



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

<b>Case Reference:</b>	CHI/18UG/OAF/2021/0019
<b>Property:</b>	33 Holtwood Drive, Ivybridge, Devon, PL21 9TH
<b>Applicant:</b>	Marcus & Rachael Anne Granville
<b>Representative:</b>	Kings Solicitors
<b>Respondent:</b>	Not Known
<b>Representative:</b>	None
<b>Type of Application:</b>	Sections 21 and 27(5) Leasehold Reform Act 1967 (Valuation: Missing Landlord)
<b>Tribunal Members:</b>	Judge A Cresswell (Chairman) Mr M Woodrow MRICS
<b>Date and venue of Hearing:</b>	30 September 2021 on the papers
<b>Date of Decision:</b>	1 October 2021

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**DECISION**

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## **Summary**

- i) The price payable under Section 9 of the Leasehold Reform Act 1967 (“the 1967 Act”) for the freehold interest in the property is £97.00.**
- ii) The Applicant shall pay the purchase price of £97.00 into Court pursuant to s27(5) of the Leasehold Reform Act 1967.**

## **The Application**

1. The Applicants are leaseholders of the property.
2. The Applicants issued an application in the Plymouth County Court on 22 April 2021 for an order under s27 of the Leasehold Reform Act 1967 (“the Act”) and on 26 April 2021 the Deputy District Judge transferred the matter to the Tribunal for a determination as to the amount of the appropriate sum to be paid into Court under s27(5) of the Act for transfer of the Freehold of the Property, the Landlord being missing.
3. The Tribunal is therefore asked by the Applicants to determine the single issue of the price payable for the transfer of the freehold interest pursuant to s.21 of the Act.
4. The Applicants’ solicitors provided a detailed bundle of documents for the purposes of the application, which include a photograph and brief details of the Property.
5. The Application was listed to be determined on the papers alone and without an inspection of the Property.

## **Inspection and Description of Property**

6. The Tribunal did not inspect the property.
7. The photograph of the property shows it to be a detached house.
8. The property was built in about 1985 and forms part of a residential area on the western side of Ivybridge.
9. The property is said by the Applicants’ surveyor to comprise a modern two storey detached house of traditional construction with rendered and decorated brick/block cavity walls under a pitched roof clad with concrete tiles. The surveyor states that the *“property appears to be of a three bedroom design and benefits from driveway parking for several vehicles and an integral single garage”*.

10. The Tribunal was somewhat surprised that the Applicants' surveyor did not undertake an internal inspection.
11. The Tribunal has looked at publicly available websites for sales of comparable local properties and uses its own expertise when undertaking the valuation process.

### **Directions and Hearing**

12. Directions were issued on 30 July 2021.
13. The Tribunal directed that the parties should submit specified documentation to the Tribunal for consideration.
14. This determination is made in the light of the documentation submitted in response to those directions.

### **The Law**

15. The statutory provisions are detailed in the Annex below.
16. The appropriate sum which in accordance with section 27 (3) of the Act to be paid into Court is the aggregate of:
  - i. Such amount as may be determined by (or on appeal from) a tribunal to be the price payable in accordance with section 9 of the Act
  - ii. 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
17. Section 9 of the Act sets out in detail the assumptions to be made and the procedure to be followed in carrying out the valuation. The effect of section 27(1) is that the valuation date is the date on which the application for an order was made to the Court and that date is in this case 22 April 2021.

### **The Lease**

18. The Applicants hold the property under the terms of a lease dated 9 November 1671, which was made between Sir William Strode and Richard Strode as lessors and Sir Richard Chiverton as lessee.

### **The Evidence**

19. The evidence provided by the Applicants included:

- i. A witness statement by Simon James Browner, solicitor.
  - ii. The Judgement of the Court
  - iii. The Register of Title, indicating, amongst other things that the purchase price on 28 April 2003 was £174,950.
  - iv. A valuation by T M Davies FRICS.
20. The Lease is for 500 years from 9 November 1671.

### **Capitalisation and Deferment Rate**

21. Mr Davies says he values the site at 30% of market value but then quotes a figure of £69,750 which is about 25.36%. He doesn't offer any explanation on capitalisation or deferment rates.
22. In the absence of any submissions or evidence on capitalisation or deferment rates at the valuation date, other than the rates applied, the Tribunal is unable to depart from the guidelines laid down in **Cadogan Estates Limited v Sportelli** (2006) and therefore adopts a uniform rate of 4.75%.

### **The Decision**

23. Extracting such information as it could from the papers supplied to the Tribunal by the Applicants' solicitor, by reference to information publicly available on the internet and with the benefit of its knowledge and experience the Tribunal reached the following conclusions and found as follows:

Term 500 Years from 9 November 1671		
Unexpired Term 150.58 years	Say 151 years	
Ground Rent	Nil	
Current Market Value (CMV)	£290,000	
Site Value at 30% of CMV	£87,000	
<b>Valuation</b> (3 stage approach)		
<b>Term:</b>	151 yrs at £0	£0
<b>Reversion to 50-year lease extension at a modern ground rent:</b>		
Modern ground rent 4.75% of site value	£4132	
Years Purchase for 50 years @4.75% =18.984		
Deferred 151 years @ 4.75% = 0.00091		

= 0.01727 x £4132		<b>£71.36</b>
<b>Reversion to entirety value of freehold house:</b>		
Deferred 201 years @ Present Value £1 @4.75%		
= 0.000089 x £290,000		<b>£25.81</b>
	<b>Freehold Purchase Price</b>	<b>£97.17</b> <b>Say £97</b>

### **Conclusion**

24. Using the agreed figures and those it has determined above, the Tribunal calculated the premium to be £97.00.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.
3. 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.
4. 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.

**Annex**

**Leasehold Reform Act 1967**

**21 Jurisdiction of [. . . tribunals]**

(1) The following matters shall, in default of agreement, be determined by [the appropriate tribunal] namely,—

(a) the price payable for a house and premises under section 9 above;

(cza) the amount of the appropriate sum to be paid into court under section 27(5);

**9 Purchase price and costs of enfranchisement, and tenant's right to withdraw**

(1) 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.]

[(1A) [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 [or an extended lease . . .];

(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

[(i) if the tenancy is such a tenancy as is mentioned in subsection (2) or subsection (3) of [section 186](#) of the Local Government and Housing Act 1989, or is a tenancy which is a long tenancy at a low rent for the purposes of [Part I](#) of the Landlord and Tenant Act 1954 in respect of which the landlord is not able to serve a notice under section 4 of that Act specifying a date of termination earlier than 15th January 1999, under the provisions of [Schedule 10](#) to the Local Government and Housing Act 1989; and

(ii) in any other case] under the provisions of [Part I](#) of the Landlord and Tenant Act 1954;

(c) on the assumption that the tenant has no liability to carry out any repairs, maintenance or redecorations under the terms of the tenancy or [Part I](#) of the Landlord and Tenant Act 1954;

(d) on the assumption that the price be diminished by the extent to which the value of the house and premises has been increased by any improvement carried out by the tenant or his predecessors in title at their own expense;

(e) 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

(f) 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.]



[(1AA) Where, in a case in which the price payable for a house and premises is to be determined in accordance with subsection (1A) above, the tenancy has been extended under this Part of this Act—

(a) if the relevant time is on or before the original term date, the assumptions set out in that subsection apply as if the tenancy is to terminate on the original term date; and

(b) if the relevant time is after the original term date, the assumptions set out in paragraphs (a), (c) and (e) of that subsection apply as if the tenancy had terminated on the original term date and the assumption set out in paragraph (b) of that subsection applies as if the words “at the end of the tenancy” were omitted.]

[(1B) For the purpose of determining whether the rateable value of the house and premises is above £1,000 in Greater London, or £500 elsewhere the rateable value shall be adjusted to take into account any tenant's improvements in accordance with [Schedule 8](#) to the Housing Act 1974.]

[(1C) Notwithstanding subsection (1) above, the price payable for a house and premises where the right to acquire the freehold arises by virtue of any one or more of the provisions of sections 1A[, 1AA], and 1B above[, or where the tenancy of the house and premises has been extended under section 14 below and the notice under section 8(1) above was given (whether by the tenant or a sub-tenant) after the original term date of the tenancy,] shall be determined in accordance with subsection (1A) above; but in any such case—

(b) section 9A below has effect for determining whether any additional amount is payable by way of compensation under that section;

and in a case where the provision (or one of the provisions) by virtue of which the right to acquire the freehold arises is section 1A(1) above, subsection (1A) above shall apply with the omission of the assumption set out in paragraph (b) of that subsection.]

[(1D) Where, in determining the price payable for a house and premises in accordance with this section, there falls to be taken into account any marriage value arising by virtue of the coalescence of the freehold and leasehold interests, the share of the marriage value to which the tenant is to be regarded as being entitled shall be one-half of it.]

[(1E) But where at the relevant time the unexpired term of the tenant's tenancy exceeds eighty years, the marriage value shall be taken to be nil.]

(2) The price payable for the house and premises shall be subject to such deduction (if any) in respect of any defect in the title to be conveyed to the tenant as on a sale in the open market might be expected to be allowed between a willing seller and a willing buyer.

(3) On ascertaining the amount payable, or likely to be payable, as the price for a house and premises in accordance with this section (but not more than one month after the amount payable has been determined by agreement or otherwise), the tenant may give written notice to the landlord that he is unable or unwilling to acquire the house and premises at the price he must pay; and thereupon—

(a) the notice under section 8 above of his desire to have the freehold shall cease to have effect, and he shall be liable to make such compensation as may be just to the landlord in respect of the interference (if any) by the notice with the exercise by the landlord of his power to dispose of or deal with the house and premises or any neighbouring property; and

(b) any further notice given under that section with respect to the house or any part of it (with or without other property) shall be void if given within the following [twelve months].

(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:—

(a) any investigation by the landlord of that person's right to acquire the freehold;

(b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;

(c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;

(d) making out and furnishing such abstracts and copies as the person giving the notice may require;

(e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

[(4A) Subsection (4) above does not require a person to bear the costs of another person in connection with an application to [the appropriate tribunal].]

(5) The landlord's lien (as vendor) on the house and premises for the price payable shall extend—

(a) to any sums payable by way of rent or recoverable as rent in respect of the house and premises up to the date of the conveyance; and

- (b) to any sums for which the tenant is liable under subsection (4) above; and
- (c) to any other sums due and payable by him to the landlord under or in respect of the tenancy or any agreement collateral thereto.

## **27 Enfranchisement where landlord cannot be found**

(1) Where a tenant of a house having a right under this Part of this Act to acquire the freehold is prevented from giving notice of his desire to have the freehold because the person to be served with the notice cannot be found, or his identity cannot be ascertained, then on an application made by the tenant [the court] may, subject to and in accordance with the provisions of this section, make such order as [the court] thinks fit with a view to the house and premises being vested in him, his executors, administrators or assigns for the like estate and on the like terms (so far as the circumstances permit) as if he had at the date of his application to [the court] given notice of his desire to have the freehold.

(2) Before making any such order [the court] may require the applicant to take such further steps by way of advertisement or otherwise as [the court] thinks proper for the purpose of tracing the landlord; and if after an application is made to [the court] and before the house and premises are vested in pursuance of the application the landlord is traced, then no further proceedings shall be taken with a view to the house and premises being so vested, but subject to subsection (7) below—

(a) the rights and obligations of all parties shall be determined as if the applicant had, at the date of the application, duly given notice of his desire to have the freehold; and

(b) [the court] may give such directions as [the court] thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Act or of regulations made under this Act.

(3) Where a house and premises are to be vested in a person in pursuance of an application under this section, then on his paying into [court] the appropriate sum there shall be executed by such person as the [court] may designate a conveyance in a form approved by the [court] and containing such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 10 above; and that conveyance shall be effective to vest in the person to whom the conveyance is made the property expressed to be conveyed, subject as and in the manner in which it is expressed to be conveyed.

(4) For the purpose of any conveyance to be executed in accordance with subsection (3) above, any question as to the property to be conveyed and the rights with or subject to which it is to be conveyed shall be determined by the [court], but it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be conveyed and, for the purpose of excepting them from the conveyance, any underlying minerals.

(5) 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.

(6) Where a house and premises are vested in a person in accordance with this section, the payment into [court] of the appropriate sum shall be taken to have satisfied any claims against the tenant, his executors, administrators or assigns in respect of the price payable under this Part of this Act for the acquisition of the freehold in the house and premises.

(7) An application under this section may be withdrawn at any time before execution of a conveyance under subsection (3) above and, after it is withdrawn, subsection (2)(a) shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (2)(a) in the case of any application, the application shall not afterwards be withdrawn except with the landlord's consent or by leave of [the court], and [the court] shall not give leave unless it appears to [the court] just to do so by reason of matters coming to the knowledge of the applicant in consequence of the landlord being traced.

(8) A conveyance executed under subsection (3) above shall have effect as provided by that subsection notwithstanding any interest of the Crown in the property expressed to be conveyed.