



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

Case Reference : **CHI/45UF/OAF/2020/0004**

HMCTS (paper,video Audio) : **P: PAPERREMOTE**

Property : **46 Penns Court, Horsham Road,
Steypning, BN44 3BF**

Applicants : **Philip Richardson and Gillian
Richardson**

Representative : **Green Wright Charlton Annis**

Respondent : **Sussex Homes Ltd**

Representative : **Burnand Brazier Malcolm Wilson
Solicitors**

Type of Application : **Determination of Price to be paid for
the Freehold Interest under Section
9(1) of the Leasehold Reform Act 1967
(The Act)**

Tribunal Members : **Robert Brown FRICS (Chairman)
William H Gater FRICS (Regional
Valuer)**

Date of Paper Consideration : **8th October 2020**

Date of Decision : **26th October 2020**

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was Paper Remote:(P:PAPERREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested it and all issues could be determined in a hearing on paper. No physical property inspection was undertaken.

DECISION

1. The Tribunal determines that the price to be paid for the Freehold Interest in No 46 Penns Court, Horsham Road, Steyning, BN44 3BF (“the property”) under the terms of the Leasehold Reform Act 1967 is **£8,691.85**.

REASONS FOR DECISION

The Application and Introduction

2. This determination follows an Application dated 3rd March 2020, for the determination of the price to be paid for the Freehold Interest in the property under Section 9(1) of the Act.
3. The Applicants are the Leaseholders.
4. The Tribunal is not asked to consider any other matters.

Documents before the Tribunal

5. Directions amended 20th September 2020.
6. Bundle in two parts comprising 300 pages.

Matters agreed between the parties

7. The party's representatives had helpfully managed to agree certain matters and these are listed below:
 - 1) The lease of the property is for 99 years from 23rd June 1989 and the unexpired term is 68.65 years.
 - 2) Valuation Date/Date of Notice: 27th October 2019.
 - 3) Rising Ground Rent: £100.00 for 1st 25 years, £200.00 for 2nd 25 years, £400.00 for 3rd 25 years and £800.00 for the remainder.

4). Valuation under Section 9(1) of the Leasehold Reform Act 1967

5) Deferment rate for the reversion: 5.00%.

Matters in dispute between the parties

8. The Parties were agreed that the following matters were still in issue:

1) Freehold Vacant Possession Value (**FHVP**)

Applicant: £360,000.00

Respondent: £400,000.00

2) Capitalisation Rate for the Ground rent under the Lease.

Applicant: 7.00%

Respondent: 4.75%

3) Site Value percentage of the FHVP

Applicant: 33.00%

Respondent: 50.00%

4) The Section 15 Rent.

Applicant: £5,940.00

Respondent: £14,000.00

5) Capitalisation rate for the Section 15 Rent

Applicant: 5.00%

Respondent: 7.00%

The Law

Section 9 (1) of the Act provides as follows:

- (1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and

members of this family who reside in the house not buying or seeking to buy) might be expected to realise on the following assumptions –

- (a) on the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;
- (b) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rent charges (...) to which section 11 (2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchases would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's in cumberances: and
- (c) on the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.

Consideration of the Papers submitted

9. Due to the current Public health Emergency in respect of Covid-19 the Tribunal was unable to carry out an inspection.
10. The parties had not requested a Hearing which was available to them via Cloud Video Platform (CVP) and were agreed that the Tribunal could consider the matters on the papers submitted.
11. The Tribunal met via 'Teams' on 8th October 2020.

The Property

12. The estate is a development of retirement homes comprising 20 houses, 39 two bedroom and 3 one bedroom apartments. Together with a wardens house, community centre and visitor accommodation.
13. The subject property comprises (taken from sales details within the Bundle) an inner terrace retirement cottage with the following accommodation: Entrance Hall, Cloakroom, Sitting Room, Dining Room, Kitchen, Two double bedrooms (one en-suite with bath the other en-suite with shower). Communal Grounds. All the usual mains services are connected including gas fired central heating.

Lease

14. The property is held under a lease dated 31st October 1991. The lease is for a term of 99 years from 23rd June 1989 at a rising annual ground rent:

1st 25 years: £100.00
2nd 25 Years: £200.00
3rd 25 years: £400.00
Remainder: £800.00

15. The property is subject to an estate management scheme (Section 19 of the Leasehold and Urban Development Act 1993) and the Freeholder is responsible for maintaining the structure of the houses and apartments subject to payment of a service charge.

Discussion on the Issues and the Tribunal's findings

16. The Tribunal sets out below a summary of the arguments put forward by the Parties representatives.

Freehold Vacant Possession Value (FHVP)

17. **Mr Julian Wilkins MRICS of Julian Wilkins and Co Chartered Surveyors on behalf of the Applicant** contends that the FHVP is £360,000.
18. In support of this figure he refers to 4 sales of 2 bedroom leasehold properties on this estate within 2 years of the valuation date.

No 48: £340,000.00 - Sold 29/03/19 - 69.2 years unexpired
No 47: £350,000.00 - Sold 20/12/18 - 69.5 years unexpired
No 1: £350,000.00 - Sold 15/01/18 - 129.49 years unexpired
No 46: £355,000.00 - Sold 12/09/17 - 70.8 years unexpired
19. After making adjustments for the Land Registry House Price Index and differences in the properties (as detailed in Appendix 4 of his statement) this produced an average LHVP of £342,657.00. To this he added the sum of £15,000.00 (to reflect the cost of enfranchisement including fees) producing a revised figure of £357,657 which he rounded to £360,000.00.
20. **Mr Anthony Saunders FRICS of Cuthbert Lake Chartered Surveyors on behalf of the Respondent** contends that the FHVP is **£400,000**.
21. In support of this figure he refers to the sale of the property in 2017 at £355,000.00 with an unexpired term of 71 years. Applying the 'Savills Graph' 71 years is 87.8% = £404,328.00. (*Mundy v Trustees of the Sloane Stanley Estate* [2018] EWCA Civ 35).

22. He also referred to a number of Lease extensions he had negotiated at he had negotiated on behalf of the Freeholder ranging from £15,000.00 in 2017 to £18,000.00 in 2020.
23. One Freehold had been sold following service of a Notice dated 12th July 2012 at a premium of £9,000.00.
24. **The Tribunal** is not persuaded by Mr Saunders approach adopting methodology more generally used in lease extension valuation under Leasehold Reform, Housing and Urban Development Act 1993. The Tribunal is unable to place significant weight on un-supported evidence of premiums negotiated with other lessees or their representatives.
25. In any event applying the principles in *Mundy* (above) the starting point for the valuation is the best available market evidence. In this case Mr Saunders considers only one transaction whereas Mr Wilkins analyses 4 transactions on the same development over the 2 years preceding service of the Notice.
26. **The Tribunal** prefers Mr Watkins approach applying known sales details to the House Price Index in the absence of direct evidence close to the date of the Notice.
27. **The Tribunal** determines the FHVP at **£360,000.00**.

Capitalisation Rate for the Ground rent under the Lease.

28. **Mr Wilkins** adopts 7.00% on the basis that this is the figure he has commonly agreed in both 67 Act and 93 Act cases where the ground rent is modest doubling every 25 years. Further in the South East there is a general acceptance that 7.00% is the default rate.
29. In support of this he refers the Tribunal to *Various Leaseholders v Elmbirch Properties Ltd*. CHI/29/UN/2019/0013. In this case the Tribunal after hearing the parties determined that a rate of 6.15% for high initial grounds subject to a 10 year review pattern was appropriate.
30. **Mr Saunders** says that the rate should be 4.75% (*Cadogan v Sportelli*)
31. **The Tribunal** notes that Mr Saunders does not explain his position further relying entirely on the reference to *Cadogan v Sportelli*. The Tribunal is aware of several case involving Cadogan and Sportelli but is not aware that any of these cases may be regarded as 'guidance cases' for properties outside Prime Central London.
32. **The Tribunal** finds the evidence of Mr Watkins relying on *Elmbirch* (above) more persuasive.

33. **The Tribunal** determines the capitalisation rate for the term at **7.00%**.

Site Value percentage of the FHVP

34. **Mr Wilkins** says that he prefers the Standing House Approach and that the normal range is between 25% and 40% of the FHVP. However from valuations he has carried out 33% is widely adopted. On this basis he considers the site value to be £118,000.00.

35. Research he has undertaken locally of 2 plots recently sold for development reveals site percentages of 27.8% and 31.1%. With this research he sees no reason to not to adopt 33%.

36. **Mr Saunders** adopts 50% as being the figure he agreed in respect of No 43 Penns Court negotiated under the terms of the 67 Act.

37. He further supports this with an estimate 'bricks and mortar' (excluding risk and profit) cost of £180.00 per square feet = £198,000.00

38. **The Tribunal** considers the terms negotiated by Mr Saunders in respect of No 43 Penns Court and the unsupported evidence of rebuilding costs (excluding risk and profit) are insufficient evidence to justify a site percentage of 50.00%. Further no justification for the exclusion of 'risk and profit' is given. Such allowance would adjust his proposed site percentage downwards.

39. The Tribunal prefers Mr Watkins approach which is supported by a devaluation of the available evidence of site values.

40. **The Tribunal** determines the site percentage to be 33.00% - **£118,800.000.**

The Section 15 Rent

41. **Mr Saunders** says the Section 15 rent is calculated on the basis of '*yield a developer would expect upon a letting at a fixed ground rent for 50 years subject to review after 25 years*'.

42. **Mr Wilkins** says the valuers have agreed the deferment rate at 5.00% and it follows therefore that it is correct to capitalise the Section 15 rent at the same rate as it has been de capitalised (*Custodian of Charities v Goldridge* (1973) 26 P and CR 191, (1973) 227 EG 1467).

43. **The Tribunal** prefers the approach of Mr Wilkins.

44. The Tribunal determines the Section 15 rent at 5.00% of the site value **£5940.00.**

Capitalisation rate for the Section 15 Rent

45. **Mr Wilkins** says the valuers have agreed the deferment rate at 5.00% and it follows that the capitalisation rate should also be 5.00%.
46. **Mr Saunders** says he has capitalised the Section 15 Rent at 7.00% on the basis that this is the '*yield a developer would expect upon a letting at a fixed ground rent for 50 years subject to review after 25 years*' and deferred at 4.75%.
47. **The Tribunal** noted the valuers have agreed the Deferment Rate at 5.00%.
48. Mr Saunders adopts the 'adverse differential' principle (*Wilkes v Larkcroft* 1983 WL 482252). A method described by Stuart Daniel QC in *Chilcott v Clinton Devon Estates* 1974 27 Property and Compensation Reports 282...."But as has been seen, this 'adverse differential' does not rest on any theory or principle of valuation" No justification or explanation is given in this for its use in this case.
49. **The Tribunal** draws the parties attention to *JGS Properties v King and Others* [2017] UKUT 0233(LC) which gave clear guidance that the rate to be adopted when deferring under the 67 Act is 5.25%. This decision acknowledged that there should be an additional 0.5% uplift in the deferment rate from the rate set in *Earl Cadogan and Others v Sportelli and another* [2008] UKHL 71 to reflect poorer growth outside Prime Central London.
50. Following *Custodian of Charities v Goldridge (above)* the Tribunal finds that it is correct that the same rate should be used for capitalisation and de-capitalisation and since the parties have agreed the capitalisation rate for the term it is logical to apply the same rate to the Section 15 rent i.e. 5.00%.
51. The Tribunal, concurs with the approach of Mr Wilkins and accordingly adopts 5.00%.

Valuations submitted by the parties

52. **The Applicant:** £8,691.00.
53. **The Respondent:** £16,500.00

Tribunal's Valuation

54. The Tribunal considered all of the evidence submitted by the Parties both oral and written and summarised above.
55. Applying the Tribunal's findings above, the Tribunal determines the amount of the premium as follows:

Term			
Existing Ground rent	£	200.00	
YP 19.65 years 7.00%		10.505	£2,101.00
1st review	£	400.00	
YP 25 years 7.00%	11.65		
PV 19.65 years 7.00%	0.2646	3.084	£1,233.42
2nd Review	£	800.00	
YP 24 years 7.00%	11.47		
PV 44.65 years 7.00%	0.049	0.561981	£449.58
Reversion to S15 Rent	£	5,940.00	
YP 50 years 5.00%	18.26		
PV 68.65 years 5.00%	0.035	0.640782	£3,806.25
Reversion to Entirety Value	£	360,000.00	
PV 118.65 years 5.00%		0.00306	<u>£1,101.60</u>
Premium			£8,691.85

Appeal Provisions

56. 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).
57. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

58. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Robert T Brown
Chairman