



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

Case Reference : **MAN/00EJ/OAF/2017/0001**

Property : **37 Hopgarth Gardens, Chester Le Street,
County Durham DH3 3RH**

Applicants : **Mr M A Hutchinson and
Mrs L Hutchinson**

Representative : **Gordon Brown Law Firm LLP**

Type of Application : **Determination of price payable Section 21
Leasehold Reform Act 1967**

Tribunal Members : **Mr ID Jefferson TD BA BSc FRICS
Mr I R Harris BSc FRICS**

Date of Decision : **4 April 2017**

DECISION

DECISION

The appropriate sum payable by the Applicant pursuant to Section 9 (1) of the Leasehold Reform Act 1967 is £6,848.00.

The matter is remitted back to the County Court to finalise.

REASONS

The Application

1. The Application is made under Section 21(1) of the Leasehold Reform Act 1967 ('the Act') for this Tribunal to determine the appropriate sum, including premium price payable by the Applicants for the freehold in this missing freeholder matter.
2. This Tribunal have been provided with copies of various Court Orders including District Judge Grey 13 August 2016 and District Judge Colthard 10 December 2016. The Court is satisfied that the Claimants being Tenants of the property 37 Hopgarth Gardens Chester Le Street under a lease dated 1 May 1961 between W K Properties Limited and Thomas Robson Laws have the right under Part 1 of the Act to acquire the freehold of the property and are prevented from giving Notice in accordance with the Act of their desire to have the freehold of the property because the identity of the person to be served with Notice cannot be ascertained.
3. The Court is satisfied that the Applicants had taken all reasonable steps to identify the freeholder and by way of a copy undated claim thought to be 30 March 2016 the matter was transferred to this Tribunal to determine the appropriate sum.

Inspection

4. The Tribunal inspected the property on 4 April 2017. It is a two storey semi-detached house thought to have been built around 1960 of brick walls under a pitched interlocking tile roof. The accommodation includes to the ground floor an entrance porch, hallway, through living room, and extended kitchen. To the first floor are three bedrooms, two double one single, bathroom and separate wc. Externally there is a front garden, driveway, attached side garage, and enclosed rear garden. The total site area extends to around 300 sq. yds. or 254 m². The frontage of the plot is around 29 ft. or 8.5 m.
5. Following inspection the Tribunal convened to consider the papers before it and make its determination. The Applicants did not request a hearing.

Submissions

6. Obviously, no submission or representations has been received from the freeholder. A helpful and detailed submission has been received from Gordon Brown representatives of the Applicants including an Expert valuation report prepared by Mr M J Boaden MRICS of MJ Boaden Chartered Surveyors. The Applicants solicitors

stated that the valuation report was an independent report but of course it is not, it is simply an Expert report on behalf of the Applicants.

7. The Tribunal are happy to accept the report by Mr Boaden as an Expert report and found it most helpful.
8. The Tribunal intends to deal with each stage of the valuation in turn setting out the Applicants position, followed by the Tribunals decision.

Date of Valuation

9. The expert received instructions from Gordon Brown on 14 October 2015, undertook an inspection on 30 October, and assumed a valuation date of 3 December 2015, namely the date of their report.
10. As a matter of law the Tribunal determine that the valuation date is the date of application to the Court Section 27 (1) (2) (a) which is believed to be 28 July 2016. This gives an unexpired term of around 42.50 years rather than the slightly greater number of years assumed by the Expert. The Tribunal agreed that it is a Section 9 (1) valuation.

Term

11. The Expert adopts a yield of 7%. The Tribunal are aware that very often a slightly lower yield is adopted but on this occasion accept the Experts figure.

First Reversion

12. To arrive at a modern ground rent in the absence of suitable sale evidence of building plots in the vicinity it is common to use the methodology adopted by the Expert.
13. In so doing one must arrive at the entirety value first of all. The Expert puts forward the view that there have been a limited number of sales within Hopgarth Gardens itself over the last couple of years. He puts forward eight comparables although one is simply an offer rather than a sale and few if any are strictly comparable given that they differ in accommodation, type of house and so forth.
14. None the less the Tribunal having considered those comparables and indeed also that of 9 Hopgarth Gardens (a 2 Bedroom terrace property) sold in March 2016, after the date of the Experts report, at £123,000 are happy to accept the Experts figure of £130,000.
15. As to site value the Expert puts forward a figure of 30% and refers the Tribunal to a FTT Decision of 6 Meadow Rise Newcastle upon Tyne decided in December 2014.
16. Using the Tribunals own knowledge and experience and having regard to the case cited (although FTT Decisions are not binding on this Tribunal) this Tribunal determine that 6 Meadow Rise is a smaller and more modern property, and plot,

more fully developed than the subject property. The Tribunal determine a more appropriate percentage would be 32.5%.

17. Turning to the question of deferment rates the Tribunal note that the Expert has put forward 5.5% whilst acknowledging that Sportelli uses a generic deferment rate in respect of houses of 4.75%. The Expert seeks to rely upon Zuckerman and the aforementioned case of 6 Meadow Rise, and Mansell Securities.
18. This is a critical part of the valuation and this Tribunal has therefore devoted significant time on this point.
19. Sportelli at para 121 states:

“The prospect of varying conclusions on the deferment rate in different cases reached on evidence that was less comprehensive than that before us can therefore be avoided by LVTs adopting the practice of following guidance of this decision unless compelling evidence to the contrary is adduced.”
20. This Tribunal consider that the detailed reasoning of Sportelli means that a different deferment rate to Sportelli should therefore only be adopted if the FTT is satisfied on compelling evidence that it is justified.
21. An additional 0.25% uplift as per Zuckerman and City & Country Properties Ltd v Alexander Christopher Charles Yates [2012] UKUT227(LC) states:

“If there exists clear evidence that the purchase of the freehold reversion would realise, upon the facts of the particular case, that it was extremely improbable that, as a freeholder it would ever become burdened with any responsibility of management, then this evidence may well be sufficient to displace this additional 0.25%.”
22. This Tribunal do not consider that the burden of management in respect of the subject property justifies any such addition.
23. Further, in the Kelton Court cases (Zuckerman & Others v Trustees of Calthorpe Estate LRA/97/2008), N J Rose FRICS concluded that a very significant amount of statistical information would be required in evidence to depart from the Sportelli figure.
24. Further, the Zuckerman case was in respect of a 1970s block of flats where the evidence pointed to the greater risk of deterioration when compared to the repair cost of high value properties in prime central London. Again such issues are not relevant in the case of a single house.
25. In Clarise Properties Limited re 167 Kingshurst Road Northfield Birmingham [2012] UKUT 4 (LC) the Lands Tribunal affirmed that the starting point for determining the deferment rate is the Sportelli generic rate of 4.75% for houses.
26. In summary this Tribunal determine that the Expert has not put forward any significant evidence to substantiate a departure from the generic Sportelli rate of 4.75% in respect of the subject house.

Second Reversion

27. The Tribunal do however concur that the three stage valuation set out in Clarise should be followed.
28. Clarise takes the Tribunal neatly to the second reversion where the Expert has applied a percentage reduction to the entirety value at adds with Clarise. The Expert has put forward no comparable evidence to indicate why they adopted the scale of reduction they did (10%) and in the absence of any such comparable evidence this Tribunal prefer to follow the Lands Tribunal in Clarise Properties and adopt a reduction of 20% from entirety value.

Determination of the Appropriate Sum

29. The Applicants contend for a premium, equivalent to the appropriate sum, of £4,490.
30. Applying its findings this Tribunal finds that the premium payable is £6,800, see Appendix. To determine the appropriate sum, which may be different, the Tribunal have also considered the matter of outstanding ground rent.
31. The Applicants solicitor has set out in some detail payments of ground rents. The Applicants confirm that until his death on 23 April 2004 they made payments to a Mr Wright believing him to be either the freeholder or agent therefore. This Tribunal determine that an additional payment of the annual ground rent arrears be made in addition to the premium sum, restricted to a total of 6 years arrears, giving a total ground rent arrears of £48.00.
32. This Tribunal therefore determine that the appropriate sum in respect of this Application is £6,848.00.
33. The matter is now able to be transferred back to the County Court.

Chairman

APPENDIX

Tribunal Valuation

Leasehold Reform Act 1967

37 Hopgarth Gardens, Chester Le Street
County Durham DH3 3RH

Valuation Date 28 July 2016

Lease Details

Commencement Date: 1 March 1960
Term: 99 years
Expiry Date: 1 March 2059
Unexpired Term: 42.5 years
Ground Rent per annum (fixed) £8.00

Term

Ground Rent Reserved £8.00
YP for 42.5 years @ 7% 13.48 £108

First Reversion To Section 15 Modern Ground Rent

Entirety Value £130,000
Amount Attributable to Site 32.5%
Site Value £42,250
S.15 modern ground rent @ 4.75% £2,007
YP for 50 years @ 4.75% 18.9844
£38,102
PV of £1 in 42.5 years @ 4.75% 0.1392
£5,304

Second Reversion

Adjusted Freehold Value £104,000
PV of £1 in 92.5 years @ 4.75% 0.0137
Total Value of Landlord's Proposed Interest £1,425
Premium Payable £6,837
Say £6,800