



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

- Case Reference** : **MAN/OOCF/OAF/2018/0031, 0032, 0033  
and 0034**
- Properties** : **5, 7, 9 and 11 Katherine Street, Thurcroft,  
Rotherham, S66 9LF**
- Applicants  
Represented by** : **Coppen (Estates) Limited  
Counsel, Mr Gayle and Taylor and Emmet  
LLP, Solicitors.**
- Respondents** : **Number 5, Denis Plant and Heather Plant  
Number 7, Terence James Norman and  
Barbara Ann Norman  
Number 9, Glynne Michael Hadfield  
Number 11, David Alan Senior and Elaine  
Senior**
- Type of  
Application** : **Leasehold Enfranchisement, Application  
For A Determination As To The Price To Pay  
Section 21 Of The Leasehold Reform Act  
1967**
- Tribunal  
Members** : **Judge C. P. Tonge, LLB, BA  
Mrs S. A. Kendall BSc, MRICS**
- Date of Decision** : **30 July 2020**

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**DECISION**

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## **Background**

1. On 30 July 2020 this Tribunal met again, by remote telephone conference, due to restrictions being imposed relating to social distancing in the Covid 19 pandemic. This is a reconvened meeting of the Tribunal from a hearing at Sheffield Magistrates Court on 26 June 2019. The Tribunal has reconvened to decide the issue of the price to be paid for the freehold of the four properties involved in this case.
2. The Tribunal reminds the parties to this case that the hearing on 26 June 2019 was adjourned for an arbitrator to be appointed to decide what the ground rent for each property should be as at the fiftieth anniversary of the commencement of each long lease for each property.
3. The Tribunal refers to the Decision and Directions issued by this Tribunal after the hearing of 26 June 2019. That Decision and Directions will be annexed to this Decision and become part of this Decision. The Decision and Directions issued after the hearing of 26 June 2019 contain a full description of the background to the case, the dispute as to the ground rent, the inspection by the Tribunal of the properties involved in this case, the law that this Tribunal is dealing with and the conduct of the adjourned hearing. It will not be necessary to repeat these matters again.
4. The Tribunal now deals with the events that have occurred between the adjourned hearing and today, as they effect this case.
5. On 22 January 2020 the Arbitrator, Mr D. R. Heap, made awards setting out the value of the ground rents for these four properties, being £1,160 per year, for each property, as at the ground rent review date for each property.
6. The Directions in this case would have brought about a reconvened hearing in April 2020. However, the Respondents contacted the Tribunal indicating that they were not happy with these awards and that they needed additional time to consider their position and to instruct an expert on their own behalf. The Tribunal is mindful of the fact that one of the Respondents is unfortunately in poor health and that this case involves long leases that contain an unusually complicated ground rent review procedure. The Tribunal determined that pursuant to its overriding objective, it was fair and just to permit extensions (Rule 3, Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (S. I. 2013/1169) resulting in a reconvening of the Tribunal today. The Tribunal further notes that there is still no expert evidence on behalf of the Respondents.
7. Direction 3 is to the effect that all parties expected this reconvened hearing to take place in the absence of the parties, but provides for a party to

request an oral hearing, if a party thinks that this is necessary. The parties have confirmed that they are content for this reconvened hearing to take place in their absence.

8. The Tribunal refers to emails that have been received from the Respondents during the adjournment between hearing dates. Copies of various documents have been attached to these emails including a letter from Alexander Stafford, MP to the Secretary of State for Housing, Communities and local Government, a press article and a page from the Negotiator relating to Law Commission Reports, suggesting reform of the law in this general area.
9. The Tribunal has not permitted itself to be influenced by these documents, determining the price to be paid for the freehold of these properties based upon considering admissible evidence available to the Tribunal today and the law as it stands today. Parliament has not seen fit to alter that law and this Tribunal is bound to apply the law as it now stands.
10. The Tribunal does however note that the Respondents are extremely unhappy with the rent review procedure as commenced by the Applicant and the awards as handed down by the Arbitrator. The Tribunal comments that the real problem in this case (as it relates to the ground rents for these properties) is the fact that the Respondents are all bound by long leases, with a term remaining as of the valuation of about 150 years. These contain rent review clauses that permit an increase in ground rent to be determined rather than stating a figure known to the parties in advance. Application of those rent review clauses have brought about a substantial increase in the ground rent. The Applicant has done nothing more than seek to exercise its rights under those long leases. The Arbitrator has applied the law to the facts as he found them to be. That procedure took place completely independent of these Tribunal proceedings and should properly have done so before this Tribunal case began.
11. Mr Francis, the expert surveyor called on behalf of the Applicant has provided an updated report, dated 25 February 2020. This serves a copy of the four arbitration awards as handed down by the Arbitrator and adopts those figures to recalculate the price to be paid for the freeholds of these four properties. In his expert opinion these are now £19,342.48 for 5 and 7 Katherine Street and £19,341.35 for 9 and 11 Katherine Street.

## **Determination**

12. The Tribunal determines that due to clause 5(ii)(a) and 6 of each long lease, it must apply the ground rents as determined by the Arbitrator in calculating the price to be paid for the freeholds to these properties. The procedure as set down in the leases for these properties has brought about an increase in the ground rent to £1,160 per year.

13. The Tribunal notes that the date for the valuation of the price to be paid for these freeholds is provided by ascertaining the date that the Respondents' Notices' Of Their Claim To Acquire the Freehold were served upon the freeholder Applicant. The Notices are dated, 23 March 2017 (number 5), 24 March 2017 (number 7), 25 March 2017 (number 9) and 22 March 2017 (number 11).
14. In the absence of any direct evidence of the date of service of these Notices, the Tribunal assumes that they were served by the usual first class post. The Civil Procedure Rules provide that there is a rebuttable presumption that service by first class post will take place two days after postage. The Tribunal therefore presumes that service occurred 2 days after the dates specified above, except where that date would fall during a week end.
15. The Tribunal therefore determines that the valuation dates are as follow:
  - Number 5 Katherine Street, 25 March 2017
  - Number 7 Katherine Street, 27 March 2017
  - Number 9 Katherine Street, 27 March 2017
  - Number 11 Katherine Street, 24 March 2017
16. The rent review dates, as specified in the long leases are 25 December 2014 (number 5), 1 December 2014 (number 7) and 24 June 2017 (number 9 and 11).
17. The rent review dates for 5 and 7 Katherine Street are before the Respondents' Notices are dated and must therefore be before they were served upon the freeholder Applicant. The rent review dates for 9 and 11 Katherine Street are approximately three months after the Notices referring to them were served. However, because the Tribunal agrees with the method of calculation of the price to be paid as adopted by Mr Francis, this has no effect upon the price to be paid.
18. The Tribunal agrees with the methodology of valuation as described by Mr Francis throughout paragraphs 3.1 to 3.10 of his updated statement. This follows the well established three stage formula as confirmed by the Court of Appeal in Clarise Properties Ltd v Rees [2017] EWCA Civ 1135. The Tribunal agrees that because each lease has approximately 150 years of unexpired term with two further rent review dates, it is appropriate to calculate stage 1, the term in perpetuity. Capitalisation at 6% is fair and reasonable, given that there are two future, unquantifiable, rent reviews.
19. As such the Tribunal agrees with Mr Francis that the compensation due to the freeholder for loss of the right to collect the ground rent for the unexpired term of these leases is £19,333.37.

20. Due to the fact that each lease has approximately 150 years of unexpired term, the second two parts of the calculations of the price to be paid add little to the price. In relation to these two parts of the calculation the Tribunal sees no good reason to depart from the calculations as made by Mr Francis.
21. The Tribunal agrees with Mr Francis that it is appropriate to deal with 5 and 7 Katherine Street together and to deal with 9 and 11 Katherine Street together. The Tribunal annexes to this decision two valuation schedules as determined by Mr Francis.
22. The Tribunal determines that the price to be paid for the freehold of 5 and 7 Katherine Street, Thurcroft, Rotherham is £19,342.48.
23. The Tribunal determines that the price to be paid for the freehold of 9 and 11 Katherine Street, Thurcroft, Rotherham is £19,341.35.
24. This reconvened hearing has taken place during the Covid 19 pandemic. The only impact that the restrictions imposed because of the pandemic have had on this case is that this reconvened hearing has been conducted by remote telephone conferencing between the members of the Tribunal, rather than the usual meeting.

## **Decision**

25. The price to be paid under section 9(1) of the Act for 5 Katherine Street is £19,342.48, calculated in accordance with appendix 2 attached.
26. The price to be paid under section 9(1) of the Act for 7 Katherine Street is £19,342.48, calculated in accordance with appendix 2 attached.
27. The price to be paid under section 9(1) of the Act for 9 Katherine Street is £19,341.35, calculated in accordance with appendix 2 attached.
28. The price to be paid under section 9(1) of the Act for 11 Katherine Street is £19,341.35, calculated in accordance with appendix 2 attached.
29. Appeal against this decision is to the Upper Tribunal. Any party wishing to appeal has 28 days from the date that this decision is sent to them to deliver to this First-tier Tribunal an application for permission to appeal, stating the grounds of appeal, particulars of appeal and the outcome that the appellant seeks to achieve.

Judge C. P. Tonge

Appendix 1; Decision and Directions after the hearing on 26 June 2019.

## Appendix 2; Valuation schedules

### APPENDIX 2

#### VALUATION SCHEDULE

5 and 7 Katherine Street, Thurcroft

Valuation date, 25 March 2017 and 27 March 2017, respectively.

#### TERM

Ground rent	£1,160	
x YP in perpetuity @ 6%	6.6667	
£19,333.37		

#### 50 YEAR EXTENSION

Modern Ground rent	£1,160	
x YP @ 5.5% for 50 years	16.9315	
Deferred for 147.75 years by P V of £1 in 147.75 @5.5%	0.000367	£7.21

#### REVERSION TO FULL MARKET VALUE

Property Value	£80,000	
Property Value subject to L. G. H. A. 1989	£76,000	
Deferred 197.75 years @ 5%	0.000025	£1.90

TOTAL £19,342.48

L. G. H. A. 1989 is the Local Government and Housing Act 1989

9 and 11 Katherine Street, Thurcroft

Valuation date, 27 March 2017 and 24 March 2017, respectively.

#### TERM

Ground rent	£1,160	
x YP in perpetuity @ 6%	6.6667	
£19,333.37		

#### 50 YEAR EXTENSION

Modern Ground rent	£1,160	
x YP @ 5.5% for 50 years	16.9315	
Deferred for 150.25 years by P V of £1 in 150.25 @5.5%	0.000367	£6.30

#### REVERSION TO FULL MARKET VALUE

Property Value	£80,000	
Property Value subject to L. G. H. A. 1989	£76,000	
Deferred 197.75 years @ 5%	0.000022	£1.67

TOTAL £19,341.35

L. G. H. A. 1989 is the Local Government and Housing Act 1989