



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

Case Reference : BIR/00CR/OAF/2023/0007

Property : 9 Calder Rise, Woodsetton, Dudley, West Midlands, DY3 1DB

Applicants : Craig Wheatley and Lesley Anne Wheatley (leaseholders)

Representative : Ladders Solicitors LLP

Respondent : William and Mary Taylor (missing landlord)

Representative : None

Type of Application : To determine the sum payable into Court by lessees to purchase a freehold interest pursuant to Section 27 Leasehold Reform Act 1967 by Order of Birmingham County Court of 20th April 2023. Claim No.JO1BM099

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
Judge C. Payne

Date and Venue of Hearing : None. Determined by paper submission

Date of Decision : **17 November 2023**

DECISION

Introduction

- 1 This is an application to determine the sum payable into Court by Lessees to purchase the freehold interest in 9 Calder Rise, Woodsetton, Dudley, West Midlands, DY3 1DB, where the landlord cannot be found, pursuant to Section 27 Leasehold Reform Act 1967 ('the Act').
- 2 The Lessees have been unable to locate the freeholder to serve Notice to acquire the freehold and applied to Birmingham County Court for a Vesting Order on 16th June 2022. This was granted on 20th April 2023 by District Judge Dunn, subject to assessment of the price by the First-tier Tribunal (Property Chamber).

The Law

- 3 There are two known interests in the property:

Freehold	Owned by parties unknown. The lease had been granted by William and Mary Taylor to James Newman for 380 years from 26 th April 1712 at peppercorn ground rent.
Leasehold	The leasehold interest was assigned to the Applicants in 2001.
- 4 The Applicants are the current leaseholders in occupation and wish to acquire the freehold. They have been unable to locate the freeholders and applied to Birmingham County Court for a Vesting Order under Section 27 of the Leasehold Reform Act 1967. The application was made on 16th June 2022 which is the valuation date for present purposes.
- 5 The Court issued the Vesting Order on 20th April 2023 subject to determination of the price by the First-tier Tribunal (Property Chamber).
- 6 The Tribunal has considered the facts and assesses the price under section 9(1) of the Act.

Facts Found

- 7 The Tribunal inspected the property on 8th November 2023. It comprises a four bedroom detached house at the end of a cul-de-sac on a modern housing estate built around 1988. The accommodation comprises an entrance hall, cloakroom, living room, dining room, conservatory, kitchen and utility on the ground floor with a landing, four bedrooms and bathroom on the first floor. There is an attached double garage. The front garden has a drive with lawn to the side and the back garden has been landscaped with fencing to all sides.
- 8 It is two storey brick and tile construction with a flat roof over the utility. The property has been well maintained and is in good condition throughout.
- 9 The plot is an average size for the estate. A conservatory has been added to the back but the Tribunal finds the property extended as far as practically possible and regards the plot as fully developed for valuation purposes.

Issues

- 10 The Court Order requires the Tribunal to determine the price of the freehold interest and any other sums due to the freeholders at the date of execution of the transfer.

The price payable under section 9(1) of the Act

- 11 The Applicants submitted a Valuation Report prepared by J. Moore MA of Midland Valuations dated 19th July 2023. The Tribunal's determination of each item of the valuation is set out below.

12 ***Unexpired Term***

Applicant

69.86 years.

Tribunal

The Tribunal accepts the term from the Land Registry entry and agrees the unexpired term at the valuation date but for calculation purposes, rounds to 70 years.

13 ***Value of Term Ground Rent***

Applicant

Nil. The ground rent is one peppercorn per annum.

Tribunal

The Tribunal agrees.

14 ***Freehold Entirety Value***

'Entirety value' is the notional market value of the best house that could reasonably be expected to have been built on the plot at the valuation date, assuming the plot were fully developed.

Applicant

Mr Moore values the freehold interest at 16th June 2022 at £360,000 having checked the sales records of 7 other properties on the estate:

<u>Address</u>	<u>Description</u>	<u>Date</u>	<u>Price £</u>
15 Marlborough Road	2 bed detached bungalow	11.04.22	215,000
5 Reynards Close	2 bed detached bungalow	01.06.22	335,000
19 Bosworth Close	2 bed detached bungalow	31.01.23	238,000
6 Westerdale Close	2 bed detached bungalow	21.04.23	275,000
16 Eton Close	4 bed detached house, no garage	04.02.22	290,000
7 Calder Rise	3 bed detached house, single garage	04.05.22	219,000
3 Neath Way	4 bed detached house, double garage	12.09.22	375,000

Mr Moore considered the bungalows of little assistance as there was strong demand for this type of property and a shortage of supply and the prices achieved would not have fairly represented the market for the subject house.

Of the houses, Mr Moore considered 3 Neath Way and 16 Eton Close to be the best comparables.

3 Neath Way

The house had sold for £375,000 three months after the valuation date in what Mr Moore submitted was a rising market, implying the value of the subject house would have been less three months earlier. He said Calder Close had suffered from fly tipping and anti-social behaviour in the past and that the subject house had been burgled in 2010. On the other hand, he said the subject house was better as it had been improved by adding a conservatory. Considering all the positive and negative points, he submitted that on balance its value would have been slightly less at £360,000 at the valuation date.

16 Eton Close

A four bedroom house on the same estate that sold for £290,000 in February 2022, 4 months before the valuation date. However, its floor area was smaller and by comparing its sale value per square metre with 3 Neath Way, (£3,412/ m² 16 Eton Close compared to £3,440/m² for 3 Neath Way), their values were very similar.

Tribunal

The Tribunal inspected the exterior of all the detached houses and two bungalows, all of which were on the same estate.

The Tribunal agrees with Mr Moore that the bungalows would attract different type of buyer and their values would not necessarily have been indicative of values that might have been achieved for four bedroom detached homes, more likely to appeal to a family market.

16 Eton Close was interesting but in the Tribunal's view not nearly as attractive as the subject house since it was at the top of a cul-de-sac accessed from a shared drive, facing dense trees on the other side of the drive, on a fairly cramped plot without a garage. It was useful to see but only to gain an overall view of the market and not as good a comparison for 9 Calder Rise which was a better house in a better position.

7 Calder Rise is next door but again not as attractive, since it has three bedrooms compared to the subject's four and a single garage compared to the subject's double. Again though, the Tribunal appreciates it being put forward as part of the overall evidence.

3 Neath Way is the best comparable. It was sold three months later but the price may well have been negotiated around the same time in June 2022. It appears to have very similar accommodation and occupies a similar position in a nearby cul-de-sac. Both houses have the same general outlook facing west. It is not clear whether 3 Neath Way was sold by private treaty after full marketing, but in the Tribunal's opinion the price was around the full market value that would have been expected for property of this type in the area at the valuation date.

Having considered the evidence, the Tribunal finds 3 Neath Way to provide the best evidence and the value of 9 Calder Rise to have been the same at 16th March 2022, £375,000.

15 ***Site Value as Percentage of Entirety Value***

Applicant

35%, in line with Mr Moore's experience of other property valuations under the Leasehold Reform Act 1967.

Tribunal

The Tribunal agrees.

16 ***Years Purchase***

Applicant

As there is a peppercorn ground rent the value of the term income is effectively nil and there would be no point determining the capitalisation rate.

Mr Moore submits for a deferment rate of 5.25% based on case law (e.g. see footnote below) and personal experience of negotiating numerous cases with Valuers in the market.

Tribunal

The Tribunal agrees.

Cases cited by Mr Moore:

¹ *Zuckerman v Trustees of the Calthorpe Estates* [2009] UKUT 235 (LC)

² *Mansal Securities and Others* [2009] EW Lands LRA/185/2007

³ *Earl Cadogan v Sportelli* [2007] 1 EGLR 153

17 **Freehold Standing House Value**

Applicant

£360,000. Mr Moore considers the plot fully developed and deems the standing house value to be the same as the entirety value.

Tribunal

The 'standing house' value is the market value of the house built on the site, excluding the value of tenant improvements, assuming the freehold is sold with vacant possession.

The Tribunal agrees that in this case the entirety value and standing house value are the same which the Tribunal determines at £375,000.

18 **'Clarise reduction'**

Under *Clarise Properties Limited* [2012] UKUT 4 (LC), [2012] 1 EGLR 83, Valuers sometimes make allowance for the prospect of occupiers remaining in occupation on expiry of the term which in this case will be April 2092.

Applicant

Mr Moore makes no reduction to reflect the principle in *Clarise* of the prospect of a lessee remaining in occupation at expiry of the lease under Schedule 10 to the Local Government and Housing Act 1989.

Tribunal

As the lease expires in 70 years' time, the Tribunal considers this too remote to require a *Clarise* reduction. Each case is considered on its merits but in this instance it is too far in the future and disregarded.

19 **Tribunal Valuation**

Based on these inputs, the Tribunal determines the value of the freehold interest at:

Term 1

£ 0

Term 2

Entirety Value	£ 375,000	
x plot ratio	<u>0.35</u>	
Plot Value	£ 131,250	
5.25% return	<u>0.0525</u>	
Equivalent rental value per s.15 of the Act	£ 6,890	
Years Purchase 50 years 5.25%	17.5728	
Present Value 70 years 5.25%	<u>0.027826</u>	£3,369
<u>Reversion</u>		
Standing House Value	£ 375,000	
Present Value 120 years 5.25%	<u>0.00215</u>	£ 806
Freehold Value		£ 4,175

20 **Other sums due to the Freeholder**

The property is subject to a peppercorn ground rent according to H.M. Land Registry. The Tribunal therefore determines the outstanding ground rent at nil in accordance with the Court Order dated 20th April 2023.

21 **Tribunal Determination**

The Tribunal determines the price of the freehold interest in accordance with section 9(1) of the Leasehold Reform Act 1967 at £4,175 (Four Thousand One Hundred and Seventy Five Pounds).

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date: 17 November 2023

Appeal to the Upper Tribunal

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal and the result sought by the party making the application.