



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

Case Reference : BIR/00CN/OAF/2015/0044

Property : 21 Calstock Road, Willenhall, West Midlands, WV12 4TG

Applicants : Balbeer Singh and Kulwinder Singh Basra

Representative : Mr. J. Moore, Midland Valuations Limited

Respondent : Vagards Investment Corporation

Representative : Manisures Ltd.

Type of Application : (1) An Application under section 21(1)(a) of the Leasehold Reform Act 1967 ('the Act') to determine the price payable under section 9(1), in respect of the tenants' acquisition of the freehold, under section 21(1)(ba) of the Act, and (2) an Application under section 21(1)(a) of the Act for a reasonable costs order determined under section 21(1)(ba) and in accordance with section 9(4) of the Act

Tribunal Members : Judge D.R. Salter
R.T. Brown FRICS

Date of Hearing : 17 November 2015

Date of Decision : 2 February 2016

DECISION

Determination

1.The Tribunal determines, taking account of the evidence adduced, its evaluation of that evidence, using its general knowledge and experience but not any special knowledge, that the price payable by the lessees for the acquisition of the freehold interest in the property in accordance with section 9(1) of the Act, as amended, is **£3,284.03**.

2.The Tribunal also determines a valuation fee of **£475.00** and legal costs of **£475.00** (plus VAT, if applicable)

Reasons for Decision

Introduction

3.The right of the Applicants to acquire the freehold interest in the property and that the determination of the price payable should be pursuant to section 9(1) of the Act is not disputed.

Inspection

4.The members of the Tribunal inspected the property on 17 November 2015 in the presence Ms Kelly Simpson, who had been authorised by the Applicants to grant access to the property to the members of the Tribunal.

5.The property is located in Willenhall which is proximate to Wolverhampton. It is a two storey semi-detached property constructed in the 1970s with an adjoining car port and recessed garage. It has front and rear gardens. The accommodation provided by the property comprises – on the ground floor: entrance hall, living room and kitchen, and on the first floor: two double bedrooms, one single bedroom and bathroom (full suite). The property is centrally heated and double glazed.

6.The Tribunal also inspected, externally, various properties which had been drawn to its attention by Mr. Moore in his written submissions.

Lease

7.The lease is for a term of 99 years from 29 September 1972 at an initial ground rent of £35.00 per annum, with a review to £52.50 per annum to 29 September 2038 and to £70.00 per annum to 29 September 2071.

Hearing

8.A Hearing was held in Birmingham on the same day as the Inspection. It was attended by the Applicant's representative, Mr. Jolyon Moore of Midland Valuations Limited. The Respondent did not attend nor was it represented.

Price payable for acquisition of the freehold interest

Matters not in dispute between the parties

9.Deferment rate: 5.50%.

Matters in dispute

10. Years unexpired at the date of the Notice: Applicants – 56.33 years; Respondent – 56.25 years (approx.)

11. Entirety value: Applicants - £130,000; Respondent - £135,000.

12. Site apportionment: Applicants – 34.00%; Respondent – 40.00%.

13. Capitalisation rate: Applicants – 7.00%; Respondent - 6.50%.

14. Clarise adjustment: Applicants – 6.00%; Respondent – no adjustment.

Applicants' Case

Entirety value

15. Mr. Moore adopted an entirety value of £130,000.00 which was based on the sales of four comparable properties in the immediate vicinity of the property. The prices achieved for these properties ranged from £115,450.00 to £130,000.00 over the period August 2014 to July 2015. One of these properties had been sold with a freehold title in July 2014 at a price of £125,000.00.

Site apportionment

16. Mr. Moore considered that a site apportionment of 34% was correct. It reflected many settlements reached by his company with surveyors acting for freeholders of semi-detached houses in the Midlands. It was also consistent with many decisions of the Midland First-tier Tribunal (Property Chamber) and, in particular, with the decision in *10 Norton Close, Tamworth* (BIR/41UK/OAF/2015/0006) where a site apportionment of 33.33% was adopted in July 2015 in respect of a semi-detached property with an integral garage, although this decision might be distinguished on the ground that the property has a side (rather than integral) garage, thereby, justifying the marginally higher apportionment of 34%. Mr. Moore also alluded to the decision in *38 Denmore Gardens, Wolverhampton* (BIR/41UB/OAF/2011/0019) in which an apportionment of 33.33% was adopted for a semi-detached house.

Capitalisation Rate

17. Mr. Moore adopted a capitalisation rate/yield of 7.00%. The current annual rent was low (£52.50) and this together with related collection costs amounted, in his opinion, to a relatively unattractive prospect for an investor and should be reflected in the yield.

18. He accepted that to an investor the review of the rent in September 2038 was clearly preferable to a rent that was fixed for the entire term, but he submitted that this was countered by the fact that the investor would have to wait for this increase in income. In view of this, Mr. Moore stated that it was appropriate to capitalize the current rent and the increased rent after the review at the same rate.

19. In support of his proposed capitalisation rate, Mr. Moore relied upon the Lands Tribunal decisions in *163 Wagon Lane, Solihull* (LRA/30/1999; *Speedwell Estates Ltd v No Respondent*) and *1 Wrekin Road, Perry Barr* (LRA/070/97; *Speedwell Estates Ltd v No Respondent*).

20. In *Wagon Lane*, the Lands Tribunal considered that it was possible to adopt the same yield rate in relation to the pertinent ground rents in that case, whilst in *Wrekin Road* it

was acknowledged by the Lands Tribunal that, without more, the longer the period for which a rental income is fixed (i.e. the period before the next rent review or the reversion), the less is its attractiveness to an investor and, thus, the higher will be the yield rate that an investor will require. In the latter respect, Mr. Moore added that government gilt classifications might be taken as the best definition of short, medium and long term investments with anything over 15 years regarded as 'long'. In this case, the current rent of £52.50 is fixed for another 23.33 years and the rent of £70.00 following the review is then fixed for 33 years. These 'long' periods justify a higher yield rate.

Deferment Rate

21. Mr. Moore adopted a deferment rate of 5.50%. He indicated that he was not aware of 'a single case heard by the Midland LVT or F-TT since the decision in *Kelton Court* [*Zuckerman and Others v Trustees of the Calthorpe Estate* LRA/97/2008] was handed down that has departed from a deferment rate of 5.50% for s. 9(1) properties.'

22. *Zuckerman* addressed the question of whether a further adjustment to the *Sportelli* generic deferment rate must be made to take account of differences in growth rates and rates of deterioration and obsolescence of flats in the West Midlands and prime Central London. In *Zuckerman*, the Lands Tribunal found that the deferment rate in relation to the flats in *Kelton Court* should be increased from an initial (*Mansal*) deferment rate of 5.00% to 6.00%, with an additional 0.25% to the risk premium to reflect the greater risk of deterioration and obsolescence, 0.50% to reflect the risk of lower growth rates and 0.25% for a greater allowance for management.

23. Mr. Moore submitted that of the *Zuckerman* 'adjustments' to the initial (*Mansal*) deferment rate of 5.00% it was appropriate in the present case to make allowance (0.50%) only for the potential for lower growth rates in the risk premium. He suggested that lower anticipated growth rates must play a part in the decision-making process of any investor in residential property in the Midlands.

24. Mr. Moore supplemented this submission by attaching three graphs to his written submissions which chart the rates of growth between properties in Calstock Road and Cadogan Square in prime Central London. These graphs depict the Nationwide House Price Index from 1973 (fourth quarter) to May 2015, the Lloyds (formerly Halifax) House Price Index from 1983 (first quarter) to the valuation date, and data obtained from the Land Registry covering the period 1995 to 2015. He contended that the comparative rates of growth in the West Midlands and prime Central London were clear on each graph with the latter outperforming the former.

Clarise Adjustment/Section 10 Deduction

25. Mr. Moore considered that it was appropriate to make a deduction to the extended lease value to reflect the provisions of Schedule 10 to the Local Government and Housing Act 1989 by virtue of which a lessee has the right to remain in occupation of the property thereby denying the freeholder vacant possession. This *Clarise adjustment* should be 6.00% based on the guidance given by the Upper Tribunal in *68 Mallaby Close, Shirley* [2014] UKUT 03004 (LC) and other First-tier Tribunal (Property Chamber) decisions.

Submission

26. Mr. Moore submitted that the price payable for the freehold interest is **£2,945.00**.

Respondent's Case

27. Manisures Ltd. relied upon a written valuation report which had been prepared at its request by Mr. John Hennessy, a chartered surveyor. This report is dated 8 July 2015 and is headed 'Re: 21 Calstock Road, Willenhall, WV12 4TG – proposed leasehold enfranchisement'. Principally, it includes a description of the property (following inspection), its leasehold tenure (with approximately 56.25 years unexpired on the lease), and a two-stage valuation of the freehold interest for the purposes of s. 9(1) of the Act. The key elements of that valuation are:

Entirety value: £135,000.00

Site apportionment: 40.00%

Capitalisation rate: 6.50%

Deferment rate: 5.50%

28. The report intimates that the entirety value was reached following enquiries of several local estate agents and that this value was an averaged value as there was evidence of 'slightly higher and lower freehold values'. Otherwise, no evidence was adduced in support of the chosen percentages for the site apportionment, capitalisation rate and deferment rate. The report concluded that the price payable for the freehold interest is **£3,528.00**.

Valuation fee and legal costs

Applicants' Case

29. Mr. Moore accepted that an inspection of the property had been carried out and a valuation made in accordance with the Act by a chartered surveyor, Mr John Hennessy, who had been appointed by the Respondent. However, he stated that the Applicants were only required to pay the reasonable costs of such an inspection and related valuation. He understood that the fee sought by Mr. Hennessy was £750.00 and that this included travel costs related to the carrying out of the inspection. Mr Moore felt that it was 'somewhat unfair for an applicant to have to pay high levels of fees simply because a freeholder's professional representatives are located far away or in an area where costs are higher'. In his opinion, there were plenty of local surveyors with the requisite degree of competence who could have undertaken the work at a lower cost. Accordingly, he submitted that, in this instance, a reasonable valuation fee would be £475.00. He referred the Tribunal to the following decisions of the Midland First-tier Tribunal (Property Chamber) in which similar awards had been made, namely *1 South Drive, Birmingham* (BIR/00CN/OAF/2014/0123), (£465.00 – agreed), and *6 Trajan Hill, Coleshill* (BIR/44UB/OAF/2014/0029), (£450.00 – determined).

30. With regard to legal costs, Mr. Moore submitted that a reasonable cost for dealing with the conveyance of the freehold title of the property would be £475.00. He indicated that this equated to about two and half hours work at £190.00 per hour by a Grade B fee earner. He referred the Tribunal to awards of £450.00 that had been made by the Midland First-tier Tribunal (Property Chamber) in recent comparable cases, namely *88 Rosemary Crescent, Dudley* (BIR/00CR/OAF/2015/0005), *6 Trajan Hill, Coleshill* (BIR/44UB/OAF/2014/0029) and *4 Kestrel Drive, Tamworth* (BIR/41UK/OAF/2014/0026).

Respondent's Case

31. Manisures Ltd. sought an order for a valuation fee of £750.00 and for 'expected' legal costs of £750.00 (plus VAT).

The Tribunal's Deliberations

32. The Tribunal considered all the oral and written evidence that had been presented and submitted, respectively, by the parties and which is summarised above.

Price payable for acquisition of the freehold interest

33. The Tribunal's deliberations on the substantive issues are prefaced by the following observations which underlie, as will be seen, its limited reliance within those deliberations on the evidence submitted on behalf of the Respondent. First, such evidence, which comprises the report dated 8 July 2015 and prepared by Mr. Hennessy was not presented to the Tribunal in the manner prescribed in the Directions issued by the Tribunal on 22 September 2015. Secondly, no compelling evidence was proffered in support of the entirety value, site apportionment, capitalisation rate and deferment rate adopted in the valuation in that report. Thirdly, this valuation follows the two-stage approach to valuation which pre-dates and is superseded by the three-stage approach advocated and applied in *Clarise Properties Limited* [2012] UKUT 4 (LC) (*Clarise*). (see further below, paragraph 44).

Years unexpired at the date of the Notice

34. Taking into account the term of years granted by the lease and the date of the Applicants' notice of claim (8 May 2015), the Tribunal finds that for the purposes of the Application the years unexpired amount to 56.33 years.

Entirety value

35. The Tribunal was guided, principally, by the evidence submitted by Mr. Moore as to the prices achieved on the sale of four semi-detached properties situated in relatively close proximity to the property which he opined were similar to the property. As indicated above (see, paragraph 6), these properties were inspected, externally, by the Tribunal. Such inspections suggested that these properties might be viewed more favourably than the property and, accordingly, that this might be reflected in the entirety value proposed for the property. In his oral evidence at the Hearing, Mr. Moore acknowledged the value of the Tribunal's external inspections of the comparable properties, but he defended the entirety value of £130,000.00 for the property which he had proposed in his written submissions and submitted that this value was consistent with the sale prices of the comparable properties over the period in which they had been achieved and, especially, with sale price of the property with freehold title. The Tribunal also took notice of the 'averaged price' of £135,000.00 that was proposed as the entirety value for the property in Mr. Hennessy's report, but, in the absence of supporting evidence, attached little weight to it.

36. In the light of the above, the Tribunal adopts the figure of £130,000.00 proposed by Mr. Moore.

Site apportionment

37. There was a marked disparity between the respective site apportionments adopted – 34% by Mr. Moore and 40% in the valuation in Mr. Hennessy’s report. No evidence was submitted in support of the latter. Following its inspection of the property and Mr. Moore’s oral submission at the Hearing that a site apportionment of 40% was ambitious in respect of a property with a 25 foot frontage, the Tribunal discounted a site apportionment of 40%. Further, it was persuaded that a slight uplift on the site apportionment adopted in *10 Norton Close, Tamworth* could be sustained on the ground mooted by Mr. Moore that it was appropriate in this case to distinguish, marginally, between semi-detached properties with an integral and side garage respectively.

38. Accordingly, the Tribunal adopts a site apportionment of 34%.

Capitalisation Rate

39. The Tribunal does not dissent from either the general observation of the Lands Tribunal in *Wagon Lane* that the same capitalisation rate might be applied to a current rent and an increased rent after review or from the suggestion of the Lands Tribunal in *Wrekin Road* that the longer a rental income is fixed the less attractive it will be to investors who will, accordingly, expect a higher yield which are alluded to by Mr. Moore in his written submissions. However, there is no direct correlation between these statements and the capitalisation rate of 7% proposed by Mr. Moore.

40. However, the Tribunal finds on the limited evidence presented that 7% is on the high side for a ground rent subject to fixed review. Whilst Mr Hennessy does not justify his contention for 6.5% the Tribunal finds this to be more in line with its own recent decisions.

41. Accordingly, the Tribunal adopts a capitalisation rate of 6.50%.

Deferment Rate

42. In his written submissions, Mr. Moore indicated that at the time of the preparation of those submissions there were no agreed matters between the parties. Subsequently, however, it was apparent to the Tribunal that there was common ground between the parties as to the deferment rate to be adopted, namely 5.50%.

43. Accordingly, the Tribunal adopts the agreed deferment rate of 5.50%.

Clarise Adjustment

44. In this respect, the Tribunal is guided, initially, by the decision of the Upper Tribunal in *Clarise* (see above, paragraph 25), and, in particular, by paragraph 36 of that decision which is as follows:

“We consider the time has now come to move away from the two-stage approach as the standard practice in section 9(1) valuations and to apply instead the three-stage approach. As a matter of good valuation practice, where a price has to be determined, every element of value should in general be separately assessed unless there is some reason not to do so. There is now a much greater likelihood that the ultimate reversion will have a significant value than there was when the two-stage approach became standard practice 40 years or more ago. There are two reasons for this. The first is that house prices, including the prices of houses that would fall to be valued under section 9(1), have increased substantially in real terms; and the second is the lower deferment

rates that are now applied in the light of *Sportelli*. There is, we think, a real danger that applying the two-stage approach as standard will in some cases lead to the exclusion of an element of value that ought to be included in the price. This is particularly so if valuers and LVT's treat as the criterion for the application of a *Haresign* addition whether the house is 'substantial' and thus exclude any element of value in the ultimate reversion (other than that included in the capitalisation of the section 15 rent in perpetuity) where the house does not meet this ill-defined criterion. The only relevant question is whether the ultimate reversion does have a significant value. In future, therefore, we consider that the appropriate approach will be to capitalise the section 15 rent to the end of the 50-year extension and to assess the value (if any) of the ultimate reversion."

45. Stage three of the *Clarise* approach involves the attribution of a material value to the freehold interest (the ultimate reversion) which has to be separately identified and included in the overall calculation. This attribution should allow for a diminution in the value of the freehold interest to reflect the risk that vacant possession may not be obtained on the expiry of the lease because of the tenant's right to security of tenure under Schedule 10 to the Local Government and Housing Act 1989 (see, *Clarise* and the Upper Tribunal decision in *68 Mallaby Close, Shirley* [2014] UKUT 0304 (LC)).

46. The Tribunal is bound to follow the three-stage approach adopted by the Upper Tribunal in *Clarise* unless there is compelling evidence in support of a contention that *Clarise* may be distinguished from the present case. No such evidence has been adduced. Mr. Moore supports the application of the three-stage approach, whilst the valuation in Mr Hennessy's report applies, without explanation, a two-stage approach.

47. As seen above (paragraph 25), Mr. Moore submitted that in applying stage three of the three-stage approach there should be a 6% adjustment to the value of the ultimate reversion to reflect the tenant's right to remain in occupation of the property by virtue of Schedule 10 to the Local Government and Housing Act 1989. He relied upon the Upper Tribunal decision in *68 Mallaby Close* and 'other First-tier Tribunal decisions' to support this submission. In *68 Mallaby Close*, the Upper Tribunal dismissed the appeal and confirmed the decision of the First-tier Tribunal, which, the Upper Tribunal intimated, included an adjustment (appropriate deduction) of 4%. Further, in the following recent decisions of the Midland First-tier Tribunal (Property Chamber) decisions, namely *Flat 9, Bosworth Court, Sheldon* (BIR/00CN/OC9/2015/0006; BIR/00CN/OLR/2015/0030) (4%), *1 Bowbrook Avenue, Shirley* (BIR/00CT/OAF/2014/0055) (2.5%), *23 Lodge Close, Bewdley* (BIR/47UG/OLR/2015/0059) (4%), *10 Morpeth, Tamworth* (BIR/41UK/OAF/2015/0020) (2.5%), the adjustments made have ranged from 2.5% to 4%.

48. In *68 Mallaby Close*, the First-tier Tribunal indicated that:

"The Tribunal determines that the discount for deduction needs to be decided on its own particular facts. The most significant factor is the length of the unexpired term; the shorter the term the greater the deduction."

49. In this respect and taking into account the above decisions, the Tribunal is not persuaded, without more evidence, that Mr. Moore's submission for a 6% adjustment is sustainable. The unexpired term in this case (56.33 years) falls short by 10 years or more of the unexpired terms in some of those decisions where a 2.5% adjustment was made (on occasion, with the agreement of the parties). Accordingly, the Tribunal finds on the facts of this case that there is scope for the adoption of a 4% adjustment.

50. In conclusion, the Tribunal determines that the three stage valuation approach should apply in this case, but with a 4% adjustment to the entirety value to reflect the possible effect of Schedule 10 to the Local Government and Housing Act 1989.

Conclusion

51. Applying the above determinations, the Tribunal calculates the price payable for the freehold as follows:

Stage 1	Term			
	Current Ground Rent		£52.50	
	YP 23.33 years @ 6.5%		<u>11.9612</u>	627.96
	Ground Rent from 2038		£70.00	
	YP 33 years @ 6.5%		13.46	
	PV £1 in 23.33 years @ 6.5%		<u>0.2285</u>	<u>3.08</u>
				215.29
Stage 2	1st Reversion			
	Entirety Value	£130,000		
	Site apportionment 34.00%	£44,200		
	Section 15 Modern Ground Rent 5.5%	£2,431.00		
	YP 50 years @ 5.5%	<u>16.9315</u>		
		£41,160.48		
	PV £1 in 56.33 years @ 5.5%	<u>0.04899</u>		2,016.45
Stage 3	2nd Reversion			
	Standing House Value	130,000.00		
	Schedule 10 @4.00%	124,800.00		
	PV £1 in 106.33 years at 5.5%	<u>0.0034</u>		<u>424.32</u>
				£3,284.03

Valuation fee and legal costs

Valuation fee

52. It was not disputed that valuation costs had been incurred in connection with the reference to the Tribunal within the meaning of section 9(4) of the Act. However, no evidence had been submitted in support of Mr. Hennessy's proposed fee of £750.00 which would allow the Tribunal to assess its reasonableness or otherwise, whilst Mr. Moore had proposed a fee of £475.00 which to the Tribunal's knowledge (but not special knowledge) was within the band of reasonableness in the Midlands for a valuation following inspection.

53. Consequently, the Tribunal determines a valuation fee of **£475.00**.

Legal costs

54. In determining legal costs, the Tribunal is guided by the Senior Courts Office classification of fee earners and rates of charges for those fee earners with the rates of charge being those applicable for the area in which the fee earner practises.

55. Manisures Ltd. referred the Tribunal to 'expected legal costs' of £750.00 (+ VAT), but gave no breakdown of the work associated with these costs, of the grade of fee earner who will undertake this work and consequent rates of charge, or of the precise location of that fee earner.

56. Accordingly, the Tribunal relies upon its own knowledge and experience as an expert tribunal of the work and level of expertise required in relation to an award of legal costs under section 9(4) of the Act. This suggests that, without evidence to the contrary (and no such evidence has been submitted), the work involved is relatively straightforward and might be undertaken by a Grade B fee earner (as, indeed, was submitted by Mr. Moore). Further, the Tribunal accepts that neither Mr. Moore's assessment of the time involved in undertaking the work (two and half hours) nor the projected charge of £190.00 per hour (which is consistent with the Court Rate: London Band 3) is unreasonable.

57. If the freeholder (the Respondent) is registered for VAT purposes, it will be able to recover VAT on these fees because the services will have been supplied to the freeholder not the lessees (the Applicants). Therefore, if this is the case in this instance, no VAT will be payable by the Applicants on the legal costs awarded.

58. The Tribunal determines legal costs of **£475.00** plus VAT (if applicable).

Judge D.R. Salter
- 2 FEB 2016

Appeal Provisions

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-

- a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- b. identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.