

V2



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

**Case Reference:** LON/00AP/OCE/2019/0197

**Property:** 134 The Avenue London N17 6TG

**Applicant:** 134 The Avenue Ltd

**Representative:** Mr J Gilmartin MBA BSc MRICS

**Respondent:** Marsh Properties Ltd

**Representative:** Mr J Taylor MRICS

**Type of Application:** S24 of the Leasehold Reform Housing and  
Urban Development 1993

**Tribunal Members:** Judge F J Silverman Dip Fr LLM  
Mr I Holdsworth FRICS

**Date and venue of :  
Hearing** 10 Alfred Place London WC1E 7LR ,  
11 February 2020

**Date of Decision:** 12 February 2020

## Decision

The Tribunal determines that the total price to be paid by the Applicants is £91,350 which includes £15,000 representing the value attributed to the loft space. The payment of the premium is apportioned between the Applicants as to £39,530 to the leaseholder of the ground floor flat and as to £51,820 to the leaseholder of the first floor flat. The calculation of the premium is shown on the annexed valuations.

## Reasons

1 The Applicant nominee purchaser filed an application on the 30 September 2019 asking the Tribunal to determine the price payable to purchase the freehold of the property known as 134 The Avenue London N17 6TG (the property) under section 24 Leasehold Reform Housing and Urban Development Act 1993 and other matters relevant to that transaction.

2 The Applicant's initial notice had been served on 14 February 2019 and the Respondent landlord's counter-notice is dated 5 April 2019. The parties agreed that the valuation date was 14 February 2019.

3 The hearing of the matter took place before a Tribunal sitting in London on 11 February 2020 at which Mr J Gilmartin represented the Applicant and Mr J Taylor represented the Respondent. An agreed bundle of documents was placed before the Tribunal for its consideration. Page references below refer to that bundle.

4 Having had the benefit of oral and photographic evidence of the property the Tribunal considered that a physical inspection of the property was not required and would be disproportionate to the issues in dispute. As described in the application, the property comprises two storey mid-terrace house, currently converted into two self-contained flats situated in a residential street in Tottenham. The property is thought to have been built in the early twentieth century (circa 1900) (page 206) and is of conventional brick construction with a pitched roof covered in slates. The area in which the property is situated contains a mixture of residential, educational and commercial property. Public transport, shops and other amenities are close by.

5 At the commencement of the hearing the Tribunal was informed that the parties had reached an accommodation on most of the issues in the case and the Tribunal's determination was therefore restricted to the two areas then outstanding which were relativity and the value, if any to be attributed to the loft space above the first floor flat which is not currently part of either demise and is undeveloped. The remit of this decision is thus confined to those two areas.

6 In relation to relativity both parties made reference to the recent decision in *The Trustees of the Barry and Peggy High Foundation v Claudio Zucconi and Mirella Zanre* [2019] UKUT 0242 (the 'Barrydene' case) which suggests that Tribunals should apply the Savills 2015 graph when assessing relativity irrespective of whether the subject property was within or outside the prime central London area to which the Savills' graph exclusively relates. The Respondent's view was that the present Tribunal should follow the ratio in this case and therefore use the Savills' graph. In contrast to that the Applicant said that he did not consider that the Tribunal was bound to follow

that decision because the subject property was unlike that under discussion in the Barrydene case and he chose instead to rely on open market comparables (page 92), settlement transactions (page 90) and the Nesbitt graph which deals almost exclusively with north London properties. He has also compiled a graph of his own (page 91) but was unable satisfactorily to explain the reason for the disparity between his results and those of the other two graphs used in his table. The Tribunal does not consider that settlement evidence is the best possible evidence from which to deduce relativity and none of the examples provided by the Applicant is less than two years old. Some examples cited dated from 2013 which the Tribunal does not consider to be appropriate to a valuation date in 2019. Similarly, only one of the Applicant's open market value examples is less than two years old, others again dating from 2013. Regrettably, the Tribunal cannot consider that these are sufficiently representative of the market close to the valuation date to be reliable comparables.

7 The Respondent said that he considered that the majority of the graphs customarily used by practitioners to assess relativity were out of date and did not reflect current market conditions. He relied on the Barrydene case and based his calculation on the Savills' graph which gave a relativity rate for the first floor flat of 83.03% and for the ground floor, applying an agreed 0.6% reduction, of 82.43%. This figure also reflects an agreed deduction to reflect Act rights of 3.5% (page 118).

8 The Tribunal recognises that the subject property does not fall within the category known as 'prime central London' and although it is not comfortable with assessing the relativity in the present case on a graph which is based on prime central London transaction values, it feels constrained by the Upper Tribunal decisions in the Barrydene case and *Reiss v Ironhawk Ltd* [2017] UKUT 0311 (UT) (this latter case related to a property in Tottenham) to apply the Savills' graph to this transaction and this adopts the Respondent's relativity figures as above. The Tribunal was also referred to *Sinclair Gardens Investments (Kensington) Ltd Re: 9 & 11 George Court Chelmsford* [2017] UKUT 494 (LT) which demonstrates that use of the Savills' graph outside central London was current in 2017 ie before the valuation date relating to the present case.

9 Both parties agreed that the loft space had potential either as storage space or to be developed as extended living space for the first floor flat, or (but less likely) for independent residential use ie as a separate flat.

10 In the event that the area could be converted to useable residential space (subject to conversion and to planning permission) the Respondent valued the loft area at £15,000. Alternatively, he argued that the room could be used for storage and demonstrated the price of separate nearby storage areas at £7,700 per annum (page 212). The Respondent said (page 213) that a significant number of properties in the same street had existing loft conversions and that this was evidence not only of the popularity of loft conversions on this area but also showed both that planning permission was readily available and that such a project was financially viable. He estimated that a loft conversion would add between £50,000-£75,000 to the value of the first floor flat.

11 Although the Applicant's assessment of the added value of a loft conversion did not differ significantly from that suggested by the Respondent, the Applicant disputed the overall popularity of this type of project, saying that a number of the examples presented by the Respondent were not like for like with the subject property. He also presented calculations to the Tribunal in support of his assumption that the cost of the conversion, including building works and professional fees would negate the amount of the value which the extension added to the property. On balance, the Tribunal prefers the Respondent's view, accepting that a number of other properties

in the immediate locality have been extended in this way and that capital value would be added to the property by the extension, whether or not that value resulted in a monetary profit or merely in better living conditions for the resident might be a matter of choice in each individual case. Alternatively, the use of the loft space for storage would have its own value, albeit less than that attributable to residential use. The Tribunal assesses this value, being a combination of residential and storage potential as being worth £15,000 as shown in the table below.

12 The Applicant also argued that any value attributed to the loft space should be treated as marriage value and shared between the parties because it was not possible for either landlord or tenant to develop the loft area without the consent of the other. Although the Tribunal accepts the Applicant's point in respect of any development needing mutual consent it does not accept that this aspect of value is to be treated as marriage value under the Act and prefers to treat it conventionally as development value within the definition of that word in the Act.

**13** The Tribunal determines that the total price to be paid by the Applicants is £91,350 which includes £15,000 representing the value attributed to the loft space. The payment of the premium is apportioned between the Applicants as to £39,530 to the leaseholder of the ground floor flat and as to £51,820 to the leaseholder of the first floor flat. The calculation of the premium is shown on the annexed valuations.

## 14 The Law

Section 24 Leasehold Reform Housing and Urban Development Act 1993  
Applications where terms in dispute or failure to enter contract.

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser—

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

(3) Where—

(a) the reversioner has given the nominee purchaser such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b)all of the terms of acquisition have been either agreed between the parties or determined by a leasehold valuation tribunal under subsection (1),

but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may, on the application of either the nominee purchaser or the reversioner, make such order under subsection (4) as it thinks fit.

(4)The court may under this subsection make an order—

(a)providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (3);

(b)providing for those interests to be vested in him on those terms, but subject to such modifications as—

(i)may have been determined by a leasehold valuation tribunal, on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection, and

(ii)are specified in the order; or

(c)providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

(5)Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6)For the purposes of this section the appropriate period is—

(a)where all of the terms of acquisition have been agreed between the parties, the period of two months beginning with the date when those terms were finally so agreed;

(b)where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—

(i)the period of two months beginning with the date when the decision of the tribunal under that subsection becomes final, or

(ii)such other period as may have been fixed by the tribunal when making its determination.

(7) In this section “the parties” means the nominee purchaser and the reversioner and any relevant landlord who has given to those persons a notice for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter “the terms of acquisition”, in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the nominee purchaser, whether relating to—

(a) the interests to be acquired,

(b) the extent of the property to which those interests relate or the rights to be granted over any property,

(c) the amounts payable as the purchase price for such interests,

(d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or

(e) the provisions to be contained in any conveyance,

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section 1(4) or 21(4).

Judge F J Silverman  
as Chairman  
12 February 2020

## 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.

<b>Property: First floor flat, 134 The Avenue, London N17 6TG</b>					
<b>Roof space conversion: Development value calculation</b>					
Uplift to value arising from loft conversion					£75,000
<b>Less</b>					
Works costs incl of vat, all professional fees		m2	£/m2		
Estimated at 35m2 at £1,715 per m2		35	£1,715	£60,025	
Total works and fee costs					£60,025
<b>Residual development value of loft space</b>					<b>£14,975</b>
					<b>say</b>
					<b>£15,000</b>

<b>Property: First floor flat, 134 The Avenue, London</b>				
Reference: LON/00AP/OCE/2019/0197				
FTT valuation				
<b>Lease and Valuation Data</b>				
Lease Term:		24/06/1986		
Lease Expiry date:		23/06/2085		
Unexpired term as at valuation date:		66.36	years	
Date of Valuation		14/02/2019		
Rent receivable by landlord:				
Payable from valuation date for 33.35 years	£	150		
Payable for second period 33 years	£	200		
<b>Values</b>				
Extended lease value on statutory terms	£	340,000		
Notional Freehold	£	343,434		
LHVP with current term unexpired	£	282,302	Relativity	83.03%
Capitalisation rate (%)		6.50		
Deferment rate (%)		5.00		
<b>Value of Freeholders present interest</b>				
<b>Term 1</b>				
Ground rent payable	£	150		
YP @ 33.35 years @ 6.5%		13.50107	£	2,025
<b>Term 2</b>				
Ground rent payable	£	200		
YP @ 33 years @ 6.5%		13.45909		
Deferred @ 33.35 years @ 6.5%		0.12243	£	330
			£	2,355
Reversion				
Freehold in vacant possession	£	343,434		
Deferred @ 66.3583 years @ 5%		0.0392567	£	13,482
Total value of current interest			£	15,837
<b>Marriage value</b>				
Value of flat with long lease on statutory terms	£	340,000		
Landlords proposed interest			£	340,000
Less				
Value of Leaseholders existing interest	£	282,302		
Value of Freeholders current interest	£	15,837	£	298,139
Marriage value	<b>Total</b>		£	41,861
Division of Marriage Value equally between				
Freeholder			£	20,931
Leaseholder			£	20,931
Appurtenant land				£50
Development value				£15,000
<b>Price payable to Freeholder</b>			<b>Total</b>	£ 51,817
			<b>SAY</b>	£ 51,820



<b>Property: Ground Floor Flat, 134 The Avenue, London</b>				
Reference: LON/00AP/OCE/2019/0197				
FTT valuation				
<b>Lease and Valuation Data</b>				
Lease Term:		24/06/1985		
Lease Expiry date:		23/06/2084		
Unexpired term as at valuation date:		65.36	years	
Date of Valuation		14/02/2019		
Rent receivable by landlord:				
Payable from valuation date for 32.35 years	£	150		
Payable for second period 33 years	£	200.00		
<b>Values</b>				
Extended lease value on statutory terms	£	352,500		
Notional Freehold	£	356,061		
LHVP with current term unexpired	£	290,566	Relativity	82.43%
Capitalisation rate (%)				
		6.50		
Deferment rate (%)				
		5.00		
<b>Value of Freeholders present interest</b>				
<b>Term 1</b>				
Ground rent payable	£	150		
YP @ 32.35 years @ 6.5%		13.37863	£	2,007
<b>Term 2</b>				
Ground rent payable	£	200		
YP @ 33 years @ 6.5%		13.45909		
Deferred @ 32.35 years @ 6.5%		0.13039	£	351
			£	2,358
Reversion				
Freehold in vacant possession	£	356,061		
Deferred @ 65.3583 years @ 5%		0.04122	£	14,677
Total value of current interest			£	17,034
<b>Marriage value</b>				
Value of flat with long lease on statutory terms	£	352,500		
Landlords proposed interest			£	352,500
Less				
Value of Leaseholders existing interest	£	290,566		
Value of Freeholders current interest	£	17,034	£	307,600
Marriage value	<b>Total</b>		£	44,900
Division of Marriage Value equally between				
Freeholder			£	22,450
Leaseholder			£	22,450
			£	22,450
Appurtenant land				
				£50
<b>Price payable to Freeholder</b>				
			<b>Total</b>	£ 39,534
			<b>SAY</b>	£ 39,530

<b>SUMMARY TABLE</b>				
<b>Property: First floor flat, 134 The Avenue, London</b>				
Premium payable			£51,820.00	
<b>Property: Ground Floor Flat, 134 The Avenue, London</b>				
Premium payable			£39,530.00	
Total premium payable				<b>£91,350.00</b>