



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

**Case Reference:** LON/00BG/OCE/2014/0122

**Property:** The Earl of Devon Public House, 213  
Devons Road, E3 3QX

**Applicant:** The Earl of Devon Limited

**Representative:** Mr R Mullis, Counsel (instructed by  
Alexander JLO, solicitors)

**Respondent:** Waterglen Limited

**Representative:** Mr C Fain, Counsel (instructed by Pier  
Management)

**Type of application:** Application for determination of terms of  
acquisition - s.24 Leasehold Reform,  
Housing and Urban Development Act 1993

**Tribunal members:** Mr M Martynski (Tribunal Judge)  
Mr D I Jagger MRICS

**Date and venue of hearing:** 27 January 2015  
10 Alfred Place, London WC1E 7LR

**Date of decision:** 28 January 2015

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**DECISION**

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**Decision summary**

1. The price to be paid by the Applicant to the Respondent in respect of freehold is £71,517.00 (our valuation is attached).

## **Background**

2. The building in question, The Earl of Devon Public House ('the Building'), is as its name suggests, a former Public House now converted into six flats over three floors. There is a pitched roof partially covering the top two flats and containing loft space. The remainder of the roof is flat.
3. The leases for the flats all date from 25 March 1988 and are for a period of 99 years. As at the date of valuation therefore, there were 73.5 years remaining on those leases.
4. Of the six leaseholders in the Building, five took part in the enfranchisement claim.
5. The Applicant leaseholders' notice was agreed to be dated 3 September 2013 and that is accordingly the valuation date. The notice proposed a premium for the freehold interest in the Building of £43,000.
6. The Respondent freeholder's Counter-notice is dated 11 November 2013 and proposes:-
  - (a) A premium for the freehold of £125,454 plus a further £11,000 for appurtenant property
  - (b) A leaseback of the roof space and air above the roof

## **The issues**

7. By the date of the hearing and during the hearing, the parties managed to agree between themselves:-
  - (a) Deferment rate of 5%
  - (b) Freehold Vacant Possession – Total £1,335,000
  - (c) Freehold Vacant Possession – Participants £1,130,000
  - (d) Freehold Vacant Possession – Non participant £205,000
  - (e) £1,000 was to be added to the final valuation arrived at by the tribunal to represent appurtenant parts of the Building to be taken by the Applicants as part of the freehold
  - (f) the claim for a leaseback was withdrawn
8. The only issues between the parties at the hearing therefore were the Capitalisation Rate and the appropriate Relativity Percentage. The parties figures for the final amount to be paid for the freehold interest therefore at the hearing were:-

Applicant:	£66,500
Respondent:	£112,539

## **The parties' positions and our decisions**

### *Capitalisation*

9. The Ground Rents at the building have recently been updated (in accordance with the lease provisions) to £200 per flat per annum. There are increases in

the ground rents every 25 years; the next two increases being to £400 and then £800.

10. The Applicant argued for a rate of 7%. In his report, Mr Hayes MRICS, for the Applicant leaseholders reasoned that for small lot sizes such as the one in question, the relevant range of Capitalisation Rates is 6.5 to 10%. He decided on a point near the bottom of this range after taking into account the 'reasonably large' income, the fixed review periods countered against the length of time before the next review.
11. In closing submissions, Mr Mullis for the Applicant confined his argument for 7% to the fact that there is now such a long time until the next rent review in the subject leases.
12. For the Respondent, Mr Holford BSc (Hons) MRICS, stated in his report that he considered a rate of 6% to be appropriate. He relied upon the factors set out in *Nicholson v Goff*<sup>1</sup> (lease term, security of recovery, amount of rent, rent reviews, nature of rent reviews).
13. In our view the Capitalisation Rate should be 6%. We arrive at this figure as we prefer a valuation approach that confines itself to the principles as laid down by the (as it was then) Lands Tribunal. We agree that there is much more of a market in ground rents as a result of long-term low interest rates and that as a result, that market has become more competitive. We do not consider that, on its own, the fact that there is a long period until the next rent review is significant. As pointed out on behalf of the Respondent, there is a possible administrative advantage in not having to deal with a rent increase until many years into the future. Further, most residential ground rents have a period of between 15-25 years between reviews.

## Relativity

14. Both valuers relied solely upon graphs for their Relativity values.
15. Mr Hayes for the Applicant arrived at his figure of 94.25% for Relativity based on an average of the following seven graphs:-
  - (a) Beckett & Kaye (original 2009 version)
  - (b) Nesbitt & Co
  - (c) SE Leasehold
  - (d) Austin Gray
  - (e) Andrew Pridell
  - (f) LEASE
  - (g) CEM
16. Mr Holford took his figure of 89.3% as the average of just three of the following graphs:-
  - (a) Beckett & Kay (2013)
  - (b) John D Wood & Co
  - (c) Nesbitt & Co

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<sup>1</sup>[2007]1EGLR 84

17. In arriving at our Relativity figure of 93.99% we have taken an average of the following graphs:-  
Beckett & Kaye (original 2009 version)  
Nesbitt & Co  
SE Leasehold  
Andrew Pridell
18. We have arrived at this decision for the following reasons.
- (a) *Beckett & Kaye (original 2009 version)*: Whilst we accept that this graph is based on opinion rather than data, it was included in the 2009 RICS report and so had some (albeit possibly only some implied) endorsement as a result. Further, the graph appears to be in line with other graphs included in the RICS report.
  - (b) *Beckett & Kaye (2013 update)*: This has now been revised so as to be wholly different to the 2009 graph. We do not know the reason why the original graph was updated. Further, the graph as updated (both in 2011 and 2013) now sits substantially outside most of the other graphs commonly used.
  - (c) *Nesbitt & Co*: Relied upon by both parties.
  - (d) *SE Leasehold*: We reject the criticism that this graph relates to only purpose-built blocks. We do not have any evidence that there is a different deferment for purpose-built over conversion. Further, we consider the Building sits somewhere between a Victorian converted house on the one part and a purpose-built block on the other.
  - (e) *Austin Gray*: It was conceded that the data used for this graph was mainly in the Brighton and Hove area. Whilst we accept that there is no clear evidence that Relativity is affected by region (apart from Prime Central London ((‘PCL’), we consider that where there are a sufficient range of graphs available, it is better to take graphs that are based wholly or which contain a significant amount of London data into account.
  - (h) *Andrew Pridell*: This data is from non-PCL London and is therefore of use.
  - (i) *LEASE&CEM*: We have rejected this on the basis that the data is from all over England and Wales and repeat what we have said in respect of Austin Gray.
  - (j) *John D Wood*: This includes too large a percentage of PCL and near PCL data and accordingly in our view is not a properly representative graph for non-PCL London.

Mark Martynski, Tribunal Judge

28 January 2015

**The Tribunal's Valuation**

**Assessment of premium for Collective Enfranchisement**

**In accordance with Schedule 13 of the Leasehold Reform, Housing and Urban Development Act 1993**

**LON/00BG/OCE/2014/0122**

**Components**

Valuation date	03/09/2013
Yield for ground rent	6.0%
Deferment Rate	5.0%
Freehold Vacant Possession Value: Total	£1,335,000
Freehold Vacant Possession Value: Participants	£1,130,000
Freehold Vacant Possession Value: Non- Participants	£205,000
Existing lease value: Participants	£1,062,087
Existing lease value: Non-Participant	£1,062,087
Relativity	93.99
Unexpired Term	73.56 years

**Diminution in value of Freeholders Interest**

1-Freeholder's Present Interest

£1000 for 24.55 years @ 6.0%		
£1000 x 12.7056		£12,706
£2000 for 25 years @ 6.0%	12.7834	
Deferred 24.55 years @ 6.0%	0.2392	£6116
£4000 for 24 years @ 6.0%	12.5503	
Deferred 49..55 years @ 6.0%	0.0557	£2796

2- Valuation of Reversion:

£1,130,000 @ 5.0% def'd 73.56 years		
£1,130,000 x 0.0276		<u>£31,188</u>
		<b>£52,806</b>

**Marriage Value**

Extended lease value		£1,130,000
Less		
Existing lease	£1,062,087	
Freehold interest	£52,086	<u>£1,114,893</u>
Marriage value		£15,107
50% of Marriage Value		<b>£7554</b>