

964



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

**Case Reference** : **MAN/00CG/OAF/2015/0031**

**Property** : **1 Welbury Gardens  
Halfway  
Sheffield  
S20 4TT**

**Applicants** : **Mr & Mrs D Toyne**

**Representative** : **Crapper & Haigh**

**Respondent** : **William Drabble & Sons Trust**

**Representative** : **Oldales**

**Type of Application** : **Leasehold Reform Act 1967 – s 21(1)**

**Tribunal Members** : **Judge J Holbrook  
Mr J Faulkner FRICS**

**Date and venue of  
Hearing** : **2 March 2016  
Determined without a hearing**

**Date of Decision** : **15 March 2016**

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**DECISION**

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## DECISION

**The price payable under section 9(1) of the Leasehold Reform Act 1967 for the freehold interest in the Property is £3,050.00.**

## REASONS

1. On 26 October 2014 the Applicants, Mr & Mrs D Toyne of 1 Welbury Gardens, Halfway, Sheffield S20 4TT (“the Property”), gave notice to the Respondent, William Drabble & Sons Trust, of their desire to acquire the freehold of the Property. The freehold is currently vested in the Respondent.
2. On 23 February 2015 the Respondent sent a notice in reply admitting the Applicants’ right to acquire the freehold in accordance with the provisions of Part 1 of the Leasehold Reform Act 1967 (“the Act”).
3. On 18 November 2015 an application was made to the Tribunal under section 21 of the Act for a determination of the price payable under section 9 of the Act.
4. By Directions issued on 10 December 2015 the Tribunal informed the parties that it intended to determine the application on the basis of a consideration of written evidence alone, without an oral hearing, unless it received notice that either party required a hearing to take place. No such notice was received. Accordingly, the Tribunal convened to determine the application in the absence of the parties on 2 March 2016. The Tribunal did not inspect the Property.
5. The Tribunal had previously been provided with written submissions and valuation evidence on behalf of each party: from Mr Francis of Crapper & Haigh for the Applicants, and from Mr Oldale of Oldales Management and Lettings for the Respondent. Mr Francis valued the freehold interest at £2,292.88. Mr Oldale valued it at £4,750.00.

### **The Property and the Lease**

6. The Property comprises a modern semi-detached two bedroom bungalow of brick construction with a tiled roof. It has a detached garage and is said to be situated on a “good sized” plot.
7. The Applicants hold the Property under a lease (“the Lease”) dated 14 July 1982 made between Messrs Drabble, Drabble Paton and Sedgwick (1) Barratt Bradford Limited (2) and R & D Evison (3). The Lease granted a term of 200 years from 29 September 1966.

8. The initial annual rent reserved by the Lease was £70. However, the Lease provides that, with effect from 29 September 2005, the annual rent was to increase to £140. The Lease further provides for subsequent £70 step increases in the annual rent to take effect every 30 years thereafter.

## **Law**

9. Section 9(1) of the Act provides, in effect, that the price payable shall be the amount which the freehold of the Property, if sold in the open market by a willing seller (with the tenant and members of his family not buying or seeking to buy) might be expected to realise.
10. Under section 9(3) of the Act, the Applicants have the right, within one month of ascertaining the amount payable for the Property, to give written notice to the Respondent that they are unable or unwilling to acquire it.
11. By virtue of section 9(4), the Applicants are also liable to bear the Respondent's reasonable costs. However, on this occasion the Tribunal has not been asked to make a determination as to the amount of such costs.
12. In the case of *Re Clarise Properties Ltd's Appeal* [2012] UKUT 4 (LC) the Upper Tribunal (Lands Chamber) provided guidance to the effect that the purchase price payable by a tenant for the landlord's freehold interest under section 9(1) of the Act must be ascertained by the application of a three-stage approach comprising the following elements:
  - (1) The capitalised value of the rent payable under the tenancy from the date of service of the Notice of Tenant's Claim until the original term date.
  - (2) The capitalised value of the "section 15 rent" (i.e., the modern ground rent which would be payable if the statutory right to extend the tenancy was exercised) payable from the original term date until the expiry of the 50-year lease extension.
  - (3) The value of the landlord's reversion to the house and premises after the expiry of the 50-year extension, on the basis that Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy.

## **Price payable for the freehold interest in the Property**

13. The parties agree that the price payable for the freehold interest in the Property should be determined in accordance with section 9(1) of the Act by application of the above three-stage approach. The valuation date is the date on which the Applicants gave notice of their desire to acquire the freehold; namely, 26 October 2014.

14. The parties also agree that, on the valuation date, the entirety value of the Property was £142,500 and that, for the purposes of determining the section 15 rent, the proportion of the entirety value which was attributable to the site was one third.
15. As noted below, the parties disagree about other aspects of the valuation process.

Capitalisation of the rent for the unexpired term of the Lease

16. The parties agree that the capitalised value of the rent must be ascertained having regard to the stepped increases in rent for which the Lease provides. However, they disagree about the capitalisation rate which should be applied for this purpose (which depends upon the yield which an investment purchaser would expect to receive if it acquired the freehold interest). They also disagree about the deferment rate which should be applied to reflect the fact that the right to receive future increases in rent does not arise until the relevant rent review dates are reached. Mr Francis argues that capitalisation and deferment rates of 7% should be adopted, whereas Mr Oldale argues that the appropriate rate is 4% in each case.
17. In support of his position, Mr Francis argues that the selection of a 7% capitalisation and deferment rate is consistent with the approach taken by the Upper Tribunal in the *Clarise* case and with a number of subsequent determinations by the First-tier Tribunal. Mr Oldale, on the other hand, argues that rates of 4% are in line with sales of comparable interests agreed by him. Details of three such sales were provided.
18. Whilst we note the settlement evidence put forward by Mr Oldale, we attach little weight to it. The three purchasers concerned were presumably tenants who may have been anxious to settle and thus prepared to pay something in excess of the proper price to achieve settlement. We have seen no evidence to suggest that the purchasers had the benefit of professional advice when agreeing the price for the freehold interests.
19. Similarly, decisions about capitalisation and deferment rates in previous first instance tribunal decisions do not bind the Tribunal in the present circumstances and should be treated with caution. Such decisions will have depended upon the particular facts of each case, and are likely to have been influenced by the strength of the arguments advanced by the parties.

8. The initial annual rent reserved by the Lease was £70. However, the Lease provides that, with effect from 29 September 2005, the annual rent was to increase to £140. The Lease further provides for subsequent £70 step increases in the annual rent to take effect every 30 years thereafter.

## **Law**

9. Section 9(1) of the Act provides, in effect, that the price payable shall be the amount which the freehold of the Property, if sold in the open market by a willing seller (with the tenant and members of his family not buying or seeking to buy) might be expected to realise.
10. Under section 9(3) of the Act, the Applicants have the right, within one month of ascertaining the amount payable for the Property, to give written notice to the Respondent that they are unable or unwilling to acquire it.
11. By virtue of section 9(4), the Applicants are also liable to bear the Respondent's reasonable costs. However, on this occasion the Tribunal has not been asked to make a determination as to the amount of such costs.
12. In the case of *Re Clarise Properties Ltd's Appeal* [2012] UKUT 4 (LC) the Upper Tribunal (Lands Chamber) provided guidance to the effect that the purchase price payable by a tenant for the landlord's freehold interest under section 9(1) of the Act must be ascertained by the application of a three-stage approach comprising the following elements:
  - (1) The capitalised value of the rent payable under the tenancy from the date of service of the Notice of Tenant's Claim until the original term date.
  - (2) The capitalised value of the "section 15 rent" (i.e., the modern ground rent which would be payable if the statutory right to extend the tenancy was exercised) payable from the original term date until the expiry of the 50-year lease extension.
  - (3) The value of the landlord's reversion to the house and premises after the expiry of the 50-year extension, on the basis that Schedule 10 to the Local Government and Housing Act 1989 applies to the tenancy.

## **Price payable for the freehold interest in the Property**

13. The parties agree that the price payable for the freehold interest in the Property should be determined in accordance with section 9(1) of the Act by application of the above three-stage approach. The valuation date is the date on which the Applicants gave notice of their desire to acquire the freehold; namely, 26 October 2014.

14. The parties also agree that, on the valuation date, the entirety value of the Property was £142,500 and that, for the purposes of determining the section 15 rent, the proportion of the entirety value which was attributable to the site was one third.
15. As noted below, the parties disagree about other aspects of the valuation process.

Capitalisation of the rent for the unexpired term of the Lease

16. The parties agree that the capitalised value of the rent must be ascertained having regard to the stepped increases in rent for which the Lease provides. However, they disagree about the capitalisation rate which should be applied for this purpose (which depends upon the yield which an investment purchaser would expect to receive if it acquired the freehold interest). They also disagree about the deferment rate which should be applied to reflect the fact that the right to receive future increases in rent does not arise until the relevant rent review dates are reached. Mr Francis argues that capitalisation and deferment rates of 7% should be adopted, whereas Mr Oldale argues that the appropriate rate is 4% in each case.
17. In support of his position, Mr Francis argues that the selection of a 7% capitalisation and deferment rate is consistent with the approach taken by the Upper Tribunal in the *Clarise* case and with a number of subsequent determinations by the First-tier Tribunal. Mr Oldale, on the other hand, argues that rates of 4% are in line with sales of comparable interests agreed by him. Details of three such sales were provided.
18. Whilst we note the settlement evidence put forward by Mr Oldale, we attach little weight to it. The three purchasers concerned were presumably tenants who may have been anxious to settle and thus prepared to pay something in excess of the proper price to achieve settlement. We have seen no evidence to suggest that the purchasers had the benefit of professional advice when agreeing the price for the freehold interests.
19. Similarly, decisions about capitalisation and deferment rates in previous first instance tribunal decisions do not bind the Tribunal in the present circumstances and should be treated with caution. Such decisions will have depended upon the particular facts of each case, and are likely to have been influenced by the strength of the arguments advanced by the parties.

20. However, we agree that the approach adopted in the *Clarise* case provides a useful starting point. In that case the parties had agreed a capitalisation rate of 6.5% in respect of an annual ground rent of £6.25 for an unexpired term of 28.5 years. That rate is, of course, 0.5% below the rate contended for by Mr Francis. In addition, the current rent for the Property (£140 per annum) would be significantly more attractive to an investment purchaser than the rent in *Clarise*. Furthermore, in the present case there is the added attraction of guaranteed increases in the rent every 30 years. In our judgment, each of these factors in isolation justifies further 0.5% reductions in the capitalisation rate, so that the rate which should be adopted is 5.5%.
21. Both Mr Francis and Mr Oldale contended that, in relation to the rent for the unexpired term, the deferment rate should be the same as the capitalisation rate. We see no reason to disagree: the deferment rate is thus also 5.5%.

#### Capitalisation of the section 15 rent

22. Although the parties agree the site value, they disagree about the approach which should be taken to decapitalising the site value to ascertain the section 15 rent (Mr Francis argues for a rate of 5.5%; Mr Oldale argues for 5%) and about the appropriate deferment rate (Mr Francis says 5.5%; Mr Oldale, 4%). The overall effect on valuation is small. However, we agree with Mr Francis: we reject the notion that it is acceptable to adopt differing rates for these purposes.

#### Value of the ultimate reversion

23. It is clear that the value of the ultimate reversion is minimal in this case. Although the parties have again advocated different deferment rates, this has very little effect on the overall valuation. However, we note that, in his valuation, Mr Oldale has not discounted the entirety value to allow for the effect of Schedule 10 to the Local Government and Housing Act 1989 (which provides the tenant with an entitlement to an assured tenancy at a market rent at the end of the extended term). We agree with Mr Francis that, in line with the decision in *Clarise*, a discount of 20% should be applied to allow for this.

#### Valuation

24. The Tribunal has carried out its own valuation in the light of the above findings and conclusions (as shown in the Annex hereto). Given the amounts involved, we consider accuracy to four decimal places to be adequate. We have rounded up the valuation figure of £3,045.02 and therefore determine that the price payable under section 9(1) of the Act is £3,050.00.

**ANNEX – Valuation of freehold interest in the Property**

**Term 1**

|                         |                |      |                   |
|-------------------------|----------------|------|-------------------|
| Rent                    | £ 140.00       | p.a. |                   |
| YP for 20.93 yrs @ 5.5% | <u>12.2531</u> |      | <b>£ 1,715.43</b> |

**Term 2**

|                              |                |      |                 |
|------------------------------|----------------|------|-----------------|
| Rent                         | £ 210.00       | p.a. |                 |
| YP for 30 yrs @ 5.5%         | <u>14.5337</u> |      |                 |
|                              | £ 3,052        |      |                 |
| PV of £1 in 20.93 yrs @ 5.5% | <u>0.3261</u>  |      | <b>£ 995.26</b> |

**Term 3**

|                              |                |      |                 |
|------------------------------|----------------|------|-----------------|
| Rent                         | £ 280.00       | p.a. |                 |
| YP for 30 yrs @ 5.5%         | <u>14.5337</u> |      |                 |
|                              | £ 4,069        |      |                 |
| PV of £1 in 50.93 yrs @ 5.5% | <u>0.0654</u>  |      | <b>£ 266.11</b> |

**Term 4**

|                              |               |      |                |
|------------------------------|---------------|------|----------------|
| Rent                         | £ 350.00      | p.a. |                |
| YP for 11 yrs @ 5.5%         | <u>8.0925</u> |      |                |
|                              | £ 2,832       |      |                |
| PV of £1 in 80.93 yrs @ 5.5% | <u>0.0131</u> |      | <b>£ 37.10</b> |

**Term 5**

|                               |                |      |                |
|-------------------------------|----------------|------|----------------|
| Rent                          | £ 420.00       | p.a. |                |
| YP for 30 yrs @ 5.5%          | <u>14.5337</u> |      |                |
|                               | £ 6,104        |      |                |
| PV of £1 in 110.93 yrs @ 5.5% | <u>0.0026</u>  |      | <b>£ 15.87</b> |

**Term 6**

|                               |               |      |               |
|-------------------------------|---------------|------|---------------|
| Rent                          | £ 490.00      | p.a. |               |
| YP for 11 yrs @ 5.5%          | <u>8.0925</u> |      |               |
|                               | £ 3,965       |      |               |
| PV of £1 in 140.93 yrs @ 5.5% | <u>0.0005</u> |      | <b>£ 1.98</b> |

**Reversion 1 (S15 Ground Rent)**

|                               |                 |      |                |
|-------------------------------|-----------------|------|----------------|
| Entirety Value                | £ 142,500       |      |                |
| Site Apportionment @ 33.3333% | <u>£ 47,500</u> |      |                |
| Modern Ground Rent @ 5.5%     | £ 2,613         | p.a. |                |
| YP for 50 yrs @ 5.5%          | <u>16.9315</u>  |      |                |
|                               | £ 44,242        |      |                |
| PV of £1 in 151.93 yrs @ 5.5% | <u>0.0003</u>   |      | <b>£ 13.27</b> |

**Reversion 2**

|                               |               |  |            |
|-------------------------------|---------------|--|------------|
| Standing House Value          |               |  |            |
| Subject to Sch10 LG& HA 1989  | £ 114,000     |  |            |
| PV of £1 in 201.93 yrs @ 5.5% | <u>0.0000</u> |  | <b>£ -</b> |

**Total**

**£ 3,045.02**