



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

Case Reference : **BIR/47UD/OAF/2019/0019**

Property : **31 Church Down Close, Redditch,
B97 5ND**

Applicants : **Mr M D Cullum and Mrs K J Cullum**

Representative : **FBC Manby Bowdler LLP**

Respondent : **Mr M S Cohwdhry (whereabouts
unknown)**

Representative : **N/A**

Interested party : **Arrow Global Limited**

Representative : **Restons Solicitors Limited**

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
Mr D Satchwell FRICS**

**Date and venue of
Hearing** : **Paper determination**

Date of Decision : **28 January 2020**

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 31 Church Down Close, Crabbs Close, Redditch, Worcestershire, B97 5ND ('the Property') under section 27(3) is:
 - a) £4,404, 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 a covenant by the Applicants to observe and perform the covenants and conditions contained or referred to in the Charges Register of the freehold title and to indemnify the Respondent 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.

Reasons for Decision

Introduction

3. The freehold interest in the Property is registered at the Land Registry to Muhammed Sayeed Cohwdhry ('the Respondent') under Title Number WR101353. Matthew David Cullum and Karen Jean Cullum ('the Applicants') hold a lease of the Property dated 20th March 2006 ('the Lease') for a period of 99 years from 3rd March 2006, registered at the Land Registry under Title Number WR105811. At the date of the application to the Court (the effective valuation date), 7th December 2018, there were approximately 86.25 years unexpired.
4. The yearly rent payable under the Lease is £100 from 3rd March 2006 to 2nd March 2031, a yearly rent of £200 from 3rd March 2031 to 2nd March 2056, a yearly rent of £400 from 3rd March 2056 to 2nd March 2081 and a yearly rent of £500 for the remainder of the term. (The Lease also refers to a yearly rent of £300 payable during the period 3rd March 2056 to 2nd March 2056, which is clearly a drafting error).
5. The freehold of the Property is subject to a restriction in favour of Arrow Global Limited (Co. Reg. No. 5606545) ('the Interested Party'), who have the benefit of an interim charging order on the beneficial interest of the Respondent.

6. On 5th August 2019, by Order of District Judge Talog-Davies sitting in the County Court at Birmingham, the Court ordered the Applicants to apply to the Tribunal to determine the price payable for the Property under section 9 of the Leasehold Reform Act 1967, the Court being satisfied that the Respondent could not be found.
7. The Tribunal received an Application, under sections 21(1)(cza) and 21(2)(a) of the Act on 7th October 2019. The Tribunal issued Directions on 15th October 2019 and received a statement of case and bundle from the Applicants on 21st November 2019, which included a submission in respect of the valuation of the freehold interest from Mr Chew of Lawrence & Wightman Chartered Surveyors.
8. The Applicants, in their submissions, referred to the restriction in favour of the Interested Party. This is not a matter which falls within the jurisdiction of the Tribunal, who is only concerned with the determination of the appropriate sum to be paid to the court under section 27(5) of the Act and the determination of provisions which ought to be contained in the conveyance.

The Law

9. 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 on appeal from) the appropriate tribunal to be 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.*
10. 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.
11. 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, which provides as follows:

...

(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...

Inspection

12. The Tribunal inspected the Property on 29th November 2019 in the presence of the Applicants.
13. The Property is a two storey, detached house, built circa. 1980, in brick and tile. It had a small lawned area to the front, with off road parking and a garage. The original integral garage had been converted in to a single bedroom and separate storeroom and a new extension, encompassing a single garage and w.c., had been built to the left hand side of the Property. To the rear of the house was a fair sized garden with a large patio. The grassed area had a slight incline towards the patio.
14. The internal accommodation comprised, on the ground floor, a porch, hallway, lounge, w.c., storeroom, bedroom, kitchen, dining room and conservatory. The first floor comprised a hallway, master bedroom (with en-suite shower room), a double bedroom, two single bedrooms and a family bathroom.
15. The Property had the benefit of double-glazing and a gas fired central heating system. It had been fully modernised and was in good condition at the time of the inspection.

16. Following the inspection of the Property, the Tribunal noted that the extension to the Property appeared to have been built on a small area of land adjoining the left hand side of the Property. This land was registered under Title Number WR101984 and did not form part of the freehold interest held under Title Number WR101353.
17. On 14th January 2020, the Tribunal received a letter from the Applicants' Representative confirming that the Applicants were, in fact, the freehold owners of Title Number WR101984 and that the Applicants concurred with the Tribunal's view that the extension had been built on this adjoining land. The letter enclosed a supplementary submission, from Lawrence & Wightman, which included a revised valuation, as the entirety value, standing house value and site value apportionment figures had been slightly adjusted in light of this new information.

Submissions

The Applicants' submissions on the Valuation

Basis of Valuation

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

Entirety Value

19. Mr Chew provided four comparables in his written submissions. These houses, within the vicinity of the Property, were sold on a freehold basis in the months prior to and just after the valuation date:
 - 5 Church Down Close was sold in November 2017 for £305,000. It had a different layout to the Property and retained its integral garage. It had four bedrooms (the master with en-suite) and a conservatory.
 - 29 Church Down Close was sold in January 2018 at £307,500. It had a similar layout to the Property and had a conservatory. It had retained its integral garage and had four bedrooms, but there was no en-suite to the master bedroom.
 - 39 Church Down Close was sold in May 2019 at £329,950. It had a similar layout to the Property and the garage had been converted to form a study and utility room, although no new garage had been constructed. There was an en-suite to the master bedroom and a conservatory to the rear. The kitchen and dining room had been converted to form a kitchen diner.
 - 56 Boultons Lane was sold in July 2019 at £327,000. The rear of the garage had been converted to form a utility room and w.c. It

had four bedrooms, but there was no en-suite to the master bedroom and no conservatory.

20. Mr Chew noted that the comparables detailed an upwards movement in the market and, having regard to the type of property and sale dates, submitted the entirety value should be £320,000.
21. In his supplementary submission, Mr Chew submitted that, as the new garage and ground floor w.c. had been built on the adjoining land, the valuation should be made on the basis that the new garage did not exist and that the plot was delineated as on the plan to Title Number WR105811 (the leasehold title).
22. He referred to the fact that 39 Church Down Close was the same type of house as the Property and had, similarly, had its garage converted but noted that it had also been extended slightly to the front of the garage conversion and had a level plot, whereas the plot to the Property was on different levels.
23. Taking in to account the above, Mr Chew considered a revised entirety figure of £317,500 was appropriate.

Standing House Value

24. In respect of the standing house value, Mr Chew submitted that the same figure should be adopted as used for the entirety value, the Property being in generally good order throughout.

Site Value Apportionment

25. In his initial submissions, Mr Chew stated that the Property was located in a reasonably good quality residential area and that he generally would agree a site value apportionment of 35% of the entirety value for detached houses in such an area. He stated that he had adopted a slightly higher value, of 36%, because the plot was larger than average, especially in terms of the width of the plot.
26. Taking in to account the fact that the adjoining land under Title Number WR101984 did not form part of the freehold interest being valued, in his supplementary submission, Mr Chew stated that the site no longer included a potential to extend to the left-hand side, so considered the general site value apportionment of 35% to be more appropriate.

Capitalisation Rate

27. Mr Chew stated that a capitalisation rate of 6% was appropriate, taking in to account the escalating ground rent and frequency of the reviews. He did not believe that the amount of the rent was unduly high, considering the capital value of the Property.

Deferment Rate

28. Mr Chew referred to the decisions in *Zuckerman and Others v Trustees of the Calthorpe Estate* LRA/97/2008 and *Cadogan and Another v Sportelli and Another* [2007] EWCA Civ 1042. He also referred to the more recent decision of the Upper Tribunal in *JGS Properties v King and others* [2017] UKUT 0233 (LC), where the Upper Tribunal upheld the decision of the First-tier Tribunal, to the effect that there should be an addition of 0.5% to the deferment rate set in *Sportelli* of 4.75%, in respect of the lack of growth between Prime Central London (PCL) and the West Midlands, but no further addition for volatility.
29. He stated that, since that decision, he had agreed dozens of settlements adopting a deferment rate of 5.25% and contended that it was appropriate to adopt a deferment rate of 5.25% in this matter for both the second and third stages of the calculations.

Schedule 10 Allowance

30. Mr Chew submitted that, since *Clarise Properties Ltd Re 167 Kingshurst Road* LRA/170/2010, tribunals have suggested that each case be decided on its merits as to the amount of any deduction to be made to reflect the possibility of the lessee's rights under Schedule 10 of the Local Government and Housing Act 1989.
31. He stated that over the past two years it had become common practice that no adjustment be made where, with the 50 year extension added, the term of the lease had more than 60 - 65 years unexpired. In this case, he noted that the reversion was very remote, being over 136 years, and, as such, submitted there should be a nil deduction.

Valuation

32. Applying those figures to the valuation formula, Mr Chew arrived at a value of £4,390 in his revised valuation.

The Applicants' submissions on the terms of the Conveyance

33. The Applicants submitted that entries three to six of the Charges Register of the freehold title substantively related to easements enjoyed at the behest of the neighbouring landowners. They submitted that the conveyance to the Applicants need not refer to the same, as these would automatically bind the Applicants as owners of the freehold title.
34. Regarding entry two of the Charges Register, the Applicants submitted that this was reflective of a restrictive covenant and that the wording indicated an apparent intention that successors in title observe the same. They concluded that the Tribunal might consider that an indemnity clause in respect of the same be appropriate.

35. In relation to the provisions in the Lease, the Applicants considered the Lease to be poorly drafted. The Applicants queried the purported grant of any easements and other rights and reservations made by the Respondent, as it did not appear that the Respondent owned any adjoining or neighbouring land over which such easements and rights were to be granted and in whose favour any reservations were to be made.
36. The Applicants submitted that, should they be wrong in this assumption, any such easements and reservations would be deemed to be granted and reserved by virtue of the provisions of sections 8 (2)(i) and (ii) of the Act [*presumably referring to section 10*], so there would be no need to refer to them in the conveyance to the Applicants.

The Tribunal's Deliberations

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

Enfranchisement Price

38. The Tribunal is satisfied that the approach taken by Mr Chew 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 Tribunal also agrees that the valuation should only include that part of the house and land that falls within the boundaries of the freehold interest, excluding the new extension.

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).

39. It was clear from the Tribunal's inspection that the Property was in a good condition and well maintained. The Tribunal externally viewed the comparables provided by Mr Chew, which were all in very close proximity to the subject Property.
40. The Tribunal notes that the Property was very similar to 39 Church Down Close, although number 39 had been enlarged slightly to the front and was sited on a larger plot. Number 29 was also a similar type of house with a slightly larger plot, but the garage had not been converted and it did not have the benefit of an en-suite to the master bedroom.

41. Taking in to account the above, together with the upwards trend in the market, the Tribunal considers that a figure of £320,000 for both the entirety value and the standing house value is appropriate.
42. The Tribunal considers the site value apportionment of 35%, submitted by Mr Chew, to be reasonable and agrees with a deferment rate of 5.25%. Due to the level of rent and infrequency of reviews, the Tribunal also agrees the proposed capitalisation rate.
43. 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), the Tribunal accepts Mr Chew's submissions that no deduction be made due to the length of the unexpired term in this matter.

The Tribunal's Valuation

44. Applying those determinations, the Tribunal's valuation is detailed in the Appendix.
45. 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.

Conveyance provisions

46. The Tribunal agrees with the Applicants that the Lease was poorly drafted. In addition to the error in the description of the rent reviews, as the Applicants pointed out, the Lease refers to various rights granted over, and rights reserved in favour of, "*the Estate of the Lessor*". "*The Estate of the Lessor*" is defined, under clause 5 (ii) of the Lease, as the land registered, or previously registered, to the Respondent under the title number referred to "*in the heading*" of the Lease; however the draftsman has failed to include a title number in the heading.
47. The Tribunal, having considered both the freehold and leasehold titles, notes that the area of land granted under the lease mirrors the extent of the land currently included within the freehold title. The freehold title plan does detail the adjoining land registered under Title Number WR101984, however, the Applicants have confirmed that they are already the freehold owners of this title. There is no evidence that the Respondent currently is, or previously was, the owner of any other adjoining or neighbouring land. As such, the Tribunal considers that no provisions are required in the conveyance of the freehold title in relation to any easements, reservations or in respect of any of the covenants referred to in the Lease.

48. The Tribunal considers that an indemnity covenant is required in respect of entry two of the Charges Register to the freehold title. In relation to entries three and four of the Charges Register, these refer to two Wayleave Agreements - the first in respect of telegraphs cables and the second relating to the distribution of electricity. Although both entries relate to rights granted in the agreements, both entries also refer to the fact that the respective agreements contain restrictive conditions.
49. The Tribunal also notes that the conveyance to the Respondent, upon his purchase of the freehold title in March 2006, included an indemnity clause in respect of any covenants in the Charges Register.
50. As such, the Tribunal determines that the conveyance of the freehold title to the Applicants should contain a covenant by the Applicants to observe and perform the covenants and conditions contained or referred to in the Charges Register of the freehold title and to indemnify the Respondent 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.

Appeal

51. 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