



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

Case Reference : **NAT/LON/00BF/OAF/2021/0009
P: PAPERREMOTE**

Property : **21 Melbourne Road, Wallington,
Surrey SM6 8SH**

Applicant : **Tamtree Properties Limited (1)
Lipley Holdings Limited (2)**

Representative : **In person**

Respondent : **N/A – Missing Landlord**

Representative : **N/A**

Type of Application : **Sections 9 and 27(5) of Leasehold
Reform Act 1967**

Tribunal Members : **Judge Donegan
Mr K Ridgeway MRICS (Valuer
Member)**

**Date of Paper
Determination** : **13 October 2021**

Date of Decision : **13 October 2021**

DECISION

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that I was referred to are in a bundle of 126 pages, the contents of which I have noted.

Decision of the Tribunal

The Tribunal determines that the appropriate sum to be paid into court in accordance with section 27(5) of the Leasehold Reform Act 1967 ('the 1967 Act') is £3,673 (Three Thousand, Six Hundred and Seventy-Three Pounds).

The application

1. The applicants are the long leaseholders of 21 Melbourne Road, Wallington Surrey SM6 8SH ('the Property'), which is a two-storey detached house of traditional construction. They hold the Property under a head-lease dated 22 May 1868, granted by Reverend Edward Frances Beynon to James Abraham Foot. The head-lease is registered but the Land Registry do not hold an official copy and the applicants have been unable to locate a copy. The leasehold register reveals that the head-lease is for a term of 300 years from 24 June 1853 at a peppercorn ground rent. The freehold title is unregistered, and the applicants have been unable to identify or locate the current freeholder.
2. The Property is subject to an underlease dated 31 October 2007, for a term of 125 years from 24 March 2007.
3. The applicants issued a Part 8 Claim in the County Court at Central London on 25 February 2021, seeking a vesting order for the Property under section 27(1) of the 1967 Act.
4. On 08 April 2021 His Honour Judge Johns QC made an order in the following terms:
 - “1. *An estate in fee simple absolute in possession in the property be vested in the Claimants in accordance with the directions below.*
 2. *The Claimants must apply to the First-tier Tribunal for a determination of the following matters and these proceedings will stand adjourned pending such determination:*
 - 1) *the amount of any pecuniary rent payable for the property which remains unpaid;*
 - 2) *the price payable for the property in accordance with s.9 of the Act.*
 3. *Following determination of such sums by the tribunal and upon paying such sums into court, the Claimants may make a written request to restore these proceedings for hearing by a*

Business & Property District Judge, such request to be accompanied by evidence of the Tribunal's decision, of the payment into court and a draft conveyance. The hearing will be for approval and execution of the conveyance by the District Judge."

5. The Tribunal application was submitted on 10 April 2021 and directions were issued on 16 April. The case was allocated to the paper track, without objection from the applicants and the paper determination took place on 13 October 2021.
6. The applicants filed a determination bundle in accordance with the directions, which included documents from the County Court proceedings, official copies of the leasehold registers and the underlease and a valuation report from Mr Maurice Berger FRICS dated 30 September 2021.
7. The relevant legal provisions are set out in the appendix to this decision.

The issues

8. The Tribunal is required to determine the amount of any unpaid ground rent for the Property and the price payable under section 9 of the 1967 Act.
9. The Tribunal did not consider that an inspection of the Flat was necessary, nor would it have been proportionate to the issues in dispute.

Section 9 price

10. In his report, Mr Berger valued the freehold price at £1,510. This is based on a house value of £600,000 and a site value of 35%. He applied a capitalisation rate of 5% to arrive at a Modern Ground Rent of £10,500. He deferred this for 101.4 years at 5% and deferred the site value reversion for 151.4 years, again at 5%. This produced values of £1,231.44 and £148, respectively and a total of £1,509.44, which he rounded up to £1,510.
11. Mr Berger used a valuation date of 21 February 2021. He arrived at the house value by analysing seven comparables that had sold within 12 months of this date. At paragraph 12.2 and 12.3 of his report, he stated:

"12.2 The house which believe is the most similar is 15 Oxford Road which has an attic floor and four bedrooms. It sold in February

2021 for £660000. It is about 20 metres from the subject property.

12.3 The other houses which are most similar are those in Clyde Road and Ross Road. Both have 4 bedrooms. Clyde Road is about 120m from the subject property and Ross Road about 1100m from the subject property.”

The Tribunal’s decision

12. No pecuniary rent is payable for the Property, which remains unpaid.
13. The price payable for the freehold of the Property under section 9 of the 1967 Act is £3,673 (Three Thousand, Six Hundred and Seventy-Three Pounds) and this is the appropriate sum to be paid into Court under section 27(5).

Reasons for the Tribunal’s decision

14. The register for the head-lease identifies the ground rent as a peppercorn. It follows that no pecuniary rent is payable for the Property.
15. There were a few errors in Mr Berger’s report and calculations. The relevant date for valuing the freehold is the date the Court application was issued, being 25 February 2021. At that date the head-lease had 132.33 years unexpired.
16. The Tribunal agrees that 15 Oxford Road is the best comparable. This sold for £660,000 in February 2021 and is very close to the Property. The sales at 17 Ross Road and 24 Clyde Road are also of assistance. The former sold for £646,000 in June 2020 and the latter sold for £595,000 in May 2021. However, Mr Berger did not adjust these sales for time.
17. Having carefully considered all the comparables, the Tribunal concluded that the unencumbered freehold value of the Property on 25 February 2021 was £660,000. The Tribunal agrees the site value percentage (35%) and capitalisation rate (5%).
18. The Tribunal’s calculation of the section 9 price is attached.

Name: Tribunal Judge Donegan **Date:** 13 October 2021

21 Melbourne Road, Wallington, SM6 8SH

Term	300 yrs	Ground Rent - Peppercorn
Start Date	24/06/1853	
Valuation Date	25/02/2021	
Years remaining	132.33	
House Value	£660,000	
Site Value %	35%	
Site Value	£231,000	
Capitalisation Rate	5.00%	
Deferment Rate	5.00%	

Modern Ground Rent

House Value	£660,000		
Site Value	£231,000		
Section 15 Rent		£115,500	
	YP 50 @ 5%	18.2559	
	Deferred 132.33 yrs @ 5%	<u>0.00157</u>	
			£3,310
Reversionary Site Value		£231,000	
	Deferred 132.33 yrs @ 5%	<u>0.00157</u>	
			£363
Premium			<u>£3,673</u>

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Leasehold Reform Act 1967

Section 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;
- (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
 - (iii) 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 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—

- (a) ...
- (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.

...

Section 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.

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