



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

Case Reference : BIR/OOCN/OAF/2014/0034

Property : 135 Chipperfield Road, Castle Bromwich, Birmingham,
B36 8BX

Applicant : Shahid and Nahida Khan Property Investment Limited

Representative : Dr S. Khan

Respondents : Mr David John Woodhouse and Mr David Mark Woodhouse

Representative : A.W. Brunt FRICS

Type of Application : Determination of the price of the Freehold interest under
s.21(1)(a) of the Leasehold Reform Act 1967

Tribunal Members : I.D. Humphries B.Sc.(Est.Man.) FRICS (Chairman)
P.J. Hawksworth (Lawyer)

**Date and Venue of
Hearing** : 10th October 2014 at the First-tier Tribunal Office, 35 Bull St.
Birmingham, B4 6AF

Date of Decision : 14th October 2014

DECISION

- 1 The Freehold price is determined at £13,924 (Thirteen Thousand Nine Hundred and Twenty Four Pounds).

REASONS

Introduction

- 2 Mr D.J. and Mr D.M. Woodhouse hold a long leasehold interest in residential property at 135 Chipperfield Road, Castle Bromwich, Birmingham, B36 8BX and served notice to acquire the freehold interest from their landlord, Shahid and Nahida Khan Property Investment Limited, on 11th April 2014 in accordance with the Leasehold Reform Act 1967 ('the Act').
- 3 The landlord admitted the right to enfranchise by counter-notice dated 21st May 2014.
- 4 On 2nd July 2014 the landlord applied to the First-tier Tribunal to determine the price of the freehold in accordance with section 21(1)(a) of the Act.
- 5 A hearing was held at the Tribunal office in Birmingham on 10th October 2014 where the parties were represented by Dr. S.Khan for the freeholder and Mr A.W.Brunts FRICS for the tenants.

The Law

- 6 There is no dispute between the parties of the Applicants' right to acquire the freehold. The valuation falls to be determined under s.9(1) of the Leasehold Reform Act 1967 and the valuation date is the date of service of the Notice to Enfranchise on 11th April 2014.

Facts

- 7 The Tribunal inspected the property on 10th October 2014 with the Applicants' Surveyor, Mr Brunt of Messrs Anthony Brunt & Co. Chartered Surveyors. The freeholder was not represented at the inspection.
- 8 The property comprises a standard 1930s semi-detached house with a hall, lounge, dining room and kitchen on the ground floor with three bedrooms and a bathroom on the first floor. It has a small front garden with gates to the pavement, a lean-to store to the side and enclosed back garden with lawn and paving.
- 9 It is part of a large housing estate in east Birmingham that includes numerous similar houses and fronts Chipperfield Road which is a busy through route. It is directly under the flight path to Birmingham International Airport.
- 10 The lease was granted as an underlease for a term of 99 years less three days from 25th March 1936 at a ground rent of £6.50 p.a. for the term of the lease. On the valuation date there were 20 years 11 months unexpired.

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Agreed Facts

- 11 The parties had helpfully agreed the following elements of the valuation in advance:

Market value of freehold interest with vacant possession ('Entirety value')	£125,000
Ground Rent	£6.50 p.a.
Unexpired Term	20.94 years
Deferment Rate	5.5%

Disputed Facts

	<u>Freeholder</u>	<u>Tenant</u>
12 Capitalisation Rate for term	6.5%	7.0%
Site Apportionment	33.33%	30.00%
Reversion discount	20%	10%

Preliminary Issue

- 13 The Tribunal noted the reference to an Underlease and the term of 99 years less three days and asked the parties to clarify whether there was an intermediate leasehold interest. However, the parties advised that the ground rent had been paid by the tenants direct to the freeholder for at least a year which is when the current freeholder acquired its interest, they were unaware of any intermediate leaseholder and advised the Tribunal that any intermediate interest was assumed to have been merged with the freehold at some date prior to the application.

The Parties' Submissions

14 For the Applicant landlord

Dr Khan presented his valuation of the freehold at £14,957.31 under the Act but explained that it had been prepared by his Valuer who did not attend the hearing and that he was unable to comment on the technical aspects of the valuation.

15 For the Respondent tenants

Mr Brunt's submissions on the three disputed items can be summarised as follows:

16 *Capitalisation Rate*

The ground rent was purely nominal and the cost of collection would exceed the amount received if it were collected by agents. It had some value but as a fixed term investment he would expect an investor to require a return of at least 7% which was supported by reference to previous Tribunal decisions where 7% had been adopted:

<u>Address</u>	<u>Tribunal Case Ref.</u>
78a Trent Valley Road, Lichfield	BIR/43UD/OLR/2010/0083
97a Hednesfield Road, Brownhills	BIR/00CU/OLR/2010/0115
55 Anson Road, Great Wyrley	BIR/41UF/OAF/2010/0049
84 South Crest Road, Redditch	BIR/47UD/OLR/2010/0111
113 Lyde Green, Halesowen	BIR/00CR/OLR/2009/0116

However, he accepted that previous Tribunal decisions were not binding on the present Tribunal.

17 *Site Apportionment*

Mr Brunt said that as a general rule, developers in the Midlands set aside about a third of the estimated sale value of property for the purchase of the land but that this may vary if for example the site were particularly steep or awkward shaped. Examples of 12 Tribunal decisions were given to illustrate the point with site values (or 'site apportionment') varying from 28% to 33% as a percentage of the completed house. The subject plot had a width of 25'4" on the Deed plan which was relatively narrow and bearing in mind the other constraints of a slope down to the rear of the site, the fact that it was overlooked by Council housing and it was under the flight path pointed to a value of less than the standard rate, in this case 30%.

18 *Reversion Discount*

Unusually in this case, the discount contended by the tenant's Surveyor of 10% was less than that contended by the freeholder, 20%. Normally the figures are reversed as a higher rate would result in a lower price but in this case Mr Brunt respectfully suggested that the freeholder's surveyor was incorrect and although it went against his case, he considered 10% to be the appropriate rate.

19 Combining these elements, Mr Brunt submitted for a freehold valuation of £13,963.

Tribunal Decision

20 The Tribunal has considered each element of the parties' submissions and finds as follows:

21 Capitalisation Rate

The Tribunal accepts the point made by Mr Brunt that a fixed nominal ground rent would be of limited value to an investor and in this case 7% would be the appropriate rate.

22 Site Apportionment

The Tribunal notes that the only purpose of assessing the 'site apportionment' is as a short cut means of calculating the hypothetical modern ground rent envisaged by section 15 of the Act. In this case, neither party had produced any evidence of sale prices achieved for individual plots in similar locations in Birmingham and in answer to questions from the Tribunal, Mr Brunt said he was wary of using auction evidence unless the full facts behind the sale could be established, for example, whether the purchaser could in any way be regarded as a special purchaser such as a neighbour who may pay more than the expected market price of land to extend his garden. It may have additional value to that party and make them a 'special purchaser'.

In the absence of comparable evidence, the Tribunal accepts that a section 15 rent can be derived from a plot's value and that a site apportionment ratio is one way of achieving it, applying the ratio to the freehold value of the house on site assuming the plot to be fully developed, in this case a fully developed value of £125,000.

The Tribunal is not convinced that the flight path affects the plot ratio because although it is a disadvantage, it is reflected in the value of the completed house which in this case is agreed at £125,000, rather than the plot as an element of the whole.

However, the Tribunal accepts that the plot is narrow and may be less attractive to developers than other plots and for this reason determines the appropriate ratio at 30%.

23 *Reversion Discount*

The Tribunal agrees with Mr Brunt that 20% would be excessive (although it would have assisted his client) and that 10% would be more appropriate in this case.

24 **Valuation**

The Tribunal therefore values the freehold interest as set out below. In the interests of simplicity, the Tribunal rounds the unexpired term from 20.94 years to 21 years and notes a minor typographical error in Mr Brunt's computation where the present value of £1 for 21 years at 5.5% is corrected to 0.3248616.

Term 1

Ground Rent	£ 6.50	
YP 21 years 7%	<u>10.8355</u>	£ 70

Term 2

Section 15 Modern Ground Rent		
Entirety Value	£ 125,000	
Site Apportionment 30%	<u>£ 37,500</u>	
s.15 rent 5.5%	£ 2,062	
YP 50 years 5.5%	16.9315	
PV £1 21 years 5.5%	<u>0.3248616</u>	£11,341

Reversion

Entirety Value less 10%	£ 112,500	
PV £1 71 years 5.5%	<u>0.0223396</u>	£ 2,513

Freehold Value £13,924

- 25 The Tribunal finds the premium to acquire the freehold interest in accordance with the Leasehold Reform Act 1967 as amended to be £13,924 (Thirteen Thousand Nine Hundred and Twenty Four Pounds).

Appeal Procedure

- 26 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). Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman