



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

Case Reference : **BIR/00CR/OAF/2019/0002**

Property : **68 Marlborough Road, Woodsetton,
Dudley, West Midlands, DY3 1BL**

Applicants : **Mr P and Mrs T Garner**

Representative : **Midland Valuations Limited**

Respondent : **Unknown**

Representative : **N/A**

Type of Application : **Application to determine the amount
to be paid in to Court for the transfer
of the freehold interest under the
Leasehold Reform Act 1967 (as
amended)**

Tribunal Members : **Judge M K Gandham
Mr D Satchwell FRICS**

**Date and venue of
Hearing** : **10th May 2019
Centre City Tower, 5 – 7 Hill Street,
Birmingham B5 4UU**

Date of Decision : **24 May 2019**

DECISION

Decision

1. For the purposes of section 27(5) of the Leasehold Reform Act 1967 ('the Act'), the Tribunal determines that, taking account of the evidence adduced and the Tribunal's own general knowledge and experience, the appropriate sum to be paid into Court for the acquisition of the freehold interest in the property known as 68 Marlborough Road, Woodsetton, Dudley, West Midlands, DY3 1BL ('the Property') under section 27(3) is:
 - a) £1,006, being the price payable in accordance with section 9(1) of the Act; and
 - b) the amount of any pecuniary rent payable for the Property which remains unpaid is nil.

Reasons for Decision

Introduction

2. On 14th November 2018, by Order of District Judge Wooderson sitting in the Birmingham County Court, the Court ordered Mr Paul Edward Garner and Mrs Tracey Garner ('the Applicants') to apply to the Tribunal to determine the price payable for the Property under section 9(1) of the Leasehold Reform Act 1967. The Tribunal received an Application, under section 21(1)(cza) of the Act, on 11th March 2019.
3. The Tribunal issued Directions on 12th March 2019 and, in accordance with the Tribunal's instructions, the Applicants' Representative submitted a report, which the Tribunal received on 26th March 2019.
4. The Property is held under a lease dated 26th April 1712, made between (1) William Taylor and Mary Taylor and (2) James Newman ('the Lease'). The Land Registry does not hold a copy of the Lease but the Applicants' leasehold title confirms that the lease was granted for a period of 380 years at a peppercorn rent. At the valuation date, 8th May 2018, there were approximately 73.97 years unexpired.

The Law

5. Section 27 of the Leasehold Reform Act contains detailed provisions for the application to the County Court. Subsection (3) provides that, upon the payment in to Court of the 'appropriate sum,' a conveyance shall be executed as provided in that subsection. Subsection (5) of the Act provides as follows in relation to the determination of the 'appropriate sum':

(a) such amount as may be determined by (or appeal from) a leasehold valuation tribunal as to 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. It is, therefore, the duty of the Tribunal to determine the value of the Property under section 9 of the Leasehold Reform Act 1967, as amended by the Commonhold and Leasehold Reform Act 2002, and also the amount of any pecuniary rent outstanding up to the date of the conveyance.

Inspection

7. The Tribunal inspected the Property on 10th May 2019, in the presence of the Applicants.
8. The Property is a mid-terraced, two storey house, built circa. 1970, in brick and tile. It is located on a residential estate, just off the A457, in Woodsetton, Dudley, on a small, narrow plot.
9. It has a sloped garden to the front, with a pathway leading down to the porch. To the rear of the house, there is a small garden, with a lawned area to the front and a paved area to the back. The Property does not have the benefit of any off-road parking or a garage, although there are lay-bys, on both sides of the road, for public parking.
10. The Property was accessed via the porch. The ground floor of the accommodation comprised a lounge, kitchen/diner, w.c. and uPVC conservatory. The first floor comprised a landing, two double bedrooms, one single bedroom and a family bathroom (with a bath, overhead shower, w.c. and basin).
11. The Property was in a good condition and had been fully modernized. It was centrally heated and the windows were double-glazed.

Hearing

12. Following the inspection, a public hearing was held at the Tribunal's hearing rooms in Centre City Tower in Birmingham. The Hearing was attended by Mr Moore, from Midland Valuations Limited, on behalf of the Applicants.

The Applicants' Submissions

Basis of Valuation

13. Mr Moore submitted that the Property should be valued in accordance with section 9(1) of the Act.

Entirety Value

14. Mr Moore submitted an entirety value of £125,000. He stated that there were two 'excellent' comparables, which were both located in close

proximity to the Property: the sale of 62 Marlborough Road in April 2018 at £123,000 (an identical house, albeit an end-terrace rather than a mid-terrace) and the sale of 49 Marlborough Road in February 2018 for £124,500 (a mid-terrace house, which appeared to have similar accommodation to the Property).

Site Value Apportionment

15. Mr Moore submitted that, as the plot was extremely narrow - the width being only 4.65 metres - and was a mid-terrace house, there was virtually no scope for any enlargement. In addition, he referred to the fact that the land fell away to the rear and to the side, hence the reason the houses, although terraced, were “stepped” in pairs.

Capitalisation Rate

16. Mr Moore confirmed that there was no ground rent reserved by the Lease and, therefore, no rent to be capitalised.

Deferment Rate

17. Mr Moore submitted that it was appropriate to adopt a deferment rate of 5.5%. His starting point for his consideration of the deferment rate was 4.75%, as per the decision in *Cadogan and Another v Sportelli and Another* [2007] EWCA Civ 1042 (*Sportelli*). He stated that, since February 2009, the correct deferment rate for properties outside of Prime Central London (PCL) appeared to be 5%, following the decision of the Lands Tribunal in *Re Mansal Securities Limited and Others* [2009] 20 EG104 (*Mansal*), to reflect the fact that there was a disadvantage to the holder of a s.9(1) investment, who was obliged to grant a 50-year extension at the end of the term if the leaseholder so desired.
18. He referred to the comments of N J Rose FRICS at paragraph 27 of the *Mansal* decision:

“Since the reversion in the case of section 9 (1) is to a ground rent only, a potential purchaser is likely to require a higher risk premium to compensate for the increased volatility and illiquidity than if the reversion also included a house standing on the site. The increased risk would, however, be offset to some extent by the reduced risk of deterioration and obsolescence. I find the overall result would be to increase the risk premium to 4.75% and thus to increase the deferment rate to 5%.”

19. He stated that he was fully aware that, for the past couple of years, the *Mansal* addition had been ignored by the Tribunal but argued, in the strongest terms, that the 0.25% addition should remain due to the enormous advantage to the holder of a s.9(1A) or s.9(1C), who can obtain vacant possession at the end of the term. He argued that, the fact that the ultimate reversion is potentially 123.97 years, as opposed to 73.97 years,

must be less attractive to an investor purchaser due to the increased risk of illiquidity.

20. Mr Moore submitted an addition of 0.5% should also be made, to reflect the decision in *Zuckerman & Others v Trustees of the Calthorpe Estate* (LRA/97/2008) (*Zuckerman*), in respect of the lack of growth between Prime Central London (PCL) and the West Midlands. In support of this, he referred the Tribunal to the graph included within his written submission, which compared the rate of growth for properties in the West Midlands to that of Cadogan Square (in the heart of PCL), utilising the Nationwide House Price Index, for the period from 1974 to May 2018, the valuation date. In addition, he supplied a table detailing Land Registry Price Index figures for both the West Midlands and Kensington & Chelsea which, he stated, indicated a very clear difference in the increase in property prices between the two areas.
21. Taking in to account his above submissions, he calculated the deferment rate as 5.50% as follows:

Risk Free Rate	2.25% minus	}	
Real Growth Rate	2.00% plus	}	as per <i>Sportelli</i>
Risk Premium	4.50% plus	}	
Additional Risk Premium (to reflect s.9(1) as opposed to s.9(1A))	0.25% plus	}	as per <i>Mansal</i>
Lower Growth Rate Outside PCL	<u>0.50%</u>	}	as per <i>Zuckerman</i>
Deferment Rate	<u>5.50%</u>		

Schedule 10 Allowance

22. Following the decision of the Upper Tribunal in *Lomas Drive* [2017] UKUT 0463 (LC) (*Lomas Drive*), Mr Moore submitted that a Schedule 10 deduction to the Standing House value at the second reversion was only appropriate in matters in which there were very short leases. As the current Lease still had 73.97 years remaining, he believed that no deduction was warranted.

Valuation

23. Applying those figures to the valuation formula Mr Moore arrived at a value of £829.

The Tribunal's Deliberations

24. The Tribunal considered all of the written and oral evidence submitted and summarised above.

Enfranchisement Price

25. The Tribunal is satisfied that the approach taken by Mr Moore was the proper approach and that the valuation of the Property should be under section 9(1) of the Act, based on the rateable value and low rent.

The valuation exercise under section 9(1) is in three stages:

Stage (1) the valuation of the remainder of the existing term (73.97 years) by capitalising the Ground Rent,

Stage (2) Valuing an assumed extension to the lease of 50 years, and

Stage (3) Valuing the Property with assumed vacant possession after the end of the existing term plus 50 years (123.97 years)(subject to tenant's rights under Schedule 10 of the Local Government and Housing Act 1989 Act).

26. The Tribunal is satisfied that the Entirety Value figure submitted by Mr Moore is reasonable, based on the very good comparables he submitted and the Tribunal's own general knowledge.
27. Regarding the Site Value Apportionment, the Tribunal notes that the plot was extremely narrow and sloping, hence there was very limited scope for any enlargement. As such, the Tribunal agrees with the figure of 30% submitted by Mr Moore. In addition, the Tribunal acknowledges that the Lease is granted on a peppercorn rent, so there is no rent to be capitalised.
28. The Tribunal notes Mr Moore's arguments regarding illiquidity, but is not persuaded by them in this instance, and determines that a deferment rate of 5.25% should be adopted, as follows:

Risk Free Rate	2.25% minus
Real Growth Rate	2.00% plus
Risk Premium	4.50% plus

Lower Growth Rate Outside PCL 0.50%

Deferment Rate 5.25%

29. In respect of any Schedule 10 allowance, the Tribunal concurs with the reasoning of Mr Moore, in that, following the recent decision in *Lomas Drive* - in which the Upper Tribunal made no deduction in respect of Schedule 10 rights in relation to the property at 39E Walmley Ash Road, where the lease had an unexpired term of 46 years - it follows that no deduction should be made in this matter, where the term remaining is greater.

The Tribunal's Valuation

- 30. Applying those determinations, the Tribunal's valuation is detailed in the Appendix.
- 31. The Lease is granted on a peppercorn rent. In addition, under the provisions of sections 47 and 48 of the Landlord and Tenant Act 1987 and section 166(1) Commonhold and Leasehold Reform Act 2002, there is a requirement to notify long leaseholders that rent is due. A tenant is not liable to make payment of rent under a lease unless the Landlord has given him notice relating to the payment. The Tribunal determines that no amount is payable for rent under section 27(5)(b) of the Act as there has been no demand for rent.

Appeal

- 32. If the Applicants are dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
.....
Judge M. K. Gandham

Appendix

68 Marlborough Road, Dudley DY3 1BL- Freehold Enfranchisement May 2018

Term Commencement	26/04/1712
Term (years)	380
Lease Expiry	26/04/2092
Date of Valuation	08/05/2018
Unexpired Term	73.97
With 50 year extension	123.97

Term

Rent Receivable	£	-	£	-
-----------------	---	---	---	---

Reversion 1

Entirety Value	£	125,000.00		
Site Percentage	30.00%	£	37,500.00	
S15 Modern Ground Rent	5.25%	£	1,968.75	
YP 50 years @ 5.25%			17.57281	
		£	34,596.47	
PV 73.97 years @ 5.25%			0.02271	£ 785.71

Reversion 2

Standing House Value	£	125,000.00		
PV 123.97 years @ 5.25%			0.00176	£ 219.80
				£ 1,005.51
say				<u>£ 1,006.00</u>