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

**Case Reference** : CHI/00HN/OCE/2013/0048

**Property** : THE POINT, MARINA CLOSE, BOSCOMBE,  
BOURNEMOUTH, DORSET BH5 1BT

**Applicant** : The Point Freehold Limited

**Representative** : Ms. C. Crampin (counsel)  
Mr Howard and Mr Lewis  
of Coles Miller Solicitors LLP  
H. Gross FRICS

**Respondent** : Fairhold (Yorkshire) Limited

**Representative** : Mr. T. Jefferies (counsel)  
S. Higley FRICS

**Type of Application** : Section 24(1) of the Leasehold Reform  
Housing and Urban Development Act 1993

**Tribunal Members** : Judge D. R. Whitney  
P.D. Turner-Powell FRICS

**Date and venue of  
Hearing** : 17<sup>th</sup> February 2014  
Bournemouth Magistrates Court

**Date of Decision** :

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**DECISION**

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1. This is an application by the Applicant nominated purchaser in respect of a claim for collective enfranchisement under the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act"). The claim is in respect of property known as The Point, Marina Close, Boscombe, Bournemouth, Dorset ("the Property") and was begun by way of Initial Notice dated 15<sup>th</sup> February 2013. A counter notice was served by the Respondent competent landlord admitting the right to enfranchise dated 22<sup>nd</sup> April 2013.
2. Application was made to the Tribunal for a determination of the terms of the acquisition dated 7<sup>th</sup> October 2013. Provisional directions were made dated 11<sup>th</sup> October 2013.
3. Prior to the hearing the form of transfer was agreed and the only matter the Tribunal was asked to determine by way of hearing related to the premium payable by the Applicant to the Respondent for the Property.

### **INSPECTION**

4. The Tribunal inspected the Property immediately prior to the hearing in the presence of the parties representatives.
5. The Property appeared to be a modern development which the Tribunal was advised was completed in about 2002. The front elevation directly overlooks the seafront and to the rear are gated communal areas. There is a main foyer and entranceway from the front elevation into the development.
6. The Property consists of some 83 flats all of which are in various self contained blocks, each with a lift forming the Property as a whole. The Property benefits at the rear form a ground floor car parking area with underneath this a concrete constructed basement car park area. The Tribunal were advised that every flat has at least one car parking space (some have two) and the Property has a number of designated visitor spaces.
7. The Tribunal was shown some water penetration to the underground car parking area. To the front elevation the Tribunal were shown the steelwork which had required repair.

### **HEARING**

8. The Tribunal was supplied with a bundle containing various documents including the two expert reports of Mr Gross and Mr Higley. Prior to the hearing the Tribunal had received a supplemental report of Mr Higley, supplemental report of Mr Gross also skeleton arguments for both parties.
9. The parties confirmed it was now agreed that the Tribunal should value the reversion. This left two issues which the parties sought to have determined by the Tribunal being: the capitalisation rate to be applied to the rents and the deferment rate to be used on valuation of the reversion.
10. The parties confirmed all other terms of the valuation were agreed as set out in the joint report filed on 23<sup>rd</sup> December 2013 and signed by both valuers but undated.
11. The Applicants valuer, Mr Gross now proposed a purchase price of £659,376 using a deferment rate of 5.75% and capitalisation rate of 7.20%.

12. The Respondents valuer, Mr Higley proposed a price of £782,662 using a 5% deferment rate and capitalisation rate of 6.75%.
13. Mr Howard Gross FRICS gave evidence on behalf of the Applicants. He relied upon a report dated 31<sup>st</sup> December 2013 and a supplemental report dated 14<sup>th</sup> February 2014. He confirmed that following sight of Mr Higley's supplemental report dated 7<sup>th</sup> February 2014 he had revisited his own report and revised it in light of Mr Higley's report.
14. In respect of the deferment rate he acknowledged that the starting point was 5% as endorsed in the Sportelli decision. Mr Gross relied upon the decision in Zuckerman v. Calthorpe Estates[2009] UKUT 235 (LC) to make additions to the 5% rate.
15. In his submission he was entitled to make an addition to the growth rate to take account of the fact that the Property was not within prime central London which was the area involved in the Sportelli decisions. In the Zuckerman case an additional 0.5% had been added to take account of the difference between prime central London and the West Midlands in respect of the potential for capital growth. Mr Gross sought to compare the South West with the West Midlands and London. He relied upon the Nationwide and Halifax house price indices for the South West, the West Midlands and London to support his contention that the growth prospects for the South West, and therefore the Property, were not as good as London. He did concede that the growth rate for the South West was better than the West Midlands although not as good as London. He had not relied on any other indices, such as Land registry data, as he felt these were for too short a period. He accepts the position was far from ideal but this was the data available. He accepts he took the start and end dates only and had not looked at other periods to show difference in growth rate and had simply split the difference between West Midlands and London to arrive at 0.25%. In his submission an addition of 0.25% was appropriate.
16. Mr Gross also looked to make an addition for obsolescence of 0.25%.
17. He accepted that the Property was a modern good quality block although it did have certain problems and Mr Gross sought to rely upon an email exchange with the block managing agent, Paul Robinson of Minster Property Management Limited.
18. Mr Gross explained that Minster Property Management are appointed by a company run and controlled by the residents of the Property. The Property had experienced problems with the steelwork to the seafront elevation corroding. Works had been undertaken to powder coat the steelwork and this now had a ten year guarantee but this would need replacing every ten to fifteen years at a cost currently of about £50-60,000.
19. Further the underground car park suffers from water penetration allegedly due to design defects. A quote has been obtained for undertaking repairs at an estimated cost of about £100,000. Whilst it is hoped this will prevent the current water penetration this cannot be guaranteed.
20. Whilst Mr Gross accepts the situation in the Property was different from that in the Zuckerman case in his opinion as the leases get shorter in his opinion the cost of these repairs will affect the value of the flats and this should be reflected in the value of the reversion. For this reason he recommends an addition of 0.25%.
21. Mr Gross also looked to add a further 0.25% for management risk. Whilst he accepts currently it is unlikely the management company will fail as the leases get shorter there is a greater risk of this occurring and in his opinion an

additional amount needs to be included for this sum. Mr Gross in cross examination stated he was aware of the decision in Voyvoda v. Grosvenor West End [2013] UKUT 0334 (LC) but in his opinion this was still an issue.

22. As a result Mr Gross contented for a deferment rate of 5.75%.
23. In respect of the capitalisation rate Mr Gross sought to look at comparables. He accepted that it was a large block. Mr Gross highlighted that there are very few open market transactions.
24. In respect of two comparables, Salford Quays and Millenium Court Mr gross highlighted that these had indexed rent reviews. The Property has fixed rent reviews which may not keep pace with inflation. As a result in his opinion the rate utilized for Slafrod Court and Millenium Court should be uplifted to take account of this difference. However having had regard to the various comparables and the report of Mr Higley Mr Gross now believed in his opinion that the correct rate was 7.20%.
25. Mr Gross did go through various other comparables which he and Mr Higley had relied upon including the sale of the Property to the Respondent. In his view the date of the transaction was some time ago and he was concerned that this may not have been a completely open market transaction.
26. Mr Higley FRICS gave evidence on behalf of the respondent freeholder. He relied upon a report dated 19<sup>th</sup> December 2013 and a supplemental report dated 7<sup>th</sup> February 2014.
27. Mr Higley explained that in his opinion the indices provided a very broad brush approach particularly given the wide area they covered. He confirmed, as Mr Gross indicated, he had not been able to find anything which related specifically to the Bournemouth area. In his opinion the indices if anything demonstrated the South West had done better than other parts of the UK including the West Midlands but not as well as London. He also believed that in considering the indices consideration should be given to a range of start and finish dates. Further in his opinion if you stripped out inflation over the period at 9/10% then the growth rate was similar to the 2% allowed in Sportelli.
28. As to the question of obsolescence in his view this was not a factor. He felt that any issues would be reflected in the vacant possession values. As to the issues raised over the car parking and steelwork to the front elevations these are simply repairs and he would expect the leaseholders to deal with this as and when they arise.
29. For all of these reasons he saw no reason to depart from the 5% rate as recommended by the Sportelli decision.
30. As to capitalisation he had reviewed the various comparables to come to his rate of 6.75%. In respect of the Property he understood that this was part of a portfolio bought by the Respondent from Bellway the original developer of the Property. He did not know how it was marketed but his understanding was that the whole transaction was put together in a broadbrush way and if anything the Property would have been undervalued as part of a portfolio as a whole.
31. Mr Higley explained that the comparables were real world transactions and not "no Act". Given he had to value in a "no Act" world in his opinion this reduced the rate. He therefore took the figures and adjusted to give a "no Act" world figure.
32. Mr Higley confirmed he prepared his supplemental report having had sight of Mr Gross' report to take account of points he had raised.
33. He explained he had taken account of different lease lengths and lot sizes in considering comparables. In his opinion there had been no real changes over

- the past two or three years which required him to make any additional adjustment to the comparables given interest rates had been flat since 2010.
34. Mr Higley stated that in his opinion the more valuable the flat the more secure the income is. With regards to Salford Quays he accepted on balance an investor may well prefer an RPI indexed rent rather than a fixed pattern. In his opinion when you factor everything in the rate is about 7% before you adjust this for a no Act world resulting in a rate of 6.75%.
  35. The Applicants submitted that Mr Gross had taken account of a longer period than that not accepted in City & Country v. Yeats [2012] UKUT 227 (LC). When then taking account of Zuckerman it was appropriate to make an addition to the growth rate.
  36. In respect of obsolescence the Applicant contends that there are specific problems with damp and corrosion. Whilst work is being done it is not clear as to the cost of the repairs needed to the car park area.
  37. In respect of the capitalisation rate the Applicant contends that in respect of the Property sale in 2005 we do not know what actually happened and challenged other comparables and the adjustments made by Mr Higley. The Applicants challenged Mr Higley's approach in choosing what he believed was a middle point figure.
  38. The Respondents sought to rely upon Sportelli. They did not accept that any adjustment should be made and referred the Tribunal to various cases including the Yeats decision to show that evidence of growth rates should include much more evidence than put forward by Mr Gross. Further they submitted that a range of periods needed to be assessed and covered and not one single range.
  39. As to obsolescence the respondent did not agree that Zuckerman applied. These flats were far more valuable and the matters relied upon were items of repair of which there is no evidence the leaseholders will not be able to pay the cost of. The respondent therefore invited the Tribunal to rely upon Mr Higley's report.

## DECISION

40. The Tribunal had regard to all the evidence it had received both in writing before the hearing and orally at the hearing. The Tribunal had the benefit of having heard counsel for both sides as to the arguments and they had provided skeleton arguments in advance and bundle of authorities.
41. In respect of the deferment rate the Tribunal reminds itself that the starting point is 5% as approved in the Sportelli decision. The Tribunal is satisfied in this case it should not depart from this figure and determines that 5% is the correct deferment rate.
42. The Tribunal determines this given that in its opinion there was not sufficient evidence to support departing from the growth rate included within Sportelli. The evidence was limited to an index covering the whole of the South West. This was a very broad area and neither valuer (as they both candidly admitted) could provide any evidence as to the actual locality. The Tribunal had regard to the various decisions particularly the Yeats decision. The Tribunal was not persuaded any addition should be made due to a difference in the growth rate between prime central London and Bournemouth as determined in Sportelli.
43. In respect of obsolescence the Tribunal was not convinced that any of the problems which it was shown at the Inspection and which were explained to it justified any addition. The steelwork had been repaired and the cost of the repairs, even at £50-60k every 10 years, were not great for a block consisting of

- 83 flats. As for the car park in the Tribunals opinion this also does not give rise to obsolescence. This is a modern, relatively high value block and in the Tribunals opinion this Property was not similar to that in the Zuckerman case.
44. Whilst the Tribunal heard the evidence put forward for a further addition including management risk again the Tribunal was not persuaded by this. Given there is a residents owned management company and the nature of the block the Tribunal was not satisfied that there was evidence to support any extra addition.
45. In respect of capitalisation rates the Tribunal prefers the evidence of Mr Higley and determines that the capitalisation rate to apply in this case is 6.75%.
46. In reaching this decision the Tribunal had regard to all the evidence put forward and the various comparables. The Tribunal agreed with Mr Higley that it was appropriate to make an adjustment for the no Act world and reduce the rate. Further his methodology in considering the comparables and looking to take a mid point and adjusting was preferred by the Tribunal.
47. The Tribunal were also asked to determine the amount payable for appurtenant property. No formal submissions were made although both valuers in their reports said the amount was nominal. Mr Higley contended for £100 and Mr Gross for £1. Given both valuers contended this was nominal, a position with which the Tribunal agrees, then in the Tribunals view the value should be £1.
48. The Tribunal determines that the price payable in respect of the freehold for the Property is:

Specified premises:	£782,562
Appurtenant parts:	£1
<b>TOTAL</b>	<b>£782,563</b>

49. A copy of the Tribunals calculation is attached to this decision.

Judge D. R. Whitney

### 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.

The Point  
Marina Close  
Bournemouth  
BH5 1BT

18/02/14

TRIBUNALS VALUATION 15/02/13

FREEHOLDERS INTEREST

GROUND RENT TO 12/21 YP 8.874 YRS @ 6.75%		25,500 <u>6.51708</u>	166,186
GROUND RENT 2021-2041 YP 20 YEARS @ 6.75%	10.803021 <u>0.5600972</u>	51,000 <u>6.05074</u>	308,588
GROUND RENT 2041-2061 YP 20 YRS @ 6.75% DEFERRED 28.874 YRS @ 6.75%	10.803021 <u>0.1516721</u>	76,500 <u>1.63852</u>	125,347
GROUND RENT 2062-2081 YP 20 YEARS @ 6.75% DEFERRED 48.874 YRS @ 6.75%	10.803021 <u>0.0410722</u>	102,000 <u>0.12</u>	15,320
GROUND RENT 2082-2101 YP 20 YEARS @ 6.75% DEFERRED 68.874 YRS @ 6.75%	10.803021 <u>0.0111222</u>	127,500 <u>0.03</u>	4,978
GROUND RENT 2102-2121 YP 20 YEARS @ 6.75% DEFERRED 88.874 YRS @ 6.75%	10.803021 <u>0.0030118</u>	153,000 <u>0.03</u>	15,320



GROUND RENT 2122-2126		178,500	
YP 5 YRS @6.75%	4.1277902		
DEFERRED 108.874 YRS @ 6.75%	0.0008156		
		<u>0.0033666</u>	
			<u>600</u>
			666,278
REVERSION			
FREEHOLD VALUES PER PARTIES			
AGREEMENT		30,085,000	
DEFERRED 113 YRS @ 5%		<u>0.00386522</u>	
			<u>116,285</u>
			782,562
			1
OTHER COMPENSATION			
			<u>£782,563</u>
			=====