



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

Case Reference : **MAN/00CJ/OAF/2014/0017**

Property : **6 Meadow Rise, Newcastle upon Tyne
NE5 4TR**

Applicants : **Colin Robert Waugh and Nicola Louise
Waugh**

Representative : **BBH Legal Services**

Respondent : **Freehold Securities Limited**

Representative : **Stevensons Solicitors**

Type of Application : **Determination of price payable - section
21(1)(a) Leasehold Reform Act 1967**

Tribunal Members : **Mr S Moorhouse LLB
Mr IR Harris BSc FRICS**

**Date of Paper
Determination** : **20 November 2014 and 11 December 2014**

Date of Decision : **22 December 2014**

DECISION

DECISION

The price payable is £1,364.

REASONS

The Application

1. The Application is made under section 21(1)(a) of the Leasehold Reform Act 1967 ('the Act') to determine the price payable by the Applicants upon enfranchisement. The Property is held by the Applicants under the terms of a lease ('the Lease') dated 1 September 1983 and made between Leech Homes (North East) Limited (1) and Brian Phillipson and Pauline Elizabeth Phillipson (2) for a term of 99 years calculated from 1 March 1982 at an annual ground rent of £25.

Inspection

2. On 20 November 2014 the Tribunal inspected the Property. It was noted to comprise a small 2 bedroomed end terrace with central heating and upvc double glazing, with modest garden areas to front and rear.

Interim Decisions and Further Directions

3. The Tribunal then convened to consider by way of paper determination the submissions of the parties and issued interim decisions on preliminary matters of admissibility and further directions.
4. It was determined that the late submission of the Respondent's bundle of documents would be accepted, as would the submission of the Applicants' statement of case notwithstanding that this was unsigned and not attributed to an individual.
5. The parties were offered the opportunity, pursuant to the Tribunal's further directions, to make any comments on the Tribunal's jurisdiction (the Applicants' right to enfranchise having been denied by the Respondent), to submit additional or substitute documents to ensure that valuation reports were up to date and could be admitted as 'expert evidence' and, to comment on comparable evidence of value identified by the Tribunal.
6. The Tribunal reconvened on 11 December 2014 with the benefit of further submissions by both parties.

Jurisdiction

Submissions

7. The Respondent submits within its statement of case and in response to the Tribunal's further directions that no valid notice of claim has been served under section 5 of the Act. The Respondent contends that the Applicants' proper course of action was to make an application to the County Court for a declaration of validity of the notice of claim and that in the absence of such a declaration any determination of the Tribunal would be of no effect. The Respondent accordingly applies for striking out pursuant to Rule 9(2)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and makes a related application for costs under Rule 13(1)(b).
8. The Applicants contend that the notice served is valid. In the alternative the Applicants invite the Tribunal to recognise that their right to acquire the freehold is not in fundamental dispute and all parties would be best served by a determination of the price to be paid.

Determination

9. Issues concerning the Applicants' entitlement to acquire their freehold fall within the jurisdiction of the County Court. The Tribunal recognised within its further directions that a dispute over the validity of the Applicants' notice might give rise to related proceedings in the County Court or to the re-serving of notice and a fresh application to the Tribunal.
10. The Tribunal is not prepared to encroach upon the jurisdiction of the County Court by determining the validity or otherwise of the Applicants' notice of claim. It follows that there is no basis for the Tribunal to strike out the Application or to make a related order for costs. The Respondent's applications for strike out and costs are denied.
11. It is open to the Tribunal to stay the present proceedings pending the outcome of related proceedings in the County Court, however the Applicants have not indicated any intention to bring such related proceedings. Bearing in mind the Tribunal's overriding objective to deal with cases fairly and justly, including the avoidance of delay, the Tribunal considers that the most expedient approach is for it to reach a determination on price pursuant to the present Application.

Expert Evidence

Submissions

12. Pursuant to the Tribunal's further directions the Respondent has submitted a revised valuation report. The Respondent asks that the purported valuation filed by the Applicants be totally disregarded as it does not refer to the correct valuation date and patently fails to comply with most, if not all, requirements of Rule 19 of the 2013 Rules.
13. The Applicants, in response to further directions, have made no further comments on valuation and state that they will accept the Tribunal's determination in that regard.

Determination

14. The Tribunal determines that the Respondent's revised valuation report dated 1 December 2014 shall be admitted as expert evidence in accordance with the 2013 Rules. The Applicants' valuation fails to meet the criteria for admission as expert evidence and is dated November 2012. It will therefore be viewed by the Tribunal in that context.

Method of Valuation

15. The valuation evidence submitted by the Applicants supports a price of £947 and the valuation evidence submitted by the Respondent supports a price of £1700.
16. The Respondent submits that the proper basis of valuation can be found at section 9(1) of the Act. The Tribunal agrees that the Property meets the low rent test and satisfies the value limits necessary for a section 9(1) valuation to apply.
17. The Tribunal considers that the appropriate method of calculation of the price to be paid for the freehold is therefore as follows: the value of the present rental income for the unexpired term **plus** the current value of a modern ground rent for a 50 year lease extension **plus** a Haresign addition (i.e. the value of the reversion at the end of the 50 year extension). This accords with the Respondent's valuation report but differs from the method of calculation adopted by the Applicants' valuer. In this respect the Tribunal accepts the Respondent's contention that in the light of the case of *Clarise Properties Limited [2012] UKUT 4 (LC)* this three stage valuation is appropriate.
18. In order to determine the price payable the Tribunal considers that the following variables and values need to be determined:
 - yield to calculate the value of the existing rental entitlement;
 - entirety value;
 - site apportionment;
 - deferment rate to calculate the current value of the capitalised modern ground rent on the lease extension;
 - yield to capitalise the modern ground rent; and
 - value of reversionary interest for the Haresign addition.

These are considered in turn.

Yield - existing rental entitlement

Submissions

19. The Respondent's valuer states that the rent is £25 per annum without review, but then later states: 'The rent is £70 per annum with a review to £90 per annum in March 2044. I am of the opinion that this should be capitalised at 6.5%.' The Respondent's valuer then adopts a yield of 6% in his calculation, applied to a rent of £25 per annum. There is no supporting argument by the Respondent for a yield at either rate. The Applicants adopt a yield of 6% in calculating their suggested price.

Determination

20. The Tribunal notes that the correct figure for the ground rent is £25 per annum, with no provision for review. The Tribunal agrees that it is appropriate to adopt a yield of 6%, this being the rate adopted by both parties within their calculations.

Entirety Value

Submissions

21. The Respondent has valued the freehold interest at £130,000 in its calculation of modern ground rent, arguing that there is further development potential on the site. The Applicants value the freehold interest at £100,000 but have not provided any supporting evidence that can be admitted as expert opinion.

Determination

22. The Tribunal considers that it is unrealistic to include a premium for development potential on such a small site, it would be uneconomic to extend to include a third bedroom. The Tribunal values the freehold Property in its existing state at £105,000 at the date of receipt by the Respondent of the Applicants' notice of claim. This valuation takes into consideration the range of information submitted by the parties and identified by the Tribunal.

Site apportionment

Submissions

23. The Respondent apportion the site value as being 33.33% of total value and the Applicants propose an apportionment of 30%.

Determination

24. The Tribunal determines that the appropriate apportionment of total value for a low value house in the region would be 30%, giving a site value of £31,500.

Deferment rate - current value of capitalised modern ground rent

Submissions

25. The Applicants adopt a deferment rate of 6% and the Respondent a rate of 5.5%. The Respondent submits that in the Zuckerman case in the Lands Tribunal the deferment rate was changed from 5% to 5.5% for reasons relevant to the present location and that this rate was reaffirmed in the case of *Clarise Properties Limited [2012] UKUT 4 (LC)*.

Determination

26. The Tribunal determines that a deferment rate of 5.5% should be adopted in this case.

Yield - modern ground rent

Submissions

27. The Respondent submits that the yield should, as per the *Clarise* case, be at the same rate as is used for deferment, i.e. 5.5%.

Determination

28. The Tribunal agrees with the Respondent that the yield assumed in capitalising the modern ground rent for the 50 year lease extension should be at the deferment rate of 5.5%.

Value of reversionary interest - Haresign addition

Submissions

29. The Respondent submits that a 2.5% reduction in the freehold value would be appropriate to reflect the required assumption that the occupier would be entitled to an assured tenancy.

30. With regard to deferment rate, the Respondent submits that the starting point is the rate of 4.5% promulgated in the case of *Cadogan v Sportelli [2008] 1 WLR 2142*. The Respondent submits that in the *Clarise* case the tribunal then added 0.25% for obsolescence and 0.5% for lower growth prospects, and that such additions are also necessary for the present location.

Determination

31. The Tribunal determines that a reduction of 5% would represent a fair reflection of the current enhancement achieved by investment properties upon achieving vacant possession. This reduction is to be applied to the standing house value already determined to be £105,000, giving a value of £99,750.

32. The Tribunal agrees that a deferment rate of 5.5% is appropriate in the present case.

Overall Determination of Price Payable

33. Applying the Tribunal's preceding determinations the price payable by the Applicants comes to £1,364. The Tribunal's detailed calculation arriving at this figure is annexed.

ANNEX

Valuation Date	:	9 th April 2013
Term Commencement Date	:	1 st March 1982
Term (years)	:	99
Term expiry Date	:	28 th Feb 2081
Unexpired Term (years)	:	67.89
Ground Rent	:	£25
Capitalisation Rate	:	6%
Freehold Value	:	£105,000
Apportionment of Value to site	:	30%
Modern Ground at 5.5%	:	£1732.50 p.a.
Capitalisation Rate on Modern	:	5.5%
Reversion (years)	:	117.89
"Haresign" reduction	:	5%
Reversionary Yield	:	5.5%

Term 1

Passing rent	£25.00	
YP for 67.89 yrs at 6% is	16.347	£408.69

Term 2 First Reversion

Modern Ground Rent	£1732.50	
YP 50yrs at 5.5%	16.9315	
PV of £1 in 67.89 yrs is	0.026387	
Result X Modern GR is	0.44677	£774.00

Term 3 Haresign reversion

£105,000 less 5% is	£99,750	
PV of £1 in 117.89 yrs is	.001814	£181.00

Decision		£1364.00
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