



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

Case reference	:	CHI/00HH/OCE/2022/0020
Property	:	39 Marine Drive, Paignton, Devon, TQ3 2NS
Applicant	:	Jennifer Tyrell (Flat 1) Margaret Joan Nixon (Flat 2) Ramon Edward Setter & Josephine Mary Setter (Flat 3) Paul Marshall & Phyllis Georgina Marshall (Flat 4)
Representative	:	Almy & Thomas Solicitors for Flats 1 and 2 WBW Solicitors for Flat 4
Respondent	:	Peter Oxford Rada Denise Oxford Missing Landlord
Type of application	:	Section 26 and 27 Leasehold Reform, Housing and Urban Development Act 1993
Tribunal member(s)	:	Mrs J Coupe FRICS
Date of decision	:	7 August 2023

DECISION

Decision of the Tribunal

- 1. The premium payable is £333.00 (Three hundred and thirty three pounds). The case is remitted to the County Court at Torquay and Newton Abbot to give effect to the Vesting Order (JOOTQ215).**

Background

2. This matter relates to an application made by the applicant qualifying tenants pursuant to sections 26 and 27 of the Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act”) for a determination of the premium payable for the freehold interest of the property known as 39 Marine Drive, Paignton, Devon, TQ3 2NS (“the property”).
3. By proceedings brought under CPR Part 8 and issued on 3 May 2022 (“the valuation date”), the applicants applied to the County Court for a vesting order.
4. The applicants were prevented from serving a Notice of claim under section 13 of the 1993 Act due to being unable to locate the respondent landlords.
5. By an Order made by Deputy District Judge Melville Shreeve sitting in the County Court at Torquay and Newton Abbot on 13 July 2022, dated 16 July 2022, the matter was transferred to the Tribunal for determination of the terms and price of transfer in accordance with Chapter 1 of the 1993 Act.
6. The Tribunal made Directions on 4 July 2023 and issued revised Directions on 31 July 2023, setting out a timetable for progression of the application. Directions were given for a determination on the papers alone unless a party objected in writing and for steps to be taken to facilitate that. The parties were further advised that no inspection would be undertaken. Neither party objected.
7. An electronic bundle comprising 233 pages has been submitted by the applicants. References to the page numbers of the bundle are indicated as [].
8. Having reviewed the bundle I concluded that the matter was capable of being determined fairly, justly and efficiently on the papers, consistent with the overriding objective of the Tribunal.
9. In accordance with the Directions, no inspection of the property was carried out. Instead, I relied upon the expert valuer’s report included within the bundle, which provided photographs of the front and rear of the property, gardens, parking and garages, and viewing the exterior of the property via publicly available online platforms.
10. These reasons address in **summary form** the key issues raised. They do not recite each and every point referred to in submissions. The Tribunal concentrates on those issues which, it considers, are the fundamental points of the application.

Expert Evidence

11. An experts' valuation report dated 31 July 2023 was provided by Mr Stephen Avery MRICS, registered valuer, of Allied Surveyors [63]. Mr Avery qualified in 1988 and whilst his curriculum vitae does not refer to any specific expertise in leasehold reform valuations, Mr Avery demonstrates considerable experience in residential valuation work. Mr Avery's report contains the declarations required from expert witnesses by the RICS. His report does not contain the specific wording required by rule 19(5)(b) of the Tribunal Procedure Rules 2013 but the declarations given are substantially to the same effect. As is apparent from my valuation at appendix 1, the valuation element in this matter is not particularly complex and I am therefore satisfied that Mr Avery's general valuation expertise is satisfactory for him to give expert evidence. I am further satisfied that Mr Avery understands his duty to the Tribunal.
12. Mr Avery inspected the property on the 25 July 2023 and 26 July 2023 and reported as follows.
13. The property is a detached building, believed to have been built during the 1930's, most likely as a single dwelling, and later reconfigured to provide four self-contained flats, which vary in size and accommodation. The date of conversion is unknown however, Mr Avery suggests, and I concur, that this is likely to have occurred around the same time as the granting of the flat leases, dated 1981. The property stands on a level plot in a seafront location facing Preston Green and Preston seafront.
14. Photographs appended at [82-83] of the bundle show the property to be built with part clad and part rendered elevations, beneath a pitched roof clad in tiles and a further area of flat roof. Windows appear to be UPVC double glazed.
15. The accommodation is as follows:
 - i. Flat 1 is accessed via an entrance and hallway at ground level leading to first floor accommodation comprising landing; hallway; reception room with kitchen off; three bedrooms (one with ensuite shower/WC); bathroom/WC; utility.
 - ii. Flat 2 is located on the ground floor and provides accommodation comprising an entrance lobby; reception room; kitchen; two bedrooms; shower/WC; utility.
 - iii. Flat 3 is located on the ground floor and provides accommodation comprising an entrance lobby and hall; reception room; kitchen; bedroom; box room; bathroom/WC.
 - iv. Flat 4: Split level accommodation comprising an entrance hall, utility, cloakroom/WC and bedroom at ground floor level and a reception room/kitchen and bedroom with ensuite shower/WC at first floor.
16. Mr Avery's report did not include the floor area of any of the individual flats nor the gross external area of the property.

17. The property provides off-road parking to the front for two/three cars. A driveway to the right of the property provides access to two additional parking spaces at the rear, a block of three single garages and a further area of land currently utilised by one of the residents for storage of a caravan. Mr Avery stated that the driveway also “*appears to serve*” as a right of way to a separate detached residence at the rear, which does not form part of this matter. No further information in this regard was submitted. Garden areas are provided to both front and rear.
18. Leases for Flat 1, Flat 2 and Flat 3 are dated 4 September 1981 and each provides a term of 999 years commencing 4 September 1981. Ground rent is fixed at £5.00 per annum in each instance.
19. The lease for Flat 4 is dated 16 February 1983 for a term of 999 years commencing 4 September 1981. Ground rent is fixed at £5.00 per annum.
20. The unexpired term of each lease exceeds 957 years and, accordingly, Mr Avery stated that no marriage value is due to the freeholder, such sums only becoming payable once an unexpired term fall below 80 years.
21. Mr Avery adopted a 6.00% capitalisation rate and, with reference to the decision in ‘Sportelli’ (*Earl Cadogan & Cadogan Estates Limited v Sportelli* [2007] 1 EGLR 153), Mr Avery adopted a deferment rate of 5%.
22. Relying on comparable evidence sourced from HM Land Registry, Mr Avery stated that the market value of the four flats averaged between £110,000 for the smallest, that being Flat 3, and £325,000 for the largest, that being Flat 1. Mr Avery opined that such valuations provided a total value in the region of £760,000.
23. Mr Avery also relied upon evidence of freehold ground rent sales, analysed at initial gross yields of between <1% - 5.71%.
24. Mr Avery stated that the landlord is not thought to own any adjacent land and, as such, he included no additional compensation in his valuation for loss or damage resulting from an acquisition of the property.
25. Mr Avery provided a worked valuation at page [75] which calculated the premium payable at £400.00 (Four hundred pounds).

Form of transfer

26. A draft TR1 appears at pages [217] of the bundle.

Findings

27. I consider that collection of a £5.00 per annum ground rent from each of four lessees to be verging on uneconomical. Mr Avery’s capitalisation rate of 6% could therefore be argued to be generous to the landlord. However, as the quantum of rent is so nominal, any application of a higher rate will have a relatively modest effect on the premium payable. Accordingly, I accept Mr Avery’s calculation at 6%.

28. Mr Avery included within his report eight comparable ground rent sales however he provided no explanation as to how such evidence supported his valuation. Mr Avery analysed each comparable on a gross initial yield basis but included no comment on the valuation effect, if any, of geographical differences to Paignton (Kent, Blackburn, South Glamorgan, North Devon), the size of the developments (3 – 24 units), the quantum of annual ground rent (£175 - £4,800), the method of sale, nor any history or particularly relevant information specific to each sale. For these reasons I found such evidence to be of no assistance.
29. Mr Avery's valuation [75] included two errors. At paragraph 5.3 of his report [71], Mr Avery referred to an unexpired term of approximately 957.3 years and, at paragraph 6.5 of the report [72], Mr Avery concluded 6% to be the appropriate capitalisation rate. However, in his worked calculation at page [75] Mr Avery instead applied a 5% capitalisation rate to an unexpired term of 164.6 years. This is incorrect. Accordingly, I adopt a 6% capitalisation rate to the unexpired term of 957 years i.e. in perpetuity, to arrive at a sum of £333.33.
30. I agree the deferment rate of 5% as appropriate.
31. Mr Avery values the long leasehold interests at an average of £110,000 - £325,000 which, he stated, provides a total value of circa £760,000. I find this an inappropriate method of valuation and would prefer Mr Avery to have provided his expert opinion as to the value of each flat, supported by analysis of the comparable evidence and having had regard to the tenant's improvement referred to. Furthermore, the figure adopted by Mr Avery does not appear to represent the average value as stated.
32. Mr Avery's valuation made no reference to any distinction between a virtual freehold value and a long leasehold interest, typically represented by a 1% notional difference. That said, the reversion in this matter is so distant that such omission, nor indeed the long lease values, are of no particular relevance.
33. I concur with Mr Avery that due to the length of the unexpired terms no marriage value is due.
34. Mr Avery provided no opinion as to whether the site has any potential development value. The absence of any hope value from Mr Avery's valuation would suggest that he considers the plot to be fully developed.
35. Mr Avery did not identify in his report which garage is included within the demise of any particular flat. Instead, I ascertained from the official copy of register of title, plan and leases contained within the bundle that garages identified as garage 1, 2 and 3 are included within the property demised to the lessees of Flat 1, Flat 2 and Flat 3 respectively. Flat 4 does not appear to include a garage. The bundle contains documentation relating to an historic attempt to redevelop the garage block. The Tribunal has not been provided with any information in this regard by Mr Avery and nor have I undertaken any planning enquiries. However, I find that the reversion is so distant in this matter, that any potential additional value in such regard is too remote to be relevant. Accordingly, I conclude there to be no hope value.

36. I agree with Mr Avery that no additional compensation is due to the landlord for other losses.

Decision

37. Applying a 6% capitalisation rate to the fixed rent of £20.00 per annum in perpetuity and deferring the cumulative long leasehold value for some 957 years, I determine that the premium payable for the freehold interest in the property is £333.00. Appendix 1.

The Form of Transfer

38. I approve the TR1 Form of Transfer save for the following amendments:

i. **Box 8** – Shall be amended to include the wording “The sum of £333.00 (Three hundred and thirty three pounds) has been paid into Court pursuant to an Order made under section 26(1) Leasehold Reform Housing and Urban Development Act 1993.

ii. **Box 9** - Shall be amended to “The transferor transfers with limited title guarantee.”

ii. **Box 10** – Shall be amended to hold the property on trust for themselves as tenants in common in equal shares.

iii. **Box 11** – Shall be amended to include the following statements:
“This transfer is executed for the purposes of Chapter I of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (section 34(10) of the Leasehold Reform, Housing and Urban Development Act 1993 and rule 196 of the Land Registration Rules 2003).

It is hereby declared that the same covenants for title shall be implied herein as if the owner was conveyancing/transferring the property with limited title guarantee.”

vi. **Box 12** - The execution clause for the Transferors 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 Peter Oxford and Rada Denise Oxford in accordance with the Order of the Court dated 16 July 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.

Appendix 1

Diminution of freehold

Loss of Ground Rent	£20.00 per annum	
YP in perpetuity @ 6%	16.6667	<u>£333.33</u>

Reversion to freehold

Capital value	£767,677	
Present value of £1 in 957 years	0.00	<u>£0.00</u>

Enfranchisement Premium **£333.00**