



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

Case Reference : **MAN/13UH/OAF/2022/0012**

Property : **1 Millwood Drive, Hartford,
Northwich CW8 2ZJ**

Applicant : **Wendy Suzan Hill**

Representative : **Orme Associates**

Respondent : **Adriatic Land 3 Limited (incorporated in
Guernsey)**

Representative : **Knights Plc**

Type of Application : **Determination of Price Payable - 21(1) of the
Leasehold Reform Act 1967**

Tribunal Members : **Judge R Watkin
Mr S Wanderer MRICS**

**Date and Venue of
Hearing** : **27 October 2022 – Decision on the papers**

Date of Decision : **27 October 2022**

DECISION

Decision

The Tribunal determines that the price payable under S.9(1) Leasehold Reform Act 1967 for the freehold interest in the property known as 1 Millwood Drive Hartford Northwich CW8 2ZJ is £6,200.

The Application

1. The Applicant, Wendy Suzan Hill, is the registered proprietor of the leasehold property known as 1 Millwood Drive Hartford Northwich CW8 2ZJ (the “Property”) registered under title number CH571860 at HM Land Registry. The Respondent to the application is Adriatic Land 3 Limited (incorporated in Guernsey), the registered proprietor of the freehold of the Property registered under title number CH538140 at HM Land Registry.
2. The Applicant holds the leasehold interest in the Property pursuant to a lease dated 1 February 2008, on the following terms:

Landlord	Littledales Park (Hartford) Management Company Limited
Term	900 years (less 10 days)
Annual rent	£200 per annum reviewed to RPI every 5 th anniversary
3. It is noted that there is also a headlease date of 29 March 2007 between Hillcrest Homes (1) Littledales Park (Hartford) Management Company Limited (2) for a term of 900 years from one January 2007. The headlease expires 10 days after the Applicant’s lease.
4. The Applicant acquired the lease on 27 February 2008 for a premium of £525,000 and currently pays a ground rent of £263.54
5. The Applicant now seeks to acquire the freehold title under the provisions of Sections 21(1)(a) Leasehold Reform Act 1967 (the “Act”) and applies to the Tribunal for the price payable to be determined by the Tribunal.
6. A Notice of Claim dated 10 November 2021, setting out the Applicant’s intention to purchase the freehold of the Property, was sent to the Respondents.
7. By letter dated 5 January 2022, the solicitors acting on behalf of the Respondent served a Reply to the Tenant’s Notice of Claim (the “Reply”) on the Applicant’s agents and requested that the Applicant’s valuer contact its valuer to discuss the valuation of the premium payable.

8. The Applicant informed the Tribunal that it sent a valuation to the Respondent's valuer on 13 January 2022 and, on receiving no response, re-sent the valuation on 4 March 2022 and 17 March 2022. As no response was received, the Applicant's agent applied to the Tribunal on 24 March 2022 for a determination of the price payable.

The Law

9. Section 21(1) of the Act 1967 states:

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;

(b) ...

(ba) the amount of any costs payable under section 9(4) or 14(2);

10. Section 9 of the 1967 Act states:

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.

DIRECTIONS

11. On 8 June 2022, the Application was considered by the Tribunal and a directions order made by Judge Bennett indicating that the Tribunal does not consider that an inspection of the Property will be necessary, that it considers the matter appropriate for a determination in the absence of the parties (allowing the parties an opportunity to indicate whether they wish to make oral representations), setting out a timetable for the exchange of documents and providing directions in relation to expert evidence.
12. In compliance with the directions order, the Tribunal received the following documents:
 - a. Applicants Submission Bundle.
 - b. Expert witness report of the Respondents valuer.

THE VALUATION

13. Both parties have forwarded valuation evidence.
14. The Applicants valuation evidence is provided by Mr Andrew Orme who values the price payable for the headleaseholder's interest at £0 and the freehold interest to at £6000.
15. The Respondent's evidence is provided by Mr Geraint Evans Fr ICS who also states that the headleasehold interest is of nominal value and values the price payable for the freehold at £8,270
16. There are four main areas of disagreement between the parties, the date of the valuation, the level of reviewed rent to be assumed from January 2022, the appropriate capitalisation rate and the methodology used in calculating the price payable.

Reviewed Rent and Date of the Valuation

17. In relation to the likely value of the rent as at January 2022, and the date of the valuation, the Tribunal has considered the submissions of both parties and notes at that section 9(1) stipulates:

... 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 ...” (underlining added for

emphasis)

18. At s.37(1)(d) of the Act, it states:

“relevant time” means, in relation to a person’s claim to acquire the freehold or an extended lease under this Part of this Act, the time when he gives notice in accordance with this Act of his desire to have it;

19. The point is dealt with as follows within Hague on Enfranchisement, 7th Edition at 9-01:

“The valuation date for each valuation method is the date of service of the tenant’s Notice of Tenant’s Claim.”

20. Thus, whilst it would appear that the correct date of valuation is, therefore, 12 November 2021, as the point is of no consequence to the Tribunal’s decision in relation to the price payable for the freehold (see below), it is not considered further.

21. The rent under the lease was due for review with effect from 1 January 2022, based on the RPI figure for December 2021. When the Applicant’s claim was made in November 2021, an increase in rent from the review date could be anticipated, but the precise level would not have been ascertainable. Both parties’ submissions include, correctly in the Tribunal’s view, an assumed rental increase but differ as to the level of assumed rent from January 2022.

22. The price payable for a “house and premises” at “the relevant time” can only be calculated at that “relevant time”. The RPI for December 2022 will not have been known at the time of the “relevant time”. Therefore, the valuation can only consider an approximate valuation of the likely rent at the next review, calculated on the information available at the “relevant time” at which point the last published RPI figure is likely to have been for September 2021. At that time, it was known that, for the year 2021 (up to September 2022), the RPI had increased by 14. Therefore, one basis for approximating the likely RPI for December 2021 would be by dividing this figure by the 8 months of the year to achieve an average monthly increase of 1.75 and multiplying it by 3 for the months (October, November, December). On this basis, the Tribunal concludes that the likely rate to have been used at the “relevant time” for the RPI for December 2021 is 313.85 ($308.6 + 14/8 \times 3$).

23. Taking 313.85 as the assumed RPI for December 2021, this would provide a new rent from January 2022 of £309.67 ($£200 \times (313.85/202.7)$).

Capitalisation Rate

24. The Tribunal is mindful of the comments at paragraph 8 of the Court of Appeal decision in *Earl Cadogan v Sportelli* [2007] EWCA Civ 1042 where it was said:

“we are not concerned with the other elements in the value of the reversion, ground rents and how it should be capitalise. Nothing said in this decision has any direct application to capitalization rates. Market evidence should be more readily available for those.”

25. Thus, whilst Mr Evans does give some evidence of a generic nature, and not linked to specific transactions, the Tribunal takes the view that it should be guided by the market evidence and was not persuaded to afford weight to those comments in the absence of market evidence in support, particularly in circumstances where clear market evidence has been provided by both parties.
26. Both expert valuers have put forward comparable evidence and it is to these that the Tribunal has had regard but, in doing so, it removes those that show extremes of high or low yields. Having had regard to the evidence provided, the Tribunal considers the correct capitalisation rate is 5%.

Methodology

27. Whilst the two experts adopted a similar valuation methodology, Mr Orme adopts a 'layer' approach, whereby he capitalised the uplift at review using a higher yield. Although, given the figures involved, the impact on the final valuation was only slight, the Tribunal did not accept Mr Orme's approach in this respect and adopted a single yield throughout its valuation.

DECISION

28. Following the reasoning set out above, the Tribunal calculates the price payable as set out in the table below and concludes that the appropriate price payable for the freehold reversion in this matter is £6,200.

Initial Rent

Ground Rent	£263.54					
YP (years)	0.137	@	5%	=	0.1332	
						£32.11

Reviewed Rent

Ground Rent	£309.67						
YP (perp)		@	5%	=	20.0000		
PV £1 after (years)	0.137	@	5%	=	0.9933		
						£ 6,152.13	
						Total	£ 6,187.24
						Say	£6,200

Costs

29. Neither party made any application to the Tribunal in respect of costs.

Appeal

30. If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after these reasons have been sent to the parties under Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge R Watkin

27 October 2022