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

Case reference : LON/00BC/OCE/2014/0285

Property : 1-8 Cumberland Court, 173 Horn Lane, Woodford Green, Essex IG8 9AF

Applicant : Cumberland Court Woodford Green Freehold Ltd

Representative : Ms Nicola Muir of counsel & Mr Richard Murphy, Dip Surv, MRICS of Richard John Clarke, surveyors

Respondent : Regisport Ltd

Representative : Mr Paul Holford, BSC(Hons), MRICS of Morgan Sloane Ltd

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

Tribunal members : Judge Timothy Powell
Mr I B Holdsworth FIRCS

Date of determination and venue : 17 March 2015 at
10 Alfred Place, London WC1E 7LR

Date of decision : 31 March 2015

DECISION

Summary of the Tribunal's decisions

- (1) The appropriate capitalisation rate is 7%;
- (2) The appropriate relativity is 94.13%;

- (3) The development hope value of the loft space above flat 6 is nil; and
- (4) The appropriate premium payable for the collective enfranchisement is **£82,870**.
- (5) The premiums payable by each leaseholder are shown below:

Flat	
1	£10,330
2	£10,330
3	£10,980
4	£10,330
5	£10,330
6	£9,910
7	£10,330
8	£10,330
Total	£82,870

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 Cumberland Court, 173 Horn Lane, Woodford Green, Essex IG8 9AF (the “property”).
2. The property is a small block of flats build in 1988. It comprises 8 flats each of which is let on a long lease in more-or-less identical form.
3. By a notice of a claim dated 7 May 2014 the participating tenants proposed a purchase price of £47,450 for Cumberland Court itself (“the Specified Premises”) and £100 for the parking spaces and appurtenant land (“the Additional Land”).
4. By a counter-notice dated 10 July 2014, the respondent freeholder admitted the validity of the claim to acquire the Specified Premises, but disputed the claim to part of the additional land and the terms. The respondent proposed a price £245,180 for the Specified Premises and £5,000 for the parking spaces. Although, initially, the respondent claimed that it should retain the remainder of the additional land and grant the nominee purchaser permanent rights over it, by the date of

the hearing the respondent had agreed that the applicant could acquire the whole of the additional land claimed in the initial notice.

5. On 6 November 2014, the applicant applied to the Tribunal for a determination of the premium.

The issues

Matters agreed

6. The following matters were agreed:
 - (a) Tenure: there are 8 flats each of which is subject to a lease commencing in June 1988 for a term of 99 years at a ground rent of £150 per annum for 33 years; rising to £300 per annum for 33 years; and finally rising to £600 per annum for 33 years
 - (b) The valuation date: 9 May 2014
 - (c) Unexpired term: approximately 73.07 years
 - (d) The freehold vacant possession of flats are valued as follows:
 - Flats 1, 2, 4, 5, 7 and 8: £195,000 each
 - Flats 3 and 6: £210,000 each
 - (e) Deferment rate: 5%
 - (f) Hope value for the non-participating flat (flat 6) (agreed at the hearing): 10% of the marriage value.
 - (g) The likely cost of development of a studio flat in the loft above flat 6 would be £105,000, and the likely value of resulting studio flat would be £130,000.

Matters not agreed

7. The following matters were not agreed:
 - (a) Capitalisation rate;
 - (b) Relativity;
 - (c) Development hope value in respect of the loft above flat 6; and
 - (d) The premium payable.

The hearing

8. The hearing in this matter took place on 17 March 2015. The applicant was represented by Ms Nicola Muir of counsel and Mr Richard Murphy Dip.Surv, MRICS, of Richard John Clarke, chartered surveyors (with his assistant, Mr Robert Clifford, also in attendance). The respondent

was represented by Mr Paul Holford, BSc(Hons), MRICS, of Morgan Sloane Ltd, who appeared as both advocate and expert.

9. Neither party asked the Tribunal to inspect the property; nor, given the nature of the evidence including numerous coloured photographs, did the Tribunal consider that an inspection was necessary.
10. The applicant relied upon the expert report and valuation of Mr Murphy dated 2 March 2015, in which he contended for a total premium payable of £82,000; and the respondent relied upon the expert report of Mr Holford dated 21 January 2015 (as updated on 2 February 2015), in which he contended for a total premium payable of £140,028.

Capitalisation rate

11. Mr Murphy for the applicant considered that a 7% capitalisation rate was appropriate. Although Mr Holford accepted that the appropriate capitalisation rate would be in the region of 6% to 7%, in his professional view 6% was appropriate in this case. He said that 7% was reserved for low-level, fixed ground rents that do not rise over the term, but 6% is appropriate for ground rents that are more dynamic, such as in the present case. He also relied upon several Leasehold Valuation Tribunal (LVT) and First-tier Tribunal (FtT) decisions which, he said, suggested that a 6% capitalisation rate was correct.

The Tribunal's decision

12. The Tribunal determines that the appropriate capitalisation rate is 7%.

Reasons for the Tribunal's decision

13. Both experts relied upon the Lands Tribunal decision of *Nicholson v Goff* [2007] 1EGLR 83, which listed factors which would influence the capitalisation rate, namely:
 - The length of the lease term;
 - The security of recovery;
 - The size of ground rent;
 - Whether there is provision for a review of the ground rent; and
 - If there is a provision, the nature of it.
14. The experts agreed that a ground rent set at £150, doubling every 33 years, represented an amount of money worth collecting. However, Mr Murphy demonstrated that the amount of ground rent would most

likely not keep up with the rate of inflation and therefore, as a result, it would be a less attractive investment for an investor.

15. Mr Holford produced no evidence to suggest that there was anything special or exceptional about the ground rents in this case. Nor did the Tribunal decisions that he quoted support his position, as the 6% rates adopted in those decisions were in respect of rent reviews to capital values or to a market rent, or involved significantly higher ground rents than the present fixed sums.
16. The Tribunal preferred Mr Murphy's evidence that the ground rents and review periods reflected standard market terms, which generally achieved a yield of 7%; and that there was nothing that made the subject ground rents exceptional, so that the capitalisation rate should be different.

Relativity

17. Mr Murphy contended for a relativity of 94.23% having averaged a basket of seven of the graphs of relativity published by the RICS in October 2009. Mr Holford contended for relativity of 91.18% having averaged a basket of four relativity graphs, including the updated and revised Beckett and Kay 2014 (1st revision) graph.
18. Each expert explained their choice of graphs and sought to justify them and to exclude some, at least, of graphs relied upon by the other.

The Tribunal's decision

19. The Tribunal determines that the appropriate relativity is 94.13%.

Reasons for the Tribunal's decisions

20. The Tribunal was disappointed at the lack of any comparable evidence whatsoever. This was a thoroughly unsatisfactory situation, first, given that both experts claimed to have unearthed comparable evidence that supported their respective positions, but had not produced it to the Tribunal; and, secondly, given the accepted general unreliability of graphs of relativity. However, since both experts were content to rely on the graphs exclusively, the Tribunal had no choice but to base its decision on an analysis of those graphs.
21. When selecting the graphs of relativity upon which they wished to rely, both experts excluded those graphs which relate to properties in the Prime Central London (PCL) area.

22. Mr Murphy relied upon seven graphs of relativity, namely those which appear in Section 2 of the RICS report and two of the graphs in Section 3: the College of Estate Management (CEM) and the Leasehold Advisory Service (LEASE) graphs. For his part, Mr Holford relied upon the South East Leasehold and Nesbitt & Co graphs from Section 2 of the RICS report, plus the Beckett and Kay 2014 (1st revision) graph (being an updated version of the original Beckett and Kay graph in Section 2 of the RICS report) and the John D Wood "Pure Tribunal Graph".
23. While Mr Holford denied counsel's suggestion that he had "cherry-picked" landlord-friendly graphs for his calculation of relativity, the Tribunal considered that he had indeed being highly selective in his choice.
24. With regard to the Beckett and Kay 2014 (1st revision) graph, this was a mixture of opinion and settlement evidence, with no indication as to the balance between the two. The relativity given was wildly divergent from all other graphs and there was no evidence to explain the difference. In addition, Mr Holford failed to produce any peer-support for the revised graph, which appeared to be based largely on landlords' settlement evidence. Altogether, the Tribunal found this graph to be not at all reliable.
25. The Tribunal also disliked the John D Wood "Pure Tribunal Graph", which only reflected Tribunal decisions on relativity, and which must, necessarily, have taken myriad other factors into account.
26. In so far as Mr Murphy had taken all of the graphs of relativity in Section 2 of the RICS report, plus two others, he could not be said to have been so selective in his choice. However, the Tribunal was not willing to include all of the graphs in the averaging process. The original Beckett and Kay graph, while benefiting from the fact that it was contemporaneous with other graphs that were published by the RICS in 2009, suffered from being purely opinion evidence and, for this reason, it was excluded by the Tribunal. The LEASE and the CEM graphs were also excluded from the basket of graphs, for the same reason that the Tribunal disliked Mr Holford's John D Wood graph, namely they merely reflected Tribunal decisions.
27. The Tribunal decided that the appropriate four graphs of relativity to be included in the averaging process were: South East Leasehold, as it covered properties in Outer London; Nesbitt and Co, which again covered properties predominantly in Greater London; Austin Gray and Andrew Pridell Associates: while both are based on the south coast, they both include properties in the south east of England and suburban London, and there are no strong reasons to exclude them.

28. Averaging the four relativities derived from these graphs, the Tribunal determined that the appropriate relativity (rounded up) is 94.13%, calculated as follows:

Graph	Years unexpired
	73.07
South East leasehold	94.23%
Nesbitt & Co	92.54%
Austin Gray	95.40%
Andrew Pridell Associates	94.34%
Average:	94.128%
Rounded up to:	94.13%

Development hope value

29. For the freeholder Mr Holford suggested that the un-demised roof void situated above flats 3 and 6 could be developed into a self-contained studio flat. The agreed cost of developing the space would be in the region of £105,633 and the agreed likely sale value would be £130,000, leaving a residual development value of £24,367.
30. The questions are: what sum would a hypothetical purchaser be prepared to add to the purchase price for the chance of possibly being able to make a gross profit (before tax) of £24,367? Would he want to take the risk?
31. Mr Holford demonstrated how the roof void has existing access off of un-demised store room which, itself, is accessed from the main, second-floor landing, outside flats 7 and 8. He suggested that "this property provides a unique opportunity" to develop the roof void into a self-contained studio flat and that it would be easy to do so. His report included detailed plans of the layouts, both existing and proposed, together with costings prepared by a building surveyor instructed for the purpose. Mr Holford assessed that an allowance of 25% should be made for risk, giving a premium due for development hope value of £18,275.25.

The Tribunal's decision


32. The Tribunal determines that the development hope value of the loft space above flat 6 is nil.

The reasons for the Tribunal's decision

33. It is incumbent upon the party seeking development hope value to demonstrate with evidence that there is a realistic prospect of obtaining planning permission for the proposed development.
34. Mr Holford's evidence made no reference to planning guidance, in particular to specific policies that would control the proposed development. Such policies may well include issues such as car parking (and it appeared to be agreed by the experts that there was no extra space for an additional car parking place), intensification of use and street scene (the visual aspect of any roof top development, albeit that in the present case the proposal would be to have a Dormer at the rear of the building).
35. The freeholder had not entered into consultation with the planning officer by way of pre-application enquiry, so there was no evidence of the likely view of the planning officer to any such development. There was also no evidence of other similar loft extensions in the area. Although the freeholder's building surveyor had obviously spent time and effort costing the proposed development and preparing realistic plans, there was no indication that the surveyor had made any inquiries about feasibility.
36. The Tribunal therefore had to consider how much would a prospective investor pay for the chance of developing a studio flat in the roof void, without this basic information as to feasibility? Even if a planning officer had given a favourable opinion, is this the sort of development that would go ahead for this sort of profit, £24,367 before tax, given all the unforeseen costs that may be involved, for example, the possibility of a party wall dispute with existing leaseholders?
37. In the Tribunal's view the case has not been made out that the premium should include an element for the development potential of the roof void. Even if it had been, the Tribunal is not convinced, given the risks and the relatively modest reward, that the potential development would attract a premium. Accordingly, the Tribunal assesses the development hope value as nil.

The premium

38. The Tribunal determines that the appropriate premium is **£82,870**. A copy of its valuation calculation is annexed to this decision.



Name: Judge Timothy Powell **Date:** 31 March 2015

Appendix: Valuation setting out the Tribunal's calculations

Property: Flats 1,2,4,5,7 & 8 Cumberland Court 173 Horn Lane Woodford Essex IG8 9AF
FTT Reference: MR/LON/OOBG/OCE/2014/0285

Lease and Valuation Data

Lease Term:	99 years from 4th June 1988		
Lease Expiry date:	June 3, 2087		
Unexpired term as at valuation date:	73.07	years	
Date of Valuation	9th May 2014		
Rent receivable by landlord:			
Payable from 09/05/2014 for 7.07 years	£	150	
Payable from 03/06/2022 for 33 years	£	300	
Payable from 03/06/2055 for 33 years	£	600	
Values			
Freehold Value	£	195,000	
LHVP	£	183,554	Relativity 94.13%

Capitalisation rate	7.00%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1				
Rent passing	£	150		
Present Value at 7% for 7.07 years		5.43132	£	815
Term 2				
Rent passing	£	300		
Present value at 7% for 33 years		12.753790		
Deferred 7.07 years		0.619807	£	2,371
Term 3				
Rent passing	£	600		
Present value at 7% for 33 years		12.753790		
Deferred 40.07 years		0.066465	£	509
Total term value			£	3,694.77
Reversion				
Freehold in vacant possession	£	195,000		
Deferred 73.07 years @ 5%		0.0283	£	5,517
			£	5,517
Total			£	9,212

Calculation of Marriage Value

Value of Landlords freehold interest	£	195,000		
Value of Landlords proposed interest	£	-	£	195,000
Less				
Value of Leaseholders existing interest	£	183,554		
Value of Freeholders current interest	£	9,212	£	192,766
Marriage value			£	2,234

Division of Marriage Value equally between				
Freeholder			£	1,117
Leaseholder	£	1,117		

Price payable to Freeholder

Value of freeholders current interest	£	9,212		
Plus share of marriage value	£	1,117		
Total	£		£	10,329
Say	£		£	10,330

Property: Flat 3 Cumberland Court 173 Horn Lane Woodford Essex IG8 9AF
FTT Reference: MR/LON/OOBG/OCE/2014/0285

Lease and Valuation Data

Lease Term:	99 years from 4th June 1988		
Lease Expiry date:	June 3, 2087		
Unexpired term as at valuation date:	73.07	years	
Date of Valuation	9th May 2014		
Rent receivable by landlord:			
Payable from 09/05/2014 for 7.07 years	£	150	
Payable from 03/06/2022 for 33 years	£	300	
Payable from 03/06/2055 for 33 years	£	600	
Values			
Freehold Value	£	210,000	
LHVP	£	197,673	Relativity 94.13%

Capitalisation rate	7.00%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1			
Rent passing	£	150	
Present Value at 7% for 7.07 years		5.43132	£ 815
Term 2			
Rent passing	£	300	
Present value at 7% for 33 years		12.753790	
Deferred 7.07 years		0.619807	£ 2,371
Term 3			
Rent passing	£	600	
Present value at 7% for 33 years		12.753790	
Deferred 40.07 years		0.066465	£ 509
Total term value			£ 3,694.77
Reversion			
Freehold in vacant possession	£	210,000	
Deferred 73.07 years @ 5%		0.0283	£ 5,942
			£ 5,942
Total			£ 9,637

Calculation of Marriage Value

Value of Landlords freehold interest	£	210,000	
Landlords proposed interest	£	-	£ 210,000
Less			
Value of Leaseholders existing interest	£	197,673	
Value of Freeholders current interest	£	9,637	£ 207,310
Marriage value			£ 2,690

Division of Marriage Value equally between			
Freeholder			£ 1,345
Leaseholder	£	1,345	

Price payable to Freeholder

Value of freeholders current interest	£	9,637
Plus share of marriage value	£	1,345
Total	£	10,982
Say	£	<u>10,980</u>

Property: Flat 6 Cumberland Court 173 Horn Lane Woodford Essex IG8 9AF
FTT Reference: MR/LON/OOBG/OCE/2014/0285

Lease and Valuation Data

Lease Term:	99 years from 4th June 1988	
Lease Expiry date:	June 3, 2087	
Unexpired term as at valuation date:	73.07	years
Date of Valuation	9th May 2014	
Rent receivable by landlord:		
Payable from 09/05/2014 for 7.07 years	£	150
Payable from 03/06/2022 for 33 years	£	300
Payable from 03/06/2055 for 33 years	£	600
Values		
Freehold Value	£	210,000
LHVP	£	197,673
	Relativity	94.13%

Capitalisation rate	7.00%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1			
Rent passing	£	150	
Present Value at 7% for 7.07 years		5.43132	£ 815
Term 2			
Rent passing	£	300	
Present value at 7% for 33 years		12.753790	
Deferred 7.07 years		0.619807	£ 2,371
Term 3			
Rent passing	£	600	
Present value at 7% for 33 years		12.753790	
Deferred 40.07 years		0.066465	£ 509
Total term value			£ 3,694.77
Reversion			
Freehold in vacant possession	£	210,000	
Deferred 73.07 years @ 5%		0.0283	£ 5,942
			£ 5,942
Total			£ 9,637

Calculation of Marriage Value

Value of Landlords freehold interest	£	210,000	
Value of Landlords proposed interest	£	-	£ 210,000
Less			
Value of Leaseholders existing interest	£	197,673	
Value of Freeholders current interest	£	9,637	£ 207,310
Marriage value	Total		£ 2,690

Division of Marriage Value between

Freeholder at 10%	£	269
Leaseholder at 90%	£	2,421

Price payable to Freeholder

Value of freeholders current interest	£	9,637
Plus share of marriage value	£	269

Total	£	9,906
Say	£	<u>9,910</u>