



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

Case Reference : **BIR/00CA/OAF/2020/0010**

HMCTS : **P:PAPERREMOTE**

Property : **The Croft, 9 Wicks Lane, Formby,
Liverpool, L37 3JE**

Applicant : **Edward Patrick Parkes**

Representative : **J Rostron Solicitors**

Respondent : **Morax Limited**

Representative : **Formby Law Limited**

Type of Applications : **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.**

**Under section 21 (2) (a) of the Leasehold
Reform Act 1967 for a determination of the
provisions to be included in the conveyance
under section 10 of the Act.**

Tribunal Members : **V Ward BSc (Hons) FRICS – Regional Surveyor
N Wint BSc (Hons) FRICS ACI Arb
Judge M Gandham**

Date of Decision : **29 September 2020**

DECISION

Introduction

1. This is the Tribunal's decision in respect of applications 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, and also section 21 (2) (a) of the Act, for a determination of the provisions to be included in the conveyance under section 10, in respect of The Croft, 9 Wicks Lane Formby, Liverpool L37 3JE.
2. The Applicant, Edward Patrick Parkes, was represented J Rostron Solicitors. The Respondent is Morax Limited who were represented by Formby Law Limited.
3. The Applicant served notice to acquire the Freehold interest on 6 February 2020 and applied to the Tribunal by an application dated 14 April 2020.
4. The Property is held by way of a lease dated 29 September 1960. The lease is for a term of 990 years from 29 September 1927. The ground rent is £15.75 per annum without review.
5. The Tribunal issued Directions for a determination of the applications dated 26 May 2020. Due to the Covid-19 Public Health Emergency, the Tribunal advised the parties that it would be unable to carry out an inspection of the Property unless either party objected within 14 days. Neither party objected. The parties were invited to include photographs in their submissions by way of mitigation.
6. Neither Party requested an oral hearing, the Tribunal therefore makes its determination on the basis of the written submissions of the Parties.
7. The Respondent made no submissions apart from the valuation referred to below.
8. The basis of valuation is to be in accordance with the provisions of section 9 (1) of the Leasehold Reform Act 1967.

The Property

9. From the information provided by the Applicant, the Property appears to comprise a dormer bungalow offering the following accommodation:

GF: Hall, cloakroom, two reception rooms, kitchen, bathroom, two bedrooms;

FF: Bedroom with ensuite.

Outside: Gardens and garage.

The price to be paid for the benefit of the freehold interest

10. On behalf of the Applicant, Mr Rostron's valuation approach was as follows:
- a) Capitalise the rent for the term of the lease and add the value of a 50 year lease extension at a modern ground rent with reviews every twenty five years and the value of the Property after the expiry of the lease and the 50 year extension.
 - b) The existing lease has 897 years unexpired, the value of a 50 year extension and the reversion would be nil.
 - c) The lease has a ground rent of £15.75 per annum.
 - d) There may be people looking to buy the freehold with the idea of selling it in the future to an occupying leaseholder who may pay in excess of market value.
 - e) It is assumed the tenant has the right to acquire the freehold under the Act that they hold good leasehold title with no encumbrances, the site is not subject to town planning or other restrictions and there are no contamination or environmental hazards.

11. Mr Rostron considered it appropriate to offer a range of valuations:

a) The low valuation:	
Ground rent (pa)	£15.75
YP 897 years @ 6.5%	<u>15.3846</u>
Value	£242.30
b) The higher valuation:	
Ground rent (pa)	£15.75
YP 897 years @ 5.0%	<u>20.00</u>
Value	£315.00

12. Taking the average of the above, Mr Rostron calculated the value at £280.00
13. To support his valuation, the following comparables were provided which were, Mr Rostron stated, recent freehold acquisitions following the service of Tenants' Notice and section 9.1 valuation under the Act. They included either a decision or settlement (following withdrawal of an application under section 21(1) (a)/21(1) (ba) of the Act) or agreed without application to the Tribunal. The leases were 999 years with 900 plus years unexpired and the properties were, he submitted, similar to that in this application.

£175 (excluding landlords legal and valuation costs) 11 Argarmeols Road, Formby, Merseyside.

£776 (inclusive of landlords legal & valuation costs) 23 Shireburn Road, Formby, Merseyside.

£896 (inclusive of landlords legal & valuation costs) 31 Shireburn Road, Formby, Merseyside.

£776 (inclusive of landlords legal & valuation costs) 33 Shireburn Road, Formby, Merseyside.

£776 (inclusive of landlords legal & valuation costs) 35 Shireburn Road, Formby, Merseyside.

£750 (inclusive of landlords legal & valuation costs) 43 Freshfield Road, Formby, Merseyside.

£750 (inclusive of landlords legal & valuation costs) 43a Freshfield Road, Formby, Merseyside.

£687.05 (inclusive of landlords legal & valuation costs) 84 Victoria Road, Formby, Merseyside.

£850 (inclusive of landlords legal & valuation costs) 7 Shireburn Road. Formby, Merseyside.

14. A valuation was provided on behalf of the Respondent by Robin Underwood FRICS which was as follows:

Ground rent (pa)	£17.75
YP 897 years @ 4.5%	<u>22.22</u>
Value	£394.44
Say	£395.00

15. The Tribunal notes that the incorrect ground rent was used in Mr Underwood's valuation.
16. There was no background to Mr Underwood's valuation save that the yield of 4.5% chosen was "to reflect low investment yield and current interest rates".

The Tribunal's valuation

17. The Tribunal relied on its own knowledge and experience to consider the value of the freehold interest along with a consideration of the evidence provided.
18. The Tribunal agrees with Mr Rostron that the value of the reversion particularly with the benefit of a 50 year extension is *de minimis*.
19. It is therefore the value of the right to receive the ground rent of £15.75 per annum that the Tribunal must consider. The Tribunal considers that ground rent at this level could not be beneficially collected and further it is fixed. On balance,

it is therefore an investment that if sold via the appropriate method would not be of particular interest to a prospective purchaser and its attractiveness will only diminish further over time. The ground rent will only be collected upon an event such as an assignment (subject to statutory recovery provisions). The yield suggested by Mr Underwood does not in the opinion of the Tribunal reflect the low ground rent. The comparables offered by Mr Rostron are of general use but without more details such as the level of ground rent and whether it is fixed, they cannot be analysed. The Tribunal is not bound to adopt the capitalisation rates suggested by the parties however the rate of 6.5% is considered by the Tribunal to reflect the relative attractiveness of the ground rent investment. The Tribunal's valuation is therefore as 11 b) above; £242.30 say £242.00.

The provisions to be included in the conveyance

20. In relation to the application under section 21 (2) (a) of the Act, Mr Rostron, on behalf of the Applicant, referred the Tribunal to the provisions of section 10 (4) of the Act. He also referred the Tribunal to the decision of the Upper Tribunal in *The Trustees of the Sloane Stanley Estate v Carey – Morgan and anor.* 2011 UKUT 415 (LIC) ("*The Trustees of the Sloane Stanley Estate* decision"). He stated that the Lands Tribunal, approving early decisions of that tribunal, took the view that material enhancement was a matter of 'general impression' and that there must be evidence to satisfy a tribunal that there would be some monetary uplift in value or the prevention of some monetary diminution in value of other property when considering whether any restrictive covenants should be included within the conveyance of the freehold title.
21. Mr Rostron also referred to Hague on Enfranchisement (6th Ed.), section 6.32:

"The basic rule is that the landlord cannot require the continuance of any of the covenants imposed by the tenant's lease. But an exception is made in the case of any restrictive covenant which is capable of benefiting other property, and which also fulfils one of two further alternative conditions. These are as follows:

 - (i) *The covenant is enforceable by one or more persons other than the landlord...*
 - (ii) *The covenant, although enforceable only by the landlord, is "such as materially to enhance the value of the other property..."*
22. Mr Rostron stated that the Applicant had forwarded a Notice of Request for Particulars of Rights of Way and Restrictive Covenants to the Respondent on 10 February 2020. He confirmed that no reply was received within the required period. As such, he submitted that the conveyance of the freehold title should not include any particulars of rights of way or covenants, save for those already existing on the freehold title.
23. Mr Rostron referred to the fact that the Respondent had also failed to comply with the Tribunal's Directions by not providing a draft transfer. He provided to

the Tribunal an extract copy of the Respondent's freehold title and plan, registered under Title Number MS394700, together with an extract copy of the Applicant's leasehold title and plan, registered under Title Number MS370214, and an official copy of the lease to the Property. Mr Rostron also supplied a draft transfer ("the Draft Transfer"), which is appended to this decision.

24. The Respondent failed to provide any documentation to the Tribunal relating to the application under section 21 (2) (a) of the Act.

The Tribunal's deliberations on the conveyance provisions

25. The Tribunal notes that section 10 (4)(b)(i) of the Act confirms that a conveyance executed to give effect to section 8 of the Act should only contain such provisions as the landlord might require to secure continuance of restrictions arising by virtue of the lease which are capable of benefiting and materially enhance the value of other property.
26. In both *The Trustees of the Sloane Stanley Estate* decision and the earlier decision of *Cadogan v Erkman* [2011] UKUT 90 (LC), the Upper Tribunal determined that, although valuation evidence is not required to quantify such a benefit, evidence is required to establish that the restriction would materially enhance the value of the other property.
27. In this matter, having considered both titles and plans, the acquisition of the freehold appears to be a transfer of the whole of the freehold title. The Respondent failed to reply to the Applicant's Notice of Request for Particulars of Rights of Way and Restrictive Covenants and also failed to provide to the Tribunal a Statement of Case, draft transfer (detailing any covenants they required to be included into the conveyance of the freehold title) or any other evidence or documentation that any particular covenant would be required to materially enhance the value of any other property. Based on the evidence before it, the Tribunal is not satisfied that any restrictive covenants arising by virtue of the tenancy are such as would *materially enhance* the value of any other property.
28. The Charges Register to the freehold title does detail possible restrictions in a Conveyance dated 6 June 1951 made between (1) Mary Teresa Weld-Blundell (2) Geoffrey Edmond de Trafford and Edric Humphrey Weld and (3) The Trustees of the Royal Liver Friendly Society. It is not clear what these restrictions are, or whether they would still be enforceable, but they will remain on the freehold title. As such, the Tribunal determines that the conveyance to the Applicant should contain a covenant by the Applicant to observe and perform any restrictive covenants contained or referred to in the said Conveyance 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 any such covenants relate to the Property and remain capable of being enforced.

29. Subject to the above provision and the consideration in box 8 of the Draft Transfer being amended to ‘Two hundred and forty two pounds £242.00’ (as per the Tribunal’s valuation), the Tribunal determines that the provisions that ought to be contained in the conveyance of the freehold title to be as per the provisions contained in the Draft Transfer.

Determination

30. The Tribunal determines that the price payable by the lessee for the acquisition of the freehold interest in the property known as The Croft, 9 Wicks Lane Formby, Liverpool L37 3JE in accordance with Section 9(1) of the Leasehold Reform Act 1967 as amended, is £242.00 (Two hundred and forty two pounds).
31. The Tribunal determines that the provisions that ought to be contained in the conveyance of the freehold title to the Applicant are as per the Draft Transfer subject to the following amendments:
- a) Box 11 to contain a covenant by the Applicant to observe and perform any restrictive covenants contained or referred to in the Conveyance dated 6 June 1951 made between (1) Mary Teresa Weld-Blundell (2) Geoffrey Edmond de Trafford and Edric Humphrey Weld and (3) The Trustees of the Royal Liver Friendly Society 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 any such covenants relate to the Property and remain capable of being enforced; and
 - b) the consideration being amended to ‘Two hundred and forty two pounds £242.00’, as per the Tribunal’s valuation.

Costs

32. The application under section 21 (1) (ba) of the Act for a determination of the reasonable costs payable under section 9 (4) of the Act was stayed by the Tribunal until the determination of the substantive applications. The Applicant is therefore to advise the Tribunal within 21 days if costs are agreed or alternatively for directions to be issued.

Appeal

33. If either party is 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).

V Ward

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

For information on how HM Land Registry processes your personal information, see our [Personal Information Charter](#).

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Remember to date this deed with the day of completion, but not before it has been signed and witnessed.

Give full name(s) of all the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) of the property: MS394700
2	Property: 9 Wicks Lane, Formby, L37 3JE
3	Date:
4	<p>Transferor: Morax Limited</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 4405684</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
5	<p>Transferee for entry in the register: Edward Patrick Parkes</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
6	Transferee's intended address(es) for service for entry in the register: 9 Wicks Lane, Formby, L37 3JE
7	The transferor transfers the property to the transferee

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to *Joint property ownership and practice guide 24: private trusts of land* for further guidance. These are both available on the GOV.UK website.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

8 Consideration

- The transferor has received from the transferee for the property the following sum (in words and figures): Two hundred and eighty pounds £280.00
- The transfer is not for money or anything that has a monetary value
- Insert other receipt as appropriate:

9 The transferor transfers with

- full title guarantee
- limited title guarantee

10 Declaration of trust. The transferee is more than one person and

- they are to hold the property on trust for themselves as joint tenants
- they are to hold the property on trust for themselves as tenants in common in equal shares
- they are to hold the property on trust:

11 Additional provisions

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 10 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to Joint property ownership and practice guide 24: private trusts of land for further guidance.

Examples of the correct form of execution are set out in practice guide 8: execution of deeds. Execution as a deed usually means that a witness must also sign, and add their name and address.

Remember to date this deed in panel 3.

12 Execution

EXECUTED as a DEED by
MORAX LIMITED
Acting by

.....
Director

And

.....
Director/Secretary

EXECUTED as a DEED by
EDWARD PATRICK PARKES
In the presence of

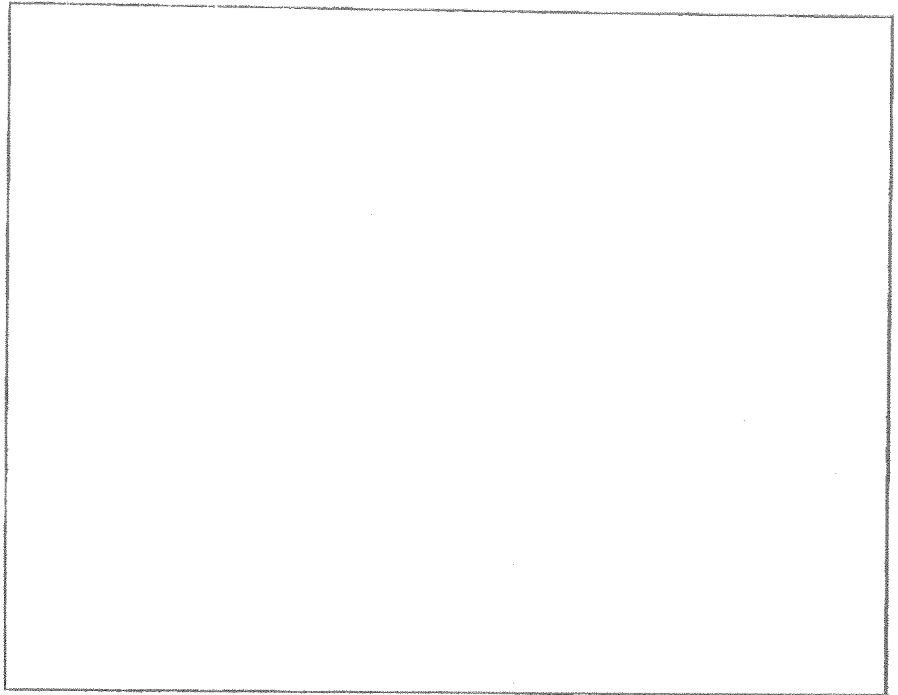
.....
Edward Patrick Parkes

.....
Signature of Witness

.....
Name of witness

.....
Address

.....
Occupation



WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

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