



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

Case References : **BIR/47UB/OAF/2019/0010
BIR/47UB/OC9/2019/0007**

Property : **28 Chadcote Way Catshill Bromsgrove
B61 0JT**

Applicant : **Rachel Louise Colston**

Representative : **Anthony Brunt and Co Surveyors &
Valuers**

Respondent : **Benjamin William Nield**

Representative : **DMH Stallard Solicitors**

Tribunal Members : **V Ward BSc (Hons) FRICS (Chairman)
Judge M K Gandham**

**Date and venue of
Hearing** : **7 August 2019**
**Tribunal Hearing Rooms, Centre City
Tower, 5-7 Hill Street, Birmingham B5
4UU**

Date of Decision : **29 August 2019**

DECISION

Introduction

1. An application was submitted by Rachel Louise Colston (“the Applicant”), under section 21 (1) (a) of the Leasehold Reform Act 1967 (“the Act”) for the determination of the price to be paid under section 9 of the Act in respect of the acquisition of the freehold interest in 28 Chadcote Way, Catshill Bromsgrove B61 0JT (“the Property”). Applications were also submitted under section 21 (2) (a) of the Act, for a determination of the provisions to be included in the conveyance under section 10 of the Act, and under section 21 (1) (ba) of the Act, for a determination of the reasonable costs payable under section 9 (4) of the Act.
2. The Applicant was represented by Mr Anthony Brunt of Anthony Brunt and Co, Surveyors and Valuers. The Respondent freeholder, Benjamin William Nield, a Chartered Surveyor, acted on his own behalf.
3. The Applicant served Notice to acquire the freehold interest on 28 November 2018 and the Respondent replied by counter-notice dated 24 January 2019.
4. The Applicant holds a Lease for a term of 99 years from 29 September 1969 at a fixed ground rent of £30 per annum.

Matters agreed between the parties before the hearing

5. The following items were agreed between the parties:
 - a) Provisions to be included in the transfer.
 - b) The Property is to be valued in accordance with section 9 (1) of the Act.
 - c) The Valuation Date: 28 November 2018.
 - d) The Capitalisation rate for section 15 modern ground rent: 5.25%

Matters in dispute between the parties

6. The Tribunal was advised that the following matters were still in dispute:
 - a) Term capitalisation rate
Applicant: 6.5% Respondent: 4.0%
 - b) Entirety Value

Applicant: £170,000 Respondent: £175,000

c) Site Apportionment Plot Ratio

Applicant: 30% Respondent: 35%

d) Deferment rate

Applicant: 5.25% Respondent: 5.00%

e) Standing House Value

Applicant: £170,000 Respondent: £175,000

7. The value of the freehold interest as provided by each party was as follows:

Applicant £4,926.00 Respondent £7,148.00 (Rounded to £7,150.00)

Citations

8. The following decisions are referred to below:

a) Cadogan and Another v Sportelli and Another [2007] EWCA Civ 1042
"Sportelli"

b) Clarise Properties Limited [2012] UKUT 4 (LC)
"Clarise"

c) JGS Properties Limited [2017] UKUT 0233 (LC)
"JGS Properties"

The Law & The Basis of Valuation

9. The Applicant has the right to acquire the freehold interest under the Leasehold Reform Act 1967 and it is agreed that the valuation is to be determined under section 9(1) of the Act at the date of service of the Notice, 28 November 2018.

10. The parties adopted the same method of valuation, based on the Act and case precedents, which is entirely conventional and in line with current practice. Under this method, the price of the freehold comprises three elements:

Term 1

A sum representing the value at the date of Notice of the right to receive the ground rent for the duration of the lease.

Term 2

A sum representing the right of the landlord to receive a modern ground rent, i.e. a rent in accordance with section 15 of the Act, for a period of 50 years from the date of the existing lease expiry to the expiry of the statutory extension period subject to a rent review after 25 years. The right is brought back to represent its value at the valuation date by applying an appropriate deferment rate.

The Act envisages the section 15 rent to be a market rent but as the parties agreed that there were no comparable market rents for plots of this size let in the market on these terms they relied on alternative means of assessing the rental value. This was to assume that the site would be vacant and to let in the open market and estimate the annual rent a builder might have paid for the land at the valuation date. The assumption is that a builder would have estimated the market value of the best house that could reasonably have been built on the land (“entirety value”), assume a percentage of that sale price to represent the value of the plot (“the plot ratio”, and from the resulting plot value, calculate an equivalent rent in annual terms spread over 50 years (the “modern ground rent”) that would have equalled the value of the land.

Reversion

A sum representing the right of the landlord to receive the value of the actual house on site, (“the standing house value”), on expiry of the 50 year modern ground rent. The assumption is that the value at the Notice date can be invested at a compound rate of interest, the deferment rate, to equal the value of the standing house at the expiry of the 50 year extension. In some cases, a deduction from the standing house value is made to reflect the risk of a lessee remaining in occupation on expiry of the 50 year extension, a *Clarise* deduction. In this matter, neither side made an alteration in this regard and hence the Tribunal declines to do so.

Inspection

11. The Tribunal carried out an inspection of the Property on 7 August 2019 in the presence of Mr Brunt. The Respondent did not attend the inspection.
12. The Property comprises a modern mid-terraced house (of four), which benefits from gas fired central heating and double glazing, offering the following accommodation:

Ground floor: hall, kitchen, lounge;

First floor: Two double bedrooms and one single bedroom and bathroom with full suite including shower over the bath;

Outside: Small fore garden, rear garden.

Garage: The Property benefits from a garage in separate block approximately five minutes walk from the house itself. The garage was in an extremely dilapidated condition and was not suitable for any form of beneficial use.

13. The Property does not enjoy a direct road frontage but is situated to the rear of an area of public open space and is approached via a pedestrian walkway from Chadcote Way. There is a layby for parking to the roadside in front of the area of public open space. Other properties in the vicinity of the subject appear to be of a similar age type and class.

Catshill is a village and residential area approximately 2 ½ miles to the north of Bromsgrove town centre.

The Hearing

14. A Hearing was held following the inspection at the Tribunal Hearing Rooms, City Centre Tower, Hill Street, Birmingham. Mr Nield attended the Hearing and the Applicant was, again, represented by Mr Brunt.
15. Although adopting a valuation under section 9(1) of the Act in his valuation (as referred to below), Mr Nield, at the Hearing, also asked the Tribunal to note that the purpose of the valuation was to adequately compensate landlords for their loss and that the best evidence for the value of the freehold interest of the Property was his purchase of it in January 2017 for £7,000. The Tribunal notes Mr Nield's comments, however, it is also mindful of the fact that a leaseholder should not be required to pay a sum simply to compensate a landlord who may have purchased the interest for a sum much higher than its true value.

Submissions of the Parties

16. The Tribunal finds it convenient to detail the Applicant's and Respondent's representations in respect of each facet of the valuation that is at issue followed by its own determination:
 - a) Term capitalisation rate

Applicant: 6.5%

Mr Brunt applied 6.5% to the passing ground rent due to the fact that the rent was relatively nominal and was fixed for the remainder of the term, hence would effectively lose value due to inflation. In addition, he contended that a landlord's collection costs in respect of a relatively small amount would be disproportionately high.

Respondent: 4.0%

A different approach was taken by Mr Nield who had analysed numerous transactions recorded from auction sales of ground rent investments which were, in many cases, of small portfolios. The initial yields shown ranged from 0.26% to 4.55%. Commenting generally on First-tier Tribunal decisions where capitalisation rates had been determined at between 6.00 to 7.00%, Mr Nield was of the opinion that these were out of step with the market, particularly due to uneconomic uncertainty caused by Brexit and other factors, accordingly he adopted a capitalisation rate of 4.0%, which equated to an initial yield of 4.66%

The Tribunal

The Tribunal noted the evidence provided by Mr Nield, however, does not agree that economic uncertainty would necessarily lower yields particularly in the context of proposed leasehold reform to make it easier and cheaper for leaseholders to enfranchise. The ground rent is a small amount fixed for a significant period, therefore, the Tribunal adopts 6.5%.

b) Entirety Value

Between them, the parties had provided a significant number of comparables. The Tribunal viewed externally those that it considered the most relevant.

In respect of the evidence below it should be noted that, unless where stated, all are located in Catshill and are mid terraced with three bedrooms. The sale price and date of sale is given.

6 Bourne Avenue	£145,000	August 2018	
16 Bourne Avenue	£168,000	December 2018	
68 Bourne Avenue	£168,000	March 2019	
17 Mayfield Close	£170,000	November 2018	Two bedrooms
45 Mayfield Close	£168,000	April 2019	Two bedrooms
42 Woodrow Lane	£182,500	April 2019	End Terraced
14 Greendale Close	£179,000	March 2019	With gf WC

Applicant: £170,000

Mr Brunt considered the most relevant comparables were the properties on Bourne Avenue which are all within close proximity of the Property, which had led him to his value of £170,000. These properties were believed to be of a similar configuration albeit that they enjoyed road frontage and hence enjoyed forecourt parking.

Respondent: £175,000

In addition to sold prices, Mr Nield had also provided details of two properties which were currently sold subject to contract:

60 Bourne Avenue sold, subject to contract, for just under £180,000. End terraced.

42 Chadcote Way sold, subject to contract, for £175,000. End terraced in adjacent terrace to subject facing onto the area of public open space.

The Tribunal

The Tribunal considers the Bourne Avenue properties are useful as a starting point, they are in very close proximity and are of a similar layout with garages also in separate blocks and of similar usability. They differ from the subject in that they have forecourt parking. The degree to which this factor influences value will be down to the individual, however, the Property has the benefit of the layby and a pleasant outlook onto the area of public open space. This factor coupled with some evidence of higher values being achieved, such as 17 Mayfield Close - £175,000 for a house with two bedrooms, leads the Tribunal to adopt an entirety value of £172,500.

c) Site Apportionment Plot Ratio

Applicant: 30%

Mr Brunt stated that, generally, site apportionments were approximately 35% for detached houses (as in *JGS Properties*), semi-detached properties 33 1/3 % and terraced houses 30% hence his application of the latter to the subject.

Respondent: 35%

Mr Nield considered that, due to the hypothetically lower costs of developing a terraced plot due to the fact that only two external elevations would be

required and gable ends are already constructed, the plot ratio should be higher.

The Tribunal

The Tribunal does not consider that the benefits outlined by Mr Nield outweigh the disadvantages of what is a relatively narrow plot particularly since it has no road frontage; a plot with wider frontage can be developed more easily, the Tribunal, therefore, finds the plot ratio for valuation purposes to be 30%.

d) Deferment rate

Applicant: 5.25%

Following *JGS Properties* and other Midlands region First-tier decisions, Mr Brunt adopted 5.25%.

Respondent: 5.00%

Due to the fact that the *Sportelli* was determined in 2007, Mr Nield was of the opinion that an adjustment was required to reflect current market conditions and produced some comparables to this effect. These provided details of the sales of the freehold interests in houses in the West Midlands area which are subject to leases where the term unexpired is between 45 to 54 years and the ground rents are at a similar level to the Property. The values achieved were between approximately £5,700 and £7,100. The Respondent acquired the Property at auction in January 2017 at a price of £7,000.

The Tribunal

Whilst the Tribunal noted the comparables provided by Mr Nield, his analysis was not considered sufficiently rigorous to outweigh the guidance given by the Upper Tribunal in *JGS Properties* and hence adopts 5.25% as the deferment rate.

e) Standing House Value

The reports submitted by the parties prior to the hearing appeared to indicate that they were of the opinion that the standing house value and entirety value were one and the same, as the Property was effectively already developed to its fullest extent.

Applicant: £170,000

At the hearing, and following the benefit of an inspection of the garage subsequent to his report being submitted, Mr Brunt sought to adjust his opinion of standing house value down to £165,000 and differentiate it from his opinion of the entirety value. The Tribunal did not accept this adjustment. It is customary to apply the same deferment rate to the standing house value for the third stage of the valuation however in this case Mr Brunt chose to adopt 5.5% instead of the 5.25% he had adopted for the second stage of the valuation, due to the fact that at the final stage of the valuation, the deferment rate, was being applied to a house and land as opposed to purely land at the second stage i.e. greater obsolescence.

Respondent: £175,000

The Respondent employed a standing house value of £175,000 in line with his opinion of the entirety value.

The Tribunal

The Tribunal, on balance, are of the opinion that the standing house value and entirety value were one and the same for the Property, as whilst the garage could be improved, its usefulness would always be limited due to its proximity to the Property itself and the poor access to the block in which it is situated. The Tribunal, therefore, adopts its entirety value of £172,500. The Tribunal was not persuaded to adopt a different rate in the third stage of the valuation, Mr Brunt had not advanced evidence of sufficient merit to deviate from what is considered the conventional approach.

The Tribunal's Valuation

17. Applying those determinations to the matters agreed by the parties the Tribunal's valuation is as shown in Appendix 1.
18. The Tribunal determines the value of the freehold interest in accordance with the provisions of section 9 of the Leasehold Reform Act 1967 at £5,215.00 (Five Thousand, Two Hundred and Fifteen Pounds).

Costs

19. It was agreed at the hearing that either party may apply to the Tribunal, within four weeks of the date of this decision, to issue Directions in respect of the Costs application. If there is no application during this period it was agreed that the application would be considered as withdrawn.

Appeal

20. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Vernon Ward
Chairman

APPENDIX 1

THE TRIBUNAL'S VALUATION

Term 1

Ground Rent (pa)			£	30.00		
YP	49.83 years @	6.50%		14.717	£	441.51

Term 2

Entirety Value			£	172,500.00		
Site						
Apportionment		30%	£	51,750.00		
Section 15 Rent		@ 5.25%	£	2,716.88		
YP 50 years	50.00 years @	5.25%		17.573		
PV of £1	49.83 years @	5.25%		0.0781	£	3,728.78

Reversion

Standing House Value			£	172,500.00		
PV of £1	99.83 years @	5.25%		0.00605	£	1,043.63
					£	5,213.92
			say		£	5,215.00