



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

- Case Reference** : CHI/43UM/OCE/2020/0016
- Property** : Cedar Cottage, Trigg's Lane, Woking,
Surrey GU21 7PL
- Applicants** : Matthew Edward Lawson
Robert William Symes and Stephanie Anne
Symes
- Representative** : Hart Brown Solicitors LLP
- Respondent** : Jonathan Michael Hunt (missing)
- Type of Application** : Collective enfranchisement
Leasehold Reform Housing and Urban
Development Act 1993 (Missing Landlord)
- Tribunal Member** : D Banfield FRICS
Regional Surveyor
- Date of Decision** : 9 November 2020

DECISION

The enfranchisement price is determined to be £54,500.

The draft TR1 is approved subject to the amendment referred to at paragraph 47.

BACKGROUND

1. By an Order of District Judge McCulloch sitting at the County Court at Guildford and dated 6th November 2019, the Tribunal is required to determine the terms on which the freehold should be vested in the Applicants.
2. The Tribunal made directions on 24 August 2020 indicating that the application would be dealt with on the papers unless the applicant objected within 28 days, no objection has been received and the matter is therefore determined in accordance with Rule 31 of the Tribunal's Procedural Rules.
3. Directions also required the submission of a bundle to include a Valuer's expert report complying with certain requirements and a draft transfer.
4. Further Directions were made on 27 August 2020 giving further time for the submission of the bundle.
5. The bundle contains an expert valuation report from Ms Jennifer Freeborn MRICS dated 27 August 2020 in which she values the premium to be £49,500 as at 6 November 2019 being the date of the Court Order.
6. The Tribunal has not inspected the property.

Evidence

7. Ms Freeborn's report describes the property as a converted two storey semi-detached house with front and rear gardens and car park with access shared with Alpine Cottage adjoining. The property now comprises two flats, Flat 1 on the ground floor and Flat 2 on the first.
8. Flat 1 is accessed from the rear across the car park and garden. The accommodation comprises a kitchen with bathroom/WC off, living room and bedroom with small bay window.
9. There are old style upvc double glazed windows, a combi boiler providing space heating all main services and replacement bathroom and kitchen fittings. The overall floor area is about 38.6m² including the porch, 37m² without.
10. There have been no significant improvements for which adjustments need to be made. Outside there is a private rear garden and allocated parking space.
11. Flat 2 is accessed from the front of the property with similar accommodation to Flat 1. The overall floor area is 38.3m² and the outside space consists of a small front garden and allocated parking space.
12. The location is approximately 1 mile from Woking by foot and convenient for the A320 and M25.

13. Both leases are for terms of 99 years from 25 March 1977 expiring 24 March 2076 at fixed ground rents of £15p.a. for each flat.
14. The lessees' obligations are to insure and maintain the premises, the costs being borne on an equal shared basis.
15. Ms Freeborn provides a table of 5 long leasehold sales ranging in date from 21 December 2018 to 18 December 2019 at prices between £155,000 and £237,000 with areas between 30.3m² and 69.1m².
16. Details of 7 further properties were provided all of which were described as under offer at prices between £174,750 and £235,000. The areas ranged between 26.2m² and 52m² (EPC)
17. Ms Freeborn adjusts the sale prices by £20,000 where properties have a garden, £10,000 for a roof terrace, £20,000 for a garage and extra car space and between 5 and 10% for layout, location and condition. Having considered the Land Registry index, she makes no adjustment for time.
18. After adjustment she analyses them to £4,292 per sq.metre. Applying this rate to the floor areas and adding for gardens she arrives at rounded amounts of £181,800 for Flat 1 and £171,700 for Flat 2.
19. Although the roof space is demised to Flat 2 Ms Freeborn does not consider there is any development or other value to be added.
20. Following the guidance of *Nicholson v Goff* 2006 she has taken 8% as the capitalisation rate to reflect the modest ground rent fixed throughout the term.
21. The deferment rate is taken at 5% following Sportelli.
22. In arriving at her relativity Ms Freeborn has failed to find evidence of sales of leases of around 58 years and has therefore turned to graphs of relativity and existing authorities.
23. Ms Freeborn dismisses the Savills 2002 and 2015 graphs on the grounds that they are in respect of PCL and it is unclear whether there is a difference in relativity between PCL and outer markets. Reference is also made to the reservations made of them in the Munday decision and that unlike the Gerald Eve graph they do not influence the market. The Gerald Eve graph is preferred and indicates 78.83%. The Greater London and England graph at 82.61% also has an affect on the market.
24. Accepting the deficiencies in the available graphs, in the absence of transactional evidence no better solution is suggested.
25. Taking the Gerald Eve graph as a starting point it is likely that a number of the Outer London graphs have had an upward influence on relativities. That short leases in the provinces should be worth more than in PCL seems

implausible and there are doubts as to the statistical robustness of the provincial graphs.

26. However, the decision in Munday is that it is not a function of a tribunal to tell the market how to behave and it has no power to replace market forces at a past valuation date by others that might be considered ought to have had an influence.
27. At the valuation date the market was somewhat influenced by the 2009 RICS Greater London and England graphs whilst noting that the data was collated prior to the global recession and therefore less relevant than it was.
28. A more recent graph, the Leasehold Valuers graph 2017 based on settlement evidence shows a relativity of 83.09%.
29. A paper by Richard Murphy of John Clarke surveyors comparing the difference between the Savills 2002 and 2015 graphs indicates a percentage difference of 2.65% should be applied to the 2009 Greater London and Rest of England graph.
30. Referring to the Denholm v Stobbs (2016) case where the Gerald Eve graph was accepted as a starting point it was also accepted that there was a slight differential between PCL and properties outside it and Ms Freeborn has used her judgement and experience to weigh those influences.
31. Based on the above Ms Freeborn assesses relativity at 78.15% which she calculates as the average of ;
 - Gerald Eve graph @ 75.55%
 - Savills Unenfranchiseable graph @ 75.75%
 - The average of the 2009 RICS Greater London and England graphs reduced by 2.5% following analysis by Richard Murphy of John Clarke Surveyors which calculates to 80.54%

Form of transfer

32. A draft TR1 appears at pages 125 – 128 of the bundle.

Decision

33. Ms Freeborn has valued the interests as at 6 November 2019 being the date of the Vesting Order. With regard to the valuation date however, Section 27 (1)(b) of the Leasehold Reform Housing and Urban Development Act 1983 refers to; *“on such terms as may be determined by the appropriate tribunal to be appropriate with a view to the interests being vested in the those persons in like manner (so far as the circumstances permit) as if the applicants **had at the date of their application** given notice under section 13 of their claim” (the Tribunals emphasis)*
34. The date of the claim in this case was 10 October 2018 and there is nothing in the bundle to suggest a reason for departing from that date.

35. The Tribunal accepts Ms Freeborn's analysis of the comparables and in view of the statistics from Land Registry does not intend to make adjustments for the earlier valuation date. The Tribunal therefore determines that the long leasehold values are for Flat 1 £181,800 and for Flat 2 £171,700.
36. The Tribunal does however consider that an uplift to notional Freehold is required which it takes at the "Contactreal" amount of 1% difference giving Freehold values of £183,636 and £173,434 respectively.
37. The Tribunal accepts Ms Freeborn's capitalisation rate of 8% and deferment rate of 5%.
38. Turning now to relativity the Tribunal accepts that in the absence of transaction evidence graphs must be relied upon. The question of course is which graphs?
39. Ms Freeborn has relied on the Gerald Eve 2016 and Savills Unenfranchiseable graphs which she averages with the 2009 RICS Greater London and England graph adjusted by 2.5% which is indicated as following Richard Murphy's paper although with a discount of 2.5% rather than the 2.65% that is referred to at para 29 above. Applying these percentages [75.55+75.75 + 80.11 (82.61-2.5)] I arrive at 77.13% rather than 78.15% as indicated by Ms Freeborn.
40. Whilst acknowledging the Upper Tribunal guidance given by the cases referred to by Ms Freeborn the Tribunal has also considered that of *Deritend Investments (Birkdale) Limited v Ms Kornelia Treskonova* [2020]UKUT0164(LC) . This case related to a lease with 55.95 years unexpired and a valuation date of 10 July 2018.
41. The parties' valuers contended for, on the one hand the Savills 2016 and Gerald Eve 2016 graphs combined with the Beckett and Kay mortgage dependent graph and on the other the RICS 2009 graphs.
42. At paragraph 58 of his decision the Deputy President said "*The guidance given by this Tribunal endorses the use of the Savills and Gerald eve 2016 graphs where there is no transaction evidence, notwithstanding that the subject of the valuation is outside PCL. If persuasive evidence suggests that the resulting relativity is not appropriate for a particular location a tribunal would be entitled to adjust the figure suggested by the PCL graphs. The 2009 RICS graphs do not provide that persuasive evidence and if it is to be found it is likely to comprise evidence of transactions; if those are available it may be unnecessary to make use of graphs at all.*"
43. At paragraph 59 the Deputy President continued " *We are satisfied that the outcome justified by the evidence provided to the FTT was a determination based on the average of the two 2016 PCL graphs. For the reasons we have already explained we do not endorse Mr Sharp's*

averaging of the resulting relativity figure by reference to the Beckett and kay 2017 graph”.

44. Following this guidance, the Tribunal, in determining the relativity to be applied, has taken an average of the Gerald Eve 2016 and Savills Unenfranchiseable graphs at the corrected valuation date of 10 October 2018 [75.55+75.75] giving an average of 75.65%

45. Applying this percentage to the freehold values determined at para 36 above current leasehold interest may be assessed at £138,920 and £131,203 for Flats 1 and 2 respectively.

46. In accordance with the Tribunal’s valuation set out below the enfranchisement price is determined to be £54,500.

47. The draft TR1 is approved subject to the following amendment;

- Box 8 to state “The sum of £ (premium-determined in words and figures) has been paid into Court”

D Banfield FRICS
Regional Surveyor
9 November 2020

PERMISSION TO APPEAL

1. A person wishing to appeal the decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. 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.
4. 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.

Tribunal's valuation

Lease Terms	99yrs	25-Mar-77
Valuation date		10-Oct-18
Unexpired term		57.45
Freehold uplift		1%
Capitalisation rate		8%
Deferment rate		5%
Long leasehold values		
Flat 1	£181,800	
Flat 2	<u>£171,700</u>	£353,500
Uplift to freehold		£357,071
Existing lease value		
@Relativity	75.65%	£270,124
Ground rents (combined)		£30

Diminution of freehold

Loss of ground rent				£30	
Years Purchase	57.45	years @	8%	12.34978432	£370

Reversion to freehold

Capital Value				357,071	
Present value of £1 in	57.45	years @	5%	0.0606282	<u>£21,649</u>

Freeholder's present interest

£22,019

Marriage Value calculation

Value of existing interests

Freeholder	£22,019	
Leaseholders	<u>£270,124</u>	
Sub-Total		£292,143

Value of proposed interests

Freeholder	£0	
Leaseholders	<u>£357,071</u>	
Sub-total		£357,071

Total marriage value

£64,928

Freeholder's share at 50%

£32,464

Total

£54,483

Enfranchisement price

say

£54,500

