



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

Case reference : **CHI/00LC/OCE/2021/0014**

Property : **70 Balmoral Road
Gillingham
Kent
ME7 4QE**

Applicant : **DRF Developments Limited**

Representative : **Hodders Law**

Respondent : **Premier Projects Limited**

Representative : **None**

Type of application : **Determination of premium section
24(1) of the Leasehold Reform, Housing
and Urban Development Act 1993**

Tribunal members : **Mr I R Perry BSc FRICS**

**Date of determination
and venue** : **24th January 2022
Paper Determination**

Date of decision : **24th January 2022**

DECISION

Decision

The Tribunal determines a value of £3,432 (Three thousand four hundred and thirty-two pounds) for the freehold interest of the subject property and an additional £1,000 for the appurtenant land.

Background

This is an application made by the Applicant leaseholder pursuant to section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid for the freehold interest of 70 Balmoral Road, Gillingham, Kent, ME7 4QE (“the property”).

1. By a notice of a claim dated 30th April 2020 (it should have read “2021”) served by Registered Delivery on 30th April 2021 pursuant to section 13 of the Act, the Applicant exercised the right for a collective enfranchisement to purchase the freehold interest of the subject property. The Applicant company is owned by the leaseholders of 70 and 70A Balmoral Road.
2. The original application specified a proposed premium of £2,000 for the main building and £100 for the areas to the front.
3. The Respondent served a counter notice dated 25th May 2021 suggesting a proposed premium of £5,000 for the main building and £2,000 for the land to the front.
4. On 4th August 2021 the Applicant applied to the Tribunal for a determination of the premium.
5. On the 9th September 2021 the Tribunal issued directions indicating that because of the Coronavirus outbreak the matter would be dealt with on the papers without an oral hearing. The Tribunal informed the parties that it may ‘inspect’ the property on the internet.
6. The Directions dated 9th September 2021 specified dates by which the valuers acting for the parties should exchange valuations and communicate with each other seeking to narrow the issues in dispute. If the parties could not reach any agreement the Applicant would be responsible for preparing various documents and forwarding them by 2nd December 2021 to the other party and to the Tribunal.
7. On 16th December the Applicant sought an extension to the original date for submissions. On 16th December 2021 the Tribunal issued further directions extending the original date for submissions to the 14th January 2022.
8. On 14th January 2022 the Applicants representative provided a bundle of documents to the Tribunal, which had been copied to the Freeholder. The bundle included a detailed valuation of the freehold interest prepared by Mr Andrew M Lester MRICS of AML Surveys and Valuations Ltd of 4 Burrows Road, London, NW10 5SG. Mr Lester is an experienced Chartered Surveyor who confirms that his report is proof of evidence that has been prepared by him, as an expert, in accordance with the Royal Institution of Chartered Surveyors

Practice Statement headed 'Surveyors acting as an Expert Witness (Fourth Edition)' effective from 2nd July 2014.

Submissions

9. Within his report Mr Lester states that the Respondents have failed to engage to negotiate in any attempt to prepare a Schedule of Agreed Facts. He has assumed that as the s13 Notice was sent by "Recorded Delivery", that it was received by the Respondents the following day 1st May 2021. Therefore, he takes this as the valuation date.
10. Mr Lester describes the property as being in a mainly residential area (although next door to an undertakers) close to the heart of Gillingham fronting a busy section of the A231 running through central Gillingham.
11. The Property is described as a two storey mid-terraced building containing two flats, one on each floor. Each flat includes a Reception Room, Kitchen, Bedroom and Bathroom. He estimates the floor area of the ground floor flat known as 70 Balmoral Road to be 450 square feet and the first floor flat known as 70a Balmoral Road to be 400 square feet.
12. There is a token front garden and a modest garden area to the rear, although Mr Lester says that neither flat has access to the garden as part of their lease.
13. Mr Lester states that the main building is of solid brick wall construction beneath a pitched tiled roof with plastic double-glazed windows.
14. The Tribunal is informed that the lease of 70 Balmoral Road is for 99 years from 27th February 2006 and there is no ground rent. The lease is said to be full repairing and insuring with the Leaseholder responsible for 50% of the costs of maintaining and insuring the building. At the valuation date of 1st May 2021 there were 83.83 years unexpired.
15. The Tribunal is informed that the lease of 70a Balmoral Road is for the same period and on the same basis but is dated 23rd February 2006. At the valuation date of 1st May 2021 there were 83.82 years unexpired.
16. Mr Lester states that, as both leases have more than 80 years unexpired, there is no need of any calculation of marriage value within the premium and as there is no ground rent payable the only matters to contend are the capital of the two flats and the present value rate to be applied to the reversions.
17. Within his report Mr Lester states that the recent sales of similar properties within the locality are good evidence of value, the prime evidence is if the properties themselves sold in the open market close to the valuation date. The leasehold interest in both properties were sold at auction on 8th January 2021, only four months before the valuation date. The prices paid were £85,000 for the ground floor flat, 70 Balmoral Road and £110,000 for the first floor flat, 70a Balmoral Road.
18. In assessing the present freehold/999-year lease value of the properties Mr Lester seeks to adjust these recent sale figures to reflect the difference in value between a property with about 83 years unexpired and a property with 999 years unexpired and goes some way to explaining the difference in prices

achieved at auction, the larger property having achieved the lower price. He examines various relativity graphs to assist in this regard and recent sales of other similar properties in the area and further discusses the hypothetical value of the two flats being acquired by one party, who could then convert the building to form a single dwelling house, this figure suitably adjusted to take account of the cost of the conversion.

19. Mr Lester concludes that the fair Freehold Vacant Possession Price (“FHVP”) of the flats should be taken as £100,000 for 70 Balmoral Road, £10,000 below its sale price in January 2021, and £95,000 for 70a Balmoral Road, £10,000 above its sale price in January 2021.
20. In deciding the reversionary value, the final issue to be decided is the deferment rate to be applied to the reversion. In this respect Mr Lester follows the well-rehearsed arguments decided in *Earl Cadogan v Sportelli (2007) 1 EGLR 153* and applies a rate of 5% commonly used for flats.
21. Incorporating the FHVP values suggested, and the deferment rate taken from *Sportelli* Mr Lester concludes that the fair price to be paid for the freehold interest is £3,265.
22. The final issue in dispute is the value of the appurtenant land comprising the token front garden and a modest sized rear garden which appears to back onto a railway line. Mr Lester suggests that this has or had relatively no value as it was not incorporated with the lease of the ground floor flat when the leases were first granted in 2006 and suggests a figure of £1,000.
23. The Respondents made no submissions to the Tribunal.

The Law

24. The statutory provisions dealing with the premium payable by the Applicants for the purchase of the freehold interest are found in, paragraph 3 part II of schedule 6 of the 1993 Act. The premium is the aggregate of:
 - i. The diminution in value of the landlord’s interest in the tenant’s flat
 - ii. The landlord’s share of the marriage value
 - iii. Any amount of compensation payable to the landlord.
25. Paragraph 3(1) states that the value of the freeholder’s interest is the amount which at the relevant date that interest might be expected to realise if sold in the open market by a willing seller.
26. Paragraph 3(2) spells out the factors to be taken into account when valuing the landlord’s interest. Essentially the valuation equates with the value of an open market sale by a willing seller of an estate in fee simple.
27. The value of the Landlord’s interest comprises two elements:
 - i) The right to receive rent under the existing lease for the remainder of the term (*The term*).
 - ii) The right to vacant possession at the end of the term subject to the tenant’s right to remain in occupation (*The reversion*).

28. Paragraph 4 of schedule 6 deals with the marriage value which is calculated by aggregating the values of the Landlord and Tenant's corresponding values prior to the grant of the new lease. The Landlord is entitled to a 50 per cent share of the marriage value. As in this case marriage value is specifically excluded where the lease has more than 80 years unexpired at the valuation date.
29. Paragraph 5 of the schedule 6 enables compensation to be paid to the Landlord for any loss or damage arising out of the grant of a new lease. The question of loss or damage was not an issue in this application.

Consideration and conclusion

30. The first matter that the Tribunal needed to do was to consider whether it was fair and reasonable for this matter to be dealt with by reference to the papers and without an oral hearing. Having considered the documents provided and the matters in dispute the Tribunal decided that it could reasonably and fairly proceed to a decision on the papers which had been submitted.
31. The Tribunal has carefully considered the comprehensive comments and processes followed by Mr Lester in preparing his report. It is regrettable that the Respondent has not engaged with the Tribunal and has provided no argument or evidence to challenge Mr Lester's evidence.
32. The Tribunal accepts Mr Lester's assessment of the FHVP value of £95,000 for 70 Balmoral Road, an increase of £10,000 from the price paid for the existing leasehold in January 2021 but does not accept the FHVP figure of £100,000 suggested for 70a Balmoral Road which is £10,000 below the sale price of the existing lease in January 2021.
33. The Tribunal's experience is that sale prices were generally rising in 2021 as a consequence of the Stamp Duty Holiday which ended in September 2021. The Tribunal sees no justification for a reduction in value of 70a Balmoral Road between January 2021 from the sale price of the existing lease to a proposed value with a 999-year lease at the valuation date and decides to apply the actual sale price from January 2021, that is £110,000.
34. The Tribunal also considered the submission from Mr Lester in respect to the appurtenant land. A figure of £100 had been assigned to this within the original section 13 notice and the counter notice from the Landlord had assigned a figure of £2,000. In the absence of any comment or submission from the Respondent the Tribunal accepts the figure proposed by Mr Lester and adopts a figure of £1,000.

Decision

35. The price to be paid for the building comprising two flats at 70 Balmoral Road shall be £3,432 (Three thousand four hundred and thirty-two pounds) and the price to be paid for the appurtenant land comprising token front garden and garden at rear shall be £1,000 (One thousand pounds).
36. **The Tribunal determines that the price to be paid for the building comprising two flats at 70 Balmoral Road shall be £3,432 (Three thousand four hundred and thirty-two pounds) and the price to be**

paid for the appurtenant land comprising a token front garden and further garden at rear shall be £1,000 (One thousand pounds).

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

If the First-tier Tribunal refuses permission to appeal in accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007, and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the Applicant/Respondent may take a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for the permission.

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70 Balmoral Road, Gillingham, Kent, ME7 4QE

Valuation Date 1st May 2021.

Lease of ground floor flat 27th February 2006

Lease of first floor flat 99 years from 23rd February 2006, 83.83 years unexpired.

Ground Rents nil. Marriage Values nil

1.	First floor flat 70a Balmoral Road Diminution in Value of Landlord's Interest per Schedule 6(3)		
	<u>Reversion</u>		
	Freehold value	£110,000	
	Present Value £1 in 83.83 yrs at 5%	0.016738	
			£1,841
	Present Value of landlord's interest	<u>£1,841</u>	<u>£1,841</u>
2.	Ground Floor flat 70 Balmoral Road Diminution in Value of Landlord's Interest per Schedule 6(3)		
	<u>Reversion</u>		
	Freehold value	£95,000	
	Present Value £1 in 83.82 yrs at 5%	0.016746	
			£1,591
	Present Value of landlord's interest	<u>£1,591</u>	<u>£1,591</u>
	Total Compensation Payable to Landlord		<u>£3,432</u>
3.	Appurtenant land		<u>£1000</u>
4.	Total Payment		£4,432