First-tier Tribunal
Property Chamber
(Residential Property)

Case Reference	**:**	**JM/LON/00BA/OCE/2022/0016**
Property	**:**	**13 and 15 Faraday Road, London SW19 8PE**
Applicant	**:**	**Elizabeth Mary Harper and James Frederick Harper**
Represented by		**Robyn Cunningham (Gregsons)**
Respondents	**:**	**Laserglobe (Investments) Ltd.**
Represented by		**Steven Hall MRICS (lay)**
Date of Application	**:**	**25th January 2021 (assumed to be 2022 - it was received in 2022)**
Type of Application	**:**	**To determine the terms of acquisition of the collective enfranchisement of the property**
Tribunal	**:**	**Bruce Edgington (lawyer chair)** **Evelyn Flint FRICS**
Date and place of hearing	**:**	**17th August 2022 by video hearing**

DECISION

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UPON the Tribunal being told that the form of transfer TR1 (save for the price payable) had been agreed between the parties.

IT IS DETERMINED that:

1. The total collective enfranchisement price of the property is £11,000.00.

Reasons

Introduction

2. This application is for the Tribunal to determine the terms (including the price) of the collective enfranchisement of the freehold of the property.

3. This followed the service of an Initial Notice dated 6th August 2021 and a Counter-Notice by the Respondent dated 6th October 2021.

4. The Tribunal made a directions order on the 27th April 2022 timetabling the case to a final hearing including the filing of all evidence to be relied upon. The parties have filed a bundle including expert evidence from both sides. All matters have now been agreed save for the price to be paid. The difference, in essence, relates to (a) the potential development value of the building being converted into one house and (b) a sum to reflect unauthorised improvements to 13 Faraday Road.

5. Any reference in this decision to a page number refers to the numbered pages in the bundle supplied for the purpose of this hearing.

The Inspection

6. Following the COVID pandemic, it has not been the practice of Tribunals to inspect properties and no request for an inspection has been made in this case. In any event the parties both have their own experts who have prepared detailed reports which are in the bundle.

7. There appears to be no relevant dispute about the description of the properties set out in the expert's report of Zahid Azeem MRICS of Scrivener Tibbatts, Chartered Surveyors, dated 28th July 2022 at pages numbered 104 and 105 (for the Applicants). The Respondent's surveyor, Steven Hall BSc MRICS of Pearce & Co., Chartered Surveyors, in his report dated 19th July 2022 does not seem to disagree with Mr. Azeem but concentrates more on his view of what the properties will be when they are converted into one house (pages 192 and 193). These descriptions are sufficiently accurate for the Tribunal's purposes.

8. In brief, Mr. Azeem says that the 2 properties are in a building constructed about 120 years ago as an end terraced property and Mr. Hall, at page 182, says that it was purpose built as 2 maisonettes. Flat 15 is the ground floor flat and has 3 bedrooms, a bathroom and kitchen leading to an open lounge and sliding doors to a rear garden with timber decking. Flat 13 is the first/second floor flat with 5 bedrooms, one of which is *en suite*, another bathroom, a kitchen and a reception room. There are stairs down to the garden from the kitchen and the garden is part lawn and part patio.

9. Mr. Hall describes flat 13 as having only 4 bedrooms on page 183. However, as the term and reversion value has been agreed at £11,000.00, the Tribunal has not gone into this discrepancy any further.

The Law

10. The price to be paid on collective enfranchisement is calculated in accordance with the provisions of Schedule 6 of the **Leasehold Reform, Housing and Urban Development Act 1993** ("the 1993 Act"). The capitalisation rate, deferment rate, capital values, relativity and the terms of TR1 save for the price are all agreed. The agreed part of the price without the increases sought was £11,000.00. The Tribunal had a signed agreement before it at page 99 to confirm that. This decision will not look at whether anything else should be paid as a base price.

11. As far as development potential is concerned, the Respondent landlord says in this case that the Applicants and, indeed, any potential purchaser would (a) be able to convert the 2 flats into one house which would increase the overall value and (b) a reasonable sum for the illegal conversion of the roof space without consent should also be added. No figure is suggested for (b). A total price for hope value is claimed as £34,829 as stated at page 195.

12. Potential development value is a well established valuation principle which both parties accept and is supported by case law. The difference between the parties is that the Applicants say that the Respondent's view of property values is wrong and there is, in effect, no potential development value (or 'hope' value as it is sometimes called) as suggested as at the agreed valuation date of 16th August 2021.

13. It should be remembered that paragraph 5(4) of Schedule 6 of the 1993 Act says that a freeholder should be compensated for loss of development value which is defined as "*any increase in the value of the freeholder's interest in the premises which is attributable to the possibility of demolishing restructuring or carrying out substantial works of construction on, the whole or a substantial part of the premises*". In this case such work would be likely to include the conversion of the 2 flats into one house.

The Hearing

14. Those attending the video hearing were Ms. Robyn Cunningham, counsel for the Applicants, together with Mr. Azeem. Mr. Hall also appeared as expert witness for the Respondent and as it's advocate. There were 3 observers.

15. The Tribunal chair introduced the Tribunal members and then said that he had a couple of questions to raise on the papers. Thereafter he would ask the advocates to put their cases. This was how the hearing proceeded.

16. Ms. Cunningham had kindly produced a skeleton argument and copies of the case reports of **Carey-Morgan v The Trustees of Sloane Stanley Estate** [2013] L & T.R.2 and **31 Cadogan Square Freehold Ltd. v Cadogan** [2010] UKUT 321 (LC). Mr. Azeem produced a replacement for page 178 increasing his figure for net losses by £11,000.00 to take enfranchisement costs into account. That made his total figure for losses as £44,000.00.

17. Mr. Azeem gave his evidence and was cross examined by Mr. Hall. As sometimes happens in property cases where a party's expert witness is also the advocate, the process was not that easy. Mr. Hall confirmed that he did not agree the current lease values even though he agreed with the figure for term and reversion at £11.000.00. He then started to question Mr. Azeem about the current lease values. He was given a certain amount of latitude but then stopped in view of the agreed figure which took into account the current lease values of £825.000 for flat 13 and £550,000 for flat 15, as put forward by Mr. Azeem which he thought had been agreed (page 94).

18. He then started questioning Mr. Azeem about the cost of works to convert the 2 flats (maisonettes) into one house. Mr. Azeem agreed that his evidence consisted of estimates rather than quotations. He was asked a number of questions about whether his figures could possibly be accurate or

realistic. Mr. Azeem kept saying that the building figures were in the bundle and had been produced by 3 possible contractors. He could not add to them. Eventually, as Mr. Hall had produced no evidence to support his figure of £100,000.00, he was asked to move to another subject.

19. Mr. Hall then gave his evidence. He maintained that he did not agree with the lease valuations put forward by Mr. Azeem. He then disputed the work needed to convert the 2 flats into one house. He had e-mailed to the Tribunal a copy of a Licence to Alter dated 23rd January 2014 relating to flat 15 and referred to the plan attached which showed the layout of flat 15. He tried to show that the works needed to convert were 'fairly nominal'.

20. With respect to him, he simply did not seem to understand that Schedule 6 of the 1993 Act states, in effect, that the valuation must be on the basis that it was a sale on the open market subject to the two long leases and was not to the nominee purchaser i.e. a leaseholder in this case.

21. After the witnesses were questioned, the advocates gave closing submissions.

Discussion

22. In essence, the Tribunal has to determine which expert's evidence it should accept as correct, on the balance of probabilities. It has decided that it prefers Mr. Azeem's evidence. In the joint statement of facts at page 99 it says that the matters in dispute are the long leasehold valuations, the development value, the unauthorised improvements to flat 15 and gross internal area.

23. Mr. Azeem says, understandably, that as the Respondent has agreed the term and reversion value of £11,000.00 then this must include an agreement of the long leasehold values as these are part of that calculation. The freehold value of the building as a house is agreed at £1,560.000.00. The disputed floor area does not, in this Tribunal's view, materially affect the cost of the conversion works.

Potential for Development

24. This is by far the largest item of dispute with Mr Azeem saying that there would be a loss to any developer of at least £44,000.00 and Mr. Hall saying that there would be a profit of at least £47,658.00 which, split between the 2 parties would be £23,829.00 plus the agreed £11,000.00 making a total payable by the Applicants of £34,829.00.

25. The differences between the experts include:

(a) Mr. Azeem has produced estimates of the cost of conversion work which, although fairly vague, are at least figures from 3 different potential contractors to support the Applicants' case. Mr. Hall has produced no supporting evidence as to his general estimate. Her merely criticises Mr. Azeem.

(b) Mr. Azeem sets out what he thinks could be done to the property to convert it into a house. Despite his agreeing that he inspected the property in August 2021, Mr. Hall does not put forward any such

suggestions. Again he merely criticises Mr. Azeem by suggesting that the property does not have to be re-wired or have a new central heating system. The Tribunal considers that neither of these criticisms are realistic for a house of this value.

(c) The Tribunal does not accept that Mr. Hall can re-open the question of the leasehold valuations because his agreement to the term and reversion value precludes this. However, even if one accepted that he could, his figures are based to a large extent on indexes, theories and assumptions rather than actual values of comparable properties which Mr. Azeem has relied upon.

26. A difficulty with Mr. Hall's evidence concerns the planning risk which is connected to the issue raised above as to his misunderstanding of the 1993 Act. The statutory test is that value is based on a sale on the open market subject to 2 long leases but the nominee purchaser i.e. one of the Applicants in this case, cannot be considered as a buyer.

27. If the Applicants do decide to convert the property into a house, the so-called benefits are marginal to say the least. With building works costing £100,000.00 – to use Mr. Hall's figure – the work involved will be very substantial and probably last for many weeks. Many reasonable people would feel that they would simply have to move out and stay elsewhere which could involve considerable cost.

28. However, that is irrelevant because the Applicants cannot be the buyers when assessing valuation of development potential. This means that they would have to sell to someone else. On the balance of probabilities they would sell to a commercial developer and such developer would only be interested if there was a reasonable profit in the transaction.

29. This whole issue was dealt with in detail in the **Cadogan** case referred to above. That case reviewed much case law and the judgment was some 57 pages long plus appendices. The conclusions reached as to how much a hypothetical purchaser would bid for the freehold title bearing in mind possible planning problems, are set out in paragraph 154 onwards.

30. The case dealt with 2 properties and the development potential was the same as in this case i.e. the possibility of converting flats into a single property. However, the major differences between that case and this one are the remaining terms of the long leases. The valuation date was in 2007 and the remaining terms for all except one flat ended in 2023 i.e. just 16 years between them. It was agreed that the one exception, where the lease had been extended, would have to be 'bought off'.

31. Neither surveyor in this case seems to have found out whether planning permission would be required now. In **Cadogan** they had and found that it would be required but any application would be likely to succeed. However in paragraph 149 of the decision it says that "*the hypothetical purchaser would also in each case note that if the development was to occur it would be in 2023 rather than the valuation date and the hypothetical purchaser would take a view, in consultation with his planning advisor, regarding how sure he could be that planning considerations would be no less*

favourable in 2023 than in 2007". The decision went on to say that "*the hypothetical purchaser would be advised that insofar as there was some change then the likelihood (having regard to the way planning policies had been changing by the relevant valuation dates) was that if anything the policies would be more rather than less restrictive regarding the loss of residential units*".

32. Paragraph 155 then goes on to say "*However substantial difficulties and uncertainties existed at the relevant valuation dates regarding the prospects for such a development in 2023. These difficulties and uncertainties arose from (i) uncertainty as to whether the market would still accord additional value to houses (anyhow to the same extent) over flats as existed at the valuation date; (ii) whether planning permission for the proposed development would be available as at the valuation date and, even if available then, whether it would be available in 2023*".

33. In this case, the leases have over 100 years to run. Thus it is clear that the risks are substantially more than in **Cadogan.** Mr. Hall said in his evidence that his figures were based on the Applicants proceeding with the conversion within a fairly short period of time. He mentioned within a couple of years. This analysis does not take into account that the Applicants cannot be assumed to be the purchasers (Schedule 6 to the 1993 Act) and that the company/person who undertakes the conversion works must be assumed to be an independent third party.

34. That third party will want to make a profit and in order to do so in a house which could be approaching £2,000,000.00 in value fairly quickly, that conversion work would have to be of a high standard. It would clearly have to involve rewiring and a new single central heating system. Even on Mr. Hall's figures (which are not accepted by this Tribunal), the chances of a profit being made are marginal, to say the least.

Other Claims

35. The other disputed matter is the suggestion that some additional sum should be paid because of the alleged breach of the terms of the lease of flat 13 in that the Applicants' predecessor in title allegedly developed the roof space without the landlord's permission.

36. The flat was purchased on the 13th July 2015 and the alteration had been undertaken before then. Mr. Hall said that it was in about 2010. The Respondent purchased the freehold in 2003 (page 36) and clearly either granted written permission or had decided not to take enforcement proceedings when it knew about the breach in 2015. This gives a clear indication that either the Directors had decided not to take any action to remedy any breach or, as may be more likely, they had granted permission or their inaction has acted as acquiescence extending to implied consent to the work undertaken at least 10 years ago.

37. The end result of all this appears to this Tribunal to be that if the Respondents did pursue a claim for breach of the terms of the lease, there is probably going to be (a) no forfeiture because consent to the work had been given OR (b) relief against forfeiture and – although highly unlikely – (c) nominal damages to put the flat back into its original condition. Even if a

costs order was made and recovered, it is well known that legal costs recovered in this way do not cover all of the costs involved and there is no compensation for the Respondent's time and effort spent.

38. The final point to be made is that if the flat is put back into its original condition, it will appear to be clean and freshly renovated which may increase its leasehold value slightly. In other words, the likely compensation obtained will, indeed, be nominal. It is doubtful whether a reasonably astute and sensible landlord would consider that there would be any benefit in seeking to enforce that lease term and a commercial developer would understand that.

Conclusions

39. The agreed figure of £11,000.00 is payable. The Tribunal concludes (a) that the figures put forward by Mr. Azeem are much more likely to be an accurate assessment of the likely cost of conversion and (b) that the Respondent has simply failed to properly consider, on the balance of probabilities, the legalities and commercial risks involved.

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Judge Edgington
18th August 2022

ANNEX - RIGHTS OF APPEAL

i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to London.RAP@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.

ii. 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.

iii. 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.

iv. 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.