



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	MAN/00CJ/OAF/2019/0012 and MAN/00CJ/OAF/2019/0019
Property	:	Nos. 12 and 14 Wych Elm Crescent, High Heaton, Newcastle upon Tyne NE7 7PY
Applicants	:	Mr M Richardson (Leaseholder No. 12) Dr J Welbury (Leaseholder No 14)
Representative	:	Sintons, Solicitors
Respondent	:	Mr M A Urwin (Missing Landlord)
Representative	:	No appearance
Type of Application	:	Leasehold Reform, Housing and Urban Development Act 1993, Section 27(3) (Missing Landlord)
Tribunal Members	:	Judge Lancelot Robson Mr I. Jefferson TD BA BSc FRICS
Date of Determination	:	27th November 2019 and 28th February 2020
Date of Decision	:	10th March 2020

DECISION

Decision Summary

- (1) The Tribunal assessed the price of the freehold reversion of each flat at £13,475 plus accrued ground rent of £150 for each flat. Thus, the sum of £13,625 for each flat shall be paid into Court.
- (2) The Draft Transfer Form TR1 offered by the Applicant shall be amended as noted below to record the terms of the transfer approved by the Tribunal.
- (3) The Tribunal made the other decisions also noted below.

Preliminary

1. This case relates to an application made under section 27(3) of the Leasehold Reform, Housing and Urban Development Act 1993, (as amended) for a determination of the price to be paid for a pair of flats where the landlord is missing. The application was made in the County Court at Newcastle upon Tyne on 12th October 2018 (Claim No E80NE073). The case was transferred to this Tribunal for assessment of the value of the freehold reversion and determination of the terms of the acquisition pursuant to an Order of District Judge Morgan dated 13th May 2019 vesting the freehold interest in the property in the first named Applicant, Mr Richardson, as Nominee Purchaser.
2. Pursuant to Directions issued by the Tribunal on 7th August 2019 the Tribunal considered the matter on the papers at a meeting after an inspection of the property on 27th November 2019.
3. The Applicants instructed Mr Andrew John Tucker BSc(Hons) MRICS of Johnson Tucker, Chartered Surveyors, to prepare a report and valuation relating to the freehold acquisition. He described himself as acting as an Expert Witness owing his primary duty to the Court. A copy of his valuation summary is appended below as Appendix 1.
4. After inspecting the properties on 27th November 2019, the Tribunal met with a view to making its decision. However, it became clear that a number of important matters required attention before the Tribunal could finalise its decision. The Tribunal then gave further Directions by letter to deal with the following matters:
 - a) the application had been made on a form relating to enfranchisement of houses under the Leasehold Reform Act 1967. The application should have been made under the Leasehold Reform, Housing and Urban Development Act 1993. The Tribunal decided that to properly give it jurisdiction, the correct application form must be completed by the Applicants.
 - b) There was a discrepancy in the identification of the Nominee Purchaser, which could not be resolved from the papers because the copies of a significant number of documents had become corrupted and printed out imperfectly in the print run for the bundles sent to the Tribunal.
 - c) The Tribunal needed to see uncorrupted copies of the documents noted above to be able to complete its consideration.

d) The Tribunal became aware of a valuation on behalf of a landlord made by a member of the firm of the Applicants' surveyor in a case dealing with similar issues in 2019. (6 Shortridge Terrace, MAN/00CJ/OLR/2018/0050). While this case had been settled very shortly before trial, a member of the Tribunal had seen this valuation, which took a significantly different approach to that of Mr Tucker. It seemed to the Tribunal that this was relevant evidence which should be before it, especially when Mr Tucker had given his Report and Valuation as an Expert, rather than as the Applicant's Surveyor. The Tribunal decided to give Mr Tucker the details and give him the opportunity to consider it, following the guidance given by the Upper Tribunal in Wilson v Campbell, [2019] UKUT 363 (LC) (relating to new evidence).

e) The coloured lease plans provided with the papers were in fact uncoloured, and the Tribunal was unable to ascertain the correct extent of the relevant demises.

5. The Applicants advisers duly dealt with the above matters and the Tribunal met again to make its determination on 28th February 2020.

Inspection

6. As noted above, the Tribunal inspected the property. It found the properties to be much as stated in Mr Tucker's report. The properties are known as 12 and 14 Wych Elm Crescent, High Heaton, Newcastle upon Tyne NE7 7PY. They comprise separate ground and first floor flats, which are part of a block of four flats that date from the 1930s. Each flat is held by way of a ground lease for a term of 99 years from 29th March 1982 subject to payment of ground rents of £25 per annum, each with no provision for review of the rents.
7. Dr Janet Welbury owns the long leasehold interest of the first floor flat, No 12 Wych Elm Crescent, and Mr Michael Francis Richardson owns the long leasehold interest of the ground floor flat, No 14 Wych Elm Crescent. The building is of brick construction with a hipped span tile covered roof. The original timber framed windows have been replaced with uPVC double glazed units.
8. The layout of the ground floor flat comprises a central entrance hallway that gives access to a lounge and bedroom at the front (south) of the property. To the rear is a second bedroom, a kitchen, and a bathroom. There is a small cupboard off the kitchen and an access to the rear garden. There is also a small external store beneath the staircase that gives access to the first floor flat.
9. The first floor flat has separate access from the side of the building with an internal staircase to a first floor landing which gives access to a lounge and bedroom at the front of the property as well as a second bedroom, kitchen, and bathroom to the rear.
10. Internal finishes are predominantly plastered and painted/papered ceilings and walls with suspended timber floors. Each flat has a gas fired central heating and hot water system.

11. Mr Tucker informed the Tribunal that the gross internal area of each flat is 66.721sq m (718 sq ft).
12. Externally there are garden areas to the front and rear of the property where there are sections that are demised to each flat as shown on the plans attached to the respective leases. The Tribunal noted a minor discrepancy in the demise relating to the internal stairway the lease plan No 2 of title TY114576 where the stairs to the entrance of the first floor seem to have been excluded from the demise of No 12. The Tribunal considered this to be a minor matter, as the stairway was shown in Plan No 2 of Title TY104069 (No 14), as within the demise of No 12. Presumably at some point the Applicants can deal with this matter between themselves.

Evidence, Submissions, and Decisions

13. The Tribunal considered Section 27 of the Leasehold Reform, Housing and Urban Development Act 1993 and considered the Report and Valuation of Mr Tucker dated 20th August 2019 (the valuation appears below as Appendix 1). It contained the necessary statement of truth and declaration of independence as required by his professional body and in accordance with CPR Practice Direction 35 relating to Experts and Assessors. Such an expert has a duty to assist the Tribunal by bringing all relevant evidence to its attention known to the expert, rather than merely advocate on behalf of the client. In a missing landlord case, this is particularly critical, as there is no opponent to offer a contrary case.
14. For ease of reference, the Tribunal has noted its decisions immediately after the submissions made on behalf of the Applicants on each material point of the valuation. The Tribunal's valuation appears below as Appendix 2.

Valuation Date: Submissions

15. Mr Tucker inspected the property on 12th August 2019. His valuation was stated to be for a single flat but his figure related to each of Nos. 12 and 14 Wych Elm Crescent, which he expressly considered the same for valuation purposes. He adopted the valuation date of 1st May 2019, being the date of the Court Order.

Valuation Date: Decision

16. The Tribunal notes that Section 26(5) of the 1993 Act specifies the valuation date to be the date of the application to the County Court, not the date of its decision. This point inevitably affects the unexpired term. The Tribunal adopted the valuation date of 12th October 2018, being the date of the original application to the Court.

Unexpired Term: Decision

17. Mr Tucker adopted the unexpired term of 61.10 years. The Tribunal adopted the unexpired term of 62.50 years. This follows from the Valuation Date noted above by virtue of Section 26(5) of the 1993 Act.

Deferment Rate: Evidence and submissions:

18. Mr Tucker adopted a rate of 5.5%, rather than 5% as set out in the Court of Appeal case of Earl of Cadogan & Cadogan Estates Ltd v Sportelli [2007] EWCA Civ 1042 based on the subsequent cases of Zuckerman v Trustees of the Calthorpe Estate [2009] UKUT 235 (LC), Re Sinclair Gardens Investments (Kensington) Ltd [2014] UKUT 0079 (LC), and Contractreal Limited v Smith [2017] UKUT 0178 (LC), in which Tribunals had been persuaded to use higher deferment rates to reflect the lower prospects for long term growth outside the Prime Central London Area (PCL). In Contractreal the leaseholder's surveyor had relied upon a comparison of the Land Registry house price index for Warwickshire, Birmingham and Greater London for the period January 1995 to March 2016, which showed house prices had risen by 2.91, 2.48 times. and 5.81 times respectively. Mr Tucker had researched Land Registry data for the period from January 1995 - April 2019. In the light of comments made by the Upper Tribunal in Contractreal, Mr Tucker had researched data from the four London Boroughs which in whole or in part make up the commonly accepted definition of PCL, and compared them to Newcastle [upon Tyne]. The data for flats and maisonettes showed that prices had risen by the following multipliers over the same period;

Westminster	7.13 times
Camden	6.82 times
Kensington & Chelsea	6.59 times
Hammersmith & Fulham	5.20 times
Newcastle upon Tyne	3.11 times

The Tribunal in Sinclair Gardens had stated that further evidence justifying a departure from the Sportelli rate did not have to be especially cogent or compelling. In Mr Tucker's view, the evidence in this case was to some degree consistent with the finding in Zuckerman that the difference between past rates of long term growth in PCL and the West Midlands was not slight, but considerable. Mr Tucker considered that he had made an even more compelling case for an increased rate than was the case in Contractreal. He considered that the deferment rate in this case should be increased by 0.5% to 5.5%.

Deferment Rate: Decision

19. The Tribunal considered that while Mr Tucker had put forward statistical information relating to the movement of prices over a 24 year period in four London Boroughs and compared them with Newcastle upon Tyne, he had not put forward any market evidence in relation to the deferment rate to be adopted, nor had he put forward evidence relating to the subject property itself nor any expert evidence or argument save for the brief statistical information provided. There was no evidence presented from the research departments of large firms of Chartered Surveyors. On balance, the Tribunal did not consider that the totality of Mr Tucker's evidence was sufficient to persuade it on the balance of probabilities that it should depart from the Sportelli principle and adopt a deferment rate of 5.5%.

20. Contrary to Mr Tucker's view, The Tribunal decided that it should not depart from the precedent set out in Earl of Cadogan v Sportelli (noted above) and adopted a deferment rate of 5%.

Relativity - Capital Values: Submissions and Evidence

Extended Leases

21. Mr Tucker considered the sold prices for seven long leasehold properties sold in the near vicinity of these properties between 14th September 2018 and 3rd March 2019 of which he had knowledge. He excluded the highest and lowest prices achieved, and averaged the remaining five prices, resulting in a figure of £115,900, which he used as his value of an improved flat with an extended lease.

Extended Leases - Decision

22. The Tribunal accepted this market evidence, but decided it was appropriate to round the improved value of a flat with an extended lease up to a more convenient £116,000 as the difference was negligible and a specific sum of £115,900 seemed too detailed to be easy to justify.

Unextended Leases

23. Mr Tucker could find no recent evidence of sales of leases which had not been extended. He referred to Arrowdell Ltd v Coniston Court (North) Hove Ltd [2006 EWLands LRA72/2005], which in his view acknowledged that relativities may vary from one location to another, and approved the use of graphs of relativity as evidence. A number of such graphs existed. The majority of such graphs related to properties within the Prime Central London area. Mr Tucker considered four graphs; Savills, which he considered irrelevant as it referred to properties in the PCL area; Gerald Eve, where the data did not include the North East of England; the College of Estate Management (CEM); and the Leasehold Advisory Service (LEASE). The CEM and LEASE graphs he considered more relevant as they related to properties in London, and England and Wales, and may have contained evidence from the North East of England. The CEM graph showed that when 60 years of the lease was unexpired the relativity was 91%. The LEASE graph showed that where 60 years was unexpired for the rest of England and Wales the relativity was 87%. That percentage was applied in a property at 14 Newbury, Garth 16 Killingworth, Newcastle upon Tyne NE12 6PW (MAN/ooCK/oLR/2011/0009) by the LVT in September 2011. There the unexpired term was 60.33 years.
24. Mr Tucker noted that Newcastle City Council applied a relativity of 90% in sales when 60 years was unexpired. William Leech Investments, another local landlord, applied relativities of 85-90% on their lease extensions when there was 60 years unexpired. These latter percentages depended upon whether the tenant was an owner occupier or a buy to let landlord.
25. In the light of the above, Mr Tucker applied a relativity figure of 92.5% as the unexpired term of the lease in this case was almost 62 years.

Decision

26. The Tribunal considered that there were several problems with Mr Tucker's arguments. The Killingworth case was an FTT level case, and was therefore

only persuasive. It was also now not good law, as it did not take into account more recent case law in the Upper Tribunal and Court of Appeal (which is binding on this Tribunal). All these recent cases are listed by Mr Tucker in his own submission: Contractreal (above), Elmbirch Properties' Appeal (above), Sloane Stanley Estate v Munday (above).

27. Also, the Tribunal raised with Mr Tucker by letter, that it was aware of an Expert submission in 2019 from a member of his own firm in the case of 6 Shortridge Terrace, Jesmond, Newcastle upon Tyne NE2 2JE (MAN/00CJ/OLR/2018/0050), which took a significantly different view of the relativity valuation, essentially relying upon the Savills graph, and following the valuation principles set out in Contractreal (see above) and Elmbirch Properties plc's Appeal [2017] UKUT 0233 (LC), also Sloane v Munday [2016 UKUT 0223 (LC)] with particular reference to the use of the Savills graph.
28. Mr Tucker considered that 6 Shortridge Terrace was distinguishable, as the case had settled before trial, but in any event different valuers were entitled to take a different view, even if they were members of the same firm. While the Tribunal noted that point, it also noted that a surveyor acting as an Expert had a duty to bring all relevant evidence to the Tribunal's attention and assist the Tribunal, rather than act as a surveyor for a particular party.
29. All matters considered, the Tribunal considered that Mr Tucker's evidence was weak and decided that it should follow the Upper Tribunal in using the Savills graph, and applied a relativity of 84.0% taking into account the unexpired term of 62.5 years.

Improvements: Evidence and submissions

30. Mr Tucker listed the tenants improvements which he considered in his valuation as:

(i) installation of double glazed windows and replacement of access door	(£4,000)
(ii) installation of new kitchen and bathroom	(£6,000)
(iii) upgrading of original heating with a gas-fired central heating and hot water system	(£4,000)
(iv) upgrading of internal doors	(£1,000)
(v) sound and heat insulation,	(£500)
TOTAL	(£15,500)

He accepted that an element of the above figure represented replacement value, rather than improvement. He therefore deducted 25%, resulting in a reduction to £11,625 for improvements.

Decision

31. The Tribunal considered that Mr Tucker's view of value (as opposed to cost) was inflated, and that the figures given for some improvements were too high in terms of value, as opposed to cost. The Tribunal noted the approach taken by Johnson Tucker in the 6 Shortridge Terrace case. It decided using its general knowledge based on the evidence that £9,000 was a more appropriate figure.

Freehold Differential: Evidence and submissions

32. Mr Tucker decided not to apply a 1% adjustment from the extended lease value to freehold value, as he submitted that he did not believe buyers in the North East would make such an adjustment.

Decision

33. Notwithstanding Mr Tucker's view, the Tribunal is bound by the Elmbirch case (see above) which is an Upper Tribunal decision. The rationale in that decision seemed more appropriate than the one set out in Mr Tucker's valuation. The Tribunal thus decided that a 1% adjustment should be applied to the unimproved value of the lease with vacant possession.

Schedule 10 Rights

34. Mr Tucker again chose not to make any adjustment for the benefit of the Act and cited cases in the West Midlands in support. This approach is diametrically opposed to Johnson Tucker's approach in 6 Shortridge Terrace where the firm stated in its valuation:

"A valuation under the 1993 Act is on the assumption of a no-Act world where the tenant does not have the right to enfranchise. It is now commonplace for Tribunals to make a deduction to reflect the fact that the real world transactions have the benefit of these rights, as in the Upper Tribunal decisions of Contractreal and Elmbirch.

Decision

35. The Tribunal has followed legal precedent in making an allowance for the Benefit of the Act, which is common valuation practice. Again it notes the valuer in the Shortridge Terrace case had applied the deductions made in Elmbirch, and Contractreal. Thus, the Tribunal applied a deduction of 5%, reflecting the unexpired term.
36. For ease of reference, the Tribunal decided to attach relevant extracts in the Shortridge Terrace case:

"7.0 THE FREEHOLD DIFFERENTIAL

7.1 As part of calculating the premium for a lease extension, the freehold vacant possession value of the property needs to be determined. Generally, most available comparables are of flats selling with long or extended leases rather than freehold sales, so the value derived from them reflects a long or extended lease rather than the freehold value.

7.2 It has been widely accepted and adopted by various tribunals (for example in both the Contractreal and Elmbirch cases referred to earlier) that there should be a 1% upward adjustment to get from the long or extended lease value to the freehold value. This is normally done by applying a 99% reverse relativity to the value of the flat with a long or extended lease.

7.2 I note that [the Leaseholders Surveyor] does not make such an adjustment in his valuation.

7.3 I am of the opinion that it is entirely appropriate to make such an adjustment and have therefore done so in my valuation. I will refer to it more specifically later at the appropriate points.

8.0 RELATIVITY

8.6 Relativities have been subject to much discussion in recent years and I would in particular refer you to the Upper Tribunal case of Sloane v Mundy which included a very detailed dissection of many of the published Graphs of Relativity. That particular case concluded that the Gerald Eve and Savills graphs were by far the most reliable.

8.8 The Savills Enfranchiseable Graph is one that does reflect the benefit of 1993 Act rights. I note that for 64.72 years unexpired it shows a relativity of 85.39%. A deduction will then need to be made for the Act rights to get to a no-Act world position.

9.0 FREEHOLD VACANT POSSESSION VALUE

9.14 The bathroom and kitchen fittings may be superior to what they replaced, but a lot of that is down to the fact that the previous fittings will have been in place for a long period of time and become worn / dated.

9.16 I accept that the uPVC double glazing is an upgrade on the previous single glazed timber units. However, in my mind only a proportion of this cost should be allowed for as it is replacement of existing fittings, albeit a superior and more modern equivalent.

9.17 Taking a holistic overall view I am prepared to accept one third of £30,000 cost as being improvements. Therefore, I have deducted £10,000 from the "improved" long lease value of £185,000 to arrive at an unimproved long lease value of £175,000.

9.18 Adjusting this by 1% results in an unimproved freehold vacant possession value of £176,768.

10.0 VACANT POSSESSION VALUE WITH AN UNEXTENDED LEASE

10.9 A valuation under the 1993 Act is on the assumption of a no-Act world where the tenant does not have the right to enfranchise. It is now commonplace for Tribunals to make a deduction to reflect the fact that the real world transactions have the benefit of these rights, as in the Upper Tribunal decisions of *Contactreal* and *Elmbirch*.

10.10 On an unexpired term of 64.72 years the Savills Unenfranchiseable Graph shows a relativity that is 95.30% of the relativity for the Savills Enfranchiseable Graph. Therefore, Savills value the benefit of Act rights at this particular unexpired term at 4.70%.

The Tribunal has some difficulty in reconciling the inconsistent approach taken by Johnson Tucker evidenced above. The Tribunal take particular note that the expert

evidence in respect of Shortridge Terrace relies on four leading cases as set out at Para 2.12 in that submission namely:

“2.12 The following cases are referred to in this report:

The Trustees of Sloane Stanley Estate and Adrian Howard Mundy [2016] UKUT 0223 (LC)
Contactreal Limited v Smith [2017] UKUT 0178 (LC)
Elmbirch Properties plc’s Appeal [2017] UKUT 0233 (LC)
Earl Cadogan & Cadogan Estates Ltd v Sportelli [2007] EWCA Civ 1042”

37. The Applicants are no doubt aware that this Tribunal must take account of case precedence where it is on all fours with the case in hand, and this Tribunal’s decision therefore follows both Sportelli, and the three recent cases above. It is also in line with Johnson Tucker’s detailed and up to date arguments set out in the Shortridge Terrace submission.

Determination

38. The Tribunal was mindful of its duty to the missing landlord, and, having duly considered the evidence before it, made its valuation as set out at Appendix 2 to this decision.

39. Thus the Tribunal determined the freehold reversion of No 12 at £13,475. The Tribunal determined the freehold reversion of No 12 at £13,475. The Applicants shall each pay into Court the sum of £13,475 for the freehold reversion. There seemed to be no evidence of payment of the Ground Rents in the papers. Thus the Tribunal determined that the yearly ground rents per flat should be paid, restricted to a period of 6 years’ arrears amounting to £150 per flat. Thus the sum payable into Court by each Applicant shall be £13,625.

Transfer

40. The Applicant offered a slightly amended Land Registry Form TR1. The Tribunal decided that several items required amendment:

Box 4 – After “Transferor”, delete all and insert “Michael Alan Urwin (pursuant to a Vesting Order under Section 27(3) of the Leasehold Reform, Housing and Urban Development Act 1993 and Section 39 of the Senior Courts Act 1981 made by Judge Morgan in the County Court at Newcastle upon Tyne dated 13th May 2019 under claim number E80NE073)”.

Box 5 - Insert “Michael Francis Richardson (Nominee Purchaser)”

Box 8 – delete standard wording and insert; “The Transferee has paid into Court the sum of £27,250 (representing £13,625 for each property) pursuant to the Court Order dated 13th May 2019”

Box 9 – Delete “No title guarantee” and insert an “x” against the box “limited title guarantee”

Box 11 - The Tribunal has no objection to a restriction being inserted for the protection of Dr Welbury, if so advised.

Box 12 – Delete standard wording and insert “signed as Deed by [] a District Judge of the County Court at Newcastle upon Tyne, a duly authorised officer of the Court on behalf of the Transferor pursuant to Section 27(3) of the Leasehold Reform Housing and Urban Development Act 1993”.

Vesting Order

41. This case is now referred back to the County Court at Newcastle upon Tyne to effect the Transfer.

Tribunal Judge: Lancelot Robson Dated: 10th March 2020

Appendix 1 – Mr Tucker’s valuation – See attached

Appendix 2 – Tribunal’s valuation – See attached