FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UM/OCE/2020/0005/6
Property	:	Blocks 1-20 & 21-32, 7,9,11,13 Midhope Road Woking GU22 7UQ
Applicant	:	Claire Louise Cook and Sue Beesley
Representative	:	Claire Cook
Respondents	:	Loreinwood Limited
Representative	:	Mr Robert Brown, counsel instructed by Guillaumes LLP
Type of Application	:	Collective Enfranchisement : Section 24(1) Leasehold Reform and Urban Development Act 1993 (The Act)
Tribunal Member(s)	:	Judge D. R. Whitney Mr M Ayres FRICS
Date of hearing	:	10th and 12th February 2020
Date of determination	:	13th April 2021

DECISION

Background

1. Two applications have been made under section 24(1) of the Leasehold Reform Housing and Urban Development Act 1993 by the Applicant as the nominee purchaser in each seeking to collectively enfranchise the freehold of the Property. The Respondent is the same in respect of each notice. The two matters were joined together.

2. Directions were given at a telephone CMH on 18th November 2020. Those directions have been substantially complied with and the Tribunal had before it an electronic bundle and skeleton arguments from both sides. References in [] are to pages in the electronic bundle.

3. Ms Cook represented the Applicants and relied upon expert evidence from Mr Arun Nimba. The Respondent was represented by Mr Brown of counsel. Mr Tigwell of Guillaumes, solicitors for the Respondent, also attended. Mr Brown relied on expert evidence from Mr M Lee and also from Mr C Flight, director of the Respondent company.

4. The hearing took place by CVP video platform. The hearing commenced on 10th February 2021 but could not be concluded in one day. The hearing resumed, again by CVP video with the same representatives on 12th February 2021. Neither parties' valuer nor Mr Flight attended the second day of the hearing. The second day was to hear closing submissions on behalf of the Respondent and the Applicant's reply to the same.

The Law

5. The relevant law is contained within the Leasehold Reform Housing and Urban Development Act 1993 ("the Act"). Attached to this decision is an Appendix setting out the relevant provisions to which we have had regard in reaching this decision.

Hearing

6. Set out below is a synopsis of the submissions made and evidence heard by the Tribunal. In this we seek to record the most pertinent parts but it is not a complete record of everything said.

7. The hearing took place by remote hearing using CVP. The hearing on both days was recorded. The Tribunal was satisfied that all parties were able to take part adequately in the proceedings and it had been appropriate to proceed using the CVP remote hearing system.

Throughout the hearing the Tribunal adjourned regularly to allow the parties breaks.

8. At the start of the hearing the Tribunal clarified with the parties the issues to be addressed:

    - What was to be enfranchised under the two notices served? [7-28]
    - Had the parties reached a binding agreement as to the Premium payable?
    - If there was no agreement what was the proper premium payable by the Applicants to the Respondent for enfranchisement of the property claimed under the two notices?
    - What was the correct form of contract/transfer to be adopted?

9. Mr Brown indicated that he reserved the right to object to certain documents included within the bundle. The Applicants had filed no witness evidence but had included within the bundle various additional documents which had not been provided as part of the directions but were included in the bundle prepared by the Applicant. Ms Cook stated that she believed that in preparing the bundle she was entitled to include any documents upon which the Applicant sought to rely.

10. The Tribunal confirmed it had read in advance of the hearing the whole of the bundle and each parties' skeleton arguments.

11. It was agreed Mr Brown could challenge any documents if relied upon by the Applicants.

12. The parties agreed that notwithstanding arguments over whether or not an agreement had been reached as to the Premium they wished the Tribunal to hear evidence upon the valuation and to make a determination on the valuation even if it determined agreement had been reached.

13. The parties valuers had signed a memorandum of agreed facts [59]. This recorded the following as agreed:

    - Valuation date: 30th September 2019
    - Marriage value Flat 28: 50%
    - Hope of marriage value Flats 2,3,5,10,13 and 26: 15%
    - Deferment rate: 5%

14. Ms Cook explained that the Applicant had intended to claim the whole of the Respondents title registered at the Land Registry under title number SY429029. In her submission it was clear that this was what the Applicants were seeking. In her submission it was ridiculous for the Respondent to take advantage and suggest that when you considered

the two plans (see [18 & 28]) there was a strip of land that was not included. She stated she had spoken to both Mr Flight and Mr Lee (the Respondent's valuer) and told them she was expecting to enfranchise the whole of the Respondent's title.

15. Ms Cook explained on questioning by the Tribunal that the Applicant had not made an application to the County Court over the question of the plans not enfranchising the whole of the title due to the costs involved in the same. She stated she believed that the Respondent was attempting to obfuscate the situation and simply attempting to get the Applicant to run up lots of unnecessary costs. In her view the Tribunal should apply a "common man" approach and determine that a reasonable recipient would accept that it was the whole of the title they were looking to enfranchise. She referred to the fact that nothing in the two counter notices gave any indication that there was a strip of the respondent's title not included in the two notices served.

16. Turning to the question of agreement Ms Cook stated she was looking to agree the premium on the basis that the whole of the title was to be enfranchised. She was not agreeing with Mr Lee if it was not the whole of the title. Further she suggested that any acceptance was subject to conditions including that no further Tribunal costs would be incurred. Given the matter had now proceeded to Tribunal and the Applicants had incurred further costs she suggested the conditions of the offer meant it was no longer capable of being accepted.

17. Ms Cook suggested that the Respondent and their valuer were seeking to deceive the Applicants. Ms Cook referred to various emails (see for example [117 & 125]) which refer to her exercising the "statutory rights under collective enfranchisement". She states that it was clear that any prices she proposed was on the basis of the whole of the Respondents title being transferred. Ms Cook denied receiving a letter from Michael Lee of 28th August 2020 [747 & 748]. Ms Cook indicated she thinks the email may have gone into her Junk filter [135].

18. Ms Cook further suggested that she was not bound by the offer as she did then incur Tribunal costs and it was made on the basis that these were avoided. Ms Cook stated she believed after the price had been agreed the only issue was over the roof space lease and how to deal with that.

19. Ms Cook called Mr Arun Nimba MRICS as her expert surveyor. Mr Nimba relied upon his report and appendices [237-305].

20. Mr Nimba was cross examined by Mr Brown. He confirmed that he was made a director of Adelaide Jones in 2019 and became a Member of RICS in 2018 or 2019, he was unable to remember which.

21. Mr Nimba conceded that he should have calculated the value for non-participating flats on the basis of the unimproved value.

22. In calculating the values he relied upon 5 transactions representing 4 flats in the Property as one had sold twice. He stated this produced an average of £443 per square foot.

23. Mr Nimba had also used other comparables. He accepted he had not annexed to his report the Index he relied upon to Index the comparables contained within the Property. He stated the Index was the Land Registry Index which was a publicly available index which he considered to be accurate but only up to a few years. Mr Nimba stated that those transactions he could ascertain he listed although he did not have the sales particulars in front of him and had not annexed them to his report. He stated he was trying to give a broad cross section of evidence.

24. Mr Nimba was asked if transactions within the Property produced an average of £443 per sq ft why did he look at those outside of the Property which resulted in a significantly lower average price per square foot? His response was that in his opinion there was not a right or wrong way. You should not look at comparables in isolation and should provide a cross section.

25. Mr Nimba agreed that in respect of reference to leaseholders having agreed lease extensions [250] he had worded this badly and should have said "possibly" without representation. Mr Nimba took the view that if the leaseholders had been properly represented they would not have agreed the rent review patterns entered into.

26. Mr Nimba accepted he did not know the rent review patterns for the auction comparables he referred to in his report [250]. Mr Nimba stated he did not accept the rate in the Melluish case was appropriate.

27. Mr Nimba did not accept he should index all of his comparables. He had done so for those within the Property but did not do so for others as he felt the timescale was small and therefore in his opinion not appropriate.

28. Mr Brown suggested there were certain errors in the report. Mr Nimba stated he would need time to check his figures.

29. The Tribunal asked certain questions of Mr Nimba.

30. Mr Nimba accepted Flat 17 was the only sale of a Flat with the original lease [246]. He accepted this was a strong comparable but he stated it needed adjusting. When looking at other comparables he had set his search criteria to within 200m. He tried to find blocks of similar calibre and age.

31. Mr Nimba suggested a capitalisation rate of 10% for onerous leases and 7% for those with non-onerous lease terms. In his view no investor will pay large amounts for onerous ground rent patterns as they will in his opinion have to commute the ground rent at some point in the future.

32. The Tribunal adjourned for lunch at this point and Mr Nimba agreed to look at the areas Mr Brown suggested there were errors.

33. After the adjournment Mr Nimba explained some discrepancies. It appeared it may be the computer programme he used had caused errors such as calculating the number of days and rounding down certain figures.

34. Mr Brown asked further questions re development value. Mr Nimba felt there were still many hurdles to be overcome before any development value would become a reality. His view was that he was not suggesting there was no hope just that it was so unlikely as to have no value.

35. On further questioning by the Tribunal Mr Nimba confirmed he had used various databases such as RightMove and LonRes to find his comparables. He had not spoken to any agent mainly he said due to constraints of time.

36. Ms Cook indicated that she relied upon her skeleton argument and this concluded the case for the Applicant. Ms Cook confirmed she had made all the points she wished to rely upon.

37. It was agreed with Mr Brown we would hear first from Mr Lee.

38. Mr Lee MRICS agreed his report [307-370] and reply [406-424] was true and accurate. Mr Brown relied upon this.

39. Ms Cook then cross examined Mr Lee.

40. Mr Lee explained he had previously whilst a director of HML Shaw dealt with certain matters relating to the Property including an RTM application. He explained he resigned from HML in or about June 2017. He had been a director but held no shareholding in that company.

41. Mr Lee confirmed he became aware over the discrepancy over the two notices when discussing the matter with Mr Flight in respect of the roof lease and the surrender of the same. Mr Flight had been concerned over the loss of development value but believed this offered some protection as he would retain the slither of land. Mr Lee could not recall the specific date.

42. Mr Lee confirmed he became involved in or around March 2020 after the counternotices had been served.

43. Mr Lee confirmed he accessed the building and three flats. His opinion as to value was based on what was in the notices and in his report he covered both scenarios as he was not sure what was to be argued. He confirmed he had not accessed any loft spaces. He explained when he

was instructed by Lorienwood they were happy to surrender the roof space lease on the basis that they were retaining the strip of land not included within the two notices.

44. Mr Lee confirmed he was not a planning expert. He explained he deals with about 70/100 lease valuations per year which often involve questions of "hope" value. He also advises in respect of valuation re developing blocks.

45. In his opinion it is not uncommon for people to purchase loft space when it is not demised. He was referred to various [188] notes from leaseholders saying they would not purchase. Mr Lee commented he was not sure if they were participants and therefore had a conflict.

46. On questioning by the Tribunal Mr Lee confirmed he did a RightMove search but then obtained sale particulars for his comparables, he felt in many respects he and Mr Nimba were quite close on values relying upon the sales of flats within the development.

47. In respect of development value he stated that his clients were adamant they could develop the site. His view was that not withstanding the previous refusals there was a good chance planning would be granted given the pressure on local authorities.

48. Mr Brown then called Mr Flight. He confirmed the contents of his witness statement were accurate and true [743-750].

49. Ms Cook cross examined Mr Flight.

50. Mr Flight stated that the plan [750] in his witness statement reflected the strip of land not included within the two plans attached to the Initial Notices [18 and 28]. He explained he had the original land registry certificates within his office.

51. Mr Flight explained he became aware of the discrepancy prior to instructing Mr Lee. His recollection was he became aware in or about March 2020. He explained they had served counter notices on the basis of the notices served on behalf of the leaseholders.

52. Mr Flight said that he had no desire to dispose of his interest but the company would follow the law. In his view the leaseholders would still be liable for the costs of maintaining the retained strip of land.

53. He explained that he gave his own opinion as to value before Mr Lee was instructed. He had hoped to be able to negotiate matters himself but when it became apparent that would not be possible he appointed Mr Lee.

54. Mr Flight believed the strip of land was a strong negotiating point and way of protecting his company. He accepted that the leaseholders could have included the whole of the title. That was not what the

leaseholders included within the notices and his company were reluctant sellers. In his view the site has substantial development value. He candidly admitted he was using the strip of land to his company's advantage.

55. Mr Flight was asked about issues relating to his involvement with the previous agents, Castle Wildish, documents relating to which had been included within the bundle. He explained he had been looking to retire. He explained in his words he had been a "bit naughty" and pulled up in front of RICS but given he was not a member there was nothing they could do.

56. On re-examination Mr Flight stated he felt could build 12/14 new units. Removing the roof and building would be in his opinion relatively easy.

57. In respect of the slither he said you could look at the plans to the Notices and the word "Ellingham" written across these and from this it was clear there was a slither.

58. At this point the Tribunal adjourned for the day.

59. On resumption Mr Brown made his closing arguments. Mr Brown invited us to determine what was to be purchased. He also invited us to determine that the premium had been agreed and in the alternative what the premium should be.

60. Mr Brown suggests when you look at the two plans [18 and 28] side by side and compare the word "Ellingham" on each it is clear that there is a strip of land not included within the two notices. In particular having regard to the letters "a" and "m" relative to the lines drawn.

61. Mr Brown suggests that Wilson and Co, solicitors for the Applicant appeared to accept this [180-182] when they referred to making a County Court application. In his submission this is what should have happened if the Applicants were not happy.

62. In his submission the notices were sufficiently clear. Mr Brown suggested it was clear from the correspondence and he referred to [116, 117, 125, 128 and 130] that they were only talking about what the Applicants were entitled to under the two notices and the Act. It was the Notices which triggered the process.

63. Turning to the question of agreement Mr Brown suggests the correspondence after [130] in the bundle is of no assistance. In his opinion [13] shows a clear offer and acceptance of the Premium to be paid £222,500.

64. Mr Brown says the letter dated 29th August 2020 at [747] setting out the Heads of Agreement from Mr Lee to Ms Cook must have been received. He relies upon the email exchange at [135 and 138] where Ms Cook picks up Mr Lee for misquoting the date of this letter. Mr Brown

suggests she would only have been aware if she had received the letter. Mr Brown relied on the fact that Ms Cook did not seek to call any oral witness evidence but was content to rely upon documents. Only evidence is that given by Mr Flight and paragraphs 13 and 14 of his statement which it was accepted are hearsay evidence.

65. He says there was agreement to a premium of £222,500.

66. Turning to the expert evidence Mr Brown invited us to prefer the evidence of Mr Lee. He suggested Mr Lee had considerable experience and his evidence was clear and careful.

67. Mr Nimba was relatively inexperienced and had allowed a number of basic errors to creep in to his report which he acknowledged in his evidence. By way of example Mr Nimba agreed the deferment rate was 5% but there was an error in his methodology of the valuation. Whilst Mr Nimba acknowledged this he did not address the consequences.

68. Further he made adjustments for improvements including in respect of non participant leaseholders. Certain of these adjustments were repairs in any event. This is an incorrect methodology. At [246 and 247] he adjusts for improvements and this is wrong. This meant that about half of the flats had been incorrectly valued.

69. Further Mr Nimba explained he would round down, not round up and again Mr Brown suggests this was indicative of an incorrect approach. The terms of Flat 32 was incorrectly stated.

70. Mr Nimba indexed values when it suited and not on others. He used a comparable of a flat outside the development with precious little information.

71. Turning to the lease extensions Mr Nimba made an assumption as to the advice or lack of. He accepted he should modify his wording. Mr Brown suggests that this approach coloured his view of the valuation.

72. In respect of auction sales of ground rent investments Mr Nimba accepts his approach was unorthodox. Mr Lee's reply refers to St Emmanuel House (Freehold) Limited, St Gabriel House (Freehold) Limited and St Saviour House (Freehold) Limited v Berkeley Seventy-Six Limited & Pennine Trustees Limited (CHI/21UC/OCE/2017/0027,0026 & 0029) known as "All-Saints". Mr Nimba reaches a figure and says his gut feeling is that it is too high so he disregards the same. Further Mr Nimba chooses to disregard the decision in Deritend. Mr Brown took the view that Mr Nimba did not have sufficient experience to disregard this.

73. Turning to development value again Mr Brown would invite the Tribunal to prefer Mr Lee. He suggests he would have some idea of development value and he had taken account of the risk.

74. In respect of the proposed contract it was agreed the roof space lease would be surrendered. He would invite us to agree the form proposed by his instructing solicitors.

75. In reply Ms Cook stated she was not a liar and did not receive the letter dated 28th August 2020. She said she found it in her junk folder.

76. In her opinion the Respondent had not been clear and transparent. The Notices should be interpreted by a reasonable recipient. The lines on the plan are for "generality" and are hand drawn.

77. The Tribunal reminded Ms Cook this was her opportunity to make points in reply.

78. In her submission it was well known that Government was looking to reform the area of valuations in respect of enfranchisement and it was right to make reductions as Mr Nimba had done taking account the likely changes which were to come about.

79. In her opinion there was no development value as nothing had crystallised at the date of the valuation. The Respondent had sought planning twice and failed on both occasions. The change to permitted development was after the valuation date and she suggested irrelevant.

80. Ms Cook said she could not determine where the "wedge" had come from.

81. The Tribunal again stopped Ms Cook and reminded her this was an opportunity to reply to Mr Brown not set out again her case. Ms Cook was unhappy that she was stopped, referring to the time Mr Brown had.

82. The hearing ended.

Determination

83. The Tribunal thanks both Ms Cook and Mr Brown for their careful and measured submissions. We have considered everything within the hearing bundle and the skeleton arguments provided by both parties. We also wish to thank the Applicant for providing such a well presented electronic bundle which made the conduct of the hearing easier for all.

84. The Tribunal noted the dissatisfaction of Ms Cook at the end of the hearing. The hearing ran over two days hearing evidence from two expert surveyors and one oral witness. Ms Cook did not finish presenting her case until approximately 3.40pm on the first day (which began at 10am). We adjourned at 4.45pm and re-convened with Mr Brown making closing submissions of just over one hour. The Tribunal throughout the hearing afforded all parties every opportunity to advance their respective cases. The Tribunal allowed Ms Cook every opportunity to make all points she wished including allowing all the

various documents she had included within the bundle despite these having not previously having been disclosed to the Respondent.

What land is included?

85. The starting point is the notices served and the plans [18 and 28]. We do not accept we have any discretion as to what land is to be enfranchised. In this Tribunal's judgment it is for the party serving the notices to ensure that any plans attached properly identify the land to be enfranchised. Both notices identify the land to be enfranchised by reference to a plan and markings thereon. That is what the Tribunal must determine the premium for and any other terms of acquisition.

86. We accept that it was the intention of the Applicants that the whole of title number SY429029 was to be enfranchised. We have no doubt this was what they instructed their solicitors to achieve having heard from Ms Cook and considering the documents within the bundle.

87. Ms Cook suggests the reasonable recipient would have assumed the whole title was included. Mr Flight in his evidence was candid in stating that the Respondent is not a willing seller and that he was pleased to find the strip of land as it protected his future development rights over the property as a whole. Mr Flight accepted that the Applicants may have wanted the whole title but he believed they had not included this within the two plans.

88. We were referred to a letter from Wilson and Co dated 2nd November 2020 [180-182]. We are invited by Mr Brown to accept that this letter on behalf of the Applicants acknowledged that there is a slither of land not included within the two plans. We do not think it goes as far as this but the letter clearly acknowledges that if there is a dispute as to the extent of the land to be enfranchised and any error in the notices then it is the County Court which is the correct forum to determine this issue. Ms Cook accepted this in her submissions but stated the Applicant wished to avoid the costs.

89. Looking at the two plans we are asked to have regard to the position of the word "Ellingham" on both and the line drawn as to the land it is being sought to claim. Ms Cook suggests that the print is too small to accurately see this.

90. We find on the plan for Block 1-20 at [18] the line drawn on the plan dissects the "A" of Ellingham. On the plan for Block 21-32 the line runs after the end of the "M" of Ellingham. It is clear taking the two plans that there is a strip of land which is not included within either plan which forms part of the Respondents current title.

91. It is suggested the plan [750] prepared for the Respondents, with the strip of land coloured yellow being the land excluded, represents these two notices.

92. This Tribunal is satisfied that there is a strip of land not included within either of the two plans annexed to the original notices seeking enfranchisement. In this Tribunals judgment it is only that land which is included in the two plans that the Applicant may enfranchise. We determine the plan at [750] and the land coloured red represents the land subject to the two notices and the strip of land coloured yellow was not included and the Respondent is not required to transfer the same.

Was agreement reached?

93. We have considered carefully the correspondence and submissions made.

94. We are satisfied it is possible for the premium only to be determined.

95. We have considered whether or not it can be said the parties did not know or did not reasonably know on what basis they were negotiating. At [130] the offer is made "in accordance with our rights under collective enfranchisement" by Ms Cook. That offer is accepted by Mr Lee on behalf of his client on 25th August 2020 [130] using following words:

"Morning Claire
I can confirm that I have Charles's agreement at the agreed premium of £222,500
plus statutory recoverable costs."

96. Mr Lee goes on then to ask for the solicitors details.

97. We are satisfied that both parties believed they were negotiating the premium for what the Applicant was entitled to enfranchise. We accept Ms Cook thought that was the whole of the Respondents title and the Respondent believed it was not. In our determination the parties' individual belief is immaterial. Both were agreeing the premium on the basis of what the Applicants were entitled to under the two respective notices. This is what Ms Cook said in her email and this is what the Respondent agreed. In our judgment it was for Ms Cook to have been clear if she was seeking something different. She could have spelt out that the offer was for the whole of title number SY429029, she did not do so.

98. On balance we find that Ms Cook had seen the letter exhibited to Mr Flight's statement from Mr Lee to Ms Cook dated 28th August 2020 [747 and 748]. This letter records that what is being enfranchised is the Property as defined by the two notices and therefore the plans. At [135] is an email from Mr Lee to Ms Cook on 28th August 2020 referring to a letter being attached. Later on in the email trail [137] Ms Cook picks Mr Lee up on the date of the letter as he mistakenly referred to 30th August 2020.

99. We find that the agreement was reached by the exchange of emails on 25th August 2020. The later emails and letter simply confirm the position that an agreement was reached and that the agreement was on the basis of the two notices served.

100. In our judgment the premium was agreed by Ms Cook and Mr Lee for both notices in the total sum of £222,500.

101. Given the parties have agreed the premium this Tribunal no longer retains jurisdiction to determine the same.

102. At the request of the parties we do go on to determine the premium in the alternative if it is determined we were wrong to find that an agreement was reached.

Premium

103. At page [59] are set out the matters agreed by the two valuers:

Valuation date: 30th September 2019	
Marriage value payable in respect of Flat 28	50%
Hope of marriage value payable in respect of Flats 2, 3, 5, 10, 13 and 26	15%
Deferment Rate in line with Sportelli	5%

104. The Tribunal heard evidence from Mr Nimba for the Applicant and Mr Lee for the Respondent. We are satisfied that both gave their evidence having regard to their duty to the Tribunal. Overall we felt Mr Lee's evidence was more considered. It appeared that Mr Nimba had prepared his report in a short period of time and this was reflected by certain of the errors counsel for the Respondent raised with Mr Nimba. Mr Nimba acknowledged all such errors but it does colour the weight the Tribunal places upon his evidence.

105. Turning firstly to the freehold vacant possession values we note that if you do not include the comparables relied upon by Mr Nimba outside the subject development the two valuers figures are very similar. We note Mr Nimba makes certain deductions for improvements but this Tribunal is not persuaded the matters he refers to are strictly improvements being effectively repairs. Overall we prefer the methodology adopted by Mr Lee and determine the freehold vacant possession value for each type of flat as follows:

Studio apartments	£175,000
1 bed flats	£230,000
2 bed flats	£283,500

106. We turn next to the question of capitalisation rates. We have been referred to the decision of Melluish and others CHI/43UG/OLR/2019/0012 by Mr Nimba who raises various arguments and contends for significantly higher capitalisation rates referring to auction sales and a significantly earlier decision relating to the same property. He applies the rate in Melluish and then discounts this something he himself says is unorthodox.

107. We are not satisfied that the earlier decision dating back to 2011 is relevant. Mr Nimba also contends that Parliament may legislate on ground rents. Whilst this may be correct even by the date of hearing it has not done so and the date of valuation is significantly earlier.

108. Mr Lee seeks different rates dependant upon whether the ground rent is fixed, marginal stepped increases or doubling every 15 years. All of these rates are less than those determined in Melluish.

109. Looking at the totality of the evidence we determine that a capitalisation rate of 6.15% for all flats is appropriate having regard to all the evidence provided.

110. Turning to relativity Mr Lee refers to Deritend Investments (Birkdale) Limited v Teskonava [2020]UKUT 164 (LC) and states he should average the Savills Unenfranchisable Graph and the Gerald Eve graph producing an average relativity of 81.44%.

111. Mr Nimba disagrees and argues Deritend should not be considered as the decision post dates the valuation date. Mr Nimba invites us to include the RICS 2009 Greater London & England Graph in the average which results in an average of 84.05%.

112. We do not agree that we should ignore Deritend. That is a decision of the Upper Tribunal made before the matter came before this Tribunal. We believe it is right to consider the same and the comments it makes about the RICS 2009 graph which is now substantially out of date. We agree with the approach adopted by Mr Lee and determine the correct relativity is 81.44%.

113. This then leaves the question of development value. We note Mr Lee had not inspected a loft. Mr Nimba had. Ms Cook produced notes from various top floor leaseholders indicating that they would not pay to extend their demises into the loft. We note that Mr Brown invited us to ignore the same having not previously having been disclosed.

114. Mr Lee suggests that there is some "hope value" which he assesses at £20,000 being one third of the likely value he believes that a freeholder could obtain currently for such space. Mr Nimba states there is no value.

115. We note no leaseholder has extended their demise to include this area. As Mr Lee notes it seems there is little demand. We agree.

We do not accept that an investor would pay anything for the potential hope value in these circumstances and so we attribute no extra value. Mr Lee had not inspected the lofts and it was clear whilst a number of transactions had taken place over the years by way of lease extensions no evidence was provided that any leaseholder would seek to include the loft space, let alone as to the costs proposed by Mr Lee.

116. We make no findings as to "hope value" if the whole title was to be transferred. We reach this determination on the basis it is suggested that the Respondent would not have agreed to transfer the appurtenant property and it may be that other arguments may be raised by both parties. As a result it would be inappropriate for this Tribunal to determine the same without full argument being heard.

117. We determine the terms of the contract should be in those annexed hereto marked B.

Conclusion

118. The above sets out our determination.

119. We find that the premium was agreed at £222,500.

120. The Property to be enfranchised is that outlined in red on the plan at [750] of the bundle.

121. If we are wrong on the premium being agreed we have determined the premium to be payable by way of determining the constituent parts of any valuation. We direct the parties to produce a valuation inputting the figures agreed and those determined in this decision and to submit it for approval within 21 days of the date of this determination.

122. The Tribunal has not determined the reasonable costs and the parties are invited to try and agree the same. If they are unable to do so within 28 days of this decision either party may seek further directions from the Tribunal.

123. As a postscript we received an email from Ms Cook inviting us to determine the premium payable separately for each notice. We have declined to do so as neither party addressed the Tribunal on this basis and it would be inappropriate for us to do so.