



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

Case reference : **CHI/19UJ/OCE/2024/0022**

Property : **7 Crescent Street, Weymouth DT4 7BX**

Applicant : **Mollie Horne (1)
Operis Developments Limited (2)
7 Crescent Street RTM Company
Limited (3)**

Representative : **Pengillys LLP**

Respondent : **Don John Whistance (1)
Nathan Edward Holroyd (2)
Trenna Joy Huntingdon (3)
Raj Kumar Pathak (4) Missing**

Representative : **none**

Type of application : **Leasehold Enfranchisement under
Leasehold Reform, housing and urban
Development Act 1993**

Tribunal members : **R Waterhouse FRICS**

Venue : **Remote on Papers**

Date of decision : **12 December 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines that the appropriate sum to be paid into court for the Freehold of 7 Crescent Street Weymouth DT4 7BX is £1700.00, of which a third **£566.67** is attributed to the absentee freeholder Mr Pathak.

Background

1. By an order made by Judge Dobson sitting as a Judge of the County Court exercising the jurisdiction of a District Judge sitting at Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL on 27 June 2024 the Court issued a Vesting Order under section 26 of the Leasehold Reform Housing and Urban Development Act 1993. For the sale of the interest of the 4th Respondent in the freehold of the Property to the Applicants on such terms as may be determined by the First –tier Tribunal.
2. By the same Orders, the Court directed that the matter be transferred to the First-tier Tribunal to determine the price for the freehold interest and any other sums payable. The Tribunal is thereby required to determine the price payable for the freehold interest in the Property and any related sums. By way of background 7 Crescent Street is comprised of three flats in the building Operis is the owner of two of the three flats at the property.
3. The initial notice pursuant to Section 13 of the 1993 Act is dated 8 April 2024. This notice date is taken as the valuation date.
4. The participating tenants are ;
 - (i) Mollie Horne Flat 1
 - (ii) Operis Developments Ltd Flat 2
 - (iii) Operis Developments Ltd Flat 3

The Lease (s)

5. The Freehold is subject to three leases. Each lease is for 999 years from 1 December 1987, with a ground rent of £35 pa.

The Property

6. The Tribunal did not consider that an inspection of the Property was necessary, nor would have been proportionate to the issues in dispute. Having considered the submissions the Tribunal were satisfied that the matter was suitable for a paper determination.

7. The Tribunal is grateful to the Applicant and their surveyor for providing a description of the Property and photographs.

The Law

8. The Valuation of the Freehold falls to be undertaken in accordance with schedule 6 of the Leasehold Housing and Urban Development Act 1993. As all the leases have in excess of 80 years unexpired, no marriage value is payable and the calculation of the Freehold price is the aggregate of:-

(i) value of the Freeholder's interest in the premises and

(ii) any amount of compensation payable to the freeholder for diminution in value of any interest in other property resulting from the freehold acquisition or other loss or damage to other property.

The Valuation

9. The Applicant(s) valuation was prepared by S A Higley FRICS of Smith Robinson Higley Ltd a Chartered Surveyor with extensive experience of valuing residential property for enfranchisement purposes in the vicinity.
10. By valuation and supplementary valuation dated 25 September 2024 the applicant's valuer submits a value of £1250. This is arrived at through the capitalisation of the ground rent, which is not subject to review at 10% in perpetuity. An addition of £200 is made to cover for potential events like consent to alter.

The Tribunals Decision

Term – Ground Rent Capitalisation

11. The Freeholders interest is made up of capitalised ground rent and a deferred revision to Freehold.
12. The three leases are for 999 years from 1 December 1987, with £35 per year ground rent each. collectively they amount to £105.00 per year.
13. The Capitalisation Rate for the ground rent utilised by the Applicant is 10%. The Tribunal takes guidance from that offered in Nicholson and Goff (2007) 1 EGLR 83 “*the factors relevant to the capitalisation rate: (i) the length of the lease term; (ii) the security of recovery; (iii), the size of the ground rent (a larger ground rent being more attractive); (iv) whether there was provision for review of the ground rent; and (v) if there were such provision, the nature of it.*”

The Tribunal determines 7% is utilised.

Collective ground rent £105 per year at 7% in perpetuity (100/7) which gives £1500

Reversion

14. The reversion is in 962 years, the value for this is taken as a nil.

Consent to Alter

15. The Applicant valuation includes a figure of £200 to cover for the possibilities for consents. The Tribunal concurs with this approach.

Summation

Value of capitalised ground rent	£1500
Value of reversion	£0
Value of consent to alter possibilities	£200
Total	£1700

16. The Tribunal determines that the premium to be paid for the freehold is £1700.00 and the missing landlord's share being a third amounts to **£566.67.**

Appendix – Relevant Legislation.

APPENDIX 2 - Relevant Legislation Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 50(1) – (3)

50 Applications where landlord cannot be found.

(1) Where—

(a) a qualifying tenant of a flat desires to make a claim to exercise the right to acquire a new lease of his flat, but (b) the landlord cannot be found or his identity cannot be ascertained, the court may, on the application of the tenant, make a vesting order under this subsection.

(2) Where—

(a) a qualifying tenant of a flat desires to make such a claim as is mentioned in subsection (1), and (b) paragraph (b) of that subsection does not apply, but (c) a copy of a notice of that claim cannot be given in accordance with Part I of Schedule 11 to any person to whom it would otherwise be required to be so given because that person cannot be found or his identity cannot be ascertained, the court may, on the application of the tenant, make an order dispensing with the need to give a copy of such a notice to that person.

(3) The court shall not make an order on any application under subsection (1) or (2) unless it is satisfied—

(a) that on the date of the making of the application the tenant had the right to acquire a new lease of his flat; and (b) that on that date he would not have been precluded by any provision of this Chapter from giving a valid notice under section 42 with respect to his flat.

Section 51

51 Supplementary provisions relating to vesting orders under section 50(1).

(1) A vesting order under section 50(1) is an order providing for the surrender of the tenant's lease of his flat and for the granting to him of a new lease of it on such terms as may be determined by a leasehold valuation tribunal to be appropriate with a view to the lease being granted to him in like manner (so far as the circumstances permit) as if he had, at the date of his application, given notice under section 42 of his claim to exercise the right to acquire a new lease of his flat.

(2) If a leasehold valuation tribunal so determines in the case of a vesting order under section 50(1), the order shall have effect in relation to property which is less extensive than that specified in the application on which the order was made.

(3) Where any lease is to be granted to a tenant by virtue of a vesting order under section 50(1), then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a lease which— (a) is in a form approved by a leasehold valuation tribunal, and (b) contains such provisions as may be so approved for the purpose of giving effect so far as possible to section 56(1) and section 57 (as that section applies in accordance with subsections (7) and (8) below); and that lease shall be effective to vest in the person to whom it is granted the property expressed to be demised by it, subject to and in accordance with the terms of the lease.

(4) In connection with the determination by a leasehold valuation tribunal of any question as to the property to be demised by any such lease, or as to the rights with or subject to which it is to be demised, it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be demised and, for the purpose of excepting them from the lease, any minerals underlying that property.

(5) The appropriate sum to be paid into court in accordance with subsection (3) is the aggregate of—

(a) such amount as may be determined by a leasehold valuation tribunal to be the premium which is payable under Schedule 13 in respect of the grant of the new lease; (b) such other amount or amounts (if any) as may be determined by such a tribunal to be payable by virtue of that Schedule in connection with the grant of that lease; and (c) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of that lease, due to the landlord from the tenant (whether due under or in respect of the tenant's lease of his flat or under or in respect of any agreement collateral thereto).

(6) Where any lease is granted to a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his personal representatives or assigns in respect of the premium and any other amounts payable as mentioned in subsection (5)(a) and (b).

(7) Subject to subsection (8), the following provisions, namely—

(a) sections 57 to 59, and

(b) section 61 and Schedule 14, shall, so far as capable of applying to a lease granted in accordance with this section, apply to such a lease as they apply to a lease granted under section 56; and subsections (6) and (7) of that section shall apply in relation to a lease granted in accordance with this section as they apply in relation to a lease granted under that section.

(8) In its application to a lease granted in accordance with this section—

(a) section 57 shall have effect as if— (i) any reference to the relevant date were a reference to the date of the application under section 50(1) in pursuance of which the vesting order under that provision was made, and (ii) in subsection (5) the reference to section 56(3)(a) were a reference to subsection (5)(c) above; and (b) section 58 shall have effect as if— (i) in subsection (3) the second reference to the landlord were a reference to the person designated under subsection (3) above, and (ii) subsections (6)(a) and (7) were omitted.

Rights of Appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).