



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

Case Reference	: MAN/00BU/OAF/2021/0043
Property	:35 Medway Crescent Altrincham WA14 4UA
Applicants	: Sean Mark Hackett Jennifer Claire Hackett
Representative	: N/A
Respondent	: Gray's Inn Capital Limited
Representative	: Stevensons Solicitors
Type of Application	: Leasehold Reform Act 1967 Section 21(1)(a), section 21(ba) and section 21(2) for a determination of the price payable, reasonable costs payable under section 9(4) of the 1967 Act and the terms of the transfer.
Tribunal Members	: Judge T N Jackson Mr K Kasambara BSc MSc MRICS
Date and venue of Hearing	: Paper determination 16 September 2022
Date of Decision	: 21 September 2022

DECISION

Decision

We determine that:

The price payable by the Applicants for the acquisition of the freehold interest in the Property in accordance with section 9(1) of the Leasehold Reform Act 1967 is **£1200**;

The reasonable legal costs of the Respondent are **£654** plus disbursements and VAT (if applicable); and

The terms of the transfer are those set out in the Respondent's submission (pages 35-39);

Reasons for decision

Introduction

1. The Applicants have applied under section 21 (1) (a), Section 21 (1) (ba) and section 21(2)(a) of the Leasehold Reform Act 1967 ('the 1967 Act') for a determination of the price payable, the reasonable costs payable under section 9(4) of the 1967 Act and the terms of the transfer.

Background

2. The freehold title to the Property is registered at HM Land Registry under title number GM694105 in the name of the Respondent.
3. On 15 April 1987, the then freeholder of the property, John Maunders Group plc granted a long lease of the Property to Philip William Barker and Patricia Barker. The lease was granted for a term of 999 years from the 15th of April 1987 with the ground rent payable of £60.00 per annum.
4. The leasehold title to the Property is registered at HM Land Registry under Title Number GM449683 in the name of the Applicants.
5. The rateable value of the Property as the time it was set was £343.
6. By Notice dated 16 July 2021, the Applicants claimed their right to buy the freehold of the Property. On 21 July 2021, the Respondent's solicitors gave notice to the Applicants requiring a) payment of a deposit of £180 and b) the deduction of the Applicants' title including the provision of a copy of the Lease. The deposit was paid and further copies of the Lease and leasehold title were sent to the Respondent's solicitor on 4 August 2021. By Notice of Reply dated 6 September 2021, the Respondent admitted the right and, inter alia, stated that the Property should be valued in accordance with section 9(1) of the 1967 Act.
7. On 29 November 2021, the Applicants emailed the Respondent's solicitors proposing a price of £925 (based on a valuer's report dated 9 September 2020) and enclosed a draft transfer.

8. By letter dated 1 December 2021, the Respondent's solicitors advised the Applicants of a counter proposal of £1750 and that the draft transfer sent by the Applicants would be considered once the premium was agreed or determined by the Tribunal.
9. On 13 December 2021, the Applicants made applications to the Tribunal for determination of the price payable, the terms of the transfer and the amount of the landlord's reasonable costs.
10. Directions were issued on 26 April 2022.
11. The Applicants emailed the Respondent's solicitors on 10 May 2022 stating '*with a view to narrowing the issues and saving costs, please confirm whether the draft transfer is in an agreed form (save for the issue of consideration)*'. The Respondent's solicitor did not respond directly but included a draft transfer in his submission for the Tribunal.

Inspection/Hearing

12. The parties had agreed that the matter be dealt with on the basis of a paper determination and without an inspection. After reading the papers, the Tribunal agreed that that was appropriate.

Submissions

13. The Applicants submitted a written Statement of Case. They included a draft transfer and a copy of a valuation report dated 9 September 2020, which, on a desk top basis, valued the Property at £925 as at September 2020. The valuation report doesn't explain how the value of £925 was arrived at.
14. The Respondent's solicitor submitted a written Statement of Case. The Respondent's solicitor included a copy of a valuation report dated 19th May 2022 which, on a desk top basis, valued the Property at £4800 as at 16th July 2021. Similarly, the valuer doesn't explain how he arrived at the value of £4,800.
15. Regarding the terms of the Transfer, the Respondent's solicitor submitted that as the terms were in accordance with the Act that there could not be any reasonable objection to the same.
16. In relation to costs under section 9 (4) of the 1967 Act, the Respondent's solicitor attached a Schedule of Costs, attached as Appendix A to this decision. All work was done or to be done by the Respondent's solicitor who qualified in 1983 and who, since the 1990's had specialized in this work. He submits that the work is specialized and a premium charge is appropriate but the hourly rate charged is only slightly more than the recommended charging rate set out in the Guide to the Summary Assessment of Costs 2021 Edition.
17. No valuation costs are claimed by the Respondent from the Applicants as the relevant fee has already been reimbursed by the Applicants to the Respondent.
18. Neither party lodged a Statement in Reply to the other party's Statement of Case as allowed by the Directions.

The Law

19. Section 9 (1) of the 1967 Act provides that:

‘Subject to subsection (2) below, the price payable 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 the act conferred no right to acquire the freehold, and if the tenancy has not been extended under this Part of the 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.*

The reference in this subsection to members of the tenant’s family shall be construed in accordance with section 7(7) of this Act.’

20. Subsection 2 is not relevant as the rateable value of the Property was below £500.

21. Section 9(4) of the 1967 Act provides that:

‘Where a person gives notice of his desire to have the freehold of a house and premises under this Part of the Act, then unless the notice lapses under any provisions 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 any 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 going to be borne by the purchaser would be void'

Deliberations

Valuation

22. Both parties agree that the valuation should be in accordance with section 9(1) of the 1967 Act. Where Section 9(1) applies, the purchase price is determined on the basis of the value of the land and there is no element of marriage value. We have had regard to the Applicants' valuer's report 9 September 2020 (pages 64-70 of the Applicants' submission) and the Respondent's valuer's report of 19 May 2022 (pages 41-43 of the Respondent's submission).
23. The Applicants' valuer's report dated 9 September 2020 refers to a proposed application to acquire the freehold of the house and therefore he has not valued the Property as at 16th July 2021, the date of the application, which is the date with which we are concerned.
24. We note that the Applicants' valuer valued the Property on the basis of 'material valuation uncertainty' as per VPS3 and VPGA 10 of the RICS Red Book Global due to the Covid-19. He considered that he could attach less weight to previous market evidence for comparison purposes to inform opinions of value. He says that due to Covid, *'we are faced with an unprecedented set of circumstances on which to base a judgement'*. He says that which *'Consequently less certainty, and a high degree of caution should be attached to the valuation than would normally be the case. Given the unknown future impact that Covid 19 might have on the real estate market, we recommend that you keep the valuation of this Property under frequent review'*.
25. The Applicants' valuer did not have the rateable value and therefore was unable to confirm the bases upon which the premium should be valued but stated that the valuation arrived on either of the prescribed bases would be the same, with which we agree. The valuer then proceeded to value the freehold reversionary interest at £925. It appears that he capitalised the ground rent of £60 pa at an initial yield of about 6.5% over the remainder of the lease term. He, however, used the valuation date of 9 September 2020 which, as stated earlier, is incorrect.
26. By a letter dated 1 December 2021, the Respondent made a counter offer of £1,750 to the Applicants. The valuation of £1,750 seems to have been derived from the capitalization of the ground rent of £60 pa at an initial yield of about 3.4% over the remainder of the lease term.
27. The Respondent's valuer has valued the Property as at 16 July 2021 in a report dated 19 May 2022. He states that as the valuation is under section 9 (1) of the Act, a calculation of marriage value is not required. He did not refer to the rateable value. In relation to the calculation of the term, i.e. the right to receive at the date of valuation the rent of £60 per annum for the remainder of the lease, he has used a capitalization rate of 1.25%, being the National Loans Funds Rate 30/30½ years at the date of valuation. The valuer refers to the reversion as being 98½ years distant

and therefore the value to be nominal. The Respondent's solicitor does not provide a reason for the departure from the original valuation of £1,750 at paragraph 26 above to the second valuation of £4,800 at paragraph 27.

28. We note the rateable value of £343 and therefore the provisions of section 9(2) do not apply. We agree that no calculation of marriage value is required. We do not accept the National Loans Fund Rate as being the appropriate rate as it does not reflect the property market rates, although we do accept that a ground rent of £60 pa is a very safe, very low risk and secure investment that is likely to generate very low capitalisation rates. Based on our experience and knowledge as an expert Tribunal, we determine that the appropriate capitalization rate for the £60 ground rent pa over the remaining lease term is 5% resulting in a value of £1200, that is $(100/5 \times £60 \text{ ground rent})$. The 5% capitalisation rate is more appropriate and reasonable for investment properties such as house ground rents which can be frequently sold on, passing from one buyer to another, hence impacting on risks levels.
29. As at 16 July 2021, the reversion had 965 years rather than the 981 referred to by the Respondent's valuer, but we agree that the value is nominal.
30. We determine the price payable to be £1200.

Legal costs

31. We have reviewed the activities outlined in the Schedule of Costs attached as Appendix A to this Decision and confirm that they fall provisions of section 9(4) of the 1967 Act. However, as the terms of the transfer have been determined by the Tribunal, the Respondent's solicitor no longer has to carry out this activity and we delete the 3 units identified for 'agreeing draft transfer'.
32. Whilst we accept that this type of work can be complex, this particular case is not. It involves registered title for both freehold and leasehold. It does not involve any novel issues and required the minimum of activity, as is evidenced by the limited activities claimed. We think that in this particular case, a reasonable amount of time to be spent on the whole process by a solicitor experienced in this area is no more 3 hours (which, coincidentally matches the time identified in the Schedule of Costs after the above deduction).
33. We had regard to the Guidance to the Summary Assessment of Costs. Mr Stevenson has 39 post years qualification experience, is a specialist in this area of work and is a Category A fee earner. We are unclear as to why it was necessary for a Category A fee earner to carry out the work on this particular case, bearing in mind its simplicity and the value involved. We are not sure that there could be a simpler case. We also note that it took approximately a month for the Respondent's solicitor to respond to receipt of the deposit and the deduction of title from the Applicants and that he does not appear to have responded to the Applicants' email of 10 May 2021 in which they sought to narrow the issues and save costs. Due to the simplicity of the case, we determine that the work could have been carried out by a Grade B fee earner i.e. solicitor or legal executive with of over 4 years' experience. We are not told why Mr Stevenson in person carried out the work- it may have been that the Respondent's client insisted that he do so. However, the Tribunal does not consider that this means that the Applicant's have to pay for it if the work could properly be carried out by a less expensive though experienced fee earner.

34. Mr Stevenson's office is based in Norfolk NR20 4HB and we therefore need to consider the National 2 guideline rates which suggest hourly rates of £255 and £218 for Grade A and Grade B solicitors respectively. Mr Stevenson's hourly rate is charged at £265. For the reasons set out above, we determine that it is reasonable for a Grade B fee earner to carry out the work and that the work should reasonably take no more than 3 hours, which equates to £654 plus VAT (if applicable).
35. We accept the disbursements of £15 Special and Recorded delivery (plus VAT if applicable) and £9 Land registry fee.

Terms of transfer

36. The draft transfer provided by the Respondent is in the standard format TR1 and the same format as that originally proposed by the Applicants with the exception of the deletion in paragraph 11 of an indemnity covenant inserted by the Applicant but the addition in the same paragraph of definitions and the transferee's covenants (Respondent's bundle pages 35-39). The Applicants did not provide a Statement in response to the Respondent's submission in which they could have objected to the proposed terms of the transfer, and in the absence of such objection, and on the face of the draft, we can see no reason why it should not be agreed in the terms proposed by the Respondent's solicitor and we so determine.

Appeal

37. If either party is 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 and must state the grounds on which they intend to rely in the appeal.

Judge T N Jackson
21 September 2022

Appendix A

Schedule of Costs

All work done or scheduled to be done by G N Stevenson, Solicitor qualified 1983 Grade A Fee Earner (GNS) whose charging rate was £265 plus VAT per hour.

Each unit=1/10 of an hour

23.7.21	Receiving instructions in respect of Notice dated 16.7.21. Advising client as to procedure.	4
27.7.21	Considering Notice of 16.7.21 and validity thereof	5
30.7.21	Considering freehold Title and Plan, Leasehold Title and Plan and Lease	5
21.7.21 5.8.21	Requesting deposit and dealing with receipt thereof.	4
1.9.21	Drafting Counter Notice	4
	Preparing draft transfer	3
Estimated	Agreeing draft transfer	3
Estimated	Completion procedure	5
TOTAL	3.3 x 265	

Total costs claimed

Time spent/to be spent	£874.50
VAT@20%	£174.90
Special delivery and recorded delivery	£15.00
VAT @ 20%	£3.00
Land Registry fee	£9.00
TOTAL	£1076.40