



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

Case Reference : **GM/LON/00AP/OCE/2015/0164**

Property : **Elm Court, 53a Cholmeley Park,
London N6 5EJ**

**Applicant (Nominee
Purchaser)** : **Elm Court (Highgate) Freehold
Limited**

Representative : **Mr. Michael Edwards of Setfords
Solicitors**

**Respondent
(Landlord)** : **Elm Court (Highgate) Management
Limited**

Representative : **Mr. Stan Gallagher, counsel
instructed by Osbornes LLP**

Type of Application : **Enfranchisement**

Tribunal Members : **Judge Tagliavini
Mr. N Martindale FRICS**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
2 & 3 February 2016**

Date of Decision : **13 March 2016**

DECISION

- (1) The tribunal determines that the roof space has a development value of £240,000K and makes the determination as set out under the various headings in this Decision.

The application

1. This is an application made pursuant to section 24 of the Leasehold Reform Housing and Urban Development Act 1993 seeking the Tribunal's determination as to the development value of the roof space of the subject premises, having agreed all other issues between themselves, premium payable for the freehold title of the subject property.

The hearing

2. The Applicant was represented by Mr. Michael Edwards of Setfords Solicitors at the hearing. Mr. Stan Gallagher represented the Respondent, counsel instructed by Osbornes LLP. Valuation evidence was given by Mr. Bruce Maunder-Taylor and Ms Jennifer Ellis of Langley Taylor for the Applicant and the Respondent respectively. Planning evidence was given by Mr. David Morris of Langley Taylor and Development Feasibility by Mr. Peter Tasker of Adams Chartered Surveyors.

Preliminary matters

3. Mr. Gallagher submitted that the Respondent had complied with the Tribunal's directions and had provided in the hearing bundle evidence in the form of reports in respect of both Planning and Development Feasibility by and Mr. Morris (planning consultant) and Mr. Tasker (building surveyor). It was submitted that the Tribunal should consider these as unchallenged as expert reports due to the lack of contrary expert evidence from the Applicant. Mr. Gallagher submitted that Mr. Maunder-Taylor was not an expert in these matters and therefore the evidence of Mr. Tasker and Mr. Morris should be accepted as unchallenged. In the alternative, Mr. Gallagher submitted the Tribunal should hear oral evidence from Mr. Tasker and Mr. Morris.

4. Mr. Edwards opposed the application on the basis that the evidence of Mr. Tasker and Mr. Morris was open to challenge. He conceded that it would be appropriate if both witnesses gave oral evidence to the Tribunal.

The Tribunal's decision

5. The Tribunal determines that it is appropriate to hear oral evidence from Mr. Tasker and Mr. Morris on the issue of Planning and Feasibility of Development to the roof space of subject property in order to assist the Tribunal in the determination of the issue in dispute.

The background

6. The property, which is the subject of this application is a purpose built block of 8 flats on four floors with two flats per floor situated in a Conservation Area. There are front and rear staircases but no lift. There are 9 garages and communal gardens. The freehold of the subject premises, is owned by the Respondent Company of which, all eight lessees are shareholders and directors. The Applicant Company is made up of the lessees of five of the eight flats. Agreement has been reached between the parties on the value of ground rent income, the absence of any reversionary or marriage value. The parties remain in dispute as to the value, if any, of the roof space demised to the landlord.
7. The tribunal inspected the property before the hearing in the presence of the parties and the locality.

The issues

8. At the start of the hearing the parties identified the relevant issue for determination as follows:
 - (i) The value, if any, of the hope of developing the roof space over the block, for residential purposes.

The Applicant's case (Nominee Purchaser)

9. The Applicant asserted that there was nil development potential in the roof space of the subject building and relied upon the expert evidence of its valuer. Mr. Maunder-Taylor assisted in his report by Mr. Paul Kershaw of Modern Attics Limited, asserted both in his report and repeated in his oral evidence that the '*roof space has no value.*' Mr. Maunder-Taylor also asserted that having regard to the weak, if not defective leases, the disadvantages of taking on management and service charge responsibilities there is not even a *gambling chip* value to the development of the roof space. Accordingly his valuation report discounted any development value and any premium was in accordance with that stated in the Statement of Agreed Facts.

10. The Applicant also pointed the lack of clarity of the lease terms as there is no express provision in respect of development of the roof space; the modest size that would be available for development in the roof space; the likely complexity of the construction; the financial viability of the project; the lack of parking for a larger number of flats above the current 8; the lack of planning consent and the unlikelihood of being able to install a lift to the newly created top (4th) floor flat(s).

The Respondent's case

11. The Respondent submitted that the roof space is not demised and therefore remains the landlord's retained property. As there are no express reservations in the 999 leases prohibiting development the landlord may choose to do as it pleases with this part of its property. Ms Ellis submitted in her report and told the Tribunal that in her opinion there was sufficient development value in the roof space to give rise to a total freehold figure of £355,660 (including the value of the right to collect the ground rents of £1,826).

12. The Tribunal also heard evidence from Mr. Morris in respect of the likelihood of planning consent being obtained and spoke to his report that concluded that the creation of additional residential space within the roof would cause no detriment in design terms and would not be contentious. Mr. Tasker also spoke to his report and the Tribunal heard evidence about the different ways in which the roof could be developed, i.e. by the installation of dormers or the more extensive removal and replacement of the roof structure.

The Tribunal's determination

13. Having heard oral evidence and submissions from the parties and considered all of the documents provided, the tribunal is of the opinion that the roof space has development value of £240,000. (This is in addition to the value of the right to collect the ground rents of £1,826).

The Tribunal's reasons

14. During the tribunal's inspection of the subject premises it was apparent that there had been, and was continuing to be, development of roof spaces of nearby properties which, like the subject property are situated in a Conservation Area. Further, the Tribunal learnt that the lessees had in December 2010, commissioned and received a report in respect of the feasibility of developing the roof space, although this had not been carried out due, in part to differing priorities between the lessees.
15. The Tribunal accepts the evidence of Mr. Morris and Mr. Tasker and finds that planning permission is on balance, likely to be granted for the appropriate development. The Tribunal finds it is possible to develop the roof space with the realistic aim of creating two smaller flats, either with the addition of dormer windows or by the whole-scale replacement and rebuild of the roof structure to accommodate one or more flats. The tribunal also finds that the addition of a lift to serve the upper floors has limited prospects of success but finds that in light of the location and the relatively low floor levels a prospective purchaser would find that there is value in a roof development nonetheless.
16. The Tribunal is not persuaded by the Applicant's argument that there is nil developmental value in the roof space as being unlikely, particularly as the lessees behind the applicant company had already received information in respect of its feasibility in December 2010. The Tribunal accepts that although planning consent has not been applied for to date, it is on balance likely to be granted subject to the planning requirements being met.
17. On the valuation the Tribunal prefers the evidence of Ms Ellis to that of Mr. Maunder-Taylor. However, the tribunal finds that it is appropriate to make the following adjustments and deductions to reflect problems

with the lease, the lack of lift space, unquantified costs of development and construction, difficulties with neighbours who oppose the development and the lack of planning consent.

Therefore, the Tribunal finds as follows:

1600 sq. ft. GIA (available for roof space development)

@ £800 per sq. ft. (based on comparable rates produced by the parties)

= £1.28M GDP

Taking 25% of GDP to arrive at the development Site Value reflecting all issues, other than planning = £320,000

Deducting 25% of Site Value, to reflect planning issues, leaves the development value of the roof space at £240,000.

To which should be added the value of the right to receive the ground rents, as already agreed by the parties which will produce the total premium payable for the freehold).

18. In conclusion the Tribunal finds that there is development value of £240,00 in the roof space, which should be appropriately reflected in the premium payable by the Applicant to the landlord as otherwise agreed between the parties.

Signed: Judge LM Tagliavini

Dated: 13 March 2016