



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

Case Reference : **BIR/00CN/OAF/2023/0006**

Property : **20 Hilary Grove Northfield
Birmingham B31 1QA**

Applicant : **Janet Clarke**

Representative : **Adcocks Solicitors**

Respondents : **Missing Landlord**

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
Mr Wyn Jones FRICS**

Date of Decision : **04 January 2024**

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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 **20 Hilary Grove Northfield Birmingham B31 1QA** (the 'Property') under section 27(3) is **£62,500 (Sixty-Two Thousand & Five Hundred Pounds)** being the price payable in accordance with section 9 of the Act (as amended by the Commonhold and Leasehold Reform Act 2002).
2. The sum to be paid into court for the premium which is payable under Section 9 of the Act in respect of the head leasehold interest is **£62,500**.

Reasons for Decision

Introduction

3. The Applicant is seeking to exercise their statutory right provided by the Leasehold Reform Act 1967 to acquire the freehold interest in the Property.
4. The Property is subject to a lease dated 14 January 1936 granted between Stanton George Thomas Marsh and William Rickards. It was granted for a term of 99 years from 26 June 1936 at a rent of £5.15s.0d per year.
5. The Applicant's lease is registered under title number WM237255 however the freehold title is not registered and the identity and whereabouts of the freeholder is unknown.
6. The Applicant has 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 the claim, the Applicant states that they have made all relevant enquiries but have been unable to ascertain the identity of the freeholder of the Property and is unable to serve a notice under Section 5 of the Act on the freeholder. The Court was therefore asked to make an order dispensing with the need to give notice under Section 5 to the freeholder and requested the Court make a vesting order under section 27 of the Act providing for the sale of the freehold of the Property on such terms as may be determined by the appropriate tribunal with a view to a sale taking place as if the Claimant/ Applicant had given notice under section 5.

7. The Applicant and her husband were joint proprietors of the leasehold estate however following the passing of Mr Clarke is now the sole legal and beneficial owner of the leasehold interest in the Property.
8. 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, she is 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 has sought an order from county court, pursuant to section 27 of the Act, for a declaration entitling her to acquire the freehold reversion of the house and premises, to give directions as to the courts further requirements in attempting to trace the owner, to order that a Judge of the court shall execute a transfer of the freehold reversion in favour of the Claimant and to order that a Judge of the court shall assess the price payable for the reversionary interest.
9. The court ordered that by virtue of section 27(1) of the Act the freehold interest in the Property shall vest in the Claimant on the terms set out in the draft transfer, the matter be transferred to the First Tier Tribunal (Property Chamber) for the purposes of determining in accordance with section 27(5)(a) of the Act the price payable for the freehold interest in accordance with section 9 of the Act, upon the Claimant paying into court the appropriate sum being only the amount determined under paragraph 2, the draft transfer shall be updated to include (i) the date of this order and (ii) the total amount paid into court, and there be no order as to costs.
10. An application to the Tribunal under Section 21(1) (cza) of the Act for a determination as to the amount of the appropriate sum to be paid into Court under Section 27(5) of the Act was lodged on behalf of the Applicant to determine the price payable for the Property in accordance with Section 9 of the Act.
11. The Tribunal issued its Directions dated 6 June 2023 and the matter was listed for a paper only hearing on 27 October 2023 following an inspection of the Property on the same date.
12. The Tribunal has received a witness statement from the Applicant and a valuation prepared by Mr G R Bates FRICS for the Applicant dated 26 April 2023.

The Law

13. 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.

14. 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.
15. 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

16. The Tribunal inspected the Property on 27 October 2023 in the presence of the Applicant – Mrs J Clarke.
17. The Tribunal found the Property to comprise an extended two-storey semi-detached house situated in a cul-de-sac in an established residential area. The accommodation comprises on the ground floor a porch entrance, hallway entrance, through living room, kitchen and conservatory. On the first floor, there are 4 bedrooms (3 doubles and 1 single) and a family bathroom. Externally, there is a driveway leading to a single integral garage and a garden to the front and rear.
18. The plot is flat but triangular in shape and adjoins a footpath. To the rear is a local school.
19. The Tribunal understands that the Applicant has carried out various improvements/ alterations to the Property over the years including a fitted

kitchen, bathroom, conservatory, knocked through the front and rear rooms, extended over the garage and has carried out decorations and fitted carpets and floor coverings and installed UPVC windows and a gas fired central heating system.

Applicants' Submissions

20. On behalf of the Applicant, Mr Bates submits a valuation in accordance with section 27(5) and section 9(1) of the Act at £62,500.

Ground Rent

21. The ground rent payable is £5.75 per annum fixed for the duration of the term.

Assumed Term

22. The date of the application to the county court is 25 January 2023. The term unexpired is therefore approximately 10.5 years.

Entirety Value

23. Mr Bates determines the freehold entirety value to be £280,000 reflecting similar semi-detached properties in the area taken from research from local estate agents and internet price comparison websites.
24. The evidence considered by Mr Bates is set out in his report.

Standing House Value

25. Mr Bates determines the standing house value to also be £280,000 on the basis that the Property cannot be improved or extended beyond its current size and condition.

Site Value Apportionment

26. Mr Bates utilises a site value of 33% based on the property being a semi-detached house on a triangular shaped plot with a narrow frontage and on the basis it is assumed to be fully developed.
27. No further evidence is submitted by Mr Bates in this respect.

Capitalisation Rate

28. Mr Bates applies a capitalisation rate of 7.0% based on the low fixed ground rent being uneconomic to collect and refers generally to previous Midlands FTT decisions.

Deferment Rate

29. Mr Bates adopts a deferment rate of 5.25% following the Upper Tribunal decision in JGS Properties v King, Sedro & Nunnington [2017] UKUT 0233 (LC)
30. Mr Bates suggests this rate is entirely consistent with pertinent decisions made by the Tribunal.

Second Reversion

31. Mr Bates considers 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. Mr Bates has therefore applied the same yield rate as the deferment rate.

Schedule 10 Allowance

32. Mr Bates has not made any deduction presumably as the term remaining is too short.

Valuation

33. Applying those figures to the valuation formula Mr Bates arrives at a price of £62,500 for the freehold interest in the Property.

The Tribunal's Deliberations

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

Enfranchisement Price

35. 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).

36. The Tribunal, having considered the evidence of Mr Bates and based on its own expert knowledge and investigations, is satisfied that the methodology adopted by Mr Bates 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.
37. The Tribunal accepts and agrees with Mr Bates's notional freehold entirety value of £280,000 (that is, the value of the Property - assuming vacant possession - has been developed to its full potential).
38. 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 £280,000 given the evidence to hand and having regard to the extent of the accommodation, location, and current condition of the Property.
39. 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%.
40. The Tribunal accepts the capitalisation rate of 7.0% given the ground rent is a low fixed amount for the duration of the lease.
41. 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.
42. Following the decision in *Clarise Properties Limited* [2012] UKUT 4 (LC), the Tribunal acknowledges a Schedule 10 allowance would be appropriate. However, considers that no adjustment is needed as the lease on the Property is a short lease.
43. Applying those determinations, the Tribunal's valuation is set out in the Appendix.

Appeal

44. 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

20 Hilary Grove Northfield Birmingham B31 1QA

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

1. Term

Ground Rent	£5.75	
YP 10.5 years @ 7.0%	<u>7.26515</u>	£41.77

2. Reversion – 50 year lease

Entirety Value	£280,000	
Site Apportionment @ 33%	£92,400	
S15 MGR @ 5.25%	£4,851	
YP 50 years @ 5.25%	<u>17.5728</u>	
	£85,245.65	
PV 10.5 years @ 5.25%	<u>0.5843</u>	£49,809.03

3. Reversion – Standing House

Entirety Value	£280,000	
<u>Less</u> Schedule 10 @ 0%	£0.00	
Standing House Value	£280,000	
PV 60.5 years @ 5.25%	<u>0.04524</u>	<u>£12,667.20</u>
TOTAL		£62,518.00
PRICE, SAY		£62,500