



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

**Case Reference** : **MAN/OOBU/OAF/2021/0043**

**Property** : **35 Medway Crescent Altrincham WA14 4UA**

**Applicants** : **Sean Mark Hackett  
Jennifer Claire Hackett**

**Representative** : **N/A**

**Respondent** : **Gray's Inn Capital Limited**

**Representative** : **Stevensons Solicitors**

**Type of Application** : **Leasehold Reform Act 1967 Section 21(1)(a), section 21(ba) and section 21(2) for a determination of the price payable, reasonable costs payable under section 9(4) of the 1967 Act and the terms of the transfer.**

**Tribunal Members** : **Judge T N Jackson  
Mr K Kasambara BSc MSc MRICS**

**Date and venue of Hearing** : **Paper determination  
4 November 2022**

**Date of Decision** : **4 November 2022**

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**DECISION**

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## **Decision**

We determine that:

The price payable by the Applicants for the acquisition of the freehold interest in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967 is **£1200**;

The reasonable legal costs of the Respondent are **£654** plus disbursements and VAT (if applicable); and

The terms of the transfer are those set out in the Applicants' bundle (pages 81-84);

## **Reasons for decision**

### **Introduction**

1. The Applicants have applied under section 21 (1) (a), Section 21 (1) (ba) and section 21(2)(a) of the Leasehold Reform Act 1967 ('the 1967 Act') for a determination of the price payable, the reasonable costs payable under section 9(4) of the 1967 Act and the terms of the transfer.

### **Background**

2. The freehold title to the Property is registered at HM Land Registry under title number GM694105 in the name of the Respondent.
3. On 15 April 1987, the then freeholder of the property, John Maunders Group plc granted a long lease of the Property to Philip William Barker and Patricia Barker. The lease was granted for a term of 999 years from the 15<sup>th</sup> of April 1987 with the ground rent payable of £60.00 per annum.
4. The leasehold title to the Property is registered at HM Land Registry under Title Number GM449683 in the name of the Applicants.
5. The rateable value of the Property as the time it was set was £343.
6. We understand that the Applicant served a Notice dated 11 September 2019 claiming their right to buy the freehold.
7. By letter dated 28 October 2019, the Respondent's solicitors served the Applicants with a Notice that no valid notice under the 1967 had been served on the Respondent.
8. By letter dated 26<sup>th</sup> February 2020, the Respondent's solicitors noted that the Applicants had suggested there be a voluntary sale of the freehold. They advised the Applicants that no voluntary transaction would be considered until the Applicants had paid all costs incurred to date by the Respondent as a result of the invalid Notice. The costs totalled £960 and included valuers fee £350 plus VAT of £70; Respondent's solicitors costs of £425 plus £425 VAT; postage of £15 plus VAT of £3.00 and Land Registry fees of £12. The Applicants had paid a deposit of £180

9. On 5 March 2020, the Applicants paid the balance of the £960 without prejudice to the validity of their notice dated 11 September 2019 and /or admission to the content of the Respondent's letter. The payment was also stated to be made without admitting that the sums are costs which fall under section 9(4) of the 1967 Act and/or are reasonable in amount.
10. By Notice dated 16 July 2021, the Applicants claimed their right to buy the freehold of the Property. On 21 July 2021, the Respondent's solicitors gave notice to the Applicants requiring a) payment of a deposit of £180 and b) the deduction of the Applicants' title including the provision of a copy of the Lease. The deposit was paid and further copies of the Lease and leasehold title were sent to the Respondent's solicitor on 4 August 2021. By Notice of Reply dated 6 September 2021, the Respondent admitted the right and, inter alia, stated that the Property should be valued in accordance with section 9(1) of the 1967 Act.
11. On 29 November 2021, the Applicants emailed the Respondent's solicitors proposing a price of £925 (based on a valuer's report dated 9 September 2020) and enclosed a draft transfer.
12. By letter dated 1 December 2021, the Respondent's solicitors advised the Applicants of a counter proposal of £1750 and that the draft transfer sent by the Applicants would be considered once the premium was agreed or determined by the Tribunal.
13. On 13 December 2021, the Applicants made applications to the Tribunal for determination of the price payable, the terms of the transfer and the amount of the landlord's reasonable costs.
14. Directions were issued on 26 April 2022.
15. The Applicants emailed the Respondent's solicitors on 10 May 2022 stating '*with a view to narrowing the issues and saving costs, please confirm whether the draft transfer is in an agreed form (save for the issue of consideration)*'. The Respondent's solicitor did not respond directly but included a draft transfer in his submission for the Tribunal.

### **Inspection/Hearing**

16. The parties had agreed that the matter be dealt with on the basis of a paper determination and without an inspection. After reading the papers, the Tribunal agreed that that was appropriate.

### **Submissions**

17. The Applicants submitted a written Statement of Case. They included a draft transfer and a copy of a valuation report dated 9 September 2020, which, on a desk top basis, valued the Property at £925 as at September 2020. The valuation report doesn't explain how the value of £925 was arrived at.
18. The Respondent's solicitor submitted a written Statement of Case. The Respondent's solicitor included a copy of a valuation report dated 19<sup>th</sup> May 2022 which, on a desk top basis, valued the Property at £4800 as at 16<sup>th</sup> July 2021. Similarly, the valuer doesn't explain how he arrived at the value of £4,800.

19. Regarding the terms of the Transfer, the Respondent's solicitor submitted that as the terms were in accordance with the Act that there could not be any reasonable objection to the same.
20. In relation to costs under section 9 (4) of the 1967 Act, the Respondent's solicitor attached a Schedule of Costs, attached as Appendix A to this decision. All work was done or to be done by the Respondent's solicitor who qualified in 1983 and who, since the 1990's had specialized in this work. He submits that the work is specialized and a premium charge is appropriate but the hourly rate charged is only slightly more than the recommended charging rate set out in the Guide to the Summary Assessment of Costs 2021 Edition.
21. No valuation costs are claimed by the Respondent from the Applicants as the relevant fee has already been reimbursed by the Applicants to the Respondent.
22. The Applicants' lodged a Statement in Reply to the Respondent's Statement of Case as allowed by the Directions. The Respondent did not submit a Statement in Reply to the Applicants' Statement of Case.

### **The Law**

23. Section 9 (1) of the 1967 Act provides that:

*'Subject to subsection (2) below, the price payable 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 the act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of the 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.'*

24. Subsection 2 is not relevant as the rateable value of the Property was below £500.

25. Section 9(4) of the 1967 Act provides that:

*'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of the Act, then unless the notice lapses under any provisions 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 any 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 going to be borne by the purchaser would be void'.*

26. Section 10(4) of the 1967 Act provides that:

*'As regards restrictive covenants (that is to say, any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to Section 8 above shall include-*

- (a) such provisions (if any) as the landlord may require to secure that the tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants which affect the house and premises otherwise than by virtue of the tenancy or any agreement collateral thereto and are enforceable for the benefit of the other property;*
- (b) such provisions (if any) as the landlord or the tenant may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy or any agreement collateral thereto, being either
  - (i) restrictions affecting the house and premises which are capable of benefiting other property and (if enforceable only by the landlord) are such as materially to enhance the value of the other property; or*
  - (ii) restrictions affecting other property which are such as materially to enhance the value of the house and premises;**
- (c) such further provisions (if any) as the landlord may require to restrict the use of the house on premises in anyway which will not interfere with*

*the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has an interest.'*

27. Section 10(5) of the 1967 Act provides that:

*'Neither the landlord nor the tenant shall be entitled under subsection (3) or (4) above to require the inclusion in a conveyance of any provision which is unreasonable in all the circumstances, in view-*

*(a) of the date at which the tenancy commenced, and changes since that date which affect the suitability at the relevant time of the provisions of the tenancy; and*

*(b) where the tenancy is or was one of a number of tenancies of neighbouring houses, of the interests of those affected in respect of other houses.'*

## **Deliberations**

### Valuation

28. Both parties agree that the valuation should be in accordance with section 9(1) of the 1967 Act. Where Section 9(1) applies, the purchase price is determined on the basis of the value of the land and there is no element of marriage value. We have had regard to the Applicants' valuer's report 9 September 2020 (Applicants' bundle pages 64-70) and the Respondent's valuer's report of 19 May 2022 (Respondent's bundle pages 41-43).

29. The Applicants' valuer's report dated 9 September 2020 refers to a proposed application to acquire the freehold of the house and therefore he has not valued the Property as at 16<sup>th</sup> July 2021, the date of the application, which is the date with which we are concerned.

30. We note that the Applicants' valuer valued the Property on the basis of 'material valuation uncertainty' as per VPS3 and VPGA 10 of the RICS Red Book Global due to the Covid-19. He considered that he could attach less weight to previous market evidence for comparison purposes to inform opinions of value. He says that due to Covid, *'we are faced with an unprecedented set of circumstances on which to base a judgement'*. He says that which *'Consequently less certainty, and a high degree of caution should be attached to the valuation than would normally be the case. Given the unknown future impact that Covid 19 might have on the real estate market, we recommend that you keep the valuation of this Property under frequent review'*.

31. The Applicants' valuer did not have the rateable value and therefore was unable to confirm the bases upon which the premium should be valued but stated that the valuation arrived on either of the prescribed bases would be the same, with which we agree. The valuer then proceeded to value the freehold reversionary interest at £925. It appears that he capitalised the ground rent of £60 pa at an initial yield of about 6.5% over the remainder of the lease term. He, however, used the valuation date of 9 September 2020 which, as stated earlier, is incorrect.

32. By a letter dated 1 December 2021, the Respondent made a counter offer of £1,750 to the Applicants. The valuation of £1,750 seems to have been derived from the capitalization of the ground rent of £60 pa at an initial yield of about 3.4% over the remainder of the lease term.
33. The Respondent's valuer has valued the Property as at 16 July 2021 in a report dated 19 May 2022. He states that as the valuation is under section 9 (1) of the Act, a calculation of marriage value is not required. He did not refer to the rateable value. In relation to the calculation of the term, i.e. the right to receive at the date of valuation the rent of £60 per annum for the remainder of the lease, he has used a capitalization rate of 1.25%, being the National Loans Funds Rate 30/30<sup>1</sup>/<sub>2</sub> years at the date of valuation. The valuer refers to the reversion as being 981 years distant and therefore the value to be nominal. The Respondent's solicitor does not provide a reason for the departure from the original valuation of £1,750 at paragraph 31 above to the second valuation of £4,800 at paragraph 32.
34. We note the rateable value of £343 and therefore the provisions of section 9(2) do not apply. We agree that no calculation of marriage value is required. We do not accept the National Loans Fund Rate as being the appropriate rate as it does not reflect the property market rates, although we do accept that a ground rent of £60 pa is a very safe, very low risk and secure investment that is likely to generate very low capitalisation rates. Based on our experience and knowledge as an expert Tribunal, we determine that the appropriate capitalization rate for the £60 ground rent pa over the remaining lease term is 5% resulting in a value of £1200, that is (100/5 x £60 ground rent). The 5% capitalisation rate is more appropriate and reasonable for investment properties such as house ground rents which can be frequently sold on, passing from one buyer to another, hence impacting on risks levels.
35. As at 16 July 2021, the reversion had 965 years rather than the 981 referred to by the Respondent's valuer, but we agree that the value is nominal.
36. We determine the price payable to be £1200.

#### Legal costs

37. The Applicants submit that:
- a. the legal fees should be based on the fixed fee advertised by Stevenson's on their website, namely 0.15% of the sale price subject to a minimum fee of £495 plus VAT;
  - b. the work should have been carried out by a Grade B or C fee earner;
  - c. the hourly rate should be that set out in the Guideline hourly rates;
  - d. the Schedule includes estimated costs for agreeing the transfer upon which there is no agreement;
  - e. particular items in the Schedule of Costs are excessive as regards the time spent and a duplication of work as regards the work set out in the Respondent's solicitor's letter of 26 February 2020;
  - f. the disbursements do not fall within section 9(4) of the Act, are excessive, and in relation to the Land Registry fee duplicated by reference to the fee purported to have been incurred in the Respondent's solicitor's letter of 26 February 2020.

38. We accept that the costs set out in section 9(4) are essentially of a transactional nature for which a fixed fee would generally be negotiated between client and solicitor. However, we do not accept that the legal fees in this case should be based on the fixed fee of £495 referred to by the Applicants, as that fee appears to relate to a voluntary sale. We are concerned with a sale within the context of enfranchisement which involves at the very least the additional step of investigating the Applicants' right to acquire the freehold.
39. We had regard to the Guidance to the Summary Assessment of Costs. Mr Stevenson has 39 post years qualification experience, is a specialist in this area of work and is a Category A fee earner. We are unclear as to why it was necessary for a Category A fee earner to carry out the work on this particular case, bearing in mind its simplicity and the value involved. We are not sure that there could be a simpler case. We also note that it took approximately a month for the Respondent's solicitor to respond to receipt of the deposit and the deduction of title from the Applicants and that he does not appear to have responded to the Applicants' email of 10 May 2021 in which they sought to narrow the issues and save costs. Due to the simplicity of the case, we determine that the work could have been carried out by a Grade B fee earner i.e. solicitor or legal executive with of over 4 years' experience. We are not told why Mr Stevenson in person carried out the work- it may have been that the Respondent's client insisted that he do so. However, the Tribunal does not consider that this means that the Applicant's have to pay for it if the work could properly be carried out by a less expensive though experienced fee earner.
40. Mr Stevenson's office is based in Norfolk NR20 4HB and we therefore need to consider the National 2 guideline rates which suggest hourly rates of £255 and £218 for Grade A and Grade B solicitors respectively. Mr Stevenson's hourly rate is charged at £265. For the reasons set out above, we determine that it is reasonable for a Grade B fee earner to carry out the work and at an hourly rate of £218.
41. As the terms of the transfer have been determined by the Tribunal, the Respondent's solicitor no longer has to carry out this activity and we delete the 3 units identified for 'agreeing draft transfer'.
42. Regarding the alleged duplication of work arising from work previously carried out in relation to a Notice served in September 2019, that related to work carried out at the end of 2019/early 2020, therefore a minimum of 15 months before the service of the Notice served in July 2021. During that time there may have been changes in circumstances and therefore, in our view, it could be considered to be negligent to rely on the work previously carried out. Furthermore, the steps required in this particular case are minimal and the documents would almost draft themselves. We note that the Respondent appears to have relied on the valuation obtained for the 2019 Notice and that no valuation fee has been claimed in relation to the Notice the subject of this appeal. That was a matter of risk that the Respondent decided to take and is not relevant to whether there was any duplication of legal work. 2019. We do not accept that there was any duplication of work of which we need to take account.
43. In paragraph 5.8 of their submission, the Applicants appear to suggest that the costs relating to their Notice of September 2019 paid in March 2020 are also the subject of this application. That was not stated in the application to the Tribunal dated 13<sup>th</sup> December 2021 which refers only to the costs arising from the Notice dated 16 July



2021. We are not told if the Applicant's challenged the reasonableness of those costs at the time but the costs with which we are concerned relate solely to the Notice of July 2021. We are also only concerned with the **reasonableness** of the costs, rather than being required to form a view as to whether the Applicants can recover monies already paid in relation to a previous Notice, if, indeed, that is what is being suggested. We have covered the issue of alleged duplication in the paragraph above.

44. We have reviewed the activities outlined in the Schedule of Costs attached as Appendix A to this Decision and confirm that, they fall within the provisions of section 9(4) of the 1967 Act. We consider that seeking client's instructions on the service of a Notice is incidental to the items in section 9(4). In the event that we are wrong on that point, based on our knowledge and experience as a specialist Tribunal and taking the matter in the round, the time we consider reasonable to carry out the whole transaction is explained further below.
45. We have noted the Applicants' submission that, (with the exception of item 7), all items in the Schedule are excessive in time spent but they do not state what they do consider to be a reasonable time for each item. We accept that this type of work can be complex but this particular case is not. It involves registered title for both freehold and leasehold. It does not involve any novel issues and required the minimum of activity, as is evidenced by the limited activities claimed. We think that in this particular case, a reasonable amount of time to be spent on the whole process by a solicitor experienced in this area is no more than 3 hours.
46. Section 9(4) of the 1967 Act relates to fees for carrying out legal work as distinct from disbursements. It does not appear to us that Parliament's intention was to require a freeholder to absorb the costs of disbursements specifically in an enfranchisement sale. If that was the intention, then that would have been made explicit. For the same reasons as detailed in paragraph 42, we do not consider the Land Registry fee to be duplication. We therefore accept the disbursements of £15 Special and Recorded delivery (plus VAT if applicable) and £9 Land Registry fee.

#### Terms of transfer

47. The Applicants' draft transfer is in the standard TR1 format (Applicants bundle pages 81-84). The draft transfer provided by the Respondent, mirrors that of the Applicants with the exception of the deletion in paragraph 11 of an indemnity covenant but the addition in the same paragraph of definitions and the transferee's covenants (Respondent's bundle pages 35-39). The Applicants submit that the Respondent has failed to demonstrate an entitlement to reliance on section 10(4) of the 1967 Act and is therefore not entitled to include the matters set out in the draft transfer that it has prepared. In the alternative, they suggest that if we find that the 'material enhancement test' under section 10(4) has been met, then the provisions in the Respondent's draft transfer are unreasonable and the Respondent is not entitled to include them in the conveyance under the provisions of section 10(5) of the 1967 Act.
48. The Property is a Transfer of the Whole as opposed to Part, as the boundaries of the Leasehold Title replicate the boundaries of the freehold title. There is therefore no retained land within the freehold title. Neither are there any Common Areas as defined the Lease. The covenants in the Lease are only enforceable by the Landlord. The Respondent's draft transfer refers to 'Retained Land' which is defined as '*part of the Estate retained by the Respondent at the date of transfer*' and recites a list of

Title numbers. The 'Estate' is defined as '*the estate referred to in the Lease previously of John Maunders Group plc now and previously comprised in Title Number GM305203 other than the Property*'. However, the Respondent has neither made submissions nor provided evidence either that the 'Retained land' is 'other property' for the purposes of section 10(4), nor that the covenants suggested by the Respondent would be required to materially enhance the value of such other property. Therefore, we are not satisfied that the Respondent has met the test required in section 10(4) of the 1967 Act and is not entitled to include the matters set out in its' draft transfer. In those circumstances, we do not need to consider whether the covenants are otherwise unreasonable under section 10(5) of the 1967 Act. We determine that the terms of the transfer are those set out in the Applicants' bundle (pages 81-84).

### **Appeal**

49. 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 and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson

## Appendix A

### Schedule of Costs

All work done or scheduled to be done by G N Stevenson, Solicitor qualified 1983 Grade A Fee Earner (GNS) whose charging rate was £265 plus VAT per hour.

Each unit=1/10 of an hour

23.7.21	Receiving instructions in respect of Notice dated 16.7.21. Advising client as to procedure.	4
27.7.21	Considering Notice of 16.7.21 and validity thereof	5
30.7.21	Considering freehold Title and Plan, Leasehold Title and Plan and Lease	5
21.7.21 5.8.21	Requesting deposit and dealing with receipt thereof.	4
1.9.21	Drafting Counter Notice	4
	Preparing draft transfer	3
Estimated	Agreeing draft transfer	3
Estimated	Completion procedure	5
<b>TOTAL</b>	<b>3.3 x 265</b>	

Total costs claimed

Time spent/to be spent	<b>£874.50</b>
VAT@20%	<b>£174.90</b>
Special delivery and recorded delivery	<b>£15.00</b>
VAT @ 20%	<b>£3.00</b>
Land Registry fee	<b>£9.00</b>
<b>TOTAL</b>	<b>£1076.40</b>