



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

Case Reference : **BIR/00CN/OAF/2020/0016**

HMCTS (paper, video, audio) : **P: PAPERREMOTE**

Property : **247 Pershore Road Edgbaston Birmingham B5 7QP**

Applicants : **Susan Mamud & Rostam Rostam**

Representative : **Lawrence & Wightman**

Respondent 1 : **WEL (No 1) Limited**

Representative : **Stevensons Solicitors**

Respondent 2 : **Birmingham City Council**

Representative : **Birmingham Property Services**

Type of Application : **Under section 21 (1) (a) of the Leasehold Reform Act 1967 (“the Act”) for the determination of the price to be paid under section 9 of the Act.**

Tribunal Members : **V Ward BSc Hons FRICS
R P Cammidge FRICS**

Date of Decision : **17 September 2020**

DECISION

Introduction

1. This is the Tribunal's decision in respect of an application to determine the purchase price of the Freehold interest in 247 Pershore Road, Edgbaston, Birmingham B5 7QP ("the Property") pursuant to the provisions of the Leasehold Reform Act 1967 ("the Act").
2. The Applicants were represented by Keith Chew FRICS of Lawrence & Wightman Chartered Surveyors. The First Respondent, the Freeholder, was represented by Stevensons Solicitors and in respect of valuation matters by Geraint Evans FRICS of eBureau Limited.
3. The Tribunal was advised that substantive terms with the Second Respondent, the Intermediate Landlord, had been agreed.
4. The Applicants served notice to acquire the Freehold interest dated 16 December 2019 and the First Respondent replied by counter-notice dated 10 February 2020. The Applicants applied to the Tribunal by an application received on 29 June 2020, for the price to be determined in accordance with the Act.
5. The Property is held by way of an underlease dated 21 March 2016. The lease is for a term of 101 years, less 5 days, from 25 March 1961 at a fixed ground rent of £10 per annum.
6. Due to the Covid-19 Public Health Emergency, the Tribunal was unable to carry out an inspection of the Property but invited the parties to include photographs in their submissions by way of mitigation.
7. Neither Party requested an oral hearing, the Tribunal therefore makes its determination on the basis of the written submissions of the Parties.
8. The basis of valuation is to be in accordance with the provisions of section 9 (1A) of the Leasehold Reform Act 1967.

The Property

9. From the information provided by the parties, the Property appears to comprise an ex Local Authority mid-terraced house offering the following accommodation:

Ground Floor

Hallway

Kitchen/diner

Lounge

First Floor

Landing

Two double bedrooms

One single bedroom

Bathroom

Separate WC.

Gardens front and rear.

The Property benefits from double glazing and gas fired central heating system.

The Property stands to the rear of an area of public open space that fronts the Pershore Road approximately 2 miles from the city centre. There are high rise tower blocks adjacent to the Property whilst the Edgbaston Cricket Ground is directly opposite. Access to the Property is pedestrian only and there is no car parking available directly outside the same.

The Law

10. The relevant law is section 9 (1A) of the Leasehold Reform Act 1967 which states as follows:

Notwithstanding the foregoing subsection, the price payable for a house and premises,—

(i) the rateable value of which was above £1,000 in Greater London and £500 elsewhere on 31st March 1990, or,

(ii) which had no rateable value on that date and R exceeded £16,333 under the formula in section 1(1)(a) above (and section 1(7) above shall apply to that amount as it applies to the amount referred to in subsection (1)(a)(ii) of that section)

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) on the assumption 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; or an extended lease

(b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises

(i) if the tenancy is such a tenancy as is mentioned in subsection (2) or subsection (3) of section 186 of the Local Government and Housing Act 1989, or is a tenancy which is a long tenancy at a low rent for the purposes of Part I of the Landlord and Tenant Act 1954 in respect of which the landlord is not able to serve a notice under section 4 of that Act specifying a date of termination earlier than 15th January 1999, under the provisions of Schedule 10 to the Local Government and Housing Act 1989; and

(ii) in any other case under the provisions of Part I of the Landlord and Tenant Act 1954;

(c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecoration under the terms of the tenancy or Part I of the Landlord and Tenant Act 1954;

(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;

(e) on the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges . . . to which section 11(2) below applies, 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

(f) on the assumption 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 below.

Matters agreed between the Parties.

11. The following matters were agreed between the Parties:

- a) The capitalisation rate of 6.5%
- b) Deduction for Act rights – 11.57%.
- c) The existing lease value. The Applicant states that relying on the Savills graph for an unexpired term of 42.26 years produces a relatively of 72.61% and by applying it to a value of £170,000

produces an existing lease value of £125,252 which is incorrect, the result is £123,437. The Respondent states that an existing lease value in the latter amount has been agreed. As the Tribunal considers the figure stated by the Applicant to be a typographical error, the Tribunal therefore adopts £123,437 as the value of the existing lease.

Matters for the Tribunal to determine.

12. The following matters were to be determined by the Tribunal:

- a) The Date of Valuation/unexpired lease term.

Applicant	16 December 2019	42.26 years remaining
Respondent	18 December 2019	42.34 years remaining
- b) Freehold Value

Applicant	£172,500
Respondent	£185,000
- c) Deferment Rate

Applicant	5.25%
Respondent	4.75%

13. The premium as calculated by the parties was as follows:

The Applicants	£40,820.00
The Respondent	£48,092.00 with £47,976.00 to the freeholder and £116.00 to the intermediate landlord.

The Submissions of the Parties

- 14. Tribunal finds it convenient to list the Parties' submissions in order of the disputed facts above with the Tribunal's findings thereafter.
- 15. The Date of Valuation/unexpired lease term.

The Applicant has adopted the customary practice and taken the date of the Notice.

The Respondent quotes the Civil Procedure Rules to the effect that the deemed date of service is the second day after posting provided that day is a business day; 16 December was a Monday therefore (Wednesday) 18 December 2019 is adopted with the result of 42.34 years remaining.

The Tribunal notes that the valuation procedure in section 9 (1A) makes mention of the amount being determined at the *relevant time*. Section 1 (1) (b) the Act states:

“at the relevant time (that is to say, at the time when he gives notice in accordance with this Act of his desire to have the freehold or to have an extended lease, as the case may be)....”

Following this, the Tribunal takes the date of Notice was served i.e. 16 December 2019 as being the valuation date and therefore 42.26 years remaining.

16. The Freehold Entirety Value.

The comparable evidence presented can be summarised as follows:

281 Pershore Road

This property was sold by auction in April 2019 for £150,000 and again by auction in July 2019 for £185,000. The property is end terraced and when sold had suffered fire damage. The Applicant offers little commentary on this sale whilst the Respondent surmises that the higher price achieved was probably due to the fact that the agent at the time of the second sale was a specialist residential auctioneer and also, they would have had the benefit of the marketing carried out for the original sale. The Respondent states that the property was smaller with two bedrooms but had the benefit of a garage in a separate block and a side garden. Balancing these factors with the damaged condition, the Respondent adopts £185,000.

251 Pershore Road

The sale of this property was the last recorded sale of a property in the block in which the subject is situated. The freehold interest was sold in January 2014 for £160,000. The Applicant states that it was a four-bedroom mid terrace house. The Respondent, using Land Registry house price data for terraced houses in Birmingham, extrapolates the 2014 sale price to the valuation date which produces a value of £208,890. The Respondent considers that after allowing for the differences in accommodation offered and for tenants' improvements of £3,000, this supports an adopted value of £185,000.

1 Spey Close

This is a mid-terraced house with two bedrooms sold in January 2020 for £160,000 situated on a cul de sac approximately 0.25 miles from the subject. The Applicant considers the location of this property to be superior to the subject. The Respondent makes no specific comment in respect of this property.

91 Eastwood Road

The Applicant included details of this traditional end of terraced house which sold in October 2019 for £193,000. The property offers larger accommodation than the subject including three bedrooms with on street parking outside. The Respondent makes no specific comment in respect of this property.

Summary

The Applicant after allowing for £2,500 for improvements and considering the evidence above, adopts £172,500.

The Respondent adopts the evidence from the sale of 281 Pershore Road at £185,000 which they consider to be endorsed by the time adjusted valuation of 251 Pershore Road.

The Tribunal

The Tribunal considered each comparable in turn.

281 Pershore Road

This is undoubtedly a good comparable, it is in close proximity to the subject. It is however end terraced, benefits from a larger site area and a garage but was fire damaged at the time of sale. It also offers only two bedrooms. The evidence it provides is confusing; achieving £35,000 more after under 3 months seemingly in the same condition.

251 Pershore Road

The Tribunal considers the sale of this property to be too historic and has concerns over the use of indices as a robust methodology of valuation when taking into account the fact that they are more recent sales.

1 Spey Close

The Tribunal also considers this property a useful comparable offering similar accommodation albeit only two bedrooms. It also has the benefit of off-road car parking.

91 Eastwood Road

The Tribunal does not consider this property comparable. It is a traditional early twentieth century end of terraced house with significantly larger accommodation than the subject and on street parking available outside the property.

Conclusion

Interpolating the evidence provided by the sales of 281 Pershore Road and 1 Spey Close, the Tribunal adopts £177,500 allowing a slight weighting to the evidence of the former sale.

The Tribunal, after allowing for £2,500 for improvements, adopts £175,000.

17. Deferment Rate

The Applicant's submissions in respect of the deferment refer to the Upper Tribunal decision in *JGS Properties and King, Sedro and Nunnington* [2017] UKUT 0233 (LC). In that matter, the Upper Tribunal upheld the decision of the First-tier Tribunal to the effect that there should be an addition of 0.5% to the deferment rate set in *Earl Cadogan and others v Sportelli and another* [2008] UKHL 71 of 4.75% to reflect the poorer growth rate outside prime central London (PCL) but no further addition for volatility, to produce a deferment 5.25%. Since that decision Mr Chew states that he has agreed dozens of settlements with freeholders' agents adopting a deferment rate of 5.25%.

Continuing he states that again the Upper Tribunal in *Sinclair Gardens Investments (Kensington) Ltd v Ray* [2015] EWCA Civ 1247 in respect of a property at 7 Grange Crescent, Halesowen it was held that the First-tier Tribunal could continue to generally apply the 0.5% addition due to poorer growth prospects, without the necessity for all the evidence presented *Zuckerman & Others v Trustees of the Calthorpe Estate* (LRA/97/2008) to be re-presented in each case.

Therefore, he considered that the appropriate deferment rate to be adopted should be 5.25%.

On behalf of the Respondent, Mr Evans considers that in *Zuckerman* the actual real growth rate was not considered. It was assumed that as the property price was less than PCL, the real growth rate had to be less than 2% which it is not in his opinion. Mr Evans concludes that an adjustment to *Sportelli* should only be made if it can be shown that the real growth rate was in fact less than 2% and so adopts 4.75%

The Tribunal

The Tribunal notes Mr Evans' arguments but do not consider them to be of sufficient weight to depart from the guidance given in *JGS Properties* and accordingly adopts 5.25%.

The Tribunal's Valuation

18. Applying those determinations to the matters agreed by the Parties, the Tribunal's valuation is as shown in Appendix One.
19. The Tribunal determines that the premium to be paid for the freehold interest in 247 Pershore Road, Edgbaston, Birmingham B5 7QP pursuant to the provisions of the Leasehold Reform Act 1967 is £43,022 (Forty Three Thousand and Twenty Two pounds).

Costs

20. The application under section 21 (1) (ba) of the Act for a determination of the reasonable costs payable under section 9 (4) of the Act was stayed by the Tribunal until the determination of the substantive application. The Applicant is therefore to advise the Tribunal within 21 days if costs are agreed or alternatively for directions to be issued.

Appeal

21. 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).

Vernon Ward
Chairman

APPENDIX ONE - VALUATION

Term

Ground Rent	£	4.00	£	57.24
YP 42.26 years @ 6.5%		14.3099		

Reversion

Freehold Value	£	175,000.00	£	20,142.50
PV £1 42.26 @ 5.25%		0.1151		

	£		£	20,199.74
--	---	--	---	-----------

Marriage Value

Freehold Value	£	175,000.00		
----------------	---	------------	--	--

less

Existing leasehold value	£	123,437.00		
--------------------------	---	------------	--	--

No act world deduction (11.57%)	£	14,281.66		
------------------------------------	---	-----------	--	--

Adjusted Leasehold Value	£	109,155.34		
--------------------------	---	------------	--	--

Value of Existing Freehold Interest	£	20,199.74		
--	---	-----------	--	--

	£	129,355.08		
--	---	------------	--	--

Marriage Value	£	45,644.92		
50%			£	22,822.46

			£	43,022.20
--	--	--	---	-----------

			£	43,022.00
--	--	--	---	------------------