agrees with the Capitalisation Rate submitted by Mr Moore.
29. From the deferment rate of 5.25%, adopted in recent Upper Tribunal decisions and other decisions of this Tribunal in the Midlands region, Mr Moore made a further adjustment of 0.25% to reflect the short term remaining to produce a deferment rate of 5.00%. In the opinion of the Tribunal, leases with under 20 years remaining require special consideration and, accordingly, the adjustment is accepted.
30. In respect of any Schedule 10 allowance (made to reflect the risk to the freeholder of the leaseholder remaining in possession of the property after the 50 year extension by virtue of rights derived from Schedule 10 to the Local Government and Housing Act 1989), Mr Moore stated that such a deduction should only be made where the lease in question was very short. In his opinion, the Lease, whilst short, did not warrant a deduction. The Tribunal notes the inference from *Lomas Drive* and on this occasion accepts Mr Moore's reasoning.

The Tribunal's Valuation

31. Applying those determinations, the Tribunal's valuation is detailed in Appendix 2.
32. Under the provisions of sections 47 and 48 of the Landlord and Tenant Act 1987 and section 166(1) Commonhold and Leasehold Reform Act

2002, there is a requirement to notify long leaseholders that rent is due. A tenant is not liable to make payment of rent under a lease unless the Landlord has given him notice relating to the payment. The Tribunal determines that no amount is payable for rent under section 27(5)(b) of the Act as there has been no demand for rent.

Transfer Provisions

33. The Tribunal considers that the draft transfer supplied by the Applicant's Representative is approved subject to the inclusion of some additional provisions in Clause 11 (Additional Provisions), so as to comply with the provisions of section 10 of the Act, which states as follows:

Leasehold Reform Act 1967, section 10

(2)...a conveyance executed to give effect to section 8 above shall by virtue of this subsection ... have effect-

(i) to grant with the house and premises all such easements and rights over other property, so far as the Landlord is capable of granting them, as are necessary to secure to the tenant as nearly as may be the same rights as at the relevant time were available to him under or by virtue of the tenancy or any agreement collateral thereto...;and

(ii) to make the house and premises subject to all such easements and rights for the benefit of other property as are capable of existing in law and are necessary to secure to the person interested in the other property as nearly as may be the same rights as at the relevant time were available against the tenant under or by virtue of the tenancy or any agreement collateral thereto...

(4) As regards restrictive covenants (that is to say, any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to section 8 above shall include –

(a) such provisions (if any) as the landlord may require to secure that the tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants which affect the house and premises otherwise than by virtue of the tenancy or any agreement collateral thereto and are enforceable for the benefit of other property; and

(b) such provisions (if any) as the landlord or the tenant may require to secure the continuance...of restrictions arising by virtue of the tenancy or any agreement collateral thereto...

34. The Lease details exceptions and reservations for the benefit of the owners and occupiers of the adjoining or adjacent land and buildings, together with restrictive covenants contained in a Conveyance dated 31st August 1933 made between (1) Robert Henry Heaps (2) Joshua Edward Rymond and (3) Colin Frederick Price, which are detailed in the First

Schedule to the Lease. As such, the Tribunal determines that the clauses detailed in Appendix 1 should also be included in Clause 11 of the transfer.

Appeal

- 35. If the Applicants are dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham

Appendix 1

- 11.3 *The Property is transferred subject to all easements and rights contained or referred to in the lease of the Property dated 5th September 1933 and made between (1) Colin Fredrick Price and (2) William Henry Ruane ('the Lease'), so far as the Landlord is capable of granting the same, but excepting and reserving for the benefit of the adjoining or neighbouring land all exceptions and reservations contained in the Lease.*
- 11.4 *The Transferee hereby covenants with the Transferor to observe and perform the covenants and conditions contained or referred to in the First Schedule to the Lease and to indemnify the Transferor from and against all costs claims demands and liabilities arising from the non-observance and non-performance thereof, so far as such covenants relate to the Property and remain capable of being enforced.*