



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

**Case Reference** : LON/00AY/OCE/2014/0332

**Property** : 56 Gubyon Avenue, London SE24 0DX

**Applicant** : 56 Gubyon Avenue Management Ltd.

**Representative** : Mr A Orme, Orme Associates

**Respondent** : Mr S and Mr W Peterman

**Representative** : Mr J Gibb, MRICS, instructed by Meaby & Co. Solicitors

**Type of Application** : Collective Enfranchisement  
s.24 Leasehold Reform, Housing and Urban Development Act 1993

**Tribunal Members** : Judge Dickie  
Ms M. Krisko, FRICS

**Date and venue of Hearing** : 6 May 2015, 10 Alfred Place,  
London WC1E 7LR

**DECISION**

**Decisions of the tribunal**

(1) The tribunal determines that the premium for the acquisition of the freehold is £27,976, say £28,000.

**The Application**

(2) Application was made on 11 December 2014 to this tribunal under Section 24(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid and the terms of acquisition of the freehold interest in 56 Gubyon Avenue, London

SE24 oDX (“the Property”). The Applicant is the Nominee Purchaser for the purposes of the Act and the Respondent is the Freehold Reversioner.

- (3)** An initial Notice under section 13 of the Act and dated 30 June 2014 was sent to the Freeholder by the Participating Tenants, being the tenants of all three flats, proposing a price for the freehold in the property. The leases of the three flats in the Property are all for a period of 120 years from 1 January 1978 with a ground rent £30 per annum rising.
- (4)** On 18 August 2014 a Counter Notice was served by the Freeholder. This admitted that the Participating Tenants were, on the date of that Notice, entitled to exercise the right of collective enfranchisement in relation to the Property. It proposed the transfers of the freehold in the form of the draft transfers attached to the Counter Notice and did not accept the prices proposed in the initial Notice but made counter proposals for the interests to be acquired,
- (5)** On 28 January 2015 the tribunal issued directions, and subsequently a hearing was fixed for 6 May 2015.
- (6)** The experts had jointly produced a list of the points agreed and not agreed. The only issue in dispute for the determination of the tribunal was the virtual freehold value. The agreed valuation date is 1 July 2014.

### **The Hearing**

- (7)** At the hearing Mr Gibb, representing the Respondent, invited the tribunal to strike out the application because of failure by the Applicant to comply with directions, in that the Applicant's valuation report had been served late (it had been received by Mr Gibb only on Saturday 1 May 2015) and there had been a complete failure to prepare a hearing bundle as required by the directions. Mr Gibb had not given prior notice to Mr Orme of his strike out application, and there is no evidence before the tribunal that solicitors for the landlord have suggested that it would be made.
- (8)** It is clear to the tribunal that the parties have been in communication for some time, and that the content of Mr Orme's report was not a surprise to Mr Orme other than that:

  - the comparables are new and Mr Gibb has not had the opportunity to consider or inspect them.
  - Mr Orme makes a new proposed adjustment of 10% for the unimproved value.
- (9)** The tribunal did not consider that an adjournment of the hearing was appropriate. It would not be in the interests of justice or an effective use of tribunal resources. The tribunal considered it can fairly determine these issues at the hearing today on the available documentation, attaching the weight it sees fit in the circumstances. It declined to strike out the

application, of which some notice to the Applicant could have been given to enable preparation. A further direction of the tribunal imposing an automatic sanction upon breach could have been sought by the Applicant but was not. The Applicant has not been prejudiced.

### **Additional Items and Value of Other Property**

**(10)** Mr Gibb attached a value of £15,000 to his client's interest in the undemised loft areas, roof and cellar. He asserted in his report but without supporting evidence that the loft area provides development potential which would increase the value of the upper flat by around £100,000 and cost less than half that to construct, and that the useful storage space in the cellar would provide development potential to the ground floor flat.

**(11)** Mr Gibb observed that the leases prohibit alteration without consent, but in his written report did not attach a specific valuation to the purchase of the right to alter without consent (which consent could have incurred a fee).

**(12)** In his report Mr Gibb had suggested that the right to extend into the garden, filling in a well area, which would require permission, should be valued at £1,250. At the hearing, he also said this was the value of the landlord's deferred right to develop the garden at the end of the current term. It seemed inconsistent to the tribunal to seek without adjustment both a figure for granting permission for the extension, as well as a development value on the assumption that there was no extension. Mr Gibb could not explain how he had reached these figures. The tribunal was given no means of valuing the cost of an extension to Flat 1, or the increase in value. If any value attaches to the interests in question, there is no reason to conclude it is other than negligible. The tribunal found Mr Gibb's position unsubstantiated and vague, and rejects it.

**(13)** Mr Orme relied on the evidence of Mr. Jeremy Butterworth, whose Planning Appraisal Report had been disclosed to Mr Gibb on 29 April 2015. The tribunal refused Mr Orme permission to rely on the content of the report unless Mr Butterworth gave evidence in person. Mr Butterworth then attended the hearing and was cross examined by Mr Gibb. His report concerned the development potential of the loft space only (and not of the cellar). He firmly concluded that it was unlikely planning permission would be granted to convert the loft in the outrigger to the building.

**(14)** The tribunal had no difficulty in concluding that there is no value in the development potential for the loft. Mr Gibb failed to make out a credible case for this, in that he did not produce a plan for the suggested loft conversion, or any evidence that planning permission would be likely to be granted. Indeed, the mansard roof arrangement that he suggested, and which would be necessary to obtain sufficient head height, is exceptionally unusual for a London period terraced house of this kind. On its inspection of several streets in the area, the tribunal observed no loft conversions remotely resembling the type Mr Gibb proposed. The tribunal is not

persuaded that planning permission would be likely, and indeed would have come to this conclusion on Mr Gibb's case without the evidence of Mr Butterworth.

**(15)** Mr Gibb had not identified a value for the suggested development potential of the cellar alone. No plans were produced, no examples of similar local conversions, no consideration of planning consent, and no structural assessment. There was nothing in the evidence to suggest that use of the cellar for anything other than storage was possible, other than Mr Gibb's assertion that it might be. It can only be accessed from within Flat 1, and the permission of the freeholder would be required to excavate and convert it (but might not be obtained). There would be very significant disruption and dust that would cause within the common parts access to all flats. The tribunal was not persuaded on the evidence that there should be a development value attached to the cellar.

**(16)** Mr Orme agreed that there was a value on the storage within the landlord's property in the loft and cellar. He suggested £1,000 and £1,250 respectively and Mr Gibb £1000 and £2,000-3,000. The tribunal determines the appropriate premium for the loft space is £1,000 and for the cellar is £2,000, as storage spaces only.

**(17)** Whereas it seemed to have been agreed by Mr Orme that the development value of the garden was £1,250, the tribunal considers that this is reflected already within the market price of the ground floor flat as the garden is demised, and therefore no separate premium is appropriate.

**(18)** Mr Gibb in his report suggested there was the potential for reconfiguration, for which the landlord's consent would be required, but not until his oral evidence at the hearing did he suggest that this lay within Flat 3, in moving the kitchen to within the living room to create an extra bedroom. Mr Orme had not had the opportunity to consider this proposal, Mr Gibb produced no plans, and on inspection the tribunal considered this would make a very small and unattractive living area. There was insufficient evidence that the market value of Flat 3 would be increased in this way, and thus that there would be a value on obtaining the landlord's consent for which the tenant would be inclined to pay.

### **Long Lease Values**

**(19)** The lease for Flat 1 had been sold on 8 April 2014 for £450,000. However Mr Gibb sought to persuade the tribunal that this was not a reliable indicator of the market value of that flat on the valuation date because he understood that the sale had been agreed some months before the completion date. He could not state how many months before, nor could he assert with certainty that there had been no price variation during that time. It seems to the tribunal that the market was tested for some time before the flat was sold. The tribunal rejects Mr Gibb's argument and it considers that this sale is the best and most compelling evidence of the value of Flat 1 on

the valuation date, subject to adjustment for time. Mr Orme relied on this sale, but had not adjusted for time.

**(20)** Mr Gibb agreed, if reliance was placed on this sale, it was correct to adjust it for relativity to £472,500 as Mr Orme had done, and to adjust for time also (though he did not attempt to persuade the tribunal as to a time adjusted figure). Doing the best it can to estimate the price on the valuation date in what the experts both acknowledged was a rising market in London, the tribunal reaches a figure of £485,000 for the long lease sale of Flat 1 on 1 July 2014.

**(21)** The evidence of comparable sales produced by both experts was largely unhelpful. Mr Orme relied on only two comparables, both of them in Gubyon Avenue. However, these were sales in March 2013 and September 2012, and he had not sought to adjust them for time. The tribunal considered these sales were too historic to provide reliable evidence, particularly since one of them was of a flat within a different type of property – a double fronted house. Mr Orme had limited his search to Gubyon Avenue only, but on inspection the tribunal observed that several nearby streets were comprised of period terraced houses of exactly the same style, and that there was no logic therefore in limiting the search for comparables to the subject street only. Properties in different areas or of different styles were not considered to be as good comparables.

**(22)** Mr Orme suggested that there should be an adjustment to the values he derived from his comparables of 10% for tenants' improvements, based on the installation of combi-boilers, modern kitchens and bathrooms. Mr Gibb had not had the opportunity to consider this point latterly raised. However, it could be seen from interior photographs of one of his comparables that it did not have a modern fitted kitchen, and there were no internal photographs of the other comparable at all from which condition could be assessed. In any event, the tribunal is satisfied that the upgrading of the boilers, kitchens and bathrooms have been in the nature of repairs and not improvements, and that no adjustment is appropriate.

**(23)** Mr Gibb relied on evidence of 11 sales between March and November 2014. However, he produced no details of lease length or condition, and made no allowance for time.

**(24)** The tribunal inspected the exterior of most of these comparables, and found that a number in the immediate locality were indeed within buildings of the same style as the subject premises. Most could only be inspected from the front, however, from where the existence of alterations or extensions could not be established. However, the evidence produced was limited to loose and unpaginated pages printed out from Rightmove.com of the history of sales of these comparables, ascribing a floor level, together with only in some cases the briefest of details of the accommodation and/or a floor plan.

**(25)** Using the limited information available concerning the sale of 25A Kestral Avenue on 28 March 2014 for £455,000, the tribunal considers this property appears to be of a roughly similar size to the ground floor subject

flat and, though it is arranged over 2 floors, to be reasonably comparable. The tribunal notes as a check that this is not out of line with its adjusted valuation of Flat 1 within the subject property.

- (26)** However, owing to the lack of information concerning the other sales in similar properties, the tribunal was not persuaded that it was safe to rely on them as good comparables. In some cases the evidence as to these sales was confused and unreliable.
- (27)** The plan for the Ground Floor Flat at 6 Kestrel Avenue (2 bedroom, sold on 21 November 2004 for £668,5000) was for a first floor flat, and the same plan that appeared on the print out for 6 Kestrel Avenue (2 bedrooms, sold on 1 August 2014 for £517,000). From its inspection, the tribunal observed from the street part of a substantial ground floor extension to the rear of 6 Kestrel Avenue, but there was no evidence of the date of its construction.
- (28)** There was no plan of the sale of the Second Floor Flat at 53 Kestrel Avenue, a two double bedroom flat, on 29 August 2014 for £500,000, but from the limited information concerning the accommodation (two double bedrooms, modern kitchen and bathroom, computer station area), the tribunal was not persuaded that it was comparable in size or other features to the second floor subject flat.
- (29)** The ground floor flat, 5 Fawnbrake Avenue, was within the same style of house as the subject property and sold for £585,100 on 6 June 2014. However, without a plan of both flats, or at least further information to enable the tribunal to compare dimensions, accommodation and condition, it is difficult for the tribunal to place significant weight on this sale.
- (30)** The details of the sale of a one bedroom first floor flat at 23 Fawnbrake Avenue for £442,100 on 30 May 2014 referred to ground floor accommodation – including a 90ft rear garden and a cellar.
- (31)** Mr Gibb referred to the sale of a one bedroom ground floor flat at 363 Milkwood Road for £520,000 on 4 November 2014. However, the details he produced referred to that sale being of a first and second floor flat, though the accompanying plan was of a ground floor and basement flat.
- (32)** In a nearby area abutting Brockwell Park, on the other side of railway lines running to the side of along Milkwood Road, the tribunal did not find helpful the comparables suggested by Mr Gibb:
- 19a Rymer Street (a significantly larger two bedroom property on the first and second floor on 10 July 2014 sold for £565,000) was almost adjacent to the large and attractive Brockwell Park.
  - 70a Milton Road, a two bedroom flat sold on 23 May 2014 for £535,000, as being on the ground floor. However the photographs with the sale record clearly showed two bedrooms within the roof space with a sloping roof.

- 283a Mayall Road was wholly different in size, character and arrangement.
- At 721.9 square feet for the first floor as shown on a plan, the property at Spenser Road, sold for £554,950 on 5 September 2014, was substantially larger than any of the subject flats.

**(33)** The evidence of comparable sales for the upper 2 flats was not adequate to form a valuation based on them. However, the tribunal notes that both experts had, whilst not overtly applying a proportion, reached valuations of these two flats which were similar proportions of those they reached for Flat 1. Mr Orme's valuation for Flat 2 was 82.5% of his valuation for Flat 1, and Mr Gibb's was 85.7%. For Flat 3, Mr Orme's valuation was 83.33% of his valuation for Flat 2, and Mr Gibb's was 85.6%. The tribunal considers these suggest the appropriate differentials that it should apply.

**(34)** Having done its best to consider all the evidence, the tribunal considers the appropriate valuations for Flat 2 and Flat 3 to be £415,000 and £355,250 respectively.

**Name:** F Dickie

**Date:** 04/06/15

TRIBUNAL VALUATION – 56 GUBYON AVENUE, LONDON, SE24 0DX  
LON/00AY/OCE/14/0332

Valuation date: 1<sup>st</sup> July 2014.

Term: 83.5 years

Reversion: yield 5%

Value of term: agreed at £ 3,625

Reversion: 83.5 years @ 5% 0.0170095

Virtual freehold unimproved values:

Flat 1 £485,000 £8,250

Flat 2 £415,000 £7,059

Flat 3 £355,250 £6,042 £21,351

Storage value of cellar, and roofspace: £ 3,000

Enfranchisement value: £27,976