



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

Case Reference : **BIR/41UB/OAF/2023/0005 &
BIR/41UB/OC6/2023/0003**

Property : **30 Daywell Rise Rugeley WS15 2RE**

Applicant : **Ian John Robinson & Ann Marie
Robinson**

Representative : **Midland Valuations Ltd**

Respondent : **Ajaz Ali**

Representative 1 : **None**

Type of Application : **Application under Section 21(1)(a)
and Section 21 (1) (ba) of the
Leasehold Reform Act 1967**

Tribunal Members : **Mr N Wint FRICS
Mr T W Jones FRICS**

Date of Decision : **9 February 2024**

DECISION

DECISION

1. The Tribunal determines that, taking account of the evidence adduced and the Tribunal's own general knowledge and experience, the price payable by the Applicant for the acquisition of the freehold interest in the property known as **30 Daywell Rise Rugeley** (the 'Property') in accordance with section 9(1) of the Leasehold Reform Act 1967 (as amended) is **£8,757 (Eight Thousand, Seven Hundred & Fifty Seven Pounds)** calculated as at 3 January 2023 ('the Valuation Date') set out in the Appendix below.

REASONS FOR THE DECISION

Introduction

2. This is an application received by the Tribunal dated 12 April 2023, under section 21(1)(a) of the Leasehold Reform Act 1967 (the 'Act') for a determination of the price payable for the Property under section 9 of the Act and also an application under section 21(1)(ba) of the Act for a determination of the reasonable cost's payable under section 9 (4).
3. The Applicant Tenant served a Notice of Claim to acquire the freehold of the house and premises on the Respondent dated 3 January 2023 – which is to be the date of valuation.
4. The Tribunal issued its Directions on 26 July 2023. The applicant and respondent were directed to submit and exchange their valuations by no later than 25 August 2023 and submit any documents they wish the Tribunal to consider in making its decision by 8 September 2023. The application to determine the Landlord's recoverable costs was stayed.
5. The Applicant submitted its valuation however the Landlord failed to do so in accordance with the Directions and the Applicant's representative - Mr J Moore of Midland Valuations Ltd - requested the Tribunal bar the Respondent from taking any further part in the proceedings pursuant to rules 9(7) and (8) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.
6. The Tribunal sent a warning notice to the Respondent dated 19 September 2023 advising that it was minded to bar the Respondent from taking further part in the proceedings and advising of the consequences of not participating in the proceedings and would determine the matter on the basis of the Applicants submissions received. The Respondent and Applicant were therefore invited to make representations in relation to the proposed barring.

7. No response was received from the Respondent. The Applicant asked the Tribunal to proceed on the basis of its Directions which it did confirming the same by email to the parties.
8. The Applicant also confirmed they are content to proceed without a hearing and by way of documents only. The Tribunal has proceeded on this basis.
9. In accordance with the Tribunals Directions the Applicant has submitted their valuation of £8,757 for the freehold interest in the Property. The Respondent has proposed a premium of £37,600 without any evidence or submissions.

The Law

10. The relevant law in relation to the application is set out in section 8, 9, 14 and 15 of the Leasehold Reform Act 1967 as amended by the Commonhold and Leasehold Reform Act 2002.
11. Under section 8 (Obligation to enfranchise) where a tenant of a house has a right to acquire the freehold, and gives to the landlord written notice of his desire to have the freehold, then the landlord shall be bound to make to the tenant, and the tenant to accept, (at the price and on the conditions so provided) a grant of the house and premises for an estate in fee simple absolute, subject to the tenancy and to tenant's incumbrances, but otherwise free of incumbrances.
12. Section 9 of the Act (Purchase price and costs of enfranchisement, and tenant's right to withdraw) provides:
 - (1) the price payable for a house and premises on a conveyance under section 8 shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, might be expected to realise on the following assumptions:
 - (a) that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17) it was to be so extended;
 - (b) on the assumption that the vendor was selling subject, in respect of rent charges 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) 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.

15. Section 14 of the Act (Obligation to grant extended lease) provides that where a tenant of a house has under this Part of this Act a right to an extended lease, and gives to the landlord written notice of his desire to have it, then except as provided by this Part of this Act the landlord shall be bound to grant to the tenant, and the tenant to accept, in substitution for the existing tenancy a new tenancy of the house and premises for a term expiring fifty years after the term date of the existing tenancy.

16. Under section 15 (Terms of tenancy to be granted on extension) the new tenancy to be granted under section 14 above shall be a tenancy on the same terms as the existing tenancy as those terms apply at the relevant time, but with such modifications as may be required or appropriate to take account:

(a) of the omission from the new tenancy of property comprised in the existing tenancy; or

(b) of alterations made to the property demised since the grant of the existing tenancy; or

(c) in a case where the existing tenancy derives (in accordance with section 3(6) above) from more than one separate tenancies, of their combined effect and of the differences (if any) in their terms.

17. In addition, section 15 provides that from the original term date the rent payable for the house and premises shall be:

(a) the ground rent representing the letting value of the site (without including anything for the value of buildings on the site) for the uses to which the house and premises have been put since the commencement of the existing tenancy;

(b) the letting value at the date from which the rent based on it is to commence, but as from the expiration of twenty-five years from the original term date the letting value at the expiration of those twenty-five

years shall be substituted, if the landlord so requires, and a revised rent become payable accordingly;

(c)the letting value shall be determined not earlier than twelve months before the specified time (the reasonable cost of obtaining a valuation for the purpose being borne by the tenant), and there shall be no revision of the rent as provided by paragraph (b) above unless in the last of the twenty-five years there mentioned the landlord gives the tenant written notice claiming a revision.

18. The purchase price payable by the tenant under section 9(1) is, therefore a site valuation with a 50 year lease extension (under section 14) assuming that the tenant and members of the family residing in the house are not buying or seeking to buy, to the effect that any element of marriage value is excluded, there is no right to acquire the freehold and the lease has been extended.
19. In summary, this is calculated as follows:
 - (i) The capitalised value of the rent payable under the tenancy from the date of service of the Notice of the Tenant's Claim until the original term date
 - (ii) The capitalised value of the section 15 rent payable from the original term date until the expiry of the 50 year extension (having regard to the provision for review after the first 25 years of the extension)
 - (iii) The value of the landlord's reversion to the house and premises after the expiry of the 50 year extension, on the basis Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy
 - (iv) The value of the landlord's right under section 17 to determine the 50 year extension for redevelopment purposes
 - (v) The effect of the new easements and restrictive covenants in the conveyance
 - (vi) The value of the other rights under the extended lease extinguished on the acquisition of the freehold
20. Where section 9(1) of the Act applies, the purchase price and cost of enfranchisement is determined on the basis of the value of the land and there is no marriage value.

The Lease

21. The lease dated 24 October 1968 was originally granted between Gilbert & West Brothers Ltd (as Lessor) and R W Maun (as Lessee).

22. The lease describes the Property as the land and premises described in the Schedule as being all that piece or parcel of land situate in and having a frontage of six yards two feet six inches or thereabouts to a new road known as Daywell Rise Rugeley containing one hundred and seventy-nine square yards or thereabouts as shown on the lease plan together with the dwelling house in the course of erection and known as No. 30 Daywell Rise.
23. The lease was granted for a term of 99 years from 25 March 1965 subject to a fixed annual ground rent of £25.

The Property

24. The Property is a two-storey semi-detached house in an established residential estate located on the north side of Rugeley town centre.
25. The accommodation comprises an internal lobby, living room, kitchen and three bedrooms and family bathroom. There are gardens to the front and rear and a separate garage. Somewhat unusually there is only pedestrian access to the front of the house with vehicular access to the rear.
26. The windows are UPVC double glazed and heating is provided by a gas fired central heating system and appears to be well maintained throughout.
27. The plot is level and rectangular in shape providing a frontage of approx. 6.25m.
28. The Tribunal also understands that the Property has not been extended.

Issue No. 1 – Capitalisation Rate

29. Mr Moore for the Applicant adopts a rate of 6.5% based on the fact that the ground rent is fixed and without review. In support of this Mr Moore refers to *Nicholson v Goff* [LRA/29/2006 (2007)] and various other Tribunal decisions. No evidence or comment by way of reply was submitted by the Respondent on this point.
30. The Tribunal accepts a capitalisation rate of 6.5% in the circumstances.

Issue No. 2 – Deferment Rate

31. Mr Moore adopts a deferment rate of 5.25% based on his experience of other valuers adopting the same rates in the Midlands which in turn is based on the generic rate determined by 'Sportelli' (*Earl Cadogan v*

Sportelli [2007] 1 EGLR 153 adjusted by the Upper Tribunal decision given in respect of 'Zuckerman' (Zuckerman & Others v Trustees of the Calthorpe Estate [2009] UKUT 235 (LC)). No evidence or comment by way of reply was submitted by the Respondent on this point.

32. The Tribunal accepts a deferment rate of 5.25%.

Issue No. 3 - Schedule 10 Deduction

33. Mr Moore submits that there is a risk to the freeholder that the leaseholder may remain in occupation at the end of the assumed 50 year extension (in accordance with the rights under Schedule 10 of the Local Government and Housing Act 1989).

34. However, following the decision of the Upper Tribunal in Re Midland Freeholds Limited's and Speedwell Estates Limited's Appeals [2017] UKUK 0463 (LC) this risk would only be reflected in a deduction to the standing house value at the second reversion for very short leases. As the lease on the subject property has approximately 41 years remaining this is not short enough to warrant a discount.

35. No evidence or comment by way of reply was submitted by the Respondent on this point.

36. The Tribunal accepts no adjustment is to be made for Schedule 10.

Issue No.4 – Site Apportionment

37. Mr Moore submits that the proportion of the subject property's value when adopting the Standing House method of valuation is broadly in the range of 30 to 35% depending on the characteristics of the plot. This is also supported by various Midland Tribunal decisions.

38. Mr Moore therefore considers that a semi-detached property with a frontage of these dimensions in Rugeley should be in the order of 33.33%.

39. No evidence or comment by way of reply was submitted by the Respondent on this point.

40. The Tribunal accepts an adjustment of 33.33%.

Issue No. 5 – Standing House Value

41. Mr Moore has adopted a standing house value of £180,000.

42. The Standing House Value is the capital value of the property to be adopted at the second reversion reflecting its existing form/ condition and on the basis that it has not been developed to its full potential.
43. Mr Moore's valuation has had regard to the freeholders right to obtain possession of the property at the end of the assumed 50-year term extension and has included this in the enfranchisement price and applied the same yield as the deferment rate. Mr Moore considers the property to be fully modernised and in an excellent state of repair.
44. No evidence or comment by way of reply was submitted by the Respondent on this point.
45. The Tribunal therefore accept the standing house value is £180,000.

Issue No. 6 – Freehold Entirety Value

46. Mr Moore submits a Freehold Entirety Value of £180,000.
47. Mr Moore considers the site is developed to its fullest potential and the property has been fully modernised. Mr Moore therefore concludes that there is no further scope to enlarge or enhance the property's potential.
48. In support of this Mr Moore refers to sales of similar type properties within the area. In particular, Mr Moore has restricted his evidence to sales from three roads – Daywell Rise, Crocketts Nook and Cambrian Way:
 - 11 Crocketts Nook – 3-Bd semi-detached house which sold in November 2022 at £177,000
 - 17 Crocketts Nook – 3-Bd semi-detached house which sold in July 2022 at £170,000. (Property was sold leasehold)
 - 3 Crocketts Nook – semi-detached house sold in April 2022 at £155,000. (Limited information supplied)
 - 19 Crocketts Nook – 3-Bd semi-detached house sold in February 2022 at £168,500. Adjusted using Nationwide BS Housing Price Index produces £170,914
 - 32 Cambrian Lane – 3-Bd semi-detached house sold in November 2021 at £155,000. (Property was sold leasehold)
 - 31 Cambrian Lane – 3-Bd semi-detached house sold in July 2021. Adjusted using Nationwide BS Housing Price Index produces £173,962

29 Daywell Rise – 3-Bd semi-detached house sold in December 2022 at £155,000. (Property was sold leasehold and in need of modernisation)

5 Daywell Rise – 3-Bd semi-detached house sold in February 2021 at £150,000. Adjusted using Nationwide BS Housing Price Index produces £169,878

49. The Entirety Value is the value of the Property assumed to be modernised, in good condition and including any tenant's improvements. It effectively represents the vacant possession freehold value of the Property after having fully developed the site provided the potential is realistic and not fanciful with no deduction for any costs that may be required or uncertainty over obtaining planning permission or other works approvals.
50. No evidence or comment by way of reply was submitted by the Respondent on this point.
51. The Tribunal finds that there is no scope to extend the Property and the site has been extended to its full extent. The Tribunal notes Mr Moore has adopted the higher end of values which is to the potential benefit of the landlord.
52. The Tribunal therefore accepts the subject Property's entirety value is £180,000.

Appeal Provisions

53. 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 (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Nicholas Wint FRICS

Appendix

VALUATION

30 Daywell Rise Rugeley WS15 2RE

Applying that determination to the matters above the Tribunal's valuation is as follows:

1. Term

Ground Rent	£25.00	
YP 41.24 years @ 6.5%	<u>14,2386</u>	£356.00

2. Reversion – 50 year lease

Entirety Value	£180,000	
Site Apportionment @ 33.33%	£59,994	
S15 MGR @ 5.25%	£3,149.69	
YP 50 years @ 5.25%	17.5728	
PV 41.24 years @ 5.25%	<u>0.121216</u>	£6,712.00

3. Reversion – Standing House

Standing House Value	£180,000	
PV 91.24 years @ 5.25%	<u>0.0093855</u>	<u>£1,689.00</u>
TOTAL		£8,757.00
PREMIUM PAYABLE, SAY		£8,757.00