



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

Case Reference : **MAN/00BY/OAF/2015/0035**

Property : **70 Rodney Street
Liverpool
L1 9AF**

Applicant : **Ms K Brighton**

Representatives : **Mr M Loveday (Counsel)
and Orme Associates**

Respondent : **Liverpool City Council**

Representatives : **Mr N Jackson (Counsel)
and Hill Dickinson**

Type of Application : **Leasehold Reform Act 1967
– section 21(1)(a)**

Tribunal Members : **Judge J Holbrook
Mr J Faulkner FRICS**

**Date and venue of
Hearing** : **25 April 2016
Liverpool**

Date of Decision : **3 June 2016**

DECISION

DECISION

The price payable under section 9 of the Leasehold Reform Act 1967 for the freehold interest in the Property is £121,000.

The application for a wasted costs order against Orme Associates is refused.

REASONS

1. On 20 July 2015 the Applicant, Ms Kerry Brighton, of 70 Rodney Street, Liverpool L1 9AF ("the Property"), gave notice to the Respondent, Liverpool City Council, of her desire to acquire the freehold of the Property. The freehold is currently vested in the Council.
2. On 17 September 2015 the Council sent a notice in reply admitting Ms Brighton's right to acquire the freehold in accordance with the provisions of Part 1 of the Leasehold Reform Act 1967 ("the Act").
3. On 11 December 2015 an application was made to the Tribunal under section 21(1)(a) of the Act for a determination of the price payable under section 9 of the Act.
4. By Directions issued on 15 January 2016 the Tribunal informed the parties that it intended to determine the application on the basis of a consideration of written evidence alone, without an oral hearing. However, an oral hearing was subsequently arranged at the request of Ms Brighton. The hearing was held on 25 April 2016 at Liverpool Civil and Family Court Centre when the Tribunal heard submissions from Counsel for both parties together with oral evidence from the parties' respective expert valuers (Mr Andrew Orme for Ms Brighton; and Ms Paula Hobbs for the Council). In addition, the Tribunal had previously been provided with written submissions and valuation evidence on behalf of each party.

The Property and the Lease

5. The Tribunal inspected the Property immediately prior to the hearing in the presence of Ms Brighton, Mr Orme and Ms Hobbs.
6. The Property comprises a Grade 2 listed, Georgian style mid-terraced house of traditional brick construction dating from c.1830. It presently provides accommodation as a single dwelling over three principal storeys, plus basement and attic room. This includes, on the ground floor, a reception room and kitchen; a dining room/study; and a WC/shower room. On the first floor there is another reception room, two bedrooms and a bathroom. Two further bedrooms are on the second floor. All the rooms are generously proportioned, reflecting the

general style and character of the Property. We understand that the net internal floor area of the Property is 3164 sq ft.

7. We also understand that, although originally constructed as a house, the Property was being used as commercial offices until c.2010. There followed a period during which it was occupied illegally for the purpose of growing cannabis. However, following Ms Brighton's acquisition of the leasehold interest in 2013, the Property has been re-converted to residential use. Substantial repairs and improvements have been effected and the Property has now been fitted-out and decorated to a high standard and appears to be in a good state of repair.
8. The Property has a street frontage to Rodney Street. To the rear it has a fairly modest paved yard. There is no garage or off-street parking.
9. Rodney Street itself is at the heart of Liverpool's Georgian quarter, within a short distance of the Anglican cathedral. It comprises other period properties which are used for a mixture of residential and office/commercial purposes. Rodney Street is known particularly as the home of various medical practices.
10. Ms Brighton holds the Property under a lease ("the Lease") dated 2 November 1946 made between The Lord Mayor Aldermen and Citizens of the City of Liverpool (1) and Samuel Canter (2). The Lease granted a term of 99 years from 2 November 1946 at an annual rent of one peppercorn (if demanded).

Matters agreed and issues in dispute

11. The parties are in agreement as to the following matters:
 - a) The price payable for the freehold of the Property falls to be determined under section 9(1A) of the Act.
 - b) The relevant valuation date is 20 July 2015, on which date the unexpired term of the Lease was 30.28 years.
 - c) The capitalised value of the rent payable for the remainder of the term is nil.
 - d) The price payable for the freehold thus comprises: (1) the present value (that is, as at the valuation date) of the Council's reversion after the original term date (on the assumptions required by section 9(1A)); plus (2) a 50% share of the "marriage value" of the freehold and leasehold interests.
 - e) The appropriate deferment rate to be applied for the purpose of valuing the Council's reversion after the original term date is 5.5%.
 - f) Ms Brighton acquired the Lease on 9 May 2013 for the sum of £205,000.

- g) (Subject to the discussion in paragraph 37 below) the value of the tenant's improvements to be disregarded under section 9(1A)(d) of the Act is £200,000.
12. Notwithstanding the agreement as to these matters, the parties differ markedly when it comes to the price payable for the freehold interest in the Property. On behalf of Ms Brighton, Mr Orme argues that the price should be £76,450. On behalf of the Council, Ms Hobbs contends that it should be £175,000.
13. This difference arises, in part, from the parties' competing views as to the value of the unimproved freehold interest with vacant possession (and the resulting value of the Council's reversion); and, in part, from their differing approaches to the valuation of Ms Brighton's leasehold interest (which also goes to the question of marriage value). These issues are thus the focus of the Tribunal's determination.

Law

14. The purchase price payable by a tenant in a case where the freehold falls to be valued under section 9(1A) of the Act is the amount which the house and premises, if sold in the open market by a willing seller, might be expected to realise as at the valuation date. The purchasing tenant and her family are not to be excluded from the market for these purposes and the tenant is to be regarded as a willing, but not an anxious, purchaser. The valuation must be made on the basis of a number of statutory assumptions. In particular, the following assumptions must be made:
- the freehold of the house and premises is sold subject to the tenancy, but on the assumption that the Act confers no right to acquire the freehold or an extended lease; and
 - the price is to be diminished by the extent to which the value of the house and premises has been increased by any improvements carried out by the tenant or her predecessors in title at their own expense.
15. Under section 9(3) of the Act, Ms Brighton has the right, within one month of ascertaining the amount payable for the Property, to give written notice to the Council that she is unable or unwilling to acquire it.
16. By virtue of section 9(4), Ms Brighton is also liable to bear the Council's reasonable costs. However, on this occasion the Tribunal has not been asked to make a determination as to the amount of such costs.

Valuation of the freehold interest with vacant possession

17. The parties agree that, in order to determine the present value of the reversion to the Lease, it is first necessary to determine the value of the unimproved freehold interest with vacant possession. On behalf of Ms Brighton, Mr Loveday submitted that there are two permissible approaches in this regard: first, the valuation may be undertaken by looking at unimproved comparables and making appropriate adjustments for differences between the properties (a “bottom up” approach); or, second, it may be undertaken by looking at improved comparables and deducting for the value of the relevant improvements to the Property (a “top down” approach). Mr Orme had provided valuations on each of these bases, but Mr Loveday contended at the hearing that the top down valuation approach should be preferred in this case. Adopting this approach, Mr Orme values the unimproved freehold interest with vacant possession at £275,000 (i.e. at an assumed market value on the valuation date of £475,000, less £200,000 for tenants’ improvements).
18. For the Council, Mr Jackson submitted that a top down approach is the only permissible basis of valuation in the present circumstances. Ms Hobbs values the unimproved freehold interest at £500,000. She arrives at this figure from a starting point of an assumed market value of £750,000. From this figure Ms Hobbs deducts £200,000 for improvements and a further £50,000 for “repairs”.
19. We agree that it is appropriate in the present circumstances to determine the value of the freehold interest by means of a “top down” valuation approach. We therefore turn to a consideration of the evidence presented by the parties in this regard.
20. The parties presented evidence concerning the value of a number of other properties in the vicinity of the Property which were said to be (to a greater or lesser degree) “comparable” to the Property. Mr Orme first asked us to consider one residential property (8 Mount Street), and later made reference to four additional residential properties on Mount Street in response to the Council’s evidence. He also asked us to consider a number of properties which are currently being used as commercial offices (or which are now vacant but were last used as offices).
21. Ms Hobbs asked us to consider two residential properties (35 Mount Street and 65 Hope Street). In her view, commercial office properties were not appropriate comparables for the purposes of valuing the Property – which is, of course, a private residence. Indeed, it was Ms Hobbs’ view that there is a differential between values of residential and office properties in this part of Liverpool (residential values being in the range of £200,000 - £250,000 greater than office values).

22. By way of general comment, the quality of the comparable evidence produced by the parties was disappointing: none of the properties referred to was closely comparable to the Property, and the probative value of much of the evidence was questionable for a number of other reasons. In particular, we found that the comparison of the Property with commercial office properties was of no assistance. The Property is (and was at the valuation date) a private residence: it is not an office property. One would expect to see some fundamental differences in the appointment of a property (in terms of kitchen and bathroom fittings, for example) depending upon whether it is used as a residence or as offices, and the market for offices is a different market to that for houses. Whether or not the differential between residential and office values is as great as Ms Hobbs asserted, it was apparent from Mr Orme's own evidence that there is a significant differential: even focussing only on those office properties which Mr Orme described as being in "improved" condition, values (expressed in pounds per square foot "psf") were said to be in the range of £141 - £157. In contrast, we were shown no evidence of an allegedly comparable residential property having a value which equated to less than about £174 psf – and the majority were valued at a figure considerably in excess of this. In short, comparing the Property with office properties is like comparing apples with pears.
23. The three residential comparables produced by the parties require closer individual consideration.

8 Mount Street

24. Mr Orme asserted that the freehold of this property sold in late 2014 for £250,000 (equating to £173.80 psf). However, the reliability of this evidence was challenged on behalf of the Council. Evidence was produced which showed that the freehold was last transferred on 13 August 2013 for £1,175, soon after it was acquired by the leaseholder by enfranchisement for the same price. Evidence was also produced which showed that the leasehold interest in the property was transferred on 19 August 2013 for £250,000 to the same transferee as the freehold six days earlier. It was submitted that this evidence casts considerable doubt on Mr Orme's primary assertion about the sale of the freehold (which was not corroborated by independent evidence). In any event, the Council challenges Mr Orme's assessment of the net internal area of the property, arguing that the correct equivalent value (assuming that the freehold was indeed sold for £250,000) would be £239.23 psf.

35 Mount Street

25. This is a four bedroom Georgian house occupying a prominent corner position at the top of Mount Street, a short distance from the Property. It is a double-fronted property, with a separate garage, and has been fitted out internally to a very high standard. Ms Hobbs produced evidence to show that the freehold was sold in January 2012 for

£670,000. She said that the property is now on the market again at an asking price of £725,000.

26. Mr Orme argued that this is a “better” property than 70 Rodney Street. He said that its net internal area is 2185 sq ft (equating to £306.64 psf at £670,000, and £331.80 psf at the new asking price of £725,000).

65 Hope Street

27. This is a five bedroom Georgian terraced house located on Hope Street, some 650 metres walking distance from the Property. It has a driveway and integral garage, and has again been fitted out internally to a very high standard. Ms Hobbs produced evidence to show that the freehold was sold in August 2015 for £800,000.
28. Mr Orme again argued that this is a “better” property and that it is in a more desirable location. He also argued that, at 3361 sq ft, it is larger than the Property (its sale price equating to £238 psf).

Discussion of the residential comparables and conclusion

29. Given the considerations mentioned in paragraph 24 above, we find the evidence concerning the value of 8 Mount Street to be unreliable and we attach no weight to it.
30. As far as 35 Mount Street and 65 Hope Street are concerned, there is actual market evidence available to us. Whilst the sale of 65 Hope Street occurred shortly after the valuation date, however, the transaction evidence relating to 35 Mount Street is less helpful – because it predates the valuation date by some three years. Moreover, we attach little weight to the current asking price for 35 Mount Street because we were shown no evidence that this price will actually be achieved.
31. There are also some significant differences between both 35 Mount Street and 65 Hope Street and the Property which, in our view, indicate that the Property is worth considerably less than either of the other two. 35 Mount Street has a prominent corner position and an attractive double-frontage (compared with the narrow, mid-terrace, frontage of the Property). 65 Hope Street has an additional bedroom. Both comparables are located within areas which are designated as “primarily residential areas” by the Unitary Development Plan (whereas the Property is in a “mixed use area”). Both comparables benefit from off-street parking and both appear to be fitted out internally to a particularly high standard.
32. There are also differences in the net internal areas of the properties. The differential in value by reason of size can be allowed for (within reason) by reference to “psf” values. Whilst we accept the Council’s view that residential properties are not ordinarily valued by reference to their internal area, there is undoubtedly a relationship between the

size of a house and its value. In a case such as this (where there is a dearth of good comparable evidence), ascertaining the psf values of available comparables and then adjusting for differences seems to us to be an appropriate approach to the valuation exercise.

33. In arriving at a valuation on this basis, we also had regard to Mr Orme's written evidence concerning the sales of four other four and five bedroom residential properties on Mount Street. These transactions had apparently occurred on various dates in the five years preceding the valuation date at sale prices equating to between £184 and £250 psf. Very little additional information was provided, and we have treated this evidence with caution as a result. However, Mr Orme was not challenged on this aspect of his evidence in cross-examination, and it does provide a limited amount of additional insight into residential property values in the vicinity of the Property.
34. Taking all of the above considerations into account, we are of the view that the likely value of the Property by reference to its net internal area as at the valuation date was in the region of £200 psf. We are mindful, in particular, that this indicates a differential in value between the Property and 65 Hope Street of just under 20% in terms of value by reference to floor area (and about 27% in absolute terms), and we consider this to be a fair reflection of 65 Hope Street's greater amenity. It is more difficult to make a similar comparison with 35 Mount Street (given the absence of reliable evidence as to this property's value on the valuation date). If the Council's valuation evidence were accepted, the differential by reference to floor area could be as high as 65%. The present value of 35 Mount Street has not been established, however, whereas its superiority to the Property in terms of location, character and amenity, has been established.
35. Our assessment that the Property may be valued by the application of a figure in the region of £200 psf leads us to a valuation of the freehold in the sum of £630,000.

Deduction for tenant's improvements

36. Mr Orme provided us with a list of the extensive improvements which Ms Brighton has made to the Property since acquiring the Lease. In his submission, the effect of these improvements has been to increase the value of the Property by £200,000.
37. Ms Hobbs, in her written valuation evidence, also indicated that £200,000 was the appropriate sum to be deducted for tenant's improvements. During the hearing, however, it seemed to be suggested that the Council's position on this matter was somehow conditional upon acceptance that the Property has an improved freehold value of £750,000, and Mr Orme's evidence was criticised on the basis that it did not include more detailed costings of the improvement works. This position is surprising given that there was no hint of such conditionality in Ms Hobbs' written evidence, or any attempt by her to

attribute an alternative value to the improvements. The parties had separately invited the Tribunal to value the improvements at £200,000 and we consider it appropriate to do so.

38. Ms Hobbs' valuation evidence had also suggested that a further deduction of £50,000 be made for "repairs". However, by the time of the hearing, both parties acknowledged that there is no statutory basis for making a deduction for repairs.
39. We therefore conclude that the value of the unimproved freehold of the Property with vacant possession on the valuation date was £430,000.

Valuation of the existing leasehold interest

40. The parties disagree as to the approach which should be taken to ascertain the value of Ms Brighton's existing leasehold interest in the Property. Mr Orme's view is that the Lease should be valued by reference to published graphs of relativity: on this basis he contended that the Lease should be valued at 63.5% of the value of the unimproved freehold interest with vacant possession.
41. In contrast, Ms Hobbs approach was to take as a starting point the figure of £205,000 which Ms Brighton paid for the Lease in May 2013, and then to adjust that figure upwards to allow for an assumed rise in the value of the Property between then and the valuation date. By these means Ms Hobbs valued the Lease at £250,000.
42. It was submitted on behalf of the Council that reliance upon graphs of relativity is not an appropriate means of valuation in circumstances where (as is said to be the case here) there is sufficient available information about actual market activity to enable valuation by other means. Relativity tables are only to be used as a last resort when there are insufficient comparables. Mr Orme did not accept this view: he stated that relativity values are an accepted method of valuing unexpired leases on the assumption that the Act confers no right to acquire the freehold or an extended lease ("the no rights assumption").
43. Contrary to the view expressed on behalf of the Council, we consider that very little evidence has actually been produced in relation to the value of comparable leasehold interests – there is certainly insufficient such evidence to enable us to value the Lease without some reference to more general evidence about the relativity between freehold and leasehold values. Although such evidence should not be relied upon without regard also being had to available market evidence, we agree with Mr Orme's view that tables or graphs of relativity values provide a useful and legitimate tool in the present context. In any event, the Council's apparent position – that there is a complete disconnect between the value of the Lease and the value of the freehold interest in the Property – is, in our view, unsupportable.

44. The sole evidence of an actual market transaction provided by Ms Hobbs was that of the acquisition of the Lease by Ms Brighton in May 2013 for the sum of £205,000. On the assumption that this was a true reflection of the then market value of the Lease – and we heard no evidence about this one way or the other – this is certainly useful evidence. However, it does not necessarily provide us with an easy route to a valuation of the Lease as at the valuation date. There are a number of reasons for this: first, there may have been a rise or fall in value as a result of changes in market conditions in the intervening two years or so; second, the unexpired term of the Lease had obviously diminished during that period; third, the expected effect of the statutory no rights assumption would be that there will be a difference between the value of the Lease sold with rights under the Act and its value without such rights; and, fourth, the Property was in significantly worse repair when Ms Brighton acquired the Lease than it was on the valuation date (Mr Orme said that, in addition to the sums expended on improvements, Ms Brighton had spent in the region of £130,000 on repairs to the Property prior to the valuation date).
45. Any one or more of the above four factors may require an adjustment to the price which Ms Brighton paid for the Lease in order to determine its present value for the purposes of the Act. However, Ms Hobbs' approach only takes account of the first of them (changes in market conditions) and, even then, does so only in a way which seems highly unsatisfactory: she offers no explanation for her assertion that the present value of the Lease has increased to £250,000 beyond a vague reference (unsupported by evidence) to “upward market movement”.
46. In contrast, Mr Orme places reliance on a number of different published sources of evidence of relativity values (excluding those sources which focus on Prime Central London or Greater London). He has taken an average of the data from those sources to produce an indicative relativity of 63.5% for the unexpired term of the Lease. We consider this to be an appropriate approach in the present circumstances. It produces a valuation of the Lease in the sum of £273,050 which we also consider to be reasonable bearing in mind the likely effects on the value of the Lease of the factors set out in paragraph 44 generally, and the likely effect on value of the repairs carried out by Ms Brighton in particular.

Price payable

47. The Tribunal has carried out its own valuation in the light of the above findings and conclusions (as shown in the Annex hereto) and has thus determined that the price payable under section 9 of the Act for the freehold interest in the Property is £120,981. It is appropriate to round up this figure to £121,000.

Application for a wasted costs order

48. The Council seeks an order for wasted costs against Orme Associates Property Advisers (the trading name of 27ST Limited) who have represented Ms Brighton throughout these proceedings. The Council contends that, as a consequence of Orme Associates' failure to file and serve Ms Brighton's statement of case on time, additional legal costs have been incurred by the Council which could have been avoided.
49. Rule 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 empowers the Tribunal to make an order in respect of costs under section 29(4) of the Tribunals, Courts and Enforcement Act 2007. The Tribunal may thus order a legal or other representative to meet all or part of any "wasted costs". These include costs incurred by a party as a result of any improper, unreasonable or negligent act or omission on the part of the representative or any employee of the representative.
50. The Tribunal's directions for the conduct of these proceedings required the parties to file and serve bundles – including statements of case – by 12 February 2016. The Applicant's representative neither complied with this requirement nor applied for an extension of time. However, in response to an enquiry from the Tribunal's administration, Mr Orme sent an email on 16 February in which he stated that the Applicant's bundles had been prepared, but had yet to be paginated and, as a result of staff absence, could not be posted to the Tribunal (or delivered to the Respondent) until the following day.
51. In response to Mr Orme's email, further directions were issued by Regional Judge Duffy in which it was made plain that this seemingly casual approach to compliance with the Tribunal's directions was unacceptable. Indeed, Judge Duffy proposed to strike out the application on the grounds of non-compliance and invited the parties to make representations in that regard. In the event, having had regard to an apology subsequently received from Mr Orme, and also having had regard to the substantial prejudice which might have been suffered by Ms Brighton had the application been struck out, the Tribunal decided not to strike it out. However, the Tribunal reminded the parties of its powers in respect of wasted costs orders.
52. The Council argues that the failure by Orme Associates to file and serve Ms Brighton's statement of case on time was an unreasonable act or omission. It seeks costs of £445.50 plus VAT which it says represents its solicitors' costs for 2.7 hours spent on the matter which would have been avoided had the statement of case been filed on time.
53. We agree that Orme Associates acted unreasonably, and that the late production of Ms Brighton's statement of case no doubt resulted in a small amount of additional work for the Council's solicitors. For example, we note that brief written representations were prepared and submitted to the Tribunal in response to the proposed strike out. Those

submissions made the point that the Tribunal's directions should ordinarily be complied with, but stated that the Council's position was that it was "in the Tribunal's hands" insofar as the proposal to strike out was concerned. Nevertheless, we are not persuaded that the preparation of such modest representations (even allowing for additional time spent chasing Orme Associates for the late bundle) should have taken 2.7 hours to complete or that an award of wasted costs is justified in the circumstances. The application for a wasted costs order is therefore refused.

ANNEX – Valuation

a) Market Value of Freeholder's Existing Interest

Term

Ground Rent	£	-	p.a.	
YP for 30.28 yrs @ 6%		13.8118		£ -

Reversion

Freeholder in Possession Value	£ 630,000	
Less Tenant's Improvements	£ 200,000	
Freeholder in Possession Value (Unimproved)	£ 430,000	
PV of £1 in 30.28 yrs @ 5.5%	0.1977	£ 85,011

Market Value

£ 85,011

b) Freeholder's Share of Marriage Value

Freeholder in Possession Value (Unimproved) £ 430,000

Existing Interests

Market Value of Freeholder's Interest	£ 85,011
Market Value of Lessee's Interest	
@ relativity of 63.5% of Freehold Value	£ 273,050

Value of Combined Interests £ 358,061

Marriage Value

£ 71,939

Freeholder's 50% share

£ 35,970

Enfranchisement Price (excluding costs)

£ 120,981