



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : LON/00AU/OCE/2016/0129

Property : St James House, 28 Drayton Park,
London N5 1PD

Applicant : St James House Freehold Limited

Representative : Mr. McDermott of counsel

Respondent : Francica Properties Limited

Representative : Mr. Walsh of counsel

Type of Application : Freehold enfranchisement

Tribunal Members : Judge LM Tagliavini
Miss M Krisko FRICS

Date and venue of hearing : 10 Alfred Place, London WC1E 7LR
Date of inspection: 17 January 2017

Date of Decision : 25 March 2017
(Corrected) 30 March 2017

DECISION

Pursuant to rule 50 of The Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013 the tribunal corrects the following clerical mistakes and accidental slips:

In paragraph 22 the figure 65% replaces the figure 30%.

Paragraphs numbered consecutively 21 and 23 are renumbered 23 and 24 respectively.

The tribunal determines the following:

- A. The (roof) development value is **£295,000**.
- B. The premium payable for the appurtenant property of the bin store and outbuilding/garage is **£30,000**.
- C. The parties can now apply these figures for the purpose of their otherwise agreed valuations.

The application

- 1. The Applicant seeks a determination pursuant to said 24 and 33 of The Leasehold Reform Housing and Urban Development Act 1933 (“the Act”) as to the premium payable for the freehold of the subject property situate at St James House, 28 Drayton Park, London N5 1PD (“the property”) and the terms of the transfer and the costs payable.

The hearing

- 2. The tribunal held an oral hearing of the application at which, the Applicant, was represented by Mr. McDermott of counsel and Mr. Walsh of counsel represented the Respondent.

The background

- 3. The subject property is a four-storey modern purpose built block comprising 14 flats. All flats are held on long leases with 110.20 years remaining as of the valuation date of 20 October 2015. The ground floor comprises two 3 x Bedroom flats (one with a fenced off garden area) and the other three floor each comprising four 2 x bedroom flats. There is a car park at the rear of the building with spaces for seven cars. The appurtenant property comprises a bin area and a brick outhouse/garage currently used for storage by the lessees. All 14 lessees have agreed to purchase the freehold of the subject property and a section 13 Notice was served on 20 October 2015 proposing a

premium payable of £134,000 for the specified property and 1,000 for the additional property. The respondent's section 21 counter-notice proposed a premium of £1,666,437 payable for the freehold and £75,000 for the additional freehold. Subsequently, the applicant's valuer, Mr J Dhanoa BSc (Hons) MA MRICS provided a valuation of £178,165 for the freehold property and £8,500 for the appurtenant property. In contrast, Mr. W Dunsin FRICS the respondent's valuer provided valuation figures of £1,597,222 for the freehold property and £75,000 for the appurtenant property.

The issues

4. The parties' surveyors agreed a deferment rate of 5%, a relativity of 100% and a capitalisation rate of 7%, a valuation date of 20 October 2015, the unexpired terms of the 14 leases at 110.20 years and the reversion amounting to £146,327. Ground rents were agreed at £4,300 per annum as at 31 December 2016, rising to £6,521.00 per annum for a further 15 years. It was agreed that the passing rent at the time of Mr. Dhanoa's report (January 2017) should be used in perpetuity. Therefore, the parties identified the remaining relevant issues for determination by the tribunal as:
 - (i) The development valuation of the roof space; and
 - (ii) The value of the appurtenant property.
5. After the conclusion of the oral evidence the tribunal inspected the subject property on 17 February 2017 at the request of the parties.

The applicant's case

6. Mr. McDermott for the applicant submitted in his skeleton argument that the value of the roof development was the most important issue in reaching a determination of the value for the freehold premium. It was submitted that planning permission for the roof space was unlikely and in any event would allow for either one penthouse flat or two 2 x bedroom flats. It was asserted that, four previous planning applications and two appeals, had been refused by the relevant local authority, the London Borough of Islington was evidence of the unlikelihood of planning permission being granted for a roof development.
7. The applicant relied upon the report of Mr. Dhanoa dated 3 January 2017 who also gave oral evidence to the tribunal. Mr. Dhanoa told the tribunal that he had arrived at flat values by two methods, firstly by comparison to other flats sold in the N5 vicinity two months either side of the valuation providing a range of £695 to £763 per sq. ft. Mr.

Dhanao stated in his opinion the subject property would however, attract a lower square footage value as it was older and in a less attractive position than his comparable properties and therefore would attract a lower figure per square foot.

8. Mr. Dhanao's second method of valuing the flat values was by (i) the utilisation of indexing based on the actual purchase price of flats in the subject property in the months before the valuation date and (ii) estate agent valuations undertaken post valuation date (September 2016). In this way, Mr. Dhanao arrived at flat values in the subject property of between, £7,226,8882 £7,894,612 for the 14 flats. Mr. Dhanao adopted the average of these figures at £7,382,709.

Development value

9. Mr. Dhanao detailed the four previous planning applications that had previously been submitted and had proved unsuccessful including one appeal. He assumed a gross internal area for the new flat of 150sqm. He stated that he had sought advice on building costs from a cost consultant who estimated costs in the region of 220K to £235K to construct a 100sqm penthouse, although accepted in his oral evidence that two or three smaller flats were also likely. Mr. Dhanao reached a gross development value of a completed penthouse flat at £1,000,000 by applying the same rate per sqft by reference to the comparables sales he relied upon and having regard to the absence of a lift and the absence of parking.
10. Mr. Dhanao stated that other costs would be incurred under the Islington Affordable Housing Small Sites Contribution (SDP) and Community Infrastructure Levy (CIL) of £50psm adjusted to £300 psm during the oral evidence Mr. Dhanao also took account of party wall costs, compensation to lessees for disruption of £1,000 per flat, developer's profit, contingency, fees for amending existing leases in the region of £18,900, professional fees agreed at 12.5%, finance costs agreed at 7%, deferred development profit for 1 year at 6%, disposal fee at 2%. Mr. Dhanao stated that he had arrived at a net development site value of £290,956.05 which deferred equates to £274,486.83.
11. Mr. Dhanao then went onto consider the risks associated with development. Mr. Dhanao referred to the previous planning refusals and the application of a 50% deduction in *Arrowdale v Coniston Court (North) Hove Ltd.* LRA/72/2005. However, in this application Mr. Dhanao applied a deduction of 90% to reflect the risk factor evidenced by the previous failed planning application arriving at a roof value development value of £27,449.

Appurtenant property

12. Mr. Dhanoa placed a value of £3 per sqft on the appurtenant property (brick outbuilding) he had measured at approximately 3.38 x 4.71 x 2.28m (WxDxH) equating to £8,500.
13. In his submissions, Mr. McDermott again referred the tribunal to the four unsuccessful planning applications and one unsuccessful appeal made between April 2015 to December 2016 which variously concerned six flats over three floors or a single storey development with 3 flats in differing configurations. He submitted that the proposed mansard roof as part of the roof development was unlikely to meet the London Borough of Islington's approval, as the design was contrary to its 2006 policy.
14. Mr. McDermott submitted that the primary question for the tribunal to determine is "*How would a purchaser in the open market view this development opportunity, including consideration of whether there is or is likely to be planning permission?*" Mr. McDermott submitted that in view of the numerous failed planning applications there is only a 10% chance of it being granted in the future. In any event, any permission is likely to be for two/three smaller flats with no lift access or car park facilities. Therefore, the tribunal should prefer Mr. Dhanoa's evidence to that of the respondent

The respondent's case

15. Mr. Walsh in his opening argument submitted that a 90 per cent deduction for the risk associated with the roof development is arbitrary and unsustainable. In support of the respondent's argument the respondent relied on the report of Mr. Dunsin dated 9 January 2017 who also gave oral evidence to the tribunal. Mr. Dunsin stated he had capitalised the ground rent of the 14 flats at 6% to arrive at a current value of £108,089 and a reversionary value of £42,348.
16. Mr. Dunsin stated that the value of the existing 14 flats and three flats to be built on the roof space was prepared using the direct comparison method of valuation appraisal using comparable properties of similar property sales in the area. Mr. Dunsin valued the 14 existing flats at between £600K to £800K per flat. Mr. Dunsin valued the three flats to be built on the roof space at £2,250,000 by a consideration of similar flats that have sold in the area. Mr. Dunsin used a rate of £1,400 per m² to multiply the total roof development area he arrived at of 184.2m² and arrived at a building cost of £257,880. Mr. Dunsin made a deduction of builder's costs, professional fees, Party Wall costs, disposal fees, finance costs, and development profits from the Market Value of the three new flats to arrive at a Current Market Development Value of £1,524,205.
17. Mr. Dunsin went on to consider what level of deduction should be made in respect of the risk of development and referred the tribunal to

31 (and 37) Cadogan Square Freehold Limited v The Earl of Cadogan [2010] UKUT321 (LC). In that application a deduction of 85% was made where the property was a Grade II listed building, where there was no planning permission or listed building consent for reconversion into a single dwelling house and where any development or reconversion could not take place for a period of 16 years when the lease expired. In contrast, a 15% deduction had been made in *Strathdean Court, 33 Grove Road, Sutton* in (LON/00BF/OCE/2012/0062 in respect of a roof development for which, planning permission had been granted but had lapsed. For the subject property, Mr. Dunsin adopted a deduction of 10% to take account of the low level of risk associated with the roof development as he was of the opinion, planning permission would be granted in light of the other roof developments to properties in the surrounding area. Mr. Dunsin therefore applied this 10% deduction off the Development Value of £to arrive at a value for the roof space of £1,371,785.

18. Mr. Dunsin valued the appurtenant property which he described as vaults, storage cupboards, front and rear gardens, yards, patios, pathways, entrance areas, dustbin areas, bin store, staircases, passage ways, access ways, roadways, car parking spaces, garages and amenity land of the property at £75,000 but did not provide the tribunal with any calculation as to how he reached this figure.
19. Mr. Walsh in his submissions on behalf of the respondent invited the tribunal to look at the “bigger” picture rather than the detail when considering the development value. Mr. Walsh submitted that the creation of three flats on the roof area was a realistic prospect and Mr. Dunsin’s figures should be accepted.

The tribunal’s decision and reasons.

20. Having inspected the subject property the tribunal noted the numerous developments in the area of residential property. The tribunal considered that in light of the history of failed planning applications, there remains a significant risk of planning permission not being granted. However if planning permission is granted, the tribunal considered it is likely only for a development that will be well set back from the building’s edge thereby reducing the area available for any roof development. Therefore, the tribunal determines in its expert view, that a maximum of two flats can reasonably be constructed on the roof space having regard to the distance they are likely to be required to be set back in order to achieve planning permission.
21. The tribunal places a freehold value of £750,000 per flat having regard to the comparable evidence provided by the parties. This provides a gross development value of £1.5M. The tribunal adjusts the CIL costs to £300psm on Mr. Dhanoa’s Gross Development Value calculation and allows £7K for party wall problems and £40K for disposal fees legal

costs and new leases. Where, the parties are agreed in respect of the other figures used the tribunal these figures.

22. The tribunal considered the risk associated with the roof development and allowed a deduction of ~~30%~~ 65% to the development value to reflect the more than minimal risk involved in the actual carrying out of the scheme having regard both to the previous planning refusals but the significant development to other nearby properties.

~~21~~23. Therefore, in calculating the likely value of the two flats the tribunal finds the following:

(i) The available area for roof development is 150m².

(ii) Two flats can be developed at a value of £750k per flat

1,500,000

Development costs

(iii) Builders costs - £2,000pm² including professional fees

300,000

(iv) Compensation to tenants

14,000

(v) Party wall matters

7,000.

(v) Disposal (agent) fees, legal costs and new leases

40,000

(vi) CIL costs allowed for @ £300psm

45,0000

(vii) Developers profit @ 10% GDV

150,000

(vii) Contingency of builder's costs@ 10%

30,000

(viii) Finance costs at 1/2 of cost for 12 months @7%

20,510

Total costs 606,510

(ix) Residual value

893,850

(x) Defer for 1 year @ 6%

0.9433962

(xi) Value of roof space	843,254
(xii) Less 65% for risk associated	295,138.90

Value of roof development £295,000

23 24. In reaching a decision as regards the appurtenant property, the tribunal is of the opinion that Mr. Dhanoa's figure of £8,500 was on the low side but Mr. Dunsin's figure of £75,000 was unexplained in its calculation. Again, drawing upon the tribunal's expertise, the tribunal determined that the outbuilding had a value and could be readily utilised as a garage or parking space for which a charge of £10 per day was realistically achievable. The tribunal however, also had regard to the likelihood of an annual lease/licence being granted for this appurtenant property and therefore arrived at a figure of £30K being payable for the appurtenant property.

Signed: Judge LM Tagliavini

Dated: 25 March 2017 (Corrected 30
March 2017)