



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

Case Reference : CHI/19UJ/OAF/2015/0001

Property : 460 Dorchester Road, Weymouth, Dorset.  
DT3 5BS

Applicant : Ms C A Taylor

Representative : Pengillys Solicitors

Respondent : Landlord not known

Representative : ---

Type of Application: Enfranchisement claim under the Leasehold Reform Act 1967 ("the 1967 Act") : Missing Landlord

Tribunal Members : Judge P.J. Barber  
Mr P D Turner-Powell FRICS Valuer Member

Date of Decision : 16th April 2015

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**DECISION**

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## **DECISION**

- (1) The Tribunal determines that the price payable for the Property shall be £2,425.00 (including the amount for unpaid rent).

## **BACKGROUND**

1. The Applicant issued a claim in Weymouth County Court on 14<sup>th</sup> January 2015 under Claim Number Bo0WY005 for determination of her entitlement by virtue of the provisions of Part 1 of the 1967 Act to acquire the freehold of the house and premises at 460 Dorchester Road, Weymouth, Dorset DT3 5BS (“the Property”)
2. By Order of District Judge Bloom-Davis dated 3<sup>rd</sup> February 2015, the proceedings were transferred to the First-tier Tribunal to determine the price payable for the Property and the amount of unpaid rent and thereafter to be returned to the County Court for further disposal.
3. By Directions dated 11<sup>th</sup> February 2015, the Tribunal required the Applicant to file a bundle of specified documents in the Tribunal by 11<sup>th</sup> March 2015. The directions further provided that the Tribunal would determine the matter without an oral hearing unless a party objected within 28 days of the date of receipt of the directions. No objection has been received by the Tribunal in this regard.
4. The Applicant Ms C A Taylor is the registered proprietor of two registered titles that affect the Property. The main leasehold title for the house is registered with Good Leasehold Title under Title Number DT64986 pursuant to a lease dated 25<sup>th</sup> March 1779 made between John Pinney (1) Joseph Winzar (2) (“the Lease”) for a term of 300 years from 25<sup>th</sup> March 1779 and at an annual rent of £0 7s 6d (£0.375p). There is also a subsidiary freehold title for part of the garden registered with Title Absolute under Title Number DT60456.
5. The Applicant had acquired both registered titles in August 1994 with her former husband, but she acquired sole ownership of both titles following a divorce in or about 2002. With a view to selling the whole of the Property as a consolidated freehold interest, the Applicant engaged solicitors in order to acquire the freehold reversion in respect of the Lease. Ms Taylor has no original copy of the Lease and is unaware of the identity or whereabouts of the landlord. Advertisements were placed in the press in November 2014 enquiring as to the whereabouts of John Pinney`s successors in title, but without any responses being forthcoming.
6. The Order of District Judge Bloom-Davis referred to at paragraph 2 above, was to the effect that service of a claim form in respect of the Applicant`s claim to entitlement to enfranchise be dispensed with and the County Court ordered the Tribunal to determine the price payable for the Property and determine the amount of unpaid rent.
7. Pursuant to the directions of 11<sup>th</sup> February 2015 referred to at paragraph 3 above, the applicant`s solicitors Pengillys, filed a bundle of documents for consideration by the Tribunal in regard to such determination as the Tribunal is required to make. Such bundle includes a copy of a Valuation Report dated 6<sup>th</sup>

March 2015 issued by Mr S A Higley BSc, FRICS (“the Valuation”), setting out details of his qualifications, his valuation and a formal declaration as expert. Following an initial review of the bundle, the Tribunal suggested that Mr Higley might wish to revisit certain of his calculations and subsequently Mr Higley wrote to the Tribunal on 14<sup>th</sup> April 2015 appending a revised Appendix 6 for substitution for the original Appendix 6 in the Applicant’s bundle.

### **THE LAW**

8. Section 27(5) of the 1967 Act provides that :

*“(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.”*

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

*“9(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...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 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 VALUATION**

9. The Valuation issued by Mr Higley referred to the legal basis on which such valuation was being undertaken, and to the effect that under section 9(1) of the 1967 Act, the premium is made up of the aggregate of:-

- (1) The capital value of the freeholder’s right to receive ground rent of 37.5 pence per annum for the next 64 years or so, plus
- (2) The Freeholder’s assumed right to receive a “modern ground rent” for a further 50 years beyond the current lease expiry date, plus

- (3) The reversion to the value of the property deferred 114 years or so (ie 64 years + 50 years)

#### Value of the Ground Rent

Mr Higley submitted that as the ground rent is fixed at a low level, it is unattractive, as the costs of collection and administration outweigh the value of the income itself. Accordingly, and applying a relatively high yield of 10%, Mr Higley calculated a nominal value of £4.00.

#### Value of the First Reversion

Mr Higley applied 35% of the value of the hypothetical property in order to assess the site value at £105,000.00. Mr Higley then applied 7% to that value as the modern ground rent, resulting in a figure of £7,500.00, and he then calculated a net figure of £1,326.00.

#### The Value of the Second Reversion to 2129

Mr Higley estimated value of the property at £275,000, and then adjusted that figure by ascribing 80% to the leasehold title in DT64986, ; Mr Higley then deferred that sum at 4.75% following the decision in *Cadogan v Sportelli* resulting in a capital value to the second reversion of £1,088.00.

Mr Higley then added together the component amounts, namely £4.00; £1326.00 and £1088, resulting in an aggregate figure of £2418 which he then rounded up to £2425 as the total price payable.

#### **THE DETERMINATION**

10. The Tribunal did not carry out any inspection of the Property but has nevertheless taken into account all the written submissions and papers in the bundle. In regard to the Report, the Tribunal considered and agreed in principle the calculations, and has no reason to depart from those calculations or to take issue with the methodology used.
11. In regard to the amount due for unpaid ground rent, any claim for such would be limited by virtue of the Limitation Acts to a six year period. This would equate at £0.375p per year, to a total sum payable of £2.25. Accordingly such amount of £2.25 is already taken into account by Mr Higley, in his "rounding up" of the calculated figure of £2,418.00 to £2,425.00.
12. We made our decisions accordingly.

Judge P J Barber

#### Appeals :

1. 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.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for 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.

4. The application for permission to appeal must 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.