



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

Case reference : **CAM/33UC/OAF/2022/0003**

HMCTS code : **P:PAPERREMOTE**

Property : **18 and 20 High Street, Foulsham,
Norfolk NR20 5RT**

Applicant (Tenant) : **Sarah Ann Kent**

Respondent (Landlord) : **Persons Unknown**

Type of application : **Missing Landlord – Application
pursuant to Section 27 of the
Leasehold Reform Act 1976**

Tribunal members : **Mr P Roberts FRICS CEnv
Mrs M Hardman FRICS IRRV
(Hons)**

Date of Determination : **15 October 2022**

DECISION

This has been a remote determination on the papers which the parties are taken to have consented to, as explained below. The form of determination was a paper hearing described above as P:PAPERREMOTE. The documents that the Tribunal was referred to are in bundles from the Applicant and the Respondent. The Tribunal has noted the contents and the decision is below.

Decision

The price to be paid by the Applicants further to the Court Order dated 25 April 2022 by the County Court at Norwich is **£6,205.36**.

Reasons

Background

1. The Applicant submitted a claim dated 21 December 2021 to the County Court at Norwich in respect of the properties known as 18 and 20 High Street, Foulsham, NR20 5RT (“the Properties”) and land on the south side of Bayfield Cottage, Foulsham, NR20 5RT (“the Land”) pursuant to Section 27 of the Leasehold Reform Act 1967 (“the Act”).
2. Section 27 of the Act makes provision in respect of the enfranchisement of property in circumstances where the landlord cannot be found.
3. By Order of District Judge Russell, dated 25 April 2022, the freehold title of the Properties and Land were vested with the Applicant subject to the payment of an appropriate sum as defined by Section 27 (5) (a) of the Act, such sum to be determined by this Tribunal.
4. The Tribunal’s directions provided for determination of the appropriate sum on the papers submitted by the Applicant, without a hearing. The bundle submitted to the Tribunal extends to 182 pages and includes copies of the sealed Part 8 Claim Form, affidavit of the Claimant and Order of the Court together with a Valuation Report prepared by Mr Mansfield FRICS dated 28 July 2022 and the proposed draft TR1.
5. The Tribunal notes that the Applicant states at paragraph 2 of her Affidavit dated 21 December 2021, that she is the:

“Leasehold owner of the land known as Land on the South Side of Bayfield Cottage... ..part of which is registered at HM Land Registry under Title Number NK238643 and the other part is unregistered.”
6. However, the Official Copy of register of title in respect of Title Number NK238643 (attached at appendix SK5 of the Affidavit) states that the Applicant is the freehold owner. This accords with paragraph 10 of the Affidavit.
7. The Tribunal therefore understands that the Applicant’s reference to “Land” within the claim is, for the purposes of these proceedings, intended to be in respect of the unregistered land as identified at appendix SK6 of the Affidavit and excludes the registered land.

The Statutory Basis

8. Section 27 (5) (a) provides that the “appropriate sum” is to be calculated in accordance with the provisions of Section 9 of the Act.

9. Section 9 (1) of the Act states:

“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.”

Valuation Considerations

10. The Tribunal has had regard to the following matters as set out in the bundle provided by the Applicant.

Valuation Date

11. Mr Mansfield has adopted a valuation date of 21 December 2021 on the basis that this was the date that the application was submitted to the County Court.

12. Section 27 (2) (a) of the Act provides that *“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.”*

13. The Tribunal therefore agrees with Mr Mansfield. It therefore follows that the Tribunal accepts Mr Mansfield's assessment that the residue of the leases in respect of the Properties is 82.75 years such that they have unexpired terms in excess of 80 years.

Description of the Properties

14. Mr Mansfield describes 18 High Street as a modern, two-storey, one-bedroomed, timber-framed house and 20 High Street as a detached, two-storey, three-bedroomed cottage located to the rear of No. 18.
15. Mr Mansfield does not provide a description or valuation of the Land. However, the tribunal understands from Exhibit SK6, as attached to the affidavit of Ms Kent, that the Land is located between 14 and 16 High Street and comprises a gravelled track.
16. In this regard, the Applicant advises at paragraph 18 of her Affidavit that:

"I do accept that there are rights of way granted over the Unregistered Land. There is a pedestrian right of way serving the neighbouring former chapel building at 14 High Street. There is currently no right of way serving Bayfield House, 16 High Street, but I agree to grant a pedestrian right of way over the Unregistered Land for access to and from 16 High Street. There is also pedestrian and vehicular right of way serving my property at 20 High Street but not 18 High Street."
17. Bearing in mind that there appears to be an entrance door within 16 High Street, a prospective purchaser of the Land may form the view that there is at least a risk that the occupiers of 16 High Street may claim prescriptive rights in the absence of explicit rights. This would impact upon the value of the Land preventing exclusive occupation including development thereof.

Title Matters

18. The Tribunal notes from the affidavit of the Applicant that she claims the leasehold title of 18 High Street as registered at HM Land Registry under Title Number NK339976 and 20 High Street as registered at HM Land Registry under Title Number NK157165.
19. The Applicant also claims the leasehold title of the Land part of which is registered at HM Land Registry under Title Number NK238643, with the remainder being unregistered. As set out above, the Tribunal has assumed that the Applicant is the freeholder of the registered land, and her leasehold interest only extends to the unregistered land.
20. The leasehold interest in 18 High Street is for a term of 500 years commencing on 25th March 1604. The leasehold interest in 20 High Street is also for a term of 500 years commencing on an unspecified date in 1604.

21. The Tribunal is unaware of the existence of any rights, restrictions or covenants benefitting third parties and has therefore assumed that the Titles of the Properties are therefore “clean”.
22. The Tribunal notes from paragraph 19 of the Applicant’s affidavit that the leasehold interest in the unregistered land comprises the “...*residue of a term of five hundred years granted by a lease dated on or about the sixteenth day of May One thousand six hundred and four...*”
23. As set out above, the Tribunal understands that the leasehold title is subject to various rights of way.
24. Other than the identified rights, the Tribunal has assumed, in the absence of being made aware of any evidence to the contrary, that there are no further rights, restrictions or covenants benefitting Third Parties.

Freehold Standing Property Values

25. Mr Mansfield valued the freehold interest of the Properties, disregarding improvements, the unexpired residue of the leases and the provisions of the Act as follows:
 - 18 High Street – £220,000
 - 20 High Street - £330,000
26. Having reviewed the comparable evidence as referred to within, and attached to, Mr Mansfield’s report, the Tribunal concurs with his conclusions in this regard.

Site/Land Values

27. Mr Mansfield adopted a site value of 30% of the Freehold Property Values in respect of 18 High Street which he explained reflects the lack of outside space. He adopted a site value of 40% in respect of 20 High Street. The Tribunal concurs with this approach.
28. With regard to the Land, the Tribunal has formed the view that any prospective purchaser of the land would be aware that use and occupation of that land would be subject to the explicit rights of access in favour of 14 and 20 High Street and potential prescriptive rights of access in favour of 16 High Street.
29. In the absence of there being anyone else able to benefit from taking access over this land and inability to take exclusive occupation, it is therefore of nominal value such that the reversionary value would be de-minimis.

Existing Ground Rent Capitalisation

30. The Tribunal understands that there is no evidence of rent being demanded or paid such that the capitalised value thereof is nil.

Modern Ground Rent

31. Mr Mansfield decapitalised the site values at 7%. No market evidence is provided in support of this decapitalisation rate, but Mr Mansfield refers to previous decisions of the Tribunals. A selection of decisions was included within the bundle.
32. He capitalised the modern ground rent over a term of 50 years at 5.5% which is stated to be in accordance with the Clarise case and deferred at 4.75% in reliance on the Sportelli case.
33. The Tribunal notes that the Upper Tribunal in the Clarise case adopted 5.5% in respect of capitalisation of the Section 15 modern ground rent and adopted the same rate in respect of deferring that rent over the residue of the existing lease and also the deferment of the standing house valuation. In this regard, Clarise post-dates Sportelli.
34. Notwithstanding this, the Tribunal sees no compelling reason to depart from the approach taken in the previous Tribunal decisions and concurs with Mr Mansfield.

Reversionary Valuations

35. Mr Mansfield adopted a current freehold valuation of £220,000 in respect of 18 High Street for the purposes of calculating the reversionary value.
36. However, having calculated the site value of 20 High Street by taking 40% of the current value of £330,000, Mr Mansfield adopted £310,000 for the purposes of calculating the reversionary value prior to the “Clarise” deduction. Mr Mansfield’s justification for this adjustment is that he considers the site to be under-developed but no further explanation has been provided.
37. The Tribunal are not persuaded that 20 High Street is under-developed based on the evidence presented to it and has therefore adopted £330,000 as the reversionary value.
38. Mr Mansfield then adopted a discount of 20% to each valuation in reliance upon the Clarise decision.
39. The Upper Tribunal made this discount as it considered that uncertainty as to whether vacant possession could be secured on expiry of the extended lease would have a depressing effect on value. However, no evidence was considered to indicate the scale of the appropriate deduction.
40. In this regard, it should be assumed that a prudent landlord would serve notice pursuant to paragraph 4 of Schedule 10 of the Local

Government and Housing Act 1989 to create an assured tenancy under the Housing Act 1988 to take effect on expiry of the extended lease term thereby creating an income stream.

41. In the Tribunal's experience, whilst it would be correct to assume that the existence of an assured tenancy may deter potential owner occupiers due to the delay and uncertainty in securing occupation, it is also the case that investors would take account of the fact that there would be existing rental income such that there would be no rental void on acquisition.
42. The Tribunal is unaware of any evidence in the market to suggest that properties subject to assured tenancies are sold subject to discounts. In addition, Land Registry records indicate that cash purchasers consistently outbid purchasers relying on mortgages. The Tribunal therefore considers that no discount is applicable.

Deferment of Reversionary Value

43. The Tribunal notes that Mr Mansfield has deferred the reversionary freehold value of the Properties over the residue of the leases plus the 50-year extension and applied 4.75% in accordance with the Sportelli case.
44. The Tribunal agrees with this approach.

Conclusions

45. The Tribunal has attached copies of its valuations at Annex 1 and 2.
46. In brief, the Tribunal has determined the values as set out below.
47. The Tribunal's valuation is therefore:
 - **18 High Street** - £2,145.52
 - **20 High Street** - £4,058.83
 - **The "Land"** – de-minimis, say £1

TR1

48. The Tribunal has reviewed the proposed TR1 and hereby provides its consent subject to the deletion of the sum of £5,939 at paragraph 8 and replacement with the sum of **£6,205.36**.

Name: Peter Roberts FRICS CEnv

Date: 17 October 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Annex 1

18 High Street, Foulsham NR29 5RT

Unexpired Term at Valuation

Date	82.75
Valuation as FH House	£220,000
Site Value Percentage	30%
Site Value	£66,000

Capital Value of Ground Rent

Current Ground Rent	£0
Unexpired Term YP @7%	
Capital Value	£0

Modern Ground Rent Capital Value

Assume Site Value	£66,000
Assumed Decap Rate	7%
Ground rent	£4,620
YP 50 years @5.5%	16.931500
Undeferred Value	£78,224
PV Defer over unexpired term @ 4.75%	0.021491
Value	£1,681.10

Reversion

Standing House	£220,000
Vacant Possession Value	£220,000
PV 132.75 @ 4.75%	0.002111
Value	£464

Price	£2,145.52
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Annex 2

20 High Street, Foulsham NR29 5RT

Unexpired Term at Valuation

Date	82.75
Valuation as FH House	£330,000
Site Value Percentage	40%
Site Value	£132,000

Capital Value of Ground Rent

Current Ground Rent	0
Unexpired Term YP @7%	
Capital Value	£0.00

Modern Ground Rent Capital Value

Assume Site Value	£132,000
Assumed Decap Rate	0.07
Ground rent	£9,240
YP 50 years @5.5%	16.9315
Undeferred Value	£156,447
PV Deferr over unexpired term @ 4.75%	0.021491
Value	£3,362.20

Reversion

Standing House	£330,000
Vacant Possession Value	£330,000
PV 132.75 @ 4.75%	0.002111
Value	£696.63

Price	£4,058.83
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