



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

Case Reference : **MAN/00CA/OAF/2020/0020**

Property : **9 Montagu Road, Formby, Liverpool L37 1LA**

Applicants : **Mr Peter T Donnelly**

Representative : **J Rostron Solicitors**

Respondent : **Morax Limited**

Type of Application : **Sections 21(1)(a), 21(1)(ba) and 21(2) of the
Leasehold Reform Act 1967**

Tribunal Members : **Mr S. Moorhouse LLB
Mr I.R. Harris BSc FRICS**

**Date of Paper
Determination** : **8 March 2021**

Date of Determination : **18 March 2021**

DECISION

DECISION

- (i) The price payable for the Property determined under Section 9 of the Leasehold Reform Act 1967 is £150.
- (ii) The terms of the Deed of Transfer determined under Section 10 of the Act are set out in the draft attached in the Appendix.
- (iii) Professional costs are determined to be payable by the Applicant to the Respondent under Section 9(4) of the Act in the sum of £400 (together with any applicable VAT).

REASONS

The Application

1. The Applicant is the registered leasehold proprietor of 9 Montagu Road, Formby, Liverpool L37 1LA ('the Property'). The lease was granted on 12 September 1923 for a term of 999 years from 29 September 1922. The Respondent is the landlord, and registered freehold proprietor.
2. The Applicant seeks to acquire the freehold interest in the Property pursuant to the Leasehold Reform Act 1967 ('the Act'). The submission made on his behalf to the tribunal indicates that the Respondent has not engaged with him in the process.
3. The Applicant seeks determinations from the tribunal pursuant to section 21(1)(a) of the Act (price payable), section 21(2) (terms of the conveyance) and section 21(1)(ba) (reasonable professional costs payable under section 9(4)).
4. The application to the tribunal was made on 24 September 2020 and, pursuant to Directions, a written submission with supporting papers was made on 14 December 2020. The Respondent failed to comply with the tribunal's direction that a statement of case, valuation evidence and supporting documents be submitted, and has offered no response whatsoever to the Application.

The Law

5. The following are brief extracts of the provisions of the Act referred to above:

Subsection 21(1)

'The following matters shall, in default of agreement, be determined by a tribunal namely, -

(a) the price payable for the house and premises under section 9 above;

(ba) the amount of any costs payable under section 9(4) or 14(2);'

Subsection 21(2)

'.....the appropriate tribunal shall have jurisdiction, either by agreement or in a case where an application is made to a tribunal under subsection (1) above with reference to the same transaction, -

(a) To determine what provisions ought to be contained in a conveyance in accordance with section 10.....of the Act....'

Subsection 9(4) states as follows:

'Where a person gives notice of his desire to have the freehold of a house and premises under this Part of the 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

but so that this subsection shall not apply to any costs if on a sale made voluntarily a stipulation that they were to be borne by the purchaser would be void.'

Subsection 10(4) makes the following provision for the inclusion of restrictive covenants in the conveyance:

'As regards restrictive covenants (that is to say, any covenant or agreement restrictive of the user of any land or premises), a conveyance executed to give effect to section 8 above shall include:

(a) Such provisions (if any) as the landlord may require to secure that the tenant is bound by, or to indemnify the landlord against breaches of, restrictive covenants which affect the house and premises otherwise than by virtue of the tenancy or any agreement collateral thereto and are enforceable for the benefit of other property; and

(b) Such provisions (if any) as the landlord or the tenant may require to secure the continuance (with suitable adaptations) of restrictions arising by virtue of the tenancy or any agreement collateral thereto, being either –

- (i) *Restrictions affecting the house and premises which are capable of benefiting other property and (if enforceable only by the landlord) are such as materially to enhance the value of the other property; or*
- (ii) *Restrictions affecting other property which are such as materially to enhance the value of the house and premises;*
- (c) *Such further provisions (if any) as the landlord may require to restrict the use of the house and premises in any way which will not interfere with the reasonable enjoyment of the house and premises as they have been enjoyed during the tenancy but will materially enhance the value of other property in which the landlord has an interest.'*

Price payable

Applicant's Submission

6. The Applicant submitted a valuation report prepared by John A Rhoades FRICS. A valuation under section 9(1) of the Act proposes a purchase price for the freehold interest in the Property of £150. Capitalisation of the ground rent of £9.60 per annum to reach this figure assumes a yield rate of circa 6.4%. The value of the reversionary interest, with the benefit of a 50 year extension, is viewed as de minimis.

Determination

7. The tribunal applied its own knowledge and experience to consider the value of the freehold interest, together with the evidence submitted on the Applicant's behalf.
8. The tribunal accepts that the appropriate methodology for the valuation in this case is that set out at section 9(1) of the Act, on the basis that the rateable value of the Property on the relevant day was £152.
9. The lease was granted for a term of 999 years from 29 September 1922 and therefore has an unexpired term of 901 years. The tribunal agrees with the Applicant's valuer that the value of the reversionary interest on the expiration of the unexpired term, with a 50 year extension, is de minimis.
10. In relation to the right to receive the ground rent of £9.60 per annum, the tribunal considered that the fixed ground rent of £9.60 per annum could not be economically collected and therefore the investment if sold via the appropriate method would not be of particular interest to a prospective purchaser. Its attractiveness would diminish further over time. The ground rent would only be collected upon an event such as an assignment (subject to statutory recovery provisions). The tribunal considered that these factors were adequately reflected in the yield rate of 6.4% assumed by the Applicant's valuer.
11. The tribunal's valuation is therefore as follows:

Ground rent per annum	£9.60
YP 901 years at 6.4% is	15.625
Value	£150

Terms of Transfer Deed

Applicant's Submission

12. The Applicant has proposed a form of transfer deed, a copy of which is reproduced in the Appendix to this decision document. The Applicant refers to the provisions concerning restrictive covenants at section 10(4) of the Act, cites the case of *Trustees of the Sloane Stanley Estate v Charles Carey-Morgan and anor 2011 UKUT 415 (LC)* and includes a quote from the text book Hague: Leasehold Enfranchisement 6th Edition.
13. The Applicant further refers to and supplies a copy notice served on the Respondent on 21 July 2020 requesting particulars of rights of way and restrictive covenants, pursuant to Condition 5 of Part 1 to the Schedule to the Leasehold Reform (Enfranchisement and Extension) Regulations 1967 ('the 1967 Regulations'). It is submitted that no reply was received to the request and that as a consequence the Respondent is barred from requiring such covenants to be imposed on the freehold title acquired.

Determination

14. The Charges Register to the registered freehold title to the Property includes an entry identifying that by a conveyance dated 6 June 1951 (details of which are given) the land in the title was conveyed subject to 'all privileges in the nature of light air water drainage way and passage and any other easements or quasi-easements and restrictions (if any) affecting any part of the same'. The draft transfer supplied includes a proposed covenant on the part of the Applicant to observe and perform any restrictive covenants contained or referred to in the 1951 conveyance and to indemnify the Respondent against all costs, claims, demands and liabilities arising from the non-observance and non-performance thereof, so far as any such covenants relate to the Property and remain capable of being enforced.
15. The Respondent has not required the inclusion of the above covenant within the draft transfer pursuant to section 10(4)(a) of the Act, however it is proposed by the Applicant and is otherwise consistent with section 10(4)(a).
16. Turning to section 10(4)(b) of the Act, the tribunal noted that the lease of the Property contained restrictive covenants concerning use as a private dwellinghouse, advertisements, and the use of areas that remain unbuilt upon as yards, gardens or pleasure grounds. The Respondent has not required the continuation of these restrictions within the draft transfer, and has made no submission to the tribunal to argue that they are capable of benefiting other property and (if enforceable only by the landlord) are such as to materially enhance the value of the other property. In these circumstances the tribunal is not satisfied that any restriction arising by virtue of the tenancy is required to be included in the draft transfer.
17. Condition 5(2) of Part 1 to the Schedule to the 1967 Regulations provides that at any time when under condition 3 the tenant would be entitled to require the landlord to deduce his title, he may by notice in writing given to the landlord require him within 4 weeks to state what rights over the property and provisions concerning restrictive covenants he requires to be included in the conveyance in accordance with the provisions of the Act.

18. Condition 3 allows the tenant to require the landlord to deduce his title where he has received no notice in reply to his tenant's notice of his desire to acquire the freehold within 2 months of giving such notice (or if a reply has been received other provisions apply). In this case it is stated in the application form that no response to the tenant's notice of claim has been received. The notice of claim is dated 10 July 2020 and the request for a statement of rights and restrictive covenants is dated 21 July 2020. The request was therefore served before the two month period for responding to the notice of claim referred to in Condition 3 had expired. Had the request been validly served then Condition 5(5) would have applied deeming the Respondent to have required no rights of way or provisions concerning restrictive covenants in the deed of transfer.
19. Whilst Condition 5(5) is not applicable in this case, the Respondent has nevertheless failed to respond to the Applicant's notice of his desire to acquire the freehold and has failed to engage with the tribunal as required by the tribunal's Directions. There is no submission before the tribunal seeking to justify on the Respondent's behalf the reservation of any rights or the imposition of any new covenants or restrictions. The 'conveyance' in this case is a transfer of the whole of a registered title and therefore it is unnecessary to introduce the sorts of rights and reservations and mutual covenants that might apply if it were a transfer of part. In the absence of any argument from the Respondent to the contrary, the tribunal determines that there is no need to go beyond the covenant and indemnity (concerning any restrictive covenants contained or referred to in the 1951 Conveyance) already included within the proposed form of draft transfer.
20. The tribunal accordingly determines that the provisions that ought to be contained in the transfer deed are as set out in the draft proposed by the Applicant and attached in the Appendix.

Professional Costs

Applicant's Submission

21. The Applicant proposes that the Respondent's reasonable professional costs under section 9(4) of the Act should be fixed at £400, being the sum Ordered by the County Court in October 2017 in a similar case, also concerning a property in Formby, with the same landlord.

Determination

22. The tribunal finds that there is no evidence of any costs being incurred to date by the Respondent in relation to, or incidental to, any of the matters listed at section 9(4) of the Act. In order to complete the transfer of the freehold title it is reasonable to assume costs would be incurred in relation to at least some of these matters. Since the price is being fixed by the tribunal, and the Respondent has not responded to notices served by the Applicant, it is reasonable to assume that the professional costs incurred would not be as great as they might otherwise be.

23. In the absence of any submission from the Respondent on the issue of professional costs, the tribunal finds in the Applicant's favour and determines the total amount of costs payable under section 9(4) to be £400 together with any applicable VAT.

S Moorhouse Tribunal Judge 8 March 2021

Appendix
Draft Transfer

HM Land Registry
Transfer of whole of registered title(s)

TR1

Any parts of the form that are not typed should be completed in black ink and in block capitals.

If you need more room than is provided for in a panel, and your software allows, you can expand any panel in the form. Alternatively use continuation sheet CS and attach it to this form.

For information on how HM Land Registry processes your personal information, see our [Personal Information Charter](#).

Leave blank if not yet registered.

Insert address including postcode (if any) or other description of the property, for example 'land adjoining 2 Acacia Avenue'.

Remember to date this deed with the day of completion, but not before it has been signed and witnessed.

Give full name(s) of all the persons transferring the property.

Complete as appropriate where the transferor is a company.

Give full name(s) of all the persons to be shown as registered proprietors.

Complete as appropriate where the transferee is a company. Also, for an overseas company, unless an arrangement with HM Land Registry exists, lodge either a certificate in Form 7 in Schedule 3 to the Land Registration Rules 2003 or a certified copy of the constitution in English or Welsh, or other evidence permitted by rule 183 of the Land Registration Rules 2003.

Each transferee may give up to three addresses for service, one of which must be a postal address whether or not in the UK (including the postcode, if any). The others can be any combination of a postal address, a UK DX box number or an electronic address.

1	Title number(s) of the property: MS393967
2	Property: 9 Montagu Road, Formby, L37 1LA
3	Date:
4	<p>Transferor: Morax Limited</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix: 4405684</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
5	<p>Transferee for entry in the register: Peter Terence Donnelly</p> <p><u>For UK incorporated companies/LLPs</u> Registered number of company or limited liability partnership including any prefix:</p> <p><u>For overseas companies</u> (a) Territory of incorporation:</p> <p>(b) Registered number in the United Kingdom including any prefix:</p>
6	Transferee's intended address(es) for service for entry in the register: 9 Montagu Road, Formby, L37 1LA
7	The transferor transfers the property to the transferee

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Place 'X' in the appropriate box. State the currency unit if other than sterling. If none of the boxes apply, insert an appropriate memorandum in panel 11.

Place 'X' in any box that applies.

Add any modifications.

Where the transferee is more than one person, place 'X' in the appropriate box.

Complete as necessary.

The registrar will enter a Form A restriction in the register *unless*:

- an 'X' is placed:
 - in the first box, or
 - in the third box and the details of the trust or of the trust instrument show that the transferees are to hold the property on trust for themselves alone as joint tenants, or
- it is clear from completion of a form JO lodged with this application that the transferees are to hold the property on trust for themselves alone as joint tenants.

Please refer to *Joint property ownership* and *practice guide 24: private trusts of land* for further guidance. These are both available on the GOV.UK website.

Insert here any required or permitted statement, certificate or application and any agreed covenants, declarations and so on.

8 Consideration

- The transferor has received from the transferee for the property the following sum (in words and figures): £150 One hundred and fifty pounds
- The transfer is not for money or anything that has a monetary value
- Insert other receipt as appropriate:

9 The transferor transfers with

- full title guarantee
- limited title guarantee

10 Declaration of trust. The transferee is more than one person and

- they are to hold the property on trust for themselves as joint tenants
- they are to hold the property on trust for themselves as tenants in common in equal shares
- they are to hold the property on trust:

11 Additional provisions

Transferee will observe and perform any restrictive covenants contained or referred to in the Conveyance dated 6 June 1951 made between (1) Mary Teresa Weld-Blundell (2) Geoffrey Edmond de Trafford and Edric Humphrey Weld and (3) The Trustees of the Royal Liver Friendly Society and to indemnify the Transferor from and against all costs, claims, demands and liabilities arising from the non-observance and non-performance thereof, so far any such covenants relate to the Property and remain capable of being enforced.

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The transferor must execute this transfer as a deed using the space opposite. If there is more than one transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains transferee's covenants or declarations or contains an application by the transferee (such as for a restriction), it must also be executed by the transferee.

If there is more than one transferee and panel 10 has been completed, each transferee must also execute this transfer to comply with the requirements in section 53(1)(b) of the Law of Property Act 1925 relating to the declaration of a trust of land. Please refer to Joint property ownership and practice guide 24: private trusts of land for further guidance.

Examples of the correct form of execution are set out in practice guide 8: execution of deeds. Execution as a deed usually means that a witness must also sign, and add their name and address.

Remember to date this deed in panel 3.

12 Execution

**EXECUTED as a DEED by
MORAX LIMITED**
Acting by

.....
Director

And

.....
Director/Secretary

**EXECUTED as a DEED by
PETER TERENCE DONNELLY**
In the presence of

.....
Peter Terence Donnelly

.....
Signature of Witness

.....
Name of Witness

.....
Address

.....
Occupation

WARNING

If you dishonestly enter information or make a statement that you know is, or might be, untrue or misleading, and intend by doing so to make a gain for yourself or another person, or to cause loss or the risk of loss to another person, you may commit the offence of fraud under section 1 of the Fraud Act 2006, the maximum penalty for which is 10 years' imprisonment or an unlimited fine, or both.

Failure to complete this form with proper care may result in a loss of protection under the Land Registration Act 2002 if, as a result, a mistake is made in the register.

Under section 66 of the Land Registration Act 2002 most documents (including this form) kept by the registrar relating to an application to the registrar or referred to in the register are open to public inspection and copying. If you believe a document contains prejudicial information, you may apply for that part of the document to be made exempt using Form EX1, under rule 136 of the Land Registration Rules 2003.

37.

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