



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

Case Reference : **MAN/00BN/OCE/2020/0011**

Property : **Riverside Lodge, 208 Palatine Road
Manchester M20 2WF**

Applicant : **Riverside Lodge Freehold Limited**
Representative : **Slater Heelis LLP**

Respondent : **Centreway Investments Limited**
Representative : **Shoosmiths**

Type of Application : **Section 24 Leasehold Reform, Housing &
Urban Development Act 1993**

Tribunal Members : **Laurence Bennett (Tribunal Judge)**
Niall Walsh (Regional Surveyor)
Peter Mountain (Surveyor)

Hearing : **21, 22, 23, 24 July 2022**

Inspection : **26 July 2022**

Determination of preliminary issue : **10 March 2022**

Determination : **26 July 2022**

Date of Decision : **3 October 2022**

DECISION

Application

1. Riverside Lodge Freehold Limited (Riverside) applies under Section 24(1) of the Leasehold Reform Housing & Urban Development Act 1993 (the Act) for a determination of the premium to be paid in respect of the acquisition of the Freehold of Riverside Lodge, 208 Palatine Road, Manchester M20 2WF (the Property).

The hearing

2. The Tribunal Procedure Rules 2013 (as amended) provides the definition of 'hearing' in rule 1 as follows: "hearing" means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two way electronic communication'. The appeal was conducted by video because the Tribunal concluded that this was a case that was appropriate for a video hearing. The parties confirmed that they were satisfied with the platform for conducting the hearing.

Attendance

10 March 2022

3. Mr Thomas Jeffries, a Barrister instructed by Messrs Slater Heelis LLP represented the Applicant Riverside Lodge Freehold Limited. Mrs Lianne Ocego and Mrs Lynne Stapleton, Director and Member of the Applicant Company were present.
4. Mr Piers Harrison, a Barrister instructed by Messrs Shoosmiths represented Centreway Investments Limited (Centreway). Mr Mark Hawthorne, a Director was present. Miss Sarah Goodall and Mr Jordan Essel of Shoosmiths attended the hearing.

21 – 24 June 2022

5. Mr Thomas Jeffries, a Barrister instructed by Messrs Slater Heelis LLP represented the Applicant Riverside Lodge Freehold Limited. Mrs Lianne Ocego and Mrs Lynne Stapleton, Director and Member of the Applicant Company were present. Its witnesses were Mr John Davies MRICS Surveyor and Valuer, Mr Mark Krassowski, Planning Consultant and Mr Tom McKenny, MRICS MCIQB Quantity Surveyor.
6. Mr Piers Harrison, a Barrister instructed by Messrs Shoosmiths represented Centreway. Mr Mark Hawthorne, a Director was present. Its witnesses were Mr Justin Bennett FRICS Surveyor and Valuer, Mr Murray Graham MRTTP FRSA Planning Consultant, Mr Christopher Green FRICS FCInst Quantity Surveyor. Mr Christopher Devereux attended.

The bundle

Preliminary issue

7. In compliance with directions the parties submitted a PDF bundle comprising 682 pages. The Tribunal also received a combined authorities bundle and a supplementary authorities bundle comprising 432 pages and 75 pages respectively. Prior to the hearing, both parties submitted skeleton arguments. The Applicant also provided a chronology.

Final hearing

8. The PDF bundle comprised 1,600 pages. In addition the parties provided skeleton arguments, opening submissions, authorities bundles and additional documents referred to.

9. Page references in this decision relate to the paginated hearing bundle.

Preliminary

10. By notice under Section 13 of the Act dated 8 October 2019 the Applicant claimed the Freehold of the Property. The notice details the specified premises and additional Freeholds claimed and includes plans.
11. The Respondent served a counter notice dated 5 December 2019. Proposals contained in the initial notice not accepted were the proposed price for the Freehold interest in the specified premises and the proposed price of the additional Freeholds. Counter proposals were made which included an additional sum in respect of the development value of the flat roofs at the specified premises.
12. Riverside's application is dated 29 April 2020.
13. The Tribunal's determination of a preliminary issue is appended to this decision.

The Property

14. The specified premises, Riverside Lodge comprise 34 flats in 2 blocks of 4 and 5 storeys connected by an undercroft car park and terrace. Each of the flats has a balcony and there are staircases and lifts. The buildings are set in grounds and gardens and have the benefit of additional amenities.
15. The Tribunal visited the Property on 26 July 2022 and observed the panhandle roadway, disabled parking area, undercroft car park, smoke ventilation systems in both Blocks, flat roofs with projecting pipes, entranceway, hallways and stairs. The Tribunal viewed the aspect of the development from surrounding areas. Relevant observations are set out below.
16. Sample Leases provided by the parties appear in common form. The Applicant stated that the last of the flat sales was completed on 2 November 2012.

Evidence and submissions

17. The parties provided written submissions and skeleton arguments. At the conclusion of the evidence both parties made closing submissions. During the hearing the parties' representatives took the opportunity to cross examine each witness and the Tribunal also directed questions. Relevant evidence and submissions are set out within the Tribunal's conclusions below.

Credibility

18. Each of the parties' professional witnesses provided written reports. Their oral evidence reflected and explained their written conclusions. They answered questions in cross examination and from the Tribunal. In doing so they gave information about their evidence base and experience. This was taken into account when assessing their evidence as reflected in our findings. We have done so bearing in mind the fundamental point, that is, the advice upon which a willing but prudent purchaser would have based its decision when considering acquisition. This necessarily includes advice in respect of development potential.

Conclusions

Planning

Block A

19. The Tribunal notes the broad measure of agreement between the parties which includes the contents of transfer and aspects of development. The basis of that agreement takes into account an earlier development plan, unchanged since the previous grant of planning permission for 4 additional flats on a 5th storey at Block A.
20. This permission was originally granted in 2014 but lapsed. Planning conditions had not been completed. The parties have agreed a 10% discount for planning risk for Block A. We find no reason to disagree.

Block B

21. The evidence indicates that the 2014 planning application included a proposal to build 2 flats in Block B but was amended. The amended planning application was restricted solely to block A. An Email dated 27 July 2021 from Mr David Lawless, Senior Planner at Manchester includes: “However the attached email from the agent was scanned and placed on the file and it does seem to indicate that our main concerns centre around the 2 windows to flats 33 and 34 and the resultant impact on them. Given those previous concerns I doubt we would ever support a similar application on Block B.”
22. Mr Krassowski pointed to issues which he felt rendered a grant of permission unlikely. In addition to access doors and existing windows in internal flat hallways overlooking the roof, which in one flat is utilised as a desk space for a computer, there is a need to consider unidentified outlet pipes on the roof. Mr Krassowski mentioned the detrimental visual effect of Block A and Block B appearing as a single mass without the current step in the roof. He also referred to the impact on the view from adjacent property.
23. Mr Graham questions the rights that may have been acquired in respect of windows and doors but believes these issues could be overcome by careful planning. Similarly, in respect of the roof if stepping is an issue. There is some disagreement whether 5 or 10 additional car parking spaces would be permitted, although both experts’ oral evidence was not strong on this point.

Parking

24. The Tribunal noted the likely location of parking spaces during its visit and considers that it is entirely credible that an additional 5 spaces would be granted and accepted the opinion that 10 spaces would be likely.

Windows

25. The existing windows present an issue to be addressed in any planning proposal. Noting evidence that viable design solutions could be devised, we find their presence is not an absolute bar to development of the roof space. Consequently although we have no doubt that it is possible for 2 additional flats to be designed and constructed around this issue, it must be considered that the planning risk of rejection, amendment and delay is increased. We are reinforced in our view by the evidence presented about the inclusion of Block B within the 2014 application.

Permitted development

26. The parties provided evidence in the form of a newspaper report dated 30 September 2019 of an announcement made by the Housing Minister regarding permitted development: “Homeowners will be allowed to add 2 storeys to houses without asking neighbours Housing Minister announces ...” Those permitted development rights took effect on 1 August 2020 but were not in effect on the valuation date. The issue is whether the hypothetical purchaser would have taken this into account.
27. It is clear to us that the Minister’s statement will have had some effect. Prior to the statement it could not be envisaged that the roof space proposal might fall within permitted development. The announcement signalled that the position might change, although on the valuation date, it would have been difficult to predict the time scale or detail of proposed rights.

Visual impact

28. When inspecting the property we kept in mind expert opinion about the visual impact on surrounding property and find this unlikely to be a significant element that would prevent development of additional flats proposed and considered by the parties. The area is surrounded by tall mature trees and adjacent properties are relatively secluded and screened.

Summary

29. It follows from the above that we do not accept Mr Krassowski’s conclusion. We consider neither issues of block profile nor windows are insurmountable although they would have to be taken into account in any design scheme. Further we accept it reasonable to consider planning permission would be granted for the necessary number of additional parking spaces
30. Taking into account the above, we conclude it reasonable to assume at the valuation date 4 x 2 bedroom flats would be permitted on Block A and albeit with less certainty reflected in a significant discount 2 x 2 bedroom flats on Block B. We note Mr Graham’s view evolved at the hearing and he estimated the likelihood of Block B planning permission between 50-70%.

Construction costs

31. A statement details agreement between both parties’ Quantity Surveyors (H293). Noting the QS evidence, we accept that position. The items which remain in dispute between the QS experts is in the order of £180,000.
32. Both experts detailed their approach. Mr McKenny has based his costings on the plans and construction method statement produced for the 2014 development proposals. Mr Green’s estimates are based on RICS Guidance New Rules of Management (NRM). As submitted, we consider that the CMS would have been available to a hypothetical purchaser and would likely have been taken into account at the valuation date. It is logical that this would be the basis of costing.
33. Mr McKenny detailed his experience of live projects in the broad locality of the Property and his own experience in the region. His prioritisation of sources of information is set out in his report (p.357). Mr Green utilised CCIS and SPONS data. His approach is set out within his report (H493) and was explained in his oral evidence.

34. Neither experts' methodology appears directly applicable. We appreciate that the proposed project is somewhat unusual within the area and are not surprised there are limited direct comparisons available. However, we find some relevance in local knowledge of actual projects. This coupled with use of the CMS statement providing relevant granular information is more persuasive.

External costs

35. The major difference between the parties is whether development would require that the panhandle road is resurfaced. We observed the conditions of the road during our visit. It seems unlikely to have been in a significantly different state in 2019 and no such evidence was presented. It is clearly in an unacceptable state and requires immediate repair. We have no doubt if flats were developed for sale and reliance placed upon the road for access to car parking, resurfacing would be necessary as this would be a significant disincentive to a prospective purchaser.
36. We have considered whether repair costs might form part of the service charge for existing users and if the Local Authority has a maintenance liability. No such evidence was presented, the parties have not perceived this to be the case. We conclude that a hypothetical purchaser would place reliance on Mr McKenny's costings.

Preliminaries

37. Mr McKenny provided a breakdown of preliminary costings derived from CMS with specifics sums for scaffolding, platform, hoists, site accommodation and length of programme. Mr Green based his costings on the data sources already mentioned.
38. At the hearing, Mr McKenny revised his estimate after further consideration of the scaffolding required. Both Surveyors commented about the nature of scaffolding required, particularly whether it would be necessary to work from ground up or via a gantry. Mr McKenny pointed to the lack of information regarding the existing building and that it will be occupied throughout. Mr Green whose estimate is based on SPONS, pointed to adjustments specified within SPONS for size of project.
39. Noting that Mr McKenny has estimated for full scaffolding but noting evidence that this may not be required, we conclude that the hypothetical purchaser would not take an extreme view but a midpoint between the valuations. Accordingly, we find preliminaries should be stated at 15.5%.

Overheads and profit

40. We find Mr McKenny's estimated profit level 12.5% persuasive. We have had regard to the size of the project and its similarity in cost to live examples mentioned by him. We have considered Mr Green's estimate based on SPONS. This project is significantly below the range of projects within SPONS reflected by his revision from 3% to 7.5%. We would be surprised if a contractor would undertake this project at less than 12.5% profit.

Contingency

41. For similar reasons we find Mr McKenny's quotation for contingency at 10% realistic. We note Mr Green has not had direct contact with a Structural Engineer but conclude that a hypothetical purchaser would be concerned about structural risks bearing in mind the nature of the development and would require a contingency as reflected in Mr McKenny's estimate.

Professional fees

42. There are existing design drawings and construction information to hand. Clearly, work will be required for the specific development should it proceed. However, taking that into account, we accept Mr Green's 10% estimate.

Valuation

43. The Respondent's opening submissions draw attention to advice a hypothetical purchaser might obtain and submit that the Tribunal may find there is a range of permissible views which would have been available to the potential hypothetical purchaser.
44. Mr Davies and Mr Bennett have agreed elements of valuation and provided a joint statement of agreed matters (p.1057). They summarised matters in dispute which are addressed in initial and supplemental reports.
45. Taking into account the parties' agreed gross development value (p.1359) and other agreed elements of valuation, for example finance, development, developer's profit, and applying our findings in respect of construction costs, the residual valuations for each block are negative. Accordingly, at the valuation date there was no inherent development value as the cost of development exceeded the value of the resultant completed development.
46. For the above reasons it is not necessary for us to look at other elements of factual uncertainty and legal risk.

Planning risk

47. We note and accept the assumption by the Valuers of 10% planning risk in relation to Block A. This is reflected in the residual valuation. In respect of Block B, given the considerable uncertainty surrounding planning, notwithstanding our findings in relation to viability and costings we prefer the evidence of Mr Davis and determine an 80% planning risk.

Ground Rent

48. As agreed between the parties, we find the appropriate capitalisation of former ground rent is 6.25% on the basis of no development value attributable to Blocks A or B.

Gambling chip

49. The Tribunal has found that a hypothetical purchaser at the valuation date would have concluded that the development was not viable. However, there was a prospect of additional development for which planning permission might be obtained possibly within the scope of future permitted development indicated by the Ministerial press statement. Accordingly we recognise in the future that upwards development of either or both Blocks may be viable and determine a hypothetical purchaser may reasonably be prepared to value that prospect in the sum of £10,000.

Conclusion

50. In summary, we conclude that the sum payable by the Applicant to the Respondent in respect of the acquisition of the Freehold of Riverside Lodge shall be £108,800 in respect of Ground Rent and £10,000 in respect of the Hope value for future permitted development.

Table of findings

51.

Item	TM		CG		TRIBUNAL		
External works	50,996		22,200		50,996		£28,796
Preliminaries	105,858	18.50%	65,769	12%	84,952	15.50%	19,185
OH & P	85,341	12.50%	46,038	7.50%	85,341	12.50%	£39,303
Contingency	76,807	10%	36,293	5%	76,807	10%	£40,514
Professional fees	97,161	11.50%	65,988	10%	65,988	10%	0
Total increase in costs							£127,798

Order accordingly

Laurence J Bennett
Tribunal Judge