



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

Case reference : **CHI/00MW/OLR/2022/0062**

Property : **167 Sandown Road, Shanklin, Isle of Wight,
PO37 6HY**

Applicant : **Peter John Dewey
Ann Dewey
Adrian Ashley Furse**

Representative : **Mr Julian Wilkins MRICS**

Respondent : **Mr Rolls
Missing Landlord**

Type of application : **Freehold Acquisition
Leasehold Reform, Housing and Urban
Development Act 1993**

Tribunal member(s) : **Mrs J Coupe FRICS**

Date of decision : **9 August 2022**

DECISION

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Covid-19 pandemic: Description of determination

This has been a remote determination on the papers which has been consented to by the applicants. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote determination on papers. The documents that the Tribunal were referred to are in an electronic bundle, the contents of which have been noted. The order made is described below.

Decision of the Tribunal

- 1. The premium payable is £64,539.00. The case is remitted to the Newport (Isle of Wight) County Court to give effect to the Vesting Order (JOONIO49).**

Background

2. By an Order of District Judge Grand sitting at the County Court at Newport, Isle of Wight, dated 13 April 2022, the Tribunal is required to determine the following:
 - a. The terms of the acquisition in accordance with Section 27(1)(b) of The Act;
 - b. The form of Transfer pursuant to Section 34 and Schedule 7 of The Act and Section 27(3) of the Act.
3. The valuation date is 25 March 2022.
4. The Tribunal made Directions on 4 May 2022 setting out the information required to enable it to make a determination.
5. A bundle has been submitted by the applicants, which includes an expert witness report and valuation prepared by Mr Julian P Wilkins MRICS of Julian Wilkins Surveyors Limited. The report contained a signed and dated statement confirming that it complied with the Royal Institution of Chartered Surveyors Practice Statement: Surveyors Acting as Expert Witnesses. The report also included a statement that Mr Wilkins had complied with his duty to the Tribunal.
6. In accordance with Directions, the Tribunal did not inspect the property, instead relying on information, including photographs, provided by the applicant and viewing the property via online portals.

Evidence

7. The Tribunal considered the valuation report of Mr Wilkins, dated 25 May 2022.
8. The property is a detached building with accommodation over two floors located within an established residential area close to the sea-front and within easy reach of all main amenities.

9. The building is believed to have been built around 1900, most likely as a single dwelling, but was reconfigured some years ago to provide four self-contained flats. A small single storey extension is evident to the front. The date of conversion is unknown however, Mr Wilkins suggests, and the Tribunal agrees, that this is likely to have occurred around the same time as the granting of the flat leases, dated 1974.
10. The building is of traditional construction with brick and rendered elevations, and a double bay window frontage, beneath a pitched roof. The single storey extension roof is of flat design with mineral felt covering.
11. Flat 1 is located on the ground floor at the front of the building and includes a demised garden, which is subject to access rights. The accommodation, accessed via a private entrance, comprises a reception room; kitchen; bedroom; and bathroom with WC. Mr Wilkins scaled the floor area from the lease plan at 70m². The Energy Performance Certificate (“EPC”) records an area of 76m². The lease permits the parking of one motor car in the car park and use of the communal drying area.
12. Flat 2 is located on the ground floor to the rear of the building and includes a larger and private garden within the demise. The accommodation, accessed via the communal entrance hall or through an external door to the rear, comprises a reception room; kitchen; bedroom; and bathroom with WC. Mr Wilkins scaled the floor area from the lease plan at 54m². There is no record of an EPC. The lease permits the parking of one motor car in the car park and use of the communal drying area. Mr Wilkins considers this flat to be the most desirable within the block.
13. Flat 3 is located on the first floor and is accessed via the communal first floor landing, with accommodation comprising a reception room with galley kitchen; bedroom; and bathroom with WC. Mr Wilkins calculates the floor area, measured in accordance with IPMS 2 - Residential, at 46m² which concurs with the registered EPC. The flat has no demised outside space but, in common with other flats in the building, includes permission to park one motor car in the car park and use of the communal drying area.
14. Flat 4 is located on the first floor and is accessed via the communal first floor landing, with accommodation comprising a reception room; kitchen; bedroom; and bathroom with WC. Mr Wilkins calculates the floor area, measured in accordance with IPMS 2 - Residential, at 46m². The EPC records the floor area as 47m². The flat has no demised outside space but, in common with other flats in the building, includes permission to park one motor car in the car park and use of the communal drying area.
15. Each individual flat is held on the remainder of a 99 year lease from 18 January 1974, at a ground rent of £5.00 per annum/flat throughout the term. As at the valuation date the unexpired term was 50.82 years.
16. In reflection of a low ground rent, fixed for the duration of the lease, Mr Wilkins adopted a capitalisation rate of 8%.

17. In accordance with the decision in *Earl Cadogan v Sportelli* (2007) 1 EGLR 153 Mr Wilkins adopted a deferment rate of 5%.
18. In assessing relativity, Mr Wilkins directed himself to the Tribunal's guidance in *The Trustees of the Sloane Stanley Estate v Adrian Howard Mundy* (2016) UKUT 0223 (LC), which advises that short lease market transactions at or around the valuation date should be the starting point for the determination of relativity.
19. Accordingly, Mr Wilkins analysed the sale of Flat 4 Homeleigh, with its original lease, to one of the Applicants in August 2021 at a price of £52,500.
20. Mr Wilkins, correctly, acknowledged such sale to have transacted within an 'Act world,' whereas statutory provision requires the valuer to value in a 'No-Act world'. Furthermore, Mr Wilkins identified two reasons why the sale should be discounted from evidence. Firstly, the poor condition and lack of modernisation which adversely affected the sale price; and secondly, the applicant/buyer could be considered a special purchaser as the purchase was motivated by a desire to collectively enfranchise the freehold.
21. Following guidance in later Upper Tribunal determinations, Mr Wilkins referred to various relativity graphs and, ultimately, in his calculations relied upon those known as the Savills 2015 unenfranchiseable graph and the Gerald Eve 2016 unenfranchiseable graph. The average of these two graphs provided a relativity of 71.33% which Mr Wilkins adopted in his calculation of marriage value for Flat 1, Flat 3 and Flat 4.
22. The lessee of Flat 2 elected not to participate in the collective enfranchisement. Statutory provisions dictate that no marriage value is payable on non-participant leases. However, hope value, based on a percentage of overall marriage value, is typically payable, with such value based on the anticipation of, at some future date, receipt of a marriage value payment. Mr Wilkins avers that hope value is adversely affected by proposed reforms to leasehold legislation, such proposals having been widely published. Based on his experience and expertise, Mr Wilkins considers 10% an appropriate representation of marriage value.
23. Mr Wilkins analysed seven comparables, each transacted within one year of the valuation date and each located within 2km of the subject property, to arrive at the following long lease valuations:
 - Flat 1: £110,000
 - Flat 2: £120,000
 - Flat 3: £85,000
 - Flat 4: £85,000
24. Mr Wilkins values the remaining communal grounds at a nominal sum of £1.00.
25. Mr Wilkins considers there to be no sums payable by way of compensation for any other losses.

26. Mr Wilkins valuation was appended to the report and produced a premium of £64,539.00

Decision

27. **Capitalisation rate.** The Tribunal accept that a rate of 8% appropriately reflects such a low and fixed ground rent, one which verges on being uneconomical to collect.

28. **Deferment rate.** The Tribunal accepts the Sportelli rate of 5% as appropriate in this instance.

29. **Relativity.** The Tribunal agrees the approach adopted by Mr Wilkins in firstly analysing, and subsequently rejecting, a short lease sale within the subject block. The Tribunal accepts his methodology of applying an average of the two aforementioned graphs and, accordingly, adopts a relativity of 71.33%.

30. **Hope Value: Flat 2.** The Tribunal accepts Mr Wilkins approach and, accordingly, determines hope value at 10% of marriage value.

31. **Long leasehold adjustment:** Following established case law, Mr Wilkins followed the principle of making an adjustment of 1% to reflect the difference between long leasehold and freehold values. The Tribunal concurs with such an approach.

32. **Long leasehold values.** Having analysed the evidence, the Tribunal accept Mr Wilkins values on Flat 2 at £120,000; Flat 3 at £85,000 and Flat 4 at £85,000. The Tribunal does not agree with Mr Wilkins' value of Flat 1 and, instead, adopts a figure of £115,000 to reflect the significantly larger size of the flat in comparison to others in the block and to each of the seven comparables.

33. However, a minor mathematical error in Mr Wilkins calculations at page 119 provides a total figure for Flats 1, 3 & 4 of £285,000, which is the same figure that the Tribunal arrives at, albeit the Tribunal adopts a £5,000 higher valuation on Flat 1. The end result being that the Tribunal's calculation of the premium payable to the freeholder equals that submitted by Mr Wilkins.

34. The Tribunal agrees with Mr Wilkins that no additional compensation is due to the landlord for other losses. The Tribunal further agrees that the sum of £1.00 reflects the value of additional land.

35. **Enfranchisement Price:** The Tribunal determines the premium to be paid for the freehold interest is £64,539.00

36. **The Form of Transfer:** The Applicant submits a draft transfer in the form of the TR1 at pages 379-382 of the bundle.

37. **The Tribunal:** The Tribunal approves the TR1 Form of Transfer save for the following amendments:

- i. **Box 5** – Shall be amended to reflect the Vesting Order granted by District Judge Grand dated 13 April 2022, that being the named transferee for

entry in the register as Peter John Dewey, Ann Dewey and Adrian Ashley Furse.

The First Applicant, by way of a statement of 22 February 2022 at paragraph 14, required the exclusion of Adrian Ashley Furse from the TR1. The Tribunal received no submissions from the Third named Applicant to this effect, nor, as far as the Tribunal are aware, has such an amendment been put before District Judge Grand. Accordingly, the named transferee remains as per the aforementioned Vesting Order.

Furse.

- ii. Box 6 – Shall be amended to include an address for Adrian Ashley
- iii. Box 8 – Shall be amended to include the wording “The sum of £64,539.00 (Sixty four thousand five hundred and thirty nine pounds) has been paid into Court pursuant to an Order made under section 26(1) Leasehold Reform Housing and Urban Development Act 1993.
- iv. Box 10 – Shall be completed.
- v. Box 12 – Shall be amended to include a separate execution clause for each Transferee.
- vi. Box 12 - The execution clause for the Transferor shall be amended to include the following: “Signed as a Deed by the officer of the Court nominated to execute this deed on behalf of Mr Rolls in accordance with the Order of the Court dated 13 April 2022.”

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at 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.