



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

Case Reference : **CAM/00KF/OCE/2021/0026**

Property : **65 Woodgrange Drive, Southend on Sea, Essex SS1 2SD**

Applicants : **(1) Richard John Michael Hopson,
Martin Derek Hopson (FF
leaseholders)
(2) Daniel Gregory Ware (GF
leaseholder)**

Representative : **Tolhurst Fisher LLP**

Respondent : **Roderick John Carrington & Stuart
Andrew Maynard**

Type of Application : **Determination of terms of
leasehold enfranchisement**

Tribunal Members : **Mr N Martindale FRICS**

Date of Decision : **14 April 2022**

DECISION

Decision

1. The premium to be paid by the applicants for the freehold interest in 65 Woodgrange Drive Southend on Sea SS1 2SD registered at HM Land registry under title number EX387272 (the "Property") is **£38,543 (Thirty Eight thousand, five hundred and forty three pounds)**.
2. Just prior to the hearing the TR1 was agreed and whilst the parties were directed to make written representations on landlord's S.60 costs these

have also been agreed by the parties. Both fall outwith jurisdiction.

Introduction

3. This is an application made under Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of acquisition of the freehold interest in the Property.
4. The applicants served notice dated 25 February 2021 on the respondent landlords. The notice proposed compensation for the landlords’ interest of £23,587, plus £50 for additional ancillary land, a total of £23,637. The respondents replied with a counter notice dated 26 April 2021 recognising the right to purchase the freehold but requiring £70,000, plus £500 for additional ancillary land, a total of £70,500.
5. The Property is a two level mid-terraced Edwardian building consisting of two self contained flats, lower and upper, converted in the late 1980’s, from the former Edwardian house at 65 Woodgrange Drive, Southend on Sea.
6. The First and Second applicants, Richard Hopson and Martin Hopson have interests in the lease of the upper floor flat (HMLR title EX403387). The Third applicant has the lease of the lower floor flat (HMLR title EX405887).
7. The Upper floor flat is held on a long lease dated 14 April 1989 for 99 years from 31 December 1988 originally between Roderick Carrington and Stuart Maynard (landlords) and Diane Howell and Jennifer Holman (tenants) on set rising rents.
8. The Lower floor flat is held on a long lease dated 23 May 1989 for 99 years from 31 December 1988 from the same landlords, and Grace Fairman (tenant) also on set rising rents.
9. The landlord for both leasehold flats remains as freeholder (HMLR title EX387272) Roderick Carrington and Stuart Maynard.
10. By an application dated 14 October 2021 made by the three applicants referred the terms of transfer, the premium and other terms of acquisition to the First tier Tribunal (Property) Chamber for determination. The applicants were advised to make a separate application for determination of landlords’ reasonable costs if they could not be agreed.

Statutory basis of valuation

11. Schedule 6 to the Act provides that the price to be paid by the nominee purchaser, in this case the applicants, for the freehold interest shall be the aggregate of the value of the freeholder's interest, the freeholder's share of the marriage value, and compensation for any other loss.
12. The value of the freehold interest is the amount which, at the valuation date, that interest might be expected to realise if sold in the open market subject to the tenancy by a willing seller (with the nominee purchaser, or a tenant of premises within the specified premises or an owner of an interest in the premises, not buying or seeking to buy) on the assumption that the tenant has no rights under the Act either to acquire the freehold interest or to acquire a new lease.
13. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date.
14. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Directions

15. Directions dated 22 December 2021 prepared by Regional Surveyor Mary Hardman, were issued. Expert valuer reports were to be exchanged by 5pm on 24 January 2022 and the valuers were to discuss the case by 7 February 2022. A single bundle was to be agreed by the parties and sent by the applicant to the Tribunal 14 days prior to the hearing date.
16. The Directions clearly state on page 1 *“If the applicants fail to comply with these directions the tribunal may strike out all or part of their case...”* and page 2 *“If the respondent fails to comply with these directions the tribunal may bar it from taking any further part in all or part of these proceedings and may determine all issues against it...”*
17. In the event the bundle was prepared and filed by the applicant at the Tribunal late. It lacked any representations from the respondent. The explanation offered was that the respondent's expert report had not been received by the applicant prior. The respondent then filed their expert report on the weekend, received by the Tribunal about an hour prior to the Monday 21 March 2022 hearing.
18. While the Tribunal is aware that last minute settlements are often reached and on this occasion the relativity was settled in this period, which was helpful but, this expectation should not be allowed to colour the need to follow the overriding objective under the Rules of assisting the Tribunal. This includes complying with Directions of the Tribunal

and doing so in good time. Failure, may damage one or both parties' cases as to the particular points and details they wish to make to the Tribunal and these can be easily missed in the unseemly scramble to put their case across often orally, at such a late stage. More significantly their entire expert report and other written representations could be excluded which would damage their case very considerably. Such exclusion could even be accompanied by an application for costs under Tribunal Rule 13 from the other party and include an application for wasted costs where it resulted from the failure of a professional advisor to act properly. Late and patchy filing is a high risk approach in dealings with the Tribunal, of which the both party's representative are aware.

19. In this case it is possible that some arguments were not fully explored at the hearing owing to the late and fragmented filing and some were only available to the Tribunal at the very last moment. Parties must not be surprised, when they do not follow Directions, that these are the real risks that they and their representatives run. However on this occasion the Tribunal did not decide to exclude anything as both parties had failed to follow them Directions. Instead it made the best of the material provided late and presented by both parties at the hearing.

Applicants Case

20. The applicants have provided a valuation report with an unstated AVD. The accompanying but, separate Notice of Claim was dated 26 February 2021 but, it is unclear what date was used in the report by Colin Horton BSc AssocRICS, of Hortons Valuers Ltd. ("the Report"). Mr Horton is very familiar with Southend. The report contains a formal Statement of Truth confirming that in so far as the facts stated in the report are within their own knowledge that he believes them to be true and includes a statement of compliance confirming that he understands his duty to this Tribunal.
21. A photograph of the exterior of the Property was included in the applicant's Valuation Report. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.
22. These flats are described as being located in a "*...popular residential area however it overlooks a notorious council estate which is not ideal and will hamper potential value. It does however benefit from a good transport links and proximity to the lower town centre and train links.*" The estate appears to the Tribunal from Google Streetview (at November 2020), to be a 1970's low rise purpose built Council housing estate.
23. These two bedroom flats are both described as improved with provision of PVUc framed double glazed windows. That said, no obvious deduction was made in the calculations presented when assessing the

capital value of each flat. The gross internal floor areas were 65m² ground floor and 68m² first floor. The ground floor flat has direct access to the rear garden and parking space in the front yard, the first floor flat just had the parking space at the front, but no access to the rear garden. Both flats were in fair condition, though the first floor flat was described as in “*substantially better condition than the ground floor flat...*”. The Tribunal notes that Woodgrange Drive is a classified road, the A1160, is a bus route and that there is no on-street parking.

24. Both flats had stepped rent increases at the same steps. Ground floor £75pa for the first 33 years, £125pa for the next 33 years, £175pa for the last 33 years. The unexpired term was taken as 66.84 years for both, at the AVD. The Valuer adopts 6% return as capitalisation rate to be applied to all rental periods unexpired.
25. Mr Horton for the applicant provided details of 5 comparables, though later withdrew the pending sale of 2 Woodgrange Drive, leaving 4 comparables. The schedule of comparables set out in his report is almost unreadable owing to the very small size adopted by the writer. This entirely avoidable practice should stop if the report author expects the Tribunal to be able to easily read the materials. A minimum 12 point text size should be used. According to the report:
26. **4 Woodgrange Drive, Southend SS1:** A converted 2 bed flat, from a 1900's house with 67m², on a 125 year lease from 1989 sold for £170,000 in November 2019 some 14 months prior to the AVD.
27. **Ash Villa Beach Road, Southend SS1:** A converted 2 bed flat, from a 1900's house with 55m², on a 125 year lease from 1990, sold for £164,000 in August 2020 some 6 months prior to the AVD.
28. **9 Woodgrange Drive, Southend SS1:** A converted 2 bed flat, from a 1900's house with 72m², on a 99 year lease from 2011, sold for £180,000 in January 2020 some 12 months prior to the AVD.
29. **43a Hastings Road, Southend SS1:** A converted 2 bed flat, from a 1900's house with a 77m², on 125 year lease from 2019, sold for £170,000 August 2019 some 18 months prior to the AVD.
30. From these Mr Horton's conclusion is that both flats have a virtual freehold capital value of £170,000 at the AVD, February 2021.
31. As for additional accommodation at the Property, Mr Horton considered that although the roof space had potential for conversion he did not consider it financially viable. It was presently unconverted loft space not included in the lease of the first floor flat. The only buyer of the space would be the leaseholder of the first floor flat. However as

the first floor flat already has 2 bedrooms and that there would not be any financial benefit and no value should be attributable.

32. Although the report deals with the issue of relativity, the parties had, just prior to the hearing, agreed it at 82.78%. Accordingly it fell outside the jurisdiction of the Tribunal.
33. Although the report deals with the issue of deferment rate, the parties had just prior to the hearing, agreed it at 5%. Accordingly it fell outside the jurisdiction of the Tribunal.
34. The report deals with the capitalisation rate as dependent on; lease length, security of payment, the size of ground rent, rent review provision and its nature. The rate is said to be open to interpretation and was not determined by the Lands (Upper) Tribunal in Nicholson and Goff 2007 where these 5 factors were noted. In this Property, the rents being low, subject to minimal uplift on fixed steps and Mr Horton favours a capitalisation rate of 10% equating to 15YP.
35. Although the report sets out a figure for the value of ancillary accommodation (other than the loft space) again, the parties had, just prior to the hearing, agreed it at £100. Accordingly it fell outside the jurisdiction of the Tribunal.
36. The report concludes with the premium for each flat forming the Property to be £12,001 making a total premium of £24,002 on transfer as at the date of preparation of the report. However just prior to the hearing and in light of the late agreement on relativity the value of the 'tenant's existing lease' was reduced by Mr Horton from £153,867 to £140,726. This had the effect of significantly increasing the marriage value from £8,284 to £21,405. This changed the final premium from £12,001 to £18,571 for each flat. From this the applicant's total premium figure changed to £37,142 (rather than £24,002 as originally drafted). This did not include the £100 already agreed for the ancillary accommodation.

Respondent's Case

37. The respondent provided a report and representations from Mike Stapleton FRICS from Mike Stapleton & Company signed off in compliance off with the Court's requirements. The comments regarding print size adopted and difficulty in its readability, apply to this report as well.
38. The report contained very similar background information on the Property save that it was considered to be in 'fair condition' both on ground and first floors. By contrast to Mr Horton's report, this report did not consider that there were any improvements the value of which

should be deducted from the long leasehold capital values arising from sales of comparables. The report refers to an AVD of 26 February 2022, but it was established during the hearing that the correct date is 26 February 2021.

39. As with the report for the applicant, this report referred to the deferment rate of 5% and marriage value relativity but, both matters were settled between the parties as noted above by just prior to the hearing and thus fell outside the jurisdiction of the Tribunal. This included settlement of the ancillary land value at £100.
40. The report used 5 comparables in support of the virtual freehold capital value of the flats: Ground floor £220,000 and First floor £225,000. These comparables were all postal area SS2, further from the sea front and regarded by Mr Stapleton as less desirable than SS1 where the Property was located.
41. **69a Wimborne Road, Southend SS2:** A converted 2 bed flat, from a 1900's semi-detached house, no floor area, on a 110 year unexpired lease, at a nominal rent, sold for £200,000 February 2021, around the AVD. It had no off-street parking but there was a front garden.
42. **22 Stromness Road, Southend SS2:** A converted 2 bed flat, from a 1900's mid terraced house, GIA 56m², on a 156 unexpired lease, at a nominal ground rent, sold for £190,000 February 2021, around the AVD. It had no offstreet parking but there was a front garden.
43. **3a Kilworth Ave, Southend SS2:** A converted 3 bed first floor flat, from a 1900's semi-detached house, no floor area, on a long unexpired lease, at a nominal ground rent, sold for £190,000 January 2021, around the AVD. It appeared to have off street parking.
44. **13a Belle Vue Avenue, Southend SS2:** A converted 2 bed flat, from a 1900's mid-terraced house, no floor area, a share of the freehold, sold for £215,000 November 2020, 3 months earlier than the AVD. Uplifted by UK HPI Land Registry for Southend to £222,890. It had off-street parking.
45. **25 Stromness Road Southend SS2:** A converted 2 bed flat, from a 1900's mid-terraced house, no floor area, on a long unexpired lease, with a share of the freehold for £196,950 November 2020, 3 months before the AVD. Uplifted by UK HPI Land Registry for Southend to £204,178.
46. Overall Mr Stapleton favoured 13a Belle Vue Avenue as the best comparable.

47. His report concludes with the following figures: Ground floor flat £220,000 virtual freehold capital value, with a £24,250 premium; First floor flat £225,000 virtual freehold capital value, with a £24,750 premium; ancillary loft space for an additional £5,000; appurtenant land £100, though this final element was agreed prior. The final total premium sought was £54,100.

Decision

48. The subject Property is located in Southend postal district SS1. The applicant's comparables were all from SS1. The respondents comparables were all from SS2. SS1 is located nearer to the estuary shoreline at Southend. SS2 is located further north and inland. SS2 by all accounts is a better and generally a more expensive area for housing than SS1.
49. The boundary line between the postal districts appears to be approximately the A13 road running east of the town centre. The A1160 runs west-east below the A13 and is about halfway between the seafront and the A13. The A1160 is Woodgrange Drive. It's a bus route. On-street parking is highly restricted.
50. A Council estate dating from what appears to be the 1970's containing largely inward facing (rather than street facing) terraced houses, is set across the road and does not readily connect with Woodgrange Drive. 'Issues' arising from this estate are unclear but, are unlikely to increase value beyond those established, if there had been a similar series of 1900s terraces in place.
51. By contrast all of the respondents comparables were in SS2 and all on side residential roads where there was some on-street parking no bus routes and relatively light traffic.
52. The applicant's key comparables were very poorly presented in tiny details and pictures that were physically, almost impossible for the Tribunal to see in print. The Tribunal also noted additional details that were presented at the hearing orally by the Valuer for the applicant. Again no reason was offered as to why they had to be corrected and updated orally. In any case the Tribunal would have expected this to be sorted out well and clearly presented before hand.
53. The Tribunal cross-referenced these sales with HM Land Registry sales data referred to by the applicant. The two closest and most relevant were the sales of No.4A (not No.4) and No.9 Woodgrange Drive being either side of the subject property. Street numbering here is consecutive evens/ odds.

54. Mid terrace converted flat No.4a Woodgrange Drive, leased apparently at a nominal ground rent, but of a similar size with front off street parking, was recorded as sold on 18 October 2020 for £164,000 some 4 months before the AVD. If the Land Registry UK Index for Southend flats adopted by the applicant was applied to this sale it showed a 2.5% increase by the AVD and thus £168,000.
55. Mid terrace converted flat No.9 slightly larger (72m² rather than GF65m² and FF 68m² GIA), but with off-street parking was recorded as sold on 24 February 2021 for £180,000 and required no adjustment for time. The GF flat at the Property was about 11% smaller: The FF flat about 6% smaller. Making slight adjustments to the difference in areas alone would suggest capital values of the long leaseholds of £160,000 GF and £170,000 FF.
56. The Tribunal regards these two sales as the best comparables. They are the same or similar size, in similar condition, physically very close and took place reportedly at or close to the AVD. The respondent's comparables whilst also close in size and type with other comparable factors to the subject properties are significantly distant being in postal district SS2. The Tribunal notes them but, prefers these two from the applicant. The Tribunal accepts the applicant's approach ignoring any possible differential between floors and adopts £170,000 for the long leasehold values of each flat. The GF though smaller has use of the rear garden whereas the FF flat does not have use of the loft space.
57. The Tribunal makes no adjustment for any possible value which might be still ascribed to the un-agreed improvements suggested from their reference to the double glazed windows to each flat.
58. The Tribunal notes the £100 agreed for ancillary land.
59. The £5000 placed by the respondent on the value of the roof space above the first floor flat appears to be a spot figure unsupported by any comparable evidence. No evidence of consents or extensions into any roof spaces in similar property in this road or nearby or even in the town was provided. Indeed there was almost no information on the space or how it might be accessed by a staircase.
60. It appeared to the Tribunal from the photographs provided that the original ridge line of main roof at the Property was at or below 2 metres in height externally and would as currently constructed, be incapable of conversion into habitable living space without raising the ridge line. At best this space could be informally lined out and insulated as storage space which whilst better than its constructed state was not worth very much more than the cost of doing so. Access would be by ladder. Whilst this space was formally excluded from the lease of the first floor, the only likely bidders for this room would be the first floor leaseholder and their bid is excluded, otherwise possibly but improbably from a

first floor neighbour from the flat either side, breaking through the party wall.

61. In the absence of compelling evidence, the Tribunal places its spot figure of £500 being the speculative value of the loft for storage. There is some value in formalising the likely pre-existing use of the space by the first floor flat, for storage, significant in a flat of some 68m² without outside storage space.
62. The Tribunal notes and accepts the 1% adjustment by the valuer in calculating the notional freehold values from their long lease values. The Tribunal adopts the agreed capitalisation rate of 5% and the agreed relativity short to long leasehold, of 82.78%.
63. The diminution in the value of the landlord's interest in the tenants' flats is represented first by the capitalised value of the grounds rent receivable under their leases. That income stream is capitalised by the valuer at 7%, which the Tribunal accepts is robust and appropriate in this case owing to the relatively unchanging and relatively low ground rents. It declines the 10% rate asserted by the applicant and the low 6% in view of the costs of collection, proposed by the respondent.
64. Next, the effect of enfranchisement will deprive the landlord of the freehold reversion of the Property. The present value of the reversion is determined by applying a deferment rate to the freehold value of both flats. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli* (2006) LRA/50/2005. The rate is agreed by the parties and adopted by the Tribunal.
65. The marriage value is to be shared equally between landlord and tenant, as required by the Act. The calculations are shown in the valuation attached.
66. The premium to be paid by the applicants for the freehold interest in the Property is therefore is **£38,543 (Thirty Eight thousand, five hundred and forty three pounds)**.

Name: N. Martindale

Date: 14 April 2022