

V2



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

Case Reference : LON/00BJ/OCE/2014/0268

Property : 5, Oberstein Road London SW11 2AE

Applicant : 5 Oberstein Road Ltd

Representative : Mr C Briggs MRICS IRRV

Respondent : Spincrest Ltd

Representative : Mr S Brooks MSc FRICS

Type of Application : **S24 of the Leasehold Reform Housing and Urban Development Act 1993**

Tribunal Members : Mrs F J Silverman Dip Fr LLM
Mr I B Holdsworth BSc FRICS

Date and venue of Hearing : **Alfred Place London 12 May 2015**

Date of Decision : 13 May 2015

Decision

The Tribunal determines that the premium payable by the Applicant to purchase the freehold of the building known as 5 Oberstein Road London SW11 2AE is £ 125,000 exclusive of statutory costs as set out in the annexed valuation.

1 The Applicant nominee purchaser filed an application with the Tribunal on the 13 October 2014 asking the Tribunal to determine the price payable to purchase the freehold of the property known as 5, Oberstein Road London SW11 2AE (the property) under section 24 Leasehold Reform Housing and Urban Development Act 1993 and other matters relevant to that transaction.

2 The Applicant's initial notice had been served on 28 May 2014 and the Respondent landlord's counter-notice is dated 22 July 2014. The parties agreed that the valuation date was 28 May 2014.

3 The hearing of the matter took place before a Tribunal sitting in London on 12 May 2015 at which Mr C Briggs represented the Applicant and Mr S Brooks represented the Respondent. Mr Briggs and Mr Brooks are the surveyors representing the respective parties and the Tribunal heard evidence from each of them. An agreed bundle of documents was placed before the Tribunal for its consideration. Page numbers referred to below are references to that bundle.

4 The Tribunal had the benefit of oral and photographic evidence of the property and its comparables and did not consider that an inspection of the property was necessary in this case.

5 The property comprises a late Victorian four storey end of terrace house in a residential street close to Clapham Junction station. The area in which the property is situated contains other residential property of a similar age and type. Shops, schools and other amenities are close by. The property is currently used as three self-contained flats each of which is let on a long lease. Flat A comprises the basement and part of the ground floor levels of the property and benefits from a rear garden area. Flat B is split over the ground and first floors with the benefit of two car parking spaces at the rear of the garden. Flat C occupies the top floor of the property and has no outside space of its own. The structure of the property is solid brick walls under a pitched tiled roof. Apart from the two parking spaces which form part of the demise to Flat B (access to which is party restricted by on street parking in the adjacent public road) there is no off street parking at the property and on street parking in the vicinity of the property is either restricted or permissible only by permit.

6 The parties agreed that the relevant lease lengths were 71.1 years in respect of Flats B and C and 72.1 years in relation to Flat A. The rents and dimensions of the flats were also agreed with Flat A standing at 850 sq feet (this latter agreed at the hearing).

7 In relation to relativity the Mr Brigg's figures were 93.6% (Flat A) and 93.09% (Flats B & C). He calculated these figures by using an average obtained from a selection of 6 graphs (pp 90-95). He had not used any settlement evidence and said he had been unable to find any relevant comparable market transactions. His graph

evidence included some graphs which dealt mainly with properties outside Greater London and which were therefore of questionable relevance (eg Andrew Pridell) and did not include any graphs relating to prime central London because Mr Briggs felt they would not accurately reflect the non-prime market south of the Thames. By way of comparison Mr Brooks's totals were 91.3% (Flat A) and 91.8% (Flats B & C) which he had achieved by averaging figures from a variety of data sources. He had chosen not to use settlement evidence but had looked at two baskets of graph evidence, one dealing with prime central London statistics, the other from properties in the wider south east area. He had then corroborated the resulting averaged graph evidence through market evidence and in particular had used the sale of Flat A at the property which had taken place shortly after the valuation date and thus provided the best available guide to value as at that date.

8 Although the Tribunal supports the parties' decision to discard settlement evidence and agrees with the Applicant that the property is not in an area generally regarded as prime it considers that Mr Brooks's method of averaging a wide range of graphs coupled with the use of irrefutable market evidence represents the preferred approach to calculating relativity in this case and accordingly adopts his figures in its calculation.

9 Mr Briggs argued that the valuation should include a 1% market value uplift to reflect the benefit of owning a freehold (as oppose to a long leasehold) interest in a property. Mr Brooks resisted this argument but conceded that such an uplift had been made by a Tribunal in a case in which he had been instructed recently. Neither party could produce any evidence to support their own arguments nor was there any evidence to demonstrate whether such an addition, if made, should be 1% or more or less than that figure. Having considered both parties submissions on this point the Tribunal, using its own experience and judgment concluded that it would make an uplift of 1% to reflect the perception of a prospective buyer that ownership of a freehold offered greater security and control of the management of the property.

10 At the date of the hearing there appeared to be a dispute between the parties about the long leasehold value of Flat A. Page 183 of the bundle contains an undated agreed statement of facts which had been prepared by Mr Briggs and sent by him (unsigned) to Mr Brooks who had signed it. That document shows the value of Flat A being agreed at £695,00. Mr Briggs had subsequently changed his mind and preferred to value Flat A at £650,000. In examining Mr Briggs's revised calculation it appears that he had used a lower pound per square foot figure for this flat than for any of his comparables despite that fact that some of the comparables were in less desirable locations. He had also taken a lower pound PSF figure for this flat than for either of the other flats in the property although arguably Flat A, being on the ground floor and with the benefit of a private garden could be considered equal to or superior to either of the other apartments. In the absence of rational explanation for the Applicant's change of mind the Tribunal finds that the parties' previously agreed figure of £695,000 is the correct figure for Flat A.

11 Mr Brooks for the Respondent argued that the price to be paid for the freehold should include compensation for loss of development value. The Respondent had sought advice from the local council (page 189) as to the prospects of making a successful planning application to erect a double garage at the rear of the garden, thus enhancing the value of Flat B by approximately £60,000, and extending at the rear of the property the main effect of which would be to extend Flat A by just over 2m in depth to accommodate a larger kitchen/living area. He said that this improvement would add £92,000 to the value of that flat. Mr Brooks produced the local council's response (p197) and gave estimates of the approximate costings for

the works but conceded that no formal planning application had been made and no formal written estimates obtained. In support of his contention that the erection of a garage would add value to Flat B Mr Brooks referred to three recent sales of garages in the vicinity, none of which was attached to an adjacent dwelling, where the sale prices varied between £52,000 and £100,000. Mr Briggs challenged the Respondent's assertion saying that it was by no means certain that permission to build/extend would be granted and that the Respondent's costings had underestimated the actual costs of the proposed development. He also said that the Respondent had not made an appropriate deduction from the value of Flat B to reflect the loss of one parking space (to be replaced by the garage). The local council's response to the Respondent's request for advice (p197) suggests that a modified application to build a single garage and a small rear extension to the rear of the ground floor only might be acceptable. To reflect this uncertainty Mr Brooks had deducted 25% from his calculation of the potential development value in relation to both development proposals. The Tribunal considers that, given the type of property, the area in which it is situate and the local council's cautious response it is likely that a future freehold owner might wish to extend the property in the way envisaged by the Respondent but that the prospects of obtaining full planning permission were less than the 75% optimistically proposed by the Respondent and limits the prospects of success to 50%.

12 Using the above figures and adopting the other figures agreed by the parties' surveyors the Tribunal's valuation is attached as Schedule A.

The Law

13 Section 24 Leasehold Reform Housing and Urban Development Act 1993 Applications where terms in dispute or failure to enter contract.

(1)Where the reversioner in respect of the specified premises has given the nominee purchaser—

(a)a counter-notice under section 21 complying with the requirement set out in subsection (2)(a) of that section, or

(b)a further counter-notice required by or by virtue of section 22(3) or section 23(5) or (6),

but any of the terms of acquisition remain in dispute at the end of the period of two months beginning with the date on which the counter-notice or further counter-notice was so given, a leasehold valuation tribunal may, on the application of either the nominee purchaser or the reversioner, determine the matters in dispute.

(2)Any application under subsection (1) must be made not later than the end of the period of six months beginning with the date on which the counter-notice or further counter-notice was given to the nominee purchaser.

(3)Where—

(a)the reversioner has given the nominee purchaser such a counter-notice or further counter-notice as is mentioned in subsection (1)(a) or (b), and

(b)all of the terms of acquisition have been either agreed between the parties or determined by a leasehold valuation tribunal under subsection (1),

but a binding contract incorporating those terms has not been entered into by the end of the appropriate period specified in subsection (6), the court may, on the application of either the nominee purchaser or the reversioner, make such order under subsection (4) as it thinks fit.

(4)The court may under this subsection make an order—

(a)providing for the interests to be acquired by the nominee purchaser to be vested in him on the terms referred to in subsection (3);

(b)providing for those interests to be vested in him on those terms, but subject to such modifications as—

(i)may have been determined by a leasehold valuation tribunal, on the application of either the nominee purchaser or the reversioner, to be required by reason of any change in circumstances since the time when the terms were agreed or determined as mentioned in that subsection, and

(ii)are specified in the order; or

(c)providing for the initial notice to be deemed to have been withdrawn at the end of the appropriate period specified in subsection (6);

and Schedule 5 shall have effect in relation to any such order as is mentioned in paragraph (a) or (b) above.

(5)Any application for an order under subsection (4) must be made not later than the end of the period of two months beginning immediately after the end of the appropriate period specified in subsection (6).

(6)For the purposes of this section the appropriate period is—

(a)where all of the terms of acquisition have been agreed between the parties, the period of two months beginning with the date when those terms were finally so agreed;

(b)where all or any of those terms have been determined by a leasehold valuation tribunal under subsection (1)—

(i)the period of two months beginning with the date when the decision of the tribunal under that subsection becomes final, or

(ii)such other period as may have been fixed by the tribunal when making its determination.

(7) In this section “the parties” means the nominee purchaser and the reversioner and any relevant landlord who has given to those persons a notice for the purposes of paragraph 7(1)(a) of Schedule 1.

(8) In this Chapter “the terms of acquisition”, in relation to a claim made under this Chapter, means the terms of the proposed acquisition by the nominee purchaser, whether relating to—

(a) the interests to be acquired,

(b) the extent of the property to which those interests relate or the rights to be granted over any property,

(c) the amounts payable as the purchase price for such interests,

(d) the apportionment of conditions or other matters in connection with the severance of any reversionary interest, or

(e) the provisions to be contained in any conveyance,

or otherwise, and includes any such terms in respect of any interest to be acquired in pursuance of section 1(4) or 21(4).

Judge F J Silverman
as Chairman
13 May 2015

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.

Schedule A : Valuations

Property: Flat 5B and C Oberstein Road, London SW11 2AE
FTT Reference: RC/LON/00BJ/OCE/2014/0268

Lease and Valuation Data

Lease Term:	99 years from 24th June 1986
Lease Expiry date:	June 23, 2085
Unexpired term as at valuation date:	71.1 years
Date of Valuation	28th May 2014
Rent receivable by landlord:	
Payable from 28/05/2014 for 5.1 years	£ 200
Payable from 23/06/2019 for 33 years	£ 400
Payable from 23/06/2053 for 33 years	£ 600
Values	
Long Leasehold value	
Flat 5b	£ 595,000
Flat 5c	£ 425,000
Total Market Value	£ 1,020,000
Freehold Value	£ 1,030,200
LHVP	£ 940,573 Relativity 91.30%

Capitalisation rate	6.50%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1			
Rent passing	£	200	
Present Value at 6.5% for 5.1 years		4.21450	£ 843
Term 2			
Rent passing	£	400	
Present value at 6.5% for 33 years		13.459100	
Deferred 5.1 years		0.726100	£ 3,909
Term 3			
Rent passing	£	600	
Present value at 6.5 % for 33 years		13.459100	
Deferred 38.1 years		0.090900	£ 734
Total term value			£ 5,486
Reversion			
Freehold in vacant possession	£	1,030,200	
Deferred 71.1 years @ 5%		0.03115	£ 32,089
			£ 32,089
Total			£ 37,575

Calculation of Marriage Value

Value of Landlords freehold interest	£	1,030,200	
Landlords proposed interest	£	-	£ 1,030,200
Less			
Value of Leaseholders existing interest	£	940,573	
Value of Freeholders current interest	£	37,575	£ 978,148
Marriage value			£ 52,052

Division of Marriage Value equally between

Freeholder			£ 26,026
Leaseholder	£	26,026	

Price payable to Freeholder

Value of freeholders current interest			£ 37,575
Plus share of marriage value			£ 26,026

Total £ 63,601

Additional Value under Para 3 Schedule 6

Development value of proposed scheme		£	23,170
Adjustment for risk at:	50.00%	£	11,585
Development value at freeholder reversion			
Deferred at 5% for 71.1 years		0.03115	£ 361

Marriage Value in accordance with Para 4 schedule 6

Development Value at enfranchisement after adjustment for risk		£	11,585
Less			
Development Value at freeholder reversion		£	361
Marriage Value arising from Development potential		£	11,224

Freeholders share @50%

Total £ 5,612

Overall Total payable

£ 69,214

Property: **Fiat 5A Oberstein Road, London SW11 2AE**
FTT Reference: RC/LON/00BJ/OCE/2014/0268

Lease and Valuation Data

Lease Term:	99 years from 24th June 1987		
Lease Expiry date:	June 23, 2086		
Unexpired term as at valuation date:	72.1	years	
Date of Valuation	28th May 2014		
Rent receivable by landlord:			
Payable from 28/05/2014 for 6.1 years	£	100	
Payable from 23/06/2020 for 33 years	£	200	
Payable from 23/06/2053 for 33 years	£	300	
Values			
Long Leasehold value	£	695,000	
Freehold Value	£	701,950	
LHVP	£	644,390	Relativity 91.80%

Capitalisation rate	6.50%
Deferment rate	5.00%

Value of Freeholders present interest

Term 1			
Rent passing	£	100	
Present Value at 6.5% for 6.1 years		4.89620	£ 490
Term 2			
Rent passing	£	200	
Present value at 6.5% for 33 years		13.459100	
Deferred 6.1 years		0.681700	£ 1,835
Term 3			
Rent passing	£	300	
Present value at 6.5% for 33 years		13.459100	
Deferred 39.1 years		0.085300	£ 344
Total term value			£ 2,669.05
Reversion			
Freehold in vacant possession	£	701,950	
Deferred 72.1 years @ 5%		0.0297	£ 20,848
			£ 20,848
Total			£ 23,517

Calculation of Marriage Value

Value of Landlords freehold interest	£	701,950	
Landlords proposed interest	£	-	£ 701,950
Less			
Value of Leaseholders existing interest	£	644,390	
Value of Freeholders current interest	£	23,517	£ 667,907
Marriage value			£ 34,043

Division of Marriage Value equally between			
Freeholder			£ 17,021
Leaseholder	£	17,021	

Price payable to Freeholder

Value of freeholders current interest	£	23,517	
Plus share of marriage value	£	17,021	
Total	£	40,538	

Additional Value under Para 3 Schedule 6

Development value of proposed scheme	£	63,060	
Adjustment for risk at;	50.00%	£	31,530
Development value at freeholder reversion			
Deferred at 5% for 72.1 years	0.0297	£	936

Marriage Value in accordance with Para 4 schedule 6

Development Value at enfranchisement after adjustment for risk	£	31,530	
Less			
Development Value at freeholder reversion	£	936	
Marriage Value arising from Development potential	£	30,594	

Freeholders share @50%	Total	£	15,297
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Overall Total payable	£	55,835
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5 Oberstein Road London SW112AE

Summary table of premium payable to freeholder

	Sum payable for:				
	Term and reversion		Latent Development Value	Total	
Flat 5a	£ 40,538	£	15,297	£ 55,835	
Flat 5b	£ 31,801	£	5,612	£ 37,413	
Flat 5c	£ 31,801			£ 31,801	
Overall total payable	£ 104,140	£	20,909	£ 125,049	
		Say		£ 125,000	