



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

**Case Reference** : **MAN/OOCF/OAF/2020/0021**

**Property** : **14 Thorpefield Close, Thorpe Hesley  
Rotherham S61 2UT**

**Applicant** : **Robert Paul Sargeant and David Alan  
Mumby**

**Representative** : **Mr John M Francis, Crapper & Haigh**

**Respondent** : **Michael Anthony Rice**

  

**Type of Application** : **Section 21(a) of the Leasehold Reform  
Act 1967**

**Tribunal Members** : **Tribunal Judge J.E. Oliver  
Tribunal Member S.A. Kendall**

  

**Date of  
Determination** : **25<sup>th</sup> March 2021**

**Date of Decision** : **20<sup>th</sup> April 2021**

---

**DECISION**

---

## **Decision**

1. The price payable for the freehold interest is £3234.00.
2. The Respondent is to file his response to the claim for costs in the sum of £500 within 14 days of the receipt of this decision.
3. If no response is received within 14 days, the Respondent is to pay costs in the sum of £500.
4. If the Respondent files a response to the Tribunal within 14 days, the issue of costs is to be referred back to it for further consideration.

## **Application**

5. This is an application by Robert Paul Sergeant and David Alan Mumby (“the Applicants”) for the Tribunal to determine the price payable for the freehold interest in 14 Thorpefield Close, Thorpe Hesley, Rotherham (“the Property”) pursuant to section 9(1) of the Leasehold Reform Act 1967 (“the Act”).
6. The Applicants hold the leasehold interest in the Property.
7. The Property is held under a lease (“the Lease”) dated 26<sup>th</sup> July 1984 for a term of 99 years from 25<sup>th</sup> March 1982.
8. The Respondent to the application is the freeholder, Michael Anthony Rice (“the Respondent”). He is wrongly named in the application as Michael Anthony Price, but, despite this, the application was accepted by the Respondent’s solicitors and no issue was raised in respect of it.
9. The Applicants originally served a Notice of Tenant’s Claim to Acquire the Freehold (“the Notice”) on 25<sup>th</sup> October 2019.
10. The Respondent served a Counter Notice on 23<sup>rd</sup> December 2019 claiming the Notice was defective since it had not been signed by or on behalf of the Applicants, but only by their solicitor.
11. The Applicants thereafter amended and reserved the Notice on 24<sup>th</sup> December 2019 to which no further Counter Notice was served.
12. On the 12<sup>th</sup> December 2019 the Respondent stated he would accept the sum of £20,000 for the freehold of the Property.
13. The Applicants issued their application to the Tribunal on 9<sup>th</sup> October 2020. Directions were issued on 9<sup>th</sup> December 2020 for the parties to file and serve statements and for the matter to be listed for a hearing. This was reviewed in December 2020 when it was agreed by the parties the application would be determined on paper.
14. The Respondent did not file any documents as directed by the Tribunal and on 9<sup>th</sup> March 2021 it barred him from participating further in the application pursuant to Rules 9(3)(a) and 9(7) of the Tribunal Procedure Rules 2013.

## **The Property**

15. Due to the Covid-19 restrictions the Tribunal did not undertake an inspection of the Property but relied upon the description given in the valuation of Mr John Francis on behalf of the Applicants.
16. The valuation, dated 8<sup>th</sup> January 2021, describes the Property originally comprising a single storey semi-detached bungalow, but which has had a roof conversion such that it now has, on the ground floor, an entrance hall, lounge, kitchen, bathroom and two bedrooms. On the first floor is a small landing and

a third bedroom. The total internal area is 635 sq.ft on two floors. Outside the Property are gardens to the front and rear and a detached garage.

### **Submissions**

17. Mr Francis confirmed his valuation had been prepared under section 9(1) of the Act and on a three stage basis, the first being the compensation due for the loss of ground rent for the remaining term of the Lease, the second being the loss of ground rent for a notional fifty years beyond the end of the remaining term and thirdly the compensation for the loss of right to have the land returned at the end of the term, but subject to an Assured tenancy under Schedule 10 of the Local Government and Housing Act 1989.
18. He assessed the Property as having a value of £160,000 as at the date of service of the Notice. In arriving at this value, Mr Francis appended comparable properties, all being three bedroomed semi-detached properties, within the area of Thorpe Hesley and ranging in value from £150,000 to £18,000. He confirmed he had not found any direct comparable properties.
19. In calculating the price payable Mr Francis confirmed he had used a Capitalisation Rate of 6.5%, a Deferment Rate of 5.25% and a 2.5 % deduction to reflect the effects of Schedule 10. In respect of the Capital Value to calculate Site Value he employed a rate of 33%.
20. These gave rise to a price payable for the Property in the sum of £3,378.54 plus the Respondent's reasonable legal and valuation fees. In addition, Mr Francis sought an order for costs against the Respondent in the sum of £500. This was due to the Respondent not entering into any meaningful negotiations to resolve matters, nor producing any independent valuation evidence or challenging that produced on behalf of the Applicants. The Tribunal application was a result of the Respondent's failure to enter into any "sensible negotiations" and had therefore "behaved unreasonably in connection with the proceedings as mentioned to in Section 10(2) of Schedule 12 to the 2002 Act".

### **Determination**

21. The Tribunal finds the date of the valuation to be the 25<sup>th</sup> October 2019 this being the date of the first Notice. The defect complained of by the Respondent was a technicality and does not materially affect the valuation.
22. The Tribunal considered the valuation of £160,000 given by Mr Francis and found the properties within his report did not reflect small size of the Property in comparison to them. The Tribunal noted, from its own enquiries, the Property had been marketed for sale in March 2019 for £160,000 but had not sold. The Tribunal, in relying upon its own experience and expertise finds the valuation, at the relevant date, to be £150,000.
23. The Tribunal accepts the rates used for capitalisation of 6.5%, a site value of 33%, a deferment rate of 5.25% and the rate of 2.5% for Schedule 10.
24. Upon this basis, the Tribunal determines the price payable pursuant to section 9(1) to be calculated as follows:

### Term

Ground rent	£50	
X YP @ 6.5% for 61.417 years	15.063	£753.15

### Reversion to Modern Ground Rent (Standing House Approach)

Property Value	£150,000	
Site Value @33.33%	£50,000	
Modern Ground Rent @ 5.25% of Site Value	£2625	

### 50 year Lease extension

Modern Ground Rent	£2625	
X YP @ 5.25% for 50 years	17.5728	
Deferred for 61.417 yrs by P V of £1 in 61.417 yrs @ 5.25%		0.0432
£1992		

### Reversion to Full Market Value

Property Value	£150,000	
Property Value subject to Sch 10	£146250	
Deferred 111.417 yrs @ 5.25%	0.00334	£488.48
		£3233.63

25. The Tribunal therefore determines the price payable for the freehold interest is £3234 (Three thousand two hundred and thirty four pounds).
26. The Tribunal considered the representations made by Mr Francis for an order for costs in the sum of £500.
27. The jurisdiction of the Tribunal to award costs in proceedings is derived from Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber). Rule 13 provides that a Tribunal can make an order for costs where a person has acted unreasonably in bringing, defending or conducting proceedings. This allows the Tribunal to order the repayment of either the whole or part of the application fee. If a party wishes to pursue any further costs, it must send or deliver a copy of the application to the other party and may also send a schedule of costs. No order may be made unless the other party is given an opportunity to make representations.
28. The Tribunal considered ***Willow Court Management Company Limited v Alexander & Others [2016] UKUT 290 (LC)*** where the Upper Tribunal considered what amounted to unreasonable. There it was said:

*“Unreasonable” also means what it has been understood to mean this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an*

*unsuccessful result or because more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable."*

29. Here, the Respondent failed to engage in the process of valuing the freehold, despite accepting the Applicants' right to acquire it. His offer to sell it at £20,000 was without any supporting evidence to justify that figure and the Applicants thereafter issued the current application on 9<sup>th</sup> October 2020. In March 2021 his solicitors confirmed they were without instructions. The Respondent failed to comply with the directions given by the Tribunal to enable the application to progress resulting in him being barred from taking any further part. In all those circumstances the Tribunal finds the Respondent has behaved unreasonably and an order for costs will be made.
30. The Tribunal notes the application for costs was included within the expert report of Mr Francis that was served upon the Respondent and he has therefore had notice of it. The Respondent has 14 days for the receipt of this decision to make representations in respect of the amount claimed. If no representations are made within that time, the Respondent is to pay to the Applicants the sum of £500. If representations are made, the issue of costs is to be referred back to the Tribunal for further consideration.

Tribunal Judge J Oliver  
20 April 2021