



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

Case Reference : BIR/00CR/OAF/2021/0015

Property : 17 Tamar Drive, Woodsetton, Dudley, West Midlands, DY3 1DA

Applicants : Gary Clayton and Julie Clayton (leaseholders)

Representative : Sherrey & Associates, Solicitors

Respondent : William and Mary Taylor (missing landlord)

Representative : None

Type of Application : To determine the sum payable into Court by lessees to purchase a freehold interest pursuant to Section 27 Leasehold Reform Act 1967 by Order of Birmingham County Court, 18th July 2019.
Claim No: B00BM569

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
Judge M.K. Gandham

Date and Venue of Hearing : None. Determined by paper submission

Date of Decision : **31/01/2022**

DECISION

Introduction

- 1 This is an application to determine the sum payable into Court by Lessees to purchase the freehold interest in 17 Tamar Drive, Woodsetton, Dudley, West Midlands, DY3 1DA, where the landlord cannot be found, pursuant to Section 27 Leasehold Reform Act 1967 ('the Act').
- 2 The Lessees have been unable to locate the freeholder to serve Notice to acquire the freehold and applied to Birmingham County Court for a Vesting Order on 6th March 2015. This was granted on 18th July 2019 by District Judge Ingram, subject to assessment of the price as at 6th March 2015 by the First-tier Tribunal (Property Chamber).

The Law

- 3 There are two known interests in the property:

Freehold	Owned by parties unknown. The lease had been granted by William and Mary Taylor to James Newman for 380 years from 26 th April 1712 at a peppercorn ground rent.
Leasehold	The leasehold interest was assigned to the Applicants in 2006.
- 4 The Applicants are the current leaseholders in occupation and wish to acquire the freehold. They have been unable to locate the present freeholders and applied to Birmingham County Court for a Vesting Order under Section 27 of the Leasehold Reform Act 1967. The application was made on 6th March 2015, which is the valuation date for present purposes.
- 5 The Court issued the Order on 18th July 2019, subject to determination of the price by the First-tier Tribunal (Property Chamber).
- 6 The Tribunal has considered the facts and assesses the price under section 9(1) of the Act.

Facts Found

- 7 The Tribunal inspected the property on 24th January 2022. It comprises a detached bungalow on an estate built around 1988. The accommodation comprises an entrance hall, living room, kitchen breakfast room, two double bedrooms and bathroom. It has a terraced front garden with lawn and drive to the side and attached single garage. The back garden has a patio, lawn and fencing to all sides.
- 8 It is of brick and tile construction and in good condition throughout.
- 9 The plot is relatively small but average for the estate. There is a small extension to the rear to create a breakfast room as part of the kitchen but there are no practical ways of building further extensions and the plot is considered fully developed.

Issues

- 10 The Court Order requires the Tribunal to determine the price of the freehold interest and any outstanding ground rent.

The price payable under section 9(1) of the Act

- 11 The Applicants submitted a valuation prepared by a Chartered Surveyor acting on their behalf, K.Chew Esq. FRICS of Messrs Lawrence & Wightman, Birmingham, and the Tribunal's determination of each item of the valuation is set out below.

12 ***Unexpired Term***

Applicant

Approximately 77 years two months.

Tribunal

The Tribunal accepts the term from the Land Registry entry and agrees the unexpired term at the valuation date but for calculation purposes, rounds to 77 years.

13 ***Value of Term Ground Rent***

Applicant

Nil, peppercorn ground rent.

Tribunal

The Tribunal agrees.

14 ***Freehold Entirety Value***

Applicant

The Applicants bought the lease in 2006 and the price paid at the time is of no assistance.

Mr Chew values the freehold at March 2015 at £190,000 having checked the sales records of the seven most recent sales in Tamar Drive from 2000 to 2012, all of which are discounted as historic, and taking account of sales of similar bungalows in the area:

10 Westerdale Close	September 2015	£175,000
1 Reynards Close	December 2015	£215,000
5 Reynards Close	October 2014	£200,000

Tribunal

The Tribunal inspected the exteriors of the three comparables, all of which are modern bungalows within a quarter of a mile of 17 Tamar Drive.

The bungalow in Westerdale Close appears similar but according to evidence published by Rightmove, has not been extended. On this basis, the value of the subject should be marginally higher.

The bungalows in Reynards Close appear better from the road frontage, the front gardens are deeper, the plots wider and there is more space between them. The Tribunal considers they would sell for more than 17 Tamar Drive if offered for sale.

The Act requires the price to be based on the rental value of the plot and the most usual way of assessing this is to calculate the maximum sale price of a notional house on the plot, which would not necessarily but may be the existing house if the plot is fully developed, and apply a percentage to assess the value of the plot relative to the whole. The Valuer then applies a notional rate of return to the plot value to assess its notional rental value for the purposes of section 15 of the Act.

The full potential value of the house or in this case bungalow is referred to as the 'entirety value', and the value of the existing house or bungalow, assuming freehold with vacant possession, is the 'standing house value'. The notional plot rental value or ground rent referred to in section 15 of the Act is generally known as the 'modern ground rent'.

Having considered the sales evidence of similar properties in the area the Tribunal agrees with Mr Chew and considers the entirety value to be £190,000, i.e. the maximum potential value of a fully developed bungalow on this plot in March 2015.

15 ***Site Value as Percentage of Entirety Value***

Applicant

34% as the plot slopes up from the road.

Tribunal

The Tribunal agrees.

16 ***Years Purchase***

Applicant

As there is a peppercorn ground rent the value of the term income is effectively nil and there would be no point determining the capitalisation rate.

Mr Chew submits for a deferment rate of 5.5% based on case law (e.g. see footnote below) and personal experience of negotiating numerous cases with other Valuers.

Tribunal

The Tribunal agrees.

Cases cited:

¹ *Zuckerman v Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC)

² *Mansal Securities and Others* [2009] EW Lands LRA/185/2007

³ *Clarise Properties Limited* [2012] UKUT 4 (LC), [2012] 1 EGLR 83

17 ***Freehold Standing House Value***

Applicant

£190,000. Mr Chew considers the plot fully developed and accordingly deems the standing house value to be the same as the entirety value.

Tribunal

The 'standing house' value is the market value of the bungalow currently built on the site, excluding the value of tenant improvements, assuming the freehold is sold with vacant possession.

The Tribunal agrees that in this case the entirety value and standing house value are the same, £190,000.

18 ***'Clarise reduction'***

Applicant

Mr Chew makes a 5% reduction in the standing house value to reflect the principle in *Clarise* of the prospect of a lessee remaining in occupation at lease expiry under Schedule 10 to the Local Government and Housing Act 1989.

Tribunal

As the lease will not expire for 77 years, the Tribunal considers this too remote to require a *Clarise* reduction. Each case is considered on its merits but in this instance it is too far in the future and disallowed.

19 **Tribunal Valuation**

Based on these inputs, the Tribunal determines the value of the freehold interest as:

Term 1

£ 0

Term 2

Entirety Value	£190,000	
x plot ratio	<u>0.34</u>	
Plot Value	£ 64,600	
5.5% return	<u>0.055</u>	
Equivalent rental value per s.15 of the Act	£ 3,553	
Years Purchase 50 years 5.5%	16.9315	
Present Value 77 years 5.5%	<u>0.0162017</u>	£ 974
 <u>Reversion</u>		
Standing House Value	£ 190,000	
Present Value 127 years 5.5%	<u>0.001114</u>	
		<u>£ 211</u>
Freehold Value		£ 1,185

20 **Arrears of Ground Rent**

The property is subject to a peppercorn ground rent according to Land Registry. The Tribunal therefore determines the outstanding ground rent at nil in accordance with the Court Order of 18th July 2019.

21 **Tribunal Determination**

The Tribunal determines the price of the freehold interest at £1,185 (One Thousand One Hundred and Eighty Five Pounds).

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date 31/01/2022

Appeal to the Upper Tribunal

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.