



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

Case Reference : CAM/12UB/OCE/2018/0010

Property : 49 Alpha Road, Cambridge CB4 3DQ

Applicant : 49 Alpha Road Freehold Ltd

Representative : Colin Astin FCA, St Andrew's Bureau Ltd

Respondent : Waterglen Ltd

Representative : Laura Cleasby, solicitor, of Pier Management Ltd
& valuer, Christopher Baker BSc (Hons) Dip Est Man
MIRPM AssocRICS

Type of Application : to determine the appropriate sum payable and other
terms on enfranchisement, including costs
[LRHUDA 1993, ss.32 & 33 & Sch 6]

Tribunal : G K Sinclair & R Thomas MRICS

**Hearing date
and venue** : Monday 23rd July 2018 at Cambridge County Court

Date of decision : 30th July 2018

DECISION

- Determination para 1
- Background paras 2–7
- Relevant statutory provisions paras 8–10
- Inspection and hearing paras 11–21
- Findings
 - Price paras 22–24
 - Costs paras 25–36
- Price payable Schedule

1. For the reasons which follow the tribunal determines that the price payable by the nominee purchaser for the acquisition of the freehold pursuant to Schedule 6 is £12 521.50 , and that the sum of £4 735.32 is also payable by it in respect of the landlord’s costs reasonably payable by the nominee purchaser under section 33. How that total amount is divided amongst the participating leaseholders is a matter for them.

Background

2. This application concerns a converted property comprising 11 residential flats in a quiet residential street in the Arbury area of Cambridge, between Victoria Road and the river by Jesus Green. Although of varying sizes – with two bedsits, two 2-bedroom flats and rest 1-bedroom flats – all the leases are drafted in similar terms, including as to ground rent. Each pays the same rent, regardless of size, and this is stepped so as to double every 50 years – from £50 now to £100 from June 2039, £200 from June 2089 and a final increase to £400 from 2139 until determination by effluxion of time in 2188.
3. An initial notice was served in September 2017, to which the freeholder’s solicitors took two points : that a plan was not appended to the notice (although one was included with a number of other title documents that accompanied it), and that the date by which a counter-notice was to be served was insufficient. Argument was continued in correspondence, but just in case it was wrong the landlord obtained a valuation report and served a counter-notice “Without Prejudice”. The nominee purchaser was not convinced that the initial notice was incorrect but in November a further notice in the same terms was served on behalf of the leaseholders, also “Without Prejudice”. The landlord obtained a fresh valuation report (this time from a new valuer, as it had dispensed with the services of that used previously) and served a second counter-notice – this time proposing a slightly lower purchase price.
4. By agreement the application has proceeded on the second notice, the first being described in a costs schedule submitted by the landlord as “invalid”. Certainly it cannot be described as having been withdrawn, as that would have prevented the leaseholders from trying again so soon.
5. The parties appeared to have agreed that :
 - a. The valuation date is 3rd November 2017
 - b. The unexpired term as at that date was 170.63 years
 - c. The deferment rate is 5%, as per *Sportelli*
 - d. The capitalisation rate is 6%, as per recent tribunal decisions in this region
 - e. The total value of the property is £2 256 000
 - f. The existing ground rent is £50 per unit.

6. However, it later transpired that the applicant agreed this capitalisation rate on the basis that the ground rent was assumed to remain at £50 per unit for the rest of the term, whereas in fact it is stepped (as described in paragraph 2 above).
7. What also were not agreed were the issues of “hope” value and the costs claimed by the freeholder, itemised in two schedules : for costs under the current notice and those under the “invalid” one. Each included a substantial invoice for an enfranchisement valuation.

Relevant statutory provisions

8. Section 13 of the Leasehold Reform and Urban Development Act 1993 requires that the initial notice which starts the process of collective enfranchisement must be served on the reversioner, and the latter has a minimum period of two months in which to prepare and serve a counter-notice under section 21. Where, as here, the counter-notice states that participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises¹ then by section 21(3) it must go on, inter alia, to :
 - (a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify –
 - (i) in relation to any proposal which is not so accepted, the reversioner’s counter-proposal, and
 - (ii) any additional leaseback proposals by the reversioner...
9. If the parties are unable to agree the price payable then it is determined under section 32 of and Schedule 6 to the Act.
10. Finally, section 33 deals with the issue of costs payable by the applicant to the other involved parties. Provisions material to this discussion are :
 - (1) Where a notice is given under section 13, then (subject to the provisions of this section and sections 28(6), 29(7) and 31(5)) the nominee purchaser shall be liable, to the extent that they have been incurred in pursuance of the notice by the reversioner or by any other relevant landlord, for the reasonable costs of and incidental to any of the following matters, namely
 - (a) any investigation reasonably undertaken –
 - (i) of the question whether any interest in the specified premises or other property is liable to acquisition in pursuance of the initial notice, or
 - (ii) of any other question arising out of that notice;
 - (b) deducing, evidencing and verifying the title to any such interest;
 - (c) making out and furnishing such abstracts and copies as the nominee purchaser may require;
 - (d) any valuation of any interest in the specified premises or other property;
 - (e) any conveyance of any such interest;...
 - (2) For the purposes of subsection (1) any costs incurred by the reversioner or any other relevant landlord in respect of professional services rendered by any person shall only be regarded as reasonable if and to the extent that costs in respect of such services might reasonably be expected to have

¹ See s.21(2)(a)

been incurred by him if the circumstances had been such that he was personally liable for all such costs.

...

- (5) The nominee purchaser shall not be liable under this section for any costs which a party to any proceedings under this Chapter before the appropriate tribunal incurs in connection with the proceedings.

Inspection and hearing

11. The tribunal briefly inspected the exterior of 49 Alpha Road and viewed the common parts (garden and two side alleys – one for pedestrian and cycle access and the other for storage of and access to refuse bins – externally, and the shared lobby and staircases internally) at 10:00 on the morning of the hearing. At the inspection each party was represented. As the overall value of the building was agreed the tribunal did not concern itself with inspecting the interior of any of the flats.
12. At the hearing the tribunal had before it a bundle which, with late additions from the respondent, included official copies of the title, a sample lease, the later initial notice, counter-notice and a reply, and valuation reports/submissions by Mr Astin for the applicant and Mr Baker for the respondent. It also included costs schedules produced by the respondent and each party's submissions on them. At the outset both agreed that "hope value" should be excluded (and it did not feature in Mr Baker's report).
13. On the price to be paid Mr Astin surprised everyone by arguing that the 6% rate for capitalisation was agreed only on the basis that the rent remained fixed at £50 throughout the remainder of the term, but that if the ground rent calculation was to be stepped (as in the lease, rather than in a real world negotiation) then he wished to argue for a different rate. Asked what that was, he replied 7.5%, but he had carried out no calculation to reveal what total that would produce.
14. Mr Astin, whose background is as a chartered accountant who later worked for a merchant bank and has invested in ground rents, argued that one had to look at the value of the stream of income. The Act clearly refers to a willing seller and on the question of inflation one has to take into account the view taken by the buyer, regardless of what it says in the lease. He tried to prove this by reference to an article which should have been, but was not, included in the tribunal's version of the bundle. The article to which he referred, and provided copies, was a short undated article or press release from Maunder Taylor, a firm of chartered surveyors, estate agents and managing agents. In this article, which referred to an Upper Tribunal (Lands Chamber) case as recent as 2011, the author sought to differentiate between ground rents that are fixed (or static) and those with regular reviews (or dynamic).
15. Towards the top of the second page the article says as follows :
If the hypothetical purchaser assumes inflation at 2.8% p.a., then a ground rent that doubles every 25 years would, more or less, keep pace with that rate of inflation. A lower rate of inflation would be to the advantage of the investor a higher rate of inflation would be to the disadvantage of the investor. Similarly, on those reviews geared to capital value or rack rental value, then a sport assumption of 2% p.a. real growth over the long-term

(that is 2% p.a. over and above inflation) is to the considerable advantage of the investor.

The comparison can then be viewed with some degree of comparability :

- a) A static ground rent should be valued at a relatively high capitalisation rate.
 - b) A ground rent which keeps pace with inflation, say every 25 years, should be valued at a lower rate reflecting 25-year inflationary adjustments but moderated by the fact that the investor has to wait 25 years to get that adjustment.
 - c) A dynamic ground rent linked to capital or rack rent increases should be valued at an even lower rate to reflect inflation plus real growth moderated, again, by the fact that the investor has to wait 25 years for the adjustment.
16. In proposing a higher yield for a stepped rent Mr Astin appeared to be arguing the exact opposite of what the article he sought to rely upon was saying.
 17. On behalf of the freeholder its valuer, Mr Baker, argued that as there is a stepped review in the lease it is therefore normal to apply that in enfranchisement. The 6% should apply throughout. It is commonly used in stepped leases, although mainly with 25 year increases. This is slightly longer. Stepping the increases provides some protection against inflation. Until that day he thought that 6% was agreed. He now understood that Mr Aston wants 7.5% if the rent is to be stepped. He disagreed and, by applying 6% to the stepped rent, arrived at a premium of £12 617.93. Asked about certain deferment periods mentioned in his schedule Mr Baker put them down to rounding errors introduced by the Excel software, thus explaining why the tribunal's calculation (applying the correct figures) was ever so slightly lower.
 18. On the question of costs the freeholder had produced two schedules: the first (in connection with the first or "invalid" notice) appearing at tab 8 pages 9 & 10 and the second (for the later notice) at pages 11 & 12. Ms Cleasby stated that where work was carried out on the first claim which was duplicated for the second she had not charged twice. At pages 22 & 23 she had the two valuers' invoices. Asked by the tribunal why they were two valuers' reports she said that by the time the second notice was served Pier Group was no longer using Morgan Sloane at all. Various firms are now used; in this case McDowalls.
 19. The tribunal questioned why there were two sets of valuers' costs, with the first being more expensive, as full reports were not needed for the purpose of serving a counter-notice. The landlord can't frontload non-allowable tribunal report costs. Ms Cleasby was asked how the figures in the two counter-notices differed, given that they were prepared only months apart. She informed the tribunal that the first counter-notice proposed a price of £28 658, and for appurtenant land £50 000. On 4th January 2018 she served a second counter-notice proposing a price of £27,448.96 plus a further £50 000.
 20. The invoice by Morgan Sloane dated 29th September 2017 is in the sum of £4 745 plus VAT, making a total of £5 694. That for McDowalls dated 14th December 2017 is slightly more illuminating, as it quotes an enfranchisement valuation of

£300 x 11, making a total of £3 300 plus VAT, a total of £3 960. Ms Cleasby argued that fees on enfranchisement can vary substantially, and that instructions are given to valuers to investigate fully, including as to whether the lessee is at risk of forfeiture and is using the enfranchisement process to circumvent this.

21. Mr Astin queried whether the valuers had inspected all the flats, as his company managed a number and had never been contacted.² He struggled to see how McDowalls could claim that amount, considering £750 to be more realistic if all the leases are the same, and it is easy to go online and check the sales history. He also challenged some of the timings claimed by Ms Cleasby, regarding some of them, including 180 minutes (3 hours) reviewing office copy entries, leases, etc as excessive.

Findings – Price

22. The tribunal is satisfied that it is standard practice to follow the terms of the lease as to rent reviews when calculating the diminution in value of the freeholder's interest. Until the hearing the parties seemed to agree that 6% was the correct capitalisation rate; in Mr Astin's valuation report (at tab 5, page 31) he notes this as "having regard to recent Tribunal decisions in the Eastern Region". So far as this tribunal is concerned its standard practice is to apply the provisions in the lease for periodic rent reviews when calculating the price on any enfranchisement or lease extension.
23. This accords with what is noted in *Hague*,³ namely that
It is assumed that the vendor is selling for an estate in fee simple subject to any leases subject to which the freeholder's interest is to be acquired, and any intermediate or other leasehold interests in the premises which are to be acquired. Since the existing leases are to be treated as existing, the value of the freeholder's interest will include the rents payable under those leases.
24. Adjusting for the various rounding errors in the Baker schedule the tribunal calculates that the purchase price is the slightly lower figure of £12 521.50, as set out in the schedule annexed.

Findings – Costs

25. As it is not possible to withdraw an initial notice and then start again within 12 months the original notice served in this case must be treated as invalid, and the tribunal explained at the outset that this is not an issue within its jurisdiction and into which it did not propose to venture. However, the two notices were served only three months apart and the tribunal struggles to see how the freeholder can possibly justify either the employment by it of two separate firms of valuers, at a combined cost (inclusive of VAT) of £9 654, or charging anything like either amount simply for the purposes of producing a negotiating figure for inclusion in a counter-notice.
26. Having obtained one valuation there was no need either to obtain or review a

² NB. The McDowalls report for the tribunal implies that the valuer did not inspect three of the eleven flats, as the internal size of flats 3, 8 & 10 are each shown as "NK", or "not known"

³ *Hague : Leasehold Enfranchisement* (6th ed – 2014), at 27–06

second; especially as the outcome was to serve a second counter-notice quoting a slightly lower purchase price. How does that possibly assist a freeholder which, unlike those serving the initial notice, does not in its counter-notice have to propose a purchase price bearing any reality to the market?

27. In the tribunal's opinion, taking into account the evidence before it and its overall experience, the work involved in producing a valuation for the purposes of identifying a figure from which one may expect later to negotiate downwards is not unduly onerous. The valuer can be expected to review the leases, which in this case he would swiftly discover were in similar terms – including as to rent, even though the flats are of very different sizes. He would need to travel from his office in the Colchester area to the site, spend perhaps 5 or 10 minutes inspecting externally and then between 3 and 5 minutes per flat. He would then need to check comparable evidence, much of which can easily be undertaken online these days, and produce a written report. The tribunal considers that 10 hours at £150 per hour plus VAT would suffice : £1 800.
28. On Ms Cleasby's first costs schedule, for the invalid notice, the tribunal considers that the times claimed, and the rate (despite her being employed in-house)⁴, are reasonable. However, for the reasons stated above, the invoice by Morgan Sloane is disallowed, as this is not an amount which a party would reasonably incur if it expected to pay the invoice itself. A fee of £1 800 (inc VAT) is substituted.
29. Ms Cleasby explained the difficulty in ensuring that counter-notices served by post have been received when expected, due to difficulties with the Post Office waiting some weeks before returning undelivered or uncollected Recorded Delivery letters, so the courier fee is allowed.
30. The landlord's fees and disbursements claimed under this schedule of £6 465.60 are therefore reduced to £2 571.00.
31. Turning to the second schedule, dealing with work done and conveyancing costs yet to be incurred under the current notice, many of the claims for time spent have been agreed by the applicant, but others - and the valuer's fee – have not.
32. At item 5 on tab 8, page 9, 180 minutes are claimed for reviewing office copy entries, the leases, etc. Once it became clear that the leases were all in similar terms checking the vital clauses should not have taken long. The same applies to lease and title plans. The tribunal agrees with Mr Astin that the time claimed is excessive, and it reduces this to 120 minutes.
33. Item 6 concerns perusing and considering the valuer's report. This was allowed for under the first schedule. As only one report can justifiably be allowed this cost cannot be repeated. 36 minutes are deducted. Mr Astin argued that 6 minutes be allowed for reporting to the client. The tribunal disagrees, and allows the 36 minutes claimed under item 7. It also disagrees with his proposed reduction in time for preparation of the completion statement, etc [page 10, anticipated cost item 2] from 48 minutes to 30 minutes. The total time deducted is therefore 96 minutes (16 units), or £412.80 plus VAT. The legal costs are therefore reduced from £2 141.40 to £1 728.60 and the VAT element is reduced to £345.72.

⁴ See *Sidewalk Properties Ltd v Twinn* [2015] UKUT 0122 (LC)

34. On disbursements there is no need to obtain further official copies to disprove lessees' entitlement to participate. The cost of these was claimed earlier. The fee for McDowalls is disallowed entirely. No reasonable landlord would repeat the exercise twice just to obtain a figure for inclusion in the counter-notice.
35. The costs payable under this schedule are therefore :
- | | | |
|----|---|------------------|
| a. | Time spent | £1 728.60 |
| b. | VAT thereon | £345.72 |
| c. | Disbursements (courier only), inc VAT | £90.00 |
| | Sub-total : | £2 164.32 |
36. The section 33 costs recoverable by the landlord from the applicant are thus :
- | | | |
|----|--|------------------|
| a. | First schedule (invalid notice) | £2 571.00 |
| b. | Second schedule (current notice) | £2 164.32 |
| | Total costs payable : | £4 735.32 |

Dated 30th July 2018

Graham Sinclair

Graham Sinclair
Tribunal Judge

SCHEDULE

Valuation date	3 rd November 2017
Freehold market value of entire building	£2 256 000
Unexpired term of lease (to 23 rd June 2188)	170.63 years
Deferment rate (<i>Sportelli</i>)	5%
Capitalisation of current ground rent : yield	6%
Value of current unpaid ground rent	Nil

1.	Value of freeholder's present interest		per flat
a.	Term – ground rent		
	Ground rent 1 = £50		
	YP 21.65 yrs @ 6%	11.9473	£597.00
	Ground rent 2 = £100		
	YP 50 yrs @ 6%	15.7619	
	deferred 21.65 yrs @ 6%	0.2832	£446.37
	Ground rent 3 = £200		
	YP 50 yrs @ 6%	15.7619	
	deferred 71.65 yrs @ 6%	0.0154	£48.54
	Ground rent 4 = £400		
	YP 48.98 yrs @ 6%	15.7065	
	deferred 121.65 yrs @ 6%	0.2832	£5.03
	Sub-total		£1 097.30
	x 11 flats =		£12 070.30
b.	Deferred value of freehold reversion		
	PV of £1 x 170.63 yrs @ 5%	0.0002	£451.20
		£2 256 000	
2.	Share of marriage value		nil
3.	Compensation under paragraph 5		nil
	Price payable for entire building		£12 521.50