



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

**Case Reference** : CAM/38UE/OCE/2019/0018

**Property** : Flats 1 and 2, 5 Merton Street, Banbury,  
Oxon OX16 4RP

**Applicants** : Mr Thomas Talbot Edmunds  
(Leaseholder Flats 1 and 2)

**Representative** : Spratt Endicott Solicitors

**Expert** : Mr Thomas Lindley MRICS, Savills

**Respondent** : Persons Unknown

**Type of Application** : To determine the price of the Freehold  
interest pursuant to Part 1 of the Leasehold Reform,  
Housing and Urban Development Act 1993 (The  
Act).

**Tribunal Member** : Mr R. T. Brown FRICS

**Date of Determination** : 7th October 2019 on the papers submitted to the  
Tribunal

**Date of Decision** : 14<sup>th</sup> October 2019

**DECISION**

1. The Tribunal determines the value of the Freehold interest in accordance with the provisions of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 at £13,700.00 (Thirteen thousand seven hundred pounds) and approves the Draft Form of Transfer submitted.

## **Background**

2. This is an application to determine the purchase price of the Freehold interest in a house converted into two flats pursuant to the Act.
3. The last known Freeholders were Mr Ronald George Hanley and Ms Teresa Margaret Brown. Their current whereabouts is unknown.
4. The Applicant, Mr Edmonds holds long leases of both Flats:

Flat 1: By a lease dated 12th April 1990 for a term of 99 years at a fixed annual ground rent of £35.00.

Flat 2: By a lease dated 26th October 1990 for a term of 99 years at a fixed annual ground rent of £35.00.

Both leases contain provision for the lessees, by way of a service charge, to maintain the structure and exterior of the property. Each Flat to contribute 50.00% of the cost incurred.

5. An order, in accordance with section 26 of the Act, made by Oxford County Court dated 17th June 2019 dispensed with the requirement to serve notice under Section 13 of the Act.
6. By the same order the Applicant is at liberty to apply to this Tribunal for the determination of the price to be paid for the Freehold interest pursuant to sections 26 and 27 of the Act.
7. The Applicant applied to the Tribunal on 22nd July 2019.
8. On 6th August 2019 the Tribunal issued Directions for the determination of the price (requiring amongst other matters that an Expert provide a valuers report) and draft form of transfer.
9. The Directions further stated that the matter would be considered on the papers submitted without a hearing unless such was requested. No such request was received and accordingly the matter was considered on the papers submitted.
10. In the circumstances and in accordance with Rule 3 (the overriding objective) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (S.I. No:1169) no inspection of the property was made by the Tribunal.

## **The Law**

11. The relevant law is Part 1 Chapter 1 of the Act which sets out the procedure for serving notice to enfranchise, the provisions where the Freeholder cannot be found (Sections 26 and 27). Schedule 6 to the Act sets out the valuation criteria to be adopted.
12. Rule 3 (the overriding objective) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013:
  - 3.(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
    - (2) Dealing with a case fairly and justly includes—
      - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
      - (b) to (e) *Not relevant to this case*
    - (3) The Tribunal must seek to give effect to the overriding objective when it—
      - (a) exercises any power under these Rules; or
      - (b) interprets any rule or practice direction.
    - (4) Parties must—
      - (a) help the Tribunal to further the overriding objective; and
      - (b) co-operate with the Tribunal generally.

## **Submissions**

13. A draft Form of Transfer of the Freehold Interest to the Applicant in the standard form is submitted and the Tribunal note there are no 'Additional Provisions' to be considered.
14. The Tribunal considered the valuers report provided by Mr Lindley of Savills summarised below:
  - a) The property is located in a primarily residential area to the west of Banbury town centre.
  - b) The property comprises a three storey 20th century terraced house converted to provide two apartments each with its own access:

Flat 1: Ground Floor: Living Room, Shower Room with w/c and sink, Galley Kitchen and Double Bedroom. The flat is in need of modernisation.

Flat 2: First and Second Floors: Ground Floor Lobby. First Floor: 2 Double Bedrooms. Second Floor: Kitchen, Bathroom, Reception room. The flat is in need of modernisation.

c) Valuation: Mr Lindley explained that under Schedule 6 of the Act the valuation date was the date of the Tribunal's determination. In this case he has adopted the date of the valuation as the valuation date (19th September 2019).

d) Capitalisation and Discount (Deferment) Rate: Mr Lindley adopted 6.00% for the capitalisation of the term and 5.00% for the Discount (Deferment) rate. He had adopted 5.00% after considering the 'Sportelli Court' case (5.00%), the 'Zuckerman' Kelton Court case (6.00%) and the 'Lazy Hill' case (5.75%).

e) Freehold value of the property: Mr Lindley had researched the market and concluded that the comparables were all either 'share of freehold' or very long leasehold and therefore similar to Freehold value. However a sale of the Freehold of the subject property had been agreed in the open market on a Freehold basis in the sum of £170,000.00. He acknowledged that this sum is below his comparables however the subject property is in very poor condition but provides compelling evidence of market value.

f) Market value of the existing lease: Mr Lindley was unable to find any true comparables of existing lease sales and accordingly had turned to the Graphs of Relativity for guidance. Savills Graph produced 84.00% and the Tribunal Graph 89.00%. He adopted 89.00%. He did not consider there any relevant lessee's improvements to be considered.

g) Applying those figures to the valuation matrix he arrived at premiums of £5,200.00 for Flat 1 and £8,500.00 for Flat 2 a total of £13,700.00.

### **Tribunal's deliberations and conclusions**

15. The Tribunal considered the draft form of transfer and noted there are no 'additional provisions' to be considered. The draft is confirmed.
16. The Tribunal considered carefully Mr Lindley's expert witness report and was unimpressed by the casual incomplete references to Court, Upper Tribunal and First-tier Tribunal decisions.
17. The Tribunal noted Mr Lindley had adopted the date of his valuation as the valuation date i.e. 19th September 2019. The correct interpretation is Section 27 (1)(b) of the Act is that the date of valuation is the date of the application to the court i.e. the 22nd of May 2019. The Tribunal makes no adjustment to the valuation because with 69.28 years remaining on the lease the effect on the valuation will be minimal.

18. The Tribunal noted that terms had been agreed for the sale of the Freehold together with the 2 leasehold flats in the sum of £170,000.00. Mr Lindley commented that whilst this was below the comparables it reflected the poor condition of the whole property. Mr Lindley did not then explain how this related to the valuation criteria set out in Schedule 6 Part II paragraph 3 of the Act.
19. The Tribunal notes Mr Lindley's correct starting point for the calculation of the Deferment Rate is *Earl Cadogan v Sportelli* [2007] 1 EGLR 153 (Sportelli) however since then a number of cases have been decided which indicate a slightly higher rate may be applicable.
21. The Tribunal mindful of its obligations under Rule 3 (above) and having considered the effect of these issues on the overall valuation decided not to issue further direction seeking a revised valuation.

### **Appeal Provisions**

1. 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).
2. 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.
3. 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 Brown FRICS  
Chairman