



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

Case reference : LON/00BH/OCE/2017/0045

Property : 8 & 8A Courtenay Road,
Walthamstow, London E17 6LZ

Applicant : Camille Terese Alexander, Clive
Sydney Alexander and William
Dougal Leslie

Representative : Thirsk Winton LLP

Respondent : FIT Nominee Limited and FIT
Nominee 2 Limited

Representative : JB Leitch Limited

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

Tribunal members : Judge Timothy Powell
Ian Holdsworth FRICS

**Date of determination
and venue** : 4 July 2017 at
10 Alfred Place, London WC1E 7LR

Date of decision : 14 July 2017

DECISION

Background

1. This is an application made by the applicant nominee purchaser/qualifying tenants 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 8 & 8A Courtenay Road, Walthamstow, London E17 6LZ ("the Property").

2. By a notice of a claim dated 23 June 2016, served pursuant to section 13 of the Act, the applicants exercised the right for the acquisition of the freehold of the subject Property and proposed to pay a premium of £19,500 for the freehold and £100 for the gardens and other appurtenant land (revised upwards to £29,600, less £100 for the gardens, at the hearing).
3. On 26 August 2016, the respondent freeholders served a counter-notice admitting the validity of the claim and counter-proposed a premium of £40,850 for the freehold interest (revised downwards to £34,420 plus £100 for the gardens at the hearing).
4. On 17 February 2017, the applicants applied to the tribunal for a determination of the premium and terms of acquisition.

The issues

Matters agreed in respect of 8 Courtenay Road

5. The following matters were agreed in respect of 8 Courtenay Road:
 - (a) The subject property is a ground floor flat comprising reception, bedroom, kitchen and bathroom;
 - (b) The valuation date: 23 June 2016;
 - (c) Details of the tenants' leasehold interest:
 - (i) Terms of lease: 99 years
 - (ii) Ground rents: £30 pa for 25 years; £45 pa for 25 years; £60 pa for 25 years; and finally £75 pa for 24 years
 - (d) Unexpired term at valuation date: 66.27;
 - (e) Deferment rate: 5%
 - (f) Relativity of current lease to reversion; 90.15%
 - (g) Relativity of long lease to reversion: 1%.

Matters agreed in respect of 8A Courtenay Road

6. The following matters were agreed in respect of 8A Courtenay Road:
 - (a) The subject property is a first floor flat comprising reception, bedroom, kitchen and bathroom;
 - (b) The valuation date 23 June 2016;
 - (c) Details of the tenant's leasehold interest:
 - (i) Terms of lease: 125 years;
 - (ii) Ground rents: £200 pa for 20.62 years; £400 pa for 20 years; £800 pa for 20 years; and finally £1,600 pa for 64.38 – or increased by reference to the increase in the RPI;

- (d) Unexpired term of valuation date: 120.65;
- (e) Deferment rate: 5%
- (f) Relativity of current lease to reversion; 90.15%
- (g) Relativity of long lease to reversion: 1%.

Matters not agreed

- 7. The following matters were not agreed:
 - (a) Capitalisation rate;
 - (b) Long leasehold (unimproved) value;
 - (c) The premium payable.

The hearing

- 8. The hearing in this matter took place on 4 July 2017. The applicant was represented by Mr Richard Murphy MRICS and the respondent by Mr Alistair Mason FRICS.
- 9. Neither party asked the tribunal to inspect the property and the tribunal did not consider it necessary to carry out a physical inspection in order to make its determination.
- 10. The applicant relied upon the expert report and valuation of Mr Murphy, dated 29 June 2017; and the respondent relied upon the expert report and valuation of Mr Mason, dated 21 June 2017.

Capitalisation rate

- 11. The decision of *Nicholson v Goff* [2007] 1 EGLR 83, relied upon by Mr Murphy is the best guidance as to the appropriate capitalisation rate for ground rents. That case sets out the factors to take into account, including the provision for review of the ground rent. In this case, the valuers disagreed as to the meaning of the rent review terms in the new lease for 8A Courtenay Road. However, having considered the wording carefully, the tribunal accepted Mr Mason's analysis of Schedule 1 of the new lease, namely that a minimum revised annual rent £1,600 would apply from 30 September 2072 to the remainder of the term; but that from 30 September 2072, and every 20 years thereafter, the rent *may* increase above £1,600, if the changes in the Retail Prices Index ("RPI") since the previous review date justified a higher rent.
- 12. This means that the lease contains an opportunity for further growth in the ground rent, after 60 years, through the RPI. Consequently, in the tribunal's judgment, this is relatively good ground rent clause for an investor, who would take it into account on any lease purchase.

Ordinarily, the appropriate capitalisation rates for ground rents would be between 5.5% and 7%. As this is not the very best ground rent review clause for an investor, a rate of 5.5% is not appropriate; however, the tribunal considers that a capitalisation rate of 6% is reasonable.

13. The tribunal notes that Mr Murphy himself accepted that if the new lease terms did allow for ground rent growth after 60 years, then 6% would be an appropriate capitalisation rate.

Long leasehold value

14. By the conclusion of the hearing, Mr Murphy contended for a long leasehold value for flat 8 of £343,422 and for flat 8A of £342,679; and these sums compared with Mr Mason's contention for £355,000, to be applied to both of the flats.
15. These figures amount to an approximate 3.5% difference between the two valuers, which is very much within normal valuation tolerances. Each of the parties had selected the figures and analysis tools that best suited their case and no material valuation consideration can be found by further forensic analysis by the tribunal. This is a difference that could and should have been agreed prior to attendance at the tribunal.
16. Mr Murphy did not prove that there was a distinct difference between the values of the ground floor and first floor flats, i.e. that first floor flats were more valuable; and, as became apparent during the hearing, in this particular case the opposite proved to be true.
17. Both valuers made adjustments to comparables, but each accepted that there had been shortcomings in those adjustments to reflect condition. This throws doubt on the reliability of the adjusted comparable transaction data upon which the tribunal was asked to rely.
18. Against this background, the only reasonable approach is for the tribunal to take an average of Mr Murphy's two values for the ground floor and the first flats, giving the sum £343,050, and then to select a mid-point between the two revised long leasehold values submitted to the tribunal, resulting in the figure of £349,025 for both flats.
19. The long leasehold value is only one element of the prescribed valuation method and, in the tribunal's view, this averaging approach has a marginal affect on premium; and certainly the small difference in price would be unlikely to trouble a hypothetical purchaser

Conclusion

20. All else having been agreed, the parties may incorporate these findings into a revised valuation to enable the enfranchisement to go ahead.
21. If, notwithstanding this decision, the parties fail to agree the final premium between them within 14 days, they may apply to the tribunal with their competing calculations; and the tribunal will then determine the final figure.



Name: Judge Timothy Powell **Date:** 14 July 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).