



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

Case reference : **CAM/26UF/OCE/2020/0006**

HMCTS code (paper, video, audio) : **A:BTMMREMOTE**

Property : **1-8 Stamford Close, Royston and
9- 21 Stamford Close, Royston, SG8 7EJ**

Applicant : **Stamford Close Freehold Limited**

Representative : **St Andrews Bureau Limited**

Respondent : **Abacus Land 1(Holdco 1) Limited**

Representative : **Knights plc**

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

Tribunal members : **Mrs M Hardman FRICS IRRV (Hons)
Judge Wayte**

Date of hearing : **11 January 2021**

Date of decision : **11 February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote audio hearing. The form of remote hearing was A:BTMMREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The

documents that we were referred to are in a bundle of some 344 pages together with leasehold titles and plans and email correspondence between the parties, the contents of which we have noted.

Summary of the tribunal's decision

- (1) The price payable for the collective enfranchisement is **£28,588** for 1-8 Stamford Close Royston and **£53,597** for 9-21 Stamford Close Royston.

Background

1. These are applications pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (the “**Act**”) for a determination of the price to be paid for collective enfranchisement of 1-8 Stamford Close, Royston and 9- 21 Stamford Close, Royston, SG8 7EJ (the “**Property**”).
2. The parties are the same for both applications and, with the agreement of the parties the tribunal has merged the applications for the purposes of this hearing. However, decisions have been given in respect of each individual property.
3. Two notices of a claim dated 27 February 2020 were served pursuant to section 13 of the Act.
4. In the first notice of claim the Applicants claimed to exercise the right to acquire:
 - (a) the freehold of 1-8 Stamford Close Royston SG8 7EJ, pursuant to section 1(1) of the Act, together with the demised parking spaces.
 - (b) the freehold of external areas, pursuant to section 1(2)(a) of the Act, being appurtenant property, which tenants are entitled to use in accordance with the leases and in common with occupiers of other premises and consisting of gardens grounds footpaths drying and bin areas, open spaces and access ways.
 - (c) The sum proposed to be paid was £19,233.
5. In the second notice the Applicants claimed to exercise the right to acquire:
 - (a) the freehold of 9-21 Stamford Close Royston SG8 7EJ, pursuant to section 1(1) of the Act, together with the demised parking spaces and gardens.
 - (b) the freehold of external areas, pursuant to section 1(2)(a) of the Act, being appurtenant property, which tenants are entitled to use in

accordance with the leases and in common with occupiers of other premises and consisting of gardens grounds footpaths drying and bin areas, open spaces and visitors parking spaces and vehicular access ways.

(c) The sum proposed to be paid was £33,192

6. On 29 April 2020, the Respondent freeholder served counter-notices in respect of each property admitting that the Applicants were entitled to exercise the right to collective enfranchisement and counter-proposing sums to be paid in respect of 1-8 Stamford Court of (a) £34,325 for the freehold of the building; and (b) £1,000 for the freehold of the external areas. In respect of 9-21 Stamford Court the sums proposed were (c) £65,893 for the freehold of the building and (d) £1,000 for the freehold of the external areas.
7. On 3 September 2020, the Applicants applied to the tribunal for a determination of the prices payable.
8. On 15 September 2020, the tribunal gave case management directions and a hearing was subsequently arranged by telephone for 11 January 2021.
9. The parties were informed that there would be no internal inspection and that any relevant information which would have been obtained by the tribunal at such an inspection could be provided by the parties by other means.

The issues

10. The basis of calculation of the prices is set out in Schedule 6 to the Act. In summary and referring to the relevant paragraphs of Schedule 6, the prices are to be the aggregate of:
 - (a) the value of the freeholder's interest if sold in the open market by a willing seller (as set out in paragraph 3 in respect of the building and paragraph 11 in respect of the external areas);
 - (b) the freeholder's share of any marriage value (as set out in paragraph 4 in respect of the building and paragraph 12 in respect of the external areas); and
 - (c) the amount of any compensation payable to the freeholder (as set out in paragraph 5 in respect of the building and paragraph 13 in respect of the external areas).

11. In calculating (a) and (b) above, any increase in value which is attributable to an improvement carried out by the tenants at their own expense is to be disregarded.

Matters agreed

12. The following matters were agreed:
 - (a) The leases of all flats are for a term of 125 years from 29 September 1988.
 - (b) The leases have 93.58 years outstanding and therefore there is no marriage value
 - (c) The one bedroom flats (Flats 1-8) have a ground rent of £90 until 29 September 2038, £125 until 29 September 2063, £175 until 29 September 2088 and £265 until 28 September 2113.
 - (d) The two bedroom flats (Flats 9-21) have a ground rent of £100 until 29 September 2038, £135 until 29 September 2063, £185 until 29 September 2088 and £275 until 28 September 2113
 - (e) The relativity of existing leasehold to freehold values is 97.65%
 - (f) The valuation date is 28 February 2020

Matters not agreed

13. The following matters were not agreed:
 - (a) The long leasehold and freehold values;
 - (b) The value of the external areas ;
 - (c) The capitalisation rate;
 - (d) The deferment rate; and therefore
 - (e) The prices payable.

The hearing

14. The hearing in this matter took place by telephone on 11 January 2020. The Applicants were represented by, and relied on the expert report and valuation of, Mr Colin Astin FCA dated 27 November 2020. The Respondent was represented by, and relied on the expert report and valuation of, Mr Gary French BSc DIP BLDG CONS FRICS dated 8 December 2020.
15. Only those documents in the bundle referred to in this decision have been considered by the tribunal in reaching its determination, together with the oral evidence provided by each expert at the hearing.

as the upper end of the range and he had adopted a differential of £15,000 to reflect the additional value of a garden.

35. He did not believe that any adjustment should be made to the values for the installation of the double glazing as he considered it a repair and not an improvement.

36. Adopting the agreed relativity of 97.65% he arrived at a **freehold** value of :

- One bedroom flat £174,000
- Two bedroom flat – no garden £215,000
- Two bedroom flat with garden £230,000

Decision

37. The tribunal puts limited weight on the adjustment of the previous sales on Stamford Close in that there were some 3 years prior to the valuation date. It does note however that they are reasonably contemporaneous one with another and indicate a significant uplift for a two-bedroom garden flat. We also note that 8 Stamford Close, a one-bedroom flat was for sale on the development at the time of the valuation at a guide price of £175,000 having been reduced from £180,000 earlier in the year.

38. We have reviewed the schedules of comparables provided by the experts in their evidence, although not referred to during the hearing.

39. In respect of the one-bedroom flats Mr Astin's comparables ranged from £148,500 to £170,000 whilst those cited by Mr French ranged from £151,158 to £162,000. Both however valued the subject flats at more, given that the development was agreed to attract prices at the higher end of the market and indeed their valuation of the long leasehold is only some £3,000 apart.

40. The tribunal prefers the evidence put forward by Mr French in respect of the leasehold value of the one-bedroom flats and adopts a valuation ignoring tenants' improvements of £170,000.

41. However, it agrees with Mr Astin that it is appropriate to make a deduction from the valuation for those flats (2-8) which have replacement double glazed windows. One of the one bedroom flats and 6 of the two bedroom flats retain their existing windows and therefore the tribunal is inclined to regard this as an improvement and not a repair. However, we consider that £2,000 is excessive. Mr Astin provided receipts for a two bedroom flat showing the cost of installation of windows was £1550 and the cladding an additional £171.86. We therefore make a deduction of £1000 on the one bedroom flats to arrive at a value for Flats 2-8 of £168,750.

42. In respect of the two bedroom flats the comparables produced by Mr Astin ranged from £176,000 to £220,000, none of these are noted as having a garden. The lowest of these is on a restricted site in the town centre. Those supplied by Mr French range from £220,000 to £227,000 with no information on whether they have a garden – although it is reasonable to assume that most do not. Mr Astin has adopted an addition of £15,000 for a garden whilst Mr French has adopted £10,000 addition. Both experts agree that this development attracts values at the higher end of the market for flats of a similar size and having regard to the comparables and the evidence put forward by both parties the tribunal believes that Mr Astin’s valuations are too low whilst Mr French’s are slightly on the high side .
43. The tribunal adopts a long lease value of £200,000 for the two bedroom flats with no garden and £215,000 for the two bedroom flats with a garden. It then makes a £1,250 deduction from this for the 7 flats that have upvc double glazing and cladding as a tenant’s improvement. Accordingly, the adjusted long lease values for those flats with the upvc double glazing and cladding is £198,750 for the two-bedroom flats with no garden and £213,750 for the two bedroom flats with a garden.
44. The uplift to freehold value was agreed by the parties as 2.35% and the tribunal has adopted this in its calculations.

The external areas

45. Mr Astin argued that the site and current configuration of the properties together with the small areas of appurtenant land means that the freeholder cannot argue that there is hope or unlocked development value on site.
46. Mr French agreed that it was a compact site with little space for further development. He suggested that, after enfranchisement, the five visitors spaces could be sold to individual tenants or let although accepted that this would require the consent of all tenants.
47. He had also noted that it appeared that one of the visitors’ spaces was being acquired in the claim. When the tribunal asked him to explain how he had come to this view he explained that the plan accompanying the Section 13 notice for 9-21 Stamford Court showed one of the visitors’ spaces coloured mauve, mauve denoting the property of which the freehold was proposed to be acquired. He had sought clarification on this from the applicant but as none was forthcoming he felt he had to assume that this was correct and had added £5,000 to his valuation to reflect the value of the space.
48. He had also added a further value of £500 for each block to reflect the loss of reversionary value.

The Tribunal’s determination

49. We prefer Mr Astin's evidence on this. This is a compact site with only small areas of appurtenant land. It is very unlikely that all tenants would agree to a sale of the visitors' spaces and the tribunal has not made any addition for this nor any adjustment to reflect loss of 'reversionary value' of the site.
50. Further, the colouring of the plan accompanying the Section 13 notice on 9-21 Stamford Court as indicated by Mr French would appear to be an error and the tribunal has therefore made no adjustment for this – although clearly this will need rectifying on transfer.

Capitalisation rate

51. Mr Astin had adopted a capitalisation rate of 7%. He felt that public awareness of the pitfalls and unfairness of ground rents affecting leasehold properties had increased significantly over recent years. He pointed in particular to a private members bill in June 2019, a discussion paper issued by Ministry for Housing Communities and Local Government in December 2017, a Law Commission report in 2019 and another in 2020 on leasehold reform. He felt it inevitable that the position on ground rents would change and the change would be sooner rather than later.
52. He felt that the attitude of building societies to onerous ground rents added a layer of uncertainty to the market. However when questioned by the tribunal he agreed that the ground rents on the development were not onerous .
53. He also cited *Nicholson v Goff* (2007) 1 EGLR 153 where it was noted that the size of the ground rent could affect the capitalisation rate.
54. He felt that capitalisation rates were moving up generally and he had agreed the majority of recent cases at 7% which he felt reflected the risk. The income per annum from the ground rents (£720 and £1300 respectively) was relatively small and the admin costs of collecting them and the risk of the loss of income on default disproportionately high.
55. On that basis he had adopted 7% and cited a number of FTT decisions at that figure. When questioned by Mr French he accepted that the majority of these were lease extensions rather than enfranchisement but did not believe that this was a relevant consideration as it was about the rate applied to loss of income.
56. Mr French had adopted 6%. He argued that capitalisation rates tend to fall in the range of 5.5%-7% with the upper figure of 7% usually associated with fixed rents whereas these rose every 25 years by a minimum of 35% and a maximum of 51%.

57. He felt that freehold investments which have a larger rising income stream would have lower rates than single lease extensions where the cost of collection can be an issue
58. He cited a number of FTT cases for collective enfranchisement where the rate adopted had been 6% on ground rents with a review clause. He also felt that the additional income in respect of management and insurance commissions of £1,050, whilst not compensable under Schedule 5, it was appropriate to reflect this in the capitalisation rate.

The Tribunal's determination

59. In this case the tribunal is more persuaded by Mr French's argument. The ground rent increases in respect of both developments and it would be deemed more attractive than more modest ground rents with limited increase patterns and on that basis, we agree the capitalisation rate proposed by Mr French of 6%.

Deferment Rate

60. Mr Astin had adopted a rate of 6%. He said that whilst it was generally accepted that under the decision in *Earl Cadogan v Sportelli (2007)* that the deferment rate should be 5% in relation to Prime Central London (PCL) he felt that there was a significant argument that it should be modified in circumstances that do not come within this definition. Particularly given what he said was the current political disquiet concerning leasehold property.
61. He cited the decision in *Zuckerman & others v Trustees of Calthorpe Estate (2009)* where the tribunal had found for 6% in regard to flats in Birmingham. He felt this equally applied to Royston where growth rates applicable to PCL would never apply and that the PCL rate should be discounted by 1% as in the Zuckerman case and had adopted 6%.
62. Mr French had adopted a deferment rate of 5%. He believed that the correct approach was to follow Sportelli. He said that subsequent decisions such as Zuckerman have enabled adjustment to the rate in certain circumstances but that, as held in *Voyvoda v Grosvenor West End Properties (2014) L & T10*, it was necessary for the valuer to provide evidence to justify the additional rate and he did not believe such evidence had been produced.
63. He also believed that the market had moved on since Sportelli, that PCL values had fallen by around 20% since 2015 according to Savills indices whilst North Hertfordshire values had risen by the same amount. In terms of growth Westminster values had increased by a factor of 4.09 from February 2000 to February 2020 whilst North Hertfordshire had grown by 3.39. Growth over the last 10 years for the same areas had been similar at around factor 1.6.

The Tribunal's determination

64. The tribunal is not persuaded that Mr Astin's produced sufficient evidence to justify a departure from Sportelli for the reasons set out in the Voyvoda decision and the adoption of 6%. It also noted out of interest that all FTT decisions cited by Mr Astin to support his capitalisation rate of 7% adopted a deferment rate of 5%.

65. On this basis we agree with the deferment rate as proposed by Mr French of 5%

Summary

66. In summary, the tribunal has determined that:

- i) Subject to (ii) below, the long lease values are £170,000 for the one bedroom flats, £200,000 for the two bedroom flats and £215,000 for the two bedroom flats with gardens
- ii) The long lease values are to be adjusted for tenant's improvement to the relevant flats to £169,000 for the one bedroom flats, £198,750 for the two bedroom flats and £213,750 for the two bedroom flats with gardens.
- iii) The uplift from long leasehold to freehold is 2.35%
- iv) The value of the appurtenant land is £nil
- v) The capitalisation rate is 6%.
- vi) The deferment rate is 5%

The price

50. The tribunal determines the appropriate premium for Flats 1-8 is **£28,588** and for Flats 9-21 is **£53,597**. A copy of its valuation calculation is annexed to this decision.

Appendix

Case Reference CAM/26UF/OCE/2020/0006

1-8 Stamford Close, Royston and 9- 21 Stamford Close, Royston, SG8 7EJ

Tribunal's valuation

Flats 1-8

Valuation date	28/02/2020
Unexpired term	93.58
Period to 1st review	18.58
Capitalisation rate	6%
Deferment rate	5%

Calculations

Diminution of freehold

Ground rent			£			
			720			
Years Purchase	18.58	years @	6%	11.0216	£7,936	£0
Ground rent			£			
			1,000			
Years Purchase	25	years @	6%	12.7834		£0
Present value of £1 in	18.58	years @	6%	0.3387	£4,330	
Ground rent			£			
			1,400			
Years Purchase	25	years @	6%	12.7834		£0
Present value of £1 in	43.58	years @	6%	0.0789	£1,412	
Ground rent			£			
			2,120			
Years Purchase	25	years @	6%	12.7834		£0
Present value of £1 in	68.58	years @	6%	0.0184	£498	
						£14,176

Reversion to Freehold

Capital value			£			
			1,385,561			
Present value of £1 in	93.58	years @	5%	0.0104		£14,412
						<u>£28,588</u>

Tribunal's valuation

Flats 9-21

Valuation date	28/02/2020
Unexpired term	93.58
Period to 1st review	18.58
Capitalisation rate	6%
Deferment rate	5%

Calculations

Diminution of freehold

Ground rent			£			
			1,300			
Years Purchase	18.58	years @	6%	11.0216	£14,328	£0
Ground rent			£			
			1,755			
Years Purchase	25	years @	6%	12.7834		£0
Present value of £1 in	18.58	years @	6%	0.3387	£7,599	
Ground rent			£			
			2,405			
Years Purchase	25	years @	6%	12.7834		£0
Present value of £1 in	43.58	years @	6%	0.0789	£2,426	
Ground rent			£			
			3,575			
Years Purchase	25	years @	6%	12.7834		£0
Present value of £1 in	68.58	years @	6%	0.0184	£840	
						£25,193

Reversion to Freehold

Capital value			£			
			2,730,625			
Present value of £1 in	93.58	years @	5%	0.0104		£28,403
						£53,597

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 First-tier 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).

~~Sum of A+B+C+D~~

~~Sum of A+B+C+D~~