



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

Case Reference : **CHI/00HC/OAF/2014/0011.**

Property : **10 Blackthorn Gardens, Worle,
Weston-super-Mare, Somerset, BS22
6RZ.**

Applicants : **1. Brian Humphreys
2. Peter Frederick Humphreys.**

Representative : **Berry Redmond Gordon and Penney
LLP**

Respondent : **The successors in title of Catherine
Wallop.**

Representative : **None**

Type of Application : **Price payable on enfranchisement
(missing landlord) – S27(5)
Leasehold Reform Act 1967.**

Tribunal Members : **Judge J G Orme (Chairman)
Mr. M J Ayres FRICS (Member)**

**Date and Venue of
Hearing** : **8 October 2014.
Determination on papers.**

Date of Decision : **14 October 2014.**

DECISION

For the reasons set out below, the Tribunal determines that the appropriate sum payable by the Applicants, Brian Humphreys and Peter Frederick Humphreys, pursuant to section 27(5) of the Leasehold Reform Act 1967 for the freehold reversion of the property at 10 Blackthorn Gardens, Worle, Weston-super-Mare, Somerset, BS22 6RZ is the sum of £3,844.00.

REASONS

Background

1. Brian Humphreys and Peter Frederick Humphreys (“the Applicants”) are the leasehold owners of the Property known as 10 Blackthorn Gardens, Worle, Weston-super-Mare, BS22 6RZ (“the Property”). Their title is registered at HM Land Registry with Good Leasehold title under number AV32238.
2. An application has been made to the County Court sitting at Weston-super-Mare pursuant to section 27(1) of the Leasehold Reform Act 1967 (as amended) (“the Act”). On 22 July 2014, District Judge Cope made an order in claim number A00WM125 providing for the Property to be vested in the Applicants and including the following provision:
AND THIS COURT determines and declares pursuant to the provisions of Section 27(5) of the Leasehold Reform Act 1967 that the estimated amount of pecuniary rent payable for the said property by the Applicants as Tenants thereof under the Lease out of which the Applicants current interest arises as provided by Section 3 of the Landlord and Tenant Act 1954 (as amended) and which remains unpaid and will remain unpaid up to the date of this Order is the sum to be determined by the Leasehold Valuation Tribunal under Section 9(i) of the Leasehold Reform Act 1967 under the “original valuation” basis.
3. Since 1 July 2013 the functions of the Leasehold Valuation Tribunal have been transferred to the First-tier Tribunal (Property Chamber).
4. The Applicants have filed with the Tribunal a report and valuation prepared by Mr. M T Ripley FRICS of Stephens & Co Chartered Surveyors dated 26 August 2014.
5. The Tribunal inspected the property on 8 October 2014 in the presence of Mrs. King, a tenant of the Applicants. It is a mid-terrace 2 storey house forming part of an extensive development in the early 1970’s. It is more particularly described on page 1 of Mr. Ripley’s report under the heading “Description”.
6. The Applicants did not seek a hearing before the Tribunal and the Tribunal made its determination on the papers presented to it.

The Lease

7. The register of title records that the Property is held for the residue of a term of 500 years created by a lease affecting also other land dated 1 September 1557. The witness statement of Brian Humphreys states that the lease was made between Catherine Wallop as landlord and John and Isobel Thomas as tenant and that the yearly rent payable for the whole of the premises included in the original lease was £1 6s 9d. The Applicants say that they are unable to ascertain or find the successors in title of either the original landlord or the original tenants.
8. In his witness statement, Brian Humphreys states that the Applicants purchased the Property on 12 May 2006 and that they have paid no rent for the Property since that time.

The Law

9. Section 27(5) of the Act provides:

The appropriate sum which, in accordance with subsection (3) above, is to be paid into court is the aggregate of –

 - a. *Such amount as may be determined by (or on appeal from) the appropriate tribunal to be the price payable in accordance with section 9 above; and*
 - b. *The amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.*
10. Section 9(1) of the Act provides:

Subject to subsection (2) below, the price payable for a house and premises on a conveyance under section 8 above shall be the amount which at the relevant time the house and premises, 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 on the following assumptions:-

 - a. *On the assumption that the vendor was selling for an estate in fee simple, subject to the tenancy but on the assumption that this Part of this Act conferred no right to acquire the freehold; and if the tenancy has not been extended under this Part of this Act, on the assumption that (subject to the landlord's rights under section 17 below) it was to be so extended;*
 - b. *On the assumption that (subject to paragraph (a) above) the vendor was selling subject, in respect of rentcharges to which section 11(2) below applies, to the same annual charge as the conveyance to the tenant is to be subject to, but the purchaser would otherwise be effectively exonerated until the termination of the tenancy from any liability or charge in respect of tenant's incumbrances; and*
 - c. *On the assumption that (subject to paragraphs (a) and (b) above) the vendor was selling with and subject to the rights and burdens with and subject to which the conveyance to the tenant is to be made, and in particular with and subject to such permanent or extended rights and burdens as are to be created in order to give effect to section 10 below.*

The reference in this subsection to members of the tenant's family shall be construed in accordance with section 7(7) of this Act.

11. The Tribunal has been directed to and has taken into account the following decisions in which these provisions have been considered in recent years: *Cadogan v Sportelli* [2007] EWCA Civ 1042 and [2008] UKHL 71 and *Clarise Properties Limited* [2012] UKUT 4.

Conclusions.

12. The Tribunal has considered the valuation exercise carried out by Mr. Ripley in his report and has reached the following conclusions.
13. The Tribunal accepts Mr. Ripley's submission that as no rent has been paid by the Applicants, there is no value to be attached to the residue of the current term.
14. Mr. Ripley has adopted the "standing house" method of valuation. The Tribunal accepts that this is the correct method to be adopted as there is unlikely to be evidence of sales of vacant sites as this locality has been developed for some years.
15. Mr. Ripley starts by valuing the Property on an open market basis by reference to comparable properties which have been sold recently. By virtue of section 27(2)(a) of the Act, the valuation date is the date of the application to the court. That date is unknown to the Tribunal but the Tribunal assumes that it was shortly before the date of the order made on 22 July 2014. Mr. Ripley's valuation was dated 26 August 2014. The Tribunal accepts the evidence of Mr. Ripley with regard to the value of the Property and finds that the value of the Property as at the valuation date was £132,500. The Tribunal does not consider that there has been a material change in the value of the Property between the date of the application and the date of Mr. Ripley's report.
16. The Tribunal accepts Mr. Ripley's submission that a rate of 7% of the site value should be used when calculating the modern ground rent for the 50 year lease extension from 1 September 2057.
17. Mr. Ripley seeks to apply a deferment rate of 7%. The case of *Cadogan v Sportelli* is authority for a generic deferment rate for houses of 4.75%. However, it was made clear that particular features of a property may justify a departure from that rate. Mr. Ripley sets out such features on page 3 of his report at paragraphs numbered 1 to 5. Whilst the Tribunal accepts that those features do justify a departure from the rate of 4.75%, it does not accept the figure of 7%. It considers that a figure of 6% is appropriate and will apply that figure.
18. At paragraph 6 on page 3 of his report, Mr. Ripley seeks to justify a 2 stage valuation process rather than a 3 stage process. At paragraph 36 of the decision in *Clarise Properties*, the Upper Tribunal said "*We consider that 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." The Tribunal does not accept Mr. Ripley's submissions in favour of adopting a two-stage approach. The factors which he sets out are not sufficient to persuade the Tribunal to depart from the standard practice. The Tribunal will adopt a three-stage approach.


19. Mr. Ripley has submitted that the site value is fairly estimated as 27.5% of the entirety value. The Tribunal accepts that submission.
20. In calculating the value of the second reversion at the end of the extended term, the Tribunal has reduced the entirety value of the Property by 3.85% to reflect the assumption that Schedule 10 of the Local Government and Housing Act 1989 applies to the tenancy. This means that the tenancy automatically continues until a notice is served under Schedule 10, paragraph 4, when the tenant is entitled to an assured tenancy under the Housing Act 1988 at a market rent. This means that there is no certainty of obtaining vacant possession after the 50 year lease extension. This would depress the value of the freehold reversion further.
21. Accordingly, the Tribunal's valuation is:-

1. Value of current term, no rent payable, therefore	£0.00
2. Value of first reversion:	
Entirety value £132,500	
Site value at 27.5% £36,437	
Section 15 modern ground rent at 7% £2,550	
Years purchase 50 years at 6% = 15.762 = £40,193	
Present value of £1 in 43 years deferred @6% = 0.0816 =	£3,280.00
3. Value of second reversion:	
Entirety value £132,500	
Deduct 3.85%, £127,399	
Present value of £1 in 93 years deferred @ 6% = 0.00443 =	£564.00
Total sum payable	£3,844.00

22. The Tribunal accepts Mr. Ripley's submission that the unpaid ground rent can be regarded as "infinitesimal".

Right of Appeal

23. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
24. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.
25. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.



J G Orme
Judge of the First-tier Tribunal
Dated 14 October 2014.