



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

Case reference : **LON/00BA/OCE/2020/0136**

HMCTS code : **P: CVPREMOTE**

Property : **Harveur Court, 145 Graham Road,
London, SW19 3SL**

Applicant : **Harveur Court Freehold Limited**

Representative : **Mr R Pugh BSc MRICS, Chartered
Surveyor**

Respondent : **Benjeber Limited**

Representative : **Mr Harrison of Counsel**

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

Tribunal members : **Tribunal Judge I Mohabir
Mr I Holdsworth BSc FRICS**

Date of decision : **19 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Background

1. This is an application made by the Applicant nominee purchaser 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 Harveur Court, 145 Graham Road, London, SW19 3S (the “property”).
2. By a notice of a claim dated 13 January 2020, served pursuant to section 13 of the Act, the Applicant exercised the right for the acquisition of the freehold of the subject property and proposed to pay a premium of £28,500 for the freehold and £2,200 for the appurtenant property.
3. On 24 March 2020, the Respondent freeholder served a counter-notice admitting the validity of the claim and counter-proposed a premium of £112,857 for the freehold and £3,000 for the appurtenant land.
4. On 21 August 2020, the Applicant applied to the Tribunal for a determination of the premium and terms of acquisition.

The issues

5. Annexed to this decision is the statement of agreed facts signed by the valuers for the Applicant and the Respondent respectively. The premium of £40,000 agreed in respect of paragraphs 1-4 plus the sum of £2,200 for the appurtenant land.
6. Therefore, the only issue for the Tribunal to decide is in respect of development value.

The hearing

7. The remote video hearing in this matter took place on 20 April 2021. The applicant was represented by Mr Pugh who acted as both advocate and valuer for the Applicant. The Respondent was represented by Mr Harrison of Counsel.

8. 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.
9. The Applicant relied upon the expert report and valuation of Mr Pugh BSc MRICS dated 24 March 2021 and the Respondent relied upon the expert reports and valuation of Mr Green BSc (Hons) MRICS dated 26 March 2021 and 14 April 2021.

Development Value

10. The property is a three-storey purpose built block of flats comprised of 9 flats, with 3 flats on each floor.
11. It is the Respondent's case that potentially three one-bedroom flats could be built on a third floor level. Two flats would be approximately 50 square metres in size and the third flat would be 55 square metres.
12. Therefore, this development value falls to be determined pursuant to paragraph 2 in Schedule 6 of the Leasehold Reform, Housing and Urban Development Act 1993 Act (as amended) ("the Act"). It forms part of the value of the freeholder's interest in the premises as determined in accordance with the statutory assumptions set out in paragraph 3 in the Schedule.
13. In support of this, Mr Green had sought the advice of Mr Sellars, who is an Architect and Director at Brass Architecture. He had provided a design appraisal, structural analysis and cost breakdown, which was annexed to Mr Green's initial report. Apparently, Brass Architecture had been involved in the development of a third floor at 115 Graham Road in 2020 and had obtained permission for the construction of two flats.
14. This was confirmed in a letter from Mr Sellars dated 14 April 2021, which was annexed to the supplementary report of Mr Green. In that letter Mr Sellars set out what steps had been taken to obtain planning consent for 115 Graham Road and by reference to the emerging Merton Local Plan to promote additional housing stock. He concluded that a similar application for the subject property would succeed if pre-application meeting with the local authority were instigated, feedback collated and designs evolved to suit.
15. On this basis, Mr Green prepared a residual valuation by taking a value of £745 per square foot to include the planning, technical and construction costs set out by Brass Architecture. To this he added a 10% contingency and then allowed for developer's profit of 15%. In doing so, he reached a full value of £542,235 with planning consent being granted. Mr Green then discounted this figure by 65% to

represent the risks involved on not being able to obtain planning consent to arrive at a development value of £190,111. This discount figure appears to have been lifted from the case of ***Francia Properties Ltd v St James House Freehold Ltd*** and not based on an analysis of the particular risks involved in the proposed development here. At the hearing it was amended to a residual valuation of £508,442, which resulted in a discounted development value of £177,955. These figures were subsequently revised downwards in a revised residual valuation submitted after the hearing. Mr Green's evidence is now a residual valuation of £494,519, which after adjustment for risk equates to £173,082.

16. In effect, Mr Green's evidence on development value was wholly reliant on the hearsay evidence of Mr Sellars who did not attend the hearing and was not cross-examined.
17. In short, Mr Pugh's evidence was that he attributed no value to any potential development value because, in his expert opinion, planning consent would not be granted for the planning proposal prepared by Mr Sellars.
18. Mr Pugh was cross-examined by Mr Harrison, for the Respondent, on the basis that his conclusion about planning matters could not be relied upon because he had not particular expertise on planning and he was not impartial. Nevertheless, Mr Pugh maintained that he possessed sufficient expertise as a Chartered Surveyor of many years experience to be able to comment on planning matters and, therefore, did not require the assistance of another expert on the subject.
19. Mr Pugh said that he did not have to have regard to the proposed Merton Local Plan because planning consent would not be granted in any event. He went on to make a number of criticisms of Mr Sellars' advice as he considered that it contained serious flaws and that his costings were "just a marketing brochure" to think that the development was possible. Further difficulties in obtaining planning consent highlighted by Mr Pugh included the additional height of the proposed development in relation to the adjacent properties and the disturbance caused to the lessees of Flats 7-9 on the top floor of the building.
20. However, on being further pressed in cross-examination by Mr Harrison, Mr Pugh conceded in principle that in construction terms "you can do almost anything" and admitted the possibility of designing three amended flats on the roof.
21. In cross-examination, Mr Green's evidence was unimpressive. He was unable to provide any explanation of how the architectural fees of £20,000 of the construction costs of £355,000 had been arrived at by Brass Architecture had been arrived at. He was unable to say whether

VAT was chargeable on the developer's costs or what reduction in cost would result if one of the proposed flats was not included in the construction. He was unable to explain with any detail his analysis of the risks involved in reaching his discount figure of 65%. The generic explanation given was that 30-40% of the risk discount could be attributed to planning matters and 25% to engineering matters.

22. The Applicant's case was put on the basis that the Respondent's planning proposal was not feasible because planning consent would not be granted.
23. The Tribunal was satisfied that despite Mr Pugh's experience his area of true expertise is as a valuer and not in the area of planning. Whilst the Tribunal accepted that that his experience may have given him some knowledge in planning matters, he cannot be said to be a planning expert *per se* in this area of work.
24. Therefore, the criticisms made by Mr Pugh of the Brass Architecture planning proposal cannot properly be regarded as having been made with the requisite degree of expertise and the Tribunal placed no weight on these.
25. It follows, therefore, that the only expert evidence before the Tribunal on the planning proposal was the hearsay evidence of Brass Architecture. However, at best, the evidence can only be regarded as a highly qualified proposal to develop and is based on the uncertainty of (a) being able to planning consent and (b) if so, on what conditions.
26. The evidence of Brass Architecture about the possibility of being able to develop the top floor of the building is based on the fact that planning consent, albeit after a number of applications and amendments, was granted for the nearby development at 115 Graham Road in respect to which they acted.
27. That evidence, although qualified in nature, admits the possibility of the top floor being developed in some way in perhaps a different configuration that the Brass Architect proposal. Indeed, Mr Pugh accepted in evidence that this was possible in principle.
28. Therefore, paragraphs 2(a) and 3 in Schedule 6 of the Act was engaged and the development value of the freehold interest fell to be considered.
29. As to the valuation of that interest, Mr Green had prepared a residual valuation in the sum of £494,519. Mr Pugh, despite the later service of Mr Green's addendum report, had not prepared a residual valuation because the Applicant's case was put solely on the basis that there is no development value.

The Tribunal in the absence of an alternative residual development scheme has relied upon the gross development value and development costs submitted in the residual valuation by Mr Green. The Tribunal are aware of the limitations of this valuation method. Recent Upper Tribunal decisions encourage valuers who adopt these techniques to corroborate parameters used in the valuation with relevant market or tender evidence. This was not done by this expert.

30. Save for the discount of 65% applied by Mr Green, Mr Pugh's cross-examination of him was largely concerned about the feasibility of the proposed development and the figure of 65% was largely unchallenged.
31. As to the 65% discount applied by Mr Green, he was unable to give in cross-examination and satisfactory explanation as to how he arrived at this figure. He was only able to say that 30-40% and 25% of the risk could be attributed to planning and engineering matters.
32. In the Tribunal's judgement, the discount figure adopted by Mr Green failed to take into account additional risk factors such as building costs, variations, unforeseen costs, obtaining finance, being able to build over the light well in the common parts on the top floor and the additional costs in operating in what could be considered a relatively small site. The Tribunal was satisfied that these additional risks were properly reflected by adding an additional 25% to the 65% figure adopted by Mr Green.
33. Accordingly, the Tribunal concluded that a discount of 90% should be applied in this instance, which results in a development value of £49,452.

The premium

1. The Tribunal determines the appropriate premium to be **£91,652**. A copy of its valuation calculation is annexed to this decision.

Name: Tribunal Judge I Mohabir **Date:** 19 May 2021

Appendix: Valuation setting out the tribunal's calculations

Tribunal Valuation

Harveur Court, 145 Graham Road, London, SW19 3SL			
LON/00BA/OCE/2020/0136			
Development Valuation in accordance with paragraph 2(a) and 3 Schedule 6 of The Act			
Gross development value			£1,244,150
Less			
Construction Costs		£503,879	
Sales costs		£24,883	
Interest costs		£34,246	
Developers Profit		£186,623	
Total costs			£749,631
Residual value			£494,519
Discount factor for risk		90.00%	
Residual value after risk discount applied			£49,452
Sum agreed by parties for current and reversionary interest			£40,000
Sum agreed for appurtenant land			£2,200
Total premium payable			£91,652

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).