



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

Case Reference(s) : **BIR/00CN/OAF/2021/0012
BIR/00CN/OC6/2021/0004**

Property : **40 Rollason Road, Erdington, Birmingham,
B24 9BH**

Applicant : **Shoaib Mir**

Representative : **Anthony Brunt & Co**

Respondent : **Aswin Sharma**

Representative : **Barnett Alexander Conway Ingram LLP
Prickett and Ellis Surveyors Limited**

Type of Application : **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 (ba) of the Act for a
determination of the amount of reasonable
costs payable under section 9 (4) of the Act.**

Tribunal Members : **V Ward BSc Hons FRICS
Judge P Ellis
T. Wyn Jones BSc Dip Surv FRICS MCI Arb
MEWI**

Date of Decision : **7 October 2021**

DECISION

Introduction

1. This is the Tribunal's decision in respect of an application to determine the purchase price of the freehold interest in 40 Rollason Road, Erdington, Birmingham B24 9BH ("the Property") pursuant to the provisions of the Leasehold Reform Act 1967 ("the Act").
2. The Applicant was represented by Mr A Brunt of Anthony Brunt & Co. The Respondent Freeholder was represented by Barnett Alexander Conway Ingram LLP and in respect of valuation matters by Mr J A Rollings BA (Hons) MRICS of Prickett and Ellis Limited.
3. The Applicant served notice to acquire the freehold interest dated 4 August 2020 and the Respondent replied by counter-notice dated 1 October 2020. The Applicant applied to the Tribunal, by an application dated on 24 June 2021, for the price to be determined in accordance with the Act.
4. The Property is held by way of a lease dated 10 October 2008. The lease is for a term of 99 years from and including 1 May 2000 to and including 30 April 2099. Ground Rent is payable as follows;

1 May 2010 to 30 April 2020	£750.00 pa
1 May 2020 to 30 April 2040	£1,500.00 pa
1 May 2040 to 30 April 2070	£3,000.00 pa
1 May 2070 to 30 April 2099	£6,000.00 pa
5. Neither Party requested an oral hearing, the Tribunal therefore makes its determination on the basis of the written submissions of the Parties.
6. The basis of valuation is to be in accordance with the provisions of section 9 (1A) of the Leasehold Reform Act 1967.

The Property

7. From the information provided by the parties, the Property appears to comprise a semi-detached house offering the following accommodation:

Ground Floor

Hallway
Two reception rooms
Kitchen

First Floor

Three bedrooms
Bathroom

The Property fronts onto Rollason Road, in the northern Birmingham suburb of Erdington. Birmingham city centre is approximately 4 miles to the south west.

The Law

8. The relevant law is section 9 (1A) of the Leasehold Reform Act 1967 which states as follows:

Notwithstanding the foregoing subsection, the price payable for a house and premises,—

(i) the rateable value of which was above £1,000 in Greater London and £500 elsewhere on 31st March 1990, or,

(ii) which had no rateable value on that date and R exceeded £16,333 under the formula in section 1(1)(a) above (and section 1(7) above shall apply to that amount as it applies to the amount referred to in subsection (1)(a)(ii) of that section)

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) 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; or an extended lease

(b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises

(i) if the tenancy is such a tenancy as is mentioned in subsection (2) or subsection (3) of section 186 of the Local Government and Housing Act 1989, or is a tenancy which is a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954 in respect of which the landlord is not able to serve a notice under section 4 of that Act specifying a date of termination earlier than 15th January 1999, under the provisions of Schedule 10 to the Local Government and Housing Act 1989; and

(ii) in any other case under the provisions of Part I of the Landlord and Tenant Act 1954;

(c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954;

(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;

(e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges . . . 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 purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and

(f) 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.

Matters agreed between the Parties.

9. Prior to the Tribunal meeting to consider its determination, the parties helpfully confirmed that the only items of disagreement were the capitalisation and deferment rates, the following matters having been agreed:

Entirety Value £200,000

The parties had also agreed that in this matter the standing house value and entirety value were the same.

Site Value Apportionment 33.3%

Period remaining until next ground rent review 19.74 years

Valuation Date 4 August 2020

Case Citations

10. The following cases are referred to in this decision:

Earl Cadogan and others v Sportelli and another [2007] UKHL 1 EGLR 153 (“Sportelli”).

Zuckerman & Others v Trustees of the Calthorpe Estate (LRA/97/2008) (“Zuckerman”).

Voyvoda v Grosvenor West End Properties [2014] L&TR 10 (“Voyvoda”)

(*Mansal Securities and Others* [2009] EW Lands LRA/185/2007) (“Mansal”).

JGS Properties and King, Sedro and Nunnington [2017] UKUT 0233 (LC) (“JGS Properties”).

The Submissions of the Parties

11. The Tribunal finds it convenient to list the Parties' submissions in respect of the disputed issues with the Tribunal's findings thereafter.

Capitalisation Rate

12. The Applicant. On behalf of the Applicant, Mr Brunt submits that the appropriate rate is 8.5% and comments that where the ground rent is fixed or variable to a relatively small degree, it is usual to employ a capitalisation rate of between 6% to 7% which is in line with other Tribunal determinations in the Midlands and his negotiated settlements with other surveyors. However, in this particular matter, the Applicant makes an adjustment due to the pattern of ground rent increases. Mr Brunt says that he is mindful of the Tribunal Eastern panel determination of 8.5% in the case concerning 18 Farringdon Court, Erleigh Road, Reading RGI SNT. Reference CAM/00C M/OLR/2019/0020 (“Farringdon Court”).
13. The Respondent. On behalf of the Respondent, Mr Rollings submits for a rate of 5.5%. Mr Rollings states that the rate usually agreed between valuers for properties where there is a modest ground rent, and where there is limited provision for rent review is 7.0% or thereabouts which has become effectively the “default rate” in such circumstances.

Noting the pattern of reviews in this matter, Mr Rollings outlines the factors in determining the capitalisation rate identified in *Nicholson v Goff* (2007) 1 EGLR (*Nicholson*):

- the length of the lease term;
- the security of recovery;
- the size of the ground rent (a larger amount being more attractive);
- whether there is provision for review of the ground rent; and
- if there is provision for review, the nature of it.

To Mr Rollings, it is clear from the above that the “default rate” would not be applicable in this case, and in the light of *Nicholson*, would an income stream from the subject property be more attractive or less attractive to an investor than would a modest ground rent or an investment with modest or infrequent rent reviews?

The best method to establish the appropriate capitalisation rate would in the opinion of Mr Rollings be the use of comparable evidence of the sale of similar ground rent investments, but unfortunately he has not been able to find sales of investments with increasing ground rents, directly comparable to the subject.

The evidence that was presented by Mr Rollings was of the sales of ground rent investments sold by public auction at or close to the valuation date where the freehold interests were subject to very long leases of 900 years or more (where the reversion has no value) to reduce the number of variables involved in the analysis. A schedule of this evidence was exhibited, together with the individual auction particulars. The prices achieved for most of the investments show yields in the range 5.00%-5.50% with the exceptions relating to smaller buildings with modest, fixed ground rents, where the purchase prices showed yields of 2.0% or less, and houses in Huddersfield where the sale prices demonstrated very small yields. It is likely that the purchasers of these latter investments were the leaseholders themselves, but as they were offered for sale by public auction, without a reserve price, there must have been an under-bidder competing for the investments.

Mr Rollings considered *Farringdon Court* and notes that as a First-tier Tribunal decision it is not binding on this Tribunal where a rate of 8.5% was determined on the basis of the evidence presented.

Looking at the value of the freehold interest in this case from the point of view of an investor, Mr Rollings considered that we have a substantial ground rent with significant, but infrequent, rent reviews. Compared to the returns that can be achieved from other investments, where the Bank Rate is currently 0.1%, Mr Rollings considers this to be an attractive investment. It is a single property where collecting the ground rent should be straightforward and involves very limited administration and if the leaseholder were to default in paying the ground rent, the freeholder would presumably be able to forfeit the lease and obtain possession of the property.

Returning to the guidance given in *Nicholson*, we have a ground rent that will be produced for a long period of time, where there are unlikely to be problems with recovery of the rent, where the ground rent is a significant sum and where

there is provision for reviews, albeit at infrequent intervals. Mr Rollings can see how the ground rent reserved in the lease of this property might adversely affect the value of the leasehold interest compared to similar houses with modest ground rents, but as the value of the freehold interest in this case is to be ascertained on the assumption that the Act confers no rights for the leaseholder to acquire the freehold interest, considers that the ground rent would be more attractive to prospective purchasers than would a standard ground rent investment of the type that would attract a 7.0% yield.

In the opinion of Mr Rollings opinion, based upon his own experience, and upon such evidence available, that equated to a yield of 5.50% which would be appropriate to use in capitalising the ground rent in this case.

Mr Rollings also drew attention to a Government announcement early in 2021 that it would look to implement the proposed reforms recommended by the Law Commission in the years prior to the valuation date to make it easier and cheaper for leaseholders to renew their leases or to buy the freehold interests in their buildings. The announcement by the Government came in January 2021, after the valuation date in this case. There are likely to be challenges to the proposed reforms, and the time that it will take to introduce these measures means that some, or all, may not be implemented for many years, if at all. Even if the reforms are introduced, it is unlikely that their effects will be retrospective, and therefore unlikely to affect the value of this investment.

14. The Tribunal. The relevant review pattern in this matter is 20 (the current period), 30 and 29 years although as noted by Mr Rollings, the levels of rental are significant and above what would be considered a typical amount of say £100 to £250 per annum. The Tribunal's first consideration is on the *Nicholson* principles and summarises these as follows:

- *the length of the lease term*; there is a significant unexpired lease term, just under 80 years at the valuation date;
- *the security of recovery*; the investment is well secured;
- *the size of the ground rent (a larger amount being more attractive)*; the current ground rent in this matter - £1500 – is a “collectable amount” that a Landlord could justifiably employ a professional to collect;
- *whether there is provision for review of the ground rent*; and, there are further reviews;
- *if there is provision for review, the nature of it*, the reviews allow the rental to double.

On the *Nicholson* principles therefore, the freehold interest in this property would be considered a better than average investment.

15. In *Farringdon Court*, the first four reviews were at 5 yearly intervals then moving onto a 25 year pattern until the end of the term. The rental started at £200 per annum and then increased at each 5 yearly review to £300/ £400/ £500 and at the 25 yearly pattern to £2,000/ £4,000 and £5,000 per annum. The parties in that case agreed that this was an onerous ground rent which needed to be reflected in the capitalisation rate. The tribunal in that case then moved on to quantifying that “reflection” as they considered that a purchaser would be aware of the adverse publicity associated with onerous ground rents and also the risk of government interference.
16. The Tribunal then considered whether the level of ground rent and the review pattern in this matter was onerous. In its report of 20 March 2019 on the Government’s programme of leasehold reform, the Select Committee for Housing Communities and Local Government did not arrive at an agreed definition of what is an onerous ground rent save that it could be considered as such if it is was disproportionate to the value of a home and materially affected the leaseholder’s ability to sell. Within the same report there is the comment; *Most developers and freeholders agreed that ground rents which doubled more frequently than every 20 years should be considered onerous.* Whilst developers and freeholders could not be considered impartial in such a debate, this in the opinion of this Tribunal does not seem an unreasonable statement. In this matter, the frequency of ground rent reviews, 20 years or more, is not the issue, it is the starting level of ground rent. However, in the round, the Tribunal does not consider these rent review provisions to be onerous. Even if it were, what would be the consequences? There have been no indications that the Leasehold Reform proposals to reduce future ground rents to a peppercorn would be made retrospective. However, the Tribunal accepts that some prospective purchasers would have a moral issue if a ground rent were to be considered onerous.
17. In summary, the Tribunal considers that this is not an onerous ground rent but constitutes a reasonable investment and better than a typical ground rent where the yield would be 6 to 7%. The level of rental would be of interest to a prospective purchaser and whilst the reviews are not frequent, they do show a guaranteed increase. Accordingly, the Tribunal adopts the rate proposed by Mr Rollings and adopts 5.5%.

Deferment Rate.

18. The Applicant. On behalf of the Applicant, Mr Brunt starts by considering *Sportelli* where the generic rate for houses within prime central London (PCL) was determined at 4.75% which was arrived at by taking a risk-free rate of 2.25%. deducting 2% real growth rate and then adding 4.5% for risk premium. He then adds that demand for properties and for property investments in PCL

is global; more than 86% of homebuyers of London residential property in the £6M plus bracket are from overseas. Demand in the Midlands is very different (properties are of a strikingly much lower value). The Court of Appeal dismissed the *Sportelli* appeal but left “the door open” to others to offer evidence as to deferment rates outside PCL. Ultimately following *Mansal and Zuckerman*, the Upper Tribunal adopted a rate of 5.25% in *JGS Properties* which Mr Brunt proposes here.

19. The Respondent. Mr Rollings also starts with *Sportelli* which was endorsed by *Voyvoda* but notes the *Mansal* and *Zuckerman* cases where regional differences in growth rates were observed. Mr Rollings comments that the subject property is an attractive semi-detached house in a good neighbourhood, where the growth in value is likely to follow national trends over time, especially following the effect of Covid-19, where properties outside London are proving to be more attractive to prospective purchasers and it could be argued, at least in the short-term, that growth rates will be higher outside London. Mr Rollings exhibited graphs and statistics from the Land Registry showing the trend in prices for semi-detached houses in London compared to Birmingham, appeared to be very similar, showing steady growth over time in both locations. These graphs and tables were included in the appendices to his report. Again, considering the Property itself and the area in which it is situated, Mr Rollings could see no reason to make an allowance for obsolescence that might affect the subject property any more than other similar properties elsewhere in the country. As there has now been such a long period of very low interest rates (with no real prospect of a significant rise in rates in the future) Mr Rollings considers that it could be argued that the deferment rate is now too high at 4.75%, with the risk-free rate now being well below 2.25%, and it is likely that this rate will be challenged.

However, following *Sportelli*, Mr Rollings has applied a deferment rate of 4.75% to calculate the value of the landlord’s reversion as no evidence has been provided that the growth rate in this area would be less good than in London, or that there is likely to be problems with obsolescence with this property compared to those elsewhere.

20. The Tribunal. In the *Sportelli* decision, the Lands Tribunal derived the risk free rate from Government linked bonds over a significant period of time and there are arguments for reviewing the same as noted by Mr Rollings. However, the Tribunal has not been persuaded that sufficient weight of evidence has been presented to it that it should depart from *Sportelli*. The Upper Tribunal adopted a rate of 5.25% in *JGS Properties* to reflect the lower growth rate for properties in the West Midlands which this Tribunal considers appropriate and hence considers that a deferment rate of 5.25% is apposite in this matter.

The Tribunal's Valuation

21. Applying those determinations to the matters agreed by the Parties, the Tribunal's valuation is as shown in the appendix below.
22. 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 40 Rollason Road, Erdington, Birmingham B24 9BH in accordance with the Leasehold Reform Act 1967 (as amended) is £40,310 (Forty Thousand, Three Hundred and Ten Pounds).

Costs

23. Directions for the costs application have been issued separately.

Appeal

24. 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).

Vernon Ward

APPENDIX ONE - VALUATION

Term

Period 1					
Ground Rent			£	1,500.00	£ 17,794.55
YP for years	19.74	5.50%		11.8630	

Period 2					
Ground Rent			£	3,000.00	£ 15,151.53
YP for years	30	5.50%		14.5337	
PV for years	19.74	5.50%		0.3475	

Period 2					
Ground Rent			£	6,000.00	£ 5,996.19
YP for years	29	5.50%		14.3331	
PV for years	49.74	5.50%		0.06972	

Section 15 Reversion

Entirety Value			£	200,000.00	
Site Value	33.3%		£	66,660.00	
MGR	5.25%		£	3,499.65	
YP 50 years @ 5.25%	50	5.25%		17.5728	
PV for years	78.74	5.25%		0.01779	£ 1,094.11

Ultimate Reversion

Standing House Value			£	200,000.00	£ 275.50
PV for years	128.74	5.25%		0.001377	

£ 40,311.87

say £ 40,310.00