



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

Case Reference : **CAM/00KF/OCE/2019/0006**
County Court claim no : **E00SS856**

Property : Princes Court, 27/29 Princes Street, Southend on Sea
SS1 1QA

Applicants : **1A** Barry Geoffrey Wild
1 Victoria Ann Jones
3 Anne Margaret Vaughan

Representative : Lorraine Lancaster, of Paul Robinson Solicitors LLP
(& R V Hilton MRICS)

Respondent : Racquel Rodriguez and/or Persons unknown

Type of Application : to determine the appropriate sum payable into court
on enfranchisement and the form and terms of the
conveyance where the landlord cannot be found
[LRHUDA 1993, s.26]

Tribunal Members : G K Sinclair, D Barnden MRICS & S E Moll FRICS

**Date and venue of
Hearing** : Thursday 2nd May 2019 at
Southend Magistrates Court

Date of decision : 8th May 2019

DECISION

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1. For the reasons which follow the tribunal determines that the price payable into court by the nominee purchaser for the acquisition of the freehold pursuant to Schedule 6 is £572.00.

2. As the freehold is registered under Title EX598548 the acquisition must proceed using form TR1, as proposed by the applicants. In addition to the statement recorded at section 11, clause 11.1 of the draft transfer (pursuant to the Leasehold Reform Housing and Urban Development Act 1993, section 34(10) & Land Registration Rules 2003, rule 196), and subject to any contrary requirements by the Land Registry, the applicants should in addition tick the third box in section 8 (“Consideration”) and insert the following text :

Pursuant to an order dated 1st February 2019 made by Regional Judge Edgington sitting as a judge of the County Court sitting at Cambridge vesting the property in the names of the claimants the appropriate sum as determined by the First-tier Tribunal Property Chamber on 8th May 2019 was paid into court on [*date of payment in*].

Background

3. This application is brought by the lessees of three of five flats – originally four – carved out of what previously was a large industrial building situate between two streets of terraced housing and accessed by a narrow lane between two houses on Princes Street. The western boundary of the site appears to follow the rear wall of the building, and as a result those houses immediately behind it, at 32–36 Park Street, enjoy very little space by way of back yard or garden. To maintain privacy all rear-facing windows at ground and first floor levels¹ contain obscure or ripple glass to prevent overlooking from either side. To the front and northern side are shared courtyards and parking for four cars. There are no individual gardens, although flat 2 – one wing of which projects in an easterly direction at first floor level over the passageway giving access to the northern courtyard and the parking space for flat 1 – enjoys access to a narrow balcony to the rear or western side of the second floor.

4. Planning permission was obtained in 2001 for reconstruction of the building as four flats, all let with a single parking space on 999 year leases from 1st January 2004, but in 2014 flat 1 (really a maisonette on part of the ground and first floors and accessed from the front or east side of the main building) was subdivided horizontally, creating a reduced single bedroomed flat 1 on the first floor and a new flat 1A on the ground floor. The single parking space is retained by flat 1.

5. The original four flats were each let at a fixed annual ground rent of £10 but, as this might be considered hardly worth claiming and the real value had been extracted in the premiums paid, nothing had been heard from the lessor and she failed or refused to respond to attempts to serve an initial notice upon her under

¹ The tribunal was unable to inspect the interior of flats 2 and 4

the 1993 Act. In 2014 flat 1 was split without any formal consent being granted, and liability for the £10 ground rent was split equally between 1 and 1A.

6. No response having been received by the applicants' solicitors after copies of the initial notice had been posted or delivered to two addresses associated with the lessor, an application was made to the court under section 26, a vesting order was made and directions given for the determination by this tribunal of the price payable and terms of transfer.

Inspection

7. The tribunal inspected the front (eastern) and northern side exterior of the property and the interior of each of the applicants' flats on the morning of the hearing. Flat 1A, on the ground floor, occupies the full depth of perhaps half of the main block and is a relatively small flat with slightly restricted fenestration in part. Flat 1 is accessed by a stairway at the left side of the front and occupies the space above 1A, but the ceilings are higher, the main timber floor is painted white, and more light floods in from a triangular window high up in a pitched roof section above the bedroom.
8. Flat 3 is a maisonette occupying the full depth of the northern half of the main building at ground and first floor levels. The ground floor comprises an entrance lobby and corridor leading to two bedrooms and two bathrooms, one of which is en suite. A staircase near the entrance leads to a full depth open-plan kitchen/diner/living room with large windows fore and aft – the latter of obscure glass. Flat 2 is accessed by a front door next to that for flat 3. The entrance is to a staircase off which, at first floor level, is a long kitchen/diner projecting forward over the "cart shed" parking area for flat 1 and the passageway leading to the other parking spaces and turning area. The staircase leads on up to the second floor of the main building. The tribunal did not inspect the interior of this flat, nor that of flat 4, which comprises the ground and first (top) floors of a northern extension to the main building. As the brick facing to this was laid in stretcher bond the tribunal was uncertain whether the wall was of cavity construction or whether this was simply a new brick facing concealing a much older wall. The northern wall was rendered.

Applicable valuation principles

9. By section 27(5) of the Act :
 - ...the appropriate sum which is to be paid into court in respect of any interest is the aggregate of :
 - (a) such amount as may be determined by the appropriate tribunal to be the price which would be payable in respect of that interest in accordance with Schedule 6 if the interest were being acquired in pursuance of such a notice as is mentioned in subsection (1)(b); and
 - (b) any amounts or estimated amounts determined by such a tribunal as being, at the time of execution of the conveyance, due to the transferor from any tenants of his of premises comprised in the premises in which that interest subsists (whether due under or in respect of their leases or under or in respect of agreements collateral thereto).

10. By paragraph 2 of Schedule 6 the price payable for the acquisition of the premises ...shall be the aggregate of –
- (a) the value of the freeholder’s interest in the premises as determined in accordance with paragraph 3,
 - (b) the freeholder’s share of the marriage value as determined in accordance with paragraph 4, and
 - (c) any amount of compensation payable to the freeholder under paragraph 5.
11. An important element in calculating the price is the appropriate deferment rate. The default position here is the rate for flats of 5% set by the Lands Tribunal (and upheld by the Court of Appeal) in the leading case of *Cadogan v Sportelli*.² In certain circumstances, however, tribunals have been prepared to venture beyond that, with two possible reasons being argued for and upheld in the particular circumstances of *Zuckerman and others v Trustees of the Calthorpe Estates*.³ The first is that if the subject premises are outside the PCL area, and of much lower value, they are much more likely to become obsolescent than expensive flats in Belgravia. The second is that since the decision in *Sportelli* the property management world had woken up to the increased importance of complying with the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.⁴ As failure to do so could be financially calamitous, so management had in turn become more onerous. This should be reflected in an increased risk factor of say 0.25%.
12. *Sportelli* was appealed on another point to the House of Lords⁵, which determined (Lord Hoffman dissenting) that hope value could constitute part of the price payable to the freeholder in relation to non-participating flats on a collective enfranchisement. In this case two of the lessees have chosen not to join in with the purchase; but in view of the length of the leases hope value is a matter that need not be factored into the valuation.
13. In most cases where there is a missing landlord, but perhaps surprisingly not in all, there will have been no rent paid for a substantial period before the date of the application. Section 27(5) requires that the applicant must pay into court not only the price payable, as determined by the tribunal, but also the amount or estimated amount remaining unpaid of any pecuniary rent payable for the house and premises up to the date of the conveyance. Section 166 of the Commonhold and Leasehold Reform Act 2002⁶ may, however, impose a restriction upon that by providing that :
- A tenant under a long lease of a dwelling is not liable to make a payment of rent under the lease unless the landlord has given him a notice relating to the payment; and the date on which he is liable to make the payment is

² [2007] EWCA Civ 1042; [2008] 1 WLR 2142

³ [2009] UKUT 235 (LC); [2011] L&TR 12 – otherwise known as the *Kelton Court* decision

⁴ This level of concern has reduced since the Supreme Court’s decision in *Daejan Investments Ltd v Benson* [2013] UKSC 14 on the principles applicable to the exercise of the tribunal’s powers to grant dispensation under section 20ZA

⁵ [2008] UKHL 71; [2010] 1 AC 226

⁶ In force from 28th February 2005

that specified in the notice.

The limitation period for recovery of unpaid rent is 6 years, so that is the maximum rent which could ever be recoverable under the head-lease.

Valuation evidence and hearing

14. The tribunal is indebted to Mr R V Hilton MRICS, who prepared a valuation report dated 22nd March 2018, which he later updated to show as valuation date the date of issuing the Part 8 claim in court, and to provide further comparable evidences, but with unaltered valuations. Mr Hilton also attended the hearing to give evidence on the applicants' behalf.
15. According to Mr Hilton's report the respective sizes and values of the flats are or were as follows :

<i>Flat</i>	<i>net internal area (m²)</i>	<i>Value</i>	
Old 1	130	£310,000	
New 1	77		£162,500
New 1A	53		£150,000
2	54 ⁷	£250,000	£250,000
3	127	£310,000	£310,000
4	90	£250,000	£250,000
		£1,120,000	£1,122,500

16. In his report Mr Hilton noted that the lessor's consent had not been obtained for the conversion of flat 1 into two smaller units. The leases contain a covenant against structural alterations without consent (not to be unreasonably withheld) but, strangely, no covenant against assignment or subletting of part only of the demised premises. He pointed out an anomaly concerning access rights over the external common parts between the leases for old flat 1 & 2 and those for 3 & 4.
17. Of much greater concern is the fact that the lessor covenants to keep the structure and exterior of the building in repair but the leases contain no service charge provisions enabling recovery of the cost from the lessees. This provides the lessor with no incentive at all to make her whereabouts known. An annual rent of £40 seems poor recompense.
18. On behalf of the applicants their solicitor, Ms Lancaster, explained how it was out of an abundance of caution that – having failed to establish definite contact with the lessor – the applicants opted for the section 26 missing landlord route rather than rely upon a failure by the lessor (who may at the sorting office have signed for the initial notice sent to her by Recorded Delivery) to serve a counter-notice.
19. Questioning Mr Hilton, the tribunal considered that in view of the length of the unexpired term there was no need to test the relevance of the comparables used

⁷ Studying the plans, and noting that flat 2 oversails flats 1 and 3 (save that the rear comprises an external balcony), this seems a remarkably small measurement

for what is quite a unique building; most unlike the Southend and Westcliff flats with the tribunal is much more familiar. The use of the Sportelli 5% deferment rate was not in dispute, nor the 7% yield which Mr Hilton had proposed. He said he always used this, but often settled on 6.5%, but 7% was justified as this was a very low ground rent.

20. However, the valuer members did query the figure chosen by him as the PV in perpetuity for £1 at 5%. *Parry's Tables* did not provide PV figures for more than 100 years, and when trying to calculate that for 985 years or perpetuity using Excel produced rather more noughts after the decimal point than the figure of 0.0000577 used by Mr Hilton in his report. In consequence it was put to him, and he willingly agreed, that the value for purchase of the freehold reversion was not the £65 he had used in his reports but, by adding a few more post-decimal noughts, was instead virtually valueless.

Findings

21. The tribunal is satisfied that the report produced by Mr Hilton and the values for the flats that he adopted were very fair, as were the rates chosen for deferment and yield. However, as a result of an error in his calculation of the YP for £1 in perpetuity at 5% he unnecessarily increased the sum payable into court by £65 to a gross £637 instead of the correct £572. The tribunal determines that the lower figure applies.
22. As the unexpired term is still in excess of 980 years there is no marriage value to consider, no hope value in respect of non-participating flats and no compensation payable under paragraph 5 of Schedule 6.
23. The tribunal notes the defects in the leases with regard to the recovery of the cost of maintenance of the building and, had the unexpired terms been much shorter, this may have significantly affected the values of the flats. The applicants may wish, post-acquisition, to rectify this problem either by agreement or application to the tribunal under section 36 of the Landlord and Tenant Act 1987.
24. So far as terms of transfer are concerned the main points are :
 - a. That section 34(10) of the 1993 Act prescribes that any conveyance shall in addition contain a statement that it is a transfer executed for the purposes of Chapter 1 of Part 1 of the Act; and any such statement shall comply with such requirements as may be prescribed by land registration rules under the Land Registration Act 2002. This the applicants' solicitor has provided for at 11.1
 - b. Secondly, the transfer should record that a vesting order has been made by the court, and that the consideration required has been provided by making a payment into court under the Act. See paragraph 2 above.

Dated 8th May 2019

Graham Sinclair
Tribunal Judge

SCHEDULE

Valuation date	23 rd October 2018
Freehold market value of five flats	£1 122 500
Marriage value	Nil
Unexpired term of lease (to 31 st December 3002)	985.42 years
Deferment rate (<i>Sportelli</i>)	5.0%
Capitalisation of current ground rent : yield	7.0%
Freehold relativity	100.0%
Value of current unpaid ground rent	Nil

1. Value of freeholder's present interest

a.	Term – ground rent	
	Ground rent = £40	
	YP in perpetuity @ 7.0%	14.29
		£572
b.	Deferred value of freehold reversion	
	PV of £1 x 985.42 yrs @ 5.0%	0.00000000
		£0
	Sub-total	£572

2. Compensation under paragraph 5 nil

Sum payable into court for freehold **£572**