



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

Case Reference : **BIR/00CN/OLR/2021/0014**

Property : **29 Pavenham Drive Edgbaston
Birmingham B5 7TN**

Applicant : **R & P Alipour**

Representative : **Lawrence & Wightman; Keith Chew**

Respondent 1 : **WEL (No.1) Limited**

Respondent 2 : **Bryant Homes Central Limited /
Taylor Wimpey UK Limited**

Representative 1 : **eBureau Ltd; Geraint Evans**

Representative 2 : **Shepherd Property Consultants**

Type of Application : **Application under Section 21(1)(a)
and Section 21 (1) (ba) of the
Leasehold Reform Act 1967**

Tribunal Members : **Mr N Wint FRICS
Mr T. Wyn Jones BSc Dip Surv FRICS
MCI Arb MEWI**

Date of Hearing: **23rd June 2021**

Date of Decision : **22nd July 2021**

DECISION

DECISION

1. The Tribunal determines that, taking account of the evidence adduced and the Tribunal's own general knowledge and experience, the price payable by the Applicant for the acquisition of the freehold interest in the property known as **29 Pavenham Drive Edgbaston Birmingham B5 7TN** (the 'Property') in accordance with section 9(1) of the Leasehold Reform Act 1967 (as amended) is **£11,900 (Eleven Thousand & Nine Hundred Pounds)** calculated as set out in the Appendix below.

REASONS FOR THE DECISION

Introduction

2. This is an application received by the Tribunal on 12 April 2021, under section 21(1)(a) of the Leasehold Reform Act 1967 (the 'Act') for a determination of the price payable for the Property under section 9 of the Act and also an application under section 21(1) (ba) of the Act for a determination of the reasonable cost's payable under section 9 (4).
3. The Applicant served a Notice of Claim to acquire the freehold of the house and premises on the Respondent dated 21 September 2020. The Landlord's Reply to the Tenant's notice was served by the Stevensons Solicitors dated 11 November 2020 admitting the claim.
4. Directions were issued by the Tribunal on 16 April 2021.
5. The Tribunal understands that terms have been agreed with the head-leaseholder (Respondent No. 2) and the application to determine the landlord's recoverable costs has been stayed.
6. Due to the Covid 19 public health emergency the Tribunal has not been able to inspect the Property. The parties have also confirmed they are content to proceed without a hearing and by way of documents only.
7. In accordance with the Tribunals Directions the Applicant and Respondent have prepared and submitted their valuations. Mr Chew for the Leaseholder submitted a valuation of **£11,727.00** and Mr Evans for the freeholder a valuation of **£56,400.00**.

The Law

8. The relevant law in relation to the application is set out in section 8, 9, 14 and 15 of the Leasehold Reform Act 1967 as amended by the Commonhold and Leasehold Reform Act 2002.
9. Under section 8 (Obligation to enfranchise) where a tenant of a house has a right to acquire the freehold, and gives to the landlord written notice of his desire to have the freehold, then the landlord shall be bound to make to the tenant, and the tenant to accept, (at the price and on the conditions so provided) a grant of the house and premises for an estate in fee simple absolute, subject to the tenancy and to tenant's incumbrances, but otherwise free of incumbrances.
10. Section 9 of the Act (Purchase price and costs of enfranchisement, and tenant's right to withdraw) provides:
 - (1) the price payable for a house and premises on a conveyance under section 8 shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:
 - (a) 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) it was to be so extended;
 - (b) on the assumption that the vendor was selling subject, in respect of rent charges to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and
 - (c) 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.

11. Section 14 of the Act (Obligation to grant extended lease) provides that where a tenant of a house has under this Part of this Act a right to an extended lease, and gives to the landlord written notice of his desire to have it, then except as provided by this Part of this Act the landlord shall be bound to grant to the tenant, and the tenant to accept, in substitution for the existing tenancy a new tenancy of the house and premises for a term expiring fifty years after the term date of the existing tenancy.
12. Under section 15 (Terms of tenancy to be granted on extension) the new tenancy to be granted under section 14 above shall be a tenancy on the same terms as the existing tenancy as those terms apply at the relevant time, but with such modifications as may be required or appropriate to take account:
 - (a) of the omission from the new tenancy of property comprised in the existing tenancy; or
 - (b) of alterations made to the property demised since the grant of the existing tenancy; or
 - (c) in a case where the existing tenancy derives (in accordance with section 3(6) above) from more than one separate tenancies, of their combined effect and of the differences (if any) in their terms.
13. In addition, section 15 provides that from the original term date the rent payable for the house and premises shall be:
 - (a) the ground rent representing the letting value of the site (without including anything for the value of buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy;
 - (b) the letting value at the date from which the rent based on it is to commence, but as from the expiration of twenty-five years from the original term date the letting value at the expiration of those twenty-five years shall be substituted, if the landlord so requires, and a revised rent become payable accordingly;
 - (c) the letting value shall be determined not earlier than twelve months before the specified time (the reasonable cost of obtaining a valuation for the purpose being borne by the tenant), and there shall be no revision of the rent as provided by paragraph (b) above unless in the last of the twenty-five years there mentioned the landlord gives the tenant written notice claiming a revision.

14. The purchase price payable by the tenant under section 9(1) is, therefore a site valuation with a 50 year lease extension (under section 14) assuming that the tenant and members of the family residing in the house are not buying or seeking to buy, to the effect that any element of marriage value is excluded, there is no right to acquire the freehold and the lease has been extended.
15. In summary, this is calculated as follows:
 - (i) The capitalised value of the rent payable under the tenancy from the date of service of the Notice of the Tenant's Claim until the original term date
 - (ii) The capitalised value of the section 15 rent payable from the original term date until the expiry of the 50 year extension (having regard to the provision for review after the first 25 years of the extension)
 - (iii) The value of the landlord's reversion to the house and premises after the expiry of the 50 year extension, on the basis Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy
 - (iv) The value of the landlord's right under section 17 to determine the 50 year extension for redevelopment purposes
 - (v) The effect of the new easements and restrictive covenants in the conveyance
 - (vi) The value of the other rights under the extended lease extinguished on the acquisition of the freehold
16. Where section 9(1) of the Act applies, the purchase price and cost of enfranchisement is determined on the basis of the value of the land and there is no marriage value.

The Lease

17. The underlease dated 7 August 1980 was originally granted between Bryant Homes Ltd (as Lessor) and Barry E Cohen and Rovena Macdonald (as Lessee).
18. The lease describes the Property as all that piece of land with frontage to Pavenham Drive shown edged red on the plan and marked Plot Number 14 together with the dwelling house and garage.
19. The lease was granted for a term of 99 years from 29 September 1976 (less 3 days) subject to an annual ground rent of £60 until 29 September, rising

to £90 per annum until 29 September 2026, £120 per annum until 29 September 2051 and for the remainder of the term £150 per annum.

The Property

20. The Property is located in an established residential area fronting onto Pelham Drive which is a cul-de-sac on the south eastern side of the A38 Bristol Road, one of the main arterial routes on the south side of Birmingham city centre.
21. The Property is a two-storey semi-detached house built in late 1970's of brick and tiled roof construction. The ground floor accommodation comprises a hallway with guest cloakroom, through lounge/ dining room and kitchen. On the first floor is a landing with two double bedrooms, two single bedrooms and a bathroom. Externally there are gardens to the front and rear and an integral single garage.
22. The windows are UPVC double glazed and heating is provided by a gas fired central heating system with a wall mounted boiler.
23. The plot is a level regular site extending to approx. 426 sq. yds.
24. The Tribunal understands that the Property is in average condition and has not been extended.

Matters agreed between the parties

25. The following matters are agreed between the parties:
 - (i) Site Percentage: 35%
 - (ii) Capitalisation rate: 6%

Matters in dispute between the parties

26. The following matters are in dispute:

	<u>Applicant</u>	<u>Respondent</u>
(i) Valuation Date:	21 Sept. 2021	23 Sept. 2021
(ii) Apportioned Ground Rent:	(i) £52.00	£63.50
	(ii) £70.50	£70.50
	(iii) £88.00	£88.00

(iii)	Deferment Rate:	5.25%	2.75%
(iv)	Standing House Value:	£420,000	£465,000
(v)	Entirety Value:	£450,000	£485,000

Issue No. 1 – Valuation Date

27. Mr Chew for the Applicant advises that the Notice of Claim dated 21 September 2020 was served on the freeholders WEL (No. 1) Limited and the intermediate leaseholders Bryant Central Homes Limited. Therefore, the valuation date for the purpose of the application is 21 September 2020 and as at that date the lease has 55.01 years unexpired.
28. Mr Evans for the Respondent advises that although the Notice of Claim is dated 21 September 2020 under Part 6 of the Civil Procedure Rules (CPR) the deemed date of service is the second day after it was posted (provided that day is a business day). As 21 September was a Monday the deemed date is Wednesday 23 September and as at that date the lease has 55 years unexpired.
29. The Tribunal finds that the valuation date for the purposes of this application is the date of the Notice served, 21 September 2020.
30. The apportioned ground rent payable in the first period is therefore 6 years and 9 days, the second period 25 years and in the final period 23 years, 11 months and 28 days.
31. The unexpired term is 55 years and 6 days.

Issue No. 2 – Apportioned Ground Rent

32. Mr Chew has adopted an apportioned ground rent of £52.00 per annum rising to £70.50 per annum in 2026 and £88.00 per annum in 2051. In support, Mr Chew refers the Tribunal to an email dated 13 May from Stephen Prichard of Shepherd Property Consultants confirming that the current apportioned head rent payable by Taylor Wimpey UK Ltd to the freeholders WEL (No. 1) Ltd is £52.00 per annum which increases to £70.50 per annum in 2026 and £88.00 per annum in 2051.
33. Mr Evans has adopted an apportioned ground rent of £63.50 per annum rising to £70.50 per annum in 2026 and £88.00 in 2051.

34. The Tribunal has apportioned ground rents as confirmed by Mr Shepherd and adopted by Mr Chew.

Issue No. 3 – Deferment Rate

35. Mr Chew has adopted a deferment rate of 5.25% based on his experience and having regard to various leading cases determined by the Tribunal.
36. In arriving at his adopted deferment rate Mr Chew refers to the Upper Tribunal decision given in respect of *Zuckerman & Others v Trustees of the Calthorpe Estate (LRA/97/2008)* (“Zuckerman”) where the rate of 6% was adopted. However, to reflect the difference between a flat (in Zuckerman) and a house (the subject Property) he makes a deduction of 0.25% to reflect the increased management risk for flats and a further deduction of 0.25% for the perceived lower risk for houses to arrive at an adjusted rate of 5.5%.
37. Mr Chew’s then refers the Tribunal to the approach adopted in *Cadogan and Another v Sportelli and Another [2007] EWCA Civ 1042* (“Sportelli”) which determined the deferment rate at 4.75% which he then adjusts upwards by 0.5% following Zuckerman to reflect the lower growth rates in the West Midlands compared to Prime Central London.
38. Mr Chew then suggests, that following *Mansal Securities Limited and Others [2009] LRA/185/2007* (“Mansal”), a further addition of 0.25% for the risk premium given that the reversion is to a ground rent and the possibility of increased volatility and illiquidity should be made, thereby again arriving at a deferment rate of 5.5%; in effect to reflect the fact that there is a disadvantage to the holder of a s.9(1) investment – who is obliged to grant a 50-year extension at the end of the term, if the leaseholder so desired.
39. However, Mr Chew then refers to the Upper Tribunal decision in *JGS Properties Limited v King & ORS [2017] UKUT233 (LT)* which upheld the decision of the First-tier Tribunal that there should be an addition of 0.5% to the deferment rate set in Sportelli to reflect the poorer growth rates outside PCL but that there should be no further adjustment for volatility thereby arriving at a rate of 5.25%.
40. In further support of this 0.5% addition Mr Chew refers the Tribunal to *Sinclair Gardens Investments (Kensington) Ltd RE: 7 Grange Crescent [2014] UKUT 79 (LC)* where the Upper Tribunal held that a 0.5% addition should apply to reflect the locations poorer long term growth prospects

compared to PCL and avoiding the need to reconsider all the evidence adduced in Zuckerman.

41. Mr Evans refers to Arbib and Sportelli as his starting point. He suggests that as the market and economy are now quite different to when these cases were decided the adoption of a constant deferment rate is wrong; in effect the starting point being a risk-free investment as reflected by index-linked gilts and that any change in deferment rates only occurs when a trend in risk-free yields has become established or that a trend can be seen to establish a new level of yields.
42. In Sportelli, Mr Evans refers to para. 122 which states that the deferment rate in future cases should be stable although the potential for change needs to be recognised. In the decision it was held that the deferment rate would not vary on a daily basis to reflect any daily changes in the yield of index-linked gilts as the deferment rate is a tool to assess a long-term investment, one of the features of which is stability rather than volatility; that is unless a trend in the risk-free rate can be identified or that the long-term prospects of growth in the residential property market has changed or that the level of demand for residential reversions has changed.
43. In effect, the decision in Sportelli held that it was necessary to show there to have been a change in risk-free yields having occurred over a considerable period of years before any changes in deferment rates can be made/ considered.
44. Mr Evans also refers the Tribunal to the decision in Sportelli where it was held that the deferment rate for houses should be determined as follows:

Risk Free Rate (RFR)	2.25%
<u>Less</u> Real Growth Rate (RGR)	2.0%
<u>Add</u> Risk Premium (RF)	4.5%
 Deferment Rate	 4.75%

45. In Sportelli, it was held that the RFR was the return demanded by investors for holding an asset with no risk, effectively a government security.
46. Mr Evans therefore contends that as interest rates have fallen dramatically since 2017 it can no longer be assumed that investments will grow and that there is now the risk that the value of investments may in fact begin to decline. Mr Evans concludes that as a consequence of the change in the

economy and investment market since the decisions in Arib and Sportelli the RFR should be reviewed.

47. In support of this Mr Evans submits evidence in respect of the Bank of England lending rates between 2003 and 2021 showing a decline from 3.75% to 0.1% with a step change in late 2008 following the credit crisis that occurred at the time. In addition, Mr Evans submits further evidence from the UK Debt Management Office showing a drop in maturity rates between 2003 and 2021, GILT yields showing similar reductions over the same period and returns on NS&I investments.
48. This according to Mr Evans is evidence of a long-term change in the risk-free yield and is sufficient to require an adjustment to the RFR which in turn requires an adjustment to be made to the established deferment rate.
49. Mr Evans concludes that a nominal RFR of 0.25% is appropriate producing a deferment rate of 2.75%.
50. Mr Evans also refers the Tribunal to Zuckerman and acknowledges that although he has previously argued, without success, that this adjustment should not be made as the RGR on Kelton Court exceeds 2% now considers that the step gradation he refers to refers to para. 88 of Sportelli that states the deferment rate could require adjustment for location however based on the evidence adduced there was no justification for any adjustment to be made and that no adjustment to the real growth rate is appropriate given the long-term basis of the deferment rate and that any difference of a local nature may be reflected in the freehold vacant possession value.
51. The Deferment Rate is the annual discount rate applied, on a compound basis, to an anticipated future receipt (assessed at the current price of a property) in order to assess the present value of the right to vacant possession of a residential property at the end of a leasehold to which the freehold is subject.
52. The Tribunal finds that the starting point for the deferment rate is Sportelli and JGS Properties which determined the rate at 4.75% (Risk Free 2.25% less Real Growth 2.00% plus Risk Premium 4.50%).
53. The Tribunal has also followed the guidance in Sportelli that unless there is strong evidence to the contrary the deferment rate should remain consistent and is not persuaded by the evidence from Mr Evans that an adjustment to the RFR should be made.

54. The Tribunal has also made a further addition of 0.5% to reflect the decision in Zuckerman, in respect of the lack of growth between Prime Central London (PCL) and the West Midlands.
55. The Tribunal makes no deduction (0.25% as per Mansal), as we see no reason why the house would not be standing at the expiry of the 50-year extension. The Tribunal is also aware that the case in Mansal was uncontested and determined at the heart of the recession, since which time the wider market conditions have improved and consider that the risk of illiquidity.
56. The Tribunal notes the comments of N J Rose FRICS at paragraph 27 of Mansal:
- “Since the reversion in the case of section 9 (1) is to a ground rent only, a potential purchaser is likely to require a higher risk premium to compensate for the increased volatility and illiquidity than if the reversion also included a house standing on the site.”
57. The Tribunal also notes the comments by A J Trott FRICS in JGS Properties Limited, in particular at paragraph 23:
- “The capital value of the site is usually found by using the cleared site approach (by reference to direct sales comparables) or the standing house approach (by reference to the entirety value). In Mansal and in these appeals the parties relied on the standing house approach and took the site value as a percentage of the entirety value. The increased risk of volatility referred to in Mansal reflected the gearing effect that is found in residual valuation. That affect is absent where the site value is taken as a (fixed) percentage of the entirety value since the site value will then be directly proportional to the entirety value and will be no more or less volatile than the house value from which it is derived. It seems to me that the site value may not be as volatile as suggested in Mansal and that Mr Davis’s acceptance of a 0.25% adjustment is generous. I do not think it is justified in this instance.”
58. The Tribunal concludes that the deferment rate is 5.25%.

Issue No. 4 – Standing House Value

59. Mr Chew has considered the sale of 37 Pavenham Drive which was sold in December 2018 at £425,000. It is similar in design to the subject Property however includes an en-suite shower room off the main bedroom.

60. Mr Chew has also considered 39 Pavenham Drive which was put up for sale in December 2020 at an asking price of £425,000 and was sold at £405,000 in May 2021. It is similar in design to the subject Property and has central heating and double glazing throughout but has not been extended but the bathroom and kitchen fittings are dated.
61. Mr Chew advises he has carried out an internal inspection of the subject Property and considers it is in reasonable condition but the kitchen and bathroom fittings are dated. Also, as the Property does not have an en-suite Mr Chew considers this would be seen as a negative feature given there are 4 bedrooms.
62. Having regard to the evidence Mr Chew concludes that the standing house value of the Property is £420,000.
63. Mr Evans has adopted the standing house approach given the lack of open market rental evidence.
64. Mr Evans has also considered 37 Pavenham Drive however is of the view that since December 2018 the market has risen partly due to the effects of the covid pandemic and the changing requirements of purchasers.
65. In addition, Mr Evans has considered three other comparable properties which were all brought to the market in late 2020 and early 2021; 63 Pavenham Drive, an extended 4 bedroom house, which is under offer for £486,000, 65 Pavenham Drive, an un-extended 4 bedroom house with an asking price of £465,000 and 39 Pavenham Drive, an un-extended 4 bedroom house which appears in need of modernisation, which was offered to the market at £425,000 and is now under offer at £405,000.
66. Having regard to the evidence Mr Evans concludes that the standing house value of the Property is £465,000.
67. The Standing House Value is the value of the Property in its existing form and on the basis that it has not been developed to its full potential.
68. The Tribunal considers the evidence in respect of 37 Pavenham Drive and 39 Pavenham Drive the most helpful. No. 37 is the same design and broadly offers the same accommodation however as it has the benefit of an en-suite and predates the subject Property's valuation date by approximately 1 year the Tribunal considers it less relevant than No. 39 which is also un-extended and the same design as the subject Property but was placed on the market more recently in December 2020.

69. Both No.63 and No. 65 are different designs and are both larger properties and therefore less comparable and as advised by Mr Evans are under offer and not therefore concluded sales.
70. Mr Evans also considers that market values have broadly increased between December 2018 and 2021, and although the Tribunal accepts that values have risen during that period in many areas, the evidence from this location does not appear to support this.
71. The Tribunal therefore finds that the standing house value is £420,000.

Issue No. 5 – Entirety Value

72. Mr Chew considers that there is scope to extend the Property at the rear having regard to the plot size.
73. Mr Chew advises there are no properties in the locality of this type that have been extended and have either recently been sold or are currently on the market. However, Mr Chew refers to 65 Pavenham Drive which is a slightly larger property with a garage to the side providing the opportunity to extend over. Mr Chew also advises that 65 has in fact been extended to the rear of the garage to provide an additional dining room and also has the benefit of two reception rooms and an en-suite off the main bedroom. The agent advises it is now under offer at the asking price of £465,000.
74. Mr Chew has also considered 63 Pavenham Drive which is larger than the subject Property having two reception rooms, en-suite off the main bedroom, a conservatory and was marketed at offers over £500,000 but is now under offer at £486,000.
75. Having regard to the evidence Mr Chew concludes that the Property could be extended to include a large kitchen/ diner to the rear enabling the creation of a separate living room and based on this arrives at an entirety value of £450,000.
76. Mr Evans provides very limited reasonings as to how he has arrived at an entirety value of £485,000 simply advising he has had regard to his evidence and his judgement.
77. The Entirety Value is the value of the Property assumed to be modernised, in good condition and including any tenant's improvements. It effectively represents the vacant possession freehold value of the Property after having fully developed the site provided the potential is realistic and not fanciful with no deduction for any costs that may be required or uncertainty over obtaining planning permission or other works approvals.

78. The Tribunal finds that there is scope to extend the Property to the rear of the garage given the shape of the plot and having regard to the existing layout. This would create a large kitchen/ dining area and a large separate living room and sitting room/ study similar in layout to No. 65.
79. The Tribunal therefore considers the subject Property's entirety value would be £460,000 after adjusting for the lack of an en-suite to the main bedroom.

Appeal Provisions

80. 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).

Nicholas Wint FRICS

Appendix

VALUATION

29 Pavenham Drive Edgbaston Birmingham B5 7TN

Applying that determination to the matters agreed by the parties, the Tribunal's valuation is as follows:

1. Term

Ground Rent	£52.00	
YP 6.01 years @ 6%	<u>4.9242</u>	£256.06
Ground Rent	£70.50	
YP 25 years @ 6%	12.7834	
PV 6.01 years @ 6%	<u>0.7046</u>	£635.01
Ground Rent	£88.00	
YP 24 years @ 6%	12.5504	
PV 31.01 years @ 6%	<u>0.1642</u>	£181.35

2. Reversion – 50 year lease

Entirety Value	£460,000	
Site Apportionment @ 35%	£161,000	
S15 MGR @ 5.25%	£8,452.50	
YP 50 years @ 5.25%	17.5728	
PV 55.01 years @ 5.25%	<u>0.0599</u>	£8,897.19

3. Reversion – Standing House

Standing House Value	£420,000	
PV 105.01 years @ 5.25%	<u>0.0046</u>	<u>£1,932.00</u>
TOTAL		£11,901.61
PREMIUM PAYABLE, SAY		£11,900.00