



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

**Case Reference** : **MAN/00CG/OAF/2017/0009**

**Property** : **345 Langsett Road, Sheffield, S6 2UP**

**Applicants** : **Country Management Services Limited**

**Respondents** : **Missing Landlord**

**Type of Application** : **Leasehold Enfranchisement, application for a determination as to the price to pay into Court for the freehold interest, Section 27 (5)(a) of The Leasehold Reform Act 1967.**

**Tribunal Members** : **Judge C. P. Tonge, LLB, BA  
Mr M. C. W. Bennett, BSc, MRICS**

**Date of Decision** : **13 July 2017**

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**DECISION**

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The Tribunal's determination of the price to be paid in to Court for the freehold interest by the Applicants under section 27 (5)(a) of the Leasehold Reform Act 1967 ("the Act") is £7,118.79.

## **Background**

1. The Applicant is the long leaseholder of 345 Langsett Road, Sheffield, S6 2UP ("the property"). The company holds the remainder of a lease for 125 years (less one day) on "the property", commencing on 25 March 1897. The Applicant (in the absence of a clearly defined annual ground rent) has apportioned the annual ground rent as 50 pence year. The Tribunal states at this point that this is a fair and just approach to the determination of ground rent and for the remainder of this Decision the Tribunal will treat the ground rent as being 50 pence per year.
2. The Respondent landlord cannot be found.
3. Proceedings were issued on 11 October 2016 in the County Court.
4. On 27 January 2017, District Judge Bellamy, sitting at Sheffield County Court made an order vesting the Landlord's interest in the Applicant that they may satisfy the criteria for the Landlord to be on notice of the Applicant's intention to purchase the Freehold. A declaration that the Applicant is entitled to purchase the Freehold interest from the Respondent and transferred the case to this Tribunal for the Tribunal to determine the price to pay for the freehold interest.
5. Directions were given on 24 April 2017. The Directions were to the effect that the Regional Judge had decided that the case could be dealt with without the need for an oral hearing and required the Applicant to notify the Tribunal should they require an oral hearing to be held. The Applicant did not request an oral hearing. The remainder of the directions were in the standard form.
6. On 16 June 2017 the Applicant was informed by letter sent to them by the Tribunal that the case would be determined on 3 July 2017, following an inspection of "the property".

## **The Law**

### **The Leasehold Reform act 1967**

**Section 9** Purchase price and cost of enfranchisement, and tenant's right to withdraw

(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.

(4) Where a person gives notice of his desire to have the freehold of a house and premises under this Part of this Act, then unless the notice lapses under any provision of this Act excluding his liability, there shall be borne by him (so far as they are incurred in pursuance of the notice) the reasonable costs of or incidental to any of the following matters:--

(a) any investigation by the landlord of that person's right to acquire the freehold;

(b) any conveyance or assurance of the house and premises or any part thereof or of any outstanding estate or interest therein;

(c) deducing, evidencing and verifying the title to the house and premises or any estate or interest therein;

(d) making out and furnishing such abstracts and copies as the person giving the notice may require;

(e) any valuation of the house and premises;

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.

**Section 27 Enfranchisement where landlord cannot be found.**

- (1) Where a tenant of a house having a right under this Part of this Act to acquire the freehold is prevented from giving notice of his desire to have the freehold because the person to be served with the notice cannot be found, or his identity cannot be ascertained, then on an application made by the tenant the court may, subject to and in accordance with the provisions of this section, make such order as the court thinks fit with a view to the house and premises being vested in him, his executors, administrators or assigns for the like estate and on the like terms (so far as the circumstances permit) as if he had at the date of his application to the court given notice of his desire to have the freehold.
- (2) Before making any such order the court may require the applicant to take such further steps by way of advertisement or otherwise as the court thinks proper for the purpose of tracing the landlord; and if after an application is made to the court and before the house and premises are vested in pursuance of the application the landlord is traced, then no further proceedings shall be taken with a view to the house and premises being so vested, but subject to subsection (7) below—
  - (a) 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; and
  - (b) the court may give such directions as the court thinks fit as to the steps to be taken for giving effect to those rights and obligations, including directions modifying or dispensing with any of the requirements of this Act or of regulations made under this Act.
- (3) Where a house and premises are to be vested in a person in pursuance of an application under this section, then on his paying into court the appropriate sum there shall be executed by such person as the court may designate a conveyance in a form approved by the court and containing such provisions as may be so approved for the purpose of giving effect so far as possible to the requirements of section 10 above; and that conveyance shall be effective to vest in the person to whom the conveyance is made the property expressed to be conveyed, subject as and in the manner in which it is expressed to be conveyed.
- (4) For the purpose of any conveyance to be executed in accordance with subsection (3) above, any question as to the property to be conveyed and the rights with or subject to which it is to be conveyed shall be determined by the court, but it shall be assumed (unless the contrary is shown) that the landlord has no interest in property other than the property to be conveyed and, for the purpose of excepting them from the conveyance, any underlying minerals.

- (5) The appropriate sum which, in accordance with subsection (3) above, is to be paid into court is the aggregate of—
- (a) such amount as may be determined by (or on appeal from) the appropriate tribunal to be the price payable in accordance with section 9 above; and
  - (b) the amount or estimated amount (as so determined) of any pecuniary rent payable for the house and premises up to the date of the conveyance which remains unpaid.
- (6) Where a house and premises are vested in a person in accordance with this section, the payment into court of the appropriate sum shall be taken to have satisfied any claims against the tenant, his executors, administrators or assigns in respect of the price payable under this Part of this Act for the acquisition of the freehold in the house and premises.
- (7) An application under this section may be withdrawn at any time before execution of a conveyance under subsection (3) above and, after it is withdrawn, subsection (2)(a) shall not apply; but where any step is taken (whether by the landlord or the tenant) for the purpose of giving effect to subsection (2)(a) in the case of any application, the application shall not afterwards be withdrawn except with the landlord's consent or by leave of the court, and the court shall not give leave unless it appears to the court just to do so by reason of matters coming to the knowledge of the applicant in consequence of the landlord being traced.
- (8) A conveyance executed under subsection (3) above shall have effect as provided by that subsection notwithstanding any interest of the Crown in the property expressed to be conveyed.

### **Inspection of "the property"**

7. The inspection of "the property" commenced at 10am on 3 July 2017. Present on behalf of the Applicant was Mr Ian Maitland a Sales Director of a lettings agent based in Sheffield. Also present was a gentleman who described himself as a caretaker of "the property", who held keys for "the property", Mr Nigel Massa.

8. "The property" is a mid terraced building, on three floors, that is currently being used as a house in multiple occupation, with four sub-tenants. "The property" is situated on a very busy main road in the Hillsborough district of Sheffield, the road also having trams running along it. It has a small overgrown front garden, the retaining boundary wall of which is leaning out by over two inches over the pavement and requires at least an inspection to ensure that the wall is safe. There is no private area to the rear, it having a shared common area with three other properties. An off shot building has been removed at the rear of "the property" to afford room for one vehicle to be parked in this common area. This work has been done in such a manner that "the building" now has bricks missing from the exterior of the kitchen wall. There is also a crack in the exterior kitchen wall that indicates downward movement of the ground and requires investigation.
9. The rear windows of the house are uPVC double glazed, the front windows are mainly aluminium double glazed. The front door is wooden and the window above is in a wooden frame and single glazed. Gutters on the second floor are wooden, the gutter on the ground floor kitchen roof is plastic. There is central heating provided by a wall mounted Baxi gas boiler. The care taker pointed out that the boiler is old and in frequent need of repair.
10. The ground floor rear door leads into the small off shot rear kitchen, this is fully fitted with dated kitchen furniture and is very small, such that the sub-tenants have had to place white goods in the only reception room, a small sitting room. What would have been the second reception room has been converted into a private room, with a locked door for a sub-tenant.
11. Stairs lead to the first floor. There is a bathroom with an electric shower over the bath. The suite is old. There are two bedrooms that now have locked doors to provide accommodation for sub-tenants. There is a separate room containing a toilet the door to which is currently being kept locked, the sub-tenants having no access because the toilet is not working.
12. Stairs lead up to the second, attic floor which contains two very small rooms, one being completely empty and the other being a locked bedroom for a sub-tenant.
13. Generally "the property" is in a rundown condition, in a very busy main road and lacks even the amenity of a private rear area.

## **The written case on behalf of the Applicant**

14. The Applicants rely upon a report from Mr John M. Francis, a Director of the Sheffield based Crapper and Haigh Chartered Valuation Surveyors and a Fellow of the Institution of Chartered Surveyors. The report contains a certificate as to the truth of the content of the report and Mr Francis describes himself as an expert witness who has an overriding duty to be impartial and objective.
15. Mr Francis provides a five page report in which he deals with the relevant factors to be taken into consideration in determination of the price to be paid for this freehold interest and details the method that he has used in asking the Tribunal to decide that the price to be paid should be £7,118.79.

## **The determination**

16. The Tribunal accepts Mr Francis as an expert in valuation upon whom the Tribunal can place appropriate reliance.
17. The first issue for the Tribunal to decide is what is the open market capital value of "the property". The expert suggests that this should be £120,000 and he states that in this determination he has used his own experience and expertise, having regard also to data obtained in an internet search for similar properties in the immediate area. The Tribunal has performed a similar internet search and using its own skill and experience agrees with Mr Francis. The capital value of "the property" is £120,000.
18. The Tribunal then considers the calculations to be made in this case. The Tribunal agrees with Mr Francis that the correct approach to these calculations is that set out in the Upper Tribunal case of *Re Clarise Properties Ltd* [2012] UKUT 4 (LC); [2012] L. & T. R. 20; [2012] 1 E. G. L. R. 83; [2012] 17 E. G. 112; [2012] 8 E. G. 98 ( C. S.).
19. The Tribunal notes that where Mr Francis has used a deferment rate in his calculations he has not used the deferment rate as recommended in the guidance contained within the House of Lords judgement in the *Sportelli* case [2008] UKHL 71. The *Sportelli* guidance suggests a deferment rate for a house of 4.75%. Mr Francis points out that in the Sheffield area 5.5% has been accepted as the correct percentage for some time. The Tribunal accepts this as being correct, there being significant differences between the Prime Central London Area and Sheffield, justifying the use of a different deferment rate.

20. The Tribunal having determined these issues and affirming the approach taken by Mr Francis, the Tribunal determines that it should follow exactly the same approach as that taken by Mr Francis. The Tribunal has checked the arithmetic in the calculations and determines that it agrees with Mr Francis that the price to be paid for the freehold interest in "the property" is £7,118.79.

### **The Decision**

21. The Tribunal decides that the price to be paid into Court under section 27 (5)(a) of "the Act" is £7,118.79.
22. This case must now be transferred back to the Sheffield County Court.