



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

Case Reference : **MAN/OOEN/OAF/2019/0010**

Property : **10 Snowberry Way, Ellesmere Port
CH66 2UA**

Applicant : **Karl Jones**

Represented by : **Andrew Orme, Orme Associates**

Respondent : **Chime Properties Ltd**

Represented by : **J B Leitch Solicitors**

Type of Application : **Determination of price and contents
of transfer**

Tribunal Members : **Laurence Bennett (Tribunal Judge)
Di Latham, MRICS**

Date of determination : **30 August 2019**

Date of Decision : **25 October 2019**

DECISION

Application

1. Mr Karl Jones applies to the Tribunal for a determination of reasonable costs payable under Section 9(4) of the Leasehold Reform Act 1967 (the Act) and for determination of what provisions ought to be in the conveyance under Section 21(2) of that Act.

Parties

2. The Applicant Mr Jones is the owner of the leasehold interest in the Property created by a Lease dated 29 April 2005 for 150 years from 1 January 2004 made between Bellway Homes Ltd (1) Karl Jones (2).
3. The Respondent Chime Properties Ltd is the successor to the lessors of the Property.

Directions

4. On 29 May 2019 Judge Bennett made directions for the conduct and determination of the appeal.
5. In accordance with directions the parties made written submissions and provided documentary evidence including expert reports.
6. Neither party requested a hearing. Following external inspection of the Property the Tribunal determined the application on the basis of the written submissions and documentary evidence provided by the parties.

The Property

7. The Property is a 3 storey brick and concrete detached residence with an integral garage. It is located in a relatively quiet residential area close to the M53, convenient for commuting to major conurbations.
8. At the time of the Tribunal's inspection, the Property appeared in good order and consistent with the age of construction around 2004.

Contents of application

9. The application has proceeded as an application to determine the price payable for the freehold interest in the Property in addition to issues set out in the application form. Both parties addressed the application on that basis and the Tribunal accepts and orders the implied amendment to the scope of the application.
10. We have some comments on Mr Orme's presentation of his client's case. We have noted the difficulties in the application form. The Tribunal was not assisted by the lack of documents which should have been provided including Landlord's Counter Notice, a full copy of the Lease at the application stage and bundles prepared to a reasonable standard, not least sequentially numbered and bound. It is not appropriate to provide a collection of loose pages within plastic sleeves. Whilst we find it in the interests of the parties that this matter is determined, we consider it unlikely in future a Tribunal would accept submissions in this form.

Background

11. By notice dated 27 November 2018 Mr Andrew Orme of Orme Associates submitted a notice of tenant's claim to acquire the Freehold on behalf of Mr Jones. It noted that the premium on the grant of the Lease was £208,995 at a rent of £80 subject to review every 5 years.

Agreement

12. The parties agree that the price should be calculated according to Section 9(1) of the Act and the appropriate valuation date is 27 November 2018. They further agree the current ground rate payable £112.10 p.a. with a notional ground rent at the date of valuation £123.85 p.a. At the date of valuation the unexpired term was 135.09 years.

Expert evidence

13. Mr Orme has made extensive submissions accompanied by precedents and decisions. The Respondent has submitted the first and supplementary reports of Mr Gary M French, FRICS.
14. Mr Orme calculates the appropriate price at £1,820. Mr French's valuation is £2,601.
15. The essential difference between the parties relates to the capitalisation rate and reversion to modern ground rent as set out in Mr French's schedule.
16. Evidence and submissions are referred to within our determination below.

Tribunal's conclusions

Capitalisation

17. Mr Orme proposes capitalisation at a rate of 6.75% addressed at length in his reply to the Respondent's valuation.
18. Both experts analysed the comparables submitted. It is clear there has been a detailed discussion between the Valuers. Mr Orme submits his comparables support a capitalisation rate of 6.75%.
19. In proposing a rate of 5%, Mr French makes some points regarding the nature of this particular Lease as rent is linked to RPI and the market evidence taken into account by both experts. He questions the relevance of comparables submitted by Mr Orme and sites his own comparables showing capitalisation rates between 6 and 7%. His view is that the inflation proof element of RPI investments makes them appealing. He summarises "In my opinion the reduced period of 5 year reviews for Snowberry Way warrants a yield of 5% to reflect the benefits." In his further report Mr French provides additional commentary on Mr Orme's comparables, in particular 5 and 13 Andace Park Gardens [2018] UKUT 0064 (LC) reinforcing his view that 5% is appropriate.

20. Mr Orme's arguments are ingenious and wide ranging including reference to future reform which we consider can have limited impact. His central point relates to the risk inherent in the Lease and in effect disputes the comparative certainty in RPI investments taken into account by Mr French.
21. We are persuaded by Mr French's arguments. Traditionally, ground rent reviews do not provide for RPI uplift. This is a relatively modern form of investment, presumably to alleviate inflation and render capitalisation and returns more certain. In this case the position is reinforced by a very short review pattern, 5 years. Accordingly, we accept 5% is the appropriate capitalisation rate.

Reversionary value

22. Mr Orme submits that a reversion in excess of 135 years in the future does not carry value. Mr French takes an approach submitting the reversion to modern ground rent should carry a site value of 33.5% with "generic" deferment rate of 4.75%. The decision in 37 Hopgarth Gardens is cited both in respect of deferment rate and site value.
23. Mr Orme in his response to the Respondent's valuation addresses that aspect and suggests the yield based on rent only should be 3.53%.
24. We do not accept as first stated by Mr Orme that the reversion to modern ground rent is so distant that it should not be taken into account. Mr French calculates the Freehold value at £250,000 based on comparables. Mr Orme does not challenge this and we find the valuation consistent with our expectation based on our knowledge and experience. Relying on the precedent quoted by Mr French we accept the site value is 33.5% and a deferment rate of 4.75% should be applied reflecting the longer review period.
25. Neither party suggests it appropriate to provide a deferment for standing house value. We concur, this is remote.

Summary

26. We accept the valuation prepared on behalf of the Respondent and set out Appendix 1 of Mr French's report and annexed to this decision.
27. Having reached that view we note that the same experts reached a similar freehold price in respect of 7 Snowberry Way in 2017.

Terms of conveyance

28. We note that transfer terms are now agreed. Both parties submitted draft transfers in identical terms. Accordingly, in as much as it is necessary for the Tribunal to make an order, we do so in agreed terms as annexed to this decision.

Costs

29. The Applicant accepts the Landlord's valuation costs in the sum of £375 + VAT. We find this cost in line with expectation and appropriate.

30. The Respondent has provided a Costs Schedule in respect of legal fees. This totals £1,190.40 + VAT of £238.08. It sets out the fee earner's rate and itemised time units. However, the Respondent had offered to settle legal costs in the sum of £1,250 inclusive of VAT.
31. Mr Orme has provided a table of costs payable in similar circumstances within his experience and submits that the requested costs in this instance are greater "By about a factor of about 2."
32. We have kept in mind Section 9(4) of the Act and the scope of the "reasonable" costs recoverable. We note this is a relatively recent Lease, the title is registered and the transfer is in relatively plain form and was first drafted on behalf of the Applicant.
33. In the circumstances we find it difficult to see why 32 units were reasonably incurred in reviewing and drafting documents or why 19 letters/emails to the client were required. We accept the grade of the fee earner was appropriate although transactional aspects have largely taken place between the Valuers.
34. In the circumstances we find the legal fees payable by the Applicant should be limited to 10 letters/emails to clients, 11 in respect of the Tribunal and 20 units in respect of reviewing and drafting documents making a total of £787.20 + VAT of £157.44.

Order

35. The acquisition cost, contents of transfer and costs payable by the Applicant shall be as set out above.

Schedule of attachments

36. Price calculation
37. Draft transfer

L J Bennett
Tribunal Judge
25 October 2019

APPENDIX 1

VALUATION UNDER SECTION 9(1)
 10 Snowberry Way Cheshire
 LEASEHOLD REFORM ACT 1987 SECTION 9(1)
 Valuation date: 27/11/18
 Unexpired term: 135.09 years
 Capitalisation rate: 5.00%
 Deferment rate: 4.75%
 Entirety Value: £250,000
 Standing House Value: £225,000
 Land value: 33.5%

FREEHOLDERS INTEREST

1. THE TERM

T1	Ground Rent YP	1.42	5.00%	£112.10 1.33873 £150.07	£150.07
T2	Ground Rent YP PVE1	133.67 1.42	5.00% 5.00%	£123.85 19.97058 0.93308 £2,307.80	£2,307.80

2. REVERSION TO MODERN GROUND RENT

Entirety Value		£250,000
Site value at	33.5%	£83,750
Ground rent at YP	4.75% 50	£3,978 18.98437 £75,522.21 0.001894052
PV	135.09	4.75%

3. REVERSION TO MARKET VALUE

Standing House Value	Schedule 10	0%	£225,000 £0
	185.09	4.75%	0.000186076

£2,601

£2,600.91

FREEHOLDERS INTEREST

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

For information on how HM Land Registry processes your personal information, see our [Personal Information Charter](#).

Leave blank if not yet registered.

When application for registration is made these title number(s) should be entered in panel 2 of Form AP1.

Insert address, including postcode (if any), or other description of the property transferred. Any physical exclusions, such as mines and minerals, should be defined.

Place 'X' in the appropriate box and complete the statement.

For example 'edged red'.

For example 'edged and numbered 1 in blue'.

Any plan lodged must be signed by the transferor.

Remember to date this deed with the day of completion, but not before it has been signed and witnessed.

Give full name(s) of all of the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration

1	Title number(s) out of which the property is transferred: CH578871
2	Other title number(s) against which matters contained in this transfer are to be registered or noted, if any: CH535884
3	Property: 10 Snowberry Way, Whitby, Ellesmere Port, CH66 2UA The property is identified <input type="checkbox"/> on the attached plan and shown: <input checked="" type="checkbox"/> on the title plan(s) of the above titles and shown: Edged Red
4	Date:
5	Transferor: CHIME PROPERTIES LIMITED <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 05746957 <u>For overseas companies</u> (a) Territory of incorporation: (b) Registered number in the United Kingdom including any prefix:
6	Transferee for entry in the register: KARL JONES <u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: <u>For overseas companies</u> (a) Territory of incorporation:

Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 12.

THOUSA

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, *or*
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to [Joint property ownership](#) and [practice guide 24. private trusts of land](#) for further guidance. These are both available on the GOV.UK website.

Use this panel for:

- definitions of terms not defined above
- rights granted or reserved
- restrictive covenants
- other covenants

(b) Registered number in the United Kingdom including any prefix:

7 Transferee's intended address(es) for service for entry in the register:

10 Snowberry Way, Whitby, Ellesmere Port, Cheshire, CH66 2UA

8 The transferor transfers the property to the transferee

9 Consideration

The transferor has received from the transferee for the property the following sum (in words and figures):

THOUSAND HUNDRED (£)

The transfer is not for money or anything that has a monetary value

Insert other receipt as appropriate:

10 The transferor transfers with

full title guarantee

limited title guarantee

11 Declaration of trust. The transferee is more than one person and

they are to hold the property on trust for themselves as joint tenants

they are to hold the property on trust for themselves as tenants in common in equal shares

they are to hold the property on trust:

12 Additional provisions

Definitions

12.1 "the Estate" means the land which is now or formerly

- agreements and declarations
- any required or permitted statements
- other agreed provisions.

The prescribed subheadings may be added to, amended, repositioned or omitted.

Any other land affected by rights granted or reserved or by restrictive covenants should be defined by reference to a plan.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Any other land affected should be defined by reference to a plan and the title numbers referred to in panel 2.

Include words of covenant.

comprised in the title number referred to above

12.2 "the Lease" means a lease dated 29th April 2005 and made between (i) Bellway Homes Limited and (ii) Karl Jones

13 Rights granted for the benefit of the property

13.1 The Property is transferred together with the following rights (a) insofar as the Estate benefits from the same (b) the Transferor has power to grant the same and (c) in common with all others entitled to the like rights

13.2 Rights equivalent to those contained in the Second Schedule to the Lease

14 Rights reserved for the benefit of other land

14.1 There are reserved out of the Property for the benefit of each and every part of the Estate the following rights

14.2 Rights over the Property equivalent to those contained in the Third schedule to the Lease

Indemnity covenant by the Transferee

15 The Transferee hereby covenants with the Transferor with the object and intent of affording to the Transferor a full and sufficient indemnity but not further or otherwise that the Transferee will at all times hereafter observe and perform the covenants referred to in the proprietorship register and in the charges register of the above mentioned title number so far as they relate to the Property and are still subsisting and capable of being enforced and will so far as aforesaid indemnify and keep indemnified the Transferor and its successors in title from and against all actions, claims, costs and demands in respect of any future breach non observance or non-performance thereof

Include words of covenant.

Restrictive covenants by the transferor

Insert here any required or permitted statements, certificates or applications and any agreed declarations and so on.

16 Other

16.1 the Walls (so far as used in common) and fences dividing the Property from the adjoining land comprised in the Estate (other than any land transferred or intended to be transferred to any local authority or other competent authority) are party walls and fences and shall at all times be used maintained and repaired as such

16.2 This transfer is made under the provisions of the Leasehold Reform Act 1967

The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 11 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to [Joint property ownership](#) and [practice guide 24: private trusts of land](#) for further guidance.

Remember to date this deed in panel 4.

13 Execution

EXECUTED as a deed by Chime Properties Limited (CRN 535884) acting by two directors

.....

Director

.....

Director

SIGNED as a DEED by
Karl Jones

In the presence of:-

Witness Signature:

Witness Name:

Witness Address:

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.