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

**Case Reference** : **MAN/00BW/OAF/2015/0027**

**Property** : **39 Old Road, Ashton in Makerfield, Wigan,  
WN4 9BG**

**Applicants  
Represented by** : **John J Kelly and June M Preston  
Frodshams Solicitors**

**Respondent** : **Richard Todd**

**Type of  
Application** : **Leasehold Enfranchisement, Application for  
a Determination as to the Price to Pay and to  
Determine what should be contained in the  
Conveyance, Section 21 of the Leasehold  
Reform Act 1967**

**Tribunal Members** : **Judge C P Tonge, LLB, BA  
Mr P E Mountain, FRICS**

**Date of Decision** : **15 February 2016**

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**DECISION**

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## **Background**

1. The Applicants are the long leaseholders of 39 Old Road, Ashton in Makerfield, Wigan, WN4 9BG (“the property”). They hold the remainder of 999 year lease on “the property”, at a ground rent of £2 per year.
2. The Respondent is the freeholder of “the property”.
3. On 16 June 2014 the Applicants’, pursuant to section 5 of the Leasehold Reform Act 1967 “the Act”, gave the Respondent notice of their intention to acquire the freehold of the property (hearing bundle, page 41 to 47). That notice is in the form prescribed by the Leasehold Reform (Notices) Regulations 1997 (SI 1997/640).
4. The Respondent did not provide a formal notice in reply, but did send a letter dated 10 October 2014 indicating that he, the Respondent, did not object to the potential transfer of the Freehold of “the property”, suggesting a price of £16,750 plus costs and requiring certain assurances and declarations from the Applicants (hearing bundle, page 48).
5. The Applicants’ then commenced an action in Wigan County Court, seeking a declaration that they are entitled to acquire the freehold of “the property”, pursuant to the provisions section 20 of “the Act” (hearing bundle, page 49 and 50).
6. On 6 October 2015 District Judge Gordon, sitting at Wigan County Court, upon hearing from Respondent (Defendant) in person made the following order. “That the claim be stayed to allow for the determination of the Claimants’ application to the First-tier Tribunal... for the price payable in respect of the freehold to the property and the determination of any provisions which ought to be contained in the conveyance.” (Hearing bundle, page 64).
7. By an application dated the 14 October 2015, the Applicants asked the Tribunal for a determination as to the price to be paid for the freehold of the property and the determination of any provisions which ought to be contained in the conveyance. (Hearing bundle, page 5 to 15).
8. Directions were issued on the 29 October 2015 in which the parties were notified that the case would proceed without an inspection or an oral hearing, unless either party required these to take place in which case they were to notify the Tribunal. The remainder of the directions were in the standard form. Neither party required an inspection or oral hearing.

## 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;

lease will therefore terminate on 31 December 2901 and has 885 years to run.

13. The Applicant's rely upon the expert evidence of Mr J. Davies, BSc, MRICS, who provides a price calculation for the freehold of "the property" at £24. They acknowledge the concerns of the Respondent in requesting that the Applicants' provide four assurances and declarations and offer to deal with these concerns by inserting into the transfer of title an indemnity.

### **Respondent's case**

14. The Respondent has served three statements together with a Compact Disc of recordings of telephone conversations.
15. The Respondent seeks to value the price for the freehold at £16,750 plus costs and requiring certain assurances and declarations from the Applicants. The Respondent does not have the benefit of an experts report to support his valuation of the freehold.
16. The Respondent seeks to hold the Applicants' to certain statements made during telephone conversations made on either 10 October 2014 or 24 June 2014. It is common ground that only the Respondent knew that these telephone conversations were being tape recorded.

### **The determination**

17. The Tribunal met on 15 February 2016 to decide this case.
18. Dealing first with the recordings of certain telephone conversations. On the balance of probability, the Tribunal agrees with the Applicants' that these calls were recorded on 24 June 2014, as referred to in the first line of the Respondent's letter dated 10 October 2014 (hearing bundle, page 48). Hence, the telephone conversations were held before the Respondent had set out the terms that he sought for sale of the freehold. The Tribunal determines that nothing turns on these conversations at all.
19. The Tribunal determines that there is nothing contained within the terms of the lease that effects the determination of the price to be paid for the freehold, other than the fact that the lease has over 850 years to run and that the ground rent is £2 per year.
20. The Tribunal agrees with the expert evidence of Mr J. Davies, BSc, MRICS, (hearing bundle, page 74 to 76) to the effect that because the lease has such a long term still to run the freeholder's reversionary interest is so remote that it has no value. The only calculation that is relevant to establishing the price for the freehold is the capitalised value of the rent

payable under the tenancy from the date of the service of the Notice of the Tenants' Claim until the date of the expiry of the lease.

21. Further, the Tribunal agrees with the expert that the capitalisation should be calculated at 12 Years Purchase at £2 per year. The Tribunal therefore determines that the price to be paid for the freehold is £24.
22. In relation to the content of the conveyance. The Tribunal determines that the conveyance should be by way of Land Registry Transfer, into the joint names of the Applicants as joint tenants and that the indemnity clause as suggested by the Applicants should be included in the transfer, in the following terms, "The Transferees hereby indemnify and keep the Transferor and his successors in title fully and effectively indemnified against all actions, proceedings, damages, costs, claims and expenses which may be suffered or incurred by the Transferor or his successors in title in respect of any future breach or non-observance or non-performance of the covenants and conditions contained or referred to in the lease dated 20 September 1902 in so far as they relate to the property."
23. The Tribunal determines that the clause in paragraph 22, above is sufficient to fully protect the interests of the Respondent and that no further terms need to be specified by the Tribunal.
24. The Tribunal was not asked by the parties to consider costs incidental to the purchase as defined in section 9(4) of "the Act".

### **The Decision**

25. The Tribunal's determination of the price to be paid under section 21 (1) (a) of "the Act" is £24.
26. The Tribunal determines that that the conveyance of the freehold interest in "the Property" shall take place by Land Registry Transfer, into the joint names of the Applicants and that it shall contain the following clause on indemnity "The Transferees hereby indemnify and keep the Transferor and his successors in title fully and effectively indemnified against all actions, proceedings, damages, costs, claims and expenses which may be suffered or incurred by the Transferor or his successors in title in respect of any future breach or non-observance or non-performance of the covenants and conditions contained or referred to in the lease dated 20 September 1902 in so far as they relate to the property".