



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

Case Reference : **BIR/47UG/OAF/2018/0023**

Property : **5 Hay Close, Kidderminster DY11 5DH**

Applicants : **Michael Andrew Nock and
Claire Elizabeth Nock**

Representative : **MFG Solicitors LLP**

Respondent : **Sushil Kantibhai Patel and
Anjana Sushil Patel**

Representative : **None**

Type of Application : **Under s21 Leasehold Reform Act 1967 (as
amended) for the determination of the price
to be paid for the freehold interest**

Tribunal : **Tribunal Judge P. J. Ellis.
Tribunal Judge Mr N. Thompson.
Tribunal Member Robert Cammidge FRICS.**

Date of Hearing : **3 December 2018**

Date of Decision : **18 December 2018**

DECISION

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The Tribunal determines that the price to be paid by the Applicants to the Respondents for the freehold interest in the subject Property is £5,100.

Introduction

1. On 15 December 2017 the Applicants Mr and Mrs Michael Andrew and Claire Elizabeth Nock of 11 Telford Drive Bewdley Worcestershire DY12 2EP served a notice of their claim to acquire the freehold of 5 Hay Close Kidderminster DY11 5DH and a garage associated with 5 Hay Close but the subject of a separate lease (together “the Property”) upon the Respondents Mr Sushil Kartibhai Patel and Anjana Sushil Patel of 63 Gills Hill Lane Radlett WD7 8DG.
2. 5 Hay Close was the subject of a lease for the term of 99 years commencing 29 September 1967 made between Springavon Limited and Peter Stanley Clements and Dianne Prudence Maureen Clements on 2 July 1968. A lease for the same period and between the same parties was made on the same date for the garage. The annual ground rent for the Property was £52.00 throughout the term of the lease. The rateable value of the Property on 31 March 1990 was £181.00.
3. The Applicants acquired their interest in the lease on 22 October 2012. The Respondents acquired the freehold of the Property on 5 August 2015 along with other properties on Hay Close. The Tribunal was told at the inspection that the Property is presently let by the Applicants to tenants who have occupied the Property for over five years.
4. By a counter notice of 28 February 2018 Ross Coates Solicitors on behalf of the Respondents admitted the Applicants’ right to acquire the freehold interest although at the hearing the Respondents raised an issue of whether the Applicants were qualified to acquire the freehold by reason of having let the Property and not occupying it themselves.

5. The parties have been unable to agree the sum required to acquire the freehold interest in the Property. They are far apart. The Respondents acting by themselves have valued the right to acquire at £28,435.06 whereas the Applicants on advice from their valuer have valued the right at £5069.00.

Inspection

6. The Tribunal inspected the Property on 3 December before the hearing. The parties did not attend the inspection. The Tribunal was accompanied by a relative of the tenants.
7. The Property is a three bedroom terrace house of brick and tile construction. It has double glazing throughout including all external doors and gas central heating. The ground floor comprises a kitchen and sitting room. There is access to the rear garden through patio doors. Three bedrooms and a bathroom are on the upper floor. The third bedroom is a single bedroom. The other two are double bedrooms. The area is a quiet residential area surrounded by properties of a similar age and nature. To the rear of the Property there is a sports field occupied by the local rugby club.
8. The garage associated with the Property is nearby in a double row of garages serving other properties. Some of the garages are in poor condition and appeared unoccupied but the garage associated with the Property is used by the tenant.

The Statutory Framework

9. S1 of the Leasehold Reform Act 1967 (the Act) confers the right to acquire, on fair terms, the freehold on a tenant with a long tenancy at a low rent if the tenancy was entered into before 1st April 1990 and the house and

premises had a rateable value at the date of commencement of the tenancy or else at any time before 1st April 1990 was less than £500, andthe rateable value of the house and premises on “the appropriate day” (in this case when the property first appeared in the Valuation List) was not more than £200.

10. The rateable value in 1990 was less than £500.00. Accordingly, the valuation of the price payable has to be undertaken in accordance with the provisions of s9(1) of the Act which provide, so far as relevant, that “the price payable for a house and premises on a conveyance 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”. In this case the assumptions expressed in s9(1) were not an issue between the parties and were met.
11. A tenant qualifies for the right conferred by s1 of the Act after being a tenant of a long lease for a period of two years at the time the notice to acquire the freehold was given (s1(1)(b) of the Act).

The Hearing

Applicants’ submissions

12. The Applicants relied upon the evidence given in person by Mr Jolyon Moore MA of Midland Valuations Limited of 2 Alveston Hill Farm Cottages, Alveston Hill, Stratford-upon-Avon CV37 7RR. His calculation is annexed and marked ‘A’.
13. His report was served on the Respondents but not agreed. He gave evidence explaining how he had deduced the sum of £5,069.00 by reference to the *Sportelli* guideline of 4.75% deferment rate with an additional 0.5% for lower growth rate in the West Midlands region. He relied upon other decisions of this Tribunal in support of his contention.

14. His entirety value of £150,000 was based upon developing the site to its fullest potential. The difference in standing house value was explained by the overall appearance of the Property which, he asserted was somewhat tired and in need of decorating and new floor coverings.
15. He provided information about a number of sales of comparable properties in Hay Close including two sales of similar properties within four years at or about £135,000 in support of the entirety value he had adopted in his valuation.
16. His site percentage was based on his experience of other cases in this Tribunal. His use of 6.5% capitalisation rate was because the ground rent is the same (fixed) throughout the term and the rate selected reflects the diminishing value of a fixed income.
17. Mr Moore then relied upon the valuation tables for calculating the resultant elements of his valuation.

The Respondents' submissions.

18. Mr Patel represented himself and his wife. He had not obtained independent professional advice on the methodology of calculating the price for the freehold. He relied upon his own understanding of guidelines prepared by the Royal Institution of Chartered Surveyors (RICS). His calculation is annexed and marked 'B'.
19. There was no dispute regarding the unexpired term of the lease or the ground rent payable. There was a difference in the calculations as Mr Patel had rounded the unexpired term of the lease as at the date of valuation from 48.82 to 48 years. He relied upon the (RICS) guideline for the remaining elements of the calculation. However, he was unaware of the valuation tables and had deduced the relevant multiplication figures and percentages by utilising the example in the RICS guide and creating his own formula from that guide which he then applied to his calculation.

20. He based his estimate of the value of the property on his experience of a recent sale of one of the other properties on Hay Close.

21. Relying upon his valuation he had asked for a much higher sum for the freehold interest than the Applicants were prepared to offer.

The Decision

22. This dispute appears to have arisen principally because the valuation presented by the Respondents was based upon a misunderstanding of the methodology of determining a price for enfranchisement under the terms of the Act. The misunderstanding was exacerbated by the use of RICS guidelines and examples applicable to valuations under s9(1)(a) of the Act which apply to higher value properties typically in Central London.

23. In order to assist the Respondents' understanding the Tribunal has recalculated the Respondents' valuation using the correct figures derived from valuation tables from which it will be seen that the result is similar to the sum proposed by the Applicants, although the Respondents used some other incorrect elements such as the unexpired years of the term and the period of the first reversion as a result of the notional extension of the lease by 50 years (as required by the Act). The Tribunal's reworking of the Respondents' calculation is annexed and marked 'C'.

24. The Respondents also misunderstood the qualifying criteria for enfranchisement. The Applicants had been tenants under a long lease for over two years at the time they gave notice of their intention to exercise the right to enfranchise. The Respondents may have been confused by the existence of a tenant on a short tenancy in occupation but the Tribunal is satisfied the Applicants were entitled to serve notice at the time they did as the only criteria to qualify to enfranchise in this type of case is that the leaseholders must have held the long lease of the property for at least two years prior to the service of a notice of claim under the Act.

25. As far as the standing house and entirety values are concerned the situation of the Property is such that there is little scope for development. Other similar houses nearby have paved over the front gardens to make parking space. The addition of a front porch is possible and potentially a rear extension but little else.

26. The Tribunal accepts the valuation date as 15th December 2017 being the date of service of the notice of claim and thus the unexpired term is to be taken as 48.82 years.

27. For reasons given the Tribunal preferred the evidence of the Applicants' adviser Mr Moore. He presented appropriate evidence to support his propositions and the figure deduced was reasonable.

28. The Tribunal has reviewed Mr Moore's evidence in making its determination of the price payable. It accepts some of his assertions as set out in his calculation but the Tribunal has decided that the standing house value is too low, based on the limited scope for development and extension of the property. In the view of the Tribunal, the standing house value should be £145,000 and that is reflected in the Tribunal's valuation attached as Appendix D.

29. Accordingly, the Tribunal determines that the price payable for the freehold interest by the Applicants to the Respondents is **£5,100.**

Appeal

30. If either of the parties 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 them under 9 rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis