



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

Case Reference : **BIR/00CT/OLR/2023/0033**

Property : **113 Eileen Gardens, Kingshurst
Solihull B37 6NJ**

Applicant : **Linda Patricia Cridge**

Representative : **Blackhams**

Respondent : **Unknown**

Representative : **None**

Type of Application : **Determination of the amount to be
paid into court for the freehold
interest under the Leasehold Reform
Act 1967 (as amended)**

Tribunal Members : **Mr N Wint FRICS
Judge C Payne**

Date of Decision : **7 August 2023**

Decision

1. For the purposes of section 27(5) of the Leasehold Reform Act 1967 (the 'Act'), the Tribunal determines that, taking account of the evidence adduced and the Tribunal's own general knowledge and experience, the appropriate sum to be paid into court for the freehold interest in the property known as **113 Eileen Gardens Kingshurst Solihull B37 6NJ** (the 'Property') under section 27(3) is **£11,666** being the price payable in accordance with section 9 of the Act (as amended by the Commonhold and Leasehold Reform Act 2002).

Reasons for Decision

Introduction

2. The Applicant is seeking to acquire the freehold interest in the Property and has been the registered long leasehold owner of 113 Eileen Gardens, Kingshurst, Solihull since 1984.
3. The Property is subject to a lease dated 1 May 1969 granted between Danton Properties Ltd and Trevor John Neal. This lease was granted for a term of 99 years from 25 March 1965 at a rent of £30 per year and describes the land as the leasehold land shown edged red on the plan of the Title filed at the Registry and being 113 Eileen Gardens Birmingham B37 6NJ.
4. The Applicant's lease is registered under title number WM334221 however the freehold title is not registered and the identity of the freeholder is therefore unknown.
5. The Applicant submits that, in accordance with the necessary criteria of a long tenancy, low rent and being a house for the purposes of the Act, they are entitled to acquire the freehold interest. However, as the Applicant has not been able to serve the required notice to exercise their right pursuant to Part 1 of the Act because the proper person to be served could not be found the Applicant sought an order pursuant to section 27 of the Act vesting the freehold interest in their names on such terms as may be determined by the Court.
6. The Applicant submitted a claim under section 27 of the Act in the County Court at Birmingham as the current legal and beneficial owner of the leasehold interest in the Property. In their claim, the Applicants stated that they had made all relevant enquiries and had been unable to ascertain the identity of the freeholder of the Property and was unable to serve a notice under Section 5 of the Act on the freeholder.

7. The Court ordered that an application was to be made to the First Tier Tribunal to value the interests and to determine the amount to be paid into Court under Section 27 (5) of the Leasehold Reform Act 1967 and upon determination the Claimants solicitors is to lodge for the approval of the Court a draft conveyance of the freehold interest.
8. The Tribunal issued its Directions dated 23 February 2023 and the matter was listed for a paper only hearing on 23 May 2023 following the inspection on the same date.
9. The Applicant's Representative submitted a Statement of Case setting out the background to the application. They advised that they had made various enquiries with the company (original head leaseholder) who had been collecting the ground rent and were advised they no longer had any interest in the property and had no knowledge of the owner of that interest. The Applicant advised that the ground rent was paid up to 29 September 2019 since which time no further demands have been made or paid.
10. The Applicant also approached the solicitors acting for the freeholders to whom the ground rent was paid and they declined to respond.
11. The Applicants solicitors, in another case, were also advised by the same firm that their client had sold her interest in all the properties in the development to another party. That party was approached and advised that this property was not among the properties purchased. No persons have come forward to claim the ground rent and it is noted that the freehold or head leasehold interest in the property been registered at the Land Registry despite registration on any sale being compulsory in the area since 1965 and any registration on any transfer of ownership since 2002.
12. The Applicant has also made enquiries of the Crown as to the possible vesting of the property 'Bona Vacantia' meaning an ownerless property, which by law has passed to the Crown. The Treasury Solicitor confirmed that they have no record of such an asset being transferred to the Crown.
13. The Tribunal has received a Valuation prepared on behalf of the Applicant by Mr Taylor of Fishers dated 9 March 2023 valuing the freehold interest at £11,664.
14. The Tribunal understands the valuation date is 8 June 2022 and the unexpired lease term is 41.79 years.

15. In making its determination, the Tribunal has considered the written evidence submitted by the Applicants and had regard to the findings from its inspection of the Property.

The Law

16. Section 27 of the Leasehold Reform Act 1967 contains detailed provisions relating to applications to the County Court in cases such as this. Subsection (3) provides that, upon the payment in to Court of the 'appropriate sum,' a conveyance shall be executed as provided in that subsection. Subsection (5) of section 27 provides, as follows, in relation to the determination of the 'appropriate sum':

(a) such amount as may be determined by (or on appeal from) a leasehold valuation tribunal [First-tier Tribunal] as to the price payable in accordance with section 9...; and

(b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.

17. In this context, it is the duty of the Tribunal to determine the value of the freehold interest under section 9 Act (as amended) in furtherance of the direction made by the County Court.
18. Section 166 of the Commonhold & Leasehold Reform Act 2002 provides that a tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment.

Inspection

19. The Tribunal inspected the Property on 23 May 2023 in the presence of the Applicant – Mrs Cridge.
20. The Tribunal found the Property to comprise a two-storey semi-detached house situated in a cul-de-sac on an estate in an established residential area. On the ground floor is a hallway, living room, and kitchen and on the first floor 3 bedrooms (2 doubles and 1 single), a family bathroom and airing cupboard. Externally, there is a driveway, integrated garage and garden area to the front and rear.
21. The Property includes double-glazed windows and gas fired central heating throughout (except in the single bedroom). The Applicant advised

she has carried out several alterations/ additions including new flooring, boiler, double glazing, external facia, kitchen living room fire place, French windows in kitchen, radiator in living room and knocked the cupboard through into the garage.

22. However, the Tribunal did find the Property to need general updating and modernisation including a new kitchen and bathroom but considered it was in reasonable decorative order and repair.
23. The Tribunal also found the Property to be situated on a relatively small plot that was flat and rectangular shape but with no prospect of development.

Applicants' Submissions

24. On behalf of the Applicants, Mr Taylor of Fishers submitted his valuation in accordance with section 27(5) and section 9(1) of the Act.

Entirety Value

25. Mr Taylor adopts a freehold entirety value of £247,000 based on the sale of 89 Eileen Gardens which is an identical freehold property that was sold in October 2020 at £210,000. Adjusting this figure using the Nationwide House Price Calculator as at June 2022 produces a figure of £246,986 rounded to £247,000.

Standing House Value

26. Mr Taylor submits that as the Property cannot be improved or extended beyond its current size and condition concludes that its standing house value should also be £247,000.

Site Value Apportionment

27. Mr Taylor utilises a site value of 33.33% because the Property is semi-detached.

Capitalisation Rate

28. Mr Taylor adopts a rate of 6% as the ground rent in this case is fixed for the entire term at £30 per annum.

Deferment Rate

29. Mr Taylor adopts a rate of 5.25% in line with other recent Tribunal decisions.

Second Reversion

30. Mr Taylor has also included in his valuation the fact that as the freeholder has a right to obtain possession of the property at the end of the assumed 50 year term extension this should be valued and form part of the enfranchisement premium.

Schedule 10 Allowance

31. Mr Taylor considers the risk to the freeholder of the leaseholder remaining in occupation and claiming a tenancy at the end of the assumed 50 year extension (in 91 years' time) unlikely and so makes no deduction.

Valuation

32. Applying those figures to the valuation formula Mr Taylor arrives at a price of £11,664 for the freehold interest in the Property.

The Tribunal's Deliberations

33. The Tribunal considered all the evidence submitted as summarised in the above paragraphs.

Enfranchisement Price

34. The valuation exercise under section 9(1) of the Act is usually in three stages:

Stage (1) the valuation of the remainder of the existing term by capitalising the ground rent;

Stage (2) Valuing an assumed extension to the lease of 50 years; and

Stage (3) Valuing the property with assumed vacant possession after the end of the existing term plus 50 years (subject to tenant's rights under Schedule 10 of the Local Government and Housing Act 1989 Act).

35. The Tribunal, having considered the evidence of Mr Taylor and based on its own expert knowledge and investigations, is satisfied that the

methodology adopted by Mr Taylor is the proper approach to arrive at the enfranchisement price – Section 9 (1) meaning as the lease meets the original low rent test and the house meets the value limits, the house is to be valued according to the original valuation basis, that is, the value of the site.

36. The Tribunal accepts and agrees with Mr Taylor's notional freehold entirety value of £247,000 (that is, the value of the Property - assuming vacant possession - has been developed to its full potential).
37. The Tribunal accepts and agrees the standing house value (that is, the value of the Property in its existing form and on the basis that it has not been developed to its full potential) to be £247,000 given the evidence to hand and having regard to the extent of the accommodation, location, and current condition of the Property.
38. The Tribunal also considers the site value apportionment, having regard to the construction, location, and site constraints as well as market conditions and recent Tribunal decisions in the Midlands region, to be 33.33%.
39. The Tribunal accepts the capitalisation rate of 6% given the ground rent is a fixed amount for the duration of the lease.
40. The Tribunal adopts a Deferment Rate of 5.25% following recent Upper Tribunal decisions and other decisions of the First-tier Tribunal in the Midlands region.
41. Following the decision in *Clarise Properties Limited* [2012] UKUT 4 (LC), the Tribunal acknowledges a Schedule 10 allowance may be appropriate. However, it accepts Mr Taylor's contention that no adjustment is needed on this occasion.
42. Applying those determinations, the Tribunal's valuation is set out in the Appendix.

Appeal

43. If the Applicants are 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).

Nicholas J P Wint FRICS

Appendix

Valuation – Freehold Interest

113 Eileen Gardens Kingshurst Solihull B37 6NJ

Applying those determinations to the above matters, the Tribunal's valuation is as follows:

1. Term

Ground Rent	£30.00	
YP 41.79 year @ 6.5%	<u>15.20637</u>	£456.19

2. Reversion – 50 year lease

Entirety Value	£247,000	
Site Apportionment @ 33.33%	£82,325.10	
S15 MGR @ 5.25%	£4,322.07	
YP 50 years @ 5.25%	<u>17.5728</u>	
	£75,950.83	
PV 41.79 years @ 5.25%	<u>0.1179</u>	£8,954.61

3. Reversion – Standing House

Entirety Value	£247,000	
<u>Less</u> Schedule 10 @ 0%	£0.00	
Standing House Value	£247,000	
PV 91.79 years @ 5.25%	<u>0.00913</u>	<u>£2,255.11</u>
TOTAL		£11,665.91
PRICE, SAY		£11,666.00