

23/05/2023



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

Case Reference : CHI/24UF/OAF/2022/0036

Property : 16 The Curve, Gosport, Hampshire, PO13 0RA

Applicant : Joshua Reynolds
Darian Deanna Reynolds

Representative : Glanvilles LLP

Respondent : Honor Management Ltd

Representative :

Type of Application : Freehold Enfranchisement under Leasehold Reform Act 1967 (Houses)
Section 21 (1) (a) and 21 (2) (a)

Tribunal members : D Banfield FRICS, Regional Surveyor
Judge Tildesley OBE

Date of Decision : 22 May 2023

DECISION

BACKGROUND

1. The Applicant has applied to the Tribunal for a determination of the price to be paid for the reversion of the property under the Leasehold Reform Act 1967 (the Act) and for the approval of the form of transfer.
2. A claim notice was served on 4 August 2022 to which a Notice in reply has not been served.
3. The application to the Tribunal was made on 24 October 2022.
4. The Tribunal made directions for the disposal of the application on 24 January 2023 setting out a timetable for the Respondent to provide a draft transfer and the parties' Valuers to provide valuations. The Applicant was then to prepare a hearing bundle.
5. The Respondent has not responded to the directions and the bundle therefore comprises only the Applicants documents.
6. The bundle has been examined before making this determination and the Tribunal considers that this application remains suitable for determination on the papers. References to pages in the bundle are shown as[x]
7. The application is therefore determined on the papers without a hearing in accordance with rule 31 of the Tribunal Procedure Rules 2013.
8. The Tribunal consider that an inspection of the property is not required.
9. The official copy of register of title [28] HP22684 indicates that the current proprietor is Honor Management Limited the interest being subject to a number of leasehold interests.
10. The subject Lease [59] is dated 21 November 1966 between The Metropolitan Railway Country Estates Limited and Clarence James Burgess and Ivy Lilian Burgess for a term of 999 years from 1 May 1963 at a yearly rent of £5.
11. The Leasehold Title HP52419 [54]is currently vested in the Applicants, Joshua Reynolds and Darian Deanna Reynolds
12. An expert report dated 7 February 2023 has been prepared by Mr Julian Wilkins MRICS [82] in which he confirms that he has complied with the required RICS Practice Statement and Guidance Note.

The Law

13. See below

Evidence

14. Mr Wilkins values the freehold interest in accordance with Section 9 of the Leasehold reform Act 1967 at £63 (sixty-three pounds)
15. He has assumed a rateable value based on a similar property as £266 meaning the basis of valuation is Section 9(1).
16. Mr Wilkins describes the valuation methodology as the capitalization of the Ground Rent of £5 p.a. plus the value of the capitalized modern ground rent and freehold deferred to the end of the existing lease.
17. The ground rent of £5 p.a. he capitalizes at 8% giving a rounded value of £63.
18. In view of the length of the unexpired term (939.72 years) he places no value on the reversion.
19. A draft Transfer is provided as Appendix 2 of the bundle [17-30]

DECISION

- 20. The Tribunal determines that the price payable to acquire the freehold reversion is £63 (sixty- three pounds only).**
- 21. The Tribunal approves the form of the Transfer which is to be used, without alteration save for the completion of Box 11**
- 22. The Tribunal orders the Respondent to execute the transfer and return the same to the Applicants' solicitor within 28 days of the document being sent to it by signed for post.**

THE LAW

Leasehold Reform Act 1967

Purchase price and costs of enfranchisement, and tenant's right to withdraw.

(1) Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, (with the tenant and members of his family . . . not buying or seeking to buy) 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, 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 below) it was to be so extended;

(b) 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

(c) 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.

The reference in this subsection to members of the tenant's family shall be construed in accordance with section 7(7) of this Act.

(1A) 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.

(1AA) Where, in a case in which the price payable for a house and premises is to be determined in accordance with subsection (1A) above, the tenancy has been extended under this Part of this Act—

(a) if the relevant time is on or before the original term date, the assumptions set out in that subsection apply as if the tenancy is to terminate on the original term date; and

(b) if the relevant time is after the original term date, the assumptions set out in paragraphs (a), (c) and (e) of that subsection apply as if the tenancy had terminated on the original term date and the assumption set out in paragraph (b) of that subsection applies as if the words “at the end of the tenancy” were omitted.

(1B) For the purpose of determining whether the rateable value of the house and premises is above £1,000 in Greater London, or £500 elsewhere, the rateable value shall be adjusted to take into account any tenant's improvements in accordance with Schedule 8 to the Housing Act 1974.

(1C) Notwithstanding subsection (1) above, the price payable for a house and premises where the right to acquire the freehold arises by virtue of any one or more of the provisions of sections 1A, 1AA and 1B above, or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy, shall be determined in accordance with subsection (1A) above; but in any such case—

(a)

(b) section 9A below has effect for determining whether any additional amount is payable by way of compensation under that section; and in a case where the provision (or one of the provisions) by virtue of which the right to acquire the freehold arises is section 1A (1) above, subsection (1A) above shall apply with the omission of the assumption set out in paragraph (b) of that subsection.

(1D) Where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one-half of it.

(1E) But where at the relevant time the unexpired term of the tenant's tenancy exceeds eighty years, the marriage value shall be taken to be nil.

(2) The price payable for the house and premises shall be subject to such deduction (if any) in respect of any defect in the title to be conveyed to the tenant as on a sale in the open market might be expected to be allowed between a willing seller and a willing buyer.

(3) On ascertaining the amount payable, or likely to be payable, as the price for a house and premises in accordance with this section (but not more than one month after the amount payable has been determined by agreement or otherwise), the tenant may give written notice to the landlord that he is unable

or unwilling to acquire the house and premises at the price he must pay; and thereupon—

(a) the notice under section 8 above of his desire to have the freehold shall cease to have effect, and he shall be liable to make such compensation as may be just to the landlord in respect of the interference (if any) by the notice with the exercise by the landlord of his power to dispose of or deal with the house and premises or any neighbouring property; and

(b) any further notice given under that section with respect to the house or any part of it (with or without other property) shall be void if given within the following twelve months.

(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters: —

(a) any investigation by the landlord of that person's right to acquire the freehold;

(b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;

(c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;

(d) making out and furnishing such abstracts and copies as the person giving the notice may require;

(e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to the appropriate tribunal.

(5) The landlord's lien (as vendor) on the house and premises for the price payable shall extend—

(a) to any sums payable by way of rent or recoverable as rent in respect of the house and premises up to the date of the conveyance; and

(b) to any sums for which the tenant is liable under subsection (4) above; and

(c) to any other sums due and payable by him to the landlord under or in respect of the tenancy or any agreement collateral thereto.

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.