



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

Case Reference : BIR/OOCN/OAF/2016/0009

Property : 56 Benedon Road, Sheldon, Birmingham, B26 2NJ

Applicants : Mr Gary Peter Marshall and Miss Kaylee Louise Ward

Representative : Mr J.G.Evans MSt (Cantab.) FRICS sub-agent to Nick Plotnek Associates

Respondent : Chime Properties Limited

Representative : Mr G.M. French B.Sc. Dip Bldg Cons. FRICS

Type of Application : To determine the price of the Freehold interest pursuant to section 9(1) of the Leasehold Reform Act 1967.

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS
Judge D.R. Salter (Lawyer)

Date and Venue of Hearing : 11th May 2016 at the First-tier Tribunal (Property Chamber), Centre City Tower, 5-7 Hill Street, Birmingham, B5 4UU.

Date of Decision : **- 7 JUN 2016**

DECISION

Introduction

- 1 This is an application to determine the purchase price of the Freehold interest in a house pursuant to section 9(1) of the Leasehold Reform Act 1967 ("the Act").
- 2 The Applicants are the leaseholders and the Respondent the freeholder.
- 3 The Applicants served notice to acquire the freehold interest dated 1st June 2015 and the Respondent replied by counter-notice dated 23rd July 2015. Terms were not agreed and the Applicants applied to the First-tier Tribunal by application received 22nd February 2016, for the price to be determined in accordance with the Leasehold Reform Act 1967.
- 4 The Tribunal issued Directions and the parties' representatives made written submissions. The Tribunal inspected the property on 11th May 2016 and there followed a Hearing at the First-tier Tribunal offices in Birmingham attended by the parties' representatives and Mr Kelly, a witness of fact for the Applicants.

The Law

- 5 The Applicants hold a Lease for a term of 99 years from 24th June 1936 expiring 23rd June 2035 at a fixed ground rent of £5.25 p.a.
- 6 The Applicants have the right to acquire the Freehold interest under the Leasehold Reform Act 1967 and it is agreed that the valuation is to be determined under s.9(1) of the Act at the date of service of notice, 1st June 2015.

Facts Found

- 7 The Tribunal inspected the property in the presence of Mr Kelly, Miss Ward's step-father who was also a Building Contractor involved in carrying out alterations to the property from 2012 to 2016.
- 8 The property was built as a 1930s two bedroom semi-detached house. Land Registry details describe it as 'terraced' but, in fact, it was only linked to neighbouring houses by an adjoining side passage at ground floor level and for valuation purposes the parties' Surveyors agree to refer to it as a 'semi-detached' which the Tribunal agrees as a fair description.
- 9 It is in a residential part of Sheldon, a suburb about 6 miles south east of Birmingham city centre. The house is within walking distance of local schools and amenities. The surrounding area is of similar style and character that would have been developed at around the same time in the 1930s.
- 10 The Applicants bought the lease in 2012 and have carried out substantial alterations and redevelopment by building extensions to the rear and converting the roof into an additional room. The accommodation now comprises a hall, living room, kitchen / dining room and toilet under the stairs on the ground floor; three double bedrooms, an en-suite bathroom and main bathroom on the first floor and a room in the roof used as a fourth bedroom. It has a small front garden and enclosed, lawned back garden.

Basis of Valuation

- 11 The parties' Surveyors attended the Hearing and adopted the same method of valuation based on the Act and case precedents which is entirely conventional and in line with current practice. Under this method, the price of the Freehold interest comprises three elements:
- 12 1 Term 1
a sum representing the value at the date of Notice 1st June 2015, of the right to receive ground rent of £5.25 p.a. for the duration of the lease to expiry in 2035. This is known as the 'term' for which the Surveyors agreed a value of £58.
- 13 2 Term 2
a sum representing the right of the landlord to receive a modern ground rent, i.e. a rent in accordance with s.15 of the Act, for a period of 50 years from the date of the existing lease expiry in 2035 to expiry of the statutory extension period in 2085, subject to a rent review after 25 years. The right is valued as at 2035 and then brought back to represent its value at 1st June 2015 by applying an appropriate deferment rate.
- 14 The Act envisages the s.15 rent to be a market rent but as the Surveyors agreed that there were no comparable market rents for plots of this size let in the market on these terms they relied on alternative means of assessing the rental value. This was to assume that the site would be vacant and to let in the open market and estimate the annual rent a builder might have paid for the land at the valuation date. The assumption is that a builder would have estimated the market value of the best house that could reasonably have been built on the land ('entirety value'), assume a percentage of that sale price to represent the value of the plot ('the plot ratio'), and from the resulting plot value, calculate an equivalent rent in annual terms spread over 50 years (the 'modern ground rent') that would have equalled the value of the land.
- 15 The resulting 'modern ground rent' was then capitalised for 50 years at a rate of return to assess its value in 2035 and deferred for the period of the term which is 20 years in this case, at an appropriate rate of interest ('the deferment rate'), to bring the 2035 capital value back to its value as at 1st June 2015.
- 16 3 Reversion
a sum representing the right of the landlord to receive the value of the actual house on site, (the 'standing house value'), on expiry of the 50 year modern ground rent, i.e. in this case, the right to the reversion of the house in 2085 which is 70 years from the date of notice, valued as at 1st June 2015. The assumption is that the 2015 capital sum can be invested at a compound rate of interest ('deferment rate') to exactly equal the value of the standing house in 2085. As usual, no account is taken of inflation over the period so the 2085 value is assumed to be the same as its 2015 value. There is one amendment to this in that the Surveyors agreed a 10% reduction from the standing house value to reflect the risk of a lessee remaining in occupation on expiry of the 50 year extension (a 'Clarise reduction' pursuant to *Clarise Properties Limited* [2012] UKUT 4 (LC), [2012] 1 EGLR 83).

Agreed Elements

- 17 The valuation depends on various inputs for which the Surveyors had agreed the following:
- | | | |
|---|--|------|
| 1 | the value of the Term | £ 58 |
| 2 | Clarise reduction (i.e. the risk of a lessee remaining in occupation on lease expiry pursuant to Sch.10 Local Government and Housing Act 1989) | 10% |

3	the difference between the entirety value and standing house value (in this case only)	£12,500
4	the difference between the capitalisation and deferment rates applied to the modern ground rent ('adverse differential')	0

Disputed Elements

18 The disputed elements are set out below. The Surveyors gave oral and written evidence at the Hearing and the Tribunal would like to thank the parties for the care and attention taken in their presentations. They did not agree all of the elements but both Surveyors were clearly highly experienced experts in leasehold reform. They were both prepared to concede points after further consideration, where necessary, and the Tribunal had no doubt that they presented their evidence in accordance with their opinions fully compliant with RICS requirements for Surveyors acting as Independent Experts. The items not agreed and on which they made submissions, together with the Tribunal findings on each point, are set out below:

Entirety and Standing House Values

19 Applicants

Mr Evans referred to the following sales by comparison. They are all reported as 3 bedroom properties except where indicated.

Benedon Rd

14	July 2015	140,000	
66	March 2015	110,000	
139	May 2015	150,000	
60	October 2014	150,000	
145	October 2015	144,000	
3	January 2016	183,000	4 bedrooms

Larne Rd

22	July 2015	155,750	
62	October 2015	154,000	

Elmay Rd.

12	May 2015	138,000	
240	June 2015	172,000	
85	July 2015	120,000	
88	August 2015	157,000	4 bedrooms
37	September 2015	160,000	
129	December 2015	143,000	

Rotherfield Way

60	June 2015	125,000	
94	October 2015	135,000	

Horrell Rd.

67	January 2015	141,000	
46	August 2015	149,150	
69	November 2015	126,000	
295	January 2016	155,000	

- 20 For the entirety value, he considered Nos.3 and 60 Benedon Road to be the most relevant because they had both been improved and the sites were 'fully developed'. No. 60 was particularly relevant as it was next door but one to the subject property and had a ground floor rear extension, although he said it was not as fully developed as the subject property. He adjusted the prices of these houses to reflect market changes over time in line with Land Registry data for Birmingham and adjusted again to reflect differences in their construction and amenity compared to No.56. From this analysis, he concluded that the equivalent sale price of No.3 would have been £160,810 at the valuation date and No.60 £164,435. Taking an overall view he considered the 'entirety value' of No.56 to have been £162,500 at the valuation date.
- 21 For the 'standing house value', Mr Evans described the house as a three bedroom semi-detached with converted loft used as a bedroom.
- 22 He said none of the extensions to the subject property had Building Regulation approval and brought Mr Kelly, the building contractor, as a witness of fact. Mr Kelly confirmed the extensions had been built without Building Regulation approval and this would not have been granted even if an application had been made because the stairs were non-compliant and the internal doors, frames and architraves did not offer the required standard of fire resistance. Furthermore, the soffit, fascia and gutter to the right of the extension had been built overhanging the boundary of the neighbour's property without their consent. All these factors had a bearing on the value of the existing property, the 'standing house value'.
- 23 Having considered prices achieved in the area he considered the standing house value to be £150,000.
- 24 Respondent
Mr French referred to the same comparables in Benedon Rd. and added:
- | | | | |
|--------------------------|--------------|---------|-----------|
| Benedon Rd. | | | |
| 77 | October 2014 | 151,000 | |
| Elmay Rd. | | | |
| 30 | June 2015 | 185,500 | 4 bedroom |
| Manor House Lane Yardley | | | |
| 113 | January 2015 | 205,000 | |
- 25 He explained that the Yardley house had only been included as an example of the upper ceiling of values in the general area, but was not proposing it as a prime comparable.
- 26 Mr French considered No.3 Benedon Road to be the best evidence of a fully developed plot in Benedon Road since it included four bedrooms and had an additional study at ground floor level, but on his calculation the floor area was slightly less than the subject property. He considered it to be good evidence although the sale was six months after the valuation of the subject property.
- 27 Furthermore, No.30 Elmay Rd. had been extended to create a four bedroom semi-detached house that sold a month after the valuation date and in his opinion, Elmay Road was comparable to Benedon Rd. It had sold for £185,500 which indexed back in line with Land Registry data to £184,856 at 1st June 2015.
- 28 From the evidence, Mr French submitted for an entirety value of £185,000.

- 29 In respect of the standing house value, Mr French initially considered the entirety and standing house values to be the same but had been unaware of the lack of Building Regulation approval and having heard Mr Kelly's evidence at the hearing, he revised his standing house valuation to £172,500. This was based on agreement with Mr Evans at the Hearing that the difference between the entirety and standing house values should be £12,500.
- 30 Tribunal
The members of the Tribunal inspected 14 of the comparable properties from the road frontage comprising all of the properties referred to by the parties in Benedon Road and Elmay Road.
- 31 The Tribunal agrees with both Surveyors that No.66 has been extended to a lesser extent than No.56 and that had it been extended to the same extent it would have sold for more, but do not agree with all the specific adjustments made by Mr Evans which are subjective. In the Tribunal's opinion it is not scientifically possible to analyse the differences to produce an exact sum, but clearly there are differences that need to be reflected. Furthermore, No.66 had been sold three months prior in a rising market which would tend to have justified a higher value by June 2015.
- 32 Equally, the Tribunal does not fully accept No.3 Benedon Road as the best evidence of a four bedroom house sale in the road since it is only one sale and 'one swallow does not make a summer'. It had been sold six months after the valuation date for No.56 and, therefore, carries less evidential weight than a sale pre-dating the valuation date, such as No.60 Benedon Road.
- 33 The members of the Tribunal inspected No.30 Elmay Rd. from the road frontage, but considered its location to be better than the subject property.
- 34 The Tribunal notes that the Surveyors had agreed that the difference between the entirety value and standing house values in this case was £12,500.
- 35 Overall, taking a balanced view and making the best the Tribunal can of the evidence available, the Tribunal finds the standing house value of the subject property to have been £162,500 at the valuation date and the entirety value £175,000.

Plot Ratio

- 36 Applicants
Mr Evans for the Applicants said the plot was narrow with a frontage of only 20ft. which was evidenced by the dimension on the 1937 Deed plan submitted at the Hearing. He gave examples of 11 Tribunal decisions with plot ratios ranging from 27% to 32% and, in particular, a case in which he had acted at 39 Kingshurst where the plot had been wider at 21 ft. and determined by the Tribunal at 30%.
- 37 Respondent
Mr French for the Respondent considered the appropriate plot ratio to be 33.3%. He based this on other Tribunal decisions and cited an example in support, namely 10 Morpeth, Dosthill, Tamworth, at 33.3%. He also cited a case in Benedon Road where a differently constituted Tribunal had determined the ratio at 33% in 2007.

38 Tribunal

The Tribunal accepts that this is a narrow plot and the fact that the house is semi-detached would impose additional constraints and costs on the builder over and above those that might apply to a plot suitable for a detached house, partly due to the necessity of having to support the other half of the house during construction. A plot with wider frontage could be developed more easily and in this instance, based on 2015 market conditions, the Tribunal finds the plot ratio for valuation purposes to be 30%.

Deferment Rate

39 Applicants

Mr Evans contended for 5.5% which comprised three elements based on court and tribunal decisions in Sportelli, Zuckerman and Mansal.

Risk free rate	2.25%	
- real growth rate	2.00%	
+ risk premium	4.50%	
+ Mansal	0.25%	
+ Zuckerman risk	<u>0.50%</u>	
Deferment rate		5.50%

40 During the Hearing, Mr Evans said the property would not qualify for an additional 0.25% for 'obsolescence'.

41 Respondent

Mr French relied on a 'generic' rate of 4.75% based on Sportelli and added 0.5% for the difference in growth of property prices between prime central London (PCL) and the West Midlands. This was the Zuckerman 0.5% referred to by Mr Evans. Although the rate was not analysed in the same way, the only material difference between his deferment rate and Mr Evans' was his omission of 0.25% for 'Mansal risk' which he said would only be applicable to a reversion to land value and a modern ground rent. It was inapplicable to cases such as this where the reversion was to a standing house after the expiry of the extended lease.

42 Tribunal

The only difference between the Surveyors was whether there should be a *Mansal* addition, i.e. whether 0.25% should be added to reflect the risk of a reversion to land value rather than a standing house (*Mansal Securities and Others* [2009] EWLands LRA/185/2007). However, neither Surveyor contended that the house would not be standing after 70 years and as both Surveyors had agreed a 10% deduction from the reversion to reflect the risk of a tenant remaining in occupation, it would be contradictory to add 0.25% and assume the reversion would be to land only. An alternative 0.25% addition is sometimes made for 'age and obsolescence' and both parties referred to the Upper Tribunal decision in *Grange Crescent (Sinclair Gardens Investments Kensington Ltd.* [2014] UKUT 0079 LC), but as Mr Evans had conceded to the Tribunal that the property would not qualify for obsolescence it was not added.

43 Accordingly, the Tribunal determines the deferment rate at 5.25% in this case, comprising the following elements:

Risk free rate	2.25%	
- real growth rate	2.00%	
+ risk premium	4.50%	
+ Zuckerman risk	<u>0.50%</u>	
Deferment rate		5.25%

Valuation

44 Applying these inputs, the Tribunal values the Freehold interest under the Act as follows:

Term 1

Agreed £ 58

Term 2

Entirety value	£ 175,000	
Plot value @ 30%	52,500	
devalued at 5.25%	<u>0.0525</u>	
s.15 modern ground rent	2,756	
Years purchase 50 yrs 5.25%	17.5728	
Present Value £1 20 yrs 5.25%	<u>0.3593833</u>	
		£ 17,405

Reversion

Standing House value	£ 162,500	
Less Sch.10 rights 10%	<u>16,250</u>	
Net	146,250	
Present Value £1 70 yrs 5.25%	<u>0.0278261</u>	
		£ 4,068

Price under the Act £ 21,531

45 The Tribunal determines the value of the Freehold interest in accordance with the provisions of section 9 of the Leasehold Reform Act 1967 at £21,531 (Twenty One Thousand Five Hundred and Thirty One Pounds).

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

-7 JUN 2016

Appeal to Upper Tribunal

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 the result sought by the party making the application.