



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

Case Reference : **BIR/00CN/OAF/2020/0012 and 13**

HMCTS (paper,video Audio) : **P: PAPERREMOTE**

Property : **205 and 207 Dyas Avenue, Great Barr, Birmingham B42 1HN**

Applicants : **S D Field and S L Botteley**

Representative : **Mr K Chew FRICS of Lawrence and Wightman**

Respondent : **Abdul Khaliq**

Representative : **Mr N Plotnek LLB of Nick Plotnek Associates**

Type of Application : **Determination of Price to be paid for the Freehold Interest under Section 9(1)(A) of the Leasehold Reform Act 1967**

Tribunal Members : **Robert Brown FRICS (Chairman)
Vernon Ward BSc FRICS Regional Surveyor
Paul Cammidge FRICS**

Date of CVP Hearing : **27th August 2020**

Date of Decision : **11th September 2020**

COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a hearing on the papers which has been consented to by the parties. The form of remote hearing was Paper Remote:(P:PAPERREMOTE). A face-to-face hearing was not held because it was not practicable, no-one requested it and all issues could be determined in a hearing on paper. No physical property inspection was undertaken.

DECISION

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1. The Tribunal determines that the price to be paid for the Freehold Interest in No's 205 and 207 Dyas Avenue, Great Barr Birmingham B42 1HN ("the subject property") under the terms of the Leasehold Reform Act 1967 is **£126,684.00**.

REASONS FOR DECISION

The Application and Introduction

2. This determination follows an Applications dated 22nd May 2020, for the determination of the price to be paid for the Freehold Interest in the property under Section 9(1)(A) of the Act.
3. The Applicants are the Leaseholders.
4. The Tribunal is not asked to consider any other matters.

Matters agreed between the parties before and during the hearing

5. The parties' representatives had helpfully managed to agree certain matters, and these are listed below:
 - 1) The Parties are agreed that for the purposes of this determination that the premises are a '*house reasonably so called*' (Section 2(1) of the Act).
 - 2) Valuation Date: 25th June 2018.
 - 3) Capitalisation rate: 6.50%
 - 4) Length of term unexpired: 19.49 years. Although Mr Chew has rounded his figure to 19.6 the Tribunal adopts the actual figure of 19.49 years unexpired.
 - 4) No deduction in respect of Schedule 10 Local Government Act 1989

Matters in dispute between the parties

6. The Tribunal was told that the following matters were still in issue:
 - 1) Freehold Vacant Possession Value (FHVP)

Applicant: £97,000.00

Respondent: £150,000.00
 - 2) Existing Leasehold Value (Relativity).

Applicant: 48.19%

Respondent 48.20%

3) 'No Act' World deduction.

Applicant: 10.00%

Respondent: 20.12%

4) Deferment Rate

Applicant: 5.25%

Respondent: 3.78%

The Law

7. The relevant law is Section 9(1)(A) of the Act

9(1)(A) Notwithstanding the foregoing subsection, the price payable for a house and premises,—

(i) the rateable value of which was above £1,000 in Greater London and £500 elsewhere on 31st March 1990, or,

(ii) which had no rateable value on that date and R exceeded £16,333 under the formula in section 1(1)(a) above (and section 1(7) above shall apply to that amount as it applies to the amount referred to in subsection (1)(a)(ii) of that section)

shall be the amount which at the relevant time the house and premises, if sold in the open market by a willing seller, 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; [F7 or an extended lease F2. . . .]

(b) on the assumption that at the end of the tenancy the tenant has the right to remain in possession of the house and premises

Inspection and Hearing

8. Due to the current Public health Emergency in respect of Covid-19 the Tribunal was unable to carry out an inspection.

9. The parties had not requested a Hearing which was available to them via Cloud Video Platform (CVP) and were agreed that the Tribunal could consider the matters on the papers submitted.

10. The Tribunal met via CVP on 27th August 2020.

The Property

11. The property comprises a pair of shops with living accommodation and is held on two separate long leases however the Ground Floor retail area has been combined.
12. The entire Ground floor is now retail with internal access to the flat above No:207. The Flat accommodation comprises: Landing, 3 rooms and Bathroom.
13. The Flat above No 205 has its own access via a stairway to the rear of the property and has the following accommodation: Landing, 3 rooms and bathroom.
14. Outside: Forecourt, yard and 2 single garages.

Leases

15. The properties are held under two separate leases dated 15th February 1939. Each lease is for a term of 99 years from 25th December 1938 at a fixed annual ground rent of £12.50.

Discussion on the Issues and the Tribunal's findings

16. The Tribunal sets out below a summary of the arguments put forward by the Parties representatives.

Freehold Vacant Possession Value (FHVP)

17. **Mr Chew on behalf of the Applicant** says that the appropriate method is to apply an investment valuation. To do this he derived, from rental evidence of the properties themselves, a rental value of £7,760.00 pa net of outgoings excluding tax for each property.
18. Applying a rate of return of 8.00% (12.5YP) a **FHVP** of £97,000.00 for each property.
19. **Mr Plotnek on behalf of the Respondent** concurs with Mr Chew's view that the properties are '*house reasonably so called*' and accordingly has valued on the basis of a house.

20. There has been discussion for some time about allowing change of use from retail to residential in locations such as this. The Government confirmed this policy from the Autumn of 2020.
21. On that basis Mr Plotnek adopts an approach analysing 3 bedroom house sales (all types) and finds the average value of a house is £158,376.00. However, he acknowledges, deductions need to be made to reflect tenant's improvements and as a matter of judgement he reduced the valuation to £150,000.00.
22. He considers the correct **FHVP** to apply is £150,000.00.
23. **The Tribunal** is not persuaded that a Mr Chews' commercial investment valuation approach is correct because it fails to reflect the vacant possession element.
24. **The Tribunal** finds that on the evidence before it that Mr Plotnek's residential comparable approach to the valuation is to be preferred however it is a very 'broad brush' analysis. In particular, the analysis makes no division between property type (semi-detached, inner or end terrace)
25. Further it fails to reflect certain important matters and the Tribunal considers each of these in turn:
26. Assuming planning consent is granted (Mr Plotnek's comments on 'permitted development rights' are noted) it will always be a converted shop and it may or may not be that the adjoining shops in the parade will convert leaving unsatisfactory mix of uses.
27. The external appearance and internal layout will of property will always be that of a 'compromised' building thus less satisfactory as a family home and not be as convenient as for a purpose-built house.
28. The forecourt will not easily convert to a fore garden although it may provide off-street parking.
29. There is little provision for a private rear garden.
30. Taking Mr Plotnek's valuation of £158,375.00 as a starting point and as a matter of judgement the Tribunal deducts the sum of £20,000.00 to reflect these issues (£138,375.00).
31. The Tribunal then considered the appropriate deduction for improvements. It is not convinced by Mr Plotnek's 'broad brush' approach. As built these properties would have been single glazed, without double glazing and have

basic bathrooms and kitchens whereas the comparables presented by Mr Plotnek would have the modern equivalent.

32. The Tribunal considers that £12,000.00 would be appropriate to reflect these improvements.
33. **The Tribunal** determines the FHVP at **£126,375.00**.

Existing Lease Value (ELV) (Relativity)

34. **Mr Chew** says that it appropriate to apply the Savills (2015) Graph which gives a relativity of 48.20%.
35. Applying this to the FHVP of £97,000.00 produces an ELV of £46,754.00.
36. As a check Mr Chew prepared an investment valuation of the ELV by applying a rate of return of 12.00% with tax at 20.00% and Sinking Fund at 3.00% which produces a figure of £46,155.00.
37. As a result, Mr Chew adopts a figure of £46,500.00.
38. **Mr Plotnek** applying the Savills Graph find at 48.19% arrives at £72,285.00.
39. **The Tribunal** finds that the parties are so close that it is appropriate to adopt **48.20%**.

No Act' World Deduction

40. **Mr Chew** refers to the Savills Discount Graph for No Act World adjustment and finds a rate of 20.12% for 19 years 6 months unexpired.
41. Mr Chew however goes on to say that because of the retail element it is reasonable to assume that the absence of such rights might not deter a purchaser to the same extent as a homeowner. A tenant could take on a new lease on commercial terms and still trade from the property.
42. In view of this he contends that a discount of 10.00% is correct and the adjusted ELV should be £41,850.00.
43. **Mr Plotnek** applies the Savills Graph and finds the appropriate figure is 20.12%.
44. In support of this he refers to the Tribunal's recent decision in **62 Michael Court Edgbaston Birmingham** (BIR/00CN/OLR/2020/0010) in which Mr Chew appeared. A deduction of 10.15% was agreed by the parties and

endorsed by the Tribunal. In that case there were 46.69 years remaining more than twice the unexpired term in this case.

45. **The Tribunal** found, above, that the correct approach to the FHVP was as a residential property and is not persuaded on the evidence before it by Mr Chew's argument that an adjustment should be made to reflect the commercial possibilities.
46. **The Tribunal** determines that the 'No Act World' adjustment should follow the Savills Graph at **20.12%**

Deferment Rate

47. **Mr Chew says** the majority of his work is in the West Midlands and he has concluded a large number of cases by negotiation at 5.50%.
48. Mr Chew then briefly relates the history behind the current rates referring to *Zuckerman v Trustees of the Calthorpe Estate* (LRA/97/2008), *Cadogan and Another v Sportelli and Another* [2007] EWCA Civ 1042, *Mansal Securities Ltd* (LRA/185/2007) and finally to *JGS Properties* [2017] UKUT 0233(LC).
49. *JGS Properties* upholds the starting point as being 4.75% (*Sportelli*) but adds a further 0.50% to reflect poorer growth rates outside the PCL.
50. Since that time Mr Chew has regularly agreed 5.25% in negotiated cases.
51. However, in the subject case the properties have just under 20 years unexpired and Mr Chew has agreed, in these cases, a further reduction of 0.25%.
52. He therefore adopts 5.00%
53. **Mr Plotnek** says that adopting the *Sportelli* rate (adjusted for flats *Zuckerman*) is wrong when valuing leases of less than 20 years (Ref *Sportelli* paragraph 85).
54. The unexpired term in this case is 19 years 6 months and therefore neither *Sportelli* nor *Zuckerman* apply.
55. Mr Plotnek's approach firstly analysed rents of 14 (mainly 3 bedroom) residential properties and after discounting some properties derived a Net Average Rent (exclusive of tax) of £5,987.00 per annum.
56. He then proceeded to analyse the sale of 91 (mainly 3 bedroom) residential properties sold during the period July 2016 and December 2019. After adjusting those sales to the date of valuation using Land Registry Data.

57. After removing properties with incomplete details an average sale price of £158,376.00 is produced.
58. Mr Plotnek says that the hypothetical purchaser would look at a Deferment Rate derived from the net yield of properties in the area. The average net return (£5,987.00) divided by the average sale price (£158,376.00) produces a rate of 3.78%.
59. **The Tribunal** is not persuaded by Mr Plotnek's approach. The Tribunal notes the comments made by the Upper Tribunal in *Sportelli* and *Zuckerman* but those comments do not exclude the possibility that the *Sportelli* approach is correct for terms below 20 years. The Tribunal finds that those cases considered terms exceeding 20 years and specific argument or determination was not made for cases below 20 years. Accordingly, the Tribunal is not bound to follow those comments.
60. The Tribunal consider, in any event, that a term of 19.6 years is so close to 20 years that the *Sportelli* approach is appropriate and finds that Mr Chew's adjustment of a further 0.25% is a reasonable approach.
61. On the evidence before the Tribunal determines the Deferment Rate at **5.00%**.

Valuations submitted by the parties

62. **The Applicant:** £44,475.57 per property.
63. **The Respondent:** £82,590.00 per property

Tribunal's Valuation

64. The Tribunal considered all of the evidence submitted by the Parties both oral and written and summarised above.
65. Applying the Tribunal's findings above, the Tribunal determines the amount of the premium as follows:

Diminution in Freehold

Term Agreed		£	136.00
Reversion:			
Freehold Vacant Possession (net of Tenant's improvements)	£	126,375.00	
PV 19.49 years @ 5.00%		<u>0.38638527</u>	<u>£ 48,829.44</u>
Diminution in Freeholder's interest			£ 48,965.44

Freehold share of Marriage Value

Freehold Interest			£ 126,375.00	
Existing Leasehold Interest (48.20%)	£	60,912.75		
Minus No Act World (20.12%)	£	<u>12,255.65</u>		
	£	48,657.10		
Plus Diminution in Freehold	£	<u>48,965.44</u>		
	£	97,622.54	£	<u>97,622.54</u>
Gain on marriage of Interests			£	28,752.46
Freehold Share 50%				£ 14,376.23
				£ 63,341.67
				£ 126,683.33
For Both properties			say	£ 126,684.00

Appeal Provisions

66. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
67. 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.
68. 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.

Robert T Brown
Chairman