



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

**Case Reference** : **BIR/47UG/OAF/2020/0028**

**Property** : **7 Hay Close, Kidderminster DY11 5DH**

**Applicants** : **Susan Newman and David Peach**

**Representative** : **Midland Valuations Limited**

**Respondent** : **Sushil Kantibhai Patel and  
Anjana Sushil Patel**

**Type of Application** : **Under s21(1)(a) Leasehold Reform Act 1967  
(the Act) for the determination of the price  
to be paid for the freehold interest under s9  
of the Act.**

**Under s21(1)(ba) of the Act for a  
Determination of the reasonable costs  
Payable under s9(4) of the Act**

**Application for costs pursuant to  
Rule 13. The Tribunal Procedure  
(First-tier Tribunal)(Property Chamber)  
Rules 2013**

**Tribunal** : **Tribunal Judge Mr. P. J. Ellis.  
Tribunal Member Mr I Humphries. FRICS.**

**Date of Hearing** : **26 January 2021**

**Date of Decision** : **1 February 2021**

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**DECISION**

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***The Tribunal determines that the price to be paid by the Applicants to the Respondents for the freehold interest in the subject Property is £5,751.00.***

### **Introduction**

1. On 13 July 2020 the Applicants Susan Newman and David Peach served a notice of their claim to acquire the freehold of 7 Hay Close, Kidderminster, DY11 5DH and a garage associated with it but the subject of a separate lease (together “the Property”) upon the Respondents Mr Sushil Kartibhai Patel and Anjana Sushil Patel of 63 Gills Hill Lane Radlett WD7 8DG. By Notice in Reply to the Tenant’s Claim dated 5 August 2020 the Respondents admitted the Applicants right to have the freehold interest.
2. The parties were unable to agree the price of the freehold interest. This application was issued on 29 October 2020. Directions were issued on 3 November 2020 which, inter alia, stayed the application for determination of the recoverable costs associated with the freehold acquisition pursuant to s9(4) of the Act.
3. The Applicants are represented by Mr Jolyon Moore of Midland Valuations Limited. Mr Moore filed and served the Applicants Statement of Case in accordance with the Direction on 7 December 2020. The Respondents have not served any evidence but have written to the Tribunal with their proposal for the price payable.
4. The stay on determination of the costs payable under s9(4) has not been lifted.
5. The matter came on for hearing by video conference call on 26 January 2021 without an inspection of the subject property. The Applicants were represented by Mr Moore. The Respondents did not appear and were not represented.

## **The Subject Property and Leases**

6. The Tribunal relied upon the description of 7 Hay Close given by Mr Moore in his submission. The Respondents did not challenge the description. Previously Tribunal Judge Ellis had visited Hay Close in connection with an application relating to 5 Hay Close (BIR/47UG/OAF/2018/0023).
7. Mr. Moore's submission described the subject property as *“a three bedroomed terraced house of brick and tile construction with a garage in a separate block in an established residential district of Kidderminster. The ground floor accommodation comprises a kitchen and a living room. On the first floor there are two double bedrooms a single bedroom and a full suite bathroom. Externally there are gardens to the rear. The front of the property benefits from a dropped kerb to the front to allow off road parking. The property also benefits from double glazing and gas central heating, a new bathroom suite within the last two years and it has been recently decorated. Hay Close is a quiet cul de sac and does not suffer from excessive passing traffic.”*
8. The property includes a garage which is separate from the house. The garage is nearby in a double row of garages serving other properties.
9. The house and garage are let on separate leases. The Tribunal is treating the subject property as including both house and garage in accordance with s2 of the Act.
10. The relevant leases were made on 3 October 1968 between Springavon Limited and Miss Annie Evitts for a period 99 years commencing 29 September 1967. The rent for the house is £28.00 per annum for the term and for the garage it is £24.00 per annum for the term, a total rent payable to £52.00 per annum for the term.

## **The Parties Submissions**

11. Mr. Moore submitted his calculation of the proposed price supported by written submissions and his further comments during the hearing.
12. He adopted the Standing House method of valuation supported by evidence of properties listed on Rightmove which had sold in Hay Close within three years and one sale in 2004. In particular, he relied on the sale of 5 Hay Close in November 2019 at £150,000.00. He also identified the sale of 4 Hay Close, an identical property, which sold for £145,000.00 in August 2019. Number 12 Hay Close is another terrace property which sold with freehold tenure in September 2018 at £142,500.00. The House Price Index adjustments supported his contention that the Standing House valuation of £150,000.00 was realistic.
13. His site apportionment of 30% was justified by reference to his experience of a great many settlements in this geographical area and other decisions of this Tribunal, in particular the decision relating to 5 Hay Close.
14. In answer to questions from the Tribunal Mr. Moore confirmed he had considered other methods of valuation in order to verify his approach in determining his proposal. He also stated that the valuation date was 13 July, 2020.
15. His contention on yield was that the combined ground rent reserved by the leases, fixed at £52.00 per annum for the term with no review is a comparatively nominal income stream with an unattractive fixed return for another 46.21 years. Accordingly, 6.5% was a fair yield. He also referred to his experience of negotiating other cases and of decisions of the Tribunal in support of his contention that 6.5% was the correct the yield. He adopted 5.25% as the deferment rate based on the generic *Sportelli* rate of 4.75% for houses, with an additional of 0.5% to reflect the prospect of lower growth rates from residential property investment in the Midlands compared with Prime Central London.

16. In valuing the reversion, Mr Moore applied the same rate as the deferment rate to the capital value of the property. He described the current condition of the Property as good with a recently installed new kitchen. He asserted that the value of the latent development potential of the plot was not significant. Accordingly, he adopted the value of £150,000 in calculating the value of the reversion. He also made no *Clarise* deduction relying on the decision in *Lomas Drive [2017] UKUT 0463(LC)* because he considered 46.21 years remaining on the lease did not warrant a deduction.
17. Mr Moore's calculation is annexed to this Decision.
18. The respondents made no formal submission but in correspondence with the Tribunal referred to a private agreement made for the sale of the freehold of 3 Hay Close at £7500.00 and 4 Hay Close at £8,000.00. The Tribunal put these figures to Mr. Moore who was aware of the transactions at the values stated but they did not change his valuation. He understood that some purchasers would be willing to settle at a higher figure because of the *Delaforce* effect and the desire to resolve matters without the cost of proceedings.

### **The Statutory Framework**

19. S1 of the Leasehold Reform Act 1967 (the Act) confers the right to acquire, on fair terms, the freehold on a tenant with a long tenancy at a low rent if the tenancy was entered into before 1st April 1990 ..... and the house and premises had a rateable value at the date of commencement of the tenancy or else at any time before 1st April 1990 was less than £500, and .....the rateable value of the house and premises on "the appropriate day" (in this case when the property first appeared in the Valuation List) was not more than £200.
20. The rateable value in 1990 was less than £500.00. Accordingly, the valuation of the price payable has to be undertaken in accordance with the provisions of s9(1) of the Act which provide, so far as relevant, that "the price payable for a house and premises on a conveyance ..... 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. In this case the assumptions expressed in s9(1) were not an issue between the parties and were met.

21. A tenant qualifies for the right conferred by s1 of the Act after being a tenant of a long lease for a period of two years at the time the notice to acquire the freehold was given (s1(1)(b) of the Act).

## **Decision**

22. Tribunal accepted the evidence of the Applicants' adviser Mr Moore. He presented appropriate evidence to support his propositions and the figure deduced was reasonable.

23. As far as the standing house and entirety values are concerned the situation of the Property is such that there is little scope for development. Similar properties in the area have sold for prices substantially the same as that proposed by Mr Moore. He had considered other methods of ascertaining the standing value. He relied on his experience and other decisions of this Tribunal in determining the Entirety value.

24. The Tribunal accepts the valuation date as 13 July 2020 being the date of service of the notice of claim and thus the unexpired term is to be taken as 46.21 years.

25. The Respondents referred to privately agreed sales in support of their contention the price should be £7500.00.

26. The Tribunal is aware of the commentary in Emmet and Farrand on Title in coming to its decision. *“Indeed it has been indicated that evidence of “out of court” settlements under the Act should be treated with caution, because of tenants’ anxiety to settle and lack of advice and because the prices agreed would include the tenant’s bid as an element (Delaforce v Evans (1970) 215 E.G. 315; O’Connor v Treffrey Estate Trustees (1981) 259 E.G. 165;*

*cf. Larkcroft Properties Ltd v Adkins (1981) 259 E.G. 257). Instead it has been suggested that previous decisions of the Lands Tribunal may be regarded as of great assistance, particularly in establishing consistent patterns (Delaforce v Evans).”*

27. The Respondents did not give any information regarding the terms and circumstances of the transactions they referred to.
28. The Tribunal has reviewed Mr Moore’s evidence in making its determination of the price payable. It accepts the assumptions as set out in his calculation annexed to this Decision.
29. The Tribunal determines that the price payable for the freehold interest by the Applicants to the Respondents is **£5,751.00**.
30. Mr. Moore made an application for a costs order pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 but as the Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations, the Tribunal adjourns that application to be heard at the same time the Respondents costs under s9(4) of the Act are determined.

## **Appeal**

31. If either of the parties 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 them under 9 rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis

Chair