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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference:	**LON/00AR/OCE/2013/0223**
Property:	**Parkland Court, Hayden Way, RM5 3DA**
Applicants:	**Ms Shaista Illahi & Mr Fazal Illahi**
Representative:	**Thirsk Winton LLP Solicitors** **Mr R Clifford MRICS (Chartered Surveyor)**
Respondent:	**Fenlock Investments Limited**
Representative:	**Wortley Byers Solicitors** **Mr S Oram (Counsel)**
Type of application:	**Application for determination of terms of acquisition - s.24 Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members:	**Mr M Martynski (Tribunal Judge)** **Mr I Holdsworth BSc MSc FRICS**
Date and venue of hearing:	**4 February 2014** **10 Alfred Place, London WC1E 7LR**
Date of decision:	**13 February 2014**

DECISION

Decision summary

1. The price to be paid by the Applicant to the Respondent in respect of development value is £32,000 in addition to the other matters agreed by the parties and recorded in this decision.

Background

2. The building in question, Parkland Court ('the Building'), is a purpose built (in or about 1993) two-storey block containing four flats.

3. The Applicants own the long leasehold interest in three of the flats in the Building. The remaining flat is owned by the Respondent Company and is not subject to a long lease.

4. Next to the Building (at the side and rear) is a piece of land ('the Land'). Some of that land comprises a hard standing area and is used as parking spaces for the occupants of the flats. According to the Applicants there are six parking spaces. The other part of the Land is used as a garden. There is a small garden area at the front of the Building. The Land does not have planning permission for any development.

5. Under the terms of their leases, the Applicants have the rights to:-

   (a) park a vehicle '*in such parking space in the parking area of the Estate as shall be allocated to the Premises from time to time by notice in writing from the Landlord AND the necessary right of way in that behalf....*'[1]
   (b) '*use the Common Parts leading to the Premises...*'[2]; the Common Parts include the garden[3]

6. The Respondent Company acquired the freehold of the Building in 1999.

7. The Applicants' Claim Notice claiming the right to the freehold interest in the Building and Land is dated 19 April 2013. The Notice proposes a price of £18,549 for the freehold interest in the Building and £100 for the Land.

8. The Respondent's Counter-Notice is dated 25 June 2013. It admits the Applicants' right to acquire the freehold and makes a counter-proposal of £249,062 for the entire freehold reversion.

The issues

9. Prior to the hearing the parties had three issues between them which were; the price to be paid in respect of; (a) flats 1, 2 & 3; (b) flat 4; (c) the Land.

10. After a short discussion at the outset of the hearing, the parties very sensibly managed to agree on all aspects of the proposed acquisition bar the issue of the Land. The agreed matters were as follows:-

Valuation Date:	19 April 2013
Lease commencement dates:	1 October 1994 – 99 years
Unexpired term:	80.45 years

[1] paragraph 6 of the Fourth Schedule to the leases
[2] paragraph 4 of the Fourth Schedule to the leases
[3] clause 1.23 of the leases

Ground rents:	£50 pa for 6.45 years; then £100 p.a. for next 25 years; then £200 for the following 25 years; then £400 p.a. for the remainder
Capitalisation Rate:	7%
Deferment Rate:	5%
Freehold interest in flats 1-3	£11,700
Freehold interest in flat 4	£127,500

11. As to the Land, the difference between the parties was considerable being; £5,000 (Applicants) and £85,000 (Respondent).

Inspection

12. The Tribunal inspected the Land and the exterior of the Building on the morning of 5 February 2014. More detail on this inspection is set out later in this decision.

Significant evidence produced by the parties

13. The parties produced the original planning permission for the Building. That planning permission provided as follows;

> Before any of the buildings hereby permitted is first occupied, the area set aside for car parking shall be laid out and surfaced to the satisfaction of the Local Planning Authority and retained permanently thereafter for the accommodation of vehicles visiting the site and shall not be used for any other purpose.
> Reason–
> To insure that car parking accommodation is made permanently available to the standards adopted by the Local Planning Authority and to prevent the obstruction of nearby streets by parked vehicles.

14. Included in the documents before the Tribunal was a plan of a two-bedroomed, two-storey detached house on the Land. Mr Judge, a planning consultant, produced this plan in 2012 for the Respondent Company. The plan included an 'L' shaped garden, parking at the front of the house for one vehicle and next to that, parking for three cars for the Building.

15. The Applicants, as part of their preparation for the hearing, sent Mr Judge's plan to the local authority. They produced a letter from the authority commenting on that plan. The letter is dated 3 February 2014 and comes from a Mr Kukupa, Principal Planning Officer. The letter is informal guidance only, it did not have the status of pre-planning application guidance. The local authority did not carry out any site inspection. The letter concluded that the proposal contained in Mr Judge's plan was unlikely to obtain planning permission for the following reasons:-

(a) "*although residential use is acceptable in principle*", the proposal represented an over development of the site
(b) The proposed house would cause overlooking and loss of privacy to the adjacent occupiers
(c) the proposed rear garden would have an awkward and unsatisfactory relationship to the proposed house

(d) The addition of a dwelling in this location would appear incongruous and out of character with the layout of the houses in the surrounding area
(e) The acceptable levels of parking provision would be compromised
(f) The proposed dwelling would only provide one parking space for the new house, two spaces would be required
(g) The proposed house who would fall short of the minimum space standard for two-bedroomed houses at 83 m^2
(h) *"There are strong concerns as to whether the site can accommodate a dwelling which would achieve a good quality living environment for future occupiers"*

16. A further document produced by the parties contained a planning history for the Land. The only relevant entry on that document appears to be a refusal in 1996 for the conversion of 'roofslope' into a one bedroom flat.

17. A development plan adopted in 2008 by the local authority was produced. In relation to parking provision that plan set out maxima for various types of development. For a detached semi and terraced houses with the figures were 2–1.5 spaces per unit. For flats the figure was less than one space per unit.

The parties' cases in respect of the Land

Respondent

18. Mr Barrable FRICS, for the Respondent, produced a valuation for the Land as part of his valuation report. The method of valuation and the principle of the figures used in Mr Barrable's report were accepted by the Applicants.

19. Mr Barrable told the Tribunal that he was not able to find any comparables of land (without planning permission) for sale in the local area. He therefore valued the Land at £85,000 in the following way:-

Gross Development Value		£250,000
Less:		
Cost of construction	£116,000	
Finance on £100,000		
9 months @ 7%	£5,250	
Agents and legal fees	£6,250	
Profit	£37,500	
		£165,000
	Site Value	£85,000

20. Mr Barrable was of the opinion that there was a market for small pieces of land of this kind that did not have planning permission. He was further of the view that there was a very good chance (he put it at 90%) of planning permission for a two-bedroomed, two-storey detached house on the Land.

21. On cross-examination Mr Barrable conceded that without planning permission, it was not likely that a purchaser would pay the full site value (as

calculated by him) of £85,000 and that there would be some deduction from this to take account of the planning risk, which he put at no more than 10%.

22. The Respondent sought to call Mr Judge to give evidence as to his plan for the Land and as to planning in the local area generally. There was no specific direction allowing an expert of this nature and Mr Judge had not made a witness statement.

23. For their part, the Applicants sought to rely upon the letter from the local authority, which they had obtained in relation to Mr Judge's plan. That letter had not been included in the bundle put together for the hearing by the Applicants. Mr Clifford MRICS, representing the Applicants, said that he had considered calling expert evidence in relation to planning but, given that no such evidence was prepared or proposed by the Respondent, he decided not to. He therefore objected to Mr Judge now giving evidence.

24. The Tribunal decided to allow Mr Judge to give evidence in relation to his proposed scheme for the site using the submitted plan (but not as to any wider planning matters) and decided to take into account the letter from the local authority in relation to Mr Judge's plan.

25. Mr Judge confirmed that he had been asked by the Respondent to produce a drawing of what he, Mr Judge, thought would be a proposal for the Land likely to gain planning permission. He therefore considered that there was every chance of getting permission for his proposed development.

26. Mr Oram, Counsel for the Respondent, submitted that the letter from the local authority regarding Mr Judge's site proposal was by no means fatal to the Respondent's case. Many of the objections to the scheme could be answered directly or dealt with in directly by modifications to the development proposals.

Applicants

27. Mr Clifford submitted that the proposed development would be partially built upon the area currently set aside for parking provision. The loss of that parking provision would be a breach of the original planning permission.

28. Mr Clifford provided the Tribunal with various examples of refusals of planning permission in the local area. Some of those refusals of planning permission included reasons relating to on-site car parking. For example of the refusal in respect of the land between 29 and 31 Fullers close stated as follows;

> The proposed development would, by reason of the inadequate on site car parking provision, result in unacceptable overspill onto the adjoining roads to the detriment of highway safety and residential and amenity

29. Mr Clifford pointed out that if parking was provided for the proposed house, that parking and the additional parking for the flats would require wider

access from the road. Accordingly in order to allow that access, up to one and a half car parking spaces on the road would be lost.

30. The fact that the Land had been owned by the Respondent since 1999 and that the Respondent has not made any formal application for planning permission in that time was relied upon by Mr Clifford. If the Respondent truly believed that there was a realistic prospect of planning permission being granted, why had it not applied for such permission before?

31. The Applicants argued that the value of the Land was no more money than would amount to a gambling chip. Mr Clifford valued this 'gambling chip' at £5000. He referred the Tribunal to the case of *Trustees of the Sloane Stanley Estate and Carey-Morgan & Stephenson* [2011] UKUT 415 (LC). This case concerns up, amongst other things, the development value of a roof space. The tribunal in that case stated that the question to be addressed was; what assessment of the prospects of development the hypothetical purchaser would have made. In that case in the light of the fact that there was no planning permission and that there were strongly negative indications that planning permission would be granted led the tribunal to uphold the LVT decision that a hypothetical purchaser might be prepared to offer a 'gambling chip' only (which in that case amounted to £10,000 as against the freeholder's proposed value of £664,746).

32. Finally, Mr Clifford noted that there was no evidence that Mr judge or any other representative of the Respondent had spoken to the local authority regarding development of the Land, particularly in relation to Mr Judge's Plan.

The Tribunal's conclusions

33. We were very influenced by our visit to the site in question. We noted that the Land could accommodate a small detached house leaving, in relation to other properties surrounding the Land, a reasonably sized garden area. We further noted that the garden area proposed for the new development did not appear particularly incongruous. In particular there is a garden immediately to the rear with an unusual shape. Further, we noted that at what would be the rear of the proposed development there are a number of gardens and so there would be some considerable distance between the rear of the proposed development and other properties to the East.

34. There would of course be the consideration of the existing house that lies immediately to the side of the proposed development. However it clear to us that there would be no more issue of overlooking in respect of that house than there would be in any other semi-detached house. There are a number of semi-detached properties on the road in question and in the immediate vicinity.

35. There would be an issue in relation to parking with the proposed development. The proposal is for a parking space at the front of the development. That would in all likelihood mean that there were only three parking spaces left in the current parking area for the residents of the

Building. However there is an area of front garden at the front of the Building which could be used as a hard standing area for at least one vehicle. All the various properties on the road in which the Land and Building are situated have, so far as we were able to see, drives in front of the houses for the parking of vehicles. We were not able to see any houses in the immediate visual area which had front gardens that were not used for parking. The use therefore of the frontage of the building and opening out the Land and front garden for further vehicular access would not therefore be out of keeping with the immediate area.

36. We had regard to the fact that the figures for car parking spaces in the local authority development plan are maxima. On the basis of that development plan therefore, the Building and the proposed development may require only five parking spaces in total and such spaces could be provided as described above. This would of course still potentially leave an issue with the loss of 'on road' parking.

37. As for the original planning permission given for the Building, if current parking issues could be addressed to the satisfaction of the local authority, it seems to us that the local authority may waive any potential breach of the original planning permission conditions.

38. We did not find the examples of other local planning refusals to be of any particular assistance save that they highlighted the issue of parking considerations and made clear the difficulties in general of obtaining planning permission. It has to be borne in mind that these planning refusals are of course specific to the pieces of land in question in each case.

39. We did not find the planning refusal in relation to the Building in 1996 to be significant given that it was not for development of the Land.

40. Set against the fact that the Respondents had not applied for planning permission in respect of the Land over the course of its many years of ownership of that land is the fact that it had clearly considered development in 2012 when instructing Mr Judge. This was of course nearly a year prior to the Respondent receiving the Applicants' claim in respect of the freehold.

41. As to the letter from the local authority written in respect of Mr Judge's plan, clearly that letter has to be treated with some caution. Dealing with the various objections set out in that letter and using the same paragraph lettering as used earlier in this decision when quoting from that letter, we comment as follows;

(a) *overdevelopment* – from the benefit of our site visit (which of course the planning officer did not undertake) it seems to us that given the nature of the road, which comprises mainly semi-detached houses, there is no obvious apparent issue of overdevelopment

(b) *overlooking* – see our comments above

(c) *rear garden* – see our comments above

(d) *incongruous* development - see our comments above

(e) *acceptable levels of parking* – see our comments above

(f) *two parking spaces required for development* – this would not be appear to be correct according to the local development plan

(g) *undersized property* –Mr Judge stated that the proposed property would be a three-person two-bedroom property. As a two-bedroom property it was only marginally below the space standard set by the local authority. The local authority may well be persuaded, if the property was marketed as a three-person house, to accept the proposed size. Of course there could be a minor modifications to the proposed size to meet the local authorities objections

(h) *good quality living environment* – we believe from our site visit that the achievement of such accommodation is possible in the space available

42. We accept that there is a market for small pieces of land in which do not have planning permission. We consider that there is a prospect of obtaining planning permission for the Land and that this prospect has sufficient likelihood so as to make the land worth more than a 'gambling chip'.

43. Set against this is the fact that there clearly are significant issues that will need to be addressed in terms of planning if planning permission is to be obtained. The developer may well have to deal with an initial refusal of planning and to take the matter to appeal. There has to be a significant risk that planning permission will not be obtained.

44. Our valuation of the development value is attached to this decision. This valuation takes Mr Barrable's valuation as the starting point.

45. Dealing with Mr Barrable's valuation of the Land we conclude that the anticipated gross development value of the site is £232,000, this being the anticipated sale price for the 2 bedroomed house proposed to be constructed on the Land. This price is just above the mid-range of Mr Barrable's list of local comparable evidence for similar houses. We accept that a purchaser may pay a small premium for a house that has been newly built.

46. We have adjusted the figure for agent's and legal fees in line with the reduction of the gross development value. We have also similarly adjusted the profit percentage.

47. It was pointed out by Mr Clifford on behalf of the Applicants that there would be two further expenses payable on any development. The first would be a Mayor of London contribution of £2000. The second would be a development payment to the local authority of £6000. We have therefore added these further expenses to Mr Judge's figures.

48. With these adjustments we arrive at a site value of £63,310.

49. We do not consider that a hypothetical purchaser would pay the full site value. We think that this purchaser would have in mind the significant planning issues that may well arise and would conclude that there was a 50% of risk attached to a proposed development which would equate, in

our view, to a 50% deduction of the site value to reflect that risk. Putting this another way, For a potential profits of £34,800 we consider that a purchaser may be willing to risk something in the order of £32,000, and this we conclude is the appropriate figure for the development potential of the Land payable by the Applicants in this case.

Mark Martynski, Tribunal Judge

13 February 2014