FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BC/OCE/2020/0162 V;VHS REMOTE**
Property	**:**	**Barham House, 39-40 Molyneaux Street, London W1H 5JA**
Applicant	**:**	**Barham House Freehold Limited**
Representative	**:**	**Mr S Madge-Wyld**
Respondent	**:**	**Properties A Y &U Limited**
Representative	**:**	**Mr Ayuz Vankad (Director)**
Type of application	**:**	**Section 24 of the Leasehold Reform, Housing and Urban Development Act 1993**
Tribunal members	**:**	**Mrs E Flint FRICS (Chair)** **Judge N Carr**
Date of hearing	**:**	**7 December 2021**
Date of decision	**:**	**10 December 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: VHS REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined at a remote hearing. The documents that we were referred to, the contents of which we have noted, are in a bundle of 481 pages. The order made is described below.

Decision of the Tribunal

The premium payable for the freehold interest in the subject property is £30,000.

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 and other terms of acquisition which remain in dispute of Barham House, 39-41 Molyneaux Street, London W1H 5JA (the "Property").

2. By a notice of a claim dated 10 June 2020, served pursuant to section 13 of the Act, the applicant exercised the right for the acquisition of the freehold of the subject property. On 25 August 2020, the respondent freeholder served a counter-notice admitting the claim to acquire the collective enfranchisement but not admitting the price to be paid.

3. By an application received on 26 October 2020, the applicant applied to the tribunal for a determination of the premium and terms of acquisition.

4. The property which is in a conservation area comprises a four storey purpose built block of eight flats constructed in 1938 situated between listed terraced houses. There is a concrete apron to either side of the path leading to the entrance to the block and a small rear yard used for storage of bins and cycles.

5. The hearing

6. The hearing in this matter took place via a video link on 7 December 2021. The applicant was represented by Mr Sam Madge-Wyld of Counsel and Mr James Hayes MRICS, and the respondent by Mr Ayuz Vankad, a director of the freehold company and Mr Jahinder Pal Singh Dhanoa BSc(Hons) MA MRICS.

7. The parties confirmed that the price for the freeholder's loss of income and reversion had been agreed at £19,000.

8. The parties confirmed that the following matters remain in dispute:

   Development value based on flats at basement and roof level and the value of the appurtenant property

The Evidence

9. Mr Madge-Wyld described the building and confirmed the valuation date and that the value of the flats had been agreed at £19,000.

10. He said that the Respondent had purchased the property on 8 April 2020 at £91,000 following an auction in February 2020.

11. He referred to pre planning advice dated 11 May 2020 from Westminster Council that a roof extension would not be acceptable as it would be harmful to the surrounding listed buildings and that the property itself was considered to be "a building of merit". The letter confirmed that a single storey basement may be acceptable provided that it met various conditions, e.g. by its design and that it had sufficient light. Furthermore, there was no evidence from an engineer setting out what structural work would be needed to establish the basement, whether it would be possible to construct a basement that received sufficient light or from a quantity surveyor setting out the cost of such works.

12. As regards the correct method of valuation the value of the freeholder's interest was "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)" subject to various assumptions: sch.6, para 3, 1993 Act. It is not disputed that one relevant factor, albeit not listed, is the hope development value.

13. In *Trustees of Sloane Stanley Estate v Mundy* [2018] EWCA Civ 35; [2018] 1 WLR 4751, Lewison LJ, considered what "the assumption of a sale in the open market" had on the valuation of a leasehold interest under para 4A, Sch 13 (which is identical to para 3 Sch 6), 1993 Act. He held the

"[32]… first requirement of para.4A [as is the case in para 3 of Schedule 6] is the assumption of a sale in the open market. This is a familiar concept in valuation. The starting point in such a valuation is that things are to be taken as they are in reality on the valuation date, except to the extent that the instrument postulating the hypothetical transaction requires a departure from reality. …

[33]… i) The hypothesis of a sale is only a mechanism for enabling one to arrive at a value of a particular property for a particular purpose. It does not entitle the valuer to depart from the real world further than the hypothesis compels. …

iii) The world of make-believe should be kept as near as possible to reality: reality must be adhered to so far as possible. The valuer should depart from reality only when the hypothesis so requires.

iv) Although the sale is hypothetical there is nothing hypothetical about the market in which it takes place.

14. Further, that:
"[28]… property valuation usually proceeds by way of comparison with appropriate adjustments.
[30]… Sometimes it will be difficult to adjust for differences in location, difference in time, differences in physical condition and so on. But in the case of Flat 5 there was no need to make any of those adjustments because the analogue or comparable was the very same lease of the very same flat sold almost exactly at the valuation date."

15. Finally, in response to a submission that the open market was corrupted and did not reflect the true value,
"[41]… The market may not be perfect but it is still the market. As Hoffmann J explained in *Electricity Supply Nominees Ltd v London Clubs Ltd [1988] 2 EGLR 152* :
> "The open market may be a false market in the sense that it is based upon false assumptions, but it is still the open market."

[42]… Sometimes markets behave irrationally. The Tulip mania of the mid-seventeenth century, the South Sea Bubble of the early eighteenth century, the railway mania of the mid-nineteenth century and the dot-com bubble of the late twentieth century are well-known examples. Even in the absence of these extreme examples, markets are often influenced by what John Maynard Keynes called "animal spirits". In my judgment there is no legal justification in a case like this for ignoring real market transactions."

16. Accordingly, where there is a sale of the subject property shortly before or after the valuation date, the reality principle dictates that the sum paid is the value of the freehold subject to any necessary adjustment (statutory or otherwise). This also means where there is evidence of a comparable sale in the open market exists, a residual valuation should not be used; *Allen v Leicester CC* [2013] UKUT 16 (LC); (2013) JPL 6 760, at [29]; *Ridgeland Properties Ltd v Bristol CC* [2009] UKUT 102 (LC), at [293].

17. In this case the freehold of the property was purchased two months before the valuation date, for £91,000. Since the parties' valuers have agreed the value of the flat leases at £19,000, the hope value was £72,000. That figure, subject to any adjustments, should be the starting point for the Tribunal.

18. He called Mr Hayes to give evidence. Mr Hayes was of the opinion that there was no development value, he thought that the maximum amount that the market would pay for hope value was £10,000.

19. Mr Hayes referred to the letter from Westminster council which he considered made it clear that no roof top development would be allowed.

20. There was no evidence regarding what was below the ground floor flats. There was a drainage plan, drawn up in the 1930's which showed the main drain and interceptor, a manhole with iron rungs in front of the building and oversite concrete. Based on the limited plans available it appeared that the block was built using the original foundations. There was no evidence that the foundations had been strengthened when the block was built. It appeared that the basement was filled in when the block was built because there is no basement there now. He considered that any attempt to open up the area below the ground floor would be a "structural can of worms".

21. He was not convinced that the basements to the original Georgian and Victorian houses in the street provided habitable accommodation when they were built. He agreed that most houses now had habitable basements.

22. As far as the property was concerned the yard to the rear was small and used for bin and cycle storage. He did not think it would be feasible to provide sufficient natural light to any basement accommodation via light wells in the yard area due to the surrounding walls and aspect of the yard.

23. Under cross examination he was asked about the cost of carrying out a development in the basement and on the roof. He said that he did not consider that a residual valuation was an appropriate method in these circumstances but had merely used it to cross check his valuation. He considered that there were so many unknowns that any estimate would be based on costs at the higher end of the norm and that risk would have to be factored in too. This was a very speculative project.

24. Mr Vankad referred to the skeleton prepared by counsel who was not present. The difference between the experts lies in the fact that Mr Hayes considers that for a number of factors it would not be practical to carry out the basement development.

25. He said that Mr Hayes accepted that he is not a light expert and that no assessment has been carried out. No evidence has been provided to show that the proposed light wells would be insufficient. Since most other properties in the street each have a basement it must be possible to overcome the problem. As the purchaser would have control of the rear yard, he could build whatever size light well was required to meet the daylight requirements.

26. The lightwells to the front of the properties in the street are of a similar size to one and another. As the freeholder also has control of the front area it will be possible to provide cycle storage. At present there are two concrete slabs which may cover up the original basement.

27. Mr Vankad asserted that Mr Dhanoa disagreed with Mr Hayes regarding the feasibility of the rooftop development. One Molyneaux

Street had been redeveloped, Mr Dhanao believed that the rooftop development would be possible in the future.

28. He called Mr Dhanao to give evidence, whose valuation of the freehold was £1,213,425 which had been arrived at by carrying out a residual valuation.

29. Under cross examination he said that he did not think it was necessary to refer to the sale price, some two months before the valuation date, in his report despite his written confirmation that he had brought to the Tribunal's attention all material factors.

30. He was asked if he thought that the previous owners, a PLC, would have sold the property at auction with a guide price of £15,000 if it was really worth approximately £1.2million. He confirmed that although he knew the guide price it did not cause him to stand back and reconsider. He thought the guide price might be wrong. The auction was in February 2020 when the market began to be nervous due to the Covid pandemic.

31. He said it was good practice to cross check valuations and he had done so in relation to the capital values of the flats. He had looked for comparables and not found any but did not think it worth mentioning in his report. His building costs were based on 2016 prices updated. He agreed that there was no worked up plan or advice from an engineer or quantity surveyor to assist with the component parts of his residual valuation.

32. He had used a risk factor of 10% to reflect the planning uncertainties and all other risks were covered by a contingency fund. He conceded that a 25% risk factor might be more appropriate and that the building costs may be too low.

33. He confirmed that he had made a number of assumptions including that the planning regime would allow the rooftop development in the future, that there was a basement which had been filled in and could be excavated, that the building would remain structurally sound after the excavation/tunnelling works, that the costs would not be excessive and that the issue of bin and cycle storage would not be an issue.

34. Mr Vankad did not wish to make any further submissions.

35. Mr Madge-Wyld said that it was the Applicant's case that the Respondent overpaid and that the market would not have in fact paid such a sum. In closing submissions, he said that the applicant was of the opinion that a prudent purchaser would pay £10,000 for the possibility that there may be development value at some time in the future. Adding to the agreed sum of £19,000 for the flat leases plus £1,000 for the yard, the premium offered was £30,000 for the freehold interest.

Decision

36. The Tribunal has not referred in detail to the component parts of Mr Dhanoa's residual valuation because it had determined that such an approach is not a reliable basis upon which to assess the premium: it is a method of last resort.

37. Moreover, the Tribunal is not convinced that Mr Dhanoa's method of valuing the proposed flats in the basement and on the roof of the block results in values which could realistically be achieved in the open market. His approach to the valuation was not underpinned by any evidence nor had he considered the price paid by his client to be a relevant factor or indeed why his client had paid such a sum.

38. No evidence has been produced to support the likelihood of the proposed development either obtaining planning permission or being economically viable. Little consideration was given to the practicalities of undertaking the basement development where, as here, the ground floor flats are demised and the remaining area is a common part. The Tribunal accepts that there is very little prospect of any rooftop development in view of the local authority's guidance.

39. The Tribunal finds that a purchaser would consider this a very speculative development opportunity adding no more than the £10,000 offered by the applicants. The value of the rear yard at £1,000 was not contested.

40. The premium payable for the collective enfranchisement is £30,000.

Name: Evelyn Flint **Date:** 10 December 2021

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).