



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) AT 10
ALFRED PLACE, WC1E 7LR**

Case references : **LON/00AC/0CE2020/0160**

HMCTS code : **V: CVPREMOTE**

Property : **Renaissance House, 359 Cockfosters
Road, Barnet EN4 0JT**

Applicant : **Renaissance House Freehold Ltd**

Representative : **Mr Jason Mellor DipSurvPrac of
Maunder Taylor**

Respondent : **Heronlea (Hadley Wood 3) Ltd**

Representative : **Mr Piers Harrison, counsel**

Type of application : **Enfranchisement –section 24
Leasehold Reform, Housing & Urban
Development Act 1993**

Tribunal members : **Judge Tagliavini
Miss M Krisko FRICS**

Date of hearing. : **1 & 2 September 2021**

Date of decision : **27 September 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote paper hearing which has been consented to by the parties. The form of remote hearing was V: VIDEOREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents that the tribunal was referred are contained in the electronic bundles A to E, a bundle of Supplemental Appendices 1 to 6.

The tribunal's summary decision

- 1. The premium payable for the freehold of the subject property at Renaissance House, 359 Cockfosters Road, Barnet EN4 0JT ('the Property') is £144,602.**
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The application

- 1.** This an application under the provisions of section 24 of the Leasehold Reform Housing and Urban Development Act 1993 ('the 1993 Act) seeking a determination of the premium payable for the subject Property. The respondent accepted the applicant's right to purchase the freehold but dispute the premium payable.

The agreed issues

- 2.** The parties agreed the following matters:
 - (i)** The Property is a modern purpose-built development of eight flats with underground parking, garden, and day concierge service, which was constructed approximately 5 years ago.
 - (ii)** Each of the eight flats are held for leases of 125 years from 24 June 2015.
 - (iii)** The total passing ground rent is £3,850 which doubles every 25 years. Individually, seven of the flats currently pay £500 ground rent per annum and one flat is required to pay £350 per annum.
 - (iv)** The valuation date is 30 March 2020, at which point there were 120.23 years unexpired on each of the leases.

- (v) The value of the reversion of the flats under paragraph 2(a) of £41,151, which reflects aggregate FHVPs of £14,500,000 and a deferment rate of 5%.
- (vi) There is no marriage value payable under paragraph 2(b).

The disputed matters

- 3. The issues to be determined by the tribunal were:
 - (a) The capital value of the ground rent income and in particular the capitalisation rate to arrive at that value figure.
 - (b) The possibility of other compensation payable under Schedule 6.
 - (c) The premium payable for the freehold.

The applicant's evidence

- 4. The applicant relied upon the written and oral evidence of Mr Jason Mellor who also acted as its representative. Mr Mellor relied upon his report dated 10 August 2021. In his evidence, Mr Mellor relied upon the market evidence provided by 20 comparable ground rent sales that had taken place between February 2019 and July 2020. Thirteen of these sales had taken place at auction with the remaining three being made up of private sales of ground rent investments.
- 5. In valuing the ground rent value, Mr Mellor adopted an 'equated yield' ('EYF') approach in his report, which he defined as being

'Where a yield rate is applied to more than one period of ground rent, thereby calculating a separate capital value for each of the review rent periods. These capital values take account of the time the rent is payable for and the length of time delay before that review rent starts to be paid. The aggregate of these separate capital values gives the market value of the rental income.'
- 6. Mr Mellor applied this 'equated yield' approach to each of the comparable sales on which he relied and then applied it to the subject Property. In applying this approach to the subject Property, Mr Mellor stated that he would expect the EYF yield rate to be below the average and towards the bottom end of the range excluding outliers. Without the outliers being excluded the yield ranged between 5.8% and 8.6% providing an average of around 7%. Mr Mellor adjusted this figure to allow for no act right, lack of management under the lease and the higher ground rent, coming to a yield of 6%. Mr Mellor also looked at settlement which showed yields of 6% to 7% and a number of

tribunal decisions which also ranged between 6% to 7%. Mr Mellor adopted a yield of 6% thereby producing a premium payable of £139,602 which he rounded to £140,000.

7. Mr Mellor contended there was no development value as the property was a relatively new construction and had taken full advantage of the plot available in its design and construction.
8. In an alternative approach of analysing the ground rent market evidence without any separate reversionary calculation, the appropriate (EYF) capitalisation rate would be 5.5% and the premium payable for the freehold interest would be £114,000.

The respondent's evidence

9. The respondent relied upon the valuation report of Mr Alex Ingram-Hill MRICS of John D Wood & Co dated 20 August 2021, who also gave oral evidence to the tribunal. Mr Ingram-Hill disputed the reliability of auction sales for the purpose of providing comparable market evidence and asserted

'[I] am very cautious as to how it should be applied, and I think such is the nature of the auction market that analysis of sales should concede that the resultant yields represent a high-water mark which should arguable be discounted for application.'

10. In contrast to the approach adopted by Mr Mellor, Mr Ingram-Hill chose to rely on only 4 auction sales on which to base his calculation of the capitalisation rate of the subject Property. Mr Ingram-Hill adopted a 'two stream' approach for the loss of ground rent and applied a capitalisation rate of 5% to the Renaissance House ground rents. This produced a capitalised sum of £139,686 and calculated the reversionary value prior to grant as amounting to £41,151.
11. Mr Ingram-Hill asserted that there was an element of development value in the Property to reflect the possibility of the amalgamation of flats and to create improvements to the flats and grounds. Mr Ingram-Hill added a sum of £15,000 to reflect this development value and produced a price for the freehold value interest of £195,837.
12. In closing Mr Harrison relied upon the written submission provided to the tribunal and submitted that Mr Ingram-Hill's evidence should be preferred to that of Mr Mellor as the latter's reliance on auction and private sales was not discounted to reflect the effect of the 1993 Act upon the seemingly secure long-term investment producing a known income stream until the end of the lease. Mr Harrison also submitted that Mr Mellor had failed to consider the proposals put forward in the Law Commission's consultation paper (published September 2018) and its proposals on valuation (published January 2020) on

the prescription of fixed deferment and capitalisation rates as well as the designation of 'onerous ground rents' and its suggestion of a cap of 0.1% of the freehold value of the Property.

13. Mr Harrison submitted that evidence of real-world sales entered into after 2018 should be treated with care, as those sales are likely to be affected by the possibility of government intervention on valuation matters. In contrast sales under the statutory hypothesis would not be similarly affected

The tribunal's decision and reasons

14. In reaching its decision the tribunal had regard to Schedule 6 of the 1993 Act which sets out how the valuation is to be calculated. Overall, the tribunal largely preferred the evidence of Mr Mellor to that of Mr Ingram-Hill and adopted the former's methodology. The tribunal did not accept the respondent's submission that the majority of Mr Mellor's comparable sales should be excluded, for having 'onerous ground rents' as they amounted to or exceeded 0.1% of the freehold value in reliance on the Law Commission's proposals, yet to be accepted or enacted in any form. Therefore, the tribunal accepted Mr Mellor's evidence of auction and private sales as providing market evidence and accepted as appropriate, his exclusion of the outliers. The tribunal also excluded the sale of 38 Enmore Road, as this recorded that 'extra special conditions' were attached to this property.
15. The respondent did not provide any actual evidence of what development could be carried out at the front of the property, although referred to the possibility of the construction of a swimming pool or gym although there was no planning advice or calculations of cost or consideration of how any development would allow the residents to continue to exercise their access and parking rights. Notwithstanding, the tribunal finds that there is some modest development potential at the Property, although it does not accept Mr Ingram-Hill's assessment of the extent of this. Therefore, having regard to its expertise, knowledge and experience, the tribunal considers that £5,000 is an appropriately reflects the development value.
16. Therefore, the tribunal determines the following:
 - (i) The capitalisation rate is 6%
 - (ii) Other compensation payable under Schedule 6 of the 1993 Act is £5,000.
 - (iii) The premium payable for the freehold is £144,602.

Name: Judge Tagliavini

Date: 27 September 2021

Rights of appeal from the decision of the tribunal

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).