FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AK/OCE/0185**
HMCT code	**:**	**V: CVPREMOTE**
Property	**:**	**72-82 Bridle Close, London EN3 6EB**
Applicant	**:**	**72-82 Bridle Close Freehold Ltd**
Representative	**:**	**Mr Edward Blakeney, counsel**
Respondent	**:**	**Charles Hunt (Holdings) Ltd**
Representative	**:**	**Mr John Yianni, counsel**
Type of application	**:**	**Section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Judge Tagliavini** **Miss M Krisko FRICS**
Date of hearing and venue	**:**	**7 & 8 December 2021** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**21 January 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. 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 the tribunal were referred

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to are in four bundles containing pp 1-471 the contents of which the tribunal has taken into consideration.

Summary of the tribunal's decision

(1) The premium payable for the freehold including the Additional Property is £8,000.

Background

1. This is an application made by the applicant leaseholder pursuant to section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act') for a determination of the premium to be paid for the purchase of the freehold of 77-82 Bridle Close, London EN 6EB ('the property').

2. By an Initial Notice served pursuant to section 13 of the Act dated 2 April 2020, the applicant exercised the right to acquire the freehold of the subject property together with the 'additional property' identified on the plan accompanying the notice for a premium of £9,500 for the freehold and £500.00 for the 'additional property.' In as counter notice dated 11 June 2020 the respondent contended the premium payable for the subject property and additional property was £380,800.

3. In an application dated 9 December 2020 the applicant applied to the tribunal for a determination of the premium payable.

The issues

Matters agreed

4. The following matters were agreed in a Statement of Agreed Facts and Issues dated 2 June 2021
   (a) The subject property is a purpose-built block of six flats over two floors with four 2-bedroom flats with a GIA of between 650sqft and 725sqft and two 1-bedroom flats with a GIA of approximately 550sqft.
   (b) Each of the leases are held for a term of 999 years from 25 March 1963 with approximately 942 years unexpired as at the valuation date.
   (c) The valuation date is 16 June 2020.*

(d) Flats 78,81 and 82 each pay a fixed ground rent throughout the term of £15 15 shillings (£15.75) and flats 77, 79 and 80 each pay a fixed ground rent throughout the term of £100 per annum.

(e) The FHVP's for each 2-bedroom flat is £287.00 and £240,000 for each 1-bedroom flat.

(f) Capitalisation of ground rent is 6%. Value of ground rent agreed at hearing is £5,788.

(g) Deferment rate is 5%.

(h) There is £nil marriage value payable.

**Subsequently, it was agreed that the correct valuation date was 6 April 2020 but that this made no difference to the expert's valuations or the parties' legal arguments.*

Matters not agreed

5. The following matters were issues to be determined by the tribunal:

(a) Whether the Nominee Purchasers ('NP') Notice of Claim is valid?

(b) Whether the tenants have express rights over that garden areas that have been claimed as 'Additional Property.'

(c) If the claim is valid, the development value of the roof space.

(d) If the claim is valid, the quantum of other compensation (if any) payable arising from the freeholder's ownership of two sister blocks.

(e) If the claim is valid, then the quantum of value arising from the existing potential for the respondent to sell Deeds of Variation or new leases to permitting subletting (which is currently prohibited under the leases.

(f) If the claim is valid, the price payable for the freehold.

The hearing

6. The hearing in this matter took place over 7 and 8 December 2021. The applicant was represented by Mr Edward Blakeney of counsel and the respondent was represented by Mr John Yianni of counsel.

7. 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, as it was provided with photographs of the exterior and internal common parts of the property as well as a map of its location and lease plan showing its position and physical relationship to the two sister blocks, of which the respondent is also the freeholder.

8. The applicant relied upon the expert report and valuation of Mr Peter Loizou MRICS dated 22 November 2021 in which he calculated the premium payable was £7,423 (corrected at the hearing to £7,243) with £500 payable for the Additional Property or £8,000 in total. The respondent relied upon the expert report and valuation report of Mr Jason Mellor AssocRICS DipSurvPrac dated November 2021 in which he had calculated the premium payable as £138,000 including the Additional Property.

<u>The tribunal's decisions and reasons</u>

Whether the Nominee Purchasers ('NP') Notice of Claim is valid and whether the tenants have express rights over that garden areas that have been claimed as 'Additional Property'?

9. The tribunal determines that the Initial Notice of Claim is valid and includes garden areas as marked on the accompanying plan to which the applicant is entitled to acquire. The tribunal does not accept the argument of the respondent that the notice is invalidated by the applicant's failure to identify the basis upon which the Additional Property can be said to be appurtenant property which has either been demised under the terms of the leases or which is used in common with the lessees of other premises.

10. The tribunal accepts the applicant's argument that the leases contain express provisions as to the tenants' use of the garden area that are set out in clauses 2(1)(b), 4(2) and paragraph 3 of The Third Schedule, and which in the tribunal's opinion, clearly indicate that the tenants have use of the garden and are required to contribute towards their upkeep. The tribunal finds the lease does not contain any express prohibition on the use of the garden areas by tenants or require a specific fee to be paid for their use. Therefore, the tribunal finds the applicant is entitled to claim the Additional Property as marked on the plan, pursuant to s.1(3)(b) of the 1993 Act; *Marks & Spencer plc v Paribas Security Services Trust Company (Jersey) Limited* [2015] UKSC 72.

11. In light of its decision above, the tribunal is not required to consider whether there has been an 'overclaim' by the applicant, which may or may not invalidate the Notice of Claim.

The development value of the roof space

12. The tribunal finds that although there is development value in the roof space at the property, the cost benefit is likely to be minimal and therefore, determines that the monetary value to the premium payable is zero.

13. Overall, the tribunal prefers the evidence of Mr Mellor and his 'top down' approach, which relies on assessing development value by reference to market evidence either from the subject or comparable sites. This approach contrasted to that of Mr Loizou who stated that because there was no 'pre-application' approval for development in place by the Valuation Date, the development value must be zero.

14. The tribunal finds that the agreed floor areas for each of the lower floors were 2x 2 beds, 725 sqft each and 1x 1 bed, 650 sqft i.e., a total GIA of 2100 sqft. However, in the top-down approach used by Mr Mellor in his option 1 valuation, a square footage of only 1065 has been used to calculate the construction costs of £350 psqft and does not allow for the remainder of the floor space in the roof. This amounts to another 1000 sqft plus that has not been accounted for in the development costs although the totality of the area will require major works for the development to take place.

15. Therefore, the tribunal finds Mr Mellor has kept the construction costs of potential roof development on the artificially low side by ignoring the whole of the floor area that would be required to be developed for the new flats and resulting in a total construction cost of £315,000.

16. The tribunal calculates that by using £350 psqf as an estimate for the costs of the flats themselves, this provides a figure of £372,750. Using its knowledge and expertise, the tribunal considers that, even if a low estimate of £100 psqf is adopted for the considerable amount of work on the remainder of the roof space is used, including the extra support along the entire outer edges for the dormers, this produces a figure of £100,000, the result of which would be a total construction cost of £472,750 or £225 psqft over the entire 2100 sqft roof space. Although this is less than the anticipated sales receipt of £560,000, it is likely the remaining £87,250 would quickly be into negative values after allowances are made for the other deductions suggested by the respondent in his report. These are likely to include sales and legal costs at 3% (£16,800); profit and risk at 15% at least (£84,000); finance at 8%; CIL payments; planning and legal risks at 40% (at least) and professional advice/surveys etc (£10,000.

17. The tribunal finds that there is both a significant legal risk in developing the roof space and a planning risk that can be assessed as being in the region of 40% at least. Mr Mellor had assessed the value of the roof development works at £50,000 but the tribunal finds these are more likely to be in the region of over £80,000 as set out above. The tribunal

also finds that reliance on the tribunal decision in *LON/00AE/OCE/2019/0059* concerning 1-36 Fairfield Close, N12 is now outdated, particularly considering the circumstances prevailing since 2020 in the pandemic crisis and is therefore of limited assistance.

The quantum of other compensation (if any) payable arising from the freeholder's ownership of two sister blocks

18. The tribunal determines that no other sums of compensation are payable.

19. Mr Mellor submitted that there was development value in the respondent's ability to develop the two neighbouring 'sister' blocks of which the respondent was also the freeholder. The respondent asserted that the respondent's loss of ability to apply for planning permission on all three blocks raises the risk that planning permission would be refused if uniformity could not be achieved and attributed a sum of £2,000 to this risk of loss (revised from his original figure of £22,000).

20. In contrast, Mr Loizou asserted that the freeholder remained capable of developing the two sister blocks and therefore, no compensation was payable.

21. The tribunal prefers the argument made by Mr Blakeney on this issue that no further compensation is payable, and accepts his argument that such additional compensation' is calculated at the date of the initial notice and relates to the diminution in value of the respondent's interest in other property resulting from the acquisition of the subject property and any loss that may result from it

22. The tribunal find that the subject property and its two sister blocks display no special characteristics and are in an area of varying architecture and development. Therefore, the tribunal does not accept the respondent's argument that it is less likely to obtain planning permission approval if all three blocks are not developed simultaneously or in an identical fashion and there suffer a financial loss.

The quantum of value arising from the existing potential for the respondent to sell Deeds of Variation or new leases to permitting subletting (which is currently prohibited under the leases).

23. The tribunal finds the leases in their current form allow subletting to one household and prohibits subletting to persons that make up multiple households and prohibits short-term (holiday) lets. The tribunal determine that there is minimal value to be attributed to the premium in respect of this issue.

24. Clause 2(2)((xvi) of the lease's states:

> *That the Tenant will at all times during the said term keep and occupy the said flat hereby demised as and for a single private residence in one occupation only; Triplerose v Beattie* [2020] UKUT 180 (LC)

25. In his report Mr Mellor asserted that this clause restricted the use of the flat to the tenant only and prohibited sub-letting and therefore compensation would be payable for the variation of this clause by way of a Deed of Variation or the grant of new leases and attributed a value of £60,000 to the removal of the prohibition on sub-letting.

26. Mr Loizou stated in his report that any costs payable by leaseholders for the lifting of such a restriction would be limited to covering the reasonable professional fees of the landlord in considering such an application as opposed to a mechanism for profiting from it. However, the current block management policy does not permit the lifting of such a restriction and therefore no further compensation is payable.

27. Mr Blakeney for the applicant submitted that this clause was aimed only at preventing short-term holiday lets, rather than sub-letting in its entirety and that the previous decisions in the tribunal and the Edmonton county court dated 23 July 2001, confirming the prohibition on sub-letting, were determined prior to *Triplerose v Beattie* [2020] UKUT 180 (LC) are not binding on the tribunal and may have been wrongly decided.

28. The tribunal was made aware of decisions of the county court and the tribunal that determined this clause to prohibit the sub-letting of the flats finding this to be a natural interpretation of this clause preventing the sub-letting to persons that do not form a single family. However, the tribunal is of the view that this does not require this to be the lessee's family only.

The price payable for the freehold and the price payable for the Additional Property

29. In conclusion, the tribunal determines the price payable for the freehold of the subject and additional property is £8,000 as per the valuation of Mr Loizou.

Name:	Judge Tagliavini	**Date:**	21 January 2022

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).

CASE REFERENCE LON/00AC/OLR/2014/0106

First-tier Tribunal
Property Chamber (Residential Property)

Valuation under Schedule 13 of the Leasehold Reform Housing and Urban Development Act 1993

Premium payable for an extended leasehold Interest in [Property]

Valuation date: [Date]