



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

Case Reference : **RC/LON/00AB/OAF/2016/0022**

Property : **616 Longbridge Road, Dagenham,
Essex RM8 2AJ**

Applicant : **Malvin Paul Brown**

Representative : **Mr. G Cowen counsel instructed by
Cavendish Legal Group**

Respondent : **Denstar Limited**

Representative : **Mr. Nesbitt MSc MRICS**

Type of Application : **Freehold enfranchisement**

Tribunal Members : **Judge LM Tagliavini
Miss M Krisko FRICS**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
17 January 2017**

Date of Decision : **17 March 2017**

DECISION

The tribunal determines the following:

- (1) The premium to be paid by the Applicant to the Respondent for the freehold of the subject property is £72,250.
- (2) The terms of the transfer are those set out in the draft TP1.

The application

1. The Applicant seeks a determination pursuant to section 21 of the Leasehold Reform Act 1967 (“the Act”) of the price payable under section 9(1) of the Act for the price payable for the freehold of the subject premises.

The background

2. The property, which is the subject of this application, is a mid-terraced shop with two floors of residential accommodation above comprising 6 rooms. The building is part of a parade of 12 shops built in the 1930’s. The currently vacant residential accommodation is accessed from a service road at the rear of the building and the shop is used as an Indian take-away.
3. The property is let pursuant to a lease dated 26 November 1932 for a term of 99 years from 25 December 1930. The valuation date is 23 November 2014 and there was 15.09 years unexpired as at that date. Ground rent is fixed at £20 per annum throughout the term. The retail element is subject to a FRI lease dated 8 April 2011 for a term of 19 years from 20 May 2010. The rent was reviewed in May 2014 and rose to £14,300 per annum by agreement.
4. By a Notice dated 23 November 2014 the Applicant sought to exercise his right to acquire the freehold of the subject premises. By a Notice in reply dated 2 March 2016 the Respondent admitted the applicant’s right to acquire the freehold.
5. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
6. The parties submitted a draft TP1 with the terms of the transfer agreed except for the premium payable for the freehold. Further, the valuers agreed that the s.15 rent should be capitalised and deferred at 5% and the reversionary value should be deferred at 5%.

The issues

7. The issues remaining in dispute are;
 - (i) Entirety value; and
 - (ii) Site value

The Applicant's case

8. The Applicant sought to rely upon the report of Ms Genevieve Mariner BSc (Hons) FRICS of Strettons and dated January 2017. It was said that the retail element equalled 763 sq. ft. and the residential area 1091 square feet. Ms Mariner valued the entirety value as £375,000 and the reversionary value at £350,000. A site value of 30% was adopted giving rise to a site value of £112,500 and the s.15 rent of £5,625 per annum.
9. In her evidence Ms Mariner stated she had adopted a capitalisation rate of 8% because of the unpopular location and the fixed, low ground rent, which is not attractive to investors. Ms Mariner stated that in adopting a deferment rate of 5% she relied on *Sportelli* and adjusted the 4.75% determined in that case by having regard to the location and Borough in which the depressed and poorer area the subject property is located and consideration of house prices over the last 20 years (HMLR index).
10. In her valuation of the site value, Ms Mariner adopted the "standing house approach." This approach seeks to derive the site value by taking a proportion of the "entirety value" i.e. the value of the whole property including the buildings standing on it on the assumption that that property has been modernised and is in good condition. In utilising that approach Ms. Mariner started by establishing the rental value of the shop element of the subject property by considering its current rental value for and other rental comparable properties in east London and relying on her experience of the rental market in this area. In carrying out this exercise Ms. Mariner reached a passing rent of £13,475 per annum and as it was below the current passing rent of £14,300, adopted the latter, higher figure.
11. Ms. Mariner then went onto the consider the current flat value rental market assuming the property is in good order and the rental previously payable at £1,300 pcm as at November 2014 increasing this to £1,400 pcm (£16,800 pa) as at the valuation date. Ms. Mariner went on to consider the yield taking into account the area of Dagenham and the low rate growth it had exhibited and provided yields of 9% in 2013 and 4-6% in 2015/2016. Ms. Mariner applied a yield of 8.5% having made an adjustment for the "peculiarities" of the subject property. Ms. Mariner reached a valuation figure for the subject property of £366,000.

12. Ms. Mariner went on to consider the development value by the making of two flats out of the upper residential accommodation which might possible include a 1 x one bedroom flat and 1 x 2 bedroom flat. However, Ms. Mariner concluded that the costs of conversion of £75,000 to smaller flats were not profitable and reiterated her view that the investment value of the subject property is £365,000.
13. In considering whether a buyer would pay more/less for the same building but with vacant possession Ms. Mariner looked at the sales of one and two bedroom flats in the area and calculated that the entirety value of the subject premises is £375,000. In calculating the reversionary value Ms. Mariner assumed that all the covenant's had been complied with but was not required to assume modernisation or vacant possession. Therefore, taking the ground floor shop rent of £14,300 and a flat value at £13,000 and applying a yield of 8.5% Ms. Mariner reached a total for the whole of £350,000.
14. In her calculation of the site value Ms. Mariner stated that she had largely been unable to obtain evidence of site sales and instead relied on house sale sites in Rumford and Dagenham. As a result of these sales Ms. Mariner reached an average of the five comparables used (disregarding Cooks Close) of 31% adjusted to 30% as providing the ratio of the site value to completed value. Ms. Mariner applied this figure of 30% to a GDV of £375,000 of the subject property, thereby reflecting a site value of £112,500.
15. Turning next to the issue of the section 15 rent by a decapitalisation of the site value, Ms. Mariner adopter a figure of 5% i.e. the same figure for both the decapitalisation rate and the capitalization, relying on *Official Custodian for the Charities v Goldridge* (1973), thereby arriving at a modern ground rent of £5,625 pa.
16. Ms Mariner reached a freehold premium figure of £64,000.

The Respondent's case

17. The Respondent relied upon the January 2017 report of Mr. David Nesbitt of Resolution Property Surveyors. Mr. Nesbitt also utilised the "standing house" approach in his valuation of the entirety value at £500,000 and the reversionary value at £400,000 relying on a number of comparable sales in the Wood Lane, Green Lane and Rowellan Parade areas. Mr. Nesbitt was also of the view that the subject property had development value in the construction of upper floor accommodation including into the eaves of the property (subject to planning permission).

18. In his calculation of a site value, Mr, Nesbitt relied on site sales evidence in Essex, Romford, Dagenham and Lewisham, which provided an average ratio of 44.76%. However, Mr. Nesbitt adopted a figure of 50% for the site value as he distinguished these sales as being subject to CIL or section 106 commitments and therefore are not ready sites and also have a higher stamp duty liability. Mr. Nesbitt adopted a figure of 50%, which he submitted, was comfortably within the range of the evidence relied upon and within the range of the case law relied upon. This provided a site value of £250,000. Mr. Nesbitt also relied on a section 15 rent calculation of £12,500, reached by applying the agreed 5% to £250,000
19. Mr. Nesbitt reached a figure of £126,000 as the premium payable for the freehold of the subject property.

The tribunal's decision and reasons

20. In reaching its decision the tribunal preferred the evidence of Ms Mainer to that of Mr. Nesbitt. The tribunal finds the evidence given by Mr. Nesbitt to be of a speculative nature and had concerns as to the independence of that report. During his oral evidence Mr. Nesbitt consistently referred to "our" and "we" when referring to his report and its content and failed to distinguish when he was acting as an expert and when as a representative.
21. Although the tribunal accepted the methodology behind Ms Mariner's valuation and much of the evidence used to support her conclusions, the tribunal finds that the average of the comparable site sales used at 30%, on the low side in contrast to Mr. Nesbitt's average of comparable site sales at 50% which, in any event more accurately totalled 47% (excluding the sites over £1million).
22. Therefore, having regard to its expertise, evidence of previous tribunal decisions of site ratio values of 35% and 40% and taking into consideration that this site is in the middle of a parade where there will be constraints on carrying out the building works, which are likely to lower the respondent's percentages, the tribunal considers that 35% is a more appropriate figure to reflect the site ratio value.
22. Consequently, using the 35% figure Ms. Mariner's valuation alters in the following manner:

Modern ground rent	£6,263		
YP 50 years 5%	18,256		
PVE1 15.09 5%	0.479	£57387	(instead of £49,189)

New premium would be £72,259. (instead of £64,060)

23. In conclusion, the tribunal determines that the total premium payable by the Applicant to the Respondent is £72,259 (say £72,250). The tribunal also determines that the terms of transfer are appropriately recorded in the draft TP1 included in the hearing bundle.

Signed: Judge LM Tagliavini

Dated: 17 March 2017