



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

Case Reference	:	CAM/00KF/OCE/2022/0008
Property	:	17 Winton Avenue Westcliff Essex SSo 7QU
Applicants	:	(1) Darrell Stephen Lavender (2) Rafe Kevin King (Leaseholders Flats 1 & 3)
Representative	:	Paul Robunson LLP (Solicitors)
Respondent	:	Austin Piers Whitehouse (Landlord)
Type of Application	:	Determination of terms of leasehold enfranchisement of the freehold
Tribunal Members	:	Mr N Martindale FRICS
Date of Decision	:	16 August 2023

DECISION

Decision

The premium to be paid by the applicants for the freehold interest in 17 Winton Avenue Westcliff Essex SSo 7QU registered at HM Land registry under title number EX222117 (the “Property”) is **£35,139 (Thirty Five Thousand one hundred and thirty nine pounds)**.

Introduction

1. This is an application made under Section 25 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of acquisition

of the freehold interest in the Property. It appears that the freeholder, whilst not missing, has played no part in the process.

2. The Property is a two level mid terraced late Victorian building consisting of three self contained flats. Two on the ground floor. One of the first floor. It was converted from the former house. Leaseholder of Flat No.1 (GF) and leaseholder of Flat No.3 (FF) are the applicants.
3. The First applicant, Darrell Lavender has an interest in the lease of flat No.1 at No.17 (HMLR title EX692737). The Second applicant, Rafe King has an interest in the lease of the flat No.3 at No.17 (HMLR title EX 408672). The leaseholder of Flat 2 is not participating.
4. Flat No. 1 is held on a long lease dated 17 September 2002 for 99 years from 17 September 2002 from Adam Piers Whitehouse landlord on set rising rents.
5. Flat No. 2 is held on a long lease dated 23 January 2014 for 99 years from 1 January 2013 from Adam Piers Whitehouse on set rising rents.
6. Flat No.3 is held on a long lease dated 26 June 1989 for 99 years from 19 May 1989 originally between Urban City Developments Ltd. (landlords) and Shaun Nigel King (tenant) on a fixed rent of £50pa.
7. The landlord for all 3 leasehold flats is freeholder (HMLR title EX177008) Austin Piers Whitehouse.
8. By an order made District Judge Callaghan dated 13 May 2022, the matter of the premium to be paid by the applicants for the freehold interest in the Property, and the terms of transfer was referred to the Tribunal for determination.

Statutory basis of valuation

9. Schedule 6 to the Act provides that the price to be paid by the nominee purchaser, in this case the applicants, for the freehold interest shall be the aggregate of the value of the freeholder's interest, the freeholder's share of the marriage value, and compensation for any other loss.
10. The value of the freehold interest is the amount which, at the valuation date, that interest might be expected to realise if sold in the open market subject to the tenancy by a willing seller (with the nominee purchaser, or a tenant of premises within the specified premises or an owner of an interest in the premises, not buying or seeking to buy) on the assumption that the tenant has no rights under the Act either to acquire the freehold interest or to acquire a new lease.

11. Paragraph 4 of the Schedule, as amended, provides that the freeholder's share of the marriage value is to be 50%, and that any marriage value is to be ignored where the unexpired term of the lease exceeds eighty years at the valuation date.
12. Paragraph 5 of the Schedule provides for the payment of compensation for other loss resulting from the enfranchisement.

Evidence

13. The applicants provided two valuations. The respondent did not participate.
14. The first valuation prepared before service of Notice of Claim, was dated 7 January 2020. It appeared to be informal advice to the prospective applicants. There was no AVD yet. It was from M J Osborn FRICS of Howe Chartered Surveyors of Shenfield. The surveyor inspected all 3 flats. He gave the GIAs: Flat 1 (GF) 363ft², Flat 2 (GF) 372ft², Flat 3 (FF) 798ft². It appeared that he calculated these from use of the lease plans.
15. In essence the former 1900's house of traditional brick and tiled construction on 2 levels, had been converted into 2 small flats on the ground floor and 1 larger flat on the first floor. The first floor flat was roughly double the size of the two ground floors flats. The only communal areas were the front ground floor hallway which gave access to all 3 flats and the short front path from the back edge of the public pavement at the front.
16. The values were given the form of a range. They were for each of the 3 flats. There was no figure for ancillary land. The ranges were Flat 1: £3250-£3500. Flat 2: £4500-£5250. Flat 3: £13325-£22,500. There were no calculations. The Total premium ranged from £21075 to £31250.
17. Notice of Claim at a total premium of £17,085 and £100 for ancillary land, was dated and served 26 February 2020.
18. The second valuation was prepared with an AVD of 26 February 2020, dated 29 March 2023, by Colin Horton BSc AssocRICS, of Hortons Valuers Ltd. ("the Report"). The report contains a formal Statement of Truth confirming that in so far as the facts stated in the report are within their own knowledge that he believes them to be true and includes a statement of compliance confirming that they understand their duty to this Tribunal.
19. Having considered the contents of the Report, although the valuation calculations the Tribunal found the valuation calculations very hard to

read as the author had once again adopted an unnecessarily small typeface. Otherwise the Tribunal was broadly satisfied with the opinions expressed in the Report and was content that the methods adopted were appropriate to determine the enfranchisement price for the Property. The Tribunal accepts the description of the Property and its location as stated in the Report.

20. A photograph of the exterior of the Property was included in the Valuation Report. The Tribunal did not consider it necessary or proportionate to carry out an inspection of the Property.

Valuation

21. According to the Report, the Property consisted of three self contained flats. Two flats on the ground floor flat and one above both. The report refers to three flats each numbered 1. Clearly there are three flats numbered 1, 2, 3. The report ascribes the following GIAs to these 3 flats as: Flat 1: Ground floor 363ft² (33.72m²) 1 bedroom, with access to rear courtyard. Flat 1 (2): Ground floor (372ft² (34,56) 2 bedrooms, with access to rear garden. Flat 1 (3): First floor 363ft² (33.7m²) 2 bedrooms.
22. All 3 flats are said to be valued disregarding the value of the improvements but then there are no details of any tenants improvements at any flat. The valuer did not inspect internally. It is unclear if he was provided with Mr Howe's earlier valuation but the floor areas for Flat 2 1 and 2 are identical. It is unclear where the stated figure of 363ft came from for Flat 3, as it is clearly about twice the size of the other two, from the lease plans alone, occupying the entire first floor.
23. The valuer notes the sale of the short leasehold flat at No.2 for £160,000 on 11 May 2022. This is more than 2 years after the AVD. The valuer states "*It must be noted that I do think this is a value below the true long lease value.*"
24. The valuer refers to details for four nearby completed sales provided in a small and again almost illegible table. All were conversions from former 1900's terraced houses. No HMLR confirmation of these transactions was provided to the Tribunal.
25. **10 Westcliff Avenue SSo 7QR.** Sold for £203,500 April 2022. A 2 bedroom flat 75m², in similar condition.
26. **21 Retreat Road SSo 7NN.** Sold for £260,000 May 2022. A 2 bedroom flat 70m², in similar condition.

27. **18 Hermitage Road SSo 7NQ.** Sold for £250,000 August 2022. A 2 bedroom flat 74m², in similar condition.
28. **9 Winton Hall SSo 7QT.** Sold for £150,000 October 2022. A 1 bedroom flat 44m², in similar condition.
29. From these 4 comparables the valuer placed the virtual freehold values of each of the 3 flats at the Property as follows: Flat 1: £160,000. Flat 2 £200,000. Flat 3 £190,000.
30. The Tribunal is satisfied with the relevance and details of the four comparable property sales provided in the Report and their analysis by the valuer to reach the assessment of the virtual freehold vacant possession value for Flat 1, and Flat 2, clearly the figure for Flat 3 has to be at least significantly higher, based on its floor area alone. The Tribunal therefore places the sum of £230,000 on this flat and at this figure it is more in line with three of the sales provided with similar areas and condition albeit a little later. The valuer provides no evidence about market movement over time and makes no adjustment to reflect this. The Tribunal accepts that the market was essentially flat between the (Pre Covid) Notice of Claim date and the local but later sales.
31. The Tribunal notes that two of the comparables were sold with the benefit of a share of the freehold, but prefers the clarity in the adoption of the convention to value a virtual freehold at 1.01x of that of the same property sold on a long leasehold. It therefore adjusts the values marginally higher as shown in the valuations.
32. Flats 1 and 2 have leases with at least 80 years unexpired. The valuer is therefore not required to add on the landlord's share of the value of the marriage of the two interests. Flat 3 does have a term of less than 80 years unexpired and payment of the landlord's marriage value must therefore be taken into account.
33. The valuer having discounted the sale of Flat 2, for £160,000 and having found no other reliable sales of short leasehold flats of otherwise similar flats in the locality for the shorter lease Flat 3, adopted the relativity from the graphs, for the addition of marriage value at Flat 3, only. The relativity figure for short leasehold to virtual freehold for the 68.23 years unexpired is 83.79 taken from the average of the Gerald Eve 2016 and Savills unenfranchisable graphs.
34. The valuer also refers to the decisions in passing including of *Trustees of Sloane Stanley Estate v Munday 2016* and of *Trustees of Barry & Peggy High Foundation v Zucconi & Anor 2019 UKUT*. The Tribunal accepts, the 87.68% relativity proposed. The valuer duly applies this percentage relativity to the virtual freehold value for Flat 3 to obtain the value of the current short leasehold interest.

35. The diminution in the value of the landlord's interest in the tenants' flats is represented first by the capitalised value of the grounds rent receivable under their leases. That income stream is capitalised by the valuer at a variety of interest rates. The Tribunal does not accept the variations or such reasoning as is proposed. It adopts the more conventional 7% for all terms on all passing rents to find the term values in each case on each flat.
36. Next, the effect of enfranchisement will deprive the landlord of the freehold reversion of the Property. The present value of the reversion is determined by applying a deferment rate to the freehold value of both flats. The deferment rate appropriate for leasehold flats in Central London was authoritatively determined to be 5% in the case of *Earl Cadogan v Sportelli* (2006) LRA/50/2005. The valuer adopts the Sportelli deferment rate of 5% but then adjusts it to 5.3%. The Tribunal does not accept the reasoning such as is proposed and again adopts the conventional 5%.
37. The valuer's final valuations for each part of the Property to be acquired are as follows: No.1 3597 No.2 £5481 No.3 £18,500. The valuer makes no addition for ancillary land, which would for example include the loft space.
38. The valuer considers that neither flat has development potential and no additional value therefore. The Property is on a compact site and is part of a terrace. Tribunal accepts this approach.
39. The Tribunal does not accept the valuations for each flat nor the submission that no value should be ascribed for ancillary land as proposed by the applicants in their Notice of Claim. It accepts that assessment however, at £100 additional compensation to the freeholder.
40. **The determinations are: Flat 1: £4493; Flat 2: £7206; Flat 3: £23340. An addition for the ancillary land is £100 as set out in the Notice of Claim. The three valuations are attached.**
41. The premium to be paid by the applicants for the freehold interest in 17 Winton Avenue Westcliff Essex SS0 7QU registered at HM Land registry under title number EX222117 (the "Property") is **£35,139 (Thirty Five Thousand one hundred and thirty nine pounds).**
42. **The draft transfer TR1 supplied in the bundle is approved, subject to the current premium at Box 8 being deleted and the figure determined at paragraph 41 above, being inserted.**

Name: N. Martindale FRICS Date: 16 August 2023

