



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

Case Reference : **MAN/00ET/OAF/2018/0025**

Property : **16 Connaught Crescent, Widnes,
Cheshire WA8 5AE**

Applicant : **Raymond Chorley**

Respondent : **D.A.T.S (Holdings) Limited**

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

Tribunal Members : **A M Davies, LLB
P Mountain, FRICS**

Date of Decision : **6 December 2018**

DECISION

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DECISION

1. The price payable by the Applicant to the Respondent on enfranchisement is £13,750
2. The Transfer to the Applicant is to be redrafted by a conveyancer and shall include the following provisions or provisions with similar effect:
 - (a) "The Property has the benefit of such easements and rights as this transfer has the effect of granting by virtue of section 10(2)(i) of the Leasehold Reform Act 1967."
 - (b) "The Property is transferred subject to such easements and rights as this transfer has the effect of applying by virtue of section 10(2)(ii) of the Leasehold Reform Act 1967."
 - (c) The Respondent's draft clauses 15.7 and 15.8.
 - (d) A covenant by the Applicant to observe and perform the tenant's covenants in the lease insofar as they are capable of affecting the freehold Property
 - (e) A covenant by the Applicant and his successors in title to ensure that prior to any disposition (ie transfer or lease for a term of more than 7 years) of the whole or part of the Property a Deed of Covenant is executed and delivered to the proprietor for the time being of title number CH226095 whereby the disponent covenants with the said proprietor to observe and perform the tenant's covenants in the lease insofar as they are capable of affecting the freehold Property.
 - (f) Provision for the Applicant to apply to the Land Registry for a restriction in the following or similar terms: "No transfer or lease for a term expiring more than seven years after the date of the lease of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction, is to be completed by registration without either a certificate signed by the proprietor for the time being of the estate registered under title number CH226095 or their conveyancer that the provisions of clause.....of the Transfer dated.....referred to in the Charges Register [ie the clause containing the covenant at (e) above] has been complied with."

REASONS

BACKGROUND

1. The Applicant is the owner of a long leasehold interest in 16 Connaught Crescent, Widnes, Cheshire WA8 5AE registered under title number CH630839 ("the Property").

2. By a notice dated 1 May 2018 the Applicant served notice on the Respondent to exercise his right to purchase the freehold interest of his property pursuant to section 1 of the Leasehold Reform Act 1967 ("the Act"). It is common ground that the Property qualifies for enfranchisement under the Act and that the freehold interest falls to be valued on the basis set out at section 9(1) of the Act.
3. The Applicant's valuer Mr Andrew Orme valued the freehold interest at £4,580, and supplied a form of transfer. The Respondent did not serve a counter-notice. On 16 July 2018 the Applicant applied to the Tribunal for determination of the price of the Respondent's freehold interest.
4. Directions having been issued to the parties on 13 August 2018, the Respondent filed and served a valuation report prepared by Mr James Hewetson, which valued the freehold interest at £21,900 and included a substantially revised form of transfer for approval by the Tribunal.
5. On 24 September 2018 Mr Orme for the Applicant revised his valuation to £5800 and provided the Tribunal with his comments on the Respondent's form of transfer. The Tribunal is therefore asked to determine the price and to settle the transfer terms.

THE LEASE

6. The Property is held under a lease dated 31 March 2014 made between the Respondent (1), Countryside Properties (Northern) Limited (2) and the Applicant (3). The lease creates a term of 999 years from 1st January 2010 at a rent of £200 for the first 15 years of the term, and then subject to upwards-only review on the 15th and each subsequent 15th anniversary of the start of the term. Until and including the fifth review date, ie the 75th anniversary of the start of the term, the reviewed rent is to be the greater of (a) double the rent payable in the preceding 15 years and (b) one thousandth of the open market value of the property on the assumption that it is held under a similar lease for a term of 999 years.
7. Under these provisions, and assuming that there is no intervening legislation having the effect of limiting the ground rent, immediately prior to the sixth review date (the 90th anniversary of the start of the term) the annual ground rent will be £6400. On the sixth and each subsequent review date the rent is to be calculated in accordance with (b) above.
8. The lease also provides for payment of a contribution ("the Service Charge") to the Respondent's costs of providing services to the estate of which the Property forms part.

VALUATION

9. The Property is a 4 bedrooled detached house built around 2014 on a small private estate of leasehold houses and flats. The estate roads are unadopted and the Respondent maintains the common parts, including the roads and road lighting. There are the usual easements for rights of way and shared access to utilities. The Applicant paid £249,950 for the Property in August 2014.

10. The capitalisation and deferment rate applied by Mr Orme for the Applicant is 6% and the rate applied by Mr. Hewetson for the Respondent is 4.5%. The Tribunal considers the appropriate rate to be 5.5%.
11. In his valuation, Mr Orme has ignored the first review date, on the ground that the leaseholder has been in occupation for less than ten years. The lease states that the first review is to take place on the 15th anniversary of 1st January 2010 and therefore the date on which the Applicant acquired the property is irrelevant. The first review should take place in 2025.
12. Unlike Mr Hewetson for the Respondent, Mr Orme has not included any value for the residual period of the lease from 2100 to 3009, on the basis that it would be impossible to make a guess as to one thousandth of the capital value of the property in 2100. However, the lease states that reviews can be upward only and therefore after 2100 the ground rent must be at least £6,400, which is the figure adopted by Mr Hewetson. The Tribunal finds that a figure under this head should be included. A full calculation of the enfranchisement price is annexed to this decision.

THE TRANSFER

13. Under the terms of the lease, the Property benefits from a right of way over the estate roads, from utilities supplied via shared conduits, and from use or enjoyment of communal landscaped areas of the Respondent's estate. These rights will transfer to the freehold under the terms of the Act.
14. Section 10 of the Act provides that on enfranchisement a transfer should include any provision that is reasonable to protect the interests of third parties. The Applicant's obligation to contribute to the cost of maintaining the Respondent's estate will continue since he benefits from the expenditure, and loss of his contribution would prejudice the Respondent or the remaining leaseholders.
15. The Tribunal does not consider either party's form of transfer to be acceptable. The transfer shall be re-drafted by a conveyancer to contain the provisions set out in the order, or provisions with similar effect and acceptable to HM Land Registry.

VALUATION

Ground rent for 6.66 years to 2025		£ 200		£
YP 6.66 years	5.50%	5.4574		1,091.48
Ground rent to 2040		£ 400		
YP 15 years	5.50%	10.0376		
PV 6.66 years	5.50%	0.6874		2,759.94
Ground rent to 2055		£ 800		
YP 15 years	5.50%	10.0376		
PV 22 Years	5.50%	0.3079		2,472.46
Ground rent to 2070		£1,600		
YP 15 years	5.50%	10.0376		
PV 37 Years	5.50%	0.1379		2,214.70
Ground rent to 2085		£3,200		
YP 15 years	5.50%	10.0376		
PV 52 Years	5.50%	0.0618		1,985.04
Ground rent to 2100		£6,400		
YP 15 years	5.50%	10.0376		
PV 67 Years	5.50%	0.0277		1,779.47
Ground rent to 3009		£6400		
YP 909 years	5.50%	18.1818		
PV 82 years	5.50%	0.0124		<u>1422.91</u>
Premium for enfranchisement				13745.99
			Say	13750.00

Judge A Davies
6 December 2018