



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

**Case Reference** : **LON/00BE/OCE/2012/0173**

**HMCTS Code** : **V-CVP REMOTE**

**Property** : **39 Colwell Road, London, SE22 8QP**

**Applicant** : **Irfan Wahid Mirza and Saira Irfan Mirza**

**Representative** : **Mike Stapleton FRICS of Mike Stapleton & Company – Chartered Surveyors**

**Respondent** : **Bankway Properties Limited**

**Representative** : **David Robson MA (Oxon) MSc MRICS**

**Type of Application** : **Application under section 24 of the Leasehold Reform Housing & Urban Development Act 1993**

**Tribunal Members** : **Tribunal Judge Dutton  
Mr M Taylor MRICS**

**Date of Hearing** : **4 May 2022**

**Date of Decision** : **10 May 2022**

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**DECISION**

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**COVID-19 PANDEMIC: DESCRIPTION OF HEARING**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP Remote. A face-to-face hearing was not held because it was not practicable and no one requested same.

The documents that we were referred to were in a bundle of papers of some 256 pages the contents of which we have noted.

## **DECISION**

- 1. The Tribunal determines that the premium payable for the collective enfranchisement is £32,783 calculated as referred to below.**
- 2. The transfer is approved as drawn.**

## **BACKGROUND**

1. This is an application made by Irfan Wahid Mirza and Saira Irfan Mirza the nominee purchaser for DSN Investments Limited (DSN), which is their company. The application relates the freehold of 39 Colwell Road, London SE22 8QP(the Property). Within the Property are two flats, one on the ground (39) and the other on the first floor (39A), both owned by DSN. The application is made pursuant to section 24 of the Leasehold Reform Housing & Urban Development Act 1993 (the Act) for the determination of the price to be paid for the collective enfranchisement of the Property. The notice of claim under section 13 of the Act, which is dated 29 April 2021, put forward a price payable for the freehold of £25,000 together with a sum of £100 for the additional property.
2. A counter notice was sent by the Respondents admitting the Applicants right to enfranchise dated 6 July 2021 proposing the sum of £95,460 for the freehold and accepting the offer of £100 in respect of additional land. Matters could not be agreed, and an application was made to the Tribunal by the Applicants' solicitors for the determination of the premium and terms of acquisition.

## **ISSUES**

3. We are very grateful to Mr Stapleton and Mr Robson for agreeing all but the development hope value. The Matters agreed are as follows.
  - The lease terms for both 39 and 39a.
  - The valuation date as 29 April 2021.
  - The unexpired term of the leases, for 39 being 86.66 years and for 39a 90.66 years, thus marriage value is not an issue.
  - Capitalisation and deferment rates at 6% and 5% respectively
  - Value of the ground rents at £16,753.
  - The reversionary interest in the flats at £12,930.
  - Freehold addition at £100.
4. Where the parties differed was in respect of development value. Mr Stapleton considered this to be limited to the value of the loft space for storage at £1,500, giving an overall price for the freehold of £31,283. In contrast Mr Robson attributed £20,043 for 39a and £10,525 for 39. He, however, rounds down the development hope value to £30,500.

5. The hearing, which took place on 4 May 2022, was conducted by video. As we have indicated above, we were in receipt of a bundle consisting of some 256 pages which comprised the directions, the section 13 and 21 notices, copies of the freehold and leasehold titles (although not complete) and copies of both leases. In addition, we had the reports of Mr Stapleton, dated 18 April 2022 and Mr Robson dated 10 April 2022. We do not know when they were exchanged.
6. An inspection did not take place, but we did have some photographs appended to Mr Robson's report showing the interior of both flats and the front elevation, but unfortunately not the rear elevation.

## **HEARING**

7. At the hearing we heard first from Mr Robson as it was he who had, in truth, raised the question of development value. His report at paragraph 10 set out the basis upon which he achieved the figure of £30,500 for this element. Whilst accepting, on more than one occasion, that he was not a planning consultant, architect or quantity surveyor he told us from his research, not disclosed in his report, that it would be feasible to laterally extend the ground floor flat and extend in the loft space to the first-floor property.
8. He produced a schedule of what he considered to be comparable properties after the extension work, he envisaged was possible, had been carried out. There were three comparable properties for the ground floor flat and another three for the first floor flat. We have noted these. He did tell us that in respect of the first floor flat his preferred comparable was 22b Colwell Road. After making various adjustments he considered that the average value for the extended ground floor flat rounded down slightly was £690,000 and for the extended first floor flat, after disregarding one property, concluded that the same value could be allocated. In his opinion this gave an uplift for flat 39 on the ground floor of circa £190,000 and for flat 39a £220,000.
9. As to the costs of the works he sought to rely on various quotes his clients had received for 'similar schemes' which he suggested would give overall costs of £110,000 for the ground floor and £80,000 for the first floor flat. No details were provided to us. There would be extra costs for fees (£15,000) and contingencies of 10%. Whilst accepting that he was no planning consultant and suggesting that no planning application had been made for these works, he did consider, by reference to neighbouring properties (e.g. 40a and 22 Colwell Road) that there was only a modest risk that planning would not be granted for the scheme, which risk he valued at 15%. He then turned to the consideration of the compensation for loss arising from the enfranchisement referred to in his report at paragraph 10.13 onwards. There is no marriage value, but he considered that the Hope Value was typically between 0% and 25% and he fixed on 20% given that he considered that any hypothetical purchaser would note both flats are held by the same company, which is shown as a property investment company and there would be a high likelihood of development and a sale on. In accordance with his experience 20% was appropriate for this element.
10. Utilising these percentages, as set out on the valuation attached to his report, he concluded that the rounded down figure in respect of the development value was

£30,500 which gave an overall figure as the price to be paid for the freehold of the Property of £60,000.

11. In response to questions from the tribunal and Mr Stapleton he confirmed that he did not know whether the loft space was currently used to house the water tanks for both flats. He confirmed that he did not have independent evidence to support the costs estimates he had put to us for the works to the two flats. He did accept that in respect of the extended comparables for the first floor flat that the existence of a garden would have an impact, it being the case that only 22b was without a garden.
12. Out of the blue Mr Stapleton sought to rely on a planning matter relating to the Property. Retrospective permission was given for a double storey extension at the Property in May 2021, an application for planning having been made just after the Applicant acquired the two flats in December 2020. A copy was emailed to Mr Robson and the tribunal, and as it is a matter of public record, we allowed it to be used by Mr Stapleton, but deprecated the late introduction. He said it was not until he received Mr Robson's report in the near past, that he realised development value was an issue. He said that this related to works carried out in the 1990's. This was before the Respondent acquired its interest in the Property. He put to Mr Robson that this planning history would have an impact on any future applications. Mr Robson did not consider it would have such an impact and no planning restrictions in the London borough of Southwark (Dulwich area) were put to us. He confirmed that as to the costings, he relied on his experience.
13. He was asked about the possibility of creating a roof terrace, which was not included in the area of the flat, nor was it costed. He said it would be something that could be done, with perhaps an opaque screen to provide some privacy to the neighbours. He thought the pitch height of 2.87 m was sufficient to enable the works to be carried out.
14. We then heard from Mr Stapleton His position was that he did not consider there would be development. There was, he said, no certainty that planning would be granted, given the history of the Property nor any evidence as to the costs of the work. There was no planning report as to feasibility.
15. He was asked how he had arrived at a figure of £1,500 for the loft space. He said it was not demised and that the ground floor had rights of access for services. He considered that £1,500 represented a fair price for storage.
16. Mr Robson asked whether he worked throughout London, which Mr Stapleton confirmed he did. He said that his clients had bought the flats as they considered they would be good rental properties, which apparently, was their preferred route. He confirmed that he had considered the difference between the existing and extended properties relied upon by Mr Robson. His response was that the loft was not demised and that the ground floor owners had access to the loft and exclusive use of the garden. The leases had an absolute prohibition against external additions and internal alterations would be available subject to the landlord's consent, not to be unreasonably withheld. He considered there was no value to a hypothetical investor by way of fees in that internal permission being granted.

17. He would not be drawn on whether there was value in extending the flats as suggested by Mr Robson, although accepting there would be an uplift he was not prepared to speculate as to what that might be. He confirmed he had not inspected any of the comparable properties put forward by Mr Robson.
18. We revisited questions of Mr Robson. We asked whether there was truly was enough profit in these extension works to tempt a developer. It was put to him that there was no evidence that the price paid in December 2020 by the applicant suggested an over bid. He conceded that appeared to be the case. He was asked that if there was a true profit for a developer why had not the price paid in December been inflated to reflect this. He accepted that there was no evidence of overbidding.
19. As to the 20% development he said this reflected both the case and the present owner, who had acquired the flats at the same time, was a development company and the works he foresaw were likely to occur once the Applicants had acquired the freehold. He did not know the run of services although photographic evidence appeared to show a manhole in the rear garden.

## **FINDINGS**

20. We are somewhat disappointed in the evidence produced to us. Mr Stapleton has not really considered whether there would be any development value only attributing some £1,500 to the loft space for storage and would not be drawn on any thoughts as to whether there was the potential to extend the two flats.
21. Mr Robson, on whom we consider the burden of proof rests to establish development value was vague in the evidence produced. He accepted he was not a planning consultant or quantity surveyor. However, we do not think it would have been difficult to have done some research on the planning register for the Property, which would have turned up the planning permission produced late in the day by Mr Stapleton. Enquiries with the planning authority would have given some guidance on the planning risks. There were no costings provided. He relied on quotes obtained by his clients but did not produce them. He relied on experience, whilst accepting he was not a quantity surveyor.
22. Mr Robson appears to have entered the loft but could not say whether there were water tanks in situ. Mr Stapleton said they were, but the simple expedient of a photograph could have answered this. The same applied to the lack of a photograph of the rear of the Property, which would have assisted in at least giving a view of the potential to extend. In addition, there was no evidence that the Applicant had over bid when acquiring the flats, which is surprising if there was any real potential for development value.
23. We bear in mind that the loft is not demised to the upper floor and that the rights granted in the Second Schedule to the ground floor flat include rights of access for the purposes of maintaining and using the water tank and other water installations in the loft. The second schedule to the first-floor flat lease grants similar rights but “for no other purposes”. In addition, Schedule Four to both leases contains an absolute prohibition against external additions or alterations. Clearly these can be resolved by the current Applicants, but a hypothetical purchaser would have to deal with these issues if development was to take place.

24. In terms of the value of the potential extended properties Mr Robson's analysis of the evidence presented was reasonable, albeit that some of the adjustments made were debateable, but Mr Stapleton did not really engage with this aspect. Therefore, taking £690,000 for 39 is, we find appropriate. However, without a roof terrace, which was not costed at all, we find that a discount to the ground floor, in line with the actual sales at 6%, would approximate to £650,000.
25. We are of the view that there is some development potential. Subject to planning and permission of the landlord a lateral extension to the ground floor would seem possible. The same would seem to apply to the loft, but again planning would be required, and the rights of the ground floor flat dealt with. We have no real evidence as to costing. Mr Robson, whilst referring to his clients quotes for reasons which are unknown, did not produce them. The value of the flats would be uplifted by extending but we are not convinced that there would be enough profit in it for a hypothetical purchaser with these many imponderables. These are frequently the works undertaken by the owner occupier not a developer. As such we accept Mr Robson's valuation, at Appendix 8 under Compensation/Loss, the loss to the Freeholder of £725 and have re-worked this for 39a , at a value of £650,000, giving a loss of £780 which we have rounded to £1500.
26. We find that the burden of satisfying us that there is development value rests with Mr Robson and for the reason set out above we find that he has not discharged that burden. Accordingly, we do not accept that there is any development value that we can rely upon and find that the price payable for the freehold is £32,783 comprising
- Value of the ground rents at £16,753.
  - The reversionary interest in the flats at £12,930.
  - Freehold addition at £100.
  - Value of the loft £1,500
  - Loss to freeholder of £1,500

*Andrew Dutton*

Judge:

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 A A Dutton

Date:

10 May 2022

### **ANNEX – 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 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 to 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 (ie 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.