



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

**Case Reference** : **LON/00AP/OCE/2019/0147**

**Property** : **5 Frinton Road, London N15 6NH**

**Applicant** : **Shabes Limited and Delta International Limited**

**Representative** : **Mr P Loizou MRICS of Appraisal Surveyors**

**Respondent** : **Forcelux Limited**

**Representative** : **Mr J C Gibb BSc (Econ) MRICS**

**Type of Application** : **Application to determine the terms of acquisition under s24(1) Leasehold Reform, Housing and Urban Development Act 1993**

**Tribunal Members** : **Tribunal Judge Dutton  
Mr L Jarero BSc FRICS**

**Date and venue of Hearing** : **10 Alfred Place, London WC1E 7LR  
on 3<sup>rd</sup> December 2019**

**Date of Decision** : **6<sup>th</sup> January 2020**

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**DECISION**

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## **DECISION**

The tribunal determines that the price payable for the freehold of 5 Frinton Road London N15 6NH is £96,245 as set out on the attached valuation schedule.

### **Background**

1. On 18th July 2019 the applicants Shabes Limited and Delta International Limited applied to the tribunal under section 24 (1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the Act) for a determination of the terms of acquisition in respect of their purchase of the freehold at 5 Frinton Road, London N15 6NH (the Property).
2. By an initial notice served under section 13 of the Act the applicants put forward a proposed purchase price £59,500 for the freehold interest in the specified premises and £500 for the front and back garden.
3. By a counter notice served on behalf of the freeholder Forcelux Limited, the proposal as to the purchase price and the price payable for additional land was rejected and instead the landlord's counter proposal was £109,200 for the specified premises and £2,500 for the garden areas.
4. As terms could not be agreed the matter came before us for hearing on the 3rd of December 2019. Mr Loizou from Appraisal Surveyors represented the applicants and Mr James Gibb from J C Gibb chartered surveyors.
5. We were provided with a bundle of papers prior to the commencement of the hearing which included the initial and counter notice, copies of some correspondence and the official copy of the Register of Title for the freehold and the two flats at the Property. In addition, we had a copy of the leases for the first and ground floor flats, the points of agreement and disagreement and the surveyors reports from Mister Loizou and from Mr Gibb.
6. We were not required to inspect the property and heard the application on the 3rd of December 2019.

### **Hearing**

7. We heard first from Mr Loizou and will set out briefly the terms of his expert report that was before us. Before we do that however we should record that there appeared to be agreement as to the valuation date, which is the 22nd February 2019 and that the deferment rate should be 5%. The parties were unable to agree the capitalisation rate, the relativity and the freehold vacant possession value of the two flats thus leading to the freehold valuation. In respect of rights of development, the respondent considered a figure of £2,000 was appropriate and valued the other property at £2,500. The

applicant considered there was no value in the right to develop and offered £500 for the value of other property.

8. Mr Loizou's report is dated the 25th of November 2019 and sets out the description of the property confirming that the internal accommodation of the ground floor flat was 565 square feet and the upper flat at 570 square feet . There is no access to the rear garden from the upper flat, which was exclusively demised to the ground floor flat. There was a small front garden which he said was not entirely demised to the ground floor flat, but we will return to that element in due course. He told us it was agreed that there should be an adjustment of 1% between the long lease and freehold value and he considered that the maximum freehold value for the ground floor flat was £415,000 and for the first floor flat £400,000.
9. Under the heading 'Short lease value' he told us he had consulted the relativity tables and taken an average of the 5 graphs the RICS commissioned in 2009, he considered that this showed a relativity of 86.33%. He told us he had excluded the CEM reports and the SE leasehold entries seeking to reflect current case law. He told us that he had considered the Mundy case and applied a further reduction of 2.78% thus adopting a relativity of 83.55% giving a short lease value for the ground floor flat of £346,525 and for the upper flat of £334,000.
10. His report went on to set out under the ' Valuation calculations and declaration' heading, a number of comparable properties in the immediate vicinity. These appeared to indicate that an average rate applicable to the two flats on a long lease basis would be for the ground floor £322,978.29 and for the first floor flat £326,054.27. In addition there would necessarily be applied a 1% uplift for the freehold value but he told us that these figures included time adjustments and any adjustments for condition. Asked by the tribunal why he put forward valuations considerably higher than this, as referred to at paragraph 8 above, he told us that this was because he wished to effect a settlement.
11. Taking these matters into account he concluded that the price that he 'estimated' the freehold would be purchased for was £84,159.
12. At the hearing he confirmed that he attributed no value to the garden but that the difference in the value that he had assessed between the two flats of £15,000 represents the benefit that the first floor flat has over the ground floor flat in respect of such things as security and noise.
13. He told us that the comparables that he had relied upon in his report were 2 bed flats he believed all having leases over 90 years. He was asked why he had not commented on the comparables put forward by Mr Gibb in his report. He did not think that those comparables were of any use and merely formed the lowest level of values available.

14. Mr Loizou could see no development value in the loft space. We were told that there was no access other than through the 1st floor flat. In respect of the front garden he suggested that a figure of £500 was appropriate, notwithstanding that it appeared from a review of the lease to the ground floor, that the front garden was included within the demise. At the hearing the valuers agreed a figure of £500 for the front garden.
15. On the question of the capitalisation rate he told us that he had opted for 6% as he had used that in other settlements. On the question of relativity he confirmed that he had utilised the RICS graphs and considered upper tribunal decisions.
16. Asked to comment on Mr Gibb's report he stated that in respect of relativity the Savills graph was PCL and not relevant and had no comment to make on the capitalisation rate suggested by Mr Gibb of 5% other than to say he disagreed.
17. He was then asked questions by Mr Gibb which included a question as to why he had not sent the full descriptions of the other flats, set out in his valuation calculations, to Mr Gibb and why he had not considered the comparables that Mr Gibb had put forward. His response was that they were not asked for, although they had spoken concerning certain matters. In respect of the second point he considered that the date of the comparables used by Mr Gibb were too far removed from those of the valuation date for the Property. Asked about the comparables 27a Vartry Road and 2b Thorpe Road he indicated that in the case of Vartry Road it was significantly bigger and also that the Thorpe Road property was 11 months old and not within 800 metres of the Property.
18. Asked by Mr Gibb why he had not followed the Upper Tribunal's decision in the case of Trustees of Barry and Peggy High Foundation v Zucconi and Zanre. This was one of a number of cases which he said had disparaged the use of the RICS Outer London graphs. He responded that he did not rely on any one case but instead looked at a range and applied the no act world discount. He was asked why he had not referred to the sale of the first floor flat. He said he did not have evidence of same, which was inconsistent with his own report at page 100 which set out the details of the sale of the flat on the 1st floor.
19. We considered the terms of Mr Gibbs report, which also set out details of the properties and referred to the sale of the first floor flat in June of 2018 at £320,000. He said that he had inspected this property and that it was in a poor state of repair. Apparently, a good deal of work was undertaken, some of which may have required the consent of the Landlord, which it was suggested had not been sought. It did not appear to be relied upon by Mr Gibb as we had no further details.
20. He put forward 4 comparable properties which he said were within a quarter of a mile of the subject Property. These varied in dates of sale from December 2017 to February 2019. He told us that the first floor flat at 1 Frinton Road

had recently been put on the market with a share of the freehold at £425,000 and applying indexation back to the valuation date would give a figure in excess of £452,000. Taking these matters into account he came to the conclusion that the freehold vacant possession value for the flats having been uplifted by 1% gave a value of £444,455 per flat.

21. His report then contained a lengthy argument on the question of relativity in reference to a number of upper tribunal cases and comments upon the graphs contained in the RICS document for Greater London and England. He had cited extracts from various cases but had not thought to bring at those cases with him. It was only on further questioning from us that he was able to produce copies of the Zucconi case and the upper tribunal case of Reiss v Iron Hawk Limited. We noted all that he said and also considered the comparable properties that he put to us.
22. Mr Gibb then gave oral evidence and was asked about his value of £2,000.00 for the development of the loft space. He appeared to indicate that he had assumed the loft space was demised to the tenant and accordingly the £2,000 reflected the fee the landlord would be able to ask for in respect of the consent required under the lease to allow any conversion works to proceed.
23. His view was that the respondent would base its consent on an increase in value to the subject property as a result of the proposed works. However, he was content to take the view that a payment of £2,000 would be an appropriate sum for this element. He valued the upper flat at the same level as the ground floor flat, largely because as the upper flat was light and airy and had a nice front room. He also confirmed that although he had relied on indexation to assess the current values of his comparables at the valuation date he could not say which indexation he had utilised.
24. As to relativity he relied on the Mundy v Sloane Trustees, an Upper Tribunal case which he said meant that disregarding PLC graphs was inappropriate. In his opinion the criticism levelled in that case was also appropriate for valuations concerning outer London properties and the graphs of relativity relating thereto. He said the Court of Appeal had dismissed the graphs and that we should apply the Savills index to the exclusion of the other Outer London graphs. He did agree that it may be appropriate to consider the Gerald Eves graph in addition to the Savills index. His view was that the Savills index showed relativity of between 80.1% and 80.3% for the remaining terms of the two leases and he had adopted a percentage of 80.17.
25. In respect of the yield rates he considered that on the open market no one would agree to sell with a discount of 6% or more and that the minimum should be 5%, which he told us tribunals had accepted as the going rate. He was not able to adduce any evidence to support this. His final assessment of the price to be paid for the freehold was £111,500, to include his assessment of the loft space and the front garden. It did not reflect the fact that he agreed the price for the front garden at £500.

## **Findings**

26. The first matter that we consider is the sum to be attributed to the freehold vacant possession values for the two flats. The evidence given to us by Mr Loizou was unhelpful. He appeared to have adopted something of a scatter gun approach and was not consistent with his own evidence. His assessment of the values by reference to comparable evidence was disregarded in an apparent desire to achieve a settlement. We find therefore that we cannot rely on Mr Loizou's assessment of the freehold vacant possession value of the two flats.
27. We are therefore left with considering the comparable evidence, which was put forward by Mr Gibb. The properties in Vartry Rd are both substantially bigger and do not help us. We were therefore left with considering the comparables at 38 Ferndale and 2b Thorpe Rd. They do provide some assistance. We have applied the HMLR indexation flats in Haringey to at these flats to achieve the value at the valuation date. We conclude that the long lease value for each flat is £423,500 and when up lifted by 1% for the freehold value figure of £427,735 is achieved. These figures are shown on the attached valuation schedule.
28. We must then consider the impact of relativity . We consider that Mr Gibb rather over egged the pudding as to the Upper Tribunal cases and the disregard of the graphs of relativity prepared on behalf of the RICS. In the Barry and Peggy High Foundation case, the latest authority to which he referred in his extensive list of some 10 decisions at paragraph 17 the Member says as follows *"I do not accept that by taking the average of the five relativity graphs for Greater London and England published in the 2009 RICS report the FTT took account of an irrelevant consideration."*
29. At paragraph 22 he went on to say *"In adopting an average relativity from the RICS graphs the FTT, correctly in my view, excluded the relativities contained in the published research of the College of Estate Management and the Leasehold Advisory Service both of which had been criticised by the Tribunal in a number of cases..."* He went on to say at paragraph 23 as follows *"In my judgment although the FTT did not err by having regard to an average of the relativities contained in the relevant RICS graphs, they were wrong not to have considered the Gerald Eve and the Savills graphs as well solely because the property was not located in prime central London."*
30. The implication from this case is that the consideration of the RICS 2009 graphs is still appropriate in respect of properties that are outside prime central London but that we should take into consideration the more recent findings by Savills, even though they relate to PCL properties. We are content to do so. Like the previous Upper Tribunal decisions, we do not consider that each graph on the RICS paper is appropriate and have confined our

assessment of the relativity to be applied in this case as follows. We consider that the Nesbitt and Andrew Pridell graphs are most appropriate. The other graphs are either opinion based or rely on data from Beckenham and Brighton. We will also apply the relativity to be found in the Savills data. The relativity figure for Nesbitt is 85.83%. In respect of the Andrew Pridell graph that is 87.7%. In respect of the Savills graph on an enfranchisable basis it is 84.65%. We need to apply the 'No Act World' reduction in respect of these findings. By utilising both the Savills unenfranchisable and enfranchisable graphs it provides a No Act World figure of 4.45% thus reducing the relativity figure to 81.61%. It is this figure we apply to ascertain the existing lease value of £349,074.

31. The parties are agreed on the deferment rate applicable but differ on the capitalization rate to be applied. We heard all that was said by Mr Gibb. The ground rent payable in respect of these properties is modest in the extreme rising every 33 years. We consider the capitalization rate that is appropriate in this case would be 6% and that is the amount which we have factored into the valuation.
32. The other matter we must refer to relates to the value attributable to development and the front garden of the property. The lease of the ground floor flat includes in the demise the following "Secondly all those pieces or parcels of land coloured green brown and blue on the said plan". As is unfortunately common in these cases the plans that were provided to us were not coloured. However, there was a coloured plan in the tribunal file and we can see that the areas of green, brown and blue colouring all fall within the demise of the ground floor flat. In those circumstances although the valuers have agreed a figure of £500 for this area of land we cannot accept that that is appropriate. This area of land is already demised to the ground floor lessee and we see no reason why there should be additional monies paid in respect of the land that it already owns.
33. Insofar as the loft space is concerned it is noted from the lease of this property that the demise of the first floor flat includes the roof of the building. Mr Gibb accepted that the demise did include the loft space. Quite how that sits with the exceptions and reservations of the lease which includes the right to install and maintain a television or radio aerial in the loft space in the roof of the demised premises is unclear. However, we accept Mr Gibb's assertion that the upper flat does include the loft space. It is said by Mr Gibb that this has a value of £2000. It is difficult to see how that would arise. No evidence was adduced to us that the present lessee has any intention of developing the loft space or that planning permission would be granted. Furthermore, Mr Gibb appeared to be suggesting that the right would arise if such development were to take place and the lessee required the consent of the landlord. The sum of £2,000 represented the fee which the landlord might seek for granting consent. This seems to us to be a speculative windfall and not an amount which any hypothetical purchaser would take into account in determining the figure to be paid for the freehold. In those circumstances we do not consider

that any value should be attributed to the additional land representing development value for this property. We find therefore that the price to be paid for the freehold is £96,245.00 as set out on the attached valuation.

Tribunal Judge Dutton

6<sup>th</sup> January 2020

### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.



<b>First-tier Tribunal</b>			Ref:	LON/00AP/OCE/2019/0147
<b>5 and 5a Frinton Road London N15 6NH</b>				
Leases Each flat is let on similar long leases	99 years from 25 December 1982			
Unexpired term	62.83 years			
Ground rent				
First period of 33 years	£50			
Second period of 33 years	£100			
Last period of 33 years	£200			
Deferment rate	5%			
Capitalisation rate	6%			
Relativity (freehold to existing lease)	81.61%	Value of both flats		
Long lease value of each flat	£423,500	£847,000		
Uplift of 1% to freehold value	£427,735	£855,470		
Existing lease value of each flat	£349,074	£698,148		
Valuation date	22 February 2019			
<b>Value of freeholder's present interest</b>				
Ground rent 2nd period	£200			
YP 29.83yrs @ 6%	13.7360	£2,747		
Ground rent for 3rd period	£400			
YP 33 years @ 6%	14.2302			
PV of £1 in 29.83 years @ 6%	0.1758	£1,001		
Reversion to virtual freehold value	£855,470			
PV of £1 @ 5% in 62.83 years	0.0466	£39,890		
<b>Freeholder's present interest</b>		<b>£43,638</b>	<b>£43,638</b>	
<b>Value of tenant's present interest</b>				
(Based on 81.61% of virtual freehold value)		£698,148		
<b>Calculation of marriage value</b>				
<b>Value of property after enfranchisement</b>				
Freeholder's interest	Nil			
Tenant's interest	£847,000			
		£847,000		
<b>Value of existing interests</b>				
Freeholder's interest from above	£43,638			
Tenant's interest from above	£698,148			
		£741,786		
Marriage value	£105,214			
Marriage value to be divided equally between freeholder and tenant	£52,607			
<b>Premium payable to freeholder</b>				
Present interest - from above		£43,638		
Share of marriage value		£52,607		
Total		<b>£96,245</b>		