



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

Case Reference : **BIR/OOGA/OAF/2019/0011-13**

Property : **57, 93 and 101 Crossways, Peterchurch,
Herefordshire HR2 OTQ**

Applicants : **Andrew James Johnson (1)
Juliette Lucy Johnson (2)**

Representative : **Anthony Brunt & Co.**

Respondent : **Danforth Build (Wales) Limited**

Representative : **Rees Wood Terry solicitors**

Application : **Leasehold Reform Act 1967**

Members of Tribunal : **Judge D Jackson
Mr R Bryant-Pearson FRICS**

Hearing : **26th September 2019
Hereford Justice centre**

Date of Decision : **22 November 2019**

**DECISION
Addendum on Costs**

Background

1. The Applicants are the proprietors of the following leasehold land registered at HM Land Registry:
 - a) 57 Crossways (HW157751) held under a Lease for a term of 99 years from 25th March 1973 at a yearly rent of £30.
 - b) 93 Crossways (HE4759) held under a Lease for a term of 99 years from 25th March 1973 at a yearly rent of £35.
 - c) 101 Crossways (HE25078) held under a Lease for a term of 99 years from 25th March 1973 at a yearly rent of £35.
2. On 10th July 2018 the Applicants gave “Notice of Tenant’s Claim to acquire the freehold”.
3. Notice in Reply admitting the right was given on 28th August 2018.
4. On 5th July 2019 the Applicants applied to the Tribunal for determination of price payable under section 9(1) of the 1967 Act.
5. On 18th July 2019 the Tribunal issued Directions.
6. The Tribunal has considered a written submission prepared by Anthony Brunt dated 27th August 2019 on behalf of the Applicants.
7. The Respondent has failed to comply with Directions and on 18th September 2019 was barred from taking any further part in proceedings.
8. An oral hearing took place at Hereford Justice Centre on 26th September 2019. Mr Brunt attended on behalf of the Applicants. There was no attendance on behalf of the Respondent.

Inspection

9. The Tribunal inspected all three Properties on the morning of the hearing.
10. 57 Crossways sits back to back with numbers 56, 58 and 59. The Property has a fenced garden and patio area with driveway leading to an integral garage. The Property is a single storey house comprising conservatory, living room and kitchen. Accessed via an inner lobby are 2 bedrooms and a bathroom. The Property has double glazing throughout. Heating is provided by storage heaters. An unusual feature of the Property is the stream which runs in a culvert underneath the garden close to the house (the approximate route of the culvert is between the two “Issues” shown on the Land Registry plan).
11. 93 Crossways sits back to back with three other properties. Access from the estate road is via an unmade accessway serving a number of other properties. The Property is a single storey house with kitchen and lounge with conservatory off. An inner lobby leads to 3 bedrooms and a bathroom. The third bedroom has been created from the former garage. There is a garden area consisting of a small paved yard. The Property has double glazing and oil fired central heating.
12. 101 Crossways sits back to back with numbers 102, 104 and 105. Access is via an unmade accessway serving a number of other properties. The Property is a single storey house with porch, kitchen and sitting room. Off an inner lobby are 2 bedrooms and a bathroom. The Property has an integral garage and gravelled yard area. The Property has double glazing and storage heaters.

Valuation

13. It is regrettable that the Respondent has played no part in these proceedings. On 12th July 2017 the Tribunal issued a Decision in relation to 42 Crossways (BIR/OOGA/OAF/2017/0007). The Respondent was a party to that Decision. The leaseholder was represented by Mr Brunt. That Decision was not appealed and therefore gave the clearest guidance to the parties to this application as to the likely approach of the present Tribunal.
14. We adopt a rate of 6.5% in determining the capitalised value of the rent payable for the period of the unexpired term of the existing tenancy. We find that a capitalisation rate of 6.5% is appropriate for a small annual sum with no provision for increase or review.
15. Mr Brunt has produced a number of comparables at Appendix 3 to his Valuation. In particular 70 Crossways (3 bedrooms) which sold on 8th June 2018 for £136,000 and 82 Crossways (2 bedrooms) which sold for £126,000 on 29th March 2018. Both of those sales are conveniently close to the Valuation Date of 10th July 2018.
16. We have had the advantage of not only inspecting the subject Properties but also walking the estate and viewing some of the comparables referred to us. Having done so we entirely agree with Mr Brunt that the entirety value and standing house value of the 2 bedroom properties (101 and 57) as at the Valuation date is £126,000. We also agree with Mr Brunt's oral submissions that a third bedroom would command an extra £10,000 and we have therefore adopted an entirety and standing house value for 93 Crossways of £136,000.
17. The estate roads are in part unmade. The sites are "cramped" and all Properties are built "back to back" in groups of either 3 or 4. The gardens are small and the houses occupy most of the sites. We adopt a site apportionment of 28%.
18. It is now accepted valuation practice that the deferment rate to be adopted under the 1967 Act is 5.25%.
19. In relation to the second reversion Mr Brunt argues for a slightly higher rate of 5.5%. Mr Brunt's submissions were that there is a difference between the first reversion which is to land only for the purposes of determining a section 15 rent and the second reversion which involves valuation of the house. The house is subject to obsolescence and deterioration which should be reflected in the deferment rate for the second reversion. Mr Brunt also submits that as the final reversion is 103 years in the future that introduces a greater degree of uncertainty which should be reflected in the deferment rate.
20. Mr Brunt conceded that any difference between using 5.25% and 5.5% would be de minimis. He was unable to refer to any First-tier or Upper Tribunal decisions where a higher deferment rate for the second reversion had been adopted.
21. The Tribunal is grateful to Mr Brunt for his submissions but is not persuaded to depart from a deferment rate of 5.25% for both the reversion to a new 50 year lease and also for the end stage reversion.
22. In 2017 the Tribunal applied a small Schedule 10 deduction to the second reversion. Mr Brunt concedes that in light of recent Upper Tribunal case law such a deduction should no longer be applied, certainly in the circumstances of the present application.
23. The Tribunal's Valuations are set out below.

Decision

24. The price payable under section 9(1) of the Leasehold Reform Act 1967 for 57 Crossways is £3155
25. The price payable under section 9(1) of the Leasehold Reform Act 1967 for 93 Crossways is £3445
26. The price payable under section 9(1) of the Leasehold Reform Act 1967 for 101 Crossways is £3230

D Jackson
Judge of the First-tier Tribunal

Either party may appeal this Order to the Upper Tribunal (Lands Chamber) but must first apply to the First-tier Tribunal for permission. Any application for permission must be in writing, stating grounds relied upon, and be received by the First-tier Tribunal no later than 28 days after the Tribunal sends its written reasons for the Decision to the party seeking permission.

ADDENDUM ON COSTS

At the hearing on 26th September 2019 Mr Brunt on behalf of the Applicant's applied for an Order for costs in the sum of £500.

By letter dated 30th September 2019 the Tribunal required the parties to prepare written submissions on costs.

The Tribunal has considered Mr Brunt's submission dated 1st October 2019. No submissions have been received from the Respondent.

The Tribunal finds that the Respondent has behaved unreasonably in defending and conducting proceedings for the purposes of Rule 13(1)(b)(iii). In particular the Respondent has failed to comply with Directions and on 18th September 2019 was barred from taking any further part in proceedings. As observed at paragraph 13 above it is regrettable, having regard to the decision of the Tribunal in 2017 on virtually identical facts, that the Respondent failed to enter into prompt and meaningful dialogue both with the Applicant's representative and the Tribunal.

The amount claimed is reasonable and proportionate and entirely justified in relation to professional fees of preparing for and attending at the final hearing of this application.

The Tribunal makes an Order under Rule 13(1)(b)(iii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent shall, within 28 days, pay to the Applicants the sum of £500 in respect of costs.

D Jackson,
Judge of the First-tier Tribunal
18th November 2019