

974



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

**Case Reference** : **BIR/OOCT/OAF/2016/0020  
BIR/OOCT/OC6/2016/0010**

**Property** : **82 STANBROOK ROAD, SHIRLEY,  
SOLIHULL, B90 4US**

**Applicant** : **MONA SEDRO**

**Representative:** : **MR KEITH WALLER  
LEASEHOLD VALUATIONS**

**Respondent** : **JGS PROPERTIES**

**Representative** : **MR KENNETH DAVIS FRICS**

**Type of Application** : **APPLICATIONS UNDER SECTION 21(1)(a) &  
SECTION 21 (1)(ba) LEASEHOLD REFORM ACT  
1967**

**Members of Tribunal** : **MRS P DHADLI- JUDGE  
MR D SATCHWELL FRICS**

**Date of Decision** : **3 August 2016**

---

**DECISION**

---

## **DETERMINATION**

1. The Tribunal determines, taking into account the evidence adduced, its evaluation of that evidence, using its general knowledge and experience, but not any special knowledge, that the price payable by the lessees for the acquisition of the freehold interest in the property in accordance with Section 9(1) of the Leasehold Reform ACT 1967 ("the Act"), as amended is **£6,385.00**
2. The parties have agreed the capitalisation rate and costs in this matter.

## **REASONS FOR THE DECISION**

3. The right of the Applicant to acquire the freehold interest in the property and the determination of the price payable pursuant to Section 9(1) of the Act is not disputed.

## **APPLICATION**

4. Mona Sederò submitted an application for the determination of the price payable by her to acquire the freehold of 82 Stanbrook Road, Shirley, Solihull, West Midlands, B90 4US (the Property) together with an application for a reasonable costs order. The Tribunal office received these applications on the 18<sup>th</sup> March 2016.
5. Directions were made on the 15<sup>th</sup> April 2016 dealing with the requirements necessary in preparation for the hearing. The Application for reasonable costs was stayed pending confirmation of that such recoverable costs were in dispute, whereupon separate directions would be issued. It is an unfortunate feature of this Application that the Applicant's representative did not comply in a timely manner with the directions that were issued.

## **LEASE**

6. The lease is for a term of 99 years from 24<sup>th</sup> June 1983 at an initial ground rent of £75.00 per annum, rising every 33 years to £150.00 per annum and then £300.00 per annum. The unexpired term as at the date the Applicants' Notice of Claim was served was 66.75 years (the term expires 23<sup>rd</sup> June 2082). The date of the Notice of claim was 30<sup>th</sup> September 2015 and this is the date of valuation.

## **INSPECTION**

7. The members of the Tribunal inspected the property on the morning of the 27<sup>th</sup> May 2016 in the presence of the Applicant's husband.
8. The property is situated at the end of the road in a residential location in Shirley, Solihull, West Midlands. It is a 3-bedroom detached house constructed by JJ Gallagher Limited with a single integral garage and drive.
9. On the ground floor there is a hall; off the hall there is a WC and sink, lounge/dining room, kitchen and utility room with a cupboard under the stairs. Patio doors from the dining room lead to the rear garden. The garden is also accessible from the utility room as is the integral garage. The garage also has loft storage. Upstairs there are three bedrooms, one single and two doubles plus a family shower room. The third bedroom also has an en-

suite and built in wardrobes. The property benefits from gas central heating and double-glazing.

10. Outside the property there is a small rear garden; the front garden has a tarmac drive. There is extension facility over the single garage; this is limited to the width of the garage.

11. The Tribunal also inspected, externally, various properties, which had been drawn to its attention by the Respondent's representatives in his written submissions.

### **HEARING**

12. A hearing was held at Centre City Tower, Birmingham in the afternoon of the 27<sup>th</sup> May 2016. The hearing was attended by the Applicant's representative Mr Keith Waller, of Leasehold (House) Valuations and the Respondent's representative, Mr Kenneth F Davis FRICS of Cottons Chartered Surveyors. Mr A Atkinson who is the Director of the Respondent JGS Properties Limited accompanied Mr Davis.

13. Both parties had provided written submissions to the Tribunal in advance of the hearing. In addition further documents by way of response were provided to the Tribunal outside the time limits set by the directions including shortly before the hearing commenced. There were no objections raised by either party for the inclusion of these documents, and hence they were admitted by the Tribunal as evidence. The parties were reminded of the necessity to comply with directions issued in accordance with the time frames set for compliance.

### **MATTERS AGREED AND MATTERS IN DISPUTE**

14. Mr Davis had very helpfully set out within his written submissions a statement of agreed facts and contentious issues. The matters that were agreed related to the issue of costs and the Capitalisation rate was agreed at 6%. Mr Davis informed the Tribunal that the Capitalisation rate was based upon the LVT Decision of 25 Inchford Road, Solihull, West Midlands and the 2015 Bowbrook case.

15. The following matters were not agreed:

<i>Deferment Rate</i>	<i>Freeholder:</i>	<i>5.25%</i>	<i>Lessee:</i>	<i>5.5%</i>
<i>Site Value</i>	<i>Freeholder</i>	<i>38%</i>	<i>Lessee:</i>	<i>35%</i>
<i>Standing House</i>				
<i>Value</i>	<i>Freeholder</i>	<i>£345k</i>	<i>Lessee:</i>	<i>£330k</i>
<i>Schedule 10 Rights</i>	<i>Freeholder</i>	<i>Nil</i>	<i>Lessee:</i>	<i>10%</i>

### **APPLICANT'S CASE**

16. Mr Waller confirmed that he had been dealing with such cases since December 2007 as a valuer and negotiator representing owners of leasehold houses. He told the Tribunal that he had no formal qualifications.

#### *Standing House value*

17. Mr Waller referred to Mr Davis's submissions in relation to this element of valuation and asserted that the comparable properties produced by Mr Davis could be said to be different

to the subject property and one was sold subject to contract, which he said was not a reliable indicator of value.

18. Mr Waller did not produce any comparable properties to assist the Tribunal nor did he produce them to support his assertion as to the value of the subject property. Mr Waller relied upon his recollection of properties that had come on to the market in the vicinity of the subject property. One such property that Mr Waller referred to was number 40 Stanbrook Road. Mr Davis produced the particulars of this property to illustrate that this property was not comparable to the subject property. This assertion was not accepted by Mr Waller but he did accept that it was not the best comparable to put forward in support of his case.

19. Mr Waller stressed that it was important to consider like for like when looking at comparable properties. When Mr Davis presented him with what he suggested were comparable properties, he did not accept they were like for like but struggled to explain why.

20. The Standing House Value that Mr Waller asserted was **£330,000.00**.

#### *Site apportionment*

20. Mr Waller drew the Tribunals attention to his response document, which he produced on the day of the hearing. He suggested that there were recognised and accepted percentage norms in respect of different types of properties and that there were no special features in relation to the subject property that would warrant a departure from applying these accepted percentages. In addition he referred to the rateable value of the subject property at £339, together with the 283 sq. yards, which he said indicates a modest size of property when compared to other properties in the road and vicinity. Mr Waller relied upon information that his client had provided to him about other properties but no particulars were produced.

21. Mr Waller did concede that the table he had produced setting out these percentages was a starting point and there could be variations and negotiations. He had agreed and adopted such figures with other valuers.

22. On questioning by Mr Davis, Mr Waller agreed that the cost of land in Solihull was higher (although it was not put to him it was higher than a specific area).

23. Mr Waller puts the site apportionment at **35%**.

#### *Deferment Rate*

24. Mr Waller relies on the fact that the starting point for determining the deferment rate should be 4.75% for houses in Prime Central London as determined by Cadogan .v. Sportelli (2007) EWCA Civ 1042. Thereafter following Zuckerman .v. Calthorpe Estates LRA/97/2008 an addition of 0.75% is required to reflect the increased risk of deterioration and reduced growth rate in the West Midlands to give the deferment rate of 5.5%.

25. In addition Mr Waller referred to five cases determined by either the Upper or First tier Tribunals including Mansal Securities, Kelton Court and 1 Bowbrook Avenue which all determined the deferment rate of 5.50%. He asserted that this was the established practice

of the Tribunal and that he was happy to rely upon the knowledge and expertise of the Tribunal to maintain continuity and consistency.

26. On questioning by Mr Davis he conceded that he did not know the full facts of the cases he relied upon. He said he had considered the detailed written submissions made by Mr Davis, however he did not feel that those submissions changed his opinion of the appropriate deferment rate being **5.5%**.

#### *Clarise Adjustment/Section 10 Deduction.*

27. Mr Waller referred the Tribunal to the case of *Clarise* and said that in his opinion valuers have determined the figure of 20% as being too high and consequently there could be a deduction of between 0-10%. He was not able to provide a rationale for his proposed deduction of **10%** and said it was a matter for the Tribunal to assess the correct percentage deduction. He conceded that he did not know a lot about this deduction and he struggled to answer the questions put by Mr Davis.

### SUBMISSIONS

28. Written submissions had been provided to the Tribunal in advance of the hearing and these were further supplemented by a response document that was produced on the day of the hearing. Mr Waller did not have much to add to what he told the Tribunal in his oral evidence, which was a repetition of his written submissions.

29. Mr Waller puts the value of the price to be paid for the freehold interest in the subject property at **£6281.00**.

### RESPONDENT'S CASE

30. Mr Davis is a Fellow of the Royal Institution of Chartered Surveyors (FRICS). He has considerable experience as a Chartered Surveyor in the West Midlands since qualifying in 1969. He is also a registered RICS valuer. He sets out his qualifications and experience in his submissions and statement dated 17<sup>th</sup> May 2016.

#### *Deferment Rate*

31. Mr Davis's main focus and argument before the Tribunal was the issue of the appropriate deferment rate to be used in the valuation. He devoted eight pages of written submissions in relation to this issue, covering a very comprehensive evaluation and analysis of this topic. He had little to add to this by way of oral evidence or oral submissions.

32. In evidence Mr Davis referred to the major cases with a starting point thereafter how they affect the deferment rate and how houses and flats should stand separately and not together. He told the Tribunal that he has knowledge of the Kelton Court decision as he worked for the estate and he referred the Tribunal to page 9 of his submissions, and the construction of the deferment rate for Kelton Court. He did not accept that land values deteriorate and hence 0.25% needed to be excluded and also 0.25% management requirement for flats and the 0.25% limitation on service charges. Having excluded those figures it then leaves a Deferment charge rate of 5.25%, which he argues is the appropriate rate.

33. Mr Davis went on to consider growth rates in various areas and was of the view that property in Solihull was better than the 2 bedroom flats in Edgbaston. He summarised his arguments contained in his written submissions in relation to management and market place, indicating that he had personal experience of the latter. He went on to highlight sections of the written submissions that he said supported his case as to the appropriate deferment rate.

34. Mr Davis did not consider there were any contra indicators that may impact on prices in the Solihull area and asserted that these were executive houses with good international and road links. He described Solihull as a growth city area going forward.

35. In relation to site value, Mr Davis referred the Tribunal to the case of 5 Sunningdale Road, Sedgley, Dudley, West Midlands which was a First tier Tribunal decision in May 2013 (produced shortly before the hearing commenced), where the Tribunal acknowledged the norm of 37.5% for site value but determined in that case 35% was more appropriate given the slope on which the property was built.

36. Mr Davis in evidence simply referred the Tribunal to his written submissions in respect of all other issues.

37. Mr Waller did not have any significant challenge or questions for Mr Davis.

## SUBMISSIONS

38. Mr Davis made it clear that the real issue for him was the deferment rate and all the relevant points had been made in his statement and submission document and as such he did not intend to repeat the same in oral submissions. He said that Mr Waller had been a little 'light' with his evidence and the information provided in support of his case. He referred to the decision being an important decision and that there is a difference between houses and flats particularly in Solihull. He referred to page 15 paragraph 9.40 of his written submissions (which stated 'in conclusion, there are no "particular features" that justify a departure from Sportelli guidance') whereby the last paragraph contradicted the preceding paragraph he accepted that to be an error.

### *Deferment Rate*

39. In his written submissions, which with exhibits totalled some 83 pages, he commenced his evaluation of the Deferment Rate with the landmark decision in Earl Cadogan and another.v. Sportelli case (2006) LRA/50/2005 (Sportelli). Mr Davis quotes Carnworth LJ at paragraph 1 (23) :

*"The application of the deferment rate of 5% for flats and 4.75% for houses that we have found to generally applicable will need to be considered in relation to the facts of each individual case. Before applying a rate that is different from this, however, a valuer, or an LVT should be satisfied that there are particular features that fall outside the matters that are reflected in the vacant possession value of the house or flat or in the deferment rate itself can be shown to make a departure from the rate appropriate".*

Mr Davis emphasised that the starting point for the deferment rate is 4.75% for houses and 5.00% for flats and that there needs to be "particular features" to justify departure.

40. In his evaluation of cases Mr Davis considers the decision in Zuckerman and others v Trustees of the Calthorpe Estates, LRA/97/2008 (Kelton Court) where the deferment rate was determined at 6%. The construction of the deferment rate included 0.25% for obsolescence and Service charge consultation of 0.25%. Mr Davis asserts that this is a totally different proposition to the subject property in relation to size and location.

41. Reference is then made to the case of Voyvoda v Grosvenor West End Properties (2013) UK UT 334 (LC) ("Voyvoda") where the deferment rate for flats was reduced to 5.75% by the removal of the Kelton Court addition for increased service charge regulations.

42. Mr Davis then goes on to consider the current Deferment Rate adopted by the Midland First Tier Tribunal and the component features of the calculation, which arrives at the rate of 5.5%.

43. Reference is made to the recent case of Sinclair Gardens Investments (Kensington) Limited v. Ray [2014], a case which went to the Court of Appeal. Mr Davis asserts that in this case the First Tier Tribunal adopted the Deferment rate of Kelton Court at 5.75% and the Upper tribunal allowed the Appeal in part, holding that Zuckerman could be relied on as sufficient basis for the addition of 0.5% to reflect poorer long term growth in the West Midlands area but that any further adjustment to reflect the greater risk of obsolescence and deterioration had to be based on the characteristics of the property under consideration.

44. In his analysis of Deferment rates, Mr Davis in addition to the above mentioned factors looks at management; market place; international market; the decision of Mansal Securities Limited; volatility; illiquidity; deterioration; obsolescence; land registry house price calculator and the deferment rate in other areas in the rest of the Country.

45. Mr Davis concludes his argument by summarising the points he has made in the narrative previous 7 pages at page 15 of his written submissions. In summary form he states that:

*"The deferment rates of 5.25% reflects the Kelton Court decision but takes into account market evidence, negotiations and tribunal decisions in the rest of England. Lower deferment rates are applied throughout the rest of the country. This is supported by Geraint Evans, an experienced Chartered Surveyor, operating in England and Wales"*

#### *Standing House Value*

46. Mr Davis produced comparable evidence of Standing House Valuation in relation to the subject property. All the comparable properties referred to are situated in Solihull, West Midlands.

47. In addition Mr Davis has undertaken research on websites such as Rightmove and the Land Registry Website. He has been able to make adjustments using the website tools such as the Land Registry House Price Index in order to obtain a more accurate evaluation of value at the relevant time (the time of the notice of application). Having undertaken this process and considered the comparable properties he produced he comes to the conclusion that the Standing House value of the subject property is **£345,000.00**.

### *Site apportionment*

48. The plot area of the subject property was said to be 283 sq. yds. measured from the lease plans. The site value adopted on behalf of the Respondent is **38%** and it was said that this was a value that was supported by previous Decisions such as Inchford and Bowbrook both in relation to property in the prime Solihull area. Research had been attempted in Solihull for site value evidence but none was available. Mr Davis also gave consideration to the plot area of comparable properties when arriving at his conclusion

### *Clarise Adjustment/Section 10 Deduction.*

49. Mr Davis asserts that over the years the Schedule 10 rights deduction has disappeared. However he acknowledges that in the Clarise decision, it was determined that a deduction of 20% was appropriate. He interprets this as a figure 'plucked out of the air' in an uncontested case.

50. He asserts that the majority of purchasers of residential properties do so with the assistance of a mortgage with certain criteria having to be satisfied to be acceptable for mortgage purposes. Such criteria in the main require the unexpired term of a lease of a residential unit to be at least 70 years. The subject property is a quality 3-bedroom property with substantial value and there is every likelihood that the lessees will enfranchise many years before the expiry date. In the circumstances he asserts that it is most unlikely that they will let the lease expire and then take up the opportunity of converting into a statutory tenancy.

51. The unexpired term of the subject property is 66 years and he submits that a **nil allowance** for this should be adopted.

52. Mr Davis puts value of the freehold interest in the subject property at **£7545.00**

### **THE TRIBUNAL'S DELIBERATIONS**

53. The Tribunal has considered all the evidence both oral and written in this case. The Tribunal has considered the cases that have been provided to them by the parties. The Tribunal reminds the parties that it is not bound by its own previous decisions or that of the Welsh Leasehold Valuation Tribunal. It also reminds the parties that a previous decision of the Upper Tribunal is admissible evidence of what it decided and it is a question of what weight a subsequent Tribunal should give it. In accordance with the Sinclair Gardens case; the extent to which the previous decision on general points of interest rather than specific fact and the cogency of the reasoning will impact on the weight to be given to a particular decision. The Tribunal has also used its own knowledge and experience, but not any special knowledge when coming to the decisions in relation to the subject property situated in Solihull.

### *Standing House value*

54. The Tribunal was guided principally, by the evidence submitted by Mr Davis, by way of comparable properties. Mr Waller was not able to assist in producing suitable comparable



evidence to support his opinions. The Tribunal adopts the figure of **£345,000** put forward on behalf of the Respondent.

#### *Site apportionment*

55. The Tribunal considered the evidence produced by both representatives and were of the view that Mr Davis's apportionment percentage of 38% was excessive. The Tribunal prefers to adopt a rate of 35% for the subject property.

#### *Clarise Adjustment/Section 10 Deduction.*

56. The provisions of Schedule 10 to the Local Government and Housing Act 1989 enable a lessee to exercise his right to remain in occupation of the property thereby denying the freeholder vacant possession at the end of the term of the lease.

57. The Tribunal is guided by the decision of the Upper Tribunal decision of Clarise Properties Limited [2012] UKUT 24 ("Clarise"). Mr Davis had made reference in his submissions to the fact that since the case of *Clarise* he has adopted the 3-stage approach to valuation, however he asserts there should be a nil deduction. Mr Waller appears to accept the approach adopted by *Clarise* and proposes a 10% deduction.

Paragraph 36 of *Clarise* states:

*" We consider the time has now come to move away from the two-stage approach as the standard practice in section 9 (1) valuations and to apply instead the three stage approach. As a matter of good valuations practice, where a price has to be determined every element of value should in general be separately assessed unless there is some reason not to do so..... The only relevant question is whether the ultimate reversion does have a significant value. In future, therefore, we consider that the appropriate approach will be to capitalise the section 15 rent to the end of the 50 year extension and to assess the value (if any) of the ultimate reversion."*

58. Stage three of the *Clarise* approach involves the attribution of a material value to the freehold interest, (the ultimate reversion) which, has to be separately identified and included in the overall calculation. This attribution should allow for a diminution in the value of the freehold interest to reflect the risk that vacant possession may not be obtained on the expiry of the lease because of the tenant's right to security of tenure under Schedule 10 to the Local Government and Housing Act 1989.

59. The Tribunal is bound to follow the three-stage approach adopted by the Upper Tribunal in *Clarise* unless there is compelling evidence in support of a contention that *Clarise* may be distinguished from the present case. No such evidence has been adduced. The Tribunal having applied the three stage test and considered the length of the unexpired term and notional 50 year extension determine that the adjustment should be 2.5%

#### *Deferment Rate*

60. The Tribunal accepts the starting point and the principles enunciated in the case of *Sportelli* and has given due consideration to the cases thereafter that have been referred to by the parties.

61. Neither representative suggested the property would not be standing in 68 years and a deduction has been made from the reversion to reflect the risk of a tenant remaining in occupation at the end of the lease.

62. Mr Davis's arguments, have been carefully considered by the Tribunal, however the Tribunal is not persuaded to reduce the rate as suggested and consequently adopts a deferment rate of 5.5% calculated as follows:-

Risk free rate	2.25%
- Real growth rate	<u>2.00%</u>
	0.25%
Risk premium	4.50%
Obsolescence	0.25%
Poorer growth outside PCL	<u>0.50%</u>
	5.25%
	<u>5.50%</u>

### CONCLUSION

63. Applying the above determination, the Tribunal calculates the price payable for the freehold of the subject property as follows:

#### Stage

1	Term		
	Current ground Rent	£75	
	YP 0.75 years @ 6%	<u>0.71267</u>	£53
	Ground Rent from 24/6/2016	£150	
	YP 33 years @ 6%	14.2302	
	PV £1 in 0.75 years @ 6%	<u>0.95723</u>	£2,043
	Ground Rent from 24/6/2039	£300	
	YP 33 years @ 6%	14.2302	
	PV £1 in 33.75 years @ 6%	<u>0.13993</u>	£597

#### Stage

2	1st Reversion		
	Entirety Value	£345,000	
	Site apportionment @ 35%	£120,750	
	S15 Modern Ground Rent @ 5.5%	£6,641.25	
	YP 50 years @ 5.5%	16.3288	
	PV £1 in 66.75 years @ 5.5%	<u>0.02806</u>	£3,043

#### Stage

3	2nd Reversion		
	Standing House Value	£345,000	
	Schedule 10 @ 2.5%	£336,275	

PV £1 in 116.75 years @ 5.5%  
Freehold value

0.00193

£649

£6,385

### **APPEAL PROVISIONS**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional office, which has been dealing with the case. The application must:

- a) Be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision (rule 52 of The Tribunal Procedure (First –tier Tribunal)(Property Chamber) Rules 2013.
- b) Identify the decision of the Tribunal to which it relate, state the grounds of appeal, and state the result the party making the application is seeking.

If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reasons for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

Judge P Dhadli  
3 August 2016