



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

Case Reference : **BIR/41UK/0AF/2015/0006**

Property : **10 Norton Close, Perrycrofts,
Tamworth, Staffordshire B74 8TS**

Applicant : **Mr Peter Dean Stokes**

Representative : **Adcocks, Solicitors**

Respondent : **Laing Homes Ltd**

Representative : **None**

Type of Application : **Application for determination of
price payable, terms of conveyance,
and freeholders costs under sections
21(1)(a) and 21(2) of the Leasehold
Reform Act 1967**

Tribunal Members : **Judge C Goodall
Mrs S Tyrer FRICS**

Date of Decision : **14th July 2015**

DECISION

Background

1. By a lease ("the Lease") dated 28 May 1971, Laing Homes Ltd ("the Respondent") demised the property known as 10 Norton Close, Perrycrofts, Tamworth, Staffordshire ("the Property") to Kevin Malcolm Wigley and Linda Jean Miles for a term of 99 years from 28 May 1971 at an annual ground rent of £25 payable throughout the term.
2. On 5 December 2006, Mr Peter Dean Stokes ("the Applicant") acquired the leasehold interest granted by the Lease.
3. On 30 September 2014, the Applicant served a notice upon the Respondent claiming the right to acquire the freehold of the Property under the Leasehold Reform Act 1967 ("the Act"). The Respondent has not served any notice in reply under paragraph 7(1) of Schedule 3 to the Act.
4. The parties have not agreed terms. The issues are:
 - a. the price payable for the freehold;
 - b. the terms of the conveyance of the freehold from the Respondent to the Applicant;
 - c. the costs payable by the Applicant.
5. The Applicant has therefore applied to the Tribunal for a determination of these three questions, under section 21 of the Act. The Tribunal informed the parties that it intended to determine the application by way of a paper determination. No objection was received from either party. The Tribunal inspected the Property on 9 April 2015. The application was then adjourned as the Applicant's evidence had not been supplied. No evidence was supplied by the Respondent. The Tribunal reconvened on 25 June 2015 having received the Applicant's evidence (which had been copied to the Respondent) and has reached its determination as is set out below.

Inspection

6. The Property is a semi-detached 3 bedroom two storey brick built 1970's property with tiled roof and integral garage. It is set in a cul de sac with direct access from Norton Close, which the Tribunal understands to be an adopted road. Downstairs, there is a lounge and dining area with a separate kitchen. The Applicant has erected a substantial brick built outhouse and there is a conservatory at the rear. The Property is now centrally heated with a gas fired boiler, which has replaced the previous warm air system. The Property appeared virtually identical in design to the adjoining residential properties in Norton Close.

The issues and the Tribunal's determination

Price

7. The price of the freehold is determined under section 9(1) of the Act. The Applicant's evidence was provided by Mr Geoffrey Bates. His report explains that he is a chartered surveyor with 14 years of experience in valuations under the Act. He has proposed a three stage valuation methodology which adopts the commonly accepted three stage approach of, firstly capitalisation of the Ground Rent payable for the remainder of the term, secondly a capitalisation of a modern ground rent to be deferred to the end of the 50 year term extension, and thirdly a valuation of the Landlords reversion after the expiry of the 50 year extension on the basis that Schedule 10 of the Local Government Act and Housing Act 1989 applies to the tenancy. The date of valuation is the date of service of notice to acquire the freehold (30 September 2014), so there are 55 years and 8 months unexpired on the Lease. The variables which Mr Bates contends for within this methodology are:

Capitalisation of ground rent	7%
Value of freehold with vacant possession	£170,000
Site value	33.3%
Deferment rate for capitalisation of MGR	5.5%
Proportion of value at end of 50 year extension	80%

8. The Tribunal does not accept Mr Bates's valuation of the freehold with vacant possession. He has not explained how he arrived at a freehold value of £170,000 for the Property apart from saying that it was assessed using evidence of local comparable sales, property values, market trends and activity obtained from national price comparison websites and from the Land Registry website. Unfortunately, none of the specific data researched was provided to the Tribunal.

9. The Tribunal's own researches revealed two sales of comparable properties in Norton Close. One was a sale of 3 Norton Close, a similar 3 bed semi-detached property in March 2014. The sale price achieved from Land Registry data was £176,000. The second sale was in July 2014, of 2 Norton Close, when the price achieved was £175,000. This property is likewise a semi-detached 3 bedroom property.

10. The Tribunal determines that the appropriate freehold value is £175,000.00.

11. The Tribunal also does not agree with the proposed proportion to be used for the third stage of the valuation. What has to be added to the valuation is an amount to represent the present value of the landlord's reversion to the standing house value after the expiry of the 50 year extension to the term. In *Clarise Properties Ltd ([2012] UKUT 4 (LC))* ("Clarise"), the Upper Tribunal confirmed the appropriateness of this approach, but made

a deduction of 20% from the current market value of the property to reflect the fact that the tenant had the right to remain in occupation after the term of the lease plus 50 years (under Schedule 10 of the Local Government Act and Housing Act 1989) hence the Freeholder was not certain to obtain vacant possession.

12. The Tribunal notes that Mr Bates has proposed the same deduction of 20% as was applied in *Clarise*. In line with recent decisions made in the Midlands area, the Tribunal considers this to be excessive. It will be almost 106 years before the provisions of Schedule 10 Local Government Act 1989 would actually come into effect, given the unexpired term and the fifty year lease extension which has to be assumed in the valuation process. Whilst there is potential for the tenant to remain in occupation after the expiry of the lease which would no doubt have an effect on a prospective purchaser, to suggest that the market would reflect this to the extent of £35,000 some 106 years beforehand is in the opinion of the Tribunal unrealistic. The Tribunal therefore adopts what it considers to be a more realistic deduction of 5%.
13. In all other respects, the Tribunal accepts the variables put forward by Mr Bates as being appropriate in relation to the Property. The Tribunal considered:
 - a. The rate adopted for capitalisation of the ground rent is reasonable and in line with market practice for a fairly small ground rent with no escalator over the life of the lease.
 - b. The site value has been correctly proposed at 33.33% having regard to the plot size which is tight and which will not allow for any significant extension of the existing property. Further consideration was given to the quality of the area and its effect on values.
 - c. The deferment rate for the capitalization of the modern ground rent is at 5.5% for a term of 50 years. This is based upon the Sportelli generic rate which is then adjusted to reflect risk of deterioration and reduced growth in the West Midlands.
14. The Tribunal determines that the amount payable to the Respondent for the freehold reversion under the Act is £3,678.00. The calculation of this sum is shown in the valuation appended to this decision.

The Conveyance

15. The Applicant's solicitors have provided the Tribunal with a draft transfer in form TP1. The Respondent's title is registered under title number SF5994. The Property is subject to the burden of covenants originally entered into by the Respondent in a conveyance dated 5 February 1969. The TP1 is uncontentious save in respect of three issues.

16. Firstly, the Applicant has requested that the Respondent transfer with full title guarantee (as to the meaning of which see the Law of Property (Miscellaneous Provisions) Act 1994). However, section 10A of the Act provides that the Respondent cannot be required to enter into any covenants for title beyond those implied when the land is transferred with limited title guarantee.
17. Secondly, the Applicant has suggested that it is not necessary for the Applicant to give an indemnity to the Respondent in respect of the covenants in the conveyance of 5 February 1969 as these are developer's covenants rather than covenants relating to use for domestic residential purposes. The Tribunal does not agree. These are covenants that relate, in part at least, to use of land (to leave unbuilt upon), or to grant easements, and whilst it is unlikely they have practical relevance now, they remain theoretically enforceable against the Respondent, who is entitled to an indemnity. Section 10(4)(a) of the Act seems to the Tribunal to give the Respondent the right to insist upon an indemnity covenant.
18. Finally, the land is described by reference to a numbered plot on the freehold title. The Tribunal respectfully considers that the plot boundaries on the freehold title plan are not completely clear, and it would be prudent to describe the land transferred by reference to a plan.
19. The draft TP1 is not approved. The Tribunal directs that an amended draft, taking in the amendments required in this decision, should be provided to the Tribunal within 14 days, which the Tribunal will then endorse as approved.

Costs

20. The Applicant is responsible for certain of the Respondent's costs under section 9(4) of the Act. The specific items the Applicant has to pay for are the reasonable costs of:
 - a. Investigation of the Applicant's right to acquire the freehold
 - b. Any conveyance of the Property
 - c. Deducing title to the Property
 - d. Providing such abstracts and copies as the Applicant may require
 - e. Any valuation of the Property
21. There is no evidence before the Tribunal of any costs incurred by the Respondent. In particular, there is no evidence the Respondent has carried out a valuation of the Property. There is no evidence of any involvement by the Respondent in the conveyancing process by way of deducing title, or providing abstracts. There have been no representations by the Respondent to the Tribunal on the subject of costs. The Respondent will still need to arrange execution of the transfer and completion of the transaction. The Applicant has suggested that the sum of £300 be allowed as the costs due to the Respondent. The Tribunal agrees with this proposal and orders that the Respondent's costs allowable under section

9(4) of the Act are £300 plus any VAT which is irrecoverable by the Respondent.

Appeal

22. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall

Chair

First-tier Tribunal (Property Chamber)

Tribunals Valuation of 10 Norton Close Perrycrofts Tamworth B79 8TS

BIR/41UK/OAF/2015/0006

Valuation date: 30 September 2014
Lease commencement date 28 May 1971
Unexpired term 55 years 8 months

THE TERM

Ground Rent	£25 per annum	
YP 55yrs & 8 months @7%	<u>13.9550</u>	£348.87

REVERSION TO A NEW 50 YEAR LEASE

Entirety Value	£175,000	
Site Apportionment @ 33.33%	£58,327.50	
S15 Rent @5.5%	£ 3,208.01	
YP 50 years @5.5%	16.9315	
PV £1 for 55 years 8 months @ 5.5%	<u>0.0507906</u>	£2,758.76

END REVERSION

Entirety Value less 5%	£166,250	
PV £1 for 105 year 8 months @ 5.5%	<u>0.00343</u>	£570.24

LEASEHOLD ENFRANCHISEMENT PREMIUM £3,677.87

SAY £3,678.00