



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

Case reference : **LON/00BE/OCE/2019/0233**

Property : **22 Underhill Road, Dulwich, London
SE220AH**

Applicants : **T.F.Aitchison, H. David, S.
Winterhagen, M. Lelli and L.J. Hems**

Representative : **Tolhurst Fisher LLP, solicitors**

Respondent : **House of Mayfair Limited**

Representative : **Thirsk Winton**

Type of application : **Section 24 of the Leasehold Reform,
Housing and Urban Development Act
1993**

Tribunal members : **Judge Pittaway
Mr L Jarero BSc FRICS**

**Date of determination
and venue** : **17 March 2020 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **30 March 2020**

DECISION

Summary of the tribunal's decision

The appropriate premium payable for the collective enfranchisement is Twenty-two thousand pounds (£22,000.00).

Background

1. This is an application made by the applicant qualifying tenants pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the **Act**”) for a determination of the premium to be paid for the collective enfranchisement of 22 Underhill Road, London SE22 0AH (the “**property**”).
2. By a notice of a claim dated 1 July 2019, served pursuant to section 13 of the Act, the applicants exercised the right for the acquisition of the freehold of the subject property and proposed to pay a premium of £17,100 for the freehold.
3. On 22 August, the respondent freeholder (who is also the tenant of Flat 5 at the Property) served a counter-notice admitting the validity of the claim and counter-proposed a premium of ££75,000 for the freehold.
4. By an application dated 25 November 2019, the applicants applied to the tribunal for a determination of the premium and terms of acquisition.
5. The tribunal issued directions on 13 December 2020.

The issues

Matters agreed

6. The following matters were agreed:
 - a. **The subject property:**

is a detached building constructed c.2008/2009 on the site of a former mission hall. It contains five purpose-built flats on an approximately rectangular shaped, sloping site. It is constructed over ground and three upper floors and the flats are approached from a communal entrance and internal staircase. There are two flats on the ground floor and one flat on each of the upper floors. Flat 5 occupies the whole of the third floor, access is from a communal staircase on the second floor. There is no lift. The building has brick faced and render-coated walls under a flat roof. The flats enjoy access to a communal garden at the rear. Flat 2 on the ground floor has a small private rear garden. Flat 1 has a small section of front garden. There is a roof terrace at 1st floor level at the rear of the building which is demised to Flat 3. Flats 2 and 3 have demised car parking spaces. There is a separate lease of one other ground floor parking space.
 - b. **The valuation date:**

1 July 2019;

c. Details of the tenants' leasehold interests:

The five flat leases were all granted for terms of 125 years from 1 January 2009 (having 114.51 years unexpired at the valuation date). The ground rent reserved in each flat lease is £100 p.a. for the first twenty-five years of the term, rising to £200 p.a. for the next twenty-five years, £300 p.a. for the subsequent twenty-five years, and £400 p.a. for the remainder of the term. The parking space lease is held for a term of 125 years from 1 January 2009 at a ground rent of a peppercorn p.a.

d. Capitalisation of ground rent: 6% per annum;

e. Deferment rate: 5%.

f. Term and reversion value: £20,000, including the additional property, namely the communal areas over which the leaseholders have rights.

Matters not agreed

7. The following matters were not agreed
 - a. Development hope value; and
 - b. The premium payable

The hearing

8. The hearing in this matter took place on 17 March 2020. The applicants were represented by Mr J. A. Rollings MRICS a consultant to Prickett and Ellis, surveyors. The respondent was represented by Mr R. Murphy MRICS of Richard John Clarke, chartered surveyors.
9. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection to make its determination.
10. The applicants relied upon the expert report and valuation of Mr Rollings dated 3 March 2020 and the respondent relied upon the expert report and valuation of Mr Murphy dated 12 March 2020.
11. The bundles before the tribunal included a planning report prepared for the applicants by Mr A. Gunne-Jones of Planning & Development Associates (“**PD&A**”) dated 26 February 2020, and a planning report prepared for the respondent by Mr E Allsop of WYG dated 12 March 2020. Neither planner attended the hearing.
12. The tribunal had regard to the experts' reports, and other documents in the bundles before it, including the leases of the flats at the property. It noted, but had less regard to, the planning reports as the planners did not attend the hearing and were not available to be cross-examined. As appropriate the tribunal refers to these in its decision below.

The tribunal's determination and reasons

13. The issue before the tribunal to determine was the development hope value to be added to the premium payable by the applicants for the collective enfranchisement of the property.

Paragraph 5 of Schedule 6 of the Act provides

Compensation for loss resulting from enfranchisement

5(1) Where the freeholder will suffer any loss or damage to which this paragraph applies, there shall be payable to him such amount as is reasonable to compensate him for that loss or damage.

(2) This paragraph applies to—

(a) any diminution in value of any interest of the freeholder in other property resulting from the acquisition of his interest in the specified premises; and

(b) any other loss or damage which results therefrom to the extent that it is referable to his ownership of any interest in other

property. (3) Without prejudice to the generality of paragraph (b) of sub-paragraph (2), the kinds of loss falling within that paragraph include loss of development value in relation to the specified premises to the extent that it is referable as mentioned in that paragraph. (4) In sub-paragraph (3) "development value", in relation to the specified premises, means any increase in the value of the freeholder's interest in the premises which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction on, the whole or a substantial part of the premises..

14. Accordingly the tribunal has to assess whether there is any possibility of the freeholder reconstructing or carrying out substantial works of construction on the whole or a substantial part of the property.
15. The tribunal heard evidence from Mr Rollings, backed by the planning report from PD&A, that there had been no recent applications for further development of the buildings or garden land at the property. He asserted that contrary to Mr Murphy's view, there was no development potential. The property had been redeveloped only ten years ago and if more floor space could have been constructed then it would have been then. In his opinion, backed by Mr Gunne-Jones' report, the prospects of extending the property upwards and to the rear were extremely low. He submitted that it was for the respondent to demonstrate, with evidence, that there was a realistic prospect of obtaining planning permission for the suggested development and that the respondent had not done so. No plans, estimates, or financial appraisals for any further development had been provided by the respondent. (The tribunal notes that Mr Murphy had provided a development appraisal.) Mr Rollings could see no justification for increasing the premium to reflect the loss of development value.

In his submissions Mr Rollings submitted that any potential flat on the fifth floor was unlikely to achieve the value Mr Murphy had attributed to it. He pointed to the issues highlighted in the WPG report of issues that remained to be addressed, issues of access and was of the opinion that no investor would pay Mr Murphy's proposed development value.

16. Conversely Mr Murphy asserted that the property did have development value. In giving evidence he accepted that there was no present potential of a rear extension, but argued for the possibility of an additional floor being added to the property. In support he referred the tribunal to
 - a. Knight Frank "skyward" report;
 - b. WPG's report that indicated that achieving an additional studio flat to form a 5th storey was 'acceptable in principle', that had a 'balanced' chance of securing planning permission, subject to 'design, height, scale, building regulation standards and other relevant material planning considerations'; and
 - c. that there were buildings in the road taller than the property.

Using the Upper Tribunal case *Francia Properties Limited* [2018] UKUT 79 (LC) he attributed a net development value to the potential fifth floor of £45,257.

17. Neither surveyor had spoken to the planning department as to the possibility/likelihood of a fourth floor extension.
18. Mr Murphy was questioned by Mr Rollings and by the tribunal on any legal constraints that might prevent the freeholder undertaking a fourth floor development. In particular, he was asked to explain how the development could be undertaken when there was no communal access through the third floor (all of which is demised to Flat 5) to the roof. He asserted that the landlord had reserved to itself the right to carry out development under clause 5.13 of the Leases. This states, *"To permit the Landlord after reasonable prior notice to enter the demised premises in connection with the development of the remainder of the Building or any neighbouring premises without payment of compensation to the tenant for any damage or otherwise subject to the person or persons exercising such right in a reasonable manner and making good any damage caused to the demised premises."*

In the event that this was not sufficient to allow the Landlord to take part of the Flat 5 demise to create access to the roof he believed that a deal could be done with the tenant of that Flat to surrender a part of its demise at no significant extra cost. At the hearing he suggested that an allowance of £10,000 be made to his net development value of £45,257 to reflect that a deal would have to be struck with the tenant of Flat 5.

In his submissions he referred to an alternative possibility; That a fifth floor extension might be incorporated into Flat 5.

Mr Murphy was unable to advise the tribunal whether an extra means of escape would be required if a fifth storey was added; nor where such escape could be located.

19. It is clear to the tribunal that Mr Murphy had given insufficient attention to how access to any development on the roof would be achieved, in the absence of a communal staircase through Flat 5. Clause 5.13 does not give the landlord the right to remove part of the premises demised to Flat 5, nor to grant itself rights of access over that flat to obtain access to the roof. Accordingly, any development potential of a fifth floor would have to be a development undertaken to incorporate it within Flat 5. There was no evidence before the tribunal that a tenant of Flat 5 would want to pay for such an extension to its demise.

20. In the circumstances the tribunal consider that any increase in the value of the freeholder's interest in the premises which is attributable to the possibility of demolishing, reconstructing, or carrying out substantial works of construction on, the whole or a substantial part of the property, by way of a roof extension is very small. But a small possibility of such development in the future should be taken into account and the tribunal therefore attribute a value of £2000 to this possibility.

The premium

21. The tribunal therefore determines the appropriate premium to be twenty-two thousand pounds (£22,000), including development hope value.

Name: Judge Pittaway **Date:** 30 March 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Firsttier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).