FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**KA/LON/00AE/OCE/2020/0076**
HMCTS Code (paper, video, audio)	**:**	**V: CVPREMOTE**
Property	**:**	**34 Greenhill Park, London NW10 9AP**
Applicant	**:**	**The Greenest Hill Limited**
Representative	**:**	**Mr Michael Tibbatts MRICS**
Respondent	**:**	**Primeview Developments Limited**
Representative	**:**	**Mr Saul Gerrard MRICS**
Type of Application	**:**	**Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal Members	**:**	**Judge Donegan** **Mr Charles Norman FRICS (Valuer Member)**
Date and venue of Hearing	**:**	**25 May 2021** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**14 July 2021**

DECISION

Covid-19 pandemic: description of hearing

This decision was made following a remote video hearing, which neither party objected to. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held due to the current lockdown restrictions and all issues could be reasonably determined at a remote hearing. The documents that the Tribunal was referred to are in a hearing bundle of 427 pages, the contents of which were noted.

Decisions of the Tribunal

The Tribunal determines that the enfranchisement price payable for the freehold of 34 Greenhill Park, London NW10 9AP ('the Building') is £57,400 (Fifty-Seven Thousand, Four Hundred Pounds).

The background

1. This application concerns a collective enfranchisement claim for the Building, which is a three-storey, end of terrace house that has been converted into two flats. Both flats are let on long leases.

2. The respondent is the freeholder of the Building. The leaseholders of the two flats served an initial notice on 27 November 2019, pursuant to section 13 of the Leasehold Reform, Housing and Urban Development Act 1993 ('the 1993 Act'). This claimed the freehold of the Building and named the applicant company as the nominee purchaser.

3. The initial notice proposed the following prices:
   (a) £25,960 for "*the Specified Premises*", being the house; and
   (b) £50 for the "*additional freeholds*" being appurtenant land (front and rear gardens).

4. The respondent served a counter-notice on 28 January 2020, admitting the leaseholders' right to enfranchise but disputing the proposed prices. Its counterproposals were:
   (a) £85,190 for the Specified Premises; and
   (b) £10,000 for the appurtenant land.

The Tribunal application and directions

5. The Tribunal application is dated 29 April 2020 and directions were issued on 29 September 2020.

6. Direction 1 provided that any application to determine the respondent's recoverable costs was stayed. There has been no application to lift this stay.

7. The relevant legal provisions are set out in the appendix to this decision.

The leases

8. The hearing bundle included official copies of the freehold and leasehold titles and the leases for both flats. The colouring on the lease-plans was unclear. At the Tribunal's request, the respondent's advocate/expert supplied the case officer with clear copies during the hearing on 25 May 2021.

9. The lease of the ground floor flat ('GFF') was granted by Careland Homes Limited (1) to Elizabeth Owen and Donal O'Hagan (2) on 29 July 2004, for a term of 99 years from 01 April 2003. There is one lease-plan, with the flat is edged red. It occupies the entire ground floor save for the communal entrance and hallway, which are edged and hatched blue. The rear garden is also demised and is edged green.

10. The lease of the first and second floor flat ('FSFF') was granted by Careland Homes Limited (1) to Bong Keon Jeon and Sun Hae Youn (2) on 06 August 2004, for a term of 99 years from 01 April 2003. There are two lease-plans, one showing the first floor and one showing the second. The red edging on the former incorporates an internal staircase leading from the ground floor and the entire first floor. The red edging on the latter incorporates an internal staircase leading from the first floor and the rear section of the second-floor loft area. The front section of the loft is not demised. There is no ground floor plan. No outside space is demised with the FSFF.

11. It is unnecessary to recite the lease terms in detail, given that most issues had been agreed by the time of the hearing. The only material terms are the rights granted in both leases and the alienation, alteration, and mutual enforceability covenants.

12. The rights are detailed in the second schedule and include:

> "*(a) The right to pass and repass with other on foot only over the area edged blue on the Plan*
>
> *(b) The right to store household refuse and waste in any area (if any) designated by the Landlord from time to time as a dustbin area*".

The communal entrance and hallway are edged blue on the LGFF lease-plan. The front garden and entrance path are not edged blue. This means the leaseholders do not have express rights of way over these areas. There is no blue edging on either of the FSFF lease-plans.

Again, the leaseholders do not have express rights of way over the front garden or entrance path.

13. The Tenant's covenants (excluding service charge obligations) are at clause 2 and include:

"*(h)(i) Not to assign transfer sublet or part with possession of part only of the Property as distinguished from its entirety*

...

(p) Not to make any structural alterations or additions to the Property or the internal layout of the Property without first having obtained the Landlord's prior written consent".

14. The mutual enforceability covenant ('MEC') is at clause 7(b) and provides:

"*(b) That (if so required by the Tenant) the Landlord will enforce the Tenant's covenants entered into or to be entered into by any tenants of the other properties in the Building on the Tenant indemnifying the Landlord on a full indemnity basis against all damages costs and expenses and provide such security for those damages costs and expenses as the Landlord may reasonably require*".

The hearing

15. The application was heard via remote video platform on 25 May 2021. Mr Michael Tibbatts MRICS appeared as advocate for the applicant. Mr Saul Gerrard MRICS appeared as advocate and expert witness for the respondent.

16. The Tribunal heard oral evidence from the applicant's expert, Mr Zahid Azeem MRICS, as well as Mr Gerrard. Both are experienced valuation surveyors. Mr Azeem is a partner of Scribener Tibbatts Limited and has over six years' experience of residential property valuations, including valuations under the 1993 Act and the Leasehold Reform Act 1967 ('the 1967 Act'). Mr Gerrard is the managing director of Saul Gerrard Surveyors, established in 2017. Previously, he was a director of Martyn Gerrard Estate Agents. He has produced numerous valuations under the 1993 and 1967 Acts and acts for buyers of ground rent investments.

17. Mr Azeem spoke to a report dated 04 May 2021 and Mr Gerrard spoke to a report dated 05 May 2021.

18. The Tribunal was supplied with a digital hearing bundle that contained copies of the application, directions, initial notice, counter-notice, various title documents, a joint statement of facts and matters in dispute and the expert reports. The Tribunal was also supplied with a

helpful skeleton argument from Mr Tibbatts. Given that the hearing was conducted by video, the Tribunal members were unable to inspect the Building or flats. Rather they relied on photographs and plans appended to the expert reports together with the lease-plans.

The issues

19. The experts had produced a joint statement of facts in accordance with the directions. The matters agreed included:

- Valuation date 29/11/2019
- Unexpired term (both leases) 82.43 years
- Deferment rate 5%
- GIA 710sqf (GFF)/905sqf (FSFF)
- Long lease values £475,000 (GFF)/£525,000 (FSFF)
- Capitalisation rate 5%
- Improvements None

The accommodation was agreed in the following terms:

"*GFF–Comprises of three bedrooms, kitchen, reception room and bathroom. Garden.*

FFF-Four bedrooms (Fourth bedroom on second floor), one en-suite, bathroom, kitchen, reception room."

20. The wording of the transfer deed was also agreed. At the start of the hearing, the parties agreed the term and reversion value at £39,650. This meant the only outstanding issues were the value, if any, of the appurtenant land and the value of the undemised front section of the loft. When deciding these issues, the Tribunal reminded itself that the value of the respondent's interest in the Building is the amount that interest might be expected to realise on the valuation date if sold on the open market by a willing seller to a willing buyer, subject to various assumptions (paragraph 3(1) of schedule 6 to the 1993 Act). The applicant, the leaseholders of both flats and the respondent are to be disregarded as potential buyers, so the value is the sum a third party would pay. The hypothetical purchaser ('HP') is assumed to have received sound and responsible advice – ***Earl Cadogan v 2 Herbert Crescent Freehold Limited LRA/91/2007***. He would be prudent not rash – ***31 Cadogan Square Freehold Limited v Earl Cadogan [2010] UKUT 321 (LC)***.

21. The evidence and submissions on the disputed issues are summarised below.

Appurtenant land

22. The rear garden is demised with the GFF. The front garden is not demised, nor is the path leading down the south side of the Building.

23. Both experts' reports include colour photographs of the Building. The front garden is paved and separated from the pavement by a low brick wall. There is an opening in the wall to the right (looking from the road) with a path leading to the front door. There is a separate, gated opening to the left. Dustbins are stored just inside this gate. Further back, there is a path leading down the south side of the Building to the rear garden.

24. It is convenient to deal with Mr Gerrard's evidence first as he valued the appurtenant land at £15,000, whereas Mr Azeem's valuation was £Nil. Mr Gerrard's figure is broken down as follows:

(a)	Path running down the south side of the Building	£4,000/5,000
(b)	Middle section of front garden	£4,000/5,000
(c)	Potential parking space	£5,000/6,000

25. Mr Gerrard envisages a future sale of the side path to the leaseholders of the GFF, to give external access to and from their rear garden. They already have internal access, via their sitting room but external access would add value. Acquiring the path would also enable them to dispose of garden waste without having to carry it through the flat. The land to be sold would be approximately 3.5-4 x 30 feet. Mr Gerrard highlighted the benefits of external access in the light of recent lockdown restrictions on social gatherings. He suggested a value of approximately 1% of the flat value (agreed at £475,000) but acknowledged this was "*arbitrary*".

26. Mr Gerrard also envisages a future sale of the middle section of the front garden, measuring approximately 10 x 14 feet, to the leaseholders of the FSFF. This flat has no outside space and being able to sit in a front garden would add value. Again, Mr Gerrard highlighted the benefits of external space in the light of recent lockdown restrictions. He adopted the same approach to valuing this area, namely 1% of the flat value (£525,000). Again, he acknowledged this was "*arbitrary*".

27. The final value element is the potential to create a parking space in the south-east corner of the front garden, adjacent to the gated entrance and dustbins. This area, excluding the middle section referred to at paragraph 26, is approximately 7.6 feet wide and Mr Gerrard estimated the potential length at 17 feet. He had undertaken a Google search, which suggests the average width of a car is 6 to 6.5 feet and the average length is 14 feet.

28. Mr Gerrard also relied on photographs showing front parking spaces at 9 houses/buildings on Greenhill Park and Greenhill Road, to show the popularity of this arrangement. He derived the value of a space by capitalising the mean average cost of residents parking permit in Brent (£186.50), using a 5% yield. This gives a figure £3,730 for the value of on-street parking and he doubled this to arrive at a £7,500, as the value of a private parking space. He then deducted the estimated cost of creating the parking space which he put at £1,600, broken down as follows:

Highways application fee	£70
Planning application fee	£407
Cost of removing existing on-street parking bay	£610
Crossover costs (3 square meters @ £180psm)	£540

29. In cross-examination, Mr Gerrard acknowledged there had been no attempt to create a parking space in the front garden and said his client was focused on more profitable developments. He felt unable to comment on whether the absence of express rights of way over the entrance path and front garden was a drafting error in the leases. On questioning from the Tribunal, he accepted there would be limited privacy in the front garden. He had no evidence of neighbouring front gardens being used for "*sitting out*".

30. Mr Azeem's report looked solely at the potential to create a parking space. He referred to the leaseholders having rights in their leases "*to use the front garden to store household refuse and waste, to use the front garden as a dustbin area and to use the front garden as the sole means of access to and egress from both the ground floor flat and the first and second floor flat*." He suggested there would only be room for one space, due to these rights.

31. Mr Azeem valued the parking space at a maximum figure of £5,000, relying on an April 2018 sale of two parking spaces at 31 Acton Lane for a total of £10,000. In his opinion, the anticipated cost of creating this space (crossover, removal of wall, providing a hardstanding etc.) would exceed this figure. Planning consent would need to be obtained and the crossover would mean the loss of three on street parking spaces.

32. Mr Azeem valued the front garden at £Nil, as there is no money to be made from creating a parking space. In cross-examination, he accepted that dropping the kerb might only lead to the loss of two on street spaces. He had not made enquiries of the local authority, as to their requirements. On questioning from the Tribunal, he stated there was ample on street parking and the creation of front parking was primarily at the other end of Greenhill Park.

33. Mr Gerrard referred Mr Azeem to the rights in the second schedule to the leases. The express right of way at paragraph (a) only extends over the area edged blue on the lease-plan (GFF). Mr Gerrard accepted there must be an implied right of way over the entrance path, leading to the communal entrance. However, this does not extend over the rest of the front garden. Further, the wording of paragraph (b) suggests the freeholder is not obliged to designate a dustbin area and can vary its location. On questioning from the Tribunal, Mr Azeem accepted there may be some value to the side access to the rear garden and did not dispute Mr Gerrard's 1% figure.

34. In re-examination, Mr Azeem explained there is a gate from the rear garden that leads to the side path. This suggests the path is already used to access to the rear garden and an implied right of way might exist, based on long usage.

35. In closing submissions, Mr Gerrard stressed the absence of express rights of way over the front garden. The land has value and Mr Azeem had accepted his 1% figure for the side access. Mr Tibbatts submitted there are implied rights over the front garden, based on long usage. The side passage is used to access the rear garden and both flats store their dustbins inside the gate. If there is money to be made by creating a parking space, then the respondent would have done so. Mr Tibbatts accepted there might be some value to the front garden, as appurtenant land and suggested a global sum of approximately £2,000.

The Tribunal's decision

36. The Tribunal determines that the price payable for the appurtenant land is £2,500 (Two Thousand, Five Hundred Pounds).

Reasons for the Tribunal's decision

37. The Tribunal first considered the rights over the appurtenant land. The GFF lease includes an express right of way through the communal entrance and hallway. There is no such right in the FSFF lease. However, there must be an implied right/easement of necessity otherwise there is no means of accessing this flat. Equally, both flats must have an easement of necessity over the entrance path as acknowledged by Mr Gerrard. It appears the respondent has designated a dustbin area, just inside the gated opening, as shown in the photographs. The leaseholders of both flats may have an implied right of access this area, based on long usage and/or necessity. The leaseholders of the GFF may also have an implied right of way over the side path, on the same grounds. The Tribunal is unable to decide whether such rights exist, as there was no evidence from the parties as to the use of these areas. However, a well-advised HP would be aware of these potential rights and their impact on the appurtenant land.

38. Mr Azeem accepted there may be some value to the side access and did not dispute Mr Gerrard's 1% figure. However, this figure assumes no implied right of access. An implied right might exist, and this will clearly affect the sum the GFF leaseholders would pay for this access, if any. There was no evidence they wish to buy the side path (or an express right of way). Taking these factors into account, the Tribunal discounted Mr Gerrard's figure by 75%, to £1,000-1,250. This is the price at which the HP could potentially sell the side access to the GFF leaseholders. The HP would be looking to profit from the sale, so is unlikely to offer more than half this sum (£500-625). Given the uncertainties and low value, the Tribunal adopts the lower figure of £500.

39. It is very unlikely the FSFF leaseholders would pay the HP £4,000-5,000 for a small section of the paved front garden, given its limited utility and lack of privacy. They already have a place to store their dustbin and it is difficult to envisage other reasons to buy this area. There was no evidence the leaseholders wish do so. Further, there may be implied rights over this area. Taking these factors into account, the Tribunal discounted Mr Gerrard's figure by 50%, to £2,000-2,500. This is the price at which the HP could potentially sell to the FSFF leaseholders. Again, the HP would be looking to profit so is unlikely to offer more than half this sum (£1,000-1,250). Given the uncertainly and low value, the Tribunal adopts the lower figure of £1,000.

40. Both experts agree that one parking space could be created in the front garden, although there was some debate about the precise angle and location. The Tribunal prefers Mr Azeem's approach to valuing the space, based on a local comparable sale and adopts his figure of £5,000. The Tribunal accepts Mr Gerrard's figures for the Highways and Planning applications and crossover costs, which were based on information provided by Brent Council. It appears that two on street spaces will need to be removed, which would increase the costs by £610. Further, Mr Gerrard had not factored in professional fees or the cost of removing the front wall and the possible resurfacing of the parking space area. Mr Azeem did not give a figure for build costs.

41. The actual cost of creating the new parking space could be £3,000 or more. which means the potential profit is modest. Taking this into account, the availability of on street parking, the Tribunal allows a nominal sum of £1,000 for the potential parking space.

42. The Tribunal added these three sums (£500, £1,000 and £1,000) to arrive at the price of £2,500.

Development value

43. The experts agree there is scope to create a third flat at the Building, which would incorporate the demised and undemised parts of the loft.

However, they differ over the potential value of the new flats (one on the first floor and one on the second) and the likely development costs.

44. The rear section of the loft is included in the FSFF demise and is used as a bedroom. The front section is not demised. It is accessed via a side hatch on the second-floor landing. This leads to a small initial void, currently used for storage, with a larger area behind. Access is restricted. Mr Azeem had not climbed into the void, but Mr Gerrard did and was able to take photographs of the larger loft area. These reveal that some rudimentary work has already been undertaken with a view to using this area.

45. Both experts rely on a planning consent granted for a neighbouring property at 30B Greenhill Park. This is also a first and second floor flat and consent has been granted for the conversion to a two-bedroom first floor flat and one-bedroom second floor flat. 30 Greenhill Park is only two doors from the Building and they have similar layouts. Copies of the planning consent and plans were appended to Mr Gerrard's report. The conversion will necessitate new internal commonways (staircase leading to the first-floor level and a new communal first floor landing), a new staircase leading to the second floor and the installation of a dormer window to the second floor. There will also be changes to the room configuration and a replacement bathroom and kitchen on the first floor, as well as a new bathroom and kitchen on the second floor. The anticipated dimensions of the new flats are 61.36sm/660sf (first floor) and 56.94sm/613sf (second floor).

46. The experts anticipate that planning consent would be granted for a similar conversion of the FSFF. The development will require some form of agreement between these leaseholders and the freeholder. Either the leaseholders will have to buy the undemised loft area from the freeholder or the freeholder will have to purchase all or part the FSFF. Alternatively, they could develop jointly. If the new flats are to be sold or mortgaged separately then the existing FSFF lease will need to be surrendered and two new leases granted: one for each flat and with new commonways. The lease of the GFF may also need to be varied. The service charge proportion will probably need to reduce, as there will be three flats rather than two and other changes might be required. All of this means the development would require a considerable degree of cooperation and will entail substantial legal costs. In addition, there will be professional fees for: plans and calculations, obtaining planning consent, a specification of works, supervision of the development and any awards under the Party Wall etc Act 1996. There will also be local authority fees and, possibly, stamp duty land tax. If the new flats are then sold, there will also be sale costs (estate agents' fees and legal costs). The proposed development is far from straightforward, and a prudent and well-advised HP would take account of these difficulties and the various costs when formulating a bid.

47. Mr Azeem's starting point was to assess the value of the two new flats. He analysed the sales of 8 two and three-bedroom comparables for the first floor flat and 5 one-bedroom flats for the second floor flat. He adjusted for time using the Land Registry House Price Index for flats and maisonettes in Brent. He also weighted each comparable, based on their amenities, condition, and location.

48. The first floor flat comparables included sales of the GFF and three newly converted flats at 6 Baker Road. The GFF sold for £450,000 in June 2018. The time adjusted price was only £385,791, which appears to be a distortion. Mr Azeem reflect this in a weighting of 15%. 6 Baker Road is just around the corner from the Building and their rear gardens back onto each other. 6A is a three-bedroom garden flat and sold for £480,000 in September 2019. 6B is a two-bedroom first floor flat and sold for £430,000 in March 2019. 6C is a two-bedroom third floor flat and sold for £312,500 in September 2019. Mr Azeem considered 6B and 6C to be the best comparables and gave them the highest weightings (27.5% and 22.5%).

49. Having adjusted for time and weighted his comparables, Mr Azeem arrived at rates of £602psf for the first floor flat and £595psf for the second floor flat. He then applied these rates to approximate floor areas of 500 and 600sf to arrive at values of £297,500 and £361,200, which he rounded up to £300,000 (first floor) and £375,000 (second floor). The total value of both flats is £675,000, which is an uplift of £150,000 on the agreed value of the FSFF.

50. Mr Azeem then looked at build costs. He relied on three sources. Firstly, there was an estimate from Rudy Construction Company Limited ('RCCL') dated 03 May 2021. This gave indicative figures of £1,500-2,000psm for the refurbishment element and £3,000-3,500psm for the loft extension. This would give an overall cost of approximately £160,000 for the construction of the second floor flat and £90,000 for the reconfiguration of the first floor flat, making a total of £250,000. Secondly, there was an email from the owner of 30B Greenhill Park, Mr Derek Mckoy, dated 04 May 2021. He estimated that the cost of converting his flat into two flats would be between £150,000-170,000. Mr Azeem suggested this figure was on the low side "*due to the owner being in the building trade and will be providing certain services at no cost*."

51. Finally, Mr Azeem relied on the September 2019 BCIS tables (issue 53). These suggest the build costs should be in the region of £202,400, based on a new build rate of £129psf, a refurbishment rate of £173psf and a location multiplier of 1.2033. The rates are those applicable for flats in buildings of 1-2 storeys.

52. Mr Azeem took a mean average of all three figures (including £160,000 for Mr Mckoy's estimate) to arrive at a build cost of £204,133. This is £54,133 more than the anticipated uplift.

53. Mr Azeem then undertook a residual valuation, where he allowed £2,500 for Party Wall fees, £7,500 for architect's fees (including planning), £10,000 for legal fees and £13,500 for estate agents' fees at 2%. This leads to a potential loss of £82,633 and Mr Azeem allocated 25% to the freeholder (-£21,908). Based on these figures the HP would not pay any sum for development value. However, Mr Azeem also looked at the storage value of the undemised loft area. He estimated the size to be 250sf and the value to be £5psf. This could provide a rental value of £625pa. Mr Azeem applied a yield of 10% to arrive at a capital value but deducted £1,250 for the anticipated cost of forming a new access. Using these figures, he valued the undemised loft area at £5,000.

54. In cross-examination, Mr Azeem estimated the floor area of the initial void to be 25sf. His figure for the entire undemised loft (250sf) was based on measurements taken for the first floor. Mr Gerrard suggested this should be closer to 400sf, given this area accounts for approximately two-thirds of the total footprint of the Building.

55. Mr Azeem was challenged on the floor area for the new second-floor flat. His figure of 500sf is substantially below that at 30B Greenhill (616sf). He explained that he had disregarded approximately 100sf where the ceiling height will be below 1.5 meters.

56. Mr Azeem was also challenged on his development costs. He said that RCCL had seen the Building before giving their estimate. He did not think it unusual that the BCIS rate for refurbishment costs was higher than the new build rate.

57. On questioning from the Tribunal, Mr Azeem explained the profit/loss allocation in his residual valuation. This was based on the undemised loft accounting for approximately 25% of the combined floor area of the undemised loft and FSFF.

58. Mr Gerrard valued the undemised loft area at £145,640. This was based on an uplift in the value of the FSFF of £289,700 and development costs of £144,060. The uplift represents his gross development value ('GDV') of the first and second floor flats (£814,700) less the agreed value of the FSFF (£525,000).

59. Mr Gerrard arrived at his GDV figure by analysing the agreed values of the GFF and FSFF, as well as the sales of 6B and C Baker Road.

60. Mr Gerrard discounted the agreed value of the GFF (£475,000) by £45,000, to reflect the rear garden. His adjusted value of £430,000 equates to £606psf. The agreed value of the FSFF equates to £580psf, which he increased by 5% for quantum to arrive a figure of £609psf.

61. The sale price for 6B Baker Road equates to £700psf, based on a GIA of £614sf. The price of 6C equates to £659psf, based on a GIA of 474sf. Mr Gerrard discounted the latter by 3% for quantum, to arrive at £640psf. This is consistent with the adjusted agreed figures for the GFF and FSFF, taking account of the size differential and the superior "*turnkey*" condition of the Baker Road flats.

62. Mr Gerard applied £640psf to the anticipated GIAs of the new flats, based on the dimensions at 30B Greenhill Park, to arrive at values of £462,100 for the first floor and £429,100 for the second floor. Again, this is consistent with the adjusted agreed figures for the GFF and FSFF. The footprint and configuration of the new first floor flat will be very similar to the GFF.

63. Mr Gerrard assessed the cost of the loft extension at £50,000-80,000 and the refurbishment/reconfiguration costs at a further £40,000-60,000. He primarily relied on an earlier First-tier Tribunal ('F-tT') decision, relating to ***134 The Avenue, London N17 6TG case reference LON/00AP/OCE/2019/0197***, where development costs of 1,715psm (including VAT and professional fees) were allowed for a smaller loft conversion. He also sought loft extension quotes, with limited success. He obtained a quote from Mr Sal Singh, for £65,000 plus VAT, given without an inspection but considered this "*optimistically light*". He also relied on an email from a chartered building surveyor, Mr Philip Setterington MRICS, dated 28 April 2021, reading:

"*I have discussed the project with a contractor we work with regularly and they confirmed the costs for the loft conversion would be circa £1,100-£1,300 plus VAT per sqm. This cost includes replacing the roof with basic tiles/false slates and for the install of sanitaryware/finishes only. Note the cost does not include the supply of sanitaryware, wall tiles, floor tiles, carpets, coloured paints etc.*

They have not confirmed an estimate for converting into flats this very much depends on site conditions and the existing set up."

64. Mr Gerrard gave three options for development costs, all of which used the rate allowed in ***134 The Avenue*** (£1,715psm). In option 1 he applied this rate just to the undemised loft area, resulting in costs of £85,236. In option 2 he applied the rate to the whole of the first and second floor areas, which increased the costs to £202,855. In option 3 he applied this rate to the undemised loft area and a discounted rate of £857.5psm (50%), for the reconfiguration/refurbishment of the

demised areas on the first and second floors. This yielded costs of £144,060 and it is this figure he relied on.

65. In his oral evidence Mr Gerrard suggested the loft conversion works would be limited as the roof already has a gable, rather than hip, end. Further, there is no suggestion the roof needs replacement. Mr Gerrard also pointed out that his rate was more than those in the BCIS tables, as relied on by Mr Azeem.

66. Mr Gerrard also advanced an alternative value of £105,000. This is based on extending the existing FSFF into the undemised loft area, with a dormer to create a large, fifth bedroom with en-suite. He assessed the size of this new room at 391sf. However, he did not apply a price per square foot. Rather, he capitalised the potential rent. The existing bedrooms each have padlocks on their doors, which suggest they are let individually as part of an HMO. The new bedroom should generate a rent of £700-900pcm, based on local comparables. Mr Gerrard used the mid-point of £800 and capitalised this at 5% to arrive at a value of £192,000. He then deducted the development cost figure from his option 1 (£85,236) to arrive at an uplift figure of £106,764, rounded down to £105,000.

67. In cross-examination, Mr Gerrard acknowledged that his valuation of the freehold had increased since service of the counter-notice. He undervalued the loft space initially but had reviewed his valuation, following more detailed consideration. He accepted there had been no planning application for the loft or indication the leaseholders wished to purchase or develop this area.

68. Mr Gerrard accepted that typical values of newly refurbished one and two-bedroom flats in Greenhill Park were £350,00 and £450,000, respectively. However, this is only a guideline and precise values will depend on size and other factors.

69. Mr Gerrard agreed that the sales of 6B and C Baker Road were the best comparables but stressed that 6B is a small one-bedroom flat. His rate of £640psf was based on these two sales and the values agreed for the GFF and FSFF. He rejected Mr Tibbatts' suggestion of "*cherry picking*" and the need for additional comparables. He disputed Mr Azeem's rates of £602/595psf and some of the weightings used to reach this figure.

70. Mr Gerrard was also cross-examined on his alternative value of £105,000. His floor area of 391sf includes eaves storage areas. If these are disregarded, the area reduces to approximately 240sf. Further, he had not factored in the additional requirements and costs of complying with the mandatory licensing scheme in Brent, which applies to HMOs occupied by 5 or more people. The FSFF already has four bedrooms and creating and letting a new room would trigger these requirements.

71. In closing submissions, Mr Gerrard suggested Mr Mckoy's estimate could be tainted. It may suit him to overstate the build costs to reduce his potential capital gain when selling the new flats. The work required to convert the FSFF is "*not excessive*" and £145,000 is a realistic figure. Mr Tibbatts criticised Mr Gerrard's valuation methodology and lack of comparables. He also stressed that neither expert is a building surveyor, qualified to comment on build costs.

The Tribunal's decision

72. The Tribunal determines that the price payable for the undemised loft area is £15,250 (Fifteen Thousand, Two Hundred and Fifty Pounds).

Reasons for the Tribunal's decision

73. When determining development value, the Tribunal considered what sum the well-advised and well-informed HP would have paid. No doubt they would have studied the floor plans and checked the planning history for the Property. They would also have checked if neighbouring properties had loft extensions (or planning permission for such extensions) and sought professional advice. In particular, they would have considered the planning consent and drawings for 30B Greenhill Park. They would then have looked at the potential value of the new flats, the development costs and any legal obstacles to development.

74. The Tribunal preferred Mr Azeem's approach to valuing the flats. He looked at a basket of comparable sales, adjusted them for time and weighted them based on amenities, condition and location. Mr Gerrard just looked at two comparables (6B and C Baker Road) and the agreed values of the GFF and FSFF. The HP would only look at sale prices when formulating his bid, so the agreed values are only relevant as a 'sense check'.

75. The Tribunal disagrees with Mr Azeem's quantification of the floor areas for the new flats. Both experts relied on the planning consent and drawings for 30B Greenhill Park. The floor areas for those flats will be £660sf (first floor) and 613sf (second floor). These figures already take account of the areas where the ceiling height is below 1.5 meters, as noted on the drawings. Areas with a headroom between 0.9 and 1.5 meters and used solely for storage, were counted as 50% and areas below 0.9 meters were disregarded.

76. Using Mr Azeem's rates of £602 and £595psf and floor areas of 660 and 613sf results in values of £397,320 and £364,735. The former is substantially below the agreed value for the GFF (£475,000). The footprints of both flats will be almost identical. The GFF has the benefit of a garden and a third bedroom but the new first floor flat will

be fully refurbished. Taking these factors into account, the Tribunal adjusted the value of the first floor flat to £410,000. This gives a combined value for both flats of £874,735 (say £875,000). This is an uplift of £250,000 on the agreed value of the FSFF.

77. The Tribunal also preferred Mr Azeem's approach to build costs, as he took an average of three different sources whereas Mr Gerrard based his figure on the rate approved in ***134 The Avenue***, which is just one of many F-tT decisions on loft space values. That case involved a smaller loft where there was potential to extend an existing flat or create additional storage, rather than create new flats. The facts are different, and the Tribunal does not know how the £1,715psf figure was arrived at. It is not bound by this decision and derived no assistance from it.

78. The Tribunal rejects the challenge to Mr Mckoy's figures but notes that his estimate and the RCCL estimate were both given in May 2021, almost 18 months after the valuation date. It reduced both estimates by 5% to reflect build cost inflation and then took a mean average of the adjusted figures (£152,000 and £237,500) and the BCIS figure (£202,400), to arrive at a build cost of £197,300.

79. The HP would also factor in professional fees and the Tribunal adopts the figures in Mr Azeem's residual valuation, which total £33,500. This means the total development costs are £230,800, which reduces the potential profit to £19,200 (£250,000 less £230,800). The HP would only pay a fraction of this sum, as the development is fraught with difficulties and is dependent on the leaseholders' cooperation (see paragraph 46). The profits would have to be split and HP would only pay a nominal sum, say £2,000-3,000, given the uncertainty and risks. This is less than Mr Azeem's alternative valuation, for storage, which was not challenged by Mr Gerrard.

80. The Tribunal also considered Mr Gerrard's alternative valuation, involving an extension to the FSFF to create a fifth bedroom with en-suite. This would involve fewer challenges, but the parties would still have to agree terms for the purchase/sale of the undemised loft and a lease variation and licence for alterations. Party Wall Awards might also be required. The Tribunal rejects Mr Gerrard's approach to valuing the extended flat, as this assumes the fifth bedroom would be sublet to a separate tenant. This would lead to additional HMO requirements, as highlighted by Mr Tibbatts. Further, the lease prohibits sublettings of part (see paragraph 13).

81. The extended FSFF should be valued on a floor area basis, to be consistent with the other valuations. Mr Azeem estimated the area of the undemised loft to be 250sf. Mr Gerrard assessed the area of the new bedroom at 391sf. The Tribunal took the mid-point of 330.5sf and

applied the FSFF rate of £580psf to arrive at a value of £185,890 (say £186,000).

82. There was no reliable evidence on development costs for the loft extension. Mr Gerrard relied solely on the rate approved in ***134 The Avenue,*** which the Tribunal has already rejected**.** Mr Azeem did not advance any figures. Doing the best, it can the Tribunal adopts a figure of £115,00, approximately half the development costs for the conversion to two flats (see paragraph 79). This assumes the work and costs involved, including professional fees, will be half that for the full conversion. This would leave a potential profit £71,000, which should be split equally between the freeholder and leaseholders. The development can only happen if they agree terms for the purchase/sale of the undemised loft with development rights and they should share equally.

83. The HP could potentially sell the undemised loft to the leaseholders for £30,500. This sum can only be realised if the leaseholders want to extend, obtain planning permission, and then buy this area. Planning is highly likely but is not guaranteed. Equally, there is no guarantee the leaseholders will want to extend, and any sale of the loft could be years off. The HP would consider these risk factors when making a bid and would also build in a profit element. They would not pay the full £30,500, as they can only sell for this figure (on the valuation date). Further, they would not rely on future capital growth. The Tribunal concludes that the appropriate deduction for risk and uncertainty is 50%, which leaves development value of £15,250. This is the highest of the three options and is the figure the HP would pay for development value.

Summary

84. The Tribunal has determined the value of the appurtenant land at £2,500 and the development value of the undemised loft at £15,250. The parties have agreed the term and reversion value at £39,650. It follows that the total price payable for the freehold of the Property is £57,400 (Fifty-Seven Thousand, Four Hundred Pounds).

Name: Tribunal Judge Donegan **Date:** 14 July 2021

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.

Appendix of relevant legislation

Leasehold Reform, Housing and Urban Development Act 1993 (as amended)

Section 1 The right to collective enfranchisement

(1) This chapter has effect for the purpose of conferring on qualifying tenants of flats contained in premises to which this Chapter applies on the relevant date the right, exercisable subject to and in accordance with this Chapter, to have the freehold of those premises acquired on their behalf -

(a) by a person or persons appointed by them for the purpose, and

(b) at a price determined in accordance with this Chapter;

and that right is referred to in this Chapter as "the right to collective enfranchisement".

(2) Where the right to collective enfranchisement is exercised in relation to any such premises ("the relevant premises") -

a) the qualifying tenants by whom the rights is exercised shall be entitled, subject to and in accordance with this Chapter, to have acquired, in like manner, the freehold of any property which is not comprised in the relevant premises but to which this paragraph applies by virtue of subsection (3); and

(b) section 2 has effect with respect to the acquisition of leasehold interests to which paragraph (a) or (b) of subsection (1) of that section applies.

(3) Subsection (2)(a) applies to any property if at the relevant date either –

(a) it is appurtenant property which is demised by the lease held by a qualifying tenant of a flat contained in the relevant premises; or

(b) it is property which any such tenant is entitled under the terms of the lease of his flat to use in common with the occupiers of other premises (whether those premises are contained in the relevant premises or not).

(4) The right of acquisition in respect of the freehold of any of such property as is mentioned in subsection (3)(b) shall, however, be taken to be to satisfied with respect to that property, if on the acquisition of the relevant premises in pursuance of this Chapter, either –

(a) there are granted by the person who owns the freehold of that property –

(i) over that property, or

(ii) over any other property,

such permanent rights as will ensure that thereafter the occupier of the flat referred to in that provision has as nearly may be the same rights as those enjoyed in relation to that property on the

relevant date by the qualifying tenant under the terms of his lease; or

(b) there is acquired from the person who owns the freehold of that property the freehold of any other property over which any such permanent rights may be granted.

(5) A claim by qualifying tenants to exercise the right to collective enfranchisement may be made in relation to any premises to which this Chapter applies despite the fact that those premises are less extensive than the entirety of the premises in relation to which those tenants are entitled to exercise that right.

(6) Any right or obligation under this Chapter to acquire any interest in property shall not extend to underlying minerals in which that interest subsists if –

(a) the owner of the interest requires the minerals to be excepted, and

(b) proper provision is made for the support of the property as it is enjoyed on the relevant date.

(7) In this section –

"appurtenant property", in relation to a flat, means any garage, outhouse, garden, yard or appurtenances belonging to, ,or usually enjoyed with, the flat;

...

"the relevant premises" means any such premises as are referred to in subsection (2).

(8) In this Chapter, "the relevant date", in relation to any claim to exercise the right to collective enfranchisement, means the date on which notice of the claim is given under section 13.

...

Section 13 Notice by qualifying tenants of claim to exercise right

(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving notice of the claim under this section.

(2) A notice given under this section ("the initial notice") –

(a) must

(i) in a case to which subsection 9(2) applies, be given to the reversioner in respect of those premises; and

(ii) in a case to which section 9(2A) applies, be given to the person specified in the notice as the recipient; and

(b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which –

(i) ...

(ii) is not less than one-half of the total number of flats so contained;

...

(3) The initial notice must -

(a) specify and be accompanied by a plan showing –

(i) the premises of which the freehold is proposed to be acquired by virtue of section 1(1),

(ii) any property of which the freehold is proposed to be acquired by virtue of section 1(2)(a), and

(iii) any property over which it is proposed that rights (specified in the notice) should be granted in connection with the acquisition of the freehold of the specified premises or of any such property so far as falling within section 1(3)(a)

...

Section 21 Reversioner's counter-notice

(1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g).

(2) The counter-notice must comply with one of the following requirements, namely –

(a) state that the reversioner admits that the participating tenants were on the relevant date entitled to exercise the right to collective enfranchisement in relation to the specified premises;

(b) state that, for such reasons as are specified in the counter-notice, the reversioner does not admit that the participating tenants were so entitled;

(c) contain such a statement as is mentioned in paragraph (a) or (b) above but stat that an application for an order under subsection (1) of section 23 is to be made by such an appropriate landlord (within the meaning of that section) as is specified in the counter-notice, on the grounds that he intends to redevelop the whole or a substantial part of the specified premises.

(3) If the counter-notice complies with the requirement set out in subsection (2)(a), it must in addition

(a) state which (if any) of the proposals contained in the initial notice are accepted by the reversioner and which (if any) of those proposals are not so accepted, and specify –

(i) in relation to any proposal which is not so accepted, the reversioner's counter-proposal, and

(ii) any additional leaseback proposals by the reversioner;

(b) if (in a case where any property specified in the initial notice under section 13(3)(a)(ii) is property falling within section 1(3)(b) any such counter-proposal relates to the grant of right or the disposal of any freehold interest in pursuance of section 1(4), specify –

(i) the nature of those rights and the property over which it is proposed to grant them, or

(ii) the property in respect of which it is proposed to dispose of any such interest, as the case may be;

(c) state which interests (if any) the nominee purchaser is required to acquire in accordance with subsection (4) below;

(d) state which rights (if any) any relevant landlord desires to retain–

(i) over any property in which he has any interest which is included in the proposed acquisition by the nominee purchaser, or

(ii) over which any property in which he has any interest which the nominee purchase is to be required to acquire in accordance with subsection (4) below,

on the grounds that the rights are necessary for the proper management or maintenance of property in which he is to retain a freehold or leasehold interest; and

(e) include a description of any provision which the reversioner or any other relevant landlord considers should be included in any conveyance to the nominee purchaser in accordance with section 34 and Schedule 7.

…

Section 24 Applications where terms in dispute or failure to enter contract

(1) Where the reversioner in respect of the specified premises has given the nominee purchaser -

(a) a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b) a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period two months beginning with the date on which the counter-notice or further counter-notice was so given, the appropriate tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute

(2) Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser

...

SCHEDULE 6

PURCHASE PRICE PAYABLE BY NOMINEE PURCHASER

PART II

FREEHOLD OF SPECIFIED PREMISES

Price payable for freehold of specified premises

...

Value of freeholder's interest

3 (1) Subject to the provisions of this paragraph, the value of the freeholder's interest in the specified premises is the amount which at the relevant date that interest might be expected to realise if sold on the open market by a willing seller (with no person who falls within sub-paragraph (1A) buying or seeking to buy) on the following assumptions –

(a) on the assumption that the vendor is selling for an estate in fee simple –

(i) subject to any leases subject to which the freeholder's interest in the specified premises is to be acquired by the nominee purchaser, but

(ii) subject also to any intermediate or other leasehold interests in the premises which are to be acquired by the nominee purchaser

(b) on the assumption that this Chapter and Chapter II confer no right to acquire any interest in the specified premises or to acquire any new lease (except that this shall not preclude the taking into account of a notice under section 42 with respect to a flat contained in the specified premises where it is given by a person other than a participating tenant);

(c) on the assumption that any increase in the value of any flat held by a participating tenant which is attributable to any improvement carried out at his own expense by the tenant or by any predecessor it title is to be disregarded; and

(d) on the assumption that (subject to paragraphs (a) and (b)) the vendor is selling with and subject to the rights and burdens with an subject to which the conveyance to the nominee purchaser of the freeholder's interest is to be made, and in particular with an subject to such permanent or extended rights and burdens as are to be created in order to give effect to Schedule 7

(1A) A person falls within this sub-paragraph if he is –

(a) the nominee purchaser, or

(b) a tenant of the premises contained in the specified premises, or

(ba) an owner of an interest in which the nominee purchaser is to acquire in pursuance of section 1(2)(a), or

(c) an owner or an interest which the nominee purchaser is to acquire in pursuance of section 2(1)(b).

...