



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

Case Reference : BIR/00CN/OAF/2022/0012

Property : 55 Gorse Farm Road, Great Barr, Birmingham, B43 5LS

Applicant : Mr Paul Ceney

Representative : Adcocks Solicitors and G.R. Bates BA, FRICS

Respondent : Persons Unknown

Type of Application : To determine the sum payable into Court by the Lessee to purchase the freehold interest pursuant to Section 27 of the Leasehold Reform Act 1967 by Order of Birmingham County Court dated 7 July 2022 under Claim No. H01BM769

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
Judge M.K. Gandham
V. Ward B.Sc FRICS (Regional Surveyor)

Hearing : None. Paper Determination.

Date of Decision : 16 December 2022

DECISION

DECISION

- 1 The price of the freehold interest is determined at £42,300 (Forty Two Thousand Three Hundred Pounds).

REASONS

Introduction

- 2 The Applicant holds a lease of 55 Gorse Farm Road, Great Barr, Birmingham, B43 5LS, granted for a term of 99 years from 25 March 1959 at £25 p.a. ground rent and wishes to acquire the freehold interest. Despite extensive enquiries, the Applicant's Solicitors had been unable to locate the landlord to negotiate the purchase and applied to Birmingham County Court under s.27(5) of the Leasehold Reform Act 1967 ('the Act') on 15 October 2021, for a vesting order to transfer the freehold to the Applicant subject to payment of costs into Court.
- 3 By Order of Birmingham County Court dated 7 July 2022, Claim No. H01BM769, the freehold was vested in the Applicant subject to transfer to the First-tier Tribunal (Property Chamber) for determination of the price under sections 9 and 27(5)(a) of the Act.
- 4 The Tribunal received the application on 8 September 2022, issued Directions, inspected the property with the Applicant on 8 November 2022 and determines as follows.

The Law

- 5 The property is held by lease for a term of 99 years from 25 March 1959 granted by Gorse Farm Investments Ltd. (Landlord) to Howard Hicken (Tenant) at a fixed ground rent of £25 p.a. Page 4 of the Lease is missing from the copy sent to the Tribunal but the repairing clause, (12), describes the demise as a 'shop dwelling-house buildings ...' and envisages both commercial and residential use. The tenant is required to undertake all repairs.
- 6 The date of valuation is 15 October 2021 which was the date of application to the County Court.
- 7 There are two preliminary issues that need to be considered by the Tribunal for the purposes of the valuation, for which the following sections of the Act are relevant:

- 8 Meaning of 'house' - Section 2(1)

The property is a semi-detached two storey building occupied as a hairdressing salon to the front of the ground floor with residential use of the rear part of the ground floor and first floor. In view of the mixed use, the question arises as to whether the property falls within the scope of the Act and, if it does, how should it be valued. In this regard, section 2(1) provides:

'For purposes of this Part of the Act, 'house' includes any building designed or adapted for living in and reasonably so called, notwithstanding that the building ... is not solely designed or adapted for living in ...'

As such, the Act provides that property can be covered by the Act even if of mixed use, as in this case, providing it can be regarded as a house 'reasonably so called'. The Tribunal noted that:

- a) Birmingham County Court found that the property comprised a 'house' in their Order of 7 July 2022 and the Applicant, consequently, had the right to acquire the freehold interest;
- b) The Tribunal finds as a matter of fact that the predominant use is residential as it is effectively a residential building with ancillary commercial use and; ÷
- c) The Upper Tribunal has found mixed use properties of similar description to be included within the provisions of the Act in:
Day & Another v Hosebay Ltd. [2012] UKSC 41
Tandon v Trustees of Spurgeons Homes [1982] AC 755
Jewelcraft Ltd. v Pressland [2015] EWCA Civ 1111

The property therefore comprises a 'house' under section 2(1) of the Act as it currently stands (i.e. as a mixed use property).

- 9 Valuation Basis – Section 9(1) or Section 9(1A) ?
 Mr Bates for the Applicant provides two alternative bases of valuation depending on whether the freehold should be valued under section 9(1) or section 9(1A) of the Act. The methods of valuation are completely different but the appropriate method defined by the Act depends on the Rateable Value of the premises on 31 March 1990.
- 10 The Valuation Office Agency no longer keep records of Rateable Values from that time but Mr Bates helpfully made enquiries and was advised by Severn Trent Water Ltd., who still use Rateable Value as the basis for charging unmetered water rates, that the RV was £588, and by the Local Authority that it was £561. Either way, it was above £500 which defines the basis of valuation. An RV of less than £500 would require valuation under section 9(1), or over £500 under section 9(1A).
- 11 Mr Bates submitted that if the tenant's improvements were disregarded, the resulting RV would be under £500. To support his contention, he provided evidence of three semi-detached houses in the area with RVs ranging from £227 to £258.
- 12 Having considered the evidence, the Tribunal notes that prior to 31 March 1990, all property, whether residential or commercial, was assessed to a Rateable Value listed in the Valuation List at values effective on 1 April 1973. After 31 March 1990, commercial property was valued to Rateable Value and residential property was charged under the Community Charge, generally known as 'the Poll Tax'.
- 13 This property would have been a 'composite hereditament' under the General Rate Act 1967 with a single RV covering both the residential and commercial elements. The Leasehold Reform Act 1967 makes no distinction between residential and commercial property for the purposes of section 9(1A), it simply refers to Rateable Value. It would therefore make no difference whether a hypothetical value were assigned to tenant's improvements or not, the RV was in excess of £500 and accordingly the Tribunal finds the freehold interest to be valued adopting the method in section 9(1A).
- 14 In addition, s.27(5)(b) of the Act requires the Applicant to pay into Court any ground rent that remains unpaid at the date of conveyance.

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15 **Facts Found**

The Tribunal inspected the property on 8 November 2022 with the Applicant, Mr Ceney.

- 16 It comprises a two storey, semi-detached building in a well-established residential estate in north Birmingham. The neighbouring property is similar in design with an off-licence on the ground floor and flat above. The subject property has a forecourt fronting a road island with other shops also fronting the island including a Co-op supermarket, a second off-licence and three take-away food shops.

The accommodation comprises:

Ground Floor

Shop, occupied as hairdressing Salon, Office and W.C. to the front of the building.
Open plan Kitchen and Dining Room to the rear of the building forming part of the first floor flat. The Dining Room has sliding patio doors to a back garden.

First Floor

Landing, Lounge, two Bedrooms, Shower Room and separate W.C.

- 17 The building has been improved over and above its original 1959 condition by adding double glazing, gas-fired central heating, kitchen and shower refurbishments and alterations to the internal layout.

18 Outside

Tarmac paved forecourt to the front. A path to the side of the building leads to a small back garden.
There is no on-site parking or garage.

19 **Applicant's Submission and Tribunal Determination on Valuation Points**

Value of Freehold Interest with Vacant Possession

20 Applicant

Mr Bates provided details of the sale prices achieved for 8 houses in the area:

Address	Date of Sale	Sale Price £
19 Gorse Farm Road	October 2020	167,000
28 Gorse Farm Road	October 2020	155,000
86 Jayshaw Avenue	December 2020	200,000
107 Eastwood Road	January 2021	177,000
51 Eastwood Road	February 2021	190,000
49 Eastwood Road	February 2021	185,000
65 Eastwood Avenue	March 2021	160,000
69 Jayshaw Avenue	June 2021	172,000

Mr Bates adjusted the prices to reflect inflation at different dates and differences in accommodation and found the average adjusted price to be £174,000. He then deducted £9,000 to reflect the subject property's location next to an off-licence to produce a value of £165,000. He made a further deduction of £12,000 to reflect the cost of 're-conversion' to a make it completely residential property and £24,000 for the tenant's improvements listed below.

21 Tribunal

The Tribunal notes the property is mixed use and that a discount for 're-conversion' to totally residential use would be inappropriate, especially as it is highly likely (based on the lease provisions) to have been built as a mixed use property in 1959 and, as already stated, falls within the definition of a 'house' in any event. There is no evidence to suggest it was ever completely residential. In addition, as a mixed use property, the Tribunal also considers the deduction of £9,000, for its location next to an off-licence, to be inappropriate.

In terms of valuation, the Tribunal considered the alternatives of (1) comparison with other house sales in the area and applying a 'broad brush' approach to reflect the commercial element, or (2) valuing as a commercial property investment by capitalising the notional market rental value of the combined shop and flat, and found that both methods produced the same result, around £160,000, which the Tribunal finds as the value of the freehold interest with vacant possession.

Improvements

22 Applicant

Mr Bates deducts £24,000 for tenant improvements for:

- a) construction of a ground floor Kitchenette and W.C. for the shop
- b) construction of a Kitchen / Dining Room for the flat
- c) installation of gas-fired central heating
- d) rewiring
- e) installation of wall insulation
- f) double glazing
- g) Shower Room and W.C. refurbishment

23 Tribunal

The Tribunal finds some of the items listed above to be improvements and some repairs, for which the tenant is liable under the terms of the existing full repairing lease.

The Tribunal was not provided with a breakdown of Mr Bates's estimates for the effect on value of each item, but using its own knowledge and experience as an Expert Tribunal finds the appropriate deduction for tenant improvements to be £10,000.

Capitalisation Rate

24 Applicant

Mr Bates capitalises the ground rent to lease expiry at 7%.

25 Tribunal

The Tribunal agrees this to be appropriate and in line with established practice.

Deferment Rate

26 Applicant

Mr Bates capitalises the ground rent to lease expiry at 5.25%.

27 Tribunal

The Tribunal agrees this to be appropriate and in line with established practice.

Relativity

28 Applicant

As part of the valuation, it is necessary to assess the value of the existing lease with only 36.4 years unexpired relative to the value of the freehold interest with vacant possession.

Mr Bates cites the following cases to assess the relative value of the interests:

Earl Cadogan v Erkman [2011] UKUT 90

Deritend Investments Ltd. v Ms Kornelia Treskonova [2020] UKUT 0164 (LC)

Trustees of Sloane Stanley Estate v Mundy [2016] UKUT 0223 (LC)

and applies Savills Relativity Graph which indicates relativity of 58.7%, to which he adds 1% for effective comparison of the long leasehold interest with a freehold interest.

29 Tribunal

The Tribunal agrees Savills' Unenfranchisable (2015) Graph to be the most appropriate which for a lease with 36.4 years unexpired from the date of Court application (15 October 2021) to lease expiry (24 March 2058), indicates relativity of 58.63%. The Tribunal adds 1% to reflect the equivalent freehold value for Marriage Value purposes and finds for relativity of 59.63%.

£150,000 freehold value x 59.63% relativity = £89,445 as the value of the existing leasehold interest.

Allowance under Schedule 10 to the Local Government & Housing Act 1989

30 Applicant

The Applicant makes a 5% deduction to allow for the risk of the tenant remaining in occupation after lease expiry.

31 Tribunal

The Tribunal finds this risk to be too remote and makes no deduction.

Valuation

32 Applicant

Mr Bates contends for alternative valuations of £9,000 under s. 9(1) or £34,500 under s. 9(1A).

33 Tribunal

Based on its findings, the Tribunal values the freehold interest with vacant possession as shown on the following page.

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Diminution in Value of Freehold

Term		
Ground Rent	£ 25	
Years Purchase 36 years @ 7%	<u>13.0352</u>	£ 325
Reversion		
Freehold vacant possession net of improvements	£ 150,000	
Present Value 36 years @ 5.25%	<u>0.1584909</u>	<u>£ 23,773</u>
		£ 24,098

Marriage Value

Value of freehold interest after purchase	£ 150,000	
Less		
Value of existing freehold interest	£ 24,098	
Value of existing leasehold interest	<u>£ 89,445</u>	
	<u>£ 113,543</u>	
Gain (Marriage Value)	£ 36,457	
50% of Marriage Value [per Act s.9(1D)]		<u>£ 18,228</u>
		<u>£ 42,326</u>
Price say		£ 42,300

- 34 Having considered the evidence before it, the Tribunal determines the price of the freehold interest under the Leasehold Reform Act 1967 to be £42,300 (Forty Two Thousand Three Hundred Pounds).

Ground Rent

- 35 Section 27(5)(b) of the Act requires the Applicant to pay any ground rent due as part of the payment into Court. Under the provisions of sections 47 and 48 of the Landlord & Tenant Act 1987 and section 166(1) Commonhold and Leasehold Reform Act 2002, there is a requirement to notify long leaseholders that rent is due and there is no requirement to pay rent unless such notice has been given. As the Applicant has received no ground rent demands for at least the last 6 years the Tribunal determines that none is payable.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date

Appeal Procedure

If the Applicant 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 of the date these Reasons have been sent to the Applicant [rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013].

If the person wishing to appeal does not comply with the 28 day time limit, they shall include with the application for permission to appeal a request for an extension of time and the reason for not applying within the 28 day time limit. The Tribunal will then decide whether or not to extend the time limit to allow the application for permission to appeal to proceed.

The application must identify the Tribunal decision to which it relates, state the grounds of appeal and the result the party making the application is seeking.