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

**Case reference** : **GM/LON/00AE/OCE/2017/0259**

**Property** : **5-17 Berkeley Court, Neasden Lane,  
London NW10 1PX**

**Applicant** : **Berkeley Court Neasden (Freehold)  
Limited**

**Representative** : **Ms E Gibbons**

**Respondent** : **Forwardgilt Limited**

**Representative** : **Mr C Fain**

**Type of application** : **Section 24 of the Leasehold Reform,  
Housing and Urban Development Act  
1993**

**Tribunal members** : **Mrs E Flint FRICS  
Mrs S Redmond BSc (Econ) MRICS**

**Date of  
determination and  
venue** : **14 March 2018  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **24 April 2018**

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**DECISION**

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## **Decision of the Tribunal**

The premium payable for the freehold interest in the subject property is £350,250.

## **Background**

1. This is an application made by the applicant nominee purchaser pursuant to section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 (“the Act”) for a determination of the premium to be paid for the collective enfranchisement and other terms of acquisition which remain in dispute of 5-17 Berkeley Court, Neasden Lane, London NW10 1PX (the “Property”).
2. By a notice of a claim dated 7 March 2017, served pursuant to section 13 of the Act, the applicant exercised the right for the acquisition of the freehold of the subject property. On 24 May 2017, the respondent freeholder served a counter-notice admitting the claim to acquire the collective enfranchisement but not admitting the price to be paid, certain proposals in relation to excluded property and certain leasehold interests.
3. By an application received on 1 November 2017, the applicant applied to the tribunal for a determination of the premium and terms of acquisition.

### **4. The hearing**

5. The hearing in this matter took place on 13 and 14 March 2018. The applicant was represented by Ms Gibbons of Counsel, Ms J Littlemore MEng (Hons) BA (Hons) MStructE, Mr Richard Slattery BSc MSc and Mr G Yasin BSc MRICS, and the respondent by Mr Fain of Counsel, Mr T Horne MRTPI, Mr M A Redston BSc C Eng. MICE, Mr M Williams and Mr A M Lester MRICS.
6. The parties confirmed that the price for the freeholder’s loss of income and reversion had been agreed at £335,000. During the course of the hearing it was agreed that the Applicant was entitled to acquire the garden land and the terms of the transfer were also agreed.
7. The parties confirmed that the following matters remain in dispute:
8. The value of the garden land to be acquired under s.1(2) of the 1993 Act;

9. The value of the cellar;
10. Development value based on four flats at third floor level.

### **The Evidence**

11. It was agreed between the parties that Ms Gibbons would present her witnesses first as not all the experts were available at the commencement of the hearing and that the report of Mr Horne, a planning expert, would be taken as read as Ms Gibbons did not intend to cross examine the witness and had no planning witness of her own. During the hearing it was agreed that the Quantity Surveyor for the respondent, Mr M Williams, would not be called as his evidence was not challenged.
12. Mr Horne's report is dated 8 March 2018. He describes the block and its surroundings. He notes that there are a number of properties in the vicinity which have been granted consent for a roof extension. The other buildings to which he refers all include the provision of additional parking spaces within their curtilage with the exception of 146-148 Neasden Lane which was originally a two storey building.
13. He refers to the planning application received by the council on 22 November 2017 for *the erection of mansard roof extensions to three residential blocks to facilitate the construction of 10 additional flats (6 x 1 bed and 4 x 2 bed), with associated car parking spaces, new vehicular access and waste storage*. The fourth floor at the subject property would comprise 4 x 2 bed units. Since submission the applicant has agreed to amend the application to reflect a car free development, thus removing the "associated car parking spaces" from the application.
14. Mr Horne notes that the site is located on a prominent corner along a main distributor road; the current massing is lower than other buildings in the vicinity; the existing use is residential and it is of solid brick construction with a flat roof.
15. He concludes that the proposal of a single storey residential extension is an entirely reasonable proposition and would stand a good chance of being approved.
16. Ms J Littlemore, a structural engineer, said that the property was a typical purpose built block showing some wear and tear. The basement is situated under the stairs and is actually a sump with ladder access which was full of water when she had inspected.
17. Ms Littlemore explained how she had calculated the likely weight of an additional storey including notional amounts for fixtures, fittings etc. She explained the various options for supporting the new structure,

reflecting the fact that the planning permission required the external walls of the additional storey to be set back 0.5 m from the existing walls.

18. During cross examination she said that she did not disagree with what Mr Redston had done and accepted that the foundations may be sufficiently strong to take the extra load of a lightweight additional storey; underpinning would not be necessary if the additional dead weight was less than 15% of the existing load. She was concerned that Mr Redston had not reflected the enhanced load for the new roof which she said would be more than a standard floor.
19. Mr Redston handed in a Statement of Truth dated 12 March to be attached to his letter to the respondent's solicitor dated 5 March. He said that the letter had not been written specifically for the Tribunal but for his client. However, he was aware that the hearing was to take place.
20. He said that he worked to building control guidelines. He was of the opinion that the new structure would add less than 15% to the current load on the foundations and therefore there was no need to open up the foundations. He accepted that the methods of building the additional storey proposed by Ms Littlemore were two acceptable approaches. He confirmed that he would recommend putting grillage in place to avoid opening up the roof and that although he had not been through the structural calculations in detail they were in the right region.
21. Mr Slattery, a Quantity Surveyor, had costed the proposal to build four new flats on top of the existing roof based on the planning permission. He had inspected the building. He assumed that the external walls would require underpinning. He stated that the roof was in poor condition; the parapet wall was cracked; the chimneys were leaning; there was a bow in the external wall.
22. He considered it would be necessary to allow between £50,000 and £100,000 to deal with the drainage as it was a complete unknown. The sump was a hazard, there was not even a locked door to prevent access to it.
23. He said that his costings did not include Developer's profit which he was of the opinion would add 20% as it was a risky project. The costs did however include upgrading the existing electrics and plumbing, removing asbestos in the building; demolition and rebuilding the roof and rehusing the top floor tenants during the works. He had scaled the plans to arrive at a floor area of 332 sqm. During cross examination he agreed that if he stripped out the additional works to those costed by Mr Lester then there was very little between them. He had added 3% for inflation but as the valuation date was March 2017 this ought to be stripped out.

24. If Mr Redston was correct regarding the loading then he did not disagree with the costings provided by Mr Lester. Although he noted that Mr Lester appeared to have forgotten to include a cost for relining the ceiling of the top floor.
25. He was asked about the quotation from Apex. He did not know how reliable it was, he would have expected to see more quotes.
26. Mr Yasin of MyLeasehold said he had visited the block twice. He had analysed the agreed premium for the loss of income and reversion which gave a value for each flat of £290,000 since the ground rents, capitalisation and deferment rates had been agreed, it was a simple mathematical exercise to arrive at the value of the flats. In valuing the proposed flats he had added 15% for modernisation and deducted 3% as there is no lift, giving a value of £325,000 per flat. The development value was £1,300,000 based on a floor area of 332 sqm.
27. He provided details of sales of comparable flats in an addendum report. Flat 17 Berkeley Court, comprising four rooms, kitchen and bathroom/wc, sold in February 2017 for £345,000 with 117 years unexpired. This sale was used to arrive at a freehold value for the flat of £348,000. He adjusted the price by 15% for modernity and a further 3% for third floor with no lift to arrive at a value of £325,000 for the new flats.
28. Flat 10 of the subject building is on the market at £355,000 with a long lease but at the time of the hearing no offers had been received in the three months the flat has been on the market. The flat is in comparable condition to No.17 when sold. The Land Registry price index at March 2017 was 115.53 and in December 2017 115.12, a nominal difference. The sales particulars indicated that Flat 10 was approximately 5% larger than flat 17.
29. Flat 47b Prout Grove, a ground floor flat in a good state of repair, sold in August 2017 for £375,000. The flat is in a period conversion situated in a quiet street with direct access to its own garden and is significantly larger.
30. These sales support his opinion that the values applied to the new flats by Mr Lester were excessive. Prout Grove was not a particularly good comparable but effectively set the ceiling on the value of two bedroom flats in this area.
31. Under cross examination he said that he was of the opinion that the comparables used by Mr Lester were in superior buildings. This building would require upgrading and the developer would have to bear the cost as improvements are not included within the service charge provisions.

The lack of parking would impact on the value of the flats by as much as £10,000.

32. As far as planning risk was concerned he referred to several decisions of the Upper Tribunal where deductions were made for the absence of planning permission. He also referred to an email dated 2 March 2018 from a planning officer at LB Brent recommending refusal of the current planning application based on comments from the council's transport department. He noted that if planning permission was granted it would be subject to a condition that no occupier would be entitled to a resident's or visitor's parking permit, unless the occupier is the holder of a Disabled Persons Badge, to ensure that the development does not result in an increased demand for parking within the locality of the site. He was of the opinion that a discount of 65% was appropriate to reflect the risks associated with the proposed development.
33. During cross examination he was referred to the advice of Mr Horne, a town planner whose advice had not been challenged. Mr Horne was of the opinion that planning permission would be granted. Mr Yasin said he did not wish to amend his figure, noting that Apex had offered £300,000 for the airspace if planning permission was granted.
34. He considered that there were various factors to be taken into account when considering the viability of the proposals. The condition of the existing building which has not been maintained and requires significant general repairs: in particular there are fractures above the windows; areas of brickwork and masonry require attention especially on the balconies and around the windows; the chimney stack would need to be rebuilt as it has a substantial lean towards the roof; it was unclear why there was standing water in the sump.
35. He noted that the Respondent's Quantity Surveyor had not included developer's profit in his calculations. He accepted that this type of development was popular with smaller development companies. A developer would approach a structural engineer and quantity surveyor for advice to see if the development could be carried out without disturbing the occupiers of the flats. He was of the opinion that in the market, at the valuation date, a developer would look for 20% profit; 15% would be appropriate in a buoyant market.
36. He confirmed that he had taken into account the opinion of Mr Slattery that the total development cost would be in the range £1,174,039 and £1,572,624. A prudent purchaser would err on the side of caution and budget towards the top end of the range of estimated costs. He was of the opinion that the costs of the development outweighed the gross development value. However, he was of the opinion that it would be appropriate to assess the value at £15,000 as a token payment.

37. He assessed the value of the garden land at £250. A nominal sum because it could not be used for parking and there appears to be a path across the grass linking Neasden Lane and Dog Lane which has been used by the general public for over fourteen years.
38. He was of the opinion that the basement/sump was of no value as it had not been maintained, the pump was not working; it was a liability.
39. Mr Lester of AML Surveys and Valuation Ltd said he had inspected the building and some of the flats and the exterior only at a later date. In considering whether it was feasible to add an additional storey to the building he referred to the report from Mr Redston and also that there were a number of similar buildings which had been extended by the addition of a lightweight timber framed extra storey. He agreed that a prospective purchaser would investigate the likelihood of obtaining planning permission and referred to Mr Horne's conclusion that such a planning application would stand a strong chance of being approved. In view of the planning evidence he was of the opinion that a purchaser would make a discount of 10% to reflect the lack of planning permission.
40. He described the proposed development which he said had a gross development area of 310 sqm. In assessing the development value he relied on the report of Mr M Williams of MRW Consultants who had quantified the overall cost at £852,811 excluding VAT which he understood would not be payable on the construction costs of the new flats. In his valuation he included interest, estate agents and professional fees, planning application costs, Community Infrastructure Levy, £50,000 to refurbish the block, a contingency of 1% of the Gross Development Value and 15% developer's profit giving a total of £1,302,070.
41. He considered four sales of flats nearby to arrive at the value of the new flats. 170 Neasden Lane, a 3 roomed second floor flat with an unexpired term of 101 years sold September 2016 for £360,000.
42. 158 Neasden Lane, a 3 roomed second floor flat with an unexpired term of 159 years sold in August 2017 for £350,000. Both flats are in a block opposite the subject premises.
43. 172D Neasden Lane a two roomed third floor flat in a roof top extension with 117 years unexpired sold December 2016 for £312,000.
44. 51 Leeland Way, a three roomed flat in a roof top extension with 114 years unexpired sold July 2016 for £372,500.
45. Mr Lester analysed the prices in terms of £ per square foot; the average was £550. He had not adjusted any of the prices for time as the market had been stable over this period as evidenced by the Land Registry

indices. Applying £550 to the gross internal floor area of 2,818 sq ft produced a gross development value of £1,549,900. As an example, he referred to Flat 19 which with a floor area of 739 sq ft would have a value of £406,450; he considered this a reasonable price for a new build. He was of the opinion that the flats would be marketed at prices in excess of the anticipated sale prices and therefore could possibly achieve a higher sale price. Further value could be achieved by high rising ground rents for the new flats, although he did not reflect any such value in his valuation.

46. The gross development value of £1,549,900 less the total costs of £1,302,070 produces a price of £247,830 for the development value. However as planning permission has not been granted at the valuation date, a deduction of 10% should be made giving a price of £223,047.
47. In addition, he considered a quotation from Apex Airspace Development which the freeholder had obtained in February 2018. Since values have remained fairly static since the valuation date he considered that the quote would have been similar at the valuation date. Apex offered £300,000 subject to planning permission being granted, in addition they agreed to pay the CIL and share with the freeholder any additional value if the flats sell for more than originally anticipated (based on £515 per sq ft).
48. In answer to a question he said that his valuation of the ground rents and reversion was based on £300,000 for the ground floor flats and £305,000 for the first and second floor flats. The agreed premium represented a compromise.
49. Mr Lester considered that the common parts of the block were appalling, the block is very run down but said that the developer would use the scaffolding to carry out all the necessary external work; install an entryphone, improve the common parts. He thought the demand from owner occupiers was not good at present due to the condition of the block. He did not consider a car free development would affect the capital values of the flats because most flats in the block were occupied by tenants who generally did not have cars. The block is close to a tube station and on a bus route.
50. During cross examination he accepted that he had not considered whether the existing services to the block would need to be upgraded. He was of the opinion that the developer would spend whatever was necessary to ensure the new flats were saleable; putting whatever costs he was able to through the service charge account. He also agreed that none of the comparables had sold for in excess of £400,000.
51. He referred to the garden which comprises an angular parcel of grassland to the north east of the site and is bordered by both Neasden Lane and Dog Lane. It does not appear to be used as amenity space, only



as a shortcut. It could be used as a communal garden, adding £500 to the value of each of the flats; £6,000 in total.

52. The small cellar used to house the boiler, provides useful storage. He valued it at £1,000. He disagreed that the basement was a potential liability.
53. In closing submissions Mr Fain referred to the Act. The offer from Apex was a check on Mr Lester's valuation because both valuers agree that there has been little change in values in the meantime. Apex had used £515 per sq ft to calculate the gross development value, which using the correct floor area of 2818 gave a value of £1,451,270. Flat 17 analysed to £466/sq ft, adding 15% for modernity as adopted by Mr Yasin gave almost £536 which when applied to 2818 sq ft gave a value of £1,510,000 in round figures. There was no need to reduce by 3% for being on the third floor without a lift as it was compensated by the better light and aspect. Even if the value is reduced by 3% the result, £1,465,000 is still in excess of £1,300,000. Taking the average price paid for Mr Lester's two bedroom comparables gives an average price of £360,833, and in excess of £1,400,000 for four flats. A developer would adopt this approach.
54. There was little difference between the structural engineers, underpinning was not necessary. There was no need to take an overly cautious approach. Mr Slattery had used the wrong floor area; his costings would need to be amended. There was no need to decant any tenants, the repair costs could be put through the service charge; there was little planning risk. Mr Lester's valuation should be preferred.
55. Ms Gibbins said we had to assess what a developer would pay for this run-down block, close to the tube in a not particularly attractive location. There was no evidence that the respondent had tried to release any development value during its approximately 25 year period of ownership. The market had gone through several cycles. The blocks which Mr Lester had referred to with an additional storey had been developed between seven and eleven years ago at a different stage in the property cycle.
56. The planning application was made some eleven months after service of the initial notice. Even if the respondent did not have the funds to carry out the development there were alternative means e.g. joint venture. It is unlikely that a developer carrying out an appraisal would calculate to the nearest pound. The respondent's costings were deficient: there was no allowance for decanting any tenants, nuisance or damage to any existing flats; no right of access to develop an additional storey; nothing to upgrade services. The experts were right that a purchaser would not expect to recover his costs via the service charge account. This is a risky development: it would not be possible to do cosmetic works and get

premium prices. Mr Yasin did not produce a residual valuation because this is such a risky project.

57. The costs of carrying out the development are not far apart. The difference between the parties is in the gross development value. At £1,300,000 there is an insufficient margin to cover any additional costs. Mr Lester has adopted in excess of £1,500,000 by devaluing sale prices which had not been arrived at by that method in the market. The resultant prices are in excess of anything actually achieved in the market. Mr Lester agreed that the Prout Grove flat was more valuable than the proposed flats, it sold for less than his valuation of the new units. The offer from Apex sets the ceiling at £515 per sq ft as it is on the basis that planning permission has been granted.
58. Mr Yasin based his valuation on the derived value of the flats in the subject block then adjusted accordingly. A prudent purchaser would look at the bottom line, the margins are small, if there were any unforeseen problems the profit margin would be wiped out.
59. As to the garden land at the front the lessees already have rights over the land, there is no evidence that the value has not already been reflected in the value of the flats. Moreover, it may already be subject to a public right of way. It has only a nominal value of £250 at most.
60. The basement, or sump needs attention, it may be a liability and adds no value.

### **The inspection**

61. The tribunal inspected the property on the afternoon of 14 March 2018. Flats 5 -17 Berkeley Court comprise two wings of a V shaped block in a purpose-built development of three storey blocks situated at the junction of Neasden Lane and Dog Lane. Flats 5 -10 are accessed from Neasden Lane, and the remainder from Dog Lane. There are no parking facilities within the site, vehicular access would be difficult owing to the proximity of the site to the junction where the pavement has safety railings, access from Dog Lane would be across permit parking bays. Neasden Lane is a main thoroughfare; Dog Lane is a mainly residential road with permit or ticket parking. The subject property is situated on the least attractive corner of the crossroads. Neasden underground station and local shops are both within easy walking distance.
62. There is a grassed area around the front of the block which has an informal path worn across the grass; it is generally in poor condition. The rubbish and recycling bins are stored at the side of the Dog Lane building, there is a concrete area at the rear of the blocks providing the escape route via the external fire escape. The block, which is of brick construction with rendered balconies and has a flat roof, gives the

appearance of general neglect. The majority of the windows have been replaced with upvc double glazed units, not all of which are in matching style. There is cracking above the brick edge lintels, some of the rendering to the balconies is cracked. The right hand pillar at the side of the entrance path in Neasden Lane is in very poor condition.

63. Internally the common parts in the Neasden Lane block are ill kept and scruffy. The hallway and concrete staircase are narrow. The ceiling on the top floor landing is wood clad, there is an unpainted hatch to the roof. The common parts within the Dog Lane block are similar but generally in better condition as the treads and hallway are carpeted. However, owing to the narrow hall and staircase there is little scope for improvement in either block. There was a door to the basement or sump in which there was water, the door was not properly secured at the inspection.
64. The Tribunal also inspected externally the various comparables referred to by the experts. All of the blocks appeared to be in good condition with well maintained gardens and some parking. They were all more attractive than the subject premises.

### **Decision**

65. The Tribunal is not convinced that Mr Lester's method of valuing the proposed flats on the third floor of the block results in values which could realistically be achieved in the open market. He accepted that 67b Prout Grove was a more valuable flat, it was sold for £375,000. Nevertheless, his valuation relied on average values in excess of that amount.
66. Mr Yasin used as his starting point the derived values from the agreed premium for the capitalised ground rents plus the reversionary value. The Tribunal is mindful that this may be a little on the low side. Mr Lester used £300,000 and £305,000 in his calculation. The Tribunal are conscious that valuation is not an exact science; the values of £290,000 to £305,000 are well within normal valuation tolerances. We therefore take £300,000 as a starting point, add 15% for modernity and deduct a modest 3% for being on the third floor without a lift. This gives a Gross Development Value of £1,338,600 only £36,530 in excess of the costs relied upon by the respondent's valuer. The Tribunal does not agree that a developer would not consider this to be a risky project and would look for in excess of 15% profit.
67. The costs of carrying out the development were not disputed to any great degree other than the additional costs relating to services, upgrading the common parts etc. The tribunal notes that there is a letter within the bundle dated 16 August 2017 from UK Power Networks regarding a visit by their engineer in relation to Flat 14. It states that "*UK Power Networks needs to renew the 3 phase cable into the property and renew our min service head, the old one has asbestos within the service head.*"

*We will clear when we renew our cable. Before work can be completed the basement needs to be cleared of water. Also the cables that feed the individual flats need to be renewed as they are in a very poor state of repair..."* A clear indication that the current electrics to the building will need to be dealt with, particularly if the development were to proceed, adding to the circuits in the building. The issue of the sump also requires attention.

68. The Tribunal finds that a purchaser would consider this a very speculative development opportunity worth no more than the £15,000 proposed by Mr Yasin. The garden land is probably already reflected in the valuation of the existing flats and adds no more than a nominal £250 to the premium. The basement/sump has no value, it may be a liability.

69. The premium payable for the collective enfranchisement is £350,250.

**Name:** Evelyn Flint

**Date:** 24 April 2018

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).