



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

Case Reference	:	LON/00AJ/OCE/2016/0015
Property	:	48 Berrymead Gardens, Acton, London W3 8AB
Applicants	:	Carly Louise Turner, Luke Alan Woodrow Davis and Alison Clare Lambert
Representative	:	Mr David Robson MA (Oxon) MSc MRICS
Respondent	:	Praveen Kamlesh Anand
Representative	:	Mr Kam Kumar B.Com (Hons)
Type of Application	:	Section 24 Leasehold Reform, Housing and Urban Development Act 1993 – determination of terms of acquisition in dispute
Tribunal Members	:	Judge John Hewitt Mrs Helen Bowers MSc MRICS BSc(Econ)
Date and venue of Hearing	:	24 May 2016 10 Alfred Place, London WC1E 7LR
Date of Decision	:	2 June 2016

DECISION

Decisions of the tribunal

1. The tribunal determines that:
 - 1.1 The price payable by the applicants to the respondent for the freehold interest in the subject property is £5,861.00;
 - 1.2 The terms of the conveyance shall be in the form of the draft form TR1 at [61], as amended in red; and
 - 1.3 The respondent shall by **5pm Thursday 30 June 2016** pay to the applicants the sum of £276 by way of a penal costs order pursuant to rule 13(1)(b).
2. The reasons for our decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Procedural background

3. The subject property was built in about 1900, originally as a house, but subsequently converted to comprise two self-contained flats both of which have been sold off on long leases.
4. The applicants Ms Carly Turner and Mr Luke Davis are the registered proprietors of the ground floor flat [29] and the applicant Ms Alison Lambert is the registered proprietor of the first floor flat [32].
5. The respondent (Mr Anand) is the registered proprietor of the freehold interest [26] and thus is the reversioner.
6. By an initial notice dated 23 May 2015 [1] and given pursuant to section 13 Leasehold Reform, Housing and Urban Development Act 1993 (the Act) the applicants, as participating qualifying tenants, sought to exercise the right to collective enfranchisement. They proposed a premium of £5,000.
7. By a counter-notice dated 21 July 2015 [14] Mr Anand's representative, Cheal Asset Management, stated that Mr Anand admits that the participating tenants were, on the date when the initial notice was given, entitled to exercise the right to collective enfranchisement. The proposed price of £5,000 was not accepted and counter-proposed a total of £19,250, of which £8,750 appears to have the development value attributed to the ground floor flat in the light of a planning permission to carry out works to extend that flat so that it is a two-bed, two-bathroom flat.
8. The parties were unable to agree the terms of acquisition and on 12 January 2016 [16] the applicants, as nominee purchaser, made an application for the terms of acquisition in dispute to be determined by the tribunal.
9. Directions were given on 10 February 2016 [25]. As regards the valuation issues those directions required the parties' valuers to

exchange valuation calculations by 24 February 2016 and to meet to clarify the issues in dispute and by 30 March 2016 to exchange statements of agreed facts and disputed issues.

10. The applicants have engaged Mr Robson as their valuer. Mr Anand has not engaged a property professional such as Mr Robson, but has instead engaged a consultancy named K.L.P.A & Company which evidently Mr Anand established himself to manage his property investments and those of his wife and his two sons. Mr Kam Kumar appears to be a senior property consultant with K.L.P.A & Company.
11. We were told by Mr Robson that efforts to exchange valuation calculations and statements of agreed facts came to nothing as Mr Anand and his advisers failed to engage in the process or respond to requests to do so – see the correspondence at [170 – 177].
12. The directions also required the parties to exchange experts reports at least two weeks before the hearing date. They did not do so. Mr Robson's report is at [66]. It was sent to Mr Kumar on 11 May 2016. We were told by Mr Robson that no report had been served by or on behalf of Mr Anand.

The hearing

13. The application came in for hearing before us on 24 May 2016. Mr Robson appeared as the advocate for and the expert valuer of the applicants. Mr Kumar appeared as the advocate for Mr Anand.
14. Prior to the hearing, and when considering our listing arrangements, we were told by the parties that the only item in issue between them was the amount (if any) to be attributed to the development value of the ground floor flat in the light of a planning permission to extend that flat.
15. Prior to the commencement of the hearing Mr Kumar handed to our case officer a document or a report which he claimed had been omitted from the hearing file prepared by the applicants.
16. At the commencement of the hearing Mr Kumar sought permission to put the document or report into evidence. This application was opposed by Mr Robson who said that neither he nor his clients had ever seen it before. Mr Kumar was not entirely clear as to the nature of the document. He accepted that it was not an expert valuation report. He said that it might be a statement which was served with the counter-notice. Neither the counter-notice nor the covering letter made any mention of this document. We had a look at the document for relevance. It is undated and appears to be a report or valuation prepared by Mr Kumar for Mr Anand. It concludes with a best case scenario of a settlement in the region of £14,500, a worst case scenario of a settlement in the region of £11,750 and recommended that a counter-notice be served at a figure of £12,500 plus some unspecified figure to reflect the planning permission to extend the ground floor flat.

16. Mr Kumar was clear that document was not an expert valuation report; he said that the costs of such a report are not recoverable from the long lessees and therefore Mr Anand will not incur such costs.
17. In the event we found as a fact that the document had not previously been served on the applicants. Further, we were clear that the document would not assist us to determine the matter in issue and therefore we declined to give Mr Kumar permission to put the document into evidence.
18. Mr Kumar regularly appears in this tribunal representing Mr Anand and his family and he is fully aware of the tribunal's rules and that it not appropriate to produce documents on the morning of the hearing.

The development value

19. Usually where a reversioner claims that the property has a development value he or she will adduce some evidence from a valuer, preferably an independent expert valuer, as to that value. In this case Mr Anand has not adduced any such evidence because, Mr Kumar said he did not wish to incur the cost of it, if it was not going to be recoverable from the applicants.
20. Thus Mr Kumar had no evidence to advance on this point. He contented himself with the submission that a planning permission to extend a flat will increase the value of that flat.
21. Mr Robson had anticipated that the development value might be an issue because it was alluded to in the counter-notice. He thus addressed it in section 10 of his report. A copy of the plan attached to the planning permission is at [117]. The applicants provided three estimates of the costs of reconfiguring the ground floor flat in conformity with that plan [119 – 136]. These range from about £165,000 to £173,000 once adjustments are made for additions and omissions. Broadly the cost of works was around £70 -£74,000 + VAT + the cost of finishes, the new kitchen and bathrooms and electrical works. Mr Robson accepted that the costs of finishes could vary quite a bit depending on the quality chosen but overall a project cost of about £165,000 was not unrealistic.
22. Mr Robson accepted that he was not an expert quantity surveyor but in the course of his work valuing residential properties he has come across costs of extending, refurbishing or reconfiguring properties and in broad terms the estimates provided by the applicants struck a chord with him. Mr Robson said that he was impressed with the detail in the estimates and that he could relate to the figures given.
23. Mr Robson said that he had considered the values of large flats in the vicinity and his expert conclusion was that there was no profit uplift in carrying out the proposed works and therefore no compensation payable for additional loss sustained by the reversioner.

24. Mr Robson's conclusion was that the price payable for the freehold was £5,861 as shown on his valuation at [151].
25. Mr Robson was closely cross-examined by Mr Kumar. Mr Robson denied that the estimate of Kantec was not valid because it had not been printed on headed notepaper compliant with the requirements of the Companies Acts. Mr Robson also denied that the absence of a postal address for Zenith invalidated its estimate. Mr Robson accepted that carrying out the project would increase the amenity and utility of the flat but the cost of the works would not be fully covered by an increase in the market value of the flat once the works had been carried out.
26. Mr Robson denied that he had seen a copy of a home buyers' survey obtained by his clients before they purchased the ground floor flat. He said that such a report was not relevant to his valuation of the property as at the valuation date.

Final submissions

27. In his final submissions Mr Kumar said that Mr Anand had not filed an expert's report because it was not necessary. He also said that he did not challenge the tribunal's refusal to allow him to put into evidence the document/report mentioned in paragraph 16 above, although he did assert that a landlord can put in his evidence at the hearing.
28. Mr Kumar accepted the comparables mentioned by Mr Robson at [76] of his report and he also accepted the value of £570,000 for 9 Berrymead.
29. Mr Kumar complained that the estimates were fictions and they have no value; they are very excessive and cannot be verified. He said it was not for the landlord to verify the figures given. He said that the value of any property goes up if it has a planning permission.
30. Mr Robson disagreed with Mr Kumar. He said it was for the reversioner to price a development value and for the nominee purchaser to respond to the reversioner's case.
31. Mr Robson said that he had made every effort to comply with directions and to engage with Mr Anand but there was no response, even after 11 letters; all he ever had was two conversations.

Discussion and determinations

32. We found Mr Robson to be an independent expert witness doing his best to assist us and on whom we could rely with some confidence. We accept his evidence.
33. We acknowledge that Mr Robson is not a quantity surveyor, indeed he went out of his way to make that clear in his report, but we found his evidence in support of the estimated cost of the project resonated with the experience of the members of the tribunal. The estimates may be

there or thereabouts but even if they are a little on the high side that would not make a material difference to any profit that might be attached to carrying out the works.

34. There being nothing else in contention we determine that the price to be paid for the freehold interest is £5,861 as per Mr Robson's valuation at [151].
35. As to the form TR1, we were told that the draft at [61] was prepared by or on behalf of Mr Anand. It was approved on behalf of the applicants as amended in red. Mr Kumar told us that all of the red amendments were accepted by Mr Anand. Accordingly, and for avoidance of doubt, we confirm that the conveyance shall be in the form of the draft TR1 as amended in red at page [61].

Penal costs

36. At the conclusion of the substantive hearing Mr Robson made an application under rule 13(1)(b) for a penal costs order. Written notice of an intention to do so had been indicated in paragraph 12.5 of Mr Robson's report [77].
37. The gist of Mr Robson's case was that Mr Anand (and his advisers) had failed to engage in the process at all and had failed to comply with directions or to serve evidence or an expert's report. In consequence the applicants had been required to engage him to prepare an expert's report at a cost of £2,000 + VAT and to instruct him to attend the hearing at a cost of £230 per hour + VAT.
38. Mr Robson submitted that if Mr Anand had engaged in the process and taken part in meaningful negotiations all or some of those costs might have been avoided.
39. Mr Kumar opposed the application. He denied that Mr Anand had been unreasonable and said that some negotiations had taken place but they had not come to anything.
40. In our view penal costs orders are only appropriate where a party has acted unreasonably and that such conduct has caused the opposite party to incur more costs than it would otherwise have done. Guidance given by the civil courts and Upper Tribunal as regards penal costs is that the bar is set quite high. Failing to engage fully with the process and advancing a case which does not succeed will rarely, on their own, be sufficient to meet the bar.
41. In the present case the applicants' exercise the statutory right to acquire the freehold but in so doing they know that they have to make an application to the tribunal if terms of acquisition cannot be agreed within the specified time and that an expert valuer's report is required where there is a valuation issue.

42. Whilst we condemn the generally unhelpful approach adopted by Mr Anand and his advisers, we do not find such conduct to be so serious as to reach the bar required to justify a penal costs order of the magnitude sought by the applicants.
43. However, we do find that Mr Kumar's unreasonable conduct during the course of the hearing both as regards applications made by him and his cross-examination of Mr Robson did reach that bar. The hearing took longer than it should by reason of that conduct. We find that it took an extra one hour longer. At Mr Robson's charge-out rate of £230 + VAT that equates to £276. We have therefore made an order that Mr Anand shall pay £276 to the applicants by way of a penal costs order.

Judge John Hewitt
2 June 2016.