

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE****LEASEHOLD VALUATION TRIBUNAL**

**Subject Premises:** 133 Queens Road, Watford, Hertfordshire, WD17 2QL

**Applicant:**

**Nominee Purchaser:** Andrew Bernstein, Tree Tops, The Pathway, Radlett, Hertfordshire, WD7 8JB

**Applicant's**

**Solicitor:** Messrs Lawrence Stephens, 93 Wigmore Street, London W1U 1HH

**Applicant's**

**Surveyor:** Mr Andrew Cohen MRICS, Talbot's Professional Services, 465 Lordship Lane, Wood Green, London N22 5DJ

**Respondent:**

**Freeholder &**

**Landlord:**

Reo Estates and Property Investment Company Limited,  
c/o Elliot and Partners, City Gates, 2-4 Southgate, Chichester, West  
Sussex PO19 8DJ

**Respondent's**

**Solicitor:**

TWM Solicitors, 40 West Street, Reigate, Surrey, RH2 9BT

**Respondent's**

**Managing Agent:**

Rayners, The Old Parish Hall, Godstone, Surrey, RH9 8DR

**Respondents**

**Surveyor:**

Mr Simon Brook MRICS, South East Surveys

**Case Number:**

CAM/26UK/OCE/2008/0062

**Application:**

An application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement.

**Tribunal:**

Mr JR Morris LLB, LLM, PhD (Chair)  
Miss M Krisko BSc (Est Man), BA FRICS  
Mr GRC Petty FRICS

**Date of Hearing:**

6<sup>th</sup> March 2009

**Attendance:**

**Applicant:**

Mr Andrew Bernstein (the Applicant)  
Mr Andrew Cohen MRICS, Talbot's Professional Services (Applicant's Representative)

**Respondent:**

Mr Simon Brook MRICS, South East Surveys (Respondent's Representative)

**Decision:**

**The price payable for the Freehold Interest is £22,139**

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## DECISION AND STATEMENT OF REASONS

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### Application

1. This is an application to the Tribunal under Section 24 of the Leasehold Reform Housing and Urban Development Act 1993 (1993 Act) to determine matters in dispute in respect of the exercising of the right to a collective enfranchisement of 133 Queens Road, Watford, Hertfordshire, WD17 2QL.
2. The Applicant as Nominee Purchaser in an Initial Notice dated 6<sup>th</sup> March 2008 in accordance with s 13 of the 1993 Act claimed the right of the Qualifying Tenants to purchase:
  - The freehold interest pursuant to s1 (1) of the 1993 Act of the Specified Premises shown edged red on the accompanying plan to the Initial Notice as to the part coloured blue on the plan only the rooms over the passage way for the sum of £13,850
  - No Additional Premises are to be acquired pursuant to section 1(2) of the 1993 Act
3. The Respondent in a Counter Notice dated 25<sup>th</sup> May 2008 admits the Qualifying Tenants' right to purchase. The Respondent in the Counter Notice does not accept:
  - the proposal contained in the Initial Notice as to the price of the Specified Premises and counter proposes the price to be £25,500.00
  - the statement that there are no Additional Premises to be acquired pursuant to section 1(2) of the 1993 Act if the Reversioner's Title Number HD65831 is to be transferred to the Nominee Purchaser and proposed the sum of £7,500 for the Additional Property to be acquired pursuant to section 1(2) of the 1993 Act
4. The Respondent attached to the Counter Notice provisions, which it was considered should be included in any transfer to the Nominee Purchaser in accordance with s 34 and Schedule 7 of the 1993 Act:
5. Pursuant to section 126 of the Commonhold and Leasehold Reform Act 2002 the valuation date shall be the date of the Initial Notice, which appears to be the 6<sup>th</sup> March 2008.
6. Matters in dispute at the time of the Application:
  - The Extent of the Premises to be acquired
  - The Price for the Specified Premises and Additional Premises
  - The Terms of the Transfer
  - The Costs pursuant to section 33 of the 1993 Act

### Matters Agreed

7. Matters agreed at the time of Hearing:
  - Valuation Date: 6<sup>TH</sup> March 2008
  - Unexpired term 71.8 years
  - Capitalisation Rate: 7%
  - Deferment rate: 5%

- The share of freehold values of the non-participating lessee's flat excluding tenant's improvements was £140,000
  - Relativity is agreed at 93%
  - Hope Value payable for the non-participating lessee is 25% of the marriage gain that would have been payable had the lessee participated.
  - The total value of the freehold (excluding the matter in dispute) is £21,912
8. The hope value and freehold values were initially agreed. However during the course of the hearing it was accepted by the parties that any compensation for development value, which was the only issue in dispute might be better reflected through these variables. Therefore both the parties agreed that these figures could be altered by the Tribunal.

### **Matter in dispute**

9. The Tribunal is to determine what amount, if any, the Applicant should pay the Respondent for the possibility that at some time in the future the rear part of the garden (Potential Parking Area) could be sold to the owners of the commercial building (Commercial Premises) at the rear as was previously agreed.

### **Documentation**

10. The Following documents were considered relevant to the Application:
- Application Form dated 31<sup>st</sup> October 2008
  - Copy of Tenant's Initial Notice of Claim together with Schedule of Qualifying Tenants dated 6<sup>th</sup> March 2008
  - Copy of Landlord's Counter Notice dated 15<sup>th</sup> May 2008
  - Land Registry Entry for the Freehold Title Number HD65831
  - Land registry Entry for the Freehold Title Number HD399238, which relates to land adjacent to the land to be acquired.
  - Copies of the Leases and Land Registry Entries as follows:
    - Flat 133a (1<sup>st</sup> and 2<sup>nd</sup> Floor Flat) Queens Road Watford dated 29<sup>th</sup> May 1981 between Roy Golding (1) and Joseph Patrick Kinnear (2), Land Registry Title Number HD142944
    - Flat 133b (Ground Floor) Queens Road Watford dated 13<sup>th</sup> November 1981 between Roy Golding (1) and Philip David Steele and Linda Susan Steele (2), Land Registry Title Number HD151419
    - Flat 133c (Lower Ground Floor Flat) Queens Road Watford dated 15<sup>th</sup> November 1981 between Roy Golding (1) and Jacqueline Larina Fursland (2), Land Registry Title Number HD145105
  - Draft Surrender relating to the Potential Parking Area between the Tenant of Flat 133c and the Freeholder and Landlord for £4,500
  - Draft Transfer relating to the Potential Parking Area between the Respondent and the owner of the Commercial Premises for £5,000
  - Correspondence relating to the transaction for transferring the Potential Parking Area to the owner of the Commercial Premises.
11. The Leases of the flats were provided. The flats are identified as: Flat 133a, Flat 133b and Flat 133c. Each flat is under a 99-year lease from the 25<sup>th</sup> December 1980. The ground rent for each flat is £25.00 per annum for the first 33 years rising to £55.00 per annum for the next 33 years and £75.00 for the remainder of the term. Included in the demise for the Flat of 133c is an area of land to the rear of 133. Under the Lease to Flat 133c the Tenant has pedestrian-only access to the rear.

12. In addition to the Leases the Land Registry Entries were provided for the Leasehold Estates and the Freehold Estate for the Subject Premises and the adjacent premises known as Oak Yard. The sections of the Entries relevant to the matter in issue are as follows:
13. Land Registry Entry for the Freehold Title Number HD65831 for the Subject Premises describes the extent of the estate in the Property Register as being *inter alia*: "The freehold Land shown edged red on the plan of the above Title filed at the registry and being 133 Queen's Road." The Title Plan shows the area edged in red to be immediately to the rear of the building but not extending so far as the Commercial Premises to the rear nor extending beyond a line to the south east from the edge of the ground floor of the Subject Premises to the Commercial Premises at the rear. The area of land to the Southeast is currently used as a vehicular and pedestrian access. The Property Register also states: "As to the part tinted blue on the filed plan only the rooms over the passageway are included in the title." Therefore the passageway between the Subject property and 131 Queens Road and the area of land beyond it, which is currently used as the aforementioned vehicular and pedestrian access (together referred to hereafter as the Access), is not a part of this freehold title. The Proprietorship Register names the Respondent as the Proprietor for the Subject Premises.
14. Land Registry Entry for the Freehold Title Number HD399238 for Oak Yard adjacent to 133 Queens Road describes the extent of the estate in the Property Register as being *inter alia*: "The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Oak Yard, Queens Road Watford. Note: - As to the part edged blue on the filed plan only the passageway and loft space above are included in the title." The Title includes the commercial property at the rear and the land that abuts to the Southeast of Freehold Title Number HD65831. Therefore the Title includes the Access. The Access is "subject to a right of way in favour of the owners and occupiers for the time being of 129, 131 and 133 Queens road..." reserved by a Transfer of the land in favour dated 6<sup>th</sup> July 2001 made between (1) Brenda Frances Hughes (Transferor) and (2) Hazel Cook (Transferee). The Proprietorship Register of this Title names a person other than the Respondent as the Proprietor.
15. Land Registry Entry for the Leasehold Title Number HD145105 for 133c Queens Road describes the extent of the estate in the Property Register as being "The Leasehold land shown edged with red on the plan of the above title filed at the Registry and being 133c Queen's Road." The extent of the estate is the ground floor flat within the building of the Subject Premises and the land to the rear of the Subject Premises that corresponds with the area of land included in the Freehold Title Number HD65831.
16. Therefore the Respondent of the Subject Premises only has a right of way to the rear of the Subject Premises by virtue of an easement over the adjacent land namely the area here referred to as the Access. In turn the Tenant of Flat 133c that derives title from the Respondent only has the pedestrian right of way over the Access by virtue of this easement.

### **Description of the Property and Inspection**

17. The Subject Premises is a Victorian terraced house, which has been converted into three flats. There is a passageway to the side of the Subject Premises wide enough for a vehicle to pass through from the front to the rear of the property. At the rear of the Subject Premises there is land, which includes the Potential parking Area, which

is demised to the Tenant of Flat 133c. Only the rooms above the passageway are held by the Respondent and demised to the Tenants of Flats 133a and 133b. The passageway leads to a driveway, which serves commercial premises at the rear of 133 and 131 Queens Road known as Oak Yard. The passageway and driveway comprise the Access referred to above. A person other than the Respondent owns the freehold of Oak Yard, which includes the Access. Vehicular access to the land demised to Flat 133c can only be obtained via the Access.

18. The land of Flat 133c was being used as a parking area on the day of the inspection and it was noted that there was space for a total of 4 vehicles. It was stated by the Respondent's Representative that it had been part of the previously agreed transaction that only the rear part of the land would be the Potential Parking Area to be transferred to the Commercial Premises. The Tenant of Flat 133c would retain an area nearest the flat for the Tenant to park a car. It was noted by the Tribunal that the Potential Parking Area was large enough for a maximum of 3 cars to be parked.

### **Preliminary Point**

19. The Landlord's Counter Notice referred to Additional Premises to be acquired for the proposed sum of £7,500. The premises referred to in this way are the Potential Parking Area currently demised to Flat 133c. The reason for this description was that in April 2005 the solicitors (Graham Smith) for the owners of the Commercial Premises at the rear of Subject Premises wrote to the Managing Agents (Rayners) of the Respondent raising the possibility of purchasing part of the rear garden to provide a parking area for the Commercial premises. It appeared from the correspondence and the other documentation (a surrender and transfer) provided that the Tenant of Flat 133c would surrender a portion of the garden to the Respondent and in return would receive £4,500. The £4,500 for the surrender was to be met by the owner of the Commercial Premises as evidenced by a letter dated 12<sup>th</sup> May 2007 from Mr Battersby of the Managing Agents of the Respondent to the Respondent. The Respondent would then transfer the freehold in the Potential Parking Area to the owners of the Commercial Premises for £5,000. In addition the owners of the Commercial Premises would pay the costs of the transaction. The total cost to the owners of the Commercial Premises would be £9,500 plus costs of £411.25 (£350 plus VAT) although the actual benefit to the Respondent would be £5,000.
20. The Tribunal found at the hearing that the Potential Parking Area was not Additional Premises but a part of the Specified Premises, however, the Potential Parking Area may have an element of hope value because of its potential for providing parking as part of the Specified Premises.

### **Applicant's Case**

21. The Applicant's Representative provided a report in which he drew the attention of the Tribunal to Paragraph 5 Schedule 6 Part 2 of the Leasehold Reform Act 1993 which relates to compensation being paid to a landlord for loss resulting from the enfranchisement. He said that the Respondent is claiming an additional sum of £5,000 in relation to this provision by virtue of a previous agreement made some time in 2007. Under this agreement the Tenant of Flat 133c would surrender the interest in the back part of the garden (referred to in these reasons as the Potential Parking Area) to the Respondent who had in turn agreed to sell the freehold of that section to the owner of the Commercial Premises at the rear. The total price of the transaction to the owner of the Commercial Premises was £9,500 being £4,500 for the surrender and £5,000 for the freehold. For reasons not known the surrender and sale did not proceed.

22. The Applicant's Representative said that there was no evidence that the owners of the Commercial Premises at the rear are still willing to purchase the land nor that the Tenant is still willing to surrender that part of the demised premises. He said it did not follow that because there was a previous agreement, which was not taken up some time before the valuation date, that there is a valuable development opportunity, for which a prudent purchaser would pay.
23. It was submitted that the possibility of the reinstatement of the agreement and sale proceeding at the prices previously agreed was so remote that a prudent investor would not pay anything for the likelihood of development and so no compensation was payable under this provision. He added there were too many variables.

### **Respondent's Case**

24. The Respondent's Representative provided a report that stated the Applicant should pay the Respondent for the possibility that at some time in the future the rear part of the garden could be sold to the owners of the Commercial premises at the rear of the building as had been agreed previously
25. He said that the lower ground floor Flat133c demise includes the sole use of the rear garden, which is an area 6 metres by 14 metres. Parking on Queens Road is restricted by yellow line regulations; permit holder only bays and pay machines with a 2-hour limit.
26. The Respondent's Representative then described the agreement referred to earlier in these reasons. Negotiations for the transaction commenced in April 2005 and correspondence was provided, as well as a copy of the draft Surrender for £4,500 and Transfer for £5,000. It was stated that the agreement was not completed and there is no further correspondence on the matter after 26<sup>th</sup> May 2007.
27. It was commented that from two subsequent inspections undertaken on Thursday 19<sup>th</sup> February and Sunday 22<sup>nd</sup> February that the land to the rear of Subject premises is being used for parking. It was said that this is contrary to the Lease of Flat 133c in that the Landlord's permission is required for a change of use or assignment of part of the demised premises as follows:
- Under Clause 2 (8) of the Lease the tenant is not permitted to "assign, underlet or part with possession of part only of the demised premises"
  - Under Part III of the Lease Clause 1 it is stipulated that the Tenant is "Not to use the demised premises or permit the same to be used for any illegal or immoral purpose or for any purpose whatsoever other than as a private residence in the occupation of one family only."
28. The Applicant's Representative stated that the size and security of the garden area, its proximity to the Commercial Premises and the restrictive parking along Queens Road makes the acquisition of the Potential Parking Area by the Commercial Premises or others an attractive proposal given the limited parking currently available. The Respondent's permission is required and a premium can be charged for the grant of this permission.
29. Following the enfranchisement the hope of this future income will be passed to the new freeholders and therefore this constitutes a loss of hope to the Respondent.

30. The Applicant's Representative submitted that there is no set valuation for determining hope in this case and that the amount of £5,000 that was agreed and drawn up in a contract between the Respondent and the Tenant should form the basis of the valuation.

### **Decision**

31. The Tribunal must consider whether a hypothetical purchaser would pay more for the freehold because there was the hope of an additional sum payable in the future as a result of development of the land in this case potential parking space.
32. The Tribunal found that a hypothetical purchaser of the freehold would take into account the likelihood of the Potential Parking Area being developed noting:
- The most likely user of the Potential Parking Area whether as a tenant or as a purchaser of the freehold would be the owner of the Commercial Premises and this is confirmed by the agreement that had already been reached but not completed.
  - The previous agreement was not completed. It is not known why but the owner of the Commercial Premises is not currently willing to undertake such a transaction.
  - As evidenced by the Land Registry Entry for the Freehold Title Number HD399238 for Oak Yard the freehold owner of the Commercial Premises has the right to use the Access and so any freeholder of the Subject Premises only has the Potential Parking Area to offer.
  - The precise terms of the use of the Access by any freeholder of the Subject Premises are not known but might restrict the availability of the Potential Parking Area to a person other than the owner of the Commercial Premises or other occupier of Oak Yard.
  - No mention was made of obtaining planning permission for change of use in respect of the previous transaction; however, the Tribunal was of the opinion that a hypothetical purchaser of the freehold would take this into account as a requirement and cost notwithstanding that it is very likely that permission would be granted.
33. The Tribunal found that a hypothetical purchaser of the freehold would take into account the costs of the Potential Parking Area being developed in particular the Potential Parking Area is for the period of the lease relating to Flat 133c demised to the Tenant of that flat. Therefore, as was recognised by the previous agreement any freeholder would need to obtain the surrender of that part in order to transfer it or let it. According to the previous agreement the surrender was at a cost of £4,500. In the aborted transaction it appeared that the owner of the Commercial Premises was prepared to pay both the cost of the surrender and the freehold value of the Potential Parking Area. It was not argued by the Respondent's Representative that an owner of the Commercial Premises would in future be prepared to do so and the Tribunal was of the view that a hypothetical purchaser of the freehold would not make that assumption.
34. The Tribunal found that the hypothetical purchaser would not pay £5,000 under Paragraph 5 Schedule 6 Part 2 of the Leasehold Reform Act 1993 to compensate a landlord for loss resulting from the enfranchisement because the likelihood of realising the development potential was relatively low. Nevertheless the Tribunal found that the land demised to Flat 133c has a value over and above the other flats, which had not been reflected in the sums agreed by the parties because the Respondent had sought to treat the garden area of Flat133c as Additional Premises.

35. The Tribunal determined that the most appropriate way in which to deal with the additional value was by increasing the value of Flat 133c to take account of the added value that the land gave to the flat and to increase the hope value.
36. The Tribunal therefore asked the Applicant's and Respondents' Representatives if they would agree to the Tribunal altering the hope value and freehold values and if so to produce their calculations. They both agreed that the Tribunal could amend the figures and they produced the calculations accordingly.
37. The area to the rear of Flat 133c already has some immediate potential value. However, it is not available to the Respondent without the co-operation of the Tenant of Flat 133c and the owners of the adjoining property. Conversely, the value is also not available to the lessee of Flat 133c without the agreement of the Respondent and the owners of the adjoining property.
38. The Tribunal has reflected the potential for both the Tenant of Flat 133c and the Respondent in its calculation, firstly, by increasing the future reversionary value of Flat 133c by £5,000. However, as this is a long-term reversion and therefore does not adequately reflect the current position with its potential for an early capital return, the Tribunal has, secondly, also allowed the Respondent some added hope value in the marriage value. The Tribunal considers that these two amendments best reflect the potential value of the property to all parties.
39. The Tribunal noted that the Valuation fees had been agreed but had asked that the issue of legal fees be left open to further submissions if they are not agreed. The Tribunal determines that the parties have 28 days from the date of receipt of this determination in which to make application for a determination as to the legal fees.
40. The Tribunal therefore determined the valuation for Flat 133c and its effect on the total valuation to be as follows:

Date Lease Expires:	24 <sup>th</sup> December 2079
Date of Valuation:	6 <sup>th</sup> March 2008
Unexpired Term:	71.80 years
Capitalisation Rate:	7.0%
Deferment Rate:	5.0%
Extended Lease Value:	£145,000
Existing Lease Value:	£134,850
Relativity:	93%

**Diminution of Freeholder's Interest:**

Ground Rent:			£25	
Year Purchase:	5.8	years @ 7.0%	<u>4.6369</u>	£116
Ground Rent:			£50	
Year Purchase:	33	years @ 7.0%	12.7538	
Present Value of £1 in:	5.8	Years @ 7.0%	<u>0.6754</u>	£431
Ground Rent:			£75	
Year Purchase:	33	years @ 7.0%	12.7538	
Present Value of £1 in:	38.8	Years @ 7.0%	<u>0.0724</u>	£69



Loss of Reversion		£145,000	
Present Value of £1 in:	71.8 Year @ 5.0%	<u>0.0301</u>	
<b>Value of freeholders existing interest:</b>			<u>£4,365</u> £4,981
<b><u>Marriage Value</u></b>			
Value of tenants' existing interest: with extended lease:		£145,000	
<b>Less</b>			
Value of tenants' existing lease:		£134,850	
Value of freeholder's existing interest:		£ 4,981	
Marriage Gain:		£ 5,169	
50% attributable to freeholder:		£2,585	
30% hope value payable:			<u>£776</u>
<b>Premium Payable</b>			<u>£5,757</u>
<b><u>Total Premium Payable</u></b>			
133a & 133b agreed at	£16,382		
133c	£5,757		
	<b>£22,139</b>		

  
JR Morris (Chair)

Date: 16<sup>th</sup> April 2009